

June 12, 2007

Mike Johanns, Secretary
United States Department of Agriculture
Room 227E, Jamie L. Whitten Building
12th Street and Jefferson Drive SW
Washington, DC 20250

Dear Secretary Johanns,

We are writing about USDA's inadequate safeguards for keeping prohibited Canadian cattle out of the U.S. food supply. We have recently learned that contrary to USDA's policy and public assurances, older Canadian cattle which are prohibited from entering the United States because of the risk of transmitting mad cow disease, are routinely making it into the U.S. food supply carrying the USDA seal of approval. We are especially concerned because upcoming changes to Canadian regulations are creating added incentives for Canadian shippers to try to get older animals into U.S. slaughterhouses. And, without mandatory country of origin labeling for beef, consumers are left in the dark about where their meat comes from. This makes it even more imperative the USDA properly enforce rules designed to keep risky older Canadian cattle out of the U.S. food supply, because consumers lack the necessary information to protect themselves.

Since May 2003, when tests revealed the first case of mad cow disease in Canada, USDA regulations have prohibited the importation of various classes of cattle and beef products from Canada. In July 2005, the United States' border was reopened to importation of live cattle under the age of 30 months, but Canadian cattle that are pregnant and those over the age of 30 months (referred to as "OTM" animals) are still prohibited.

We have attached five affidavits from USDA employees who are inspectors for the Food Safety and Inspection Service (FSIS). These whistleblowers describe events and policies enacted at three large beef slaughterhouses in three different states. These include the Swift plant in Grand Island, Nebraska and two other plants, referred to as Plant A and Plant B at the whistleblowers' requests. The policies the whistleblowers describe range from agreements between USDA and the plants that rules will not be enforced, to direct orders by FSIS supervisors to inspectors not to intervene when an older Canadian animal is being processed in violation of regulations.

These affidavits demonstrate how inconsistent the policies are from one plant to another, how the processing of prohibited cattle is occurring under USDA oversight, and how the Animal

and Plant Health Inspection Service (APHIS) and FSIS are sometimes operating at cross purposes. The following examples from the affidavits demonstrate the extent of the public health threat created by current policies:

- At the Swift Plant in Grand Island, Nebraska, when two Canadian OTM animals were discovered going through the slaughter line, they were prohibited from entering the food supply; but there were no repercussion for the shipper or slaughtering plant.
- At Plant A, when Canadian OTM animals, accompanied by documentation certifying that they are young animals, are found going through the slaughter process, FSIS allows the carcasses *and* the dangerous tissues to proceed into the food supply. Inspectors are ordered *not* to try to determine and *not* to intervene if they accidentally determine that older animals and the dangerous tissues are entering the food supply.
- At Plant B, when Canadian OTM animals are discovered going through the slaughter line, FSIS requires the plant to remove dangerous tissues, just as if it were a domestic animal, but allows these prohibited carcasses into the food supply.

Prohibited Canadian animals allowed to enter commerce

Plants are required to determine the age of all animals entering their facility and process them accordingly. (Plants may determine age by relying on documentation, which certifies that the animal is not over 30 months old, or by performing a dentition check to determine if incisors characteristic of older animals are present.) Certain tissues, called specified risk materials (SRMs) because they carry a risk of transmitting mad cow disease, must be removed from cattle at slaughter. Some tissues must be removed from all cattle, and additional tissues, including the brain and spinal cord, must be removed from OTM cattle.

Swift plant in Grand Island, Nebraska

According to the regulations, no Canadian OTM cattle should be entering a U.S. slaughterhouse. At the Swift plant, in Grand Island, Nebraska, FSIS inspectors randomly discovered that plant employees sent two Canadian OTM animals into the slaughter process as if they were young animals. FSIS officials retained the two carcasses and wanted to retain the whole production lot because the company could not demonstrate which of the other carcasses did not also come from older animals. Swift management contacted APHIS officials who decided that only the two identified older animals would be sent to a landfill. The rest of the meat was allowed into commerce carrying the USDA seal of approval.

This concerns us because FSIS officials are in a better position than APHIS to make a decision that would protect public health. FSIS is charged with protecting public health, while APHIS is charged with protecting animal health. Because FSIS employees are in the plant every day and are aware of the plant's compliance history and process control capabilities; therefore, they are in a better position to determine whether these mistakes indicate a likelihood that other prohibited animals entered the food supply.

