



January 5, 2004

Regulatory Analysis and Development,
PPD, APHIS, Station 3C71
4700 River Road Unit 118
Riverdale, MD 20737-1238

Re: Docket No. 03-080-1, Bovine
Spongiform Encephalopathy;
Minimal Risk Regions and
Importation of Commodities

To Regulatory Analysis and Development Office:

The following comments are being submitted on behalf of the National Milk Producers Federation (NMPF) to USDA's Proposed Rule: *Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities* (Docket No. 03-080-1). NMPF, headquartered in Arlington, VA develops and carries out policies that advance the well-being of U.S. dairy producers and the cooperatives they collectively own. The members of NMPF's 32 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of 60,000 dairy producers on Capitol Hill and with government agencies. NMPF members have a vested interest in protecting the U.S. from any foreign animal disease, including Bovine Spongiform Encephalopathy (BSE). Therefore, NMPF appreciates this opportunity to comment on this proposed rule which would essentially open up the Canadian border to the importation of live cattle for the first time since the announcement by the Canadian government on May 20, 2003 that a cow had been confirmed positive for BSE in the Province of Alberta.

Background of NMPF Involvement with BSE Risk Mitigation Measures in the U.S. and Basic Concern with this Proposal

Since the first hint of any possible amplification of a scrapy-like disease in cattle in Great Britain in the late 1980's, USDA began to take a number of proactive precautions to prevent the introduction of any potential BSE risk factors into the U.S. Since that time, these risk factors have been identified as being associated with either feeding of ruminant protein and other products from ruminants infected with BSE or the importation of live ruminants with BSE.

The proactive efforts to prevent importation of any potential risk factors have been the primary reason that BSE had not been identified in the U.S. until the recent identification of a single cow in Washington on December 23, 2003. There is uncertainty regarding the current location of all but 11 of the 81 original Canadian herd co-horts of the identified infected animal. Due to this uncertainty, NMPF believes very strongly that the Canadian border must not be opened for live animal or feed importation for any reason until the present BSE case is thoroughly reviewed and all trace outs that may have been associated with the infected animal can be identified, tested and destroyed, if necessary. Given the considerable public concern over the present situation from a food safety standpoint, and given the time that will be necessary to conduct an extensive and thorough epidemiological investigation, NMPF believes that it is prudent for USDA to stop the rulemaking process until the current investigation is completed and USDA can better assess the pros and cons of creating a BSE minimal-risk region.

NMPF believes termination of this proposal until the current situation can be clearly evaluated from many different perspectives is the only prudent action that USDA can take at this time. USDA needs to now dispel the concerns and fears of the public in both our domestic and international markets for beef, as well as public health official concerns throughout the world regarding any possible human consumption of contaminated meat or meat products from animals that may have been potentially exposed to even a small amount of an infectious dose of BSE.

While the U.S. may no longer say that we are free of BSE, its possible presence in the U.S. beyond the existing initial case means every extreme precaution must be taken to prevent any further entry from beyond the U.S. border. This extreme precautionary position is so essential at this time, for BSE is not only associated with the unique debilitating progressive neurological disorder now described in cattle, but it clearly is now described as the probable cause of a variant form of Cruetzfield Jacobs Disease (vCJD) in humans who may have consumed tissue originating from BSE infected cattle. Approximately 154 persons have been reported worldwide to have succumbed to this fatal disease.

In addition to the early and continuing concern over imports from regions not free of BSE, NMPF and the National Cattlemen's Beef Association (NCBA) initiated a voluntary producer ban on feeding any ruminant protein to bovines in 1996. This was prior to the institution of the mandatory FDA ruminant feed ban in 1997. NMPF's continued support of the mandatory FDA Ruminant Feed Ban is predicated on the absolute need to minimize any chance of amplification of BSE, if indeed the disease were to be identified in other U.S. cattle. Given the current uncertain situation with regard to the recently identified case of BSE in Washington, continued enforcement and compliance of the FDA Ruminant Feed

Ban is essential, and NMPF has pledged to do our part in assuring that dairy producers continue to be in compliance in the U.S.

NMPF has been a continuing member of the BSE Industry/Government Roundtable which has worked collaboratively and diligently to implement three “firewalls” to protect U.S. livestock from any exposure to BSE. These three firewalls have been described as follows:

1. Prevention of the importation of any potential BSE risk factor(s) including all categories of live animals and animal products from non-BSE free regions of the world.
2. One hundred percent compliance with the FDA Ruminant Feed Ban at all levels throughout the food chain.
3. Continued monitoring and surveillance focused on the so-called “high risk” populations, such as nonambulatory and central nervous system (CNS) disordered animals.

NMPF is greatly concerned that this proposal, if finalized, would increase the risk of importing BSE through the importation of live animals and animal products under a newly created category described as a “BSE minimal risk region.” While this proposed action would now appear to be completely untenable given the current situation, it was troubling to NMPF even prior to the identification of the positive BSE cow in Washington. The fact that USDA would attempt to accommodate Canadian demands to open the border without a complete understanding of the possible adverse economic consequences this action might pose for U.S. beef and dairy producers is unacceptable. NMPF comments on the USDA economic analysis provided below further illustrate this point. Therefore, NMPF believes this proposed action, even prior to the U.S. announcement on December 23, 2003, would have been premature.

NMPF Comments on Economic Analysis Prepared by USDA:

NMPF believes the claim that the impacts on small business cannot be estimated due to lack of data is not correct. There is considerable data available from USDA’s National Agricultural Statistics Service on livestock inventories by operation size. There is clearly adequate data to define small business impact.

