



**R-CALF United Stockgrowers of America**  
P.O. Box 30715  
Billings, MT 59107  
Fax: 406-252-3176  
Phone: 406-252-2516  
Website: [www.r-calfusa.com](http://www.r-calfusa.com)  
E-mail: [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com)

---

December 9, 2011

Docket No. APHIS-2009-0091  
Regulatory Analysis and Development, PPD  
APHIS, Station 3A-03.8  
4700 River Road, Unit 118  
Riverdale, MD 20737-1238

**Sent Via Electronic Mail:** [www.regulations.gov](http://www.regulations.gov)

**Re: R-CALF USA Comments in Docket No. APHIS-2009-0091, Traceability for Livestock Moving Interstate**

Dear Sir or Madam:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments to the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) regarding its proposed rule, *Traceability for Livestock Moving Interstate* (proposed rule), published at 76 Fed. Reg. 50082-110 (Aug. 11, 2011).

R-CALF USA is a non-profit association that represents thousands of U.S. cattle farmers and ranchers in 45 states. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of U.S. agriculture. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

For the reasons stated below, R-CALF USA urges APHIS to immediately withdraw, in its entirety, the proposed rule. R-CALF USA further urges APHIS to, instead, proceed to engage the states, tribes, and industry participants in a collaborative effort to establish best practices

guidelines to assist individual states and tribes in the development of improved state/tribe import and export standards. The development of such best practices guidelines would enable states and tribes to identify and correct any deficiencies manifest in their respective import and export regulations, and the identification and correction of such deficiencies on a state-by-state and tribe-by-tribe basis would effectively and measurably improve the United States' ability to trace livestock from anywhere in the United States in the event that disease is found.

R-CALF USA remains deeply concerned regarding APHIS' ongoing failure and refusal to properly discharge its authorities under the U.S. Animal Health Protection Act (AHPA) that charges USDA and APHIS with protecting the American people and the U.S. cattle herd from the introduction and spread of foreign animal diseases. Congress was clear that "the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect . . . animal health [and] the health and welfare of the people of the United States." 7 U.S.C. § 8301(1). In order to provide this protection, the AHPA authorizes the Secretary of Agriculture to "prohibit or restrict...the importation or entry" of cattle or beef "if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock." *Id.* at § 8303 (a)(3).

**A. APHIS' Failure and Refusal to Properly Prevent the Introduction and Spread of Foreign Animal Diseases Belies APHIS' Claim that the Proposed Rule Is Needed to Support Efforts by U.S. Cattle Producers to Protect their Herds from Disease**

APHIS' ongoing policy of willfully and knowingly allowing the perpetual and extensive introduction and reintroduction and subsequent spread of the very diseases APHIS identifies as justification for the proposed rule, e.g., bovine spongiform encephalopathy (BSE), bovine

tuberculosis (TB), and bovine brucellosis (brucellosis) (*see* 76 Fed. Reg., at 50097, col. 2), is indefensible, unconscionable, and constitutes outright defiance of the agency's statutory obligation to protect U.S. livestock from the introduction and spread of foreign animal disease.

Further, APHIS' ongoing policy of willfully and knowingly exposing U.S. livestock to an increased risk of foreign animal disease introduction, e.g., the risk of introduction of foot-and-mouth disease (FMD), is equally indefensible, unconscionable, and likewise constitutes outright defiance of the agency's statutory obligation to protect U.S. livestock from the introduction and spread of foreign animal disease.

Specific examples of APHIS' failure and refusal to prevent the introduction and spread of foreign animal diseases, along with examples of its actions to expose U.S. livestock to a heightened risk for disease, are enumerated below. The following list clearly demonstrates that *APHIS is a leading cause, if not the leading cause, of livestock disease problems experienced in the United States*. Because APHIS is a leading cause, if not *the* leading cause, for ongoing animal disease outbreaks in the United States, its claimed intent within the proposed rule to protect the safety of U.S. livestock is both baseless and absurd.

1. Despite having conducted a 2006 quantitative risk evaluation for BSE that predicts the U.S. would import 19 to 105 BSE-infected Canadian cattle, resulting in 2 to 75 infections of U.S.-born cattle over the next 20 years pursuant to USDA's over-30-month rule (OTM Rule);<sup>1</sup> and, despite a July 2008 court-ordered injunction directing APHIS to reopen the OTM Rule and "revise any provision of the OTM Rule it deems necessary;"<sup>2</sup> and, despite the

---

<sup>1</sup> *See* 72 Fed. Reg., 1109, col. 2; 72 Fed. Reg., 53347, col. 1. Exhibit 1.

<sup>2</sup> R-CALF USA v USDA, Memorandum Opinion and Order on Motion for Preliminary Injunction, July 3, 2008, 21, Exhibit 2.

detection of 12 BSE infected Canadian cattle that meet the OTM Rule's age requirement for importation into the United States (including the February 2011 case of BSE detected in a Canadian cow), APHIS continues to ignore the fully expected, continual reintroduction of Canadian BSE into the United States.

2. Despite having full and complete knowledge of a 2006 report by USDA's Office of Inspector General (OIG) that states 75 percent of bovine TB cases detected in U.S. slaughtering plants originated in Mexico;<sup>3</sup> and, despite the OIG's other findings that, "These infected animals were identified in 12 different States" and "animals of Mexican origin spent up to 14 months at U.S. farms before going to slaughter, with each case potentially spreading the disease;"<sup>4</sup> and, despite APHIS' own report that states, "From 2001 through February 2009, 236 out of 329 slaughter cases were traced to Mexico," which means nearly 72 percent of all TB cases detected at slaughter were caused by APHIS' inadequate import restrictions for Mexican cattle imports;<sup>5</sup> and, despite APHIS' own finding that states, "Each year 1-2 infected animals per 100,000 animals imported from Mexico are identified [as bovine TB-infected] through slaughter detection or epidemiologic investigations;"<sup>6</sup> and, despite repeated requests by R-CALF USA for immediate action to address this willful introduction of bovine TB into the U.S. cattle herd, APHIS continues to cause the annual introduction and spread of bovine TB by failing to implement adequate import restrictions for Mexican cattle.

---

<sup>3</sup>See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, USDA, Office of Inspector General, Report No. 50601-0009-Ch, September 2006, at 19, 20, Exhibit 3.

<sup>4</sup> *Id.*, at iii.

<sup>5</sup> Assessment of Pathways for the Introduction and Spread of *Mycobacterium bovis* in the United States, 2009, USDA-APHIS, March 2011, at 62, Exhibit 4.

<sup>6</sup> *Id.*, at 1.

3. Despite having full and complete knowledge that Canadian cattle imports introduce bovine TB into the U.S. as evidenced by three bovine TB-infected cattle imported into the U.S. from Canada in 2008, with a total of five TB-infected Canadian cattle detected in the U.S. during the past seven years,<sup>7</sup> and, despite R-CALF USA's request that APHIS address this known disease source, APHIS continues to cause the introduction of bovine TB from Canadian cattle by failing and refusing to adequately strengthen U.S. import restrictions for Canadian cattle.
  
4. Despite having full and complete knowledge that the 11 factors used by the agency to determine the potential risk for foot-and-mouth disease (FMD) outbreaks in both entire countries and regions within a country are wholly incapable of predicting actual FMD risks (as was definitively proven following APHIS' FMD risk evaluations for Uruguay,<sup>8</sup> Argentina,<sup>9</sup> the Republic of South Africa,<sup>10</sup> and South Korea.<sup>11</sup>), APHIS nevertheless persists in its efforts to apply the same, failed 11 factors to facilitate imports into the United States of beef and cattle from FMD-affected countries, notably from the Patagonia South Region of Argentina<sup>12</sup> and Santa Catarina, Brazil.<sup>13</sup>

---

<sup>7</sup> See Assessment of Pathways for the Introduction and Spread of *Mycobacterium bovis* in the United States, 2009, USDA-APHIS, March 2011, at 61, 62, Exhibit 4.

<sup>8</sup> See 65 Fed. Reg., 82894, col. 3; 65 Fed. Reg., 77772, col. 1; see also 66 Fed. Reg., 36695-697.

<sup>9</sup> See 65 Fed. Reg., 82895, col. 1; see also 66 Fed. Reg., 29897, col. 3; 29898, col. 1.

<sup>10</sup> See 65 Fed. Reg., 65728, col. 3; see also 66 Fed. Reg., 9641-9642.

