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## Court bars meatpacker tests for mad cow

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By Charles Abbott

WASHINGTON (Reuters) - The Agriculture Department is within bounds to bar meatpackers from testing slaughter cattle for mad cow disease, a U.S. Court of Appeals panel said in a 2-1 ruling on Friday.

Creekstone Farms Premium Beef LLC, a small Arkansas packer, filed suit on March 23, 2006, to gain access to mad-cow test kits. It said it wanted to test every animal at its plant to assure foreign buyers that the meat was safe to eat.

Three U.S. cases of mad cow disease, a fatal neurological infection, have been reported, the last in March 2006. People can contract a human version of the disease by eating infected meats. Most nations banned U.S. beef after the first case, in December 2003, but trade has been restored for the most part.

In a 25-page ruling, Appellate Judges Karen Henderson and Judith Rogers said USDA has authority under the 1913 Virus-Serum-Toxin Act to prevent sale of mad-cow test kits to meatpackers. USDA interprets the law to control products for "prevention, diagnosis, management or care of diseases of animals."

David Sentelle, chief judge of the District of Columbia appeals circuit, dissented from the decision. He said USDA "exceeds the bounds of reasonableness" for a law enacted to prevent the sale of ineffective animal medicine.

USDA allows the mad-cow test kits to be sold only to laboratories that it approves. It says the tests should not be used as a marketing tool and the cattle that comprise the bulk of the meat supply are too young to be tested reliably.

Two large export markets, Japan and South Korea, accept beef only from younger U.S. cattle. Mad cow is found mostly in older cattle. Its incubation period is two to eight years.

Creekstone said it lost \$200,000 a day due to reduced U.S. beef exports when it filed its lawsuit.

In its lawsuit, Creekstone argued the 1913 law could not be invoked to prevent use of products like "rapid test" kits for mad cow disease and the kits were not a "treatment" for livestock.

U.S. District Judge James Robinson had ruled in March 2007 that USDA could not control mad cow tests because they are not a treatment for animals.

The United States applies a number of safeguards against mad cow, formally named bovine spongiform encephalopathy. They include a ban on using cattle parts in feed and requirements for packers to remove at slaughter the materials most likely to carry the mad-cow agent -- the brain, spinal column and nervous system tissue.

(Editing by Walter Bagley)

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