

**COW SENSE:
THE BUSH ADMINISTRATION'S BROKEN RECORD ON
MAD COW DISEASE**

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OMB WATCH AND CONSUMER FEDERATION OF AMERICA**

The country's third confirmed case of Bovine Spongiform Encephalopathy, better known as "Mad Cow Disease,"¹ was discovered on March 10, 2006, in a cow located on a farm in Alabama. When discussing this latest case of mad cow disease with a concerned public, the U.S. Department of Agriculture's (USDA) John Clifford announced in the same breath that the agency intends to scale back testing for the brain-wasting disorder from 1000 to about 110 daily. The lower testing levels haven't been finalized, "but the department's budget proposal calls for 40,000 tests annually," about one-tenth of the current testing level.²

Because of the gravity of the potential problem—mad cow disease infected millions of cattle in Britain and resulted in 160 fatal human illnesses as well³—details about the case are particularly troubling. The veterinarian who examined the cow estimated that it was around 10 years old—*estimated*, that is, because the lack of an animal identification program of the sort already in place in Europe, Canada, and Japan means that the government cannot know with certainty the animal's age. Moreover, there is much more we do not know: we cannot know with any certainty how many calves it had, or even the farm where it was born and probably ate the feed containing the agent that causes mad cow disease. Without this information, it becomes nearly impossible to trace animals that may have consumed the same infected feed and to ensure that they don't make it into the human or animal food supply.

The country's first confirmed case of mad cow disease was discovered on December 23, 2003. Three years later why is the public still in the dark when it comes to mad cow disease? Why can't we trace animals back to the source herd to discover the related cows that may also present the same risk to the food chain? Why are there still loopholes in the safety net that weaken our ability to prevent the spread of BSE in the nation's cattle herd or even to monitor the incidence of the disease? The answer is a string of broken promises that trace back to the special influence of special interests in the Bush administration.

¹ "USDA/Alabama BSE Epidemiological Update: News Release." United States Department of Agriculture. <http://www.aphis.usda.gov/newsroom/content/2006/03/bse_al-epi_vs.shtml>.

² Quaid, Libby. "Update 12: Government to Scale Back Mad Cow Testing." *The Associate Press on the web* March 14, 2006. <<http://www.forbes.com/entrepreneurs/feeds/ap/2006/03/14/ap2594725.html>>.

³ "Creutzfeld-Jakob Disease in the UK: Press release." UK Department of Health. March 8, 2005. <<http://www.dh.gov.uk/assetRoot/04/10/53/47/04105347.pdf>>.

Surveillance and Industry Testing

Enhanced Surveillance

In response to the discovery of the first BSE-infected cow in the U.S. in December of 2003, USDA's Animal and Plant Health Inspection Service (APHIS) instituted an intensive animal health testing program for BSE. According to APHIS, the program was designed as a one-time effort to provide a snapshot of the prevalence of BSE in the domestic cattle population. The program was designed to test as many cattle from the high-risk population as possible in a 12- to 18-month period.⁴

Since 1994, APHIS has tested over 650,000 samples with two confirmed positives from cattle that could have been born before the implementation of 1997 feed ban. But because of a lack of paperwork and an animal identification system, we may never know the exact age or origin of the cattle in question.

When the recent BSE case in Alabama was announced, USDA also proposed scaling back the surveillance program to test just 40,000 animals a year. However, Secretary Johanns has since retreated, saying the agency is not in a hurry to reduce testing.⁵

Private Firms

In February of 2004, Creekstone Farms Premium Beef LLC, a privately owned producer and processor, petitioned USDA to allow them to conduct private testing for mad cow disease. The company wanted to regain entry into the Japanese beef market after Japan closed its borders to American beef in 2003, citing BSE concerns. Of the roughly \$3.9 billion in global sales of American beef in 2003, Japan accounted for \$1.4 billion.⁶ Creekstone Farms was willing to address this concern by complying with Japan's request that every carcass exported to Japan be tested for BSE. But USDA refused the license request. It is USDA's contention that testing every animal or animals younger than 30 months is not scientifically justified or necessary.

