



EMBARGOED for July 22, 2004  
9:30 a.m. (ET) Release

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## New Study Reveals Gaping Holes in Mad Cow 'Firewall'

*McGarity: 'Government's so-called firewalls are flimsy;  
Administration's sham safeguards don't protect public health'*

Washington, DC --- Thomas O. McGarity, a food safety expert and President of the Center for Progressive Regulation, today derided the Bush Administration's response to the threat of Mad Cow disease in the U.S. beef supply, concluding that the series of regulatory measures taken to date "are riddled with sham safeguards and faux firewalls that fail to protect public health." In particular, McGarity described USDA Secretary Ann Veneman's recent assertion that USDA regulations for identifying and banning highly infective "specified risk materials" (SRMs) "ensures that the highest-risk materials are not entering the food chain" as based "more on fiction than fact." McGarity's assessment came upon the release of CPR's 160-page analysis of the Administration's Mad Cow regulatory regime, "Flimsy Firewalls: The Continuing Triumph of Efficiency over Safety in Regulating Mad Cow Disease Risks," written by McGarity with fellow CPR Member Scholar Frank Ackerman.

McGarity writes in the report: "Unfortunately, none of the frequently alluded to 'firewalls' provide the precautionary protections that are implied in the 'firewall' metaphor and demanded by the meat safety laws. If they are firewalls at all, they are flimsy firewalls, easily breached, and much in need of repair or replacement."

A key finding of McGarity's research is that because of a significant loophole in the government's regulations concerning handling of especially risky SRMs from slaughtered cattle – brains, ganglia, and other body parts that can spread Mad Cow disease – several troubling practices are now both legal and widespread in the beef slaughter and processing industry. The loophole permits industry to elect not to implement the rigorous standards for specific controls on these risky materials at specific points in processing, simply by asserting – as almost all establishments apparently have – that Mad Cow disease is unlikely to be a problem in their facility. After reaching that conclusion on their own, and without government approval, industry is then allowed to follow far less rigorous industry-drafted Standard Operation Procedures, sometimes called "prerequisite" programs, to keep brain, spinal cord and the like out of edible meat. They are not required under this approach to actually check for Mad Cow disease. The failings of this system are potentially disastrous, and include:

- *Self-regulation.* Slaughter and processing establishments are permitted to devise their own plans for identifying and preventing the spread of risky materials, without any requirement for government approval; as heads are lopped off, carcasses are split down the spine with power saws, meat is sliced from bone, and trimmed bones are sent through high pressure advanced meat recovery devices to remove the last tidbits of usable material.
- *Informal measures.* Because the establishments are permitted to opt out of the more thorough regulations, their plans are far less formal and far less thorough than a reading of the government's

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- regulations or statements to the public would suggest. Establishments are not required to check for Mad Cow or even perform simple tests for brain and other risky nervous system tissues. They are required to have a written plan, but they are not required to follow it. Instead, in the event that an establishment fails to keep risky materials out of meat, the regulations only call for it to reassess its procedures.
- *Meaningless Sanctions for Failure.* Establishments found to have allowed risky materials in their beef because of failures in the design or implementation of their self-devised control plans are not even penalized. They are simply directed to reevaluate their plans and try to correct the problem. According to one expert interviewed by McGarity for the report, as a practical matter, “It is a lot harder [for a plant] to get closed under a Prerequisite program.”

“The sad truth is that the Administration’s response to the Mad Cow discovery of last December is so inadequate, so shaped by a desire to prop up industry sales, that consumers are left with hollow promises of protection,” McGarity said. “From the first day of the Mad Cow scare, USDA has behaved like a cheerleader for the industry, right up to the point that the secretary of agriculture promised to eat beef for the holidays. The public would have been better served if USDA had been primarily concerned more about public health, and less about industry profit.”

The report charges that the government’s regulations have been designed more to protect the meat industry from economic loss than to protect the health of the American public from mad cow disease. As a result, it says, American consumers, who in 2001 ate an average of 63 pounds of beef per person, are at greater risk of consuming beef from mad cows and contracting a debilitating disease called Creutzfeldt-Jacob Disease (CJD), a slowly degenerative affliction of the central nervous system. The disease is characterized by the rapid degeneration of the brain, which eventually takes on a spongy quality, as patients are progressively robbed of their brain functions. The disease is always fatal.