<sup>11</sup> See 74 Fed. Reg., 68478, col. 3; 479, col. 2; see also 75 Fed. Reg., 1697, col. 1.

<sup>12</sup> See 72 Fed. Reg., 475-480 (USDA has a pending rulemaking to lift FMD restrictions for the Patagonia South Region of Argentina, even though Argentina has not demonstrated it is free of FMD.).

<sup>13</sup> See 75 Fed. Reg., 19915-920.

5. Despite having full and complete knowledge that the relocation of the Plum Island, N.Y., research facility to Manhattan, Kansas, will increase the risk of FMD exposure for U.S. livestock, APHIS, in cooperation with the U.S. Department of Homeland Security (DHS), proposes to transfer live FMD viruses and research on live FMD viruses to the U.S. mainland. APHIS and DHS propose this relocation despite full knowledge that: 1) there is no support for the contention that FMD research can be done as safely at Manhattan, Kansas, as at Plum Island, N.Y.;<sup>14</sup> 2) Plum Island is the *only* location determined to be of *low* risk with respect to the likelihood of FMD infection;<sup>15</sup> 3) “Plum Island’s lack of animals placed it at an advantage with respect to the likelihood that FMD virus would become established after being released and spread from the site;”<sup>16</sup> 4) Manhattan, Kansas, is in an area “where the virus would have ample opportunity to spread rapidly after release because of the presence of susceptible livestock and wildlife;”<sup>17</sup> and, 5) “for all sites except Plum Island, the wind could potentially transport viral pathogens significant distances and that this pathway is not limited for them, as it is on Plum Island.”<sup>18</sup>

The foregoing discussion reveals and documents that APHIS is a leading cause, if not *the* leading cause, for the continual introductions and spread of foreign animal diseases by failing and refusing to comply with its statutory responsibility to prevent the introduction and spread of

---

<sup>14</sup> See Biological Research: Observations’ on DHS’s Analysis Concerning Whether FMD Research Can Be Done as Safely on the Mainland as on Plum Island, U.S. Government Accountability Office (GAO), GAO-09-747, July 2009 (Hereafter “GAO Report on Plum Island”), at 46, Exhibit 5.

<sup>15</sup> See *id.*, at 42.

<sup>16</sup> *Ibid.*

<sup>17</sup> GAO Report on Plum Island, at 42, Exhibit 5.

<sup>18</sup> *Ibid.*

foreign animal diseases. The diseases APHIS is causing to be introduced and spread in the United States include the very diseases claimed as justification for its proposed rule. APHIS' proposed rule would burden each and every U.S. cattle producer that moves cattle interstate by mandating the individual identification of their cattle. APHIS could not be more disingenuous in its claim that the proposed rule is intended to support U.S. cattle producers in their effort to protect their cattle herds from disease (*see* 76 Fed. Reg., 50082, col. 2) when APHIS itself is actively facilitating the introduction of dangerous foreign animal diseases

APHIS' actions are akin to the hideous and unlawful scheme of organized crime to rob business owners of their money and then offer to mitigate the affect of their robberies in exchange for regular payments from the business owners, while making no commitment to prevent others from continually robbing their businesses. Like those victimized business owners, U.S. cattle producers have no moral or ethical obligation to pay the cost of mitigating diseases in the United States that are directly caused by APHIS' recalcitrance, and they should have no legal obligation either.

If APHIS proceeds in any way other than to immediately withdraw its proposed rule, it must thoroughly and comprehensively explain to U.S. livestock producers why it is planning to burden them with the cost of a mandatory animal identification system to control diseases that APHIS is willfully and knowingly allowing into the United States each year in direct defiance of its statutory responsibility under the AHPA.

**B. APHIS' Flip-Flop Regarding Its Principal Justification for a Mandatory Animal Identification System Demonstrates that APHIS has an Ulterior Motive for the Proposed Rule that Is Unrelated to the Prevention or Control of Animal Diseases**

Remarkably, while APHIS touted the risk of FMD introduction and spread as the principal justification – indeed its “poster-child disease” – for a national animal identification system (NAIS) in the years, months and days leading up to its publication of the proposed rule, FMD is no longer included among the diseases APHIS identifies as justification for its proposed rule. In fact the voluminous, 28-page proposed rule does not even mention FMD, let alone reference it as a disease APHIS would expect to prevent or control should it finalize its proposed rule. Any mention of FMD is now relegated to a small, hypothetical and ambiguous section in APHIS' supporting documents, in which APHIS provides the disclaimer that its hypothetical FMD discussion “does not specifically model conditions that may exist under the proposed rule;” and in which APHIS provides no explanation regarding how its proposed rule would, in any way, protect against a potential outbreak or spread of FMD. *See* Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis (hereafter “ supporting document), at 57-60.

It is abundantly clear that while APHIS has long assigned substantial weight to the potential to mitigate FMD introduction and spread in the United States in its historical and ongoing effort to impose a national animal identification system on the U.S. cattle industry, it has now completely abandoned its flagship disease.

In its 2008 risk evaluation of South Korea, APHIS described in detail South Korea's evolving national animal identification system to highlight the system as a measure to effectively

mitigate FMD spread following a FMD outbreak.<sup>19</sup> Similarly, in recent congressional testimony, APHIS testified that Japan had adopted a national animal identification system and that the need for such a unified national animal identification system had assumed greater urgency in the U.S. due to FMD.<sup>20</sup> APHIS further claimed that a national animal identification system would be critical in mitigating the risks posed by potential FMD outbreaks, and vehemently argued that the costs of a national animal identification system must be compared with the estimated billions of dollars in losses the U.S. would be expected to suffer from a FMD outbreak.<sup>21</sup> Recently, in APHIS' risk analysis section of its risk evaluation for the agency's proposed rule to regionalize a Brazilian state, APHIS describes Santa Catarina's animal identification systems in significant detail and claims the systems would allow officials to trace the movement of cattle within Santa Catarina, presumably to mitigate the spread of a FMD outbreak in Santa Catarina.<sup>22</sup> Then, within just days of publishing the proposed rule, APHIS published a notice of availability (notice) and request for comment that referenced its *APHIS Evaluation of the Foot and Mouth Disease Status of Japan* risk analysis as the basis for deciding whether to resume trade in FMD-susceptible products with Japan (*see* 76 Fed. Reg. 44503-504 (July 26, 2011)). APHIS stated in its notice: "The risk analysis will also serve as the basis for our determination whether to allow the resumption of the importation of whole cuts of boneless beef from Japan." *Id.*, 504, col 1. APHIS' referenced risk analysis regarding the potential risk of FMD introduction from Japan

---

<sup>19</sup> *See* APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, October 2008, at 24, 25, Exhibit 6.

<sup>20</sup> Testimony of Dr. John Clifford, Deputy Administrator for Veterinary Services, APHIS, Before the House Committee on Agriculture's Subcommittee on Livestock, Dairy, and Poultry Hearing to "Review Animal Identification Systems," March 11, 2009, Exhibit 7.

<sup>21</sup> *Ibid.*

<sup>22</sup> *See* APHIS Evaluation of the Status of the Brazilian State of Santa Catarina Regarding Foot-and-Mouth Disease, Classical Swine Fever, Swine Vesicular Disease, and African Swine Fever, USDA, APHIS, January 16, 2009, at 45-47, Exhibit 8.

stated, “Japan’s cattle identification system ensures adequate trace-back capability in the event of an [FMD] animal disease outbreak.”<sup>23</sup>

As demonstrated above, APHIS for many years concocted a virtual taxpayer-funded fervor, both publicly and within the entire U.S. livestock industry, to advance its goal to establish a mandatory animal identification system in the United States – which goal manifested into the proposed rule – principally, if not exclusively, by claiming a mandatory animal identification system is *essential to prevent the introduction and/or spread of FMD in the United States*. APHIS’ absolute silence regarding *any* potential for the proposed rule to mitigate the introduction or spread of FMD in the U.S. is inexplicable and provides compelling evidence that APHIS has an ulterior motive for proposing the proposed rule, which ulterior motive has absolutely nothing to do with prevention or control of animal diseases.<sup>24</sup>

APHIS’ proposed rule is a complete scam. APHIS provides no support whatsoever for its proposed rule *based on its multi-year, multi-million dollar,<sup>25</sup> taxpayer-funded public-relations and nationwide marketing campaign to hype a mandatory animal identification system as essential to protecting U.S. livestock from the most contagious disease known to cloven-hoofed animals – FMD*; and, as will be discussed below, APHIS’ proposed rule directly contradicts APHIS’ claimed objective to carry out its statutory responsibilities using a scientific, risk-based approach.

