



GUS R. DOUGLASS  
COMMISSIONER

January 6, 2004

Garry L. McKee, Ph.D., M.P.H.  
Administrator  
Food Safety and Inspection Service  
United States Department of Agriculture  
Room 331-E Whitten Building  
1400 Independence Avenue, SW  
Washington, DC 20250-3700

Dear Dr. McKee:

On January 5, 2004, the National Association of State Departments of Agriculture (NASDA) and USDA's Animal and Plant Health Inspection Service (APHIS) held a joint monthly conference call. The main topic of the call was to update NASDA members on the very recent activities pertaining to bovine spongiform encephalopathy (BSE) control measures in the State of Washington. You participated in the conference call, along with Mr. William Smith, Assistant Administrator, FSIS. In response to a question on downer cattle in custom exempt plants from Dr. Richard Breitmeyer, State Veterinarian in California, Mr. Smith stated that such animals will be treated as "adulterated," and, therefore, condemned according to the Federal Meat Inspection Act (FMIA). We believe this interpretation contradicts the statutory provisions in Section 623 of the FMIA.

First, custom animals are exempt from provisions requiring antemortem and postmortem inspection. Section 623. *Exemptions from inspection requirements* states: "The provisions of this subchapter requiring 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 any 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..." Thus, in a custom establishment, a downer animal cannot be condemned since no livestock inspection is mandated by the government.

Second, a custom-exempt animal, raised by a farmer, and brought to a custom-exempt establishment for slaughter and/or processing, remains the property of the farmer. Thus, such an animal cannot be condemned just because it staggers or cannot walk and the farmer's property cannot be seized.

Third, the term "adulterated," precisely defined in the FMIA, cannot be used in respect to a live animal. The FMIA clearly states: "The term 'adulterated' shall apply to any carcass, part thereof, meat or meat product..." In other words, a live animal cannot be determined "adulterated." Hypothetically, if FSIS had such authority to condemn a farmer's animal, exempt by the Federal Act from inspection, a question remains who would make such a decision in the continuous absence of FSIS inspectors?

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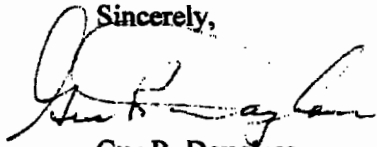
Fourth, in States designated for exclusive Federal inspection, FSIS had no system of granting custom exemption, licensing or registering the existing custom-exempt establishments. FSIS District offices are not aware of the number of custom-exempt establishments located in their districts, where they are located, what kind of operations they conduct, or a volume of slaughtered animals. Thus, who and how would determine "adulteration" of a staggering cow?

We support Secretary Ann Veneman's recent actions intended to bolster the U.S. protection system against BSE. We agree with her statement made on December 30, 2003, to ban all downer cattle from entering official establishments that produce meat products offered for sale to the public. At the same time, we realize the clear distinction between downers sold for slaughter at official establishments versus downers delivered to a custom-exempt slaughterhouse by a farmer. A farmer always selects the best cattle for custom slaughter since the meat products derived from such an animal will be consumed by his family members. He will deliver his downer to a local custom-exempt slaughterhouse only if he believes that a broken leg or injured pelvis caused movement impairment and the animal can be quickly delivered for slaughter. After all, he will eat the meat.

In order to control BSE and protect public health, it is necessary to distinguish between "non-ambulatory downers" resulting from recent leg or pelvis injuries, and potentially "condemnable downers" due to other reasons, including infectious diseases, inflammatory conditions, and showing symptoms of nervous system diseases, including BSE.

In drafting new regulations, I urge you to consider this distinction, and retain the exemption for all custom animals to be used only by a farmer's family that raised the animal. I believe the FMIA does not grant FSIS authority to condemn any downer at a custom-exempt establishment due to injury. Further, the FMIA does not allow for condemnation of any live animal due to "adulteration." I would also suggest that your agency seek a broader input to the proposed regulations from all interested constituents.

Sincerely,



Gus R. Douglass  
Commissioner

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- c: Mr. Jim Moseley, Deputy Secretary of Agriculture, USDA
- Bill Hawks, Under Secretary, Marketing & Regulatory Programs, USDA
- Bobby R. Acord, Administrator, APHIS
- Dr. W. Ron DeHaven, Deputy Administrator, APHIS
- Dr. Richard Breitmeyer, Director, Animal Health & Food Safety Services, California
- Richard Kirchhoff, Executive President, NASDA
- Deputy Commissioner Janet Fisher
- Deputy Commissioner Steve Hannah
- Dr. Joe Starcher, State Veterinarian
- Dr. W. J. Charminski, Director, MPID