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Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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May 13, 2004

The Honorable Ann M. Veneman
Secretary of Agriculture
Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Madam Secretary:

I am writing to express concern that the recent failure of the U.S. Department of Agriculture (USDA) to test a Texas cow with neurological symptoms for bovine spongiform encephalopathy (BSE) may reflect wider problems in the surveillance program. USDA apparently does not keep track of how many cows condemned for central nervous system symptoms are tested for BSE nor does it require that suspect carcasses be held pending testing. Effective surveillance and control of BSE in the United States require a reliable system for ensuring that potentially infected cows are tested and that no infected materials enter the animal or human food supply.

Under USDA regulations, any cow that exhibits signs of central nervous system (CNS) problems must be condemned by Food Safety Inspection Service (FSIS) personnel at the plant.[1] According to a 1997 Animal and Plant Health Inspection Service (APHIS) Memorandum, brain samples all of such animals should be sent for BSE testing.[2] The memorandum notes that "[i]t is essential that brain specimens be collected from adult cattle condemned for CNS signs as part of our national surveillance of BSE."[3]

The cow slaughtered at the Lone Star Beef slaughterhouse last week staggered and fell, and was condemned ante mortem by FSIS personnel.[4] Despite a request from APHIS personnel

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[1] 9 CFR 309.4.

[2] USDA APHIS, *Veterinary Services Memorandum No. 580.16, Procedures for Investigation of Adult Cattle With Clinical Signs of Central Nervous System (CNS) Disease and Procedures for Surveillance of Downer Cows for Bovine Spongiform Encephalopathy (BSE)* (June 11, 1997).

[3] *Id.*

[4] *U.S. Confirms a Failure to Use Mad Cow Test*, Wall Street Journal (May 4, 2004).

at the plant to conduct BSE testing, however, an APHIS supervisor in Austin reportedly refused the test and instructed the plant to send the carcass for rendering.[5]

This sequence of events is troubling, and it raises the question of whether this is an isolated incident. In 1997, USDA noted a major gap between the number of cattle condemned for CNS symptoms and the number of these cows actually tested for mad cow disease. The Department found:

> Based on information provided by the Food Safety and Inspection Service (FSIS), the number of adult cattle (2 years of age or greater) condemned at slaughter due to CNS signs is much greater than the number whose brains have been collected for testing.[6]

Despite recognizing the problem more than six years ago, however, USDA apparently did not adopt procedures to ensure that these samples would be collected. In March 2004, the Government Reform Committee asked USDA to provide, for each of the last five years, the number of BSE tests performed on cattle condemned by FSIS inspectors on the basis of CNS symptoms.[7] In response, USDA provided information on the numbers of cattle condemned for CNS symptoms by FSIS, but replied that "[i]t is not possible to determine, from the data we currently collect, how many of these cattle were tested by APHIS for BSE."[8] It thus appears that not only does USDA not routinely track the gap between the number of condemned and tested cattle, but that USDA could not even calculate this gap when requested to do so by Congress.

There also appears to be a lack of clarity regarding the disposition of cattle with CNS symptoms while BSE tests are pending. In the past, companies could send cattle awaiting BSE testing results for rendering, which would allow their remains to be used in feed for animals other than ruminants, such as pigs and chickens. After this incident, both FDA and USDA policy appear to have changed — in different ways.

USDA policy has apparently shifted to requesting that companies not send cattle to rendering while awaiting test results. A May 5, 2004 memo from APHIS states, "it is requested — though not required — that [the cattle] not go to inedible rendering until the sample comes

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[5] *USDA's San Angelo Vets and Techs Ordered Not to Test Suspect Cow,* Meating Place (May 5, 2004).

[6] USDA APHIS, *supra* note 2.

[7] Letter from Rep. Tom Davis and Rep. Henry A. Waxman to Secretary of Agriculture Ann M. Veneman (Mar. 8, 2004).

[8] Letter from Ronald F. Hicks, Assistant Administrator, Office of Program Evaluation, Enforcement, and Review, FSIS, to Rep. Henry A. Waxman, Attachment 1 (Mar. 22, 2004).

back negative."[9] There is no explanation of why this course of action is requested, but not required.

FDA policy also appears to have shifted towards prohibiting the use of carcasses of cattle with CNS symptoms and indeterminate BSE status in certain types of animal feed. On April 30, FDA requested that the rendering company holding the remains of the Texas cow either destroy them or use them exclusively in swine feed. In the case that the remains are included in swine feed, FDA "will track the material all the way through the supply chain from the processor to the farm to ensure that the feed is properly monitored and used only as feed for pigs."[10]

Any confusion over what to do with cattle condemned for CNS symptoms awaiting testing for BSE seems unnecessary. The obvious approach is to require companies either to destroy the carcasses or hold them until test results become available. Such a policy would avoid any need for complicated traceback procedures after the discovery of a positive result. According to the information provided to the Committee by USDA, the FSIS has condemned only 200 to 250 cows per year because of signs of central nervous system damage.[11] Mandating the destruction or holding of their carcasses would have minimal economic impact.

The experience with the BSE-infected cow in Washington State illustrates the prudence of waiting for the results of BSE tests. Prior to December 2003, USDA permitted cattle that were sampled as part of the BSE surveillance program to enter commerce even while BSE tests were pending. As a result, when the BSE-infected cow was discovered, it had already entered the food supply. This led to a complicated and partially successful traceback procedure in which hundreds of thousands of pounds of beef had to be destroyed. Because of this debacle, USDA quickly developed a new policy to require holding all carcasses from the human food chain during BSE testing.

I appreciate that you have taken steps to enhance the safety of the U.S. food supply since the discovery of BSE in the United States. I urge you to consider the lessons of this latest

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[9] Memo from John R. Clifford, Acting Deputy Administrator, Veterinary Services, and William Smith, Assistant Administrator, Office of Field Operations, Food Safety and Inspection Service, to VSMT, Regional Directors, Area Veterinarians in Charge, and Veterinary Services, *Subject: Policy Statement Regarding BSE Sampling of Condemned Cattle at Slaughter Plants – for Immediate Implementation* (May 5, 2004) (online at http://www.aphis.usda.gov/lpa/issues/bse/BSE_APHIS-FSIS.pdf).

[10] FDA, *Statement on Cow with Central Nervous System Symptoms* (Apr. 20, 2004) (online at http://www.fda.gov/bbs/topics/news/2004/NEW01061.html).

[11] The yearly totals of FSIS antemortem CNS condemnation for all adult cattle were 233 (1999), 220 (2000), 201 (2001), 249 (2002), and 247 (2003). The database for 2003 had not yet closed.

incident. USDA should develop a process that ensures the tracking of cattle condemned for CNS signs and should institute a policy requiring all carcasses with pending BSE tests to be destroyed or held. If there are any statutory barriers to these steps, please do not hesitate to let me know.

Sincerely,

Henry A. Waxman

Henry A. Waxman
Ranking Minority Member