---

<sup>23</sup> APHIS Evaluation of the Foot and Mouth Disease Status of Japan, USDA-APHIS, April 1, 2011, at 17, Exhibit 9.

<sup>24</sup> APHIS’ only assertion, albeit unsupported and unexplained, is that the proposed rule “would provide added assurance that APHIS has the capability to respond to a foreign disease outbreak such as foot and mouth disease quickly and efficiently. . .” Supporting Document, at 60.

<sup>25</sup> See Questions and Answers: New Animal Disease Traceability Framework, APHIS Fact Sheet, February 2010, disclosing that USDA spent \$120 million in its failed effort to implement a national animal identification system, at 1, Exhibit 10.

APHIS' inexplicable abandonment of the threat of an FMD introduction as its principal justification for a mandatory animal identification system as is clearly revealed in the proposed rule is akin to the hideous and unlawful scheme known as bait-and-switch in the retail industry. Under a bait-and-switch scheme, retailers lure consumers into their establishment by advertising an item known to attract consumers; but, when the consumer arrives at the establishment, the item that lured them there is unavailable, and the retailer hopes the unsuspecting consumer will nevertheless purchase an alternative item. This deceptive tactic is precisely what APHIS has employed to coerce unsuspecting cattle producers to buy into the proposed rule – it aggressively advertised FMD as the principal disease necessitating a mandatory identification system and when the proposed rule is published, FMD suddenly is abandoned as justification for the proposed rule, with only less contagious diseases remaining.

Like the victimized consumer duped by a retailer's deceptive bait-and-switch scheme, cattle producers have no moral or ethical obligation to comply with APHIS' equally deceptive bait-and-switch tactic deployed in the proposed rule, and they should have no legal obligation either.

If APHIS proceeds in any way other than to immediately withdraw the proposed rule, it must fully and comprehensively explain why APHIS abruptly abandoned FMD as a justification for the proposed rule. As part of that explanation, APHIS must describe in detail the specific role that a mandatory animal identification system played, if any, during the outbreaks of FMD that occurred very recently during this decade in the United Kingdom, South Korea, Japan, and Paraguay. Specifically, APHIS must describe in detail the degree to which traceability in those nations reduced the spread of FMD or otherwise assisted in combating the disease.

Further, and in addition to the proposed rule's failure to address APHIS' historical insistence that a mandatory animal identification system is needed to address FMD, the proposed rule also fails to explain or describe what measures and operations APHIS will deploy to control or eradicate any specific diseases. APHIS' authority to control or eradicate diseases (note that "control" and "eradicate" have very different meaning) is conferred by the AHPA's authorization to carry out operations and measures for those purposes.<sup>26</sup> However, the proposed rule is silent on any specific "operations and measures" the agency intends to carry out to eradicate or control any specific disease.

Due to this additional deficiency contained in the proposed rule, and if the agency proceeds in any way other than to immediately withdraw the proposed rule, the agency must explain and describe to the U.S. cattle industry:

1. The specific diseases APHIS intends to "control" under the proposed rule.
2. The specific nature of the "operations and measures" APHIS intends to use to "control" each of the specific diseases APHIS intends to "control" and a detailed description of the role of the traceability contemplated in the proposed rule in carrying out such "operations and measures."
3. The specific diseases APHIS intends to "eradicate" under the proposed rule.
4. The specific nature of the "operations and measures" APHIS intends to use to "eradicate" each of the specific diseases APHIS intends to "eradicate" and a detailed description of

---

<sup>26</sup> 7 U.S.C. 8308 (a), ("The Secretary may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock. . .").

the role of the traceability contemplated in the proposed rule in carrying out such “operations and measures.”

**C. APHIS Grossly Understates the Economic Cost of the Proposed Rule that Will be Borne by U.S. Cattle Producers**

**1. A three-year study shows the proposed rule will cost U.S. cattle producers hundreds of millions of dollars, if not billions of dollars**

USDA data show the 2010 U.S. calf crop was 35.685 million head and the U.S. commercially slaughtered 34.249 million cattle in 2010.<sup>27</sup> Based on the assumption that all of those cattle had to be moved at least once in 2010 – from herd of origin to grass or backgrounder, or from herd of origin to feedlot and/or slaughter plant, respectively – there was a potential for all those cattle to be moved in interstate commerce and to be subject to the proposed rule’s requirements (it is noted the requirement for indentifying feeder cattle would be only temporarily delayed under the proposed rule). Thus, there was the potential in 2010 for nearly 70 million head of cattle to be required to be individually identified if the proposed rule were fully implemented.

A study presented to the U.S. International Trade Commission (USITC) in 2007 by Kris Ringwall, Ph.D., Director, Dickinson Research Center Extension and Livestock Specialist, North Dakota State University (NDSU), that involved the tagging of 14,432 calves during the three-year period 2004-2006, concluded that the cost working each calf, tag placement and documentation was \$7.00 per calf.<sup>28</sup> In addition, Dr. Ringwall’s three-year project determined

---

<sup>27</sup> See Overview of U.S. Livestock, Poultry, and Aquaculture Production in 2010 and Statistics on Major Commodities, USDA National Animal Health Monitoring System, at 19, Exhibit 11.

<sup>28</sup> See U.S. ITC Testimony, K. A. Ringwall, PhD, Nov. 15, 2007, at 2, Exhibit 12.

that the tagging of calves was costly to producers because of shrink, which he defined as “weight loss while handling calves.”<sup>29</sup> Dr. Ringwall stated in his testimony:

When we’ve measured shrink in the cattle we have worked during the project, we estimate up to \$10 to \$20 in lost income potential per calf, regardless of the management activity applied.<sup>30</sup>

Based on Dr. Ringwall’s findings, the cost of tagging and documenting calves, *excluding the cost of the tag itself*, and the cost of the income lost due to shrink, ranged from \$17.00 per head to \$27.00 per head in 2006 or 2007 dollars. Based on information and belief, that cost in 2010 dollars likely is as high as \$30.00 per head, if not higher. However, applying Dr. Ringwall’s 2007 findings to all cattle – cows, bulls, and calves – the likely cost of the proposed rule to U.S. cattle producers ranges from \$1,190,000,000 (\$1.2 billion) to \$1,890,000,000 (\$1.9 billion) (70 million head of cattle multiplied by \$17.00 per head and \$27.00 per head, respectively). Even if only the cattle moved to slaughter in 2010 were considered, the cost to U.S. cattle producers would be \$924,723,000, or about \$920 million (34.249 million head of commercial slaughter cattle multiplied by \$27.00 per head).

Applying Dr. Ringwall’s findings to APHIS’ assertion that “[a]pproximately 20 percent of cattle are not currently eartagged as part of routine management practices” (*see* 76 Fed. Reg., 50097, col. 1) and based on the assumption that APHIS used the Jan. 1, 2011, U.S. cattle and calves inventory number of 92,582,400 head, it would cost U.S. cattle producers a high of nearly \$500 million to tag the 20 percent of cattle not already tagged (20 percent of 92,582,400 cattle equals 18,516,480 cattle multiplied by \$27 per head).

---

<sup>29</sup> *See* U.S. ITC Testimony, K. A. Ringwall, PhD, Nov. 15, 2007, at 2, Exhibit 12.

<sup>30</sup> *Id.*

Using APHIS' data relied on in its supporting document, only 3.1 million of the 35.685 million head annual calf crop is tagged with official identification. Therefore, the cost of tagging the remaining 2010 calf crop would range from \$554 million to \$880 million.

Thus, based on an actual study of tagging actual cattle – not on a study of available literature upon which APHIS relies – the cost to U.S. cattle producers to comply with the proposed rule will likely be hundreds of millions of dollars, if not billions of dollars. APHIS' upper cost estimate for the proposed rule of only \$34.3 million (*see* 76 Fed. Reg., 50097, cols. 2, 3) is based on a complete lack of understanding of the U.S. cattle industry, and it grossly understates the cost that U.S. cattle producers actually will bear if USDA does not immediately withdraw the proposed rule.

