

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

RANCHERS CATTLEMEN ACTION LEGAL FUND UNITED STOCKGROWERS OF AMERICA,)	
)	
Plaintiff,)	Cause No.
)	CV-05-06-BLG-RFC
v.)	
)	
UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, et al.,)	
)	
Defendants.)	
)	

DECLARATION OF KEVIN SHEA

I, Kevin Shea, make the following representations based upon my personal knowledge and upon facts made known to me in my capacity as an official of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA).

1. I am the Associate Administrator and Chief Operating Officer for the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA). As Associate Administrator and Chief Operating Officer, it is my duty to ensure the smooth day-to-day functioning of APHIS. Prior to becoming Associate Administrator, I spent four years as the head of APHIS Policy and Program Development staff (PPD). Before becoming the Director of PPD, I served as Director of APHIS Budget and Accounting Division for eight years, following a short period of service as PPD s Assistant Director and a year practicing law at a private law firm. In addition, I worked for APHIS for ten years as a budget analyst, section head, and chief of the Program Analysis Branch for the Budget and Accounting Division. Finally, I also served

for three years as the Chief of Policy Analysis and Development Staff of PPD. I am a graduate of the University of Maryland at College Park with a Bachelors degree in political science, and I earned a juris doctorate from the University of Baltimore School of Law.

2. Prior to the issuance of the Bovine Spongiform Encephalopathy, Minimal Risk Regions and Importation of Commodities; Final Rule and Notice, 70 Fed. Reg. 460, (Minimal Risk rule) this rule was subject to economic and risk assessment analyses at the agency, departmental, and executive levels.

3. Within APHIS, the PPD s Policy Analysis and Development staff (PAD) provides the economic analysis required for rulemaking and assists agency decision makers in the evaluation of policy and program issues. Expected impacts of regulations are examined as required by the Regulatory Flexibility Act (Pub. L. 96-354) and Regulatory Planning and Review (Executive Order 12866). In the first instance, the staff determines whether a regulation will have a significant impact on a substantial number of small entities. In the second instance, where there is determined to significant regulatory actions, costs and benefits are examined both more broadly and in greater depth.

4. The PAD staff has eleven economists, all but one with advanced degrees and six with Ph.D. degrees in either economics or agricultural economics. The lead economist that developed the analysis for the Minimal Risk rule holds a Ph.D. in agricultural economics from the University of Florida.

5. Additionally, a number of economists who hold Ph.D.s in agricultural economics working throughout USDA contributed to the analysis. These economists include staff members from APHIS' Veterinary Services Centers for Epidemiology and Animal Health (CEAH), USDA's

Office of the Chief Economist, and USDA's Economic Research Service.

6. Since the Minimal Risk rule was considered an economically significant rule, the economic assessment conducted by PAD was reviewed and cleared within USDA by USDA's Office of Budget and Program Analysis (OBPA) and USDA's Office of the Chief Economist, Office of Risk Assessment and Cost-Benefit Analysis (ORACBA).

7. The Office of Budget and Program Analysis major activities consist of coordinating the preparation of the Department's budget estimates, legislative reports, and regulations. In addition, the office provides direction and administration of the Department's budgetary functions including development, preparation, and administration of the budget; reviews program and legislative proposals for program and budget related implications; and analyzes program and resources issues and alternatives. The economic assessment for the Minimal Risk rule was reviewed by an OBPA analyst with an advanced degree in agricultural economics.

8. While the Minimal Risk rule was undergoing an economic analysis through the above-mentioned agencies, it was also subject to a risk assessment conducted under the leadership of scientists in APHIS Veterinary Services National Animal Health Policy and Programs (NAHPP). Within APHIS, ten scientists from NAHPP and six from CEAH are involved in import risk analyses. Five of these individuals from NAHPP and one from CEAH were major contributors to the development of the risk assessment for the Minimal Risk rule. NAHPP and CEAH scientists represent a wide range of disciplines, holding advanced degrees in veterinary medicine, microbiology, economics, and statistics.

9. Additionally a number of other scientists working in and outside of APHIS contributed to or provided comments on the risk assessment. These include staff from USDA's Food Safety

and Inspection Service, USDA's Office of Risk Assessment and Cost Benefit Analysis, and APHIS PPD's Risk Analysis Systems. These individuals also hold advanced degrees in a range of disciplines including veterinary medicine, zoology, microbiology, and public health. The Minimal Risk rule risk assessment was also reviewed by the Director of the Center for Animal Health and Food Safety at the University of Minnesota.

10. As mentioned above, on the Departmental level, the Office of the Chief Economist's ORACBA staff conducted a review of the economic analysis accompanying the Minimal Risk rule. Members of this staff also reviewed the risk assessment. The Office of Risk Assessment and Cost-Benefit Analysis, whose primary role is to ensure that major regulations proposed by USDA are based on sound scientific and economic analysis, has a permanent staff of eight, including four staff members with Ph.Ds and one with a DVM/MPH. ORACBA reviewers of the Minimal Risk rule's economic and risk assessments hold Ph.D.s in economics, ecology, and energy management and environmental policy.

11. Once the Minimal Risk rule was reviewed by ORACBA, reviewers provided the Chief Economist with a summary of the economic analysis and a recommendation to clear the analysis. The Office of the Chief Economist advises the Secretary on the economic implications of policies and programs affecting the U.S. food and fiber system and rural areas. Additionally, the Chief Economist is responsible for approving economic analyses of economically significant rules. In this instance, the Chief Economist, who holds a Ph.D in economics and statistics, provided clearance of the analysis for the Minimal Risk rule.

12. In addition to the analyses of the Minimal Risk rule conducted by APHIS and Departmental staff, this rule was also reviewed and approved by the Office of Management and

Budget's Office of Information and Regulatory Affairs (OIRA). OIRA is an office within the Office of Management and Budget, which is an agency within the Executive Office of the President. It is staffed by career civil servants, who have been carrying out the same kinds of economic analysis for the past 20 years. OIRA has been charged with reviewing agency draft regulations before publication to ensure that the agency has considered, among other things, alternatives and analysis of impacts, both benefits and costs. OIRA is headed by Dr. John Graham, the founder of the Harvard Center for Risk Analysis, which he ran for over ten years. The OIRA desk officer for USDA, as well as other OIRA staff, were responsible for reviewing the assessments accompanying the Minimal Risk Rule.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of February, 2005, in Washington, D.C.

Kevin Shea