

November 17, 2009

The Honorable Tom Vilsack  
Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

**Re: Serious Concerns Regarding APHIS' October 5, 2009 Status Report  
in R-CALF USA, et al. vs. USDA, et al.**

Dear Secretary Vilsack:

On Oct. 5, 2009, the U.S. Department of Agriculture (USDA) provided notice to the United States District Court, District of South Dakota, Northern Division, that states the agency is preparing a docket to initiate rulemaking to amend its bovine spongiform encephalopathy (BSE) regulations regarding the importation of bovines and bovine products. The notice specifically states, "The proposed criteria for country classification and commodity import would be closely aligned with those of the World Organization for Animal Health."<sup>1</sup>

We, the undersigned organizations, are deeply concerned with this proposed action and believe USDA is exhibiting a serious lack of judgment by attempting to align U.S. safety measures with the incessantly weak and demonstrably ineffective BSE standards established by the international World Organization for Animal Health (OIE). This proposed action would, if taken, abrogate your agency's responsibility under the Animal Health Protection Act to protect U.S. livestock and the people of the United States from the *introduction into* and *spread within* the United States of animal diseases, particularly from such a pernicious animal disease as BSE that is invariably fatal and that also afflict humans.<sup>2</sup> Your Administration must reverse, not perpetuate, the previous Administration's dangerous policy of preempting sound animal health and human health protections to facilitate trade – a policy that not only has increased domestic health hazards, but also has caused serious economic harm to domestic industries.

USDA's own risk assessment predicts, with a high level of certainty, that current regulations will cause the introduction and spread of fatal BSE within the United States.<sup>3</sup> The risk assessment further predicts that the people of the United States will be exposed to additional risk for the disease. These regulations, implemented by the prior Administration, defy USDA's animal health protection mandate while stating, throughout their respective preambles, that the U.S. *and* Canada, as well as the rules themselves, are in conformity to OIE standards.<sup>4</sup> The OIE standards cannot reasonably be expected to protect U.S. livestock and the people of the United States from the introduction and spread of BSE as required by the Animal Health Protection Act.

The OIE standards are not deemed credible. They have not been followed by any of the United States' major export customers with which the United States maintains a positive trade balance. This situation has not changed in the past six years.<sup>5</sup> Current trade policy is losing support, in large part, because food and product safety standards are negated by government

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efforts to facilitate cross-border trade at all costs. The trade-trumping-safety policy problem includes, but also goes beyond, cattle and beef. Because of USDA's past and current persistence in adopting unproven and inapt international standards – rather than continuing pre-BSE disease standards proven to protect consumers of U.S. beef and U.S. citizens, including U.S. cattle producers and their livestock – the U.S. cattle industry is unnecessarily burdened by a flood of unsafe imports. The result is a large trade deficit in cattle and beef that is forcing thousands upon thousands of independent cattle producers out of business each year.

The only countries that have scientifically demonstrated a *reduction* in the incidence of BSE are those that continue to require more BSE testing, stricter feed bans, and more stringent specified risk materials removal practices than the OIE requires.<sup>6</sup> Canada, on the other hand, is the only BSE-affected country with multiple cases of BSE detected in animals born after a feed ban that does not require standards far more stringent than those established by the OIE. It is not surprising, therefore, that OIE reports show that Canada is the *only* BSE-affected country other than Portugal to have experienced an *increased* incidence of BSE between 2007 and 2008.<sup>7</sup>

President Barack Obama and Vice President Joseph Biden, Jr., have previously demonstrated their strong opposition to USDA's final rule that reopened our borders to Canadian cattle and beef after BSE was detected in Canada. Then-Senators Obama and Biden voted in favor of a Senate Resolution of Disapproval declaring that USDA's rule shall have no force or effect.<sup>8</sup> The BSE problem in Canada has grown substantially worse since that Senate Resolution. At the time of their votes, only four cases of BSE had been detected in Canadian-born cattle, and no post-feed ban BSE cases were discovered. Since that time, seventeen (17) cases of BSE have been discovered in Canadian-born cattle. Eleven (11) of these seventeen (17) BSE-infected cattle were born after Canada's 1997 feed ban. Ten (10) of these eleven (11) infected post-feed ban cattle were eligible, under USDA's current rules, for export to the United States because they were born after March 1, 1999.<sup>9</sup>

The proper policy is to bring United States' BSE regulations in line with past standards, which were more closely aligned to the current standards of our trading partners. Animal health, as well as food and product safety, should be held in higher regard by your Administration than trade facilitation. Public support for such a change is clear. The industry need is clear. Consumer confidence would increase. The United States' current trade imbalances would become more balanced. Risks to animal and human health would be drastically reduced.