Plant B

Although FSIS inspectors do not routinely do dentition checks, when they do discover a domestic OTM animal that has passed the company checkpoint without being identified as an OTM, they require the plant to remove the additional SRMs required for an older animal. According to the inspector affidavits from Plant B, this policy¹ is now being applied in some plants to prohibited Canadian OTM animals, with only a technical modification. In such cases, once the appropriate SRMs have been removed, the FSIS veterinarian must contact the APHIS veterinarian to release the carcass for sale. At plant B, this used to take up to three days but recently has become nearly immediate and is routine. This same procedure of merely getting APHIS approval to use carcasses from prohibited Canadian animals is also applied to pregnant cattle. The frequency differs by plant, but the whistleblower from plant B says that a couple of pregnant Canadian cattle are typically passed each week.

Paperwork supercedes physical evidence of cattle age

While this policy applies to both domestic and Canadian cattle, it ties inspectors' hands much more with respect to the Canadian animals. Inspectors indicate that while only approximately 10 percent of domestic cattle are accompanied by documentation certifying their age, nearly 100 percent of Canadian truckloads have accompanying "source documentation" certifying that the animals are under 30 months of age. Therefore, when FSIS inspectors see evidence that Canadian cattle are too old to be slaughtered in a U.S. plant, they cannot act on it.

Plant A

Notice 14-07 instructs that "[FSIS veterinarians] are not to use hands-on dentition examinations to determine the adequacy of the documentation."² As written, this applies specifically to pre-slaughter inspection, but at Plant A it has been implemented to apply to post-mortem inspection activities as well. Therefore, when FSIS inspectors at Plant A discover that an OTM animal is being processed as a younger animal, and therefore most SRMs will not be removed, they are prohibited from intervening. SRMs enter the human and animal food supply because they are treated as posing no risk since they are presumed to be from a younger animal.

This failure to prevent SRMs from entering the food supply is very significant. The Harvard Risk Assessment estimated the risk of mad cow disease being transmitted to humans under current USDA regulations. Dr. Linda Detwiler, former senior staff veterinarian for APHIS and expert on the disease, points out that:

"The Harvard model ran the all (sic) of the calculations assuming 100% compliance in regard to SRM removal. FSIS ran simulations at 99, 98, 97, 96 and 95% levels of compliance. They found that for each percent drop in compliance there was an increase

¹ FSIS Notice 14-07 at IV(B)(2). www.fsis.usda.gov/OPPDE/rdad/FSISNotices/14-07.pdf

² FSIS Notice 14-07 at IV(A)(1). www.fsis.usda.gov/OPPDE/rdad/FSISNotices/14-07.pdf

of 1 percent risk to the public which illustrates the importance of full compliance with the SRM removal regulations.”³

Even more disturbing is the fact that FSIS inspectors at Plant A have been warned they are not to perform *any* physical examinations of animals with source documentation, or they may face discipline. USDA’s Agricultural Marketing Service (AMS) graders are also prohibited from taking corrective action when they discover that a carcass being processed as if were from a younger animal, has physical characteristics such as bone structure that indicate it is much older. Fortunately, the supremacy of the documentation does not yet seem to be a nationwide policy and, as mentioned above, in some plants FSIS supervisors still require that the additional SRMS in OTM cattle be removed.

Swift Plant in Grand Island, Nebraska

When FSIS inspectors doing a random dentition check at Grand Island discovered Canadian OTM carcasses at that plant, Swift management repeatedly yelled that FSIS inspectors had no right to check the teeth because the animals had documentation indicating that they were less than 30 months of age. Whistleblowers indicate that at least one of the carcasses was from an animal *much* older than 30 months.

Plant employees allowed to unload cattle from Canadian trucks

A new policy by APHIS (and codified for FSIS inspectors in Notice 14-07) now allows employees at slaughterhouses with special agreements to break the seals on Canadian trucks and unload animals, without verification by USDA employees to ensure that no prohibited cattle have entered the country.⁴ Whistleblowers from plants, both with and without such agreements, say that discrepancies between the animals on the trucks and those described in the accompanying import documents, are not unusual, demonstrating that the controls at the border leave much to be desired.

