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Presence of Mad Cow disease in U.S. raises significant questions concerning U.S. food safety policies *
by Roger A. McEowen, Associate Professor of Agricultural Economics and Extension Specialist, Kansas State University; and Neil E. Harl, Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University

The detection of a Holstein cow infected with Bovine Spongiform Encephalopathy (BSE) (commonly known as “mad cow” disease) at a dairy in Washington state raises significant questions about the effectiveness and validity of existing food safety regulations and the ability of the federal government to detect the presence of the disease under current procedures. Likewise, the presence of BSE in the U.S. will almost certainly force the Congress to reconsider legislation that addresses the safety of the U.S. meat supply.

BSE basics
BSE is a fatal disease in cattle that causes degeneration of the brain and is evidenced by staggering and weight-loss of the infected animal. BSE was first detected in the United Kingdom in 1986, and has since spread to over 23 countries. To date, over 180,000 cases of BSE have been detected worldwide, and approximately 150 human deaths have occurred. Scientific findings in recent years have revealed that feeding cattle the rendered remains of sick animals spreads the disease. Consequently, the USDA has imposed various import controls and has adopted a feed ban prohibiting the use of most animal-derived proteins in cattle feed. The USDA also collects and analyzes brain samples from adult cattle with neurological symptoms and adult animals that were non-ambulatory at slaughter. However, current U.S. law does not require that cattle be tested before slaughter or that the tissues that harbor the disease (brain and spinal cord) be banned from possible human consumption.

Legal challenge to USDA regulations
Before the USDA’s announcement of the presence of BSE in the United States, an administrative challenge had been filed against USDA regulations that permit downed livestock to be used for human consumption after passing a post-mortem inspection. The plaintiff, a beef consumer, claimed that the USDA policy violated the Federal Meat Inspection Act (FMIA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). The FFDCA prohibits the manufacture, delivery, receipt or introduction of adul-

Table 6. Types of non-farm businesses operated by Iowa farmers

<table>
<thead>
<tr>
<th>Types of non-farm business</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farm related business, such as seed sales, custom work</td>
<td>26</td>
</tr>
<tr>
<td>Crafts or homemade items such as woodworking or pottery</td>
<td>9</td>
</tr>
<tr>
<td>Repair and maintenance such as welding or auto repair</td>
<td>8</td>
</tr>
<tr>
<td>Operator of a booth at a farmer’s market or flea market</td>
<td>6</td>
</tr>
<tr>
<td>Personal services such as beautician, bookkeeping or photography</td>
<td>6</td>
</tr>
<tr>
<td>Services such as lawn care or car wash</td>
<td>4</td>
</tr>
<tr>
<td>Entertainment and recreation such as a restaurant or video rental store</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>39</td>
</tr>
</tbody>
</table>

*Iowa farmers’ non-farm business operations*
Many farmers have turned to operating a non-farm business to bring in additional income. Twenty-one percent of the sample of farm operators stated they also operated a non-farm business. Table 6 shows that the predominant type of non-farm business operated was a farm related business, such as seed sales or custom work (26 percent). Additional common types of non-farm businesses are crafts or homemade items such as woodworking or pottery and repair and maintenance such as welding or auto repair.
terated food into interstate commerce, and provides that any food that is “in whole or part, the product of a diseased animal” shall be deemed “adulterated.” USDA regulations define “dying, diseased or disabled livestock” as including animals displaying a “lack of muscle coordination” or an “inability to walk normally or stand.” Thus, the consumer argued that the agencies should label all downed livestock as “adulterated,” and that the consumption of downed animals created a serious risk of disease transmission (particularly the risk that humans will contract a fatal disease by eating BSE-contaminated beef products) and that elimination of downed cattle from the human food stream was necessary to protect public health.

On May 25, 1999, the USDA’s Food Safety and Inspection Service (FSIS) denied the petition on the basis that FSIS was bound by the definition of “adulteration” set forth in the FMIA for all livestock slaughtered at a federally-inspected slaughterhouse, and that the FMIA does not classify all products from diseased animals as adulterated. The FSIS also took the position that its regulations were consistent with the FMIA which permits the carcasses of diseased animals to be passed for human food if an FSIS veterinary officer determines that the carcass is safe for human consumption. The plaintiff sought judicial review under the Administrative Procedure Act, and the USDA motioned to dismiss the complaint on the basis that the consumer lacked standing to sue because no allegation was made that BSE had ever been detected in the U.S. and, as a result, any asserted injury was merely speculative. The Federal District Court for the Southern District of New York granted the USDA’s motion to dismiss on the basis that the alleged harm was “too remote” to support standing.