**2. APHIS likely relied on misinformation when it calculated its grossly understated cost estimate for the proposed rule.**

APHIS commissioned a study in 2009 titled “Benefit-Cost Analysis of the National Animal Identification System”<sup>31</sup> (APHIS ID Study), which study APHIS heavily relied on to arrive at its grossly understated cost estimate for the proposed rule. The assumptions used in APHIS' ID Study are erroneous and do not reflect actual costs by U.S. cattle producers for tagging cattle. For example, the APHIS ID Study estimated the cost of working (i.e., tagging) cattle based on a 2005 NDSU Article by Dr. Ringwall and assumed it took only 66 seconds to work an animal in a squeeze chute that took 15 minutes to set up; and the chute cost per head was \$1.00.<sup>32</sup> However, the article referenced by the APHIS ID Study that was used to calculate an artificially low cost to the cattle industry for tagging cattle explained that the cost estimates

---

<sup>31</sup> *See* Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team, Jan. 14, 2009, Exhibit 13.

<sup>32</sup> *See Id.*, at 16.

were based on the use of a state-of-the-art mobile cattle working system that likely is not available to many, if not most, U.S. cattle producers:

The team utilized the For-Most portable hydraulic double alley with a 750 chute. The system, as described by For-Most, has a 14-foot adjustable double alley, adjustable overhead grill and a 4-foot funnel section to a 9-foot single alley behind the model 750 squeeze chute and scale.

Cattle were fed into the For-Most system through a portable Wilson Wheel Corral, a series of hinged panels that unfold from the travel position to a complete corral for 140 head of calves (600 pound) and can be set up by one person in seven minutes (as described by Wilson). The team found setup time was quick and easy, utilizing available hydraulics and skill and experience with fifth-wheel driving.<sup>33</sup>

In addition, the setup and teardown time for the state-of-the-art equipment that enabled Dr. Ringwall's team to work each animal in only 66 seconds actually took 56 minutes and 34 minutes, respectively,<sup>34</sup> which is much longer than the 15-minute setup time used in the APHIS ID Study, and that APHIS used in its supporting document.

Further, while the APHIS ID Study estimated that the cost to beef cow operators for a bookend-type identification system, as manifested in the proposed rule, was only \$3.919 per head,<sup>35</sup> and APHIS' upper-end cost estimate was only \$0.76 per head more, the articles by Dr. Ringwall actually relied on by the APHIS ID Study estimated the actual cost of working the cattle, excluding the cost of ear tags, using the state-of-the-art cattle working system was a total

---

<sup>33</sup> Beef Talk: Tagging Cattle Challenges Time Management Concept, Kris Ringwall, Beef Specialist, NDSU Extension Service, Jan. 6, 2005, Exhibit 14.

<sup>34</sup> *See Id.*

<sup>35</sup> *See* Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team, Jan. 14, 2009, at vii, Exhibit 13.

of \$7.27 per head, *provided that 10,000 head of cattle were worked through the cattle working system on an annual basis.*<sup>36</sup>

This is but one glaring example of how the authors of the APHIS ID Study deceived the public and APHIS by misusing legitimate data for the purpose of generating an inaccurate and fictitious low estimate for the cost that typical U.S. cattle producers would incur under a bookend-type animal ID system, as is contemplated in the proposed rule. This example alone reveals that the APHIS ID Study manipulated data to underestimate the basic cost of working cattle by \$3.35 per head, even when worked in a state-of-the-art cattle handling facility that is beyond the reach of many, if not most, U.S. cattle producers.

Another glaring example of data manipulation in the APHIS ID Study is its treatment of shrink. For the cow/calf industry, the APHIS ID Study included only 25 percent of the expected shrink as a cost to the cow/calf producer.<sup>37</sup> The APHIS Study rationalized this deceptive ploy on the basis that the *buyer* of the shrunken cattle would realize a compensatory gain when the cattle were sold and subsequently afforded an opportunity to eat and drink.<sup>38</sup> The practical effect of this misuse of data, of course, is that the true cost of shrink borne by U.S. cow/calf producers for tagging their cattle was understated by 75 percent. Based on the fact that APHIS used the APHIS ID Study's shrink estimate, it too reduced the true cost of shrink that cow calf producers will realize when tagging cull cows and calves by 75 percent.

APHIS is dead wrong to assume that “the cattle industry” would realize only a 25 percent net loss because the buyer would benefit from a compensatory gain. This is because the cattle

---

<sup>36</sup> See Beef Talk: Overhead Costs Loom Big in Working Cattle on the Range, Kris Ringwall, Beef Specialist, NDSU, Ph.D., Jan. 13, 2005, Exhibit 15.

<sup>37</sup> See Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team, Jan. 14, 2009, at 18, Exhibit 13.

<sup>38</sup> See *Id.*

industry is a distinct and separate industry from the meatpacking industry and when a cattle industry participant sells cull cows to a meatpacking industry participant and APHIS assigns only 25 percent of the cattle industry participant's cost to the cattle industry, then APHIS has affectively robbed 75 percent of the cost actually realized by the cattle industry and gifted the monetary value of that cost directly to the meatpacking industry. By slight-of-hand, APHIS silently attempted to rob Peter to pay Paul in its effort to artificially lower the true cost of its ridiculously expensive mandatory animal identification scheme.

It must be noted that despite APHIS' intimation that that the U.S. cattle herd, as it measured by dividing the total cattle and calf inventory by the total number of U.S. cattle operations, "is now nearly 100 head" (*see* supporting document, at 12), the average size of the U.S. beef cow herd remains at less than 42 mother cows per herd (as measured by dividing the total number of beef cows by the total number of beef cow operations). It is those cow/calf producers, which collectively have an average herd size of less than 42 head, who will be directly burdened and financially disadvantaged by the proposed rule. And, many, if not most, of those cow/calf producers do not have access to the state-of-the-art cattle working system used in Dr. Ringwall's study. Therefore, the actual costs borne by U.S. cow/calf producers would be expected to be higher than Dr. Ringwall projected.

For the foregoing reasons, APHIS' reliance on the 2009 APHIS ID Study to estimate the cost of the proposed rule on U.S. cattle producers is unjustified, erroneous, and deceitful. As a result of APHIS' direct reliance on the APHIS ID Study, APHIS' cost estimates likewise are unjustified, erroneous and deceitful. Based on the realistic cost estimates generated by Dr. Ringwall's study, the proposed rule's start-up costs and annual costs, which would range from a low of \$554 million to a high of \$1.9 billion, are unfeasible. APHIS' proposed rule is a

financially unworkable albatross that will economically harm U.S. cow/calf producers who will not be afforded any opportunity to recoup their costs in the marketplace.

**3. APHIS's cost estimates completely overlook and ignore the market value of the information intrinsic to an individually identified animal and the effect of APHIS' proposed rule will be to steal that value from U.S. cattle producers and gift it to the U.S. meatpacking industry.**

APHIS asserts the primary benefit of the proposed rule would be to minimize losses and quickly reestablish foreign and domestic markets. *See* 76 Fed. Reg. 50097, col. 3. But, APHIS completely overlooks and ignores the fact that foreign markets already have assigned a market value to information that would enable traceability to the herd of origin. Primary export markets such as Japan, South Korea, and Hong Kong already require beef exported to them to be from animals that are traceable. Japan requires beef to be derived from cattle that are individually identified and traceable back to ranch records.<sup>39</sup> South Korea requires beef to be derived from cattle that are of U.S. origin or fed in the U.S. for at least 100 days if they originate from Mexico or Canada, which requirement necessitates individual animal identification.<sup>40</sup> Hong Kong requires beef from cattle that are traceable to the last location and to the herd of origin in the event of a BSE outbreak.<sup>41</sup>

The fact that the above mentioned export markets each require some form of traceability of cattle from which the exported beef is derived indicates they each have assigned a market value for traceability and are willing to pay for that additional value in the price they pay for U.S.

---

<sup>39</sup> *See* USDA Export Verification (EV) Program: Specified Product Requirements for Beef – Japan, USDA Agricultural Marketing Program (hereafter “AMS”), Dec. 12, 2005, Exhibit 16.

<sup>40</sup> *See* USDA Export Verification (EV) Program: Specified Product Requirement for Bovine – Republic of Korea, USDA AMS, Feb. 7, 2001, Exhibit 17.