At plants *without* such agreements, FSIS employees investigate and resolve all discrepancies before cattle can be slaughtered. For example, if 50 animals are listed in the paperwork and certified to be under 30 months of age, but 55 animals are unloaded from the truck, FSIS will determine whether the additional five animals comply with the regulations before allowing them to be slaughtered. At some plants *with* these agreements, USDA personnel verify company controls through sampling and investigate any discovered discrepancies. However, to our knowledge, USDA has not formally established a sampling program that is statistically sound, so it is impossible to determine whether USDA is detecting all problems that have been missed by company employees. Further, we are not certain whether USDA performs at least some verification at all plants under these agreements, or whether only an industry honor system is operating in certain locations. As a general matter, the public cannot rely on a company employee to pursue as thoroughly as a government inspector would, a difficult and sometimes lengthy investigation into such discrepancies.

³ Comments for Docket No. FSIS-2006-0011E – Harvard Risk Assessment of Bovine Spongiform Encephalopathy. www.fsis.usda.gov/OPPDE/Comments/2006-0011/2006-0011-4.pdf

⁴ FSIS Notice 14-07. www.fsis.usda.gov/OPPDE/rdad/FSISNotices/14-07.pdf

Canadian Rule Change Will Increase Pressure to Send Older Cattle to United States

Canadian government inspectors already have more authority than FSIS inspectors to keep risk materials from cattle out of the human food supply. Canadian government inspectors take precautions based on cattle age that are not taken in the United States. These include performing a physical examination of every animal to verify documentation of age, requiring the removal of SRMs according to the results of this examination (regardless of the age listed on the documentation), and reporting producers who file incorrect documentation. If these rules were in place in U.S. plants, the situation described in Plant A, in which obviously OTM cattle were processed as if they were younger cattle, would not have occurred. Where Canadian cattle are concerned, USDA employees have been relegated to the position of “see no evil, hear no evil, speak no evil” while the public is left unprotected and in the dark.

But the worst may be yet to come.

Beginning on July 17, new, more protective, requirements for disposing of SRMS will be imposed in Canada,⁵ increasing the cost of slaughtering OTM cattle there. The impact of these increased protections is already reverberating through the Canadian beef industry and prices paid for older cattle in Canada are decreasing, beginning at a discount of \$15 a head.⁶ On May 14, Cargill announced that it will apply an even greater discount of \$40 per hundredweight, on the price paid for OTM animals in Canada.⁷ One Cargill plant currently removes 400,000 pounds of SRM daily and the new rules will increase the cost of segregating this material.⁸

Cargill and sale barn owners say they’d prefer not to deal with older cattle at all.⁹ The smaller slaughterhouses cannot be expected to take up the slack because according to media reports “the cost of disposing of SRM material could mean many will stop slaughtering them.”¹⁰ The general manager of the Ontario Cattle Feeders Association said, “it is clear that no one wants mature cattle on their hands.”¹¹ We believe that what is additionally clear is that there is now tremendous pressure to have those cattle slaughtered in the United States.

This is significant for the consumers of American beef because it could increase their risk of mad cow disease. Canada has discovered 10 cases in its herd, compared to the three found in the United States. Five of the 10 Canadian animals were born after Canada’s feed ban went into effect, casting doubt on the effectiveness of their prevention program.

⁵ Canadian Food Inspection Agency. “Enhanced Health Protection From BSE.”

<http://www.inspection.gc.ca/english/anima/heasan/disejala/bseesb/enhren/public.shtml>

⁶ “Farmers expected to pay the price for BSE feed ban implementation; The \$15 to \$30 per head discount on cattle is likely to lead to more of them heading south.” Frances Anderson. *The Ontario Farmer*. May 29, 2007. Pg A16.

⁷ “New SRM rules pressure prices on older animals; The new rules, which will effectively ban this material, will go into effect in July. But the rendering and processing sectors are already reacting.” Patrick Gallagher. *The Ontario Farmer*. May 15, 2007. Pg A1.

⁸ Anderson

⁹ Ibid.

¹⁰ Gallagher

¹¹ Ibid.

Unfortunately, we are not surprised by the incidents cited above because there is a pattern of USDA ignoring its own stated food safety policies when they involve Canadian animals and meat products.

As you recall, the USDA Office of Inspector General (OIG) issued a scathing report in February 2005 in which it reported that USDA – and APHIS in particular – blatantly violated import restrictions imposed on Canadian meat products because of the incidence of mad cow disease in the Canadian cattle herd. That report also highlighted the lack of coordination between APHIS and FSIS that, alarmingly, seems to continue today.