The U.S. is the largest beef consuming market in the world and the largest beef producing country in the world.<sup>10</sup> You have inherited the weakest, most ineffective and liberal BSE import policies when compared to every other major beef consuming market in the world. President Obama and Vice President Biden previously objected to the very rules that exist now.

We respectfully request that you promulgate BSE rules that restore for U.S. livestock, livestock producers, and the people of the United States the highest possible level of protection against the introduction and spread of animal diseases. Valid science, consumer confidence, and sound economics require the BSE import rules to be tightened according to pre-outbreak norms. This departure from the past Administration's destructive policies will improve consumer

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confidence in the beef supply, balance trade flows, remedy the severe financial destruction of the U.S. cattle industry, and substantially decrease the risk of livestock and human disease exposure.

Sincerely,

**National Organizations:**

American Grassfed Association  
Coalition for a Prosperous America  
Consumer Federation of America  
CJD Foundation  
Farm and Ranch Freedom Alliance  
Food & Water Watch  
Freedom21, Inc.  
International Texas Longhorn Association  
National Association of Farm Animal Welfare  
National Farmers Union  
Organic Consumers Association  
Organization for Competitive Markets  
R-CALF USA  
Sovereignty International, Inc.  
The Cornucopia Institute  
Western Organization of Resource Councils

**State, Regional and County Organizations:**

Buckeye Quality Beef Association (Ohio)  
Cattle Producers of Washington  
Citizens for Private Property Rights, Missouri  
Colorado Independent CattleGrower's Association  
Independent Cattlemen of Nebraska  
Independent Beef Association of North Dakota  
Independent Cattlemen of Wyoming  
Kansas Cattlemen's Association  
Kansas Farmers Union  
Mississippi Livestock Markets Association  
Missouri Farmers Union  
Nebraska Farmers Union  
Nevada Live Stock Association  
New England Farmers Union  
Northeast Organic Farming Association/Massachusetts Chapter, Inc.  
Ohio Farmers Union  
Oregon Livestock Producers Association  
Ozarks Property Rights Congress, Missouri  
PCC Natural Markets (Puget Consumers Co-op)

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SmallHolders of Massachusetts  
South Dakota Farmers Union  
South Dakota Stockgrowers Association  
Spokane County Cattlemen, Washington  
Stevens County Cattlemen, Washington

*For More information or to contact individual organizations, please contact R-CALF USA at 406-252-2516 or r-calfusa@r-calfusa.com.*

cc: Members of Congress  
U.S. Centers for Disease Control and Prevention  
State Animal Health Officials

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<sup>1</sup> Defendant's [USDA's] Status Report, R-CALF USA et al. vs. USDA, et al., U.S. District Court, District of South Dakota, Northern Division, CIV-07-1023, Oct. 5, 2009.

<sup>2</sup> See 7 U.S.C. § 8301 (1) ("the prevention, detection, control and eradication of diseases and pests of animals are essential to protect . . . animal health [and] the health and welfare of the people of the United States."); see also 7 U.S.C. § 8303 (a) (1) (The Secretary of Agriculture "may prohibit or restrict . . . the importation or entry of any animal . . . if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.").

<sup>3</sup> See 72 Fed. Reg., 1109, col. 2; 72 Fed. Reg., 53347, col. 1 (USDA's risk modeling for its over-30-month rule (OTM Rule) predicts the U.S. would import between 19 and 105 BSE-infected cattle from Canada, which would subsequently produce BSE infections in 2 to 75 U.S.-born cattle over a 20-year period).