While testing every animal for BSE is not necessary to assure food safety, private firms like Creekstone should be able to voluntarily test for BSE, especially since they were willing to do this at its own expense. USDA should not prohibit private companies from testing their product. The Japanese government and consumers wanted all cattle tested for mad cow disease and Creekstone was willing to comply with this request. By prohibiting companies from giving their customers what they want, USDA is not only restricting free enterprise but also preventing companies from regaining the full value of their export market. USDA's action is in effect a disincentive for companies who are willing to go the extra mile to address their customers concerns. It's been over two years since Creekstone

⁴ Animal and Plant Health Inspection Service.
<http://www.aphis.usda.gov/lpa/issues/bse_testing/plan.html>.

⁵ The Associated Press. "USDA in no hurry to scale back mad cow tests." MSNBC.com on the web March 27, 2006. <<http://msnbc.msn.com/id/12042407/print/1/displaymode/1098>>.

⁶ "Renewed Japan Beef ban prompts U.S. probe" USA Today on the web January 20, 2006.
<http://www.usatoday.com/money/industries/food/2006-01-20-japan-mad-cow_x.htm>.

petitioned USDA to allow testing for BSE and U.S. companies still have not fully regained access to Japanese markets.

Bush Administration's Broken Promises

After the first BSE case was found in the U.S, the Bush administration made a string of promises to ensure that the United States would not experience the kind of crisis in consumer confidence that happened in Britain. As the policy decisions moved from the press secretary's lectern to the pages of the *Federal Register*, however, the Bush administration began to break promise after promise. Two stand out: the failure to implement a national animal identification and tracking system; and the failure to produce a strong feed rule to prevent the nation's cattle herd from consuming materials that pose the risk of transmitting BSE.

Failure to Follow Through on Animal ID

On December 30, 2003, just seven days after the first mad cow was discovered in the United States, Secretary Ann Veneman announced that the U.S. would expedite the adoption of a "verifiable nationwide animal identification system to help enhance the speed and accuracy of our response to disease outbreaks across many different animal species."⁷ This important announcement was followed by multi-million dollar investments, including \$18.8 million in 2004, and Congressional appropriations of \$33 million in both 2005 and 2006.⁸ USDA, in a 2004 statement of Undersecretary Bill Hawkes, said that the Animal Health Protection Act gave the agency "authority to address the animal ID system in a mandatory fashion if we so choose."

Animal identification programs are already used in many parts of the world, including Europe, Canada, Japan and New Zealand, to track animals and safeguard animal health. Such systems are implemented to protect against the spread of animal diseases, some of which also affect human health. Foot and mouth disease and bovine tuberculosis outbreaks have historically been kept in check by controlling the movement of livestock. When it comes to BSE, cattle identification provides critical information that helps to identify animals from the same farm that years before may have eaten infected feed. (See Table I.)

USDA began the implementation of the National Animal Identification System (NAIS) on a voluntary basis in 2004. The long-term goal of the NAIS was to provide animal health officials with the capability to identify all livestock and premises that have had direct contact with a disease of concern within 48 hours after discovery.

⁷ "Veneman Announces Additional Protection Measures To Guard Against BSE: News Release No. 0449.03." United States Department of Agriculture. December 3, 2003. <<http://www.usda.gov/Newsroom/0449.03.html>>.

⁸ "Veneman Announces Framework and Funding for National Animal Identification System: News Release No. 0170.04." United States Department of Agriculture. April 27, 2004. <<http://www.usda.gov/Newsroom/0170.04.html>>.

While Veneman expressed urgency, in May 2005, Secretary Michael Johanns announced that full recording of animal movements would be delayed until 2009.⁹ This extended timeline reversed the expedited implementation promised by Secretary Veneman.

In a February 2006 meeting of a cattleman's association called R-CALF, the NAIS coordinator Neil Hammerschmidt said that the 2009 timeline would not be met, as the agency had "no one working on rules to implement a mandatory program."¹⁰ In a letter to the Center for Science in the Public Interest in March 2006, USDA "clarified" Hammerschmidt's remarks by saying that "broad support for the NAIS will motivate a majority of stakeholders to voluntarily participate. . . . Such market incentives could obviate the need for our Agency to take regulatory action to make participation mandatory." Thus, Hammerschmidt was right – USDA had already decided that animal identification and tracking programs would not be mandatory.

Failure to Follow Through on Cattle Feed Standards

Although cattle are ruminants that by nature eat grasses, the agribusiness practice today is to fatten them up quickly with grains, animal proteins and other materials not typically in a ruminant diet. Until 1997, when the practice was banned, feed manufacturers would feed rendered cattle proteins back to cattle. This practice increased the risk of spreading mad cow disease, as cattle were exposed to the infectious proteins (or "prions") when parts from infected cattle were allowed in cattle feed. This is the likely cause of the large outbreak of BSE in cattle in Great Britain.

