

March 30, 2010

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

Docket No. APHIS 2008-0093
Regulatory Analysis and Development, PPD
APHIS, Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238

Via Overnight Mail and Facsimile: 202-720-2166; 202-720-5775; 301-734-8934.

Re: Urgent Request for Action to Strengthen U.S. BSE Protections; Supplemental Comments in Docket No. APHIS-2008-0093: Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Meat, Meat Byproducts, and Meat Food Products Derived From Bovines 30 Months of Age or Older

Dear Secretary Vilsack:

Many of us, the undersigned organizations, wrote you four months ago and asked you to promulgate bovine spongiform encephalopathy (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. Those of us who were not joined in that earlier request do so now. For the reasons discussed below, we request that you restore the previous rules and regulations that prevented Canadian cattle, and beef from Canadian cattle, over the age of 30 months from entering the United States.

On February 25, 2010, Canada confirmed its 18th BSE-positive case in a Canadian-born cow. This latest BSE-infected cow was reportedly born in 2004, indicating that the BSE agent continued to circulate in the Canadian feed system at least through all or part of 2004, which is *years* after the March 1, 1999, date established by the U.S. Department of Agriculture (USDA) as the date after which there would be *an extremely low likelihood* that Canadian cattle would be exposed to the BSE agent in Canadian animal feed.¹

With this latest case, Canada has detected 11 BSE-positive cases in cattle born after March 1, 1999. All of these BSE-positive cattle were detected between January 2006 and February 2010 under Canada's BSE surveillance program, which is voluntary except in instances where an animal exhibits at least three of seven recognized BSE symptoms and is deemed a BSE

¹ See 72 Fed. Reg., 53372, col. 2 ("APHIS considers that a period of 1 year following the full implementation of the feed ban allowed sufficient time for the measures taken by Canada to have their desired effect. Therefore, APHIS concludes that there is an extremely low likelihood that cattle born in Canada on or after March 1, 1999, will have been exposed to the BSE agent via feed. Therefore, these animals have an extremely low likelihood of being infected and can be imported into the United States for any purpose."); see also 72 Fed. Reg., 53324, col. 3 (APHIS stated, "Based on Canada's system of regulations, compliance and enforcement, and the length of time we expect pre-feed ban feed to persist in the system, we conclude that animals born on or after March 1, 1999, have an extremely low likelihood of exposure to BSE.").

suspect.² During this longer-than-four-year surveillance period, Canada tested only 203,831 cattle.³ Thus, Canada has detected one BSE-positive case in a cow born after March 1, 1999, for each 18,530 cattle tested over about a four-year period.

It would be irresponsible for USDA to continue to ignore the empirical facts that show Canada's ongoing BSE problem is far more serious than USDA predicted when it first relaxed U.S. disease safeguards in 2005, and then further relaxed those safeguards in 2007 to facilitate the importation of Canadian cattle born after March 1, 1999, and beef from Canadian cattle of any age. In support of its 2007 safeguard relaxation, the previous Administration considered the potential for BSE in Canadian cattle born after March 1, 1999, to be insignificant, and USDA stated that "such isolated incidents are not epidemiologically significant and do not contribute to further spread of BSE, especially when considered in light of the entire risk pathway and its attendant risk mitigations."⁴ This pronouncement was made when only three Canadian cows born after March 1, 1999, had been confirmed BSE-positive.⁵ As shown below, your Administration should not condone this reckless and unscientific approach to protecting the people of the United States and U.S. livestock from the introduction and spread of BSE by allowing the over-30-month (OTM) Rule⁶ to remain in effect.

I. Canada's Detection of 11 BSE-Positive Cattle Born after March 1, 1999, Cannot Be Considered Isolated, It Is Epidemiologically Significant, and it Does Contribute to the Spread of BSE

² See Bovine Spongiform Encephalopathy Manual of Procedures, Canadian Food Inspection Agency, Sect. 2(4) (Explaining that samples from animals designated as BSE suspects are required to be submitted for BSE testing.), available at <http://www.inspection.gc.ca/english/anima/heasan/man/bseesb/2e.shtml#m2.1>; see also BSE Enhanced Surveillance – Testing and Sampling Information, Canadian Food Inspection Agency (CFIA) (The CFIA's description of its BSE surveillance program states, "Since the effectiveness of this surveillance program relies heavily on the participation and cooperation of industry and all members of the animal health community, the CFIA, in partnership with stakeholders, launched a comprehensive awareness campaign to encourage the availability of suitable samples."), available at <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/surv/sampe.shtml#test>; see also Risk Management of Transmissible spongiform encephalopathies in Europe, D. Heim & U. Kim, Rev. Sci. Tech. Off. Int. Epiz., 2003, 22(1), at 183 (European researchers have found this type of voluntary reporting insufficient: "In these countries [with a voluntary reporting system for non symptomatic animals], disease awareness or willingness to report cases seems insufficient.").

