

Testimony of Caroline Smith DeWaal
Director of Food Safety
before the
House Food Safety Caucus
Hearing on "Strategies to Reduce and Prevent
Mad Cow Disease and Improve the U.S. Food Safety System"

January 27, 2004 Washington, D.C.

My name is Caroline Smith DeWaal and I am director of food safety for the Center for Science in the Public Interest (CSPI). CSPI is a non-profit organization based in Washington, DC. Since 1971, CSPI has been working to improve the public's health, largely through its work on nutrition, food-safety and alcohol issues. CSPI is supported primarily by 850,000 subscribers to its Nutrition Action Healthletter, the largest circulation health newsletter in North America.

Thank you for inviting us to present testimony today on strategies to reduce and prevent Mad Cow disease and improve the U.S. food safety system. The recent finding of two cows infected with bovine spongiform encephalopathy (BSE) shows that North America has no magic formula to protect it from this disease. While safeguards instituted in the late 1980's and 1990's helped delay the disease, they were not tough enough to provide immunity to North American cattle. Nor were many of the experts surprised when BSE was finally discovered in North America. We repeated urged the USDA to take more comprehensive action to protect consumers, as absence was no excuse for complacency.

In the late 1980's or early 1990's, BSE jumped the species barrier between cattle and humans during an epidemic of disease in cattle. Unlike the human form of the disease, which

Ì

seldom strikes those under age 50, the variant Creutzfeldt-Jakob Disease (vCJD) shows up in young men and women. It often starts with leg pain and difficulty walking but eventually leads to a progressive brain damage that leaves its victims hallucinating, unable to see, speak, or feed themselves, and ultimately, dead. While fewer than 150 people have died from vCJD since 1996, no one knows how many more are already infected with this horrible disease.

BSE in cows and vCJD in humans are both caused by prions. These are virtually indestructible proteins that have the remarkable ability to induce other proteins to become deformed. Scientists aren't certain how prions do their damage but it is clear that we must keep them out of both the food and feed supplies.

CSPI is calling on USDA, FDA, and Congress to enact the following reforms to prevent BSE from growing into a larger problem in North America:

1. Increase surveillance for BSE to determine the prevalence of BSE in the U.S. cattle and to minimize the chance that BSE-infected cattle enter either animal feed or the human food supply. Widespread testing is essential, and USDA should approve the use of "quick tests" currently being used in Europe and Japan. Testing should include healthy animals over 20 months of age and heavily target those animals of any age that show signs of central nervous system (CNS) diseases, and downer cattle at the farm. We have urged USDA to convene a public meeting to discuss how testing should be applied to best protect public health.

2. Immediately implement a mandatory, nationwide cattle identification and trace back system. This system should track cattle from birth to the slaughter plant, or other disposal

¹ Schardt, David and Stephen Schmidt, "Mad About BSE," Nutrition Action Healthletter, Vol. 24, No. 6, July/August 1997, p. 4.

venue. The system should make it possible to trace animals infected with BSE, and also to find the source of animals that come to a slaughter plant with a heavy burden of other pathogens, such as *E. coli* O157:H7. The U.S. should follow the lead of many other countries, where the information is tracked by the government and is mandatory for all cattle producers.

- 3. Ban all specified risk materials the cattle parts most likely to carry the disease from the animal feed chain. In Europe, all specified risk materials are kept out of the rendering process.² While such stringent precautions in the U.S. are only now being considered, FDA should ban all mammalian protein from animal feed, including meat and bone meal, table scraps and other sources. Short of an inspector in every barn, there is no other way to ensure that feed containing beef remains does not get fed to cattle.
- 4. Develop further protections to keep BSE infected material out of the human food chain. Finding BSE in North American cattle makes even more urgent the need for USDA to implement better protections for the human food supply, protections that CSPI has been advocating since 1997.

Advanced meat recovery systems process the parts of cattle that are mostly likely to transmit the BSE infectious agent to humans. These machines take bones with attached meat and put them through a device which removes the meat from the bone. Any spinal cord or dorsal root ganglia that are attached to the spinal columns that enter these machines will be incorporated into the meat that is produced. Spinal cords and other CNS tissue from cows with BSE can be highly infectious. Advanced meat recovery systems provide the best single opportunity for BSE-

² The European Union Press Release, "Commission Approves Further Protection Measures Against BSE," February 7, 2001, available at http://europa.eu.int/rapid/start/cgi/guesten.ksh?p action.gettxt=gt&doc=IP/01/174|0|AGED&lg=EN&display=

infected material to enter the food supply. And this meat is used in several staples of the American diet, like hot dogs, hamburgers and sausages.