<sup>41</sup> *See* USDA Export Verification (EV) Program: Specified Product Requirement for Bovine – Hong Kong, USDA AMS, Dec. 23, 2008, Exhibit 18.

beef. This market driven incentive to provide traceability as a product attribute for foreign markets has already been embraced by many R-CALF USA members. Anecdotal information from R-CALF USA members indicates that the marketplace has assigned economic premiums ranging from \$30 to \$60 per head for producers who are voluntarily providing traceable livestock for use in the beef export market.

Dr. Kris Ringwall's 2007 testimony to the U.S. ITC succinctly explained that traceability has a market value:

Steve Holcombe, founder and chief executive officer of Pardalis, Inc. (which is a third-party data storage company that values and treats data the same as money) noted: "The challenge is to effectuate regulations that are inclusive of small producers, and that recognize that there now are two distinct products being produced along agricultural supply chains today: (1) the traditional livestock product (the calf) and (2) an informational product that describes the 'pedigree' of the traditional product."

This is important to understand. Today's producer markets a calf but also markets the information about that calf, a process that is still struggling in the pens and alleyways of the cattle business. The free marketplace determines calf value, but the value of the information associated with the calf has not been determined. But one point is becoming very clear; the actual information contains the keys to unlock the various doors needed to enter the more complex market place, not only domestically but also internationally.<sup>42</sup>

The proposed rule is void of any economic analysis regarding the potential loss of all or part of the economic premiums that export-oriented cattle producers are presently receiving by choosing to add information to their cattle that describes the pedigree of their cattle. The proposed rule would interfere with the free market system by forcing all cattle producers to pay the cost of providing traceability and then gifting any and all of the market value associated with traceable cattle directly to the nation's meatpackers, which, of course, are in the business of

---

<sup>42</sup> See U.S. ITC Testimony, K. A. Ringwall, PhD, Nov. 15, 2007, at 1, Exhibit 12.

selling beef, not cattle. APHIS' failure to analyze the loss of economic premiums, specifically the portion of the economic premium assigned to basic traceability, is fatal as the effect of its proposed rule would be to transfer wealth from U.S. cattle producers to the purveyors of the commodity beef – the U.S. meatpacking industry.

Based on APHIS' estimate that 3.1 million calves were officially identified in 2010 (*see* supporting document, at 8), and assuming that those cattle are receiving market-driven premiums in the range of \$30 to \$60 per head, the proposed rule would financially damage those producers in a range of between \$93 million and \$186 million. This would be in addition to the proposed rule's costs addressed in Section C. 2. *supra*. This loss would be realized by U.S. cattle producers because, once the rule is implemented, those producers who already officially identify their cattle will no longer be able to differentiate their cattle based on all or part of the valuable "pedigree" information they are now "selling" in the marketplace.

R-CALF USA is concerned that APHIS intends to persuade export countries to abandon, in whole or in part, their current requirements for cattle traceability as specified in the USDA Export Verification (EV) program as soon as APHIS can demonstrate that all or most cattle in the U.S. are traceable under APHIS' mandatory identification scheme. When this inevitability occurs, U.S. cattle producers will be deprived of the income discussed above that they can now earn by voluntarily participating in currently available EV programs.

R-CALF USA's concern is not mere conjecture. In the June 3, 2005, Declaration of John R. Clifford, D.V.M., then deputy Administrator, APHIS, Veterinary Services, which included exhibits, Dr. Clifford stated that he did not believe the *voluntary* Export Verification Program was needed:

The program, called the Beef Export Verification program, will set forth policies, procedures and requirements for an independent process verification of participants.

It is a voluntary, user-fee service available to suppliers of beef and beef products derived from cattle slaughtered in the United States.

The USDA Agricultural Marketing Service will conduct process verification audits of suppliers, program documentation and procedures with regard to the Beef Export Verification program requirements.

Details of this program are being shared with the industry and will be posted on the USDA website starting today. It will be operational on or before September 1<sup>st</sup>.

As I said before, we do not believe such a program is necessary.<sup>43</sup> (Emphasis added.)

Based on Dr. Clifford's representation that APHIS was opposed to the very inception of the Beef Export Verification program, it is R-CALF USA's belief that it is more likely than not that Dr. Clifford and APHIS will work aggressively to dismantle this voluntary, market-driven program as soon as the proposed rule is implemented.

If R-CALF USA's concern materializes, APHIS' proposed rule would effectively steal the market value associated with "pedigree" information that enables livestock traceability (estimated at between \$93 million and \$186 million in 2010 alone) away from U.S. cattle producers and gift it to the U.S. meatpacking industry, even though it is the cattle producers who will continually bear the cost of providing such valuable market information.

As explained above, APHIS' proposed rule directly interferes with the United States' free market system and if the losses estimated for 2010 were calculated on the basis of the cattle

---

<sup>43</sup> Declaration of John R. Clifford, D.V. M, Deputy Administrator, APHIS Veterinary Services, June 3, 2005, at Exhibit 1, pp. 2 of 10 and 3 of 10, Exhibit 19.

industry's lost future income potential, those losses would compound astronomically and result in an acceleration of the already contracting U.S. cattle industry. For this reason, the proposed rule must be immediately withdrawn.

**D. APHIS' Proposed Rule Ignores Differences in Risk Inherent to the United States' Diverse Cattle Industry; Is a One-Size-Fits-All Solution to an Ill-Defined Problem; and, Contradicts APHIS' Pledge to Manage Animal Health Using a Risk-Based Approach to Trade and Disease Management**

APHIS has long advocated that trade-related disease management and domestic disease management be addressed using a scientific, risk-based approach, as opposed to, presumably, a precautionary-based, geopolitical-boundary-based, or one-size-fits-all approach.

APHIS stated in 1997 that its goal "was to create a mechanism to establish regionalized, risk-based import requirements that are consistent with obligations of VS [APHIS Veterinary Services] under the World Trade Organization's Sanitary and Phytosanitary Agreement."<sup>44</sup> (Emphasis added.)

As discussed in Section C. 3. *supra*, the Deputy Administrator of APHIS represented that APHIS was opposed to the voluntary Beef Export Verification program from its inception. He claimed at the time of its inception that trade decisions should be risk-based and stated in regard to the Beef Export Verification program:

It could have been avoided if there were a more practical, risk-based approach to trade with countries, such as Canada, that have had only isolated occurrences of BSE and have responded aggressively with appropriate mitigation measures.<sup>45</sup>

---

<sup>44</sup> Process for Foreign Animal Disease Status Evaluations, Regionalization, Risk Analysis, and Rulemaking, APHIS Veterinary Services, (October 1997 is the only date referenced in the document), Exhibit 20.

<sup>45</sup> Declaration of John R. Clifford, D.V. M, Deputy Administrator, APHIS Veterinary Services, June 3, 2005, at Exhibit 1, p. 3 of 10, Exhibit 19.

In a July 2007 report by the U.S. Government Accountability Office (GAO) regarding APHIS' efforts to implement the national animal identification system (NAIS), the GAO stated that APHIS officials told GAO that the agency did not expect that equal levels of involvement in the NAIS across all species "will be necessary, and that new, risk-based participation benchmarks for premises registration, animal ID, and animal tracking may be developed accordingly, which could vary by species."<sup>46</sup>

In a July 2009 report describing APHIS' action plan to address bovine TB, APHIS explained it was proposing to replace the current split-state status system used to address bovine TB with a risk-based approach that imposes movement restrictions that associate with a zone rather than an entire state.<sup>47</sup>

In a September 2010 concept paper for a new approach to address brucellosis, APHIS stated its new approach to managing brucellosis would "employ a flexible risk-based disease management system."<sup>48</sup>

The foregoing discussion clearly reveals APHIS' ongoing intention of using a risk-based approach to trade as well as for managing domestic disease issues. The proposed rule, however, is the antithesis to a risk-based approach to either trade or disease management. This is because the proposed rule expressly targets all livestock that are imported and exported among and between each and every geopolitical, state boundary, i.e. it targets livestock engaged in trade

---

<sup>46</sup> National Animal Identification System: USDA Needs to Resolve Several Key Implementation Issues to Achieve Rapid and Effective Disease Traceback, U.S. Government Accountability Office, July 2007, at 13, Exhibit 21,

<sup>47</sup> See A New Approach for Managing Bovine Tuberculosis: Veterinary Services' Proposed Action Plan, USDA APHIS, July 2009, at 8, Exhibit 22.

