Congress of the United States
Washington, DC 20515

January 17, 2006

By Overnight Mail

The Honorable Mike Johanns
Secretary of Agriculture
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Secretary Johanns:

We are writing in response to United States Department of Agriculture's December 21, 2005 correspondence concerning your agency's plans for implementation of section 794 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Public Law 109-97 (2006 Amendment). We were shocked and deeply upset to learn that the agency has apparently decided it need not carry out Congress' clearly expressed intent to halt horse slaughter for human consumption in FY 2006, but, rather, intends to engage in a complex regulatory maneuver to willfully circumvent legislation that was passed by an overwhelming majority in both the House and the Senate.

As clearly stated in a letter by the Amendment's sponsors, dated December 7, 2005, Congress intended section 794 of the 2006 Act to remove funding for horse slaughter inspection under the Federal Meat Inspection Act, and thus "*prevent* horse slaughter for human consumption during FY 2006." In a gross misrepresentation of this clearly expressed intent, your acting general counsel has suggested that "section 794 does not prevent horse slaughter at all," and has shared the agency's plan to continue horse slaughter inspection under a "fee-for-service" arrangement pursuant to a convoluted interpretation of an entirely different federal law. We are simply astounded by these statements in light of the bipartisan and overwhelming expression of Congress' intent to *stop*, and not just alter the funding mechanism for, horse slaughter for human consumption.

Each year an estimated 90,000 U.S. horses are slaughtered and processed for human consumption in foreign countries. To end this practice, Congress, with widespread public support, passed the 2006 Amendment by a landslide vote in both the House and the Senate. Section 794 of the final 2006 Act prohibited USDA from using congressionally appropriated funds to pay for federally-mandated inspection of horses prior to slaughter.

Instead of deferring to Congress' intent, the agency appears poised to continue horse slaughter inspections under a different law. This action is a direct defiance of Congressional intent. Every statement of record regarding this amendment reflects the directive mandated by Congress. After introducing the Amendment, Senator John Ensign declared that "[t]he goal of our amendment is simple: *to end the slaughter of America's horses* for human consumption

overseas." Senator Robert C. Byrd reiterated the purpose of the Amendment, declaring unequivocally that he had joined with Senator Ensign and "offered *an amendment to stop the slaughter of horses for human consumption* by preventing taxpayer dollars from being used to inspect the horses intended for slaughter.

The House shared this understanding. Representative Spratt, a sponsor of the Amendment, squarely presented the matter to be voted on: "What is the effect of this amendment? This amendment in simple terms will stop the slaughter [f]or human consumption of horses. . . . [Their] brutal slaughter . . . is the kind of slaughter that this bill *will prohibit*." Even congressional opponents of the bill – who presumably represent the interests of the petitioners here – predicted that the Amendment would "prohibit USDA from inspecting horses."

To justify its decision to willfully ignore this clear legislative history, USDA cites an isolated statement from the Conference Report accompanying the Amendment that states:

> It is the understanding of the conferees that the Department is obliged under existing statutes to provide for the inspection of meat intended for human consumption (domestic and exported). The conferees recognize that the funding limitation in Section 794 prohibits the use of appropriated funds only for payment of salaries or expenses of personnel to inspect horses.

The agency apparently believes that this isolated and cryptic snippet somehow overrides the overwhelming documented evidence that Congress intended to prevent horse slaughter for human consumption. Such an interpretation of this ambiguous statement – which would render the amendment meaningless – is absurd on its face, and is fundamentally insufficient to justify the agency's attempt to circumvent the clear intent of our Amendment.

Moreover, as the USDA is well-aware, for many years Congress has used language similar to that found in section 794 of the FY 2006 Appropriations Act to effectuate congressional policy on a variety of subjects ("*none of the funds made available in this Act may be used*"). To our knowledge, these mandates are routinely carried out. Accordingly, we can only conclude that the USDA has special, and as of yet undisclosed, reasons for attempting to circumvent this particular de-funding mandate. We therefore request that you immediately provide our offices with copies all agency documents concerning its actions in this matter -- including any and all contacts and correspondence with industry representatives -- so that we can ensure that USDA is carrying out its duly assigned role of *implementing* congressional policy, rather than attempting to *determine or circumvent* such policy for itself.

We understand that the USDA is considering implementing this without prior public notice and comment rulemaking. As should be plainly apparent to the agency by now, the issue of horse slaughter is of significant national interest, and each and every one of our constituents is entitled to prior notice and a full opportunity to comment on the USDA's proposal *before* it is implemented.

Therefore, should USDA continue the course of directly violating Congressional intent, we request that any new rule or regulation promulgated to allow "fee-for-service" inspections of

horses intended for human consumption not be in done in an expedited manner. Furthermore, we also request that you detail the exact procedure for determining who will be required to pay for such inspections, how such costs will be determined, what inspections will require payment, will a contract need to be signed for such service, how do you plan to insure 21 U.S.C. § 331 is properly enforced, etc.

As required by the 2006 Amendment, the agency must cease inspection of horses for slaughter. Failure to do so constitutes willful disregard of clear Congressional intent on the part of USDA. The agency has absolutely no authority to circumvent a Congressional mandate and effectively rewrite an unambiguous law at the request of the horse slaughter industry. We would appreciate your prompt response on this important matter.

Sincerely,

Rep. John Sweeney
Member of Congress

Rep. Ed Whitfield
Member of Congress

Rep. John Spratt, Jr.
Member of Congress

Rep. Nick Rahall, II
Member of Congress

Senator Trent Lott
Member of Congress

Senator Jim DeMint
Member of Congress

Senator Diane Feinstein
Member of Congress

Senator Robert Byrd
Member of Congress

Senator Evan Bayh
Member of Congress

Rep. Peter King
Member of Congress

Rep. Christopher Shays
Member of Congress

Rep. Mike Ferguson
Member of Congress

Rep. Rob Simmons
Member of Congress

Rep. Katherine Harris
Member of Congress

Rep. Mark Foley
Member of Congress

Rep. Robert Wexler
Member of Congress

Rep. George Miller
Member of Congress

Rep. Chris Van Hollen
Member of Congress

Rep. Dale Kildee
Member of Congress

Rep. Richard Neal
Member of Congress

Rep. Thaddeus McCotter
Member of Congress

Rep. Barbara Lee
Member of Congress

Rep. Stephen Lynch
Member of Congress

Rep. Jim McGovern
Member of Congress

Rep. Doris Matsui
Member of Congress

Rep. Frank Pallone
Member of Congress

Rep. Jo Ann Davis
Member of Congress

Rep. Donald Payne
Member of Congress

Rep. Raul Grijalva
Member of Congress

Rep. Walter Jones
Member of Congress

Rep. Pete Stark
Member of Congress

Rep. Gwen Moore
Member of Congress

Rep. Henry Brown, Jr.
Member of Congress

Rep. Rush Holt
Member of Congress

Rep. Rick Larsen
Member of Congress

Rep. Jim Gerlach
Member of Congress

Rep. Tom Lantos
Member of Congress

Rep. Carolyn Maloney
Member of Congress

Rep. Janice Schakowsky
Member of Congress

Senator Mary Landrieu
Member of Congress