The Bush Administration announced plans to strengthen the feed ban in January 2004, when the U.S. Food and Drug Administration (FDA) announced it would ban the use of mammalian blood, poultry litter, and plate waste as feed ingredients for cattle and other ruminants.¹¹ Feeding plate waste and chicken litter back to cattle can recycle bovine proteins into cattle feed.

These actions would have strengthened the feed ban and reduced the loopholes where cattle materials could inadvertently enter cattle feed. A panel of international experts also supported strengthening the U.S. feed ban, and urged that all animal feed should be free of high risk cattle parts.¹²

⁹ "USDA Unveils Multi-Year Draft Strategic Plan the National Animal Identification System," News Release No. 0149.05." United States Department of Agriculture. May 5, 2005.

¹⁰ "USDA abandons plan for mandatory animal ID by 2009." Food Chemical News February 6, 2006. 47:52.

¹¹ "Expanded "Mad Cow" Safeguards Announced To Strengthen Existing Firewalls Against BSE Transmission: News Release." United States Department of Health and Human Services. January 26, 2004. <<http://www.hhs.gov/news/press/2004pres/20040126.html>>.

¹² International Review Team, *Report on Measures Related to Bovine Spongiform Encephalopathy (BSE) in the United States* (Feb. 2, 2004)..

Instead of adopting these safeguards, in July 2004, FDA delayed action by announcing another study of feed ban issues.¹³ Over a year later, in October 2005, the FDA proposed minimal new restrictions on the animal feed industry – restrictions that live up to neither their own promises nor the recommendations of the international experts.¹⁴

Special Access for Special Interests

So, why at the same time the third case of BSE was confirmed, did USDA even suggest reducing its surveillance testing? And how did common sense protections – like the animal identification system and safer animal feed – get scuttled or weakened beyond recognition?

The reason? Former industry players are embedded throughout the Bush administration and often play key roles in the agencies that are supposed to regulate those same industries. More importantly, any time the USDA or FDA makes a promise to protect the public, industry can use its own special hotline straight to the White House to promote its cause.

Going Straight to the Top

Industry interests have aggressively lobbied the White House itself to distort the entire continuum of mad cow-related policy. Although Congress delegates authority to regulate food safety issues directly to the agencies, the White House has granted itself authority to review agency rulemakings with a series of executive orders.¹⁵ The White House has asserted a role in the earliest stages of policymaking by convening agencies to coordinate regulatory priorities and by reviewing agency rulemaking agendas.¹⁶ It demands the right to review proposed and final significant rules before they can be published in the *Federal Register*.¹⁷ The White House receives—and, in fact, welcomes—*ex parte* communications from industry in the course of its reviews. In accordance with the executive order,¹⁸ the White House maintains a log of those meetings on the website for the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA).¹⁹

These White House logs reveal that the feed and rendering industries brought their top officials into numerous meetings both before and after BSE was found in the U.S. in order to push back on BSE policy. The logs show six meetings regarding FDA's

¹³ "USDA and HHS Strengthen Safeguards Against Bovine Spongiform Encephalopathy: Press Release. United States Department of Health and Human Services. July 9, 2004.

¹⁴ Substances Prohibited from Use in Animal Food or Feed, 70 Fed. Reg. 58569 (October 6, 2005)..

¹⁵ See Exec. Order No. 12,866, 58 Fed. Reg. 51735 (Sept. 30, 1993).

¹⁶ See id. § 4.

¹⁷ See id. § 6.

¹⁸ See id. § 6(b)(4).

¹⁹ See Office of Info. & Reg. Affs., OMB, Meetings and Outside Communication. <<http://www.whitehouse.gov/omb/oira/>>.

consideration of the feed ban and three more regarding USDA policies on specified risk materials and downer cattle, featuring a Who's Who of the rendering and related industries. (See Table II.)

The rendering industry in particular has much at stake, because that sector takes cow parts — not just those that are left over after material for beef products are removed, but also any useable parts from cattle excluded from the food chain, including downer cows — to produce protein feeds, tallow, meat and bone meal, and a wide array of other products. Many such products are used in animal feeds that can be fed to hogs and poultry, and thus can be indirectly fed back to cows because of the loophole in the FDA feed ban rules.