<sup>48</sup> A Concept Paper for a New Direction for the Bovine Brucellosis Program, APHIS Veterinary Services, September 2009, at 14, Exhibit 23.

between and among each of the 50 states. Thus, the imposition of the proposed rule would be an economic burden on all domestic trade in livestock between and among each state, regardless of the degree of risk associated with livestock from *any* state.

Not only is the proposed rule void of any risk-based consideration, but also, APHIS' implementation of the proposed rule would constitute unfair and discriminatory treatment against domestic cattle producers when compared to foreign cattle producers. This is because domestic cattle producers that must cross a state boundary to access a slaughter plant would be required to incur the cost of APHIS' mandatory animal identification scheme as a precondition to marketing their products into the U.S. beef supply chain. Foreign cattle producers, however, are not required by APHIS, or any other agency of USDA, to participate in any mandatory animal identification scheme as a precondition for marketing their products into the U.S. beef supply chain, regardless of whether they must ship cattle across provinces, states, or departments within their respective countries to access a slaughter plant that is eligible to export beef into the United States.

Thus, the proposed rule would financially disadvantage certain U.S. cattle producers who have no option other than to cross a state line to access a slaughter facility while the U.S. cattle producers' competitor – foreign cattle producers – remain unencumbered by any U.S. requirement to meet the same standards as a precondition for marketing the beef commodity in the U.S. beef supply chain.

Further, the proposed rule discriminates against U.S. cattle producers who must cross state boundaries to access a U.S. slaughter plant when compared to U.S. cattle producers that reside in a state with one or more slaughter plants. Because only those producers who must cross state lines to access a slaughter plant would be compelled to bear the cost of an APHIS-mandated

animal identification scheme, U.S. producers who do not need to cross state lines to access a slaughter plant would be accorded an economic advantage in the U.S. beef supply chain by not having to comply with APHIS' mandatory animal identification scheme.

The effect of the proposed rule, therefore, would be to financially discriminate against every U.S. cattle producer who is not lucky enough to conduct his or her cattle business in one of the few states in which the handful of remaining meatpackers have decided to set-up a slaughter plant. For example, If Cattle Feeder A is equidistant from a slaughter plant as Cattle Feeder B, but Cattle Feeder A must cross a state boundary to access the slaughter plant, then APHIS' proposed rule has accorded Cattle Feeder B upwards of a \$27.00 per head (*see* Section C. 2. *supra*) financial advantage in the marketplace because APHIS' proposed rule would not require Cattle Feeder B to pay the mandatory cost of identifying cattle.

APHIS' proposed rule is oblivious to the fact that known disease reservoirs (including wildlife and foreign countries) and locations where cattle are comingled are the most likely and second most likely, respectively, source of a potential disease outbreak. The location where breeding-age cattle are comingled with known disease reservoirs and with imported cattle should be the origination point for any form identification program, not at the point where a farmer or rancher ships cattle interstate. An interstate shipment of breeding-aged cows from a closed herd is least likely to be the subject of a disease investigation. USDA's proposed rule completely ignores this fundamental and science-based principle. Only by issuing best practices guidelines and working with the states to assist them in developing a program that works best for them can USDA even hope to achieve a science-based and functional disease-traceback program for the entire United States.

The foregoing discussion demonstrates that APHIS' proposed rule, which imposes a requirement to incur the cost of mandatory animal identification based solely on whether livestock cross a state boundary, which requirement is oblivious to whether or not the livestock originate from an area of negligible risk or high risk for any disease, would financially advantage some cattle producers while financially disadvantaging many others. As a direct consequence, the proposed rule would interfere with domestic commerce by financially discriminating against cattle producers based solely on where they live in the United States, and those that would be discriminated against when compared to domestic cattle producers also would be discriminated against when compared to foreign cattle producers.

**E. APHIS' Proposed Rule Discriminates Against States that Require Brand Inspections and Brand Inspection Certificates as a Condition for Leaving a Brand Inspection Area and Discriminates Against Cattle Producers Within Those States that Pay for and Rely on Brands and Brand Certificates to Identify Their Cattle**

**1. USDA-APHIS has deceived U.S. cattle producers by proposing to remove brands from the list of official animal identification devices or methods.**

APHIS' proposal in the proposed rule to delist the hot-iron brand accompanied by a certificate from a recognized brand authority as an official form of animal identification constitutes a broken promise made by USDA to U.S. cattle producers. In February 2010, USDA stated in regard to its new animal disease traceability framework, which has materialized into the proposed rule:

USDA will maintain a list of official identification devices, which can be updated or expanded based on the needs of the States and Tribal Nations. There are many official identification options available, such as branding, metal tags, RFID, just to name a few.<sup>49</sup> (Emphasis added.)

---

<sup>49</sup> Questions and Answers: New Animal Disease Traceability Framework, APHIS Factsheet, USDA APHIS, February 2010, Exhibit 10.

Cattle producers have been outright deceived by USDA due to APHIS' proposal to remove brands from the list of official identification devices or methods. The construction of the above sentence, along with the usual and customary meaning attached to its words and phrases, unambiguously implies that *brands will remain an official identification option on USDA's list of official identification devices or methods*. Only under a perverted interpretation of that sentence could it mean otherwise.

The consequence of APHIS' action strips from the states and tribes the option to decide to continue relying upon the brand accompanied by a brand certificate from a recognized brand authority to identify livestock. This reduces flexibility for states and tribes to adopt a system that works best for them. In addition, it strips from individual producers within each state the flexibility to decide to continue their reliance on the brand, which flexibility each individual producer could influence by persuading their respective states' elected officials.

Under the proposed rule, however, the decision to use brands must be made jointly by two or more states or tribes. Thus, any single state or tribe would be subject to decisions made outside their jurisdiction regarding their ability to use brands for identification. This is an affront on state sovereignty. Moreover, the rights of individual cattle producers in a brand state to continue relying upon their brands would be subject to the decisions made in other states, over which they would have no control.

And, the proposed rule would effectively discriminate against cattle producers in states with mandatory brand inspection programs, which are funded in whole or in part by producer fees, by not reimbursing the producers for the cost of brand inspection fees paid when those producers leave the jurisdiction of their brand inspection authority, which generally is the state's

border, when they are required by APHIS to apply a new form of animal identification. If APHIS does not reimburse producers that are required by their respective state to obtain a brand inspection before leaving their state, and if APHIS nevertheless requires them to incur the cost of applying a second form of identification (i.e., requires them to apply an ear tag in addition to their preexisting brand), then APHIS would effectively financially disadvantage those producers in interstate commerce by the per head cost for their mandatory brand inspection.

At the very least, USDA-APHIS has an absolute moral and ethical obligation to treat U.S. cattle producers honestly and fairly. Stating one thing and doing another is dishonest and unfair. In this case, USDA-APHIS stated one thing and did another without providing any notice to the public that it had deviated from its official commitment. Regardless of any rationalization USDA-APHIS may espouse to defend its deviant action, it has acted dishonestly, unfairly, and deceptively. For this reason alone, USDA-APHIS must restore the brand's rightful status as an official animal identification device and withdraw its proposed rule.

**2. APHIS's proposed rule ignores the historical effectiveness, functionality and permanence of the hot-iron brand as a means of identifying cattle and groups of cattle.**

APHIS is acutely aware of the superior permanence of the hot-iron brand as compared to ear tags. In its final rule to allow the importation of Canadian cattle 30 months of age or older (OTM rule), APHIS distinguishes brands as "permanent identification," while separately requiring, in addition to permanent identification, an official ear tag to be placed in imported Canadian cattle.<sup>50</sup> In fact, ear tags are not even mentioned as acceptable means of permanent

---

<sup>50</sup> See Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines, 72 Fed. Reg., 53378, col. 1, (Sept. 18, 2007), Exhibit 24.

identification, with only freeze brands, hot-iron brands, and tattoos expressly listed among the acceptable, permanent means of identification.<sup>51</sup> In addition to permanent identification, the OTM rule also requires the individual identification with an official ear tag of the country of origin.<sup>52</sup>

APHIS' purpose for requiring permanent brands on Canadian cattle along with ear tags is succinctly explained in the OTM rule. APHIS stated, "We recognize that animals can lose eartags at various points in the process. . ."<sup>53</sup>

The foregoing discussion reveals that for disease traceback purposes, even for cattle originating in regions that APHIS has deemed a "minimal-risk" for disease, APHIS requires a three-prong traceback system: 1) it requires the permanent identification of the animal using a brand or tattoo; 2) it requires individual identification with an official ear tag; and, 3) it requires visible information on the animal to denote the animal's origin.<sup>54</sup>

R-CALF USA agrees that this three-prong traceback system is a science-based means of achieving functional traceability on livestock that may be subject to a disease investigation. The system has needed redundancy to address the inherent propensity for ear tags to be lost, and it provides visible information that enables any person to identify the origin of the animal.