³ See BSE Enhanced Surveillance Program, Sample Status and Testing Results, Canadian Food Inspection Agency (Monthly testing data is provided from 2004-2010, though the testing level for the month of February 2010, which is not yet posted, was estimated using data for February 2009.), available at <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/surv/surve.shtml#num>.

⁴ See 72 Fed. Reg., 1108, col. 2 (Jan. 9, 2007); see also 72 Fed. Reg., 53330, col. 3 (Sept. 18, 2007).

⁵ See 72 Fed. Reg., 1108, col. 1.

⁶ See Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines; Final Rule, 72 Fed. Reg., 53314 *et. seq.* (This rule is commonly referred to as the "OTM Rule.").

Canada's ratio of the detection of BSE-positive cattle born after March 1, 1999, per 10,000 cattle tested is 0.54.⁷ This ratio of BSE-positive cases per 10,000 cattle tested is much *higher* than the 0.34 ratio of the detection of BSE-positive cases per 10,000 cattle tested in 2007 (latest available data) in the European Union (EU), which is comprised of 27 countries including the United Kingdom. The EU detected 174 BSE-positive cattle during that year.⁸ Canada's 0.54 ratio of the detection of BSE-positive cattle born after March 1, 1999, per 10,000 cattle tested could be compared to the EU's 2007 targeted testing results for the subpopulation of EU cattle considered "risk bovine animals," which include only fallen stock, bovine animals with clinical signs at ante-mortem inspection, and emergency slaughter).⁹ The EU's collective ratio of BSE-positive cases per 10,000 risk bovine animals tested in 2007 was 0.78, and 113 BSE-positive cases were detected in this risk subpopulation.¹⁰ Indeed, when comparing Canada with individual EU countries considered to have high rates of BSE-positive cattle, Canada's ratio is *higher* than the 2007 ratios for risk bovine animals in Germany, France, Italy, Netherlands, Austria, Czech Republic, and Poland.¹¹

Even if USDA's inexplicable dismissal of the epidemiological significance of Canada's rate of detection and ratio of detection of BSE-positive cases in Canadian cattle born after March 1, 1999, *under Canada's limited testing program*, is momentarily excused, it remains an inescapable fact that these 11 BSE-positive cattle met the birth-date eligibility requirement to be exported to and subsequently slaughtered in the United States. As a result, USDA must concede that the safety of beef derived from Canadian cattle (which beef is now commingled with the U.S. beef supply) is acutely contingent on the effectiveness of attendant U.S. risk mitigations to prevent human and livestock exposure to the BSE infectivity that is definitely known to exist in cattle eligible to enter the United States. And, USDA also must concede that the attendant risk mitigations that beef from Canadian cattle are subject to in the U.S. are less stringent than in either the EU or Japan, thus assuring that U.S. consumers are *less* protected from the introduction into their food supply of beef derived from a BSE-infected animal and tissues capable of spreading BSE than are consumers in the EU and Japan.¹²

⁷ The calculation of the ratio of BSE-positive cases per 10,000 cattle tested was based on Canada's detection of 11 BSE-positive cattle born after March 1, 1999, from among the 203,831 surveillance tests performed from January 2006-February 2010 (Testing levels for February 2010 was estimated based on the February 2009 testing level).

⁸ See Table B5: Total positive cases per number of cattle tested or present in the adult population, Report on the monitoring and testing of ruminants for the presence of transmissible spongiform encephalopathies (TSEs) in the EU in 2007, Directorate-General for Health & Consumers, European Commission, at 18, available at http://ec.europa.eu/food/food/biosafety/bse/annual_reps_en.htm.

⁹ See Table B11: Testing on all risk bovine animals (Fallen stock, bovine animals with clinical signs at ante-mortem inspection and emergency slaughter), Report on the monitoring and testing of ruminants for the presence of transmissible spongiform encephalopathies (TSEs) in the EU in 2007, Directorate-General for Health & Consumers, European Commission, at 26, available at http://ec.europa.eu/food/food/biosafety/bse/annual_reps_en.htm.

