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February 18, 2004

United States Department of Agriculture
FSIS Docket Clerk
Docket # 03-0251F
Room 102, Cotton Annex
300 12th and C Street, SW
Washington, DC 20250-3700

On behalf of the State of Oklahoma Meat and Poultry Inspection Program, I am submitting comments on the interim final rule on *Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle*, as published in the *Federal Register* of January 12, 2004 by the Food Safety and Inspection Service.

The Oklahoma Meat Inspection Program supports most of the measures taken to strengthen the safety of the meat supply and to limit the potential exposure of humans to the causative agents of bovine spongiform encephalopathy (BSE). However, we offer comments intended to modify certain provisions of the interim final rule, which we believe need to be revised. We are also requesting that FSIS supply clarification about the applicability of these interim final rules to custom-exempt animals and the products derived from them, as we believe this may represent a significant threat to the public health in the State of Oklahoma.

Section 309.2 We propose that the language in this section be revised to differentiate between non-ambulatory disabled cattle that are non-ambulatory as a result of a pathological condition and those that are non-ambulatory as a result of an acute injury. Veterinarians can readily distinguish through antemortem and/or postmortem inspection when an animal has suffered an acute injury. These animals pose no greater risk for the transmission of BSE than any other normal animal in the population would, and therefore no purpose is served by banning the slaughter of otherwise healthy cattle that have suffered an acute injury. If through antemortem and/or postmortem inspection by a government veterinarian, other pathological conditions were found that would justify the condemnation of the animal, the decision would be based on scientific evidence and not a categorical condemnation on antemortem inspection because of an undetermined condition, which has no scientific basis.

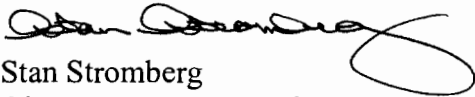
The State of Oklahoma has some serious reservations about the interpretations we have received from top FSIS officials about the manner in which the changes to Section 309.2(b) and 309.3(e) are to be implemented regarding custom-exempt cattle. The information that the State of Oklahoma has received through conference calls with top FSIS officials is that the provisions of these two sections not only apply to inspected cattle, but to cattle slaughtered and/or processed in an uninspected custom-exempt plant, the meat derived from these cattle is marked "Not For Sale" and is only for consumption by the individual, his household and nonpaying guests and employees. The rationale espoused by FSIS officials is that all of these non-ambulatory disabled cattle presented for custom-exempt slaughter are automatically considered to be "adulterated" and therefore, condemned. We disagree with this interpretation based on the following reasons:

1. The Federal Meat Inspection Act, Section 601(m) reads as follows: " The term "adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:" it further defines the term: "(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in the case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;" and "(3) if it consists in whole or in part of any filthy, putrid or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;" This language is also mirrored in 9 CFR 301.2. Our belief is that since "adulterated" is defined in both the Federal Meat Inspection Act and Section 301.2 it applies only to carcasses, parts thereof and meat or meat food products and does not apply to live animals that have not received antemortem inspection by a government veterinarian. In addition, in the absence of antemortem inspection by a government veterinarian it would be impossible to determine if the animal bears any substance which would render it injurious to health or if the quantity of such substance does not ordinarily render it injurious to health.
2. The Federal Meat Inspection Act exempts custom animals from antemortem and postmortem inspection requirements in Section 623(a) which reads: "The provisions of this title requiring the inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations for commerce shall not apply to the slaughtering by a person of animals of his own raising, and the preparation by him and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor to the custom slaughter by any person, firm or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter..." This section is further clarified in 9 CFR 303.1(a) and (b). These sections clearly state that the act and the regulations in Subchapter A of Chapter III – Food Safety And Inspection Service, Department of Agriculture do not apply to these custom animals. As a result these animals cannot be condemned by FSIS since no inspection is mandated.
3. Any animal raised by an individual and brought to a custom-exempt establishment for slaughter and/or processing remains the property of the individual and cannot be seized by the government without due process or compensation. We agree that when animals are presented for inspection, FSIS and the State of Oklahoma have the regulatory authority and responsibility to remove products from commerce that could present a threat to public health. However, this legal authority does not allow FSIS or the State of Oklahoma to seize livestock raised by individuals for private consumption in their own homes unless there is a proven public health hazard. Unless custom animals are excluded from these requirements as described in the FMIA and the regulations, we believe these requirements will not withstand legal scrutiny or challenge.

4. If FSIS continues to maintain their position that these interim final rules also apply to all animals raised by individuals for their own consumption, which are exempt by FMIA from antemortem and postmortem inspection, we expect that most injured animals will be slaughtered and processed on farms, under grossly insanitary conditions and without proper refrigeration. This would represent a much greater risk to public health than would be represented if these animals were allowed to be slaughtered and/or processed in proper facilities under sanitary conditions.

It is our hope that these comments be given due consideration to prevent the potential human exposure to agents that cause BSE as well as limit other potential threats to public health.

Sincerely,



Stan Stromberg
Director, Meat Inspection