Other findings of the report:

- USDA’s initial response to the discovery of a mad cow in Washington State was reasonably successful in bringing about a recall of potentially contaminated meat and investigating the source of the infected animal. But after these initial steps, the Administration veered away from food safety to focus on an intense public relations campaign designed to put the public’s mind at ease and ensure the continued economic well-being of the beef industry.
- In its regulating and its public relations, the government relies heavily on a statistical analysis by the industry-friendly Harvard Center for Risk Analysis of the likelihood of a Mad Cow outbreak in the United States. CPR economist Frank Ackerman evaluated the study, and concluded it “could have seriously understated the risks of a BSE [Mad Cow] outbreak in the United States.” Worse, he concluded, the report all but ignored “a scenario in which there was a 25 percent probability of more than a million cases of BSE occurring in the United States over a 20-year period,” which Ackerman called “a startling finding.”
- On April 19, 2004, the Administration undercut its own restriction on imports of beef from countries that had experienced Mad Cow outbreaks when USDA quietly informed import brokers that it would immediately lift the ban on imports of all edible beef products from Canadian cattle under 30 months, including processed meat that contained bone and other byproducts. (A court quickly issued a preliminary injunction.) Even worse, USDA’s Animal and Plant Health Inspection Service had already covertly allowed U.S. meatpackers to import 33 million pounds of beef from Canada between September 2003 and May 2004 despite Secretary Veneman’s August 2003 announcement that she was extending a ban on such meat. USDA has refused to disclose which processors received exemptions for Canadian imports.

- FDA's restrictions on feeding protein from mammals to cattle has gaping loopholes, permitting blood and blood byproducts, gelatin, plate waste (from restaurants), and more. In addition, the regulations permit cattle protein to be fed to pigs and chickens, which can in turn be rendered into cattle feed. Litter from poultry farms may be fed to cattle, even though it could easily contain significant amounts of uneaten poultry feed made from protein derived from cattle. In January, USDA promised to close these loopholes, but on July 9, 2004, instead of offering an interim rule that would take immediate effect, it issued a mere notice of an intention to regulate – delaying a rule for months, if not years.
- The safest way to make sure no infected cattle are slaughtered for beef is to test every slaughtered cow or every cow above a certain age. Japan and other countries do exactly that. France, for example, tests more cows in one week than the United States tested in the decade prior to 2004. But USDA's "see no evil" testing program is entirely voluntary and limited to a narrow sample of the U.S. cattle population.
- When one company, Creekstone Farms, announced its intention to test every single cow it slaughtered, USDA flatly forbade it, denying consumers the right to choose to eat beef from cattle known to have tested negative for Mad Cow and protecting the big five meatpacking companies from the prospect of having to test all of their cattle to meet competition.
- The new rules require that all downer (unable to walk) cattle be slaughtered and removed from the food supply, a reasonable and overdue precaution, if it is in fact enforced. But not all Mad Cow-infected cattle are unable to walk. And the rule leaves open the question of what the slaughterhouses will do with the meat from these cattle. They are allowed, for example, to sell the slaughtered downer cattle to renderers for processing into feed for animals that may in turn be fed back to cattle, permitting Mad Cow disease to spread.
- The USDA's regulations for keeping "specified risk materials" – cattle brain, skull, eyes, and ganglia – out of the human food supply define that term much more narrowly than most other countries do, and they rely on industry to police itself. An example of the overly narrow definition: cattle under 30 months are exempted from screening for Mad Cow, for no good scientific reason. Young cattle can carry the Mad Cow protein, a fact the government regulations ignore.
- Two of the rules USDA imposed in January were apparently intended solely for their public relations value. Both the ban on air injection stunning and the ban on mechanically separated meat imposed no burden whatsoever on the cattle industry and provide little if any additional protection for consumers, because neither technology had been used in the United States since soon after the outbreak of mad cow disease in England in 1996.

Professor McGarity holds the W. James Kronzer Chair at the University of Texas School of Law. He is the President of the Center for Progressive Regulation. He is the author of a lengthy analysis of the Administration's regulatory approach to Mad Cow disease, to be issued July 22, 2004. Frank Ackerman, a Member Scholar of the Center for Progressive Regulation, is an environmental economist and research director of the Global Development and Environment Institute (GDAE) at Tufts University. He has written widely on cost-benefit analysis, on the economics of waste and energy, and on alternative approaches to economic theory.

The complete 160-page report and a separate executive summary are available in PDF form at [http://www.progressiveregulation.org/issue\\_food\\_safety.cfm](http://www.progressiveregulation.org/issue_food_safety.cfm). *Founded in 2002, the Center for Progressive Regulation is a nonprofit research and educational organization of university-affiliated academics with expertise in the legal, economic, and scientific issues related to regulation of health, safety, and the environment. CPR supports regulatory action to protect health, safety, and the environment, and rejects the conservative view that government's only function is to increase the economic efficiency of private markets. Direct media inquiries to Matthew Freeman at [mfreeman@progressiveregulation.org](mailto:mfreeman@progressiveregulation.org). Visit CPR's website at [www.progressiveregulation.org](http://www.progressiveregulation.org).*