¹⁰ See *Ibid.*

¹¹ See *Ibid.*

¹² This is because the BSE mitigation measures in the EU and Japan are more robust than those in the U.S. and Canada. The EU and Japan continue to have a more comprehensive feed ban (*e.g.*, the EU feed ban prohibits the feeding of all processed animal proteins to all farmed animals (*see* http://ec.europa.eu/food/food/biosafety/tse_bse/feed_ban_en.htm)) and they continue to operate mandatory BSE testing programs (*see, e.g., supra*, fn. 9, Table 1, at 5) that remove BSE-positive cattle from the human food chain (The EU detected 61 BSE-positive cattle outside the targeted risk population, including 45 BSE-positive cattle in the

It appears that only USDA remains oblivious to the empirical evidence that demonstrates significant risk associated with Canadian cattle and beef from Canadian cattle that continue to enter and commingle with the United States' cattle and beef supply. This explains why, after more than six years, the U.S. has been unsuccessful in the full restoration of confidence in the U.S. beef supply lost among its important export customers, notably Japan, South Korea and Hong Kong. And, with ongoing concerns expressed by our export customers, there is reason to believe that this may likewise explain, at least in part, why demand for U.S. beef has declined precipitously beginning in 2005, the year USDA first implemented its relaxation of restrictions against the importation into the United States of higher-risk Canadian cattle and beef.¹³ The fact that beef demand continued to decline since 2005 despite increases in annual exports suggests that domestic beef demand continues to be adversely impacted by USDA's relaxed BSE standards.¹⁴ It also is not lost in the minds of consumers, both domestic and abroad, that USDA continues to prohibit U.S. meatpackers from voluntarily testing cattle at slaughter for BSE, even in the face of the heightened likelihood that some beef derived from imported Canadian cattle and some beef originating in Canada is derived from BSE-positive cattle.

II. USDA's Assumption that Attendant Risk Mitigations Other than Border Restrictions, Which Now Are the United States' Principle Defenses Against the Spread of and Infection from Canada's BSE Outbreak, Are Adequate Is Demonstrably False

The chief assumptions relied on by USDA to support its contention that risks from Canadian cattle with BSE that enter the United States, and risks from beef products derived from Canadian cattle with BSE that enter the U.S. food supply and animal feed supply, present only a negligible risk of BSE spread and BSE infection are that: 1) slaughter controls prevent the recycling of infectivity into human food and cattle feed,¹⁵ including the prohibition against the use of tissues from non-ambulatory cattle in the human food supply¹⁶ and the removal of

population of healthy slaughtered cattle (*see supra*, fn. 9, Table B12, at 27)); and, the EU's and Japan's specified risk removal (SRM) policies are more comprehensive than in either the United States or Canada, including the removal of SRMs from animals under 30 months of age.

¹³ See Annual Choice Retail Beef Demand Index 1980-2009, Meat Demand Tables and Charts, Ag Manager.Info, Dept. of Agricultural Economics, Kansas State University (The beef demand index (1980 = 100) fell from its high of 63.1 in 2004 to 54.2 in 2009; the beef demand index (1998 = 100) fell from its high of 125.7 in 2004 to 107.9 in 2009.), available at

<http://www.agmanager.info/livestock/marketing/graphs/Meat%20Demand/Beef%20Demand/AnnualBeefDemandIndexTable/AnnRetailChoiceBeefDemandIndexTable.htm>.

¹⁴ See Livestock and Meat Trade Data, Beef and Veal: Annual and Cumulative Year-to-Date U.S. Trade (Carcass weight, 1,000 pounds), U.S. Department of Agriculture, Economic Research Service (Exports of U.S. beef and veal more than doubled from 2005 to 2009, increasing from approx. 697 million pounds to nearly 1.9 billion pounds over the period.), available at <http://www.ers.usda.gov/data/meattrade/BeefVealYearly.htm>

¹⁵ See 72 Fed. Reg., 53333, col. 3.