<sup>4</sup> See, e.g., 72 Fed. Reg., 53331, col. 1 (USDA justifies a key decision in its rulemaking by stating it is "entirely consistent with the science and with OIE guidelines."); see also *id.*, 53341 ("Our proposed changes are consistent with the OIE guidelines for trade in live animals from a controlled risk region."); see also *id.*, 53342 (For the reasons discussed above, we disagree that this rule is inconsistent with OIE guidelines."); see also 70 Fed. Reg., 510, col. 3 ("BSE incidence and surveillance in Canada are well within the OIE guidelines for BSE minimal Risk."); see also *id.*, 464, col. 2 ("our proposed standards for minimal-risk regions were based on the OIE guidelines for BSE minimal-risk regions, using those guidelines as a reference."); see also *id.*, 476, col. 3 ("Canada again exceeds OIE guidelines. . ."); see also *id.*, 471, col. 3 ("Although Canada does not precisely meet the OIE guideline for duration of a feed ban, its control measures in other areas (such as surveillance and import restrictions) more than compensate for this.").

<sup>5</sup> See Global Beef Trade: Effects of Animal Health, Sanitary, Food Safety, and Other Measures on U.S. Exports, U.S. International Trade Commission, USITC Publication No. 4033, September 2008, at 4-9 (Japan, with a 37.2% share of U.S. exports in 2003 disallows beef from cattle over 20 months and disallows ground beef; Korea, with a 21.2% share of U.S. exports in 2003 disallows beef from cattle over 30 months of age; Mexico, with a 19.6% share of U.S. exports in 2003 disallows beef from cattle over 30 months of age.).

<sup>6</sup> See, e.g., Appendix A – APHIS' consideration of Japan in Light of the World Organization for Animal Health's (OIE) Guidelines, Analysis of Bovine Spongiform Encephalopathy (BSE) Risk to the U.S. Cattle Population from Importation of Whole Cuts of Boneless Beef from Japan, Veterinary Services, Animal and Plant Health Inspection Services, U.S. Dept. of Agriculture, at 5 ("Since October 2001, all cattle slaughtered in Japan undergo an ELISA screening test, followed by a confirmation test. . ."), (Japan prohibits ruminant derived meat-and-bone meal in animal feed and requires separate feed manufacturing production lines used exclusively for cattle feed.); see also *id.*, at 16 (Japan implemented a complete ban on the use of mammalian protein, including blood products); see also Export Requirements for Japan, U.S. Dept. of Agriculture Food Safety and Inspection Service, JA-179, Oct. 23, 2009 (Japan requires the removal of the spinal cord and spinal column from animals less than 21 months of age.).

<sup>7</sup> See Annual incidence rate of bovine spongiform encephalopathy (BSE) in OIE Member Countries that have reported cases, excluding the United Kingdom, OIE, downloaded Oct. 28, 2009, available at [http://www.oie.int/eng/info/en\\_esbincidence.htm](http://www.oie.int/eng/info/en_esbincidence.htm).

<sup>8</sup> With the help of now President Obama and Vice President Biden, the U.S. Senate in the 109<sup>th</sup> Congress passed S.J. Res. 4 by a vote of 52 to 46. The Senate Resolution provided for congressional disapproval of USDA's final rule to

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designate Canada as a minimal-risk country and to allow imports of cattle and beef from cattle that originate in a BSE-affected country, namely Canada.

<sup>9</sup> See BSE (Bovine Spongiform Encephalopathy, or Mad Cow Disease), Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, available at <http://www.cdc.gov/ncidod/dvrd/bse/index.htm>.

<sup>10</sup> See Livestock and Poultry: World Markets and Trade, U.S. Dept. of Agriculture, Foreign Agricultural Service, Circular Series April 2009, at 7 (U.S. beef and veal production and U.S. beef and veal consumption far surpass any other country in the world, e.g., the U.S. produced over 12 million metric tons while second place Brazil produced less than 9.1 million metric tons in 2008, and the U.S. consumed over 12 million metric tons while second place EU-27 consumed less than 8.5 million metric tons during the same year.).