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CPR President McGarity Responds to FDA Mad Cow Announcement

McGarity: 'FDA Delay Endangers Public Health'

Austin, TX ---- Center for Progressive Regulation President Thomas O. McGarity, a national expert on food safety laws, today issued the following statement in response to the FDA's July 9 announcement of its latest regulatory steps on Mad Cow Disease. Following is the complete text of McGarity's remarks:

"After putting off for more than five months its promise to promulgate regulations to protect human health and the agricultural economy from mad cow disease, the Bush Administration has taken baby steps where giant strides were required. On the most important issue facing it, FDA has essentially put off issuing needed regulations to protect the public until after the November election.

"On January 26, 2004, Health and Human Services Secretary Tommy G. Thompson announced that FDA would be implementing new 'public health measures . . . to strengthen significantly the multiple existing firewalls that protect Americans from exposure to the agent thought to cause' BSE (or mad cow disease). First, FDA would ban from food, cosmetics, and dietary supplements brains from aging cattle and other risky materials that USDA had already banned from meat. Second, FDA would eliminate from its pre-existing ban on feeding protein from mammals to cattle the exceptions it had created in 1997 for mammalian blood, poultry litter, and plate waste.

"Today, FDA has delivered on its first promise, but not the second. Effective immediately, the same materials that USDA told slaughterhouses to keep out of edible meat will also be banned from foods, cosmetics, and dietary supplements. The move will have no serious impact on the affected industries. Brains and other central nervous system materials are only banned if they come from cattle more than 30 months old, a tiny proportion of slaughtered cattle. Plenty of cow brains will still be available for food and dietary supplements. The only real question here is why FDA waited so long to take this easily justified step.

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“Unfortunately, USDA has reneged on its second promise, putting off regulation of its animal feed rules until some point after the November election. Rather than ‘bolstering our BSE firewalls to protect the public’ by beefing up its animal feed rules, as Secretary Thompson promised in January, FDA instead announced an Advance Notice of Proposed Regulation (ANPR). Anyone familiar with administrative law knows this represents a decision not to decide. FDA is doing nothing more than asking the public what it thinks about the possibility of additional regulation. FDA already issued an ANPR on its feed rule in 2002 and received considerable public comment. The only reason to reinvent that wheel is to put off any effective regulation until after the election. In the meantime, American consumers will remain unprotected as ranchers and feedlots continue to feed cow blood to calves and potentially contaminated chicken litter to cattle for the foreseeable future.

“It’s good that FDA is finally getting around to keeping high risk bovine materials out of food, cosmetics, and dietary supplements. But by putting off, perhaps even renegeing on its commitment to impose critically needed animal feed restrictions, FDA is endangering the public.”

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.

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 inquires to Matthew Freeman at mfreeman@progressiveregulation.org. Visit CPR’s website at www.progressiveregulation.org.