¹⁶ See 72 Fed. Reg., 53352, col. 1.

specified risk materials (SRMs) from human food and animal feed;¹⁷ and, 2) feed manufacturing and use controls¹⁸ prevent the recycling of BSE into cattle feed.¹⁹

Before providing empirical evidence to demonstrate that USDA's assumptions regarding the adequacy of these crucial controls is unfounded, there is one overwhelming and irrefutable fact that somehow has escaped the scientific purview of the entire USDA agency: *These and all other controls that USDA persistently claims are adequately implemented in Canada and elsewhere around the globe have not halted the ongoing spread of BSE in cattle or humans.* This irrefutable detail is evidenced by Canada's 11 cases of BSE detected in cattle born after March 1, 1999, with the latest case born in 2004; the 70 cases of BSE-positive cattle reported in 2009 to the World Organization for Animal Health (OIE) through Sept. 30, 2009, by 12 countries;²⁰ and the 20 confirmed human deaths caused by the human form of BSE (variant Creutzfeldt-Jakob disease or vCJD) within about the past five years (January 2004-March 10, 2010), including the most recent death reported in 2010,²¹ which now brings the total number of confirmed deaths in vCJD victims in 11 countries to 219.²²

A. Slaughter Controls to Prevent the Recycling of Infectivity into Human Food Have Been Repeatedly Breached in the United States.

In 2008, the U.S. Government Accountability Office (GAO) found that contrary to USDA regulations that prohibit non-ambulatory cattle from entering the food system, non-ambulatory cows had been slaughtered at the Westland/Hallmark plant in California and the meat from those cows entered the U.S. food market.²³ This violation purportedly was disclosed by a non-governmental source and resulted in the recall of more than 143 million pounds of beef, which according to the GAO was the largest meat recall in U.S. history.²⁴ USDA reported in February 2008 that the violations at Westland/Hallmark had occurred occasionally over the past two years, and that some of the meat products produced by the firm were purchased for Federal food and nutrition programs, including the National School Lunch Program.²⁵

¹⁷ See 72 Fed. Reg., 53352, col. 1 ("The most important public health protective measure is the removal from the human food supply of SRMs.")

¹⁸ See 72 Fed. Reg., 1109, col. 1.

¹⁹ See 72 Fed. Reg., 53333, col.3.

²⁰ See Bovine Spongiform Encephalopathy (BSE) Geographical Distribution of Countries that Reported BSE Confirmed Cases Since 1989, World Organization for Animal Health (OIE) (Data for the United Kingdom is limited to the period prior to the fourth quarter of 2009.), available at http://www.oie.int/eng/info/en_esb.htm.

²¹ See CJD Figures, The National Creutzfeldt-Jakob Disease Surveillance Unit, Western General Hospital in Edinburgh, Scotland available at <http://www.cjd.ed.ac.uk/figures.htm>.

²² See Variant Creutzfeldt-Jakob Disease, Current Data (March 2010), The National Creutzfeldt-Jakob Disease Surveillance Unit, Western General Hospital in Edinburgh, Scotland, available at <http://www.cjd.ed.ac.uk/vcjdworld.htm>.

²³ See Humane Methods of Handling and Slaughter, Public Reporting on Violations Can Identify Enforcement Challenges and Enhance Transparency, GAO-08-686T, April 17, 2008, at 1, available at <http://www.gao.gov/new.items/d08686t.pdf>.

²⁴ See *id.*, at 11.

²⁵ See California Firm Recalls Beef Products Derived from Non-Ambulatory Cattle Without the Benefit of Proper Inspection, Recall Release, U.S. Department of Agriculture, Food Safety and Inspection Service, Feb. 17, 2008, available at http://www.fsis.usda.gov/PDF/Recall_005-2008_Release.pdf.

In addition to this major violation of U.S. BSE mitigation measures that occurred over an extended period of time, there are numerous other violations that continue to occur frequently, and all across the United States. It is apparent that the Westland/Hallmark case was not unique. As you know, on March 4, 2010, the U.S. House of Representatives Committee on Oversight and Government Reform's Domestic Policy Subcommittee (Subcommittee) held a hearing titled: "Continuing Problems in USDA's Enforcement of the Humane Methods of Slaughter Act." At that hearing, the Subcommittee heard from Dr. Dean Wyatt, a USDA Food Safety and Inspection Service (FSIS) veterinarian and supervisor who described widespread mishandling of cattle, including slaughter of non-ambulatory calves, in violation of USDA regulations.²⁶ Of even greater concern was Dr. Wyatt's testimony that his efforts to enforce the Humane Methods of Slaughter Act were ignored, discouraged, and interfered with by USDA supervisors. Also on March 4, the GAO issued a report, of which you no doubt are aware, that described inadequacies in FSIS' approach to enforcement of the Humane Methods of Slaughter Act, making reference to instances where non-ambulatory animals were prodded to slaughter without any sanction being imposed on the slaughter plant.²⁷