APHIS' proposed rule fails completely to explain why the three identification elements needed from minimal-risk regions are not needed to provide a science-based traceback system for U.S. cattle. Nor does APHIS explain which of the three elements are most important to ensure the ability to conduct tracebacks, e.g., is it more important to have permanent

---

<sup>51</sup> See Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines, 72 Fed. Reg., 53378, col. 1, (Sept. 18, 2007), Exhibit 24.

<sup>52</sup> See *Id.*

<sup>53</sup> See *Id.*, at 53340, col. 1.

<sup>54</sup> See *Id.*, at 53379, col. 1.

identification or are loss-prone ear tags equally functional for disease tracebacks? And, APHIS fails completely to explain why the ability to visibly identify the origin of the animal is not even necessary for domestic traceback purposes.

If the requirement contained in the OTM rule is science-based, than the proposed requirements in the proposed rule are not. This is because the proposed rule incorporates only one of the three elements required in the OTM rule, and the one it has incorporated is not even recognized by APHIS as a permanent form of identification. The proposed rule depends exclusively on an official ear tag that bears a U.S. shield and a number: it does not require permanent identification (indeed it expels permanent identification from its list of official animal identification devices), and it does not require ear tags to bear visible information to identify even the state from which the animal originated. APHIS further fails to explain why privately-owned U.S. cattle must bear a U.S. shield for the privilege of moving across a state line. Such a shield is of no use to disease investigators and if a shield is to be required at all, it should be the shield of the state from which the animal originated, at least then a person could immediately initiate a disease investigation by calling the animal health officials in the state of origin should an animal be detected with a disease. Better yet, the animal should bear the shield of the property's owner – which is precisely what is accomplished with a registered hot-iron brand.

APHIS contends it cannot require all states to accept brands because all states do not have brand inspection programs. At the same time, however, APHIS' proposed rule requires all states to accept ear tags that do not allow any visible means with which to ascertain the origin of an animal. For example, the APHIS approved 840 ear tag does not contain an identifier that denotes the state of origin. Therefore, an animal health official without immediate access to an expensive, electronic wand or a national database has no means of initiating an immediate

traceback of the animal. On the other hand, if an animal was transported to a state with a brand, then the animal health official could immediately narrow the animal's potential origin to those states that have a recognized brand authority that issues brand certificates. APHIS is disingenuous in its claim that non-brand states cannot accept brands while it simultaneously requires non-wand states to accept 840 electronic tags.

APHIS' proposed identification requirements for cattle lack any scientific justification. APHIS has thrown the proverbial baby out with the bath water by refusing to adopt even the core elements of current U.S. disease programs that APHIS itself acknowledges were "tremendously successful" in the agency's efforts to eradicate brucellosis. *See* 76 Fed. Reg. 50081, col. 3. The highly successful brucellosis program, not surprisingly, incorporated each of the three prongs APHIS requires of Canada: 1) the program recognized brands as official identification, which provided a high level of redundancy; 2) the program required an official ear tag; and, 3) the ear tag contained visible information with which to immediately identify the state of origin.

APHIS' claim that its goal is to shorten the time necessary to conduct disease tracebacks is proved false by APHIS' failure to adopt the historically proven, simple, and visible state identifier, such as two-digit numeric code that denotes the tag's state of origin, on all of its approved ear tags.

The role of the permanent brand in contributing to the United States' "tremendously successful" disease program is profound. In a March 9, 2010, article by James C. Clement, D.V.M., Cow-Calf Research & Consulting, Dr. Clement explains the profound contribution that brands and brand programs make to generating animal tracking data every day, along with describing how critical tracking data are compiled. Dr. Clement states:

Animal tracking data is generated every day in Brand States and is the byproduct of routine record-keeping processes that involve cattle marketing businesses and SBIS [State Brand Inspection Systems]. SBIS create inspection certificates associated with the movement of 27,000,000 head of livestock (primarily cattle) on an annual basis.<sup>55</sup>

APHIS cites no study, nor does it have any nationwide experience in conducting animal disease tracebacks without relying upon the animal tracking data generated by brand states. Indeed, APHIS has not cited any system in the world that can hold a candle to the brand states' ongoing generation of animal tracking data for 27 million head of livestock, primarily cattle, which represents about one-third of the entire U.S. population of cattle and calves.

APHIS has no scientific basis for delisting the hot-iron brand accompanied by a certificate from a recognized brand authority from the list of official animal identification devices or methods, or in any way demoting the hot-iron brand to a level below any other form of animal identification.

Based on the hot-iron brand's role in generating animal tracking data for tens of millions of livestock, APHIS' proposed rule that delists the brand from the list of official animal identification devices will reduce the United State's ability to timely trace disease suspects to the disease source.

**3. APHIS' inexplicable failure to include hot-iron brands accompanied by a certificate from a recognized brand inspection authority as a group/lot identifier is unscientific.**

APHIS has failed to recognize brands as an official means of providing group/lot identification, *under any circumstance*. This is more than just alarming because of the obvious fact that each animal in a group of branded cattle is traceable even in the event the group/lot

---

<sup>55</sup> Animal ID: Another View, James C. Clement, D.V.M., Cow-Calf Research & Consulting, March 9, 2010, Exhibit 25.

identification number is lost or destroyed, or in the event the group of animals, or any member of the group of animals, is inadvertently separated. APHIS cannot make this claim for any other group/lot identification device it is proposing.

The ability to identify each individual member of the group as a member of the group is scientifically and practicably superior to any of the group/lot identification devices proposed by APHIS in the proposed rule. It is unconscionable that APHIS would reject the single most effective means of group/lot identification, and the only means that would enable a trace back of a group/lot that inadvertently becomes separated or for which the paperwork is lost or destroyed.

APHIS must universally recognize the hot-iron brand accompanied by a certificate from a recognized brand authority as an officially approved group/lot identification method. Further, U.S. cattle producers that move in interstate commerce a group/lot of branded cattle accompanied by a certificate from a recognized brand authority should have no further obligation to place any other type of animal identification on their cattle. When the group lot arrives at its destination, which may be another brand state wherein the cattle likely will be rebranded, the buyer or buyers of those cattle should be responsible for applying any type of identification that may be required by the receiving state if the group is to be separated. If the group is not separated, e.g., if the entire group is sold to a feedlot for finishing, than the owner or manager of those cattle in the receiving state should have no obligation to apply any other form of identification.

**4. Under no circumstances should APHIS include feeder cattle in any mandatory animal identification rule.**

The U.S. all but eradicated diseases such as bovine TB and brucellosis by focusing on the identification of breeding cattle only. The principal culprits that have caused the resurgence of

those diseases are imported cattle (primarily from Mexico, *see supra*) and wildlife reservoirs. APHIS has the authority, recourses and means to fully prevent the continual reintroduction of disease that are spread by imported cattle as well as to minimize disease reservoirs in wildlife, but it refuses to implement stricter import standards and effective wildlife mitigations. Instead, USDA wants to burden the owners of our nation's 31.4 million beef mother cows with its onerous, overreaching rule that effectively forces U.S. cattle producers to pay costs associated with other country's disease problems and site-specific wildlife problems. This proposed rule is anything but a scientific, risk-based proposal.

APHIS has failed to explain how past disease programs were so "tremendously successful" without ever imposing mandatory identification on feeder cattle and why, suddenly, APHIS deems it necessary.

As stated above, the cost of ear tagging the 2010 calf crop, again using APHIS' estimate that 3.1 million calves already bear official identification, would be between \$554 million and \$880 million. This cost would be expected to be incurred year after year if feeder cattle were subjected to the proposed rule. Even using APHIS' grossly understated cost of \$4.68 per head, the proposed rule would cost U.S. cattle producers \$152.6 million annually.

For comparison purposes, APHIS estimates the annual cost to states and the federal government for bovine TB testing is \$2.6 million. However, this cost does not come close to justifying the mandatory imposition of hundreds of millions of dollars in additional costs on U.S. cow/calf producers.