NMPF also believes the APHIS use of “consumer surplus” is theoretically questionable. By making a direct offset between the “consumer surplus” of public and the “producer surplus” of the industry, APHIS assumes that these surpluses are both measurable and comparable between consumers and producers. The concentration of the negative impacts on a relatively small number of industry participants, and the wide diffusion of benefits across millions of consumers, suggests that the true impact is much more negative than the analysis suggests.

There are two impacts whose measurement is particularly germane. First is the impact of other countries shutting their borders to U.S. exports based on the proposed rule. This has been addressed in the analysis, although it also depends upon increased “consumer surplus” to offer generous offsets to the crippling losses on the beef industry.

The second, and most important impact, is the potential for BSE cases in the U.S. caused by the importation of Canadian cattle. This is dismissed almost offhandedly in the published analysis.

This conclusion has already been proven wrong and is the most glaring deficiency in the economic analysis attached to this proposed rule. Even if U.S. practices are adequate to avoid amplification of BSE after it is imported in Canadian animals, it is clearly wrong to assume, as APHIS does, that a limited number of U.S. cases associated with Canadian-born animals will not materially injure the U.S. industry and consuming public. The fallout over the Washington State BSE case has shown that quite clearly. Cattle prices are dropping on the basis of a single Canadian-born cow slaughtered in the U.S.

The loss of economic confidence in the beef supply has clear negative impacts on producer revenue. In APHIS’s analytical approach, it should also have clear negative impacts on “consumer surplus”, since the downward shifting of the demand curve reflects the reduced potential for enjoyment of beef by a shaken public. Assurances—such as we’ve had in December of 2003—of overall safety of the U.S. beef supply will help mitigate this impact. However, the economic impacts are large even if *“it is highly unlikely that such an introduction would pose a major animal health or public health threat.”*

NMPF has serious concerns about the analytical framework that finds offsets for every producer loss as a gain in consumer surplus. However, the most serious problem with this economic analysis is the failure to take seriously the costs to both the producer and the consumer of a loss in confidence associated with even a very limited incidence of BSE in the U.S. Therefore, NMPF believes APHIS’s economic impact analysis is fundamentally flawed, and leaves out the impact of greatest concern.

NMPF Specific Other Concerns Regarding This Proposal

NMPF is concerned with the premature publication of this proposal, not only in regard to the current on-going BSE investigation in the U.S., but also because it was published as a proposal which is not consistent with current Office of International Epizootics (OIE) requirements. It is our understanding OIE is only in the process of developing criteria that would be consistent with the proposed “BSE minimal risk region” described in the USDA proposal. The proposal also comes at a time when several countries that purchase large quantities of exported U.S. beef are raising objections regarding possible U.S.

action to open the Canadian border to imports of live animals and meat and meat products. While the current OIE requirements to wait 7 years for possible BSE incubation periods to expire may seem unreasonable to a country reporting a single case of BSE, USDA's potential move ahead of the OIE official process would place U.S. dairy producers in an untenable situation. This is particularly true if countries like Japan and Korea reject U.S. beef and beef products as a result.

If this proposal were to be finalized by USDA, then other countries with BSE may take advantage of this precedent to seek a similar "BSE minimal risk region" status as USDA has proposed to address the Canadian situation. The potential international outfall from such a case-by-case evaluation by USDA in the absence of officially adopted OIE criteria is uncertain at best. Prior to OIE taking official action to endorse the risk-based approach being proposed by USDA, NMPF believes a more prudent course of action would be to terminate this proposal. This would be in the best interest of U.S. dairy producers, given the uncertainty of the current BSE investigation in the U.S. as well as the uncertainty this proposal would create for future U.S. beef exports in the absence of OIE endorsement.

This effort to create a new category of "BSE minimal risk region" is being cast by USDA as scientifically risk-based. However, the justifications proposed by USDA greatly depend upon 100 percent compliance by all parties associated with the importation of live cattle and/or cattle products from Canada. This includes the ability to track all live animal movements once entry is granted into the U.S. NMPF is particularly concerned with regard to young dairy heifers under 30 months of age from Canada entering U.S. feedlots with only a Canadian tattoo in the ear. This class of animals would become desirable targets for unscrupulous individuals, under current market conditions, to attempt to move such animals out of designated U.S. feedlots into market channels. This possibility will be greatly facilitated if all heifers and steers moving into U.S. feedlots are not required to be branded and, in the case of dairy and beef heifers, spayed prior to entry into the U.S. NMPF believes this part of the proposal is not only weak for these reasons, but also premature because the U.S. does not have in place any reliable means to track all live animal movements at this time. Until the U.S. can implement a reliable tracking system it is important to continue strict enforcement of protective measures at the border. NMPF believes this to be particularly important given the uncertainties surrounding the on-going U.S. investigations.

For the above reasons presented and given the uncertain status of the on-going U.S. and Canadian epidemiological investigations related to the infected BSE cow in Washington and the lack of a similar OIE category, NMPF respectfully requests this proposal be terminated until all on-going investigations are completed. USDA will then have the opportunity to reassess how this proposal might be relevant at some future point in time.

NMPF appreciates the opportunity to comment on this proposal and we stand always ready to work cooperatively with USDA to protect the health of our national cattle herd and safety of our food supply for the American public. If we can be of additional assistance, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Adams". The signature is fluid and cursive, with the first name "John" being the most prominent.

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