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State of Oklahoma

## Department of Agriculture, Food, and Forestry

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Brad Henry  
Governor

Terry L. Peach  
Secretary and Commissioner

February 18, 2004

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

On behalf of the State of Oklahoma Department of Agriculture, Food, and Forestry, 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 Department of Agriculture, Food, and Forestry supports most of the measures taken to strengthen the safety of the meat supply and to limit the potential exposure of humans to the agents which can cause 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 implementation of these interim final rules regarding 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 disease and those that are non-ambulatory as a result of an acute injury. Veterinarians can readily distinguish through careful observation when an animal has suffered an acute injury. These animals pose no greater risk for the transmission of BSE than any other normal healthy 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 examination 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 based on generalizations because of an undetermined condition, which has no scientific basis.

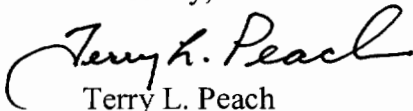
The State of Oklahoma has some serious reservations about the interpretations our meat inspection personnel have received from top FSIS officials about the manner in which the changes regarding non-ambulatory cattle are to be implemented regarding custom-exempt cattle. The information that the State 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. Both the Federal Meat Inspection Act and the Code of Federal Regulations define the term "adulterated" as it applies to carcasses, parts of carcasses or meat products. Neither the FMIA or the CFR define to term "adulterated" to include live animals or livestock. We believe that it is inappropriate and outside the scope and the intent of both the FMIA and the CFR to extrapolate the definition of "adulterated" to include livestock. In view of these facts, it is our position that it is incorrect to attempt to apply these provisions to any live animal that has not received an examination by a government veterinarian. Without an examination by a government veterinarian there is no possible way to determine if the animal might contain any substance which would render it injurious to health. To apply the term "adulterated" to livestock which has received no examination by a government veterinarian exceeds the language and the authority of both the FMIA and the CFR and has absolutely no scientific basis.
2. In addition, both the FMIA and the CFR clearly state that the Act and the regulations do not apply to custom-exempt, uninspected meat products. Both of these documents state that animals raised by an individual for his own consumption are not required to be inspected. 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 proper 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. Due to the remote locations of many of the cattle in our state, it would be virtually impossible to monitor injured cattle slaughtered and processed on farms.

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,

A handwritten signature in cursive script that reads "Terry L. Peach". The signature is written in black ink and is positioned to the left of the typed name.

Terry L. Peach  
Secretary and Commissioner