In fact, some of the companies that sent executives to meet with the White House had direct experience with mad cow disease. For example, **Baker Commodities, Inc.**, which sent executive vice president **Ray Kelly** to speak with the White House on both the FDA feed ban and USDA policy on downer cattle and dead stock, owns two of the rendering plants that received portions of the 6-year-old Holstein that tested positive as the country's first confirmed case of mad cow. Likewise, another company represented in White House meetings, **Valley Proteins**, generates products—which president Gerald Smith cannot “guarantee . . . are free of cattle products”—that are “used to make feed for East Coast poultry and turkey farmers.”²⁰ The renderers' industry group **National Renderers Association** ensured that its sector was well represented in White House meetings, but one representative in particular — **Don Franco**, president of the **Animal Protein Producers Industry** and vice president of scientific services for the **National Renderers Association**, stands out from the rest because he also has a role in influencing policy at the USDA directly. Franco was appointed in 2002 to serve a two-year term on the USDA National Foreign Animal and Poultry Disease Advisory Committee, which is described approvingly by the rendering industry magazine as providing “valuable information on methods, techniques, and policies directed at preventing the introduction of foreign diseases *without imposing impractical restrictions*.”²¹

Not surprisingly, with all the industry pressure documented publicly in the meeting logs (and possibly complemented by yet more meetings not logged because they were held before any policy was officially under OMB review), the White House ordered changes in the rules that were ultimately published in the *Federal Register*.

Foxes in the Henhouse

It is currently unknown whether the National Cattlemen's Beef Association (NCBA) held any meetings with the White House, because OIRA logs only meetings about regulations being reviewed under the executive order and USDA has made it clear that no one in the agency was attempting to draft a rule on animal identification. Of course, NCBA did not

²⁰ Gay, Lance. “Rendering Scrutinized Because of Mad Cow” *Cincinnati (Ky.) Post* Oct. 1, 2004, : at A17, available on Westlaw at 2004 WLNR 1340543.

²¹ “Franco Named to Committee.” *Render Magazine*, Feb. 2002.
<<http://rendermagazine.com/February2002/People,Places.html>>.

need to petition the White House to influence the agency's priorities, because NCBA's interests are already deeply embedded in the USDA itself.

The USDA has a number of former executives from NCBA and other allied industry concerns at both high levels and important staff positions:

Dale Moore, Chief of Staff at USDA since 2001, was formerly the Director of Legislative Affairs for the **National Cattlemen's Beef Association** from 1997 until his appointment in 2001. Before that, he worked on the industry dominated House Agriculture Committee in various positions.

Alisa Harrison served as Press Secretary and Deputy Director of Communications under both Secretaries Veneman and Johanns. She came over to USDA directly from the **National Cattlemen's Beef Association**, where she was Executive Director of Public Relations. Who better to handle the publicity following the first U.S. case of mad cow disease. Clearly USDA was planning their public relations strategy long before their public health response. Alisa Harrison is no longer at USDA.

Charles Lambert, Under Secretary for Marketing and Regulatory Programs, served 15 years in various positions at the **National Cattlemen's Beef Association** in Denver and Washington. Up to 1979, he also ran a cow-calf operation in West-Central Kansas.

Floyd D. Gaibler, Deputy Under Secretary for Farm & Foreign Ag. Services, was most recently a consultant at Leshner & Russel, Inc., an agricultural consulting firm whose clients include Altria, Monsanto, and the **Meat Promotion Coalition**, a group of agribusiness companies that includes the **National Meat Association**, the **American Meat Institute**, and the **National Cattlemen's Beef Association**.

Conclusion

“Cronyism” is more than just a rhetorical bludgeon: it is a very real problem in the Bush administration, with very serious consequences for the American public. The Bush administration has a consistent history of putting the cattlemen’s and other special interests above the public interest, in a “special interest takeover” of government.²² It is a recurring problem that weakens public protections in all areas, from mine safety to the environment. As the background of mad cow policy reveals, it is a problem that reaches even the very food we eat.