There is evidence as well of continued, frequent violations of BSE mitigation measures from recalls that have been announced by FSIS. Below are examples of such frequent violations of U.S. BSE mitigation measures, particularly breaches of SRM removal requirements, which further undercut USDA's assumption that BSE risk pathways to humans have been effectively alleviated.²⁸

- Jan. 15, 2010: New York recall of a beef carcass that may not have had the spinal column removed.
- Oct. 17, 2009: Wisconsin recall of about 5,522 pounds of beef tongues that may not have had the tonsils completely removed.
- Oct. 16, 2009: California recall of approximately 11,500 pounds of assorted meat and poultry products (including beef) that were produced without the benefit of federal inspection.
- Oct. 15, 2009: Nebraska recall of approximately 33,000 pounds of beef tongues that may not have had the tonsils completely removed.
- May 29, 2009: Idaho recall of approximately 14,560 pounds of beef primal and subprimal products that were imported from Canada and not presented for re-inspection upon entry into the United States.

²⁶ See Continuing Problems in USDA's Enforcement of the Humane Methods of Slaughter Act, Statement of Dr. Dean Wyatt, FSIS Supervisory Public Health Veterinarian, Williston, Vermont, U.S. House of Representatives Oversight and Government Reform Committee, Domestic Policy Subcommittee, March 4, 2010, available at http://oversight.house.gov/images/stories/Hearings/Domestic_Policy/2010/030410_Horse_Slaughter/030110_111th_DP_Dr_Dean_Wyatt_030410.pdf.

²⁷ See GAO, "Humane Methods of Slaughter Act: Weaknesses in USDA Enforcement," U.S. Government Accountability Office, at 3, available at <http://www.gao.gov/new.items/d10487t.pdf>.

²⁸ See Current Recalls & Alerts, USDA Food Safety and Inspection Service, available at http://www.fsis.usda.gov/Fsis_Recalls/Open_Federal_Cases/index.asp; see also *id.*, Recall Case Archive 2008-2010.

- Apr. 29, 2009: New York recall of approximately 16,213 pounds of seasoning products, which contain cattle by-products, that were ineligible for import into the United States.
- Apr. 26, 2009: Michigan recall of an undetermined amount (estimated at 30,973 pounds) of frozen meat and poultry pasta products (including beef) that were prepared without the benefit of federal inspection.
- Mar. 28, 2009: South Carolina recall of approximately 2,925 pounds of beef and other meat products that were mislabeled and possibly produced without the benefit of federal inspection.
- Aug. 7, 2008: Texas recall of approximately 941,271 pounds of cattle heads with tonsils not completely removed.
- Jun. 26, 2008: Missouri-based recall of approximately 120 pounds of fresh cattle heads with tonsils not completely removed.
- Jun. 26, 2008: Texas recall of approximately 2,850 pounds of fresh cattle heads which may have contained SRMs.
- April 4, 2008: Kansas recall of approximately 406,000 pounds of frozen cattle heads with tonsils not completely removed.

The foregoing beef recalls included nearly 144.5 million pounds of beef that entered the U.S. food system during about the past two years, and involved firms operating in at least 10 separate states, all in violation of U.S. BSE mitigation requirements. These incidents that were caught undoubtedly represent only a fraction of the cattle that were processed without complying fully with required BSE mitigation measures. Thus, there likely are hundreds of thousands of U.S. consumers who have purchased beef that likely was not subject to U.S. BSE mitigation measures. This ongoing, potential human exposure to beef produced from BSE-positive cattle, for which mitigation measures were not adequately applied, is unnecessary and can and should immediately be avoided by prohibiting the introduction of cattle and beef from Canada (where the BSE agent is known to have recycled in that country's feed system through at least all or part of 2004, and where it likely continued to recycle at least until Canada implemented its upgraded feed ban in mid-2007).

B. Feed Manufacturing Controls to Prevent the Recycling of Infectivity into Cattle Feed Have Been Repeatedly Breached in the United States.