On appeal, the Second Circuit vacated the district court’s opinion and remanded the case. The Second Circuit pointed out that a beef consumer, to establish standing, must allege and prove an injury-in-fact (not merely conjecture) that is fairly traceable to the challenged action of the USDA which is likely to be addressed by the requested relief. According to the court, enhanced risk of disease transmission due to the USDA’s position of allowing the meat from downed livestock to be used for human consumption constitutes injury-in-fact in the context of food and drug safety statutes. The court noted that the purpose of the FMIA and the FFDCA (the statutes USDA is alleged to have violated) is to ensure the safety of the nation’s food supply and to minimize the risk to public health from potentially dangerous food and drug products. Thus, the court found a direct connection between the type of injury alleged and the fundamental goals of the statutes the lawsuit was based upon. The court also stated that standing is not to be denied simply because numerous people (here, consumers of beef) may suffer the same injury.

As to whether the plaintiff had successfully alleged a non-conjectural risk of harm by asserting an enhanced risk of disease due to the USDA policy of allowing the meat from downed cattle to be used for human consumption, the court noted that even a moderate increase in the risk of disease may be sufficient to confer standing. While the USDA maintained that there was no evidence of the presence of BSE in the U.S. (and that it was never likely to enter the U.S.), the court noted that a General Accounting Office (GAO) report in January of 2002 challenged the basis for the USDA position by raising concerns about the effectiveness of current federal BSE prevention and detection efforts. The GAO report also noted that an FDA advisory committee had recommended that the “FDA consider taking regulatory action to ban brains and other central nervous system tissue from human food because of the potential risk of exposure to BSE-infected tissue.” The court also pointed out that the USDA’s FSIS, in a Think Paper, had acknowledged that BSE-infected animals may pass the required post-mortem examination and be offered for human consumption. Consequently, the court held that the plaintiff had alleged a credible threat of harm from downed cattle, and had standing to challenge the USDA regulation.

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Defeat of proposed legislation
In July 2003, the United States House of Representatives defeated by a vote of 202-199 an amendment to the Fiscal Year 2004 Agricultural Appropriations bill (enacted shortly thereafter as the Consolidated Appropriations Act of 2004) which would have prohibited meat packers from passing through inspection any “nonambulatory livestock.” The legislation was earlier proposed as an amendment to the Farm Security and Rural Investment Act of 2002, but was later offered as an amendment to the Fiscal Year 2004 Agricultural Appropriations bill. Although the amendment had been passed by the Senate, the Conference Committee on December 9, 2003, stripped the provision from the Agricultural Appropriations bill which then was passed.

The proposed legislation, entitled the “Downed Animal Protection Act,” in addition to prohibiting an establishment covered by the FMIA from passing nonambulatory livestock through inspection, would also have prohibited an entity covered by the legislation from moving nonambulatory livestock while the livestock was conscious and would have required covered entities to humanely euthanize such livestock. Nonambulatory livestock would have been defined to mean “any cattle, sheep, swine, goats, or horses, mules or other equines, that are unable to stand and walk unassisted.” The Secretary of Agriculture would have been directed to promulgate regulations to provide for the humane treatment, handling and disposition of nonambulatory livestock by a covered entity, including the requirement that nonambulatory livestock be humanely euthanized. The term “covered entity” would have included a stockyard, a market agency, a dealer, a slaughter facility and an “establishment.” The term “establishment” would have been defined to include any firm covered by the FMIA.

Future developments
The discovery (and later confirmation) of BSE in the U.S. in December 2003 is likely to lead to the invalidation of the existing USDA regulations that allow meat from downed livestock to enter the human food supply when the merits of Baur are addressed by the federal district court on remand. It is also likely to provide strong support for the Congress to reconsider the Downed Animal Protection Act and other policy steps (including increased testing, if not required testing, for all cattle, tightened rules on the feeding of animal by-products to bovine, a system for tracing livestock, Country of Origin Labeling and legislation that gives the federal government power on a mandatory basis to order a recall) to assure consumers (and import nations) that the U.S. meat supply is safe.

World Bank study: China becomes dependent on imports to feed its population. Really?

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The World Bank report, 2003 Global Economic Prospects: Realizing the Development Promise of the Doha Agenda, concludes that under a “pro-poor” scenario “a deal to lower global trade barriers could add more than $500 billion a year to global incomes by 2015, lifting 144 million people out of poverty.” In a previous column we reported that, by our calculations, this scenario models a drop in crop production in the European Union (EU) of between 50 percent and 70 percent for crops like oilseeds, wheat and other grains. These numbers are breathtaking and, at the very least, would represent a 180 degree departure from the food self-sufficiency original raison d’être of the European Common Agricultural Program (CAP). Such model results tend to be debatable, if not unreasonable, because they flow from the pursuit of a single objective: least-cost food production—totally ignoring the nature of agriculture and the unique importance of food in societies worldwide.

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