Both to improve domestic BSE protections and to increase the Bush Administration’s chances of getting U.S. beef into global markets, it should reverse course and institute real reforms on mad cow disease:

- **Close the loopholes in the feed ban.** FDA needs to further reduce the risk of BSE from infected animals that are not caught by its limited surveillance program from being recycled into the cattle feed supply. Eliminating the use of bovine blood products, chicken litter, and plate waste from animal feed is the first step. Eliminating the use of high-risk cattle parts in all animal feed would be the most protective. Without an animal identification and tracking system to find exposed cattle, the risk that some of these cattle parts are getting into the food and feed supplies is certainly elevated.
- **Implement the mandatory animal ID system.** The USDA should implement the animal tracking system that is already thoroughly planned, has a multi-million dollar investment of taxpayer funds, and has many key pieces in place. Canada implemented its mandatory program within a single year. The United States has been working on the animal ID plan since before 2003. It has the legal authority but lacks the political will to implement a world class system, like those relied on in many other countries. With nearly \$100 million invested in the program, USDA should make good on its promises and implement a mandatory system by January 2007.
- **Until USDA has a program in place to identify cattle that were exposed to infected feed,** USDA should (1) test all cattle of any age showing signs of central nervous system disease; (2) continue a high-intensity testing system of all cattle 30 months or older; and (3) test a random sampling of healthy animals 20 to 30 months old. Companies that want to test their own cattle should not be prohibited from doing so by the government.
- **Cut off the special interest hotline to the White House.** When it comes to mad cow disease, the White House Office of Management and Budget has seen a

²² See generally Center for Amer. Prog. & OMB Watch. “Special Interest Takeover: The Bush Administration and the Dismantling of Public Safeguards (2004).”
<<http://www.ombwatch.org/regs/bushrecord/takeover>>.

parade of special interest lobbyists who have had an impact on reducing the level of protection that the Bush Administration promised, but never delivered. Centralizing regulatory review in the White House gives industry a one-stop shop: what they can't achieve by having industry insiders staffing the agencies, they can get by sitting down with the Bush administration's top officials. Congress should shut down this special access for special interests.

With these simple remedies, the Bush administration and Congress would ensure that the next time someone claims to be sickened by the culture of corruption in the Bush administration and its cozy ties with industry, the claim is merely rhetorical — not literal.

Table I

Does Animal ID Work?

*Comparing Canada's mandatory tracking system
with the U.S. system*

CANADA Confirmed BSE Cases¹	Proportion of Birth Cohort Identified	Percentage
May 20, 2003; Alberta, Canada	undetermined	undetermined
Dec 23, 2003; Washington State* Birth herd in Alberta, Canada	55 out of 57	96%
Jan 2, 2005; Alberta, Canada	135 out of 135	100%
Jan 11, 2005; Alberta, Canada	349 out of 349	100%
Jan 22, 2006; Alberta, Canada	156 out of 156	100%

U.S. Confirmed BSE Cases	Proportion of Birth Cohort Identified	Percentage
Dec 23, 2003; Washington State ^{1*} Herd imported to United States in 2001 Animals imported & also from birth herd	29 out of 81 14 out of 25	36% 56%
June 24, 2005; Texas ²	146 out of 200	73%
March 15, 2006; Alabama ³	Pending	Pending

*The U.S. cow originated from Alberta, Canada.

¹ CFIA, BSE in North America, Completed Investigations, available at:

<<http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/comenqe.shtml>>

² USDA APHIS, Texas BSE Investigation, Final Epidemiology Report, August 2005, available at:

http://www.aphis.usda.gov/lpa/issues/bse/epi-updates/bse_final_epidemiology_report.pdf

³ USDA/Alabama BSE Epidemiological Update, available at:

<http://www.aphis.usda.gov/newsroom/hot_issues/bse.shtml>

Table II

Meetings

*An Overview of White House Meetings
With Special Interests on Mad Cow Policy*

**Office of Management and Budget Meetings on USDA Policies
Regarding Specified Risk Materials and Downer Cattle**

2005	July 5	Australian Embassy
	July 12	North American Casing Association
	August 11	North American Casings Association – oral contact
	October 18	Darling International Baker Commodities National By-Products National Renderers Association

**Office of Management and Budget Meetings on FDA Policies Regarding
Ruminant Feed**

2002	August 12	American Feed Industry Association
	August 21	Darling International Baker Commodities National By-Products
	September 26	National Renderers Association
2005	August 23	Darling International Valley Proteins Kaluzny Bros. Griffin Industries Anamax Group National By-Products National Renderers Association
	August 24	American Feed Industry Association
	August 26	Pet Food Industry Canadian Cattlemen’s Association American Meat Institute National Grain & Feed Association Canadian Meat Council