A Feb. 11, 2009, warning letter issued by the U.S. Food and Drug Administration (FDA) disclosed that an Idaho-based animal feed manufacturer was found in June 2009 to be manufacturing adulterated animal feed due to the manufacturer's failure to provide measures to avoid commingling or cross-contamination of feed containing ruminant protein, and for subsequently misbranding feed that was not properly labeled.²⁹ Commingling or cross-contamination has been implicated as the leading cause of BSE-infection in Canadian cattle born

²⁹ See Warning Letter, Charles M. Breen, District Director, Seattle District, U.S. Food and Drug Administration, Feb. 11, 2009, available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm201893.htm>.

after Canada implemented its 1997 feed ban, including in the 11 cases of BSE-positive cattle in Canada that were born after March 1, 1999.³⁰

A March 5, 2010, article published in Food Safety News stated that the manufacturing firm cited by FDA for manufacturing the adulterated animal feed distributed animal feed to nine states: Idaho, Nevada, Utah, Wyoming, Colorado, Montana, Washington, California, and Oregon.³¹ Neither the FDA warning letter nor the related news article specified how long the manufacturer had been distributing the adulterated feed. Nevertheless, it is clear that this breach of BSE-related feed manufacturing controls has resulted in a potential, widespread exposure of the BSE agent to many U.S. cattle in many states.

In addition to the widespread, potential exposure to the BSE agent caused by the breach of the feed manufacturer in Idaho, the FDA reports there have been other significant incidences of non-compliance with U.S. feed manufacturing controls. For example, the FDA issued a warning letter in October 2006 to an animal feed protein supplement manufacturing facility in Alabama for producing adulterated feed by failing to implement measures to prevent commingling or cross-contamination of prohibited proteins, as well as for subsequently misbranding animal feeds during the longer-than-15-month period from February 2005 through June 9, 2006.³² Although the warning letter did not state the market area served by the manufacturer of the adulterated feed, the duration of the violation indicates the potential that there was substantial exposure to adulterated feed by U.S. livestock.

Also in 2006, a Louisiana rendering plant was issued a warning letter by FDA for violating U.S. BSE-related feed manufacturing controls, again by failing to prevent commingling or cross-contamination with prohibited protein and for misbranding feed.³³ And, in June 2005, FDA inspectors found that a Minnesota rendering plant was in violation of FDA's requirements to prohibit certain proteins in ruminant feed. The investigation revealed the rendering plant failed to use proper clean-out procedures to prevent cross-contamination and failed to properly label feed to prevent its consumption by ruminant animals.³⁴

The foregoing instances of confirmed breaches to U.S. BSE-related feed manufacturing controls demonstrate that for an extended period of time, and over a widespread geographic area, U.S. livestock likely were exposed to feed products potentially containing BSE infectivity. This

³⁰ See Summary Reports 1-15, Completed Investigations, Canadian Food Inspection Agency (CFIA) (The CFIA implicated some form of cross-contamination as a possible source, if not the most likely source of infectivity in the majority of BSE cases detected in Canada, making cross-contamination a leading probable cause of BSE infectivity in the Canadian cattle herd.), available at <http://www.inspection.gc.ca/english/anima/disemala/bseesb/comenqe.shtml>.

³¹ See Feed Company Violated BSE Controls, Food Safety News, Dan Flynn, Mar. 5, 2010, available at <http://www.foodsafetynews.com/2010/03/rules-to-control-bse-violated-by-feed-company/>.

³² See Warning Letter, Carol S. Sanchez, Acting District Director, U.S. Food and Drug Administration, Oct. 26, 2006, available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2006/ucm076139.htm>.

³³ See Warning Letter, Carol S. Sanchez, Acting District Director, U.S. Food and Drug Administration, May 17, 2006, available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2006/ucm075910.htm>.

³⁴ See Warning Letter, W. Charles Becoat, Director, Minneapolis District, U.S. Food and Drug Administration, June 9, 2005, available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2005/ucm075439.htm>.

ongoing, potential livestock exposure to infectivity from BSE-positive cattle, for which mitigation measures were not adequately applied, is unnecessary and can and should immediately be avoided by prohibiting the introduction of cattle and beef from Canada (where the BSE agent is known to have recycled in that country's feed system through at least all or part of 2004, and where it likely continued to recycle at least until Canada implemented its upgraded feed ban in mid-2007).