Since 1997, USDA has been urging companies to completely remove the spinal cords before putting spinal columns and neck bones into these system, but a 2002 survey of plants using this equipment showed that the voluntary program was not adequate.³ In fact, 88% of plants surveyed produced meat from these machines that contained bits of spinal cord or other CNS tissue.⁴

On December 30, Secretary Veneman finally announced that spinal columns from cattle 30 months and older would be barred from this AMR equipment. While this pronouncement is finally an admission from USDA that this meat could pose a risk to human health, the 30-month restriction is not good enough.⁵ It assumes that only these cattle pose a risk to the public. However, documented cases of infected cattle between the ages of 20 and 30 months have been found both in Europe and in Japan. We believe the magnitude of the human illness justifies these precautions in meat production.

³ U.S. Department of Agriculture, Food Safety and Inspection Service, "The Follow-up to the Beef AMR Product Survey of 2002: Follow-up Results and Actions for the Elimination of CNS (Spinal Cord) Tissues from AMR Products Derived from Beef Vertebrae," available at http://www.fsis.usda.gov/OA/topics/AMRSurvey.pdf

⁴ U.S. Department of Agriculture, Food Safety and Inspection Service, "Analysis of 2002 FSIS Bovine AMR Products Survey Results." February 27, 2003.

⁵ In 2001, CSPI petitioned the U. S. Department of Agriculture to ban all spinal column and neck bones from all cattle processed using AMR systems.

Center for Science in the Public Interest, "Petition for Regulatory Action to Bar the Use of Spinal Cord and Columns and Other Potentially Infectious Tissue From Beef in the Human Food Supply." August 9, 2001.

5. Institute a mandatory recall program or an effective voluntary program that gives consumers information on where contaminated meat was sold. This gap in consumer protection was exposed both during the ConAgra recall in 2002 and again when over 10,000 pounds of meat were subject to a voluntary recall due to the BSE- infected cow. Under USDA's voluntary recall policy, the agency treats all distribution records documenting where the contaminated meat was sent as proprietary records that can not be disclosed to the public. As a result of this absurd policy, the public is left guessing if the meat they purchased from their local grocery store is part of the recall or not. This policy is analogous to a toy manufacturer issuing a recall on a potentially dangerous toy, but only informing the retailers selling the toy and not disclosing this information to parents who may have already purchased the toy for their children.

FSIS claims that it cannot release distribution information because it is protected under the Freedom of Information Act (FOIA) exceptions. However, this interpretation applies the FOIA "business records" exemption⁶ too broadly. In fact, distribution lists have been released under FOIA⁷ when it was determined that their disclosure would not cause "substantial competitive harm." FSIS has not presented any evidence to demonstrate that telling consumers

⁶ Specifically, exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4).

⁷ See, e.g., *Greenberg v. FDA*, 803 F.2d 1213, (D.C. Cir. 1986); *Ivanhoe Citrus Assn. v. Handley*, 612 F. Supp. 1560, 1566 (D.D.C. 1985); *Braintree Elec. Light Dept. v. Dept. Of Energy*, 494 F. Supp. 287, 290 (D.D.C. 1980).

⁸ National Parks Ass'n. v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). The leading standard for determining whether information that was compelled by the agency is "confidential" was set out in the National Parks decision: "To summarize, commercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.*

which establishments have received recalled product would create "substantial competitive harm" to the recalling company. Since recalls are limited in their depth and scope, it is questionable whether the release of the names of specific recipients of specific product at a specific time would be of any use to competitors.

USDA's policy seems intended to protect company information at the expense of consumers. While its origin is in the voluntary recall system, it is urgent that Congress act to reverse this policy as soon as possible, even before mandatory recall legislation is enacted. Companies should not be allowed to use FOIA exemptions to shield themselves from the consequences of introducing potentially adulterated foods into the food supply. It is simply criminal to deny states and consumers critical information they need to act quickly to prevent illness.

⁹ The agency withholding the information must present objective evidence from which a court can conclude that the submitting company is likely to suffer substantial competitive injury. Robert G. Vaughn, "Consumer Access to Product Safety Information and the Future of the Freedom of Information Act," *Admin. L. J.* 5:673 (Fall, 1991) [hereinafter *Vaughn*]. The burden under the Act is clearly on the agency that seeks to vindicate the company's interests. *Id.*