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January 5, 2004

Dr. Karen James-Preston
National Center for Import and Export
Animal and Plant Health Inspection Service
United States Department of Agriculture
Station 3C71
4700 River Road Unit 118
Riverdale, MD 20737-1238

Dear Dr. James-Preston:

Re: Docket No. 03-080-1: Comments on Proposed Rule for Bovine Spongiform Encephalopathy Minimal-Risk Regions and Importation of Commodities, 68 Fed. Reg. 62,386, November 4, 2003.

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the Western Organization of Resource Councils (WORC) concerning the Proposed Rule by the Animal and Plant Health Inspection Service (APHIS) for Bovine Spongiform Encephalopathy Minimal-Risk Regions and Importation of Commodities, published at 68 Federal Register 62,386 (November 4, 2003) (Proposed Rule).

WORC is a network of grassroots organizations from seven states that includes 8,250 members and 49 local community groups. WORC's seven state organizations are: the Dakota Resource Council (North Dakota), Dakota Rural Action (South Dakota), the Idaho Rural Council (Idaho), the Northern Plains Resource Council (Montana), Oregon Rural Action (Oregon), the Powder River Basin Resource Council (Wyoming), and the Western Colorado Congress (Colorado).

For the reasons set forth below, WORC strongly believes that the Proposed Rule should be immediately suspended in light of recent developments regarding the detection of bovine spongiform encephalopathy (BSE or Mad Cow Disease) in a dairy cow imported from Alberta, Canada.

Risk of BSE in the United States No Longer Theoretical

The Proposed Rule foreshadowed Secretary Veneman's December 23, 2003, announcement that a presumptive positive of Mad Cow Disease existed in the State of Washington. The Proposed Rule stated: "BSE could also be introduced into the United States if ruminants with BSE were imported into the United States." 68 Fed. Reg. 62,386. USDA's announcement on December 27, 2003, that the affected dairy cow was imported from Canada made this statement no longer an assumption. USDA News Release No. 0445.03. In the Proposed Rule APHIS assessed the risk of importing cattle from Canada:

APHIS acknowledges a theoretical increased risk of BSE introduction into the United States because of this rule. However, we conclude in the risk analysis used as a basis for this rule that, with the proposed mitigation measures, this risk is extremely small.

68 Fed. Reg. 62,400. This risk is no longer "theoretical" and is definitely not "extremely small." For this reason alone, APHIS should suspend further rulemaking until it can properly assess the true risks to Americans including American cattle farmers and ranchers.

USDA Should Address BSE Issues in the United States Prior to Allowing Further Canadian Cattle Imports

On December 30, 2003, Secretary Veneman announced a series of steps USDA will be taking that are supposed to: "bolster the U.S. protection systems against Bovine Spongiform Encephalopathy, or BSE, and further protect public health." USDA News Release No. 0449.03. However, these steps are currently only at the announcement stage and rules have yet to be proposed or even published in the Federal Register. Until these safeguards, and perhaps others, are fully implemented, it is premature for USDA to consider allowing the importation of live Canadian cattle. Secretary Veneman's December 30 announcement was a direct result of a dairy cow imported from Canada and is meant to allay concerns of American consumers and countries that import American beef. Until these concerns are addressed and the United States has its own house in order, proposals to reopen the Canadian border are ill advised.

Country of Origin Labeling (COOL) Would Have Reassured American Consumers

WORC and its member organizations have strongly supported the implementation of Country of Origin Labeling (COOL). While COOL is currently only a voluntary program and is not scheduled to be mandatory until September 30, 2004, if COOL were in place American consumers would have known on December 23, 2003, where the cattle for the beef they were buying was born and raised. Given this information, they could have made a choice to purchase American beef instead of beef from Canada and be reassured that what they are eating is safe. Current efforts in Congress and apparently supported by Secretary Veneman to delay COOL will further hinder providing American consumers information tell them where beef is from. The timely and proper implementation of

COOL would head off future needs to reassure consumers when the safety of imported cattle is in question.

USDA's Economic Analysis is No Longer Applicable to Current Cattle Market Conditions

APHIS correctly predicted the economic impact of a United States case of BSE:

A BSE discovery in the United States would have economic consequences similar to those that have occurred in Canada and elsewhere. Losses would take the form of lowered demand, closed export markets, animal depopulations and increased government expenditures for disease management and compensation for depopulated livestock. Tens of thousands of jobs with total earnings in the hundreds of millions of dollars could be threatened by the loss of export markets due to a discovery of BSE.

68 Fed. Reg. 62,400.

Now that APHIS' prediction has come true, the remainder of the economic analysis in the Proposed Rule is no longer applicable to current cattle market conditions. The record high prices for cattle that farmers and ranchers received this summer and fall have given way to limit down drops in live and future cattle prices. In addition, the market analysis done for the Proposed Rule ignores recent changes in Americans' diets and cattle herd culling due to extended drought conditions throughout the United States. The economic analysis also ignores that Canadian cattle were captive supplies of cattle that may have been used to manipulate United States cattle markets. See generally, WORC's Petition for Rulemaking on Captive Cattle Supplies, 62 Fed. Reg. 1845 (Jan. 14, 1997). These factors were not considered by USDA in weighing the costs and benefits of the Proposed Rule.

Also, USDA apparently does not consider allowing American cattle farmers and ranchers the opportunity to make a profit an important consideration. How else can one explain the following statement regarding what APHIS believes will occur upon allowing live Canadian cattle imports:

Estimated price declines for producers/suppliers and consumers/buyers of slaughter cattle, feeder cattle, and beef largely reflect a return to the more normal market conditions that prevailed before Canada's BSE discovery.

68 Fed. Reg. 62,398. USDA's own economic analysis states that these "more normal" market conditions would come at an annual decrease of \$448.7 million for sellers of cattle. 68 Fed. Reg. 62,398. USDA's analysis also claims a "net benefit" to re-opening the border that presumably is based on consumers savings through lower beef prices. If that is a benefit according to USDA, then USDA is not fulfilling its mission to serve family farmers. USDA needs to reevaluate this economic analysis in light of the current situation and in light of other trends in the beef industry, taking into account the economic situation of cattle farmers and ranchers.

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Conclusion

The Western Organization of Resource Councils believe that the Proposed Rule is not warranted at this time and further review and analysis should be undertaken by USDA before reopening the United States-Canada border to the import of live Canadian cattle.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/David R. Moeller

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