III. Conclusion

The ongoing detection of BSE-positive Canadian cattle born at ever-increasing intervals beyond the March 1, 1999, date that USDA determined was the date the Canadian feed ban was effectively enforced, and the fact that the ever-increasing number of infected cattle are detected under an extremely limited and largely voluntary BSE surveillance program, presents an acute health and safety risk to the people of the United States and to U.S. livestock. The agency's previous contention that the diagnosis of BSE-positive cases in cattle born after March 1, 1999, represents only isolated incidences that are not epidemiologically significant and that do not contribute to the risk of further spread of BSE has now been demonstrated to be incorrect. These multiple cases, instead, provide empirical evidence that Canada's feed ban has been ineffective in halting the continual recycling of BSE infectivity within Canada's animal feed supply. In addition, these cases effectively elevate the importance of other BSE mitigation measures – measures other than Canada's feed ban – to protect the people of the United States and U.S. livestock from exposure to Canada's high level of BSE infectivity. Unfortunately, the assumptions relied on by USDA regarding the effectiveness of these other measures to protect against the introduction and spread of BSE in the United States are, likewise, demonstrably false.

Mr. Secretary, above all other considerations, the health and safety of the people of the United States and United States' livestock must come first – first before trade and first before international relations. Your agency's current BSE policies and regulations compromise directly this health and safety priority and we, the undersigned, urge you to take immediate action to, at the very least, restore for the United States the protections against the introduction and spread of BSE that were in place before USDA began to systematically dismantle its BSE-related border restrictions. We respectfully implore you to, as a first step, immediately overturn the OTM Rule.

Sincerely,

National Organizations:

American Agricultural Movement, Inc. (AAM)

American Grassfed Association

BueLingo Beef Cattle Society

CJD Foundation

Coalition for a Prosperous America (CPA)

Consumer Federation of America (CFA)

Family Farm Defenders

Farm and Ranch Freedom Alliance

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Food & Water Watch

Freedom21, Inc.

International Texas Longhorn Association

Intertribal Agriculture Council (IAC)

National Association of Farm Animal Welfare

National Family Farm Coalition

National Farmers Organization (NFO)

Organization for Competitive Markets (OCM)

R-CALF USA

Socially Responsible Agricultural Project

Sovereignty International, Inc.

Texas Longhorn Marketing Alliance

The Center For Food Safety

The Dairy Education Alliance

Western Organization of Resource Councils (WORC)

State, Regional and County Organizations:

Alaska Farmers Union

Arkansas Animal Producers Association

Buckeye Quality Beef Association (OH)

California Farmers Union

CARE (Pacific Northwest)

Cattle Producers of Washington

Colorado Independent CattleGrowers Association

Concerned Citizens of the Yakama Reservation (WA)

Dakota Rural Action

Idaho Farmers Union

Idaho Rural Council

Iowa Citizens for Community Improvement

Iowa Farmers Union

Illinois Farmers Union

Independent Beef Association of North Dakota

Independent Cattlemen of Iowa

Independent Cattlemen of Nebraska

Independent Cattlemen of Wyoming

Indiana Farmers Union

Kansas Cattlemen's Association

Kansas Farmers Union

Michigan Farmers Union

Minnesota Farmers Union

Mississippi Livestock Markets Association

Missouri Farmers Union

Missouri Rural Crisis Center

Nebraska Farmers Union

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Nebraska Women Involved in Farm Economics
Nevada Live Stock Association
New England Farmers Union
Northern Wisconsin Beef Producers Association
Oglala Sioux Livestock and Landowners Association (SD)
Ohio Farmers Union
Okanogan County Cattlemen (WA)
Oregon Farmers Union
Oregon Livestock Producers Association
Oregon Rural Action
Ozarks Property Rights Congress (MO)
Pennsylvania Independent Farmers and Consumers Association Inc.
Pennsylvania Farmers Union
PCC Natural Markets, Seattle, WA
Rocky Mountain Farmers Union
SmallHolders Alliance of Massachusetts
South Dakota Livestock Auction Markets Association
South Dakota Stockgrowers Association
Spokane County Cattlemen (WA)
Stevens County Cattlemen (WA)
Texas Farmers Union
Utah Farmers Union
Sustainable Living Systems (MT)
Washington Farmers Union
Wisconsin Farmers Union
Yakima County Cattlemen (WA)

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
USDA Under Secretary Edward Avalos
USDA Deputy Under Secretary John Ferrell
U.S. Centers for Disease Control and Prevention
State Animal Health Officials