- 5. APHIS has failed to disclose the full nature of the problem the proposed rule is intended to address or to explain how the proposed rule would be expected to correct the serious problems APHIS failed to disclose.**

APHIS has failed to disclose significant problems that have been identified in its disease traceback operations and has failed to explain how the proposed rule would be expected to correct those problems. For example, APHIS attempts to justify its proposed rule on the basis that some bovine TB investigations exceed 150 days. *See* supporting document, at 8. APHIS, along with other proponents of the proposed rule's precursor – NAIS – alleged that because of what they call an “outdated system of tracking outbreaks of animal diseases to their sources;”<sup>56</sup> and a “lack of any official identification” with which to determine the “specific origin of the subject animal . . . [and] without movement data,”<sup>57</sup> disease traceback investigations have taken too long to conduct. Both the American Veterinary Medical Association (AVMA) and APHIS cited the same statistics to support their allegations: AVMA stated, “Investigators spent an average of 199 days tracing the sources of animals infected with bovine tuberculosis between October 2005 and August 2007.”<sup>58</sup> APHIS stated, “The average time spent conducting a traceback involving 27 recent bovine tuberculosis investigations was 199 days.”<sup>59</sup>

However, the Office of Inspector General (OIG) conducted an audit of APHIS' control over its bovine TB eradication program in September 2006. According to the audit, the OIG found that a lack of identification on individual animals was not the sole source of APHIS' problem in conducting its bovine TB investigations. In fact, the OIG found that over half of the investigations that were closed with an outcome of “untraceable” were animals that *were* identified with eartags, but the eartags either were not collected at the time of slaughter, had been

---

<sup>56</sup> The National Animal Identification System, Testimony of W. Ron DeHaven, DVM, MBA, CEO, American Veterinary Medical Association, Before the House of Representatives Committee on Agriculture, Subcommittee on Livestock, Dairy, and Poultry (hereafter “AVMA Testimony”), March 11, 2009, at 5, Exhibit 26.

<sup>57</sup> USDA Testimony, at 3, Exhibit 7.

<sup>58</sup> AVMA Testimony, at 5, Exhibit 26.

<sup>59</sup> USDA Testimony, at 4, Exhibit 7.

removed by the feedlot prior to slaughter, or were unable to be traced because there was no requirement to maintain records.<sup>60</sup> Equally important, the OIG found that APHIS' disease eradication efforts were hampered because the agency was not using its oversight tools in a timely manner, i.e., not timely reviewing and responding to the annual and monthly summaries of program results submitted by States nor was it properly reviewing States for program compliance.<sup>61</sup> The OIG also found that APHIS was not following Federal regulations for declaring affected bovine TB herds, which weakened the agency's ability to contain and eradicate the disease and resulted in no additional controls being put in place for the majority of bovine TB cases detected in the past 5 years.<sup>62</sup> The agency was also cited for not timely downgrading the TB status of States after the agency knew that the disease was not isolated in one herd;<sup>63</sup> not having adequate controls to restrict the introduction of bovine TB in Mexican cattle;<sup>64</sup> not requiring slaughtering facilities to conduct surveillance at the recommended rate;<sup>65</sup> not monitoring high-risk herds and the corresponding on-farm testing that is required;<sup>66</sup> and not providing sufficient training to investigators so investigations could be completed in a timely manner.<sup>67</sup>

APHIS has failed to provide the livestock industry with sufficient data to identify *all* significant problems associated with current animal disease traceability systems and provide

---

<sup>60</sup> See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Office of Inspector General, September 2006, at 38, Exhibit 27.

<sup>61</sup> See *id.*, at 5-9.

<sup>62</sup> See *id.*, at 11-14.

<sup>63</sup> See *id.*, at 16-17.

<sup>64</sup> See *id.*, at 19-21.

<sup>65</sup> See *id.*, at 22-24.

<sup>66</sup> See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Office of Inspector General, Report No. 50601-0009-Ch, September 2006, at 28-29, Exhibit 27.

<sup>67</sup> See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Office of Inspector General, Report No. 50601-0009-Ch, September 2006, at 22, 25, 28, Exhibit 27.

documentation to show how any new animal disease traceability system would be expected to resolve any such specific problems. The systemic problems described above are internal management problems that impede disease control and eradication as well as disease investigations and would *not* be solved by implementing the proposed rule.

Because the proposed rule fails to address how APHIS intends to address the systemic problems disclosed and discussed above, it is as likely as not that APHIS' internal management problems would continually hamstring disease investigations and no measurable improvement would be made to the timeliness of the Agency's disease investigation simply by imposing an outrageously expensive identification requirement on U.S. cattle producers.

#### **F. Additional Concerns Regarding APHIS' Proposed Rule**

##### **1. APHIS' proposed rule is functionally deficient because it is silent on producer liability.**

The proposed rule fails to address one of the most critical concerns raised by thousands of cattle producers during USDA's NAIS listening sessions. That critical concern was producer liability. Under APHIS' proposal, which is a book-end identification system, the person who applied the animal's tag likely would be the primary suspect in any disease traceback, even if he/she sold the animal years earlier and the animal was later comingled with higher-risk Mexican cattle or trader cattle on multiple occasions. As a primary suspect, the original ear-tagger likely would bear the cost of testing and retesting his/her entire herd. This is unacceptable and APHIS has not even attempted to estimate the tremendous cost that U.S. cattle producers likely would bear as a result of APHIS' proposed rule.

##### **2. APHIS' proposed rule will significant disrupt interstate commerce by prohibiting the use of back tags on cattle destined for slaughter.**

USDA's proposed rule will significantly increase the cost of interstate movement by disallowing the use of expedient back-tags for cattle destined for slaughter. Back tags are a proven, effective, humane and expedient means of identifying cattle destined for slaughter and the elimination of this device will disrupt commerce, increase animal injuries, and add unnecessary cost to an industry incapable of passing additional costs to those that may benefit from USDA's new imposition on cattle producers.

**3. APHIS justifies its proposed rule based on false cattle industry information and information that is too broad and ambiguous to meaningfully inform decision makers.**

R-CALF USA remains concerned that APHIS continues to not only ignore the unique characteristics of the U.S. cattle industry, but also, it continually presents misleading information to the public. For example, APHIS' supporting documents for the proposed rule states:

Although the total cattle inventory fell by 15 percent between 1979 and 2009, commercial beef production grew by 22 percent. The decline in cattle inventory has been offset by a 23 percent increase in the average dressed weight of federally inspected cattle.

APHIS, fails to inform the public that the 22 percent growth in beef production between 1979 and 2009 also was due to the influx of imported live cattle that were subsequently slaughtered in the U.S., with their resulting beef added to the United States' commercial beef production. Live cattle imports from Mexico and Canada increased by 1,269,560 head between 1979 and 2009. Based on the average carcass weight in 2009 of 748 pounds, those imported cattle contributed about 950 million additional pounds to commercial beef production.

Commercial beef production increased from 21.262 billion pounds to 25.966 billion pounds between 2007 and 2009. This represents about a 4.7 billion pound increase during that period. However, nearly one billion pounds (about 950 million pounds) of that increase was attributable to beef derived from imported cattle. Therefore, the growth in commercial beef production attributable to increased dressed weights was less than 18 percent while the contribution of imports to that growth was 20 percent, i.e., beef from imported cattle accounted for approximately 20 percent of the growth in domestic beef production between 2007 and 2009.

Thus, APHIS' assertion that the decline in cattle inventory has been offset by a 23 percent increase in the average dressed weight of federally inspected cattle is false. APHS would have been accurate to state, however, that 1.2 million head of the U.S. mother cow herd had been offset by the growth in imported cattle, which increased by 1.2 million head between 1979 and 2009.

Also, and as mentioned previously, APHIS describes the U.S. cattle industry as one in which the average number of cattle per cattle operation has increased to nearly 100 head for all cattle operations. This description fails to recognize, describe, or disclose the profound, segmented nature of the U.S. cattle industry. For example, in 2010 the average size of the U.S. beef cow herd was fewer than 42 head per herd; the average size of the U.S. dairy herd was 146 head; the average number of cattle in the 75,000 remaining farmer feedlots with capacities of less than 1,000 head was only 34 head per feedlot; and, the average number of cattle in the 2,140 commercial feedlots with capacities of more than 1,000 head was 5,380 head per feedlot.

This information provides a far more accurate description of the U.S. cattle industry and provides far more valuable information to people making decisions that impact the U.S. cattle industry. R-CALF USA urges APHIS to