In the 2005 report, the OIG stated:

As a result of the “permit creep” that occurred between August 2003 and April 2004, APHIS issued permits for the import of beef tongue as well as other permits for products with questionable eligibility. Further, the agency allowed the import of products from Canadian facilities that produced both eligible and ineligible products, thus increasing the possibility that higher-risk product could be inadvertently exported to the United States. This practice contrasted with APHIS’ publicly stated policy that only Canadian facilities that limited production to eligible products would be allowed to ship to the United States. In addition, APHIS did not communicate its decisions to all interested parties and USDA was criticized by segments of the public, the cattle industry, and the U.S. Congress.

APHIS issued permits to allow the import of beef cheek meat with questionable eligibility because the agency did not establish a clear working definition for the general term “boneless beef.” Instead of coordinating with FSIS, APHIS reviewers relied upon their own understanding of the term. Some APHIS reviewers considered the term “boneless beef” broadly, to mean any bovine meat that did not contain a bone. Thus, some applicants who requested permits to import beef cheek meat and other products received permits allowing the import of “boneless beef or boneless beef trim.” As a result, over 63,000 pounds of beef cheek meat with questionable eligibility entered U.S. commerce from Canada.¹²

Americans should be worried about the impact of older Canadian cattle on the food supply because of the combination of the potentially greater risk posed by Canadian cattle with the lax border control and weaker slaughterhouse controls in the United States. This risk will only increase if the border is officially opened to Canadian OTM cattle and more are slaughtered under current FSIS regulations.

The American Meat Institute (AMI) has urged that the United States open its border to Canadian cattle of all ages. In 2005, when advocating for opening the border to younger Canadian cattle, AMI Foundation President Jim Hodges said, “When our policies permit beef from Canada, but not the animals from which the beef is derived, our policy sends a message to the world that Canada does a better job of processing cattle than we would if we imported the cattle here and processed them ourselves. Is that the message we want to send?”¹³

¹² USDA Office of Inspector General. “Animal and Plant Inspection Service Oversight over the Importation of Beef Products from Canada” Report Number 33601-01-Hy, February 2005.

¹³ American Meat Institute. “AMI Says Beef Is Safe, Full Cattle And Beef Trade With Canada Should Be Restored” June 9, 2005.

Our answer to Hodges' question is that in light of Canada's stronger regulations to keep risk materials out of the human food supply, and the incentive this creates to send older animals to the United States, importing Canadian beef might be preferable to importing Canadian cattle. We are allowing U.S. slaughterhouses to process prohibited Canadian cattle using controls which are *less* protective of public health than the Canadian companies do when they are processing their own animals.

Based on these disturbing conclusions, we recommend that USDA:

- Rescind the proposed rule to open the United States' border to Canadian cattle over the age of thirty months.
- Strengthen border controls so that prohibited animals (including OTM and pregnant cattle) do not enter from Canada.
- Take action against producers or shippers who send prohibited animals into the United States.
- Rescind all APHIS agreements with companies that allow the company to break the seals on trucks from Canada without a USDA employee present.
- Mandate that companies physically verify the age of all Canadian cattle regardless of the documentation.
- Empower and instruct FSIS inspectors to perform dentition checks on all Canadian animals regardless of accompanying documentation.
- Empower and instruct AMS graders to intervene and retain the carcass if they discover that a Canadian OTM animal has been slaughtered.
- Prohibit the further processing and sale of meat from prohibited Canadian animals, whenever and wherever it is discovered.
- Mandate that FSIS and APHIS document all violations at the border and U.S. slaughterhouses in order to collect reliable data on the nature and extent of the problem.

We urge you to take immediate action to enforce the prohibition on older cattle from Canada entering the United States, and to take the other steps outlined above in order to protect American consumers. Please contact me at (202) 797-6550 if you have any questions.

Sincerely,

Wenonah Hauter
Executive Director
Enclosures

Cc: Senator Tom Harkin, Chairman, Senate Committee on Agriculture, Nutrition and Forestry

<http://www.meatami.com/Template.cfm?Section=Current&template=PressReleaseDisplay.cfm&PressReleaseID=2457>

Senator Herb Kohl, Chairman, Senate Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations

Representative Collin Peterson, Chairman, House Committee on Agriculture

Representative Rosa DeLauro, Chairwoman, House Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations

Dr. Richard Raymond, Under Secretary for Food Safety

Dr. David Goldman, Acting Administrator, Food Safety and Inspection Service

Ms. Phyllis Fong, Inspector General, United States Department of Agriculture