

**Position Brief**  
**on**  
**Failure to Prevent BSE Transmission Routes in USDA Final Rule**

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The preamble of the Final Rule supports a prohibition on breeding stock from entering the United States. However, the regulation does not expressly prohibit cattle of breeding age from being bred either before or after entering the U.S., either intentionally or otherwise. This loophole creates a number of pathways through which BSE could enter the United States.

While it is clear in the preamble that USDA did not intend to allow breeding cattle into the United States, *See Fed. Reg. 484, 485 (January 4, 2005)*, the Final Rule does not include any precautionary measures to prevent bred cattle from entering the U.S. or to prevent cattle from being bred upon arrival in the United States. The Final Rule does not require the spaying of heifers or castration of bulls, nor does it require heifers to be pregnancy checked as a condition of entry into the U.S.

USDA estimates that approximately two million Canadian cattle will be imported into the U.S. in 2005, approximately 500,000 of these cattle are expected to be feeder cattle. *See Economic Analysis of Final Rule, Appendix B (December 20, 2004)*. Given the lack of measures to guard against pregnancy in imported heifers, it is highly likely that a percentage of both heifers imported for direct slaughter and heifers imported for further feeding will be pregnant. Because the Final Rule neglects this likelihood, it is void of any provisions specifying the proper disposition of fetuses at slaughtering facilities or calves in feedlots.

The Final Rule, consistent with the OIE, recognizes that there is a small probability that BSE can be transmitted maternally, which is why USDA euthanized the two offspring of the Canadian-origin BSE-infected cow discovered in Washington state. *See Fed. Reg. 530*. However, because USDA does not require any calves born by imported Canadian cattle to be euthanized, such calves could become a vector for BSE infection in the United States.

USDA was quite emphatic in the Final Rule when it stated it would not accept the uncertain risk associated with the importation of Fetal Blood Serum (FBS), which is used in bovine vaccine production and bovine embryo transfer. *Id. 502*. USDA stated, “Unless and until there is conclusive data to demonstrate that BSE is not transmitted by blood and would not be a contaminant of FBS, we consider it necessary to prohibit the importation of FBS from BSE minimal risk regions.” *Id.*

However, the lack of prescriptive measures for the disposal of bovine fetuses discovered in imported cattle at slaughter effectively nullifies USDA’s import prohibition against Fetal Blood Serum. In addition, calves born in the U.S. to Canadian cows would not have to be identified as Canadian-origin animals and would be mixed with U.S. cattle and not subject to any special precautions, even though their mother is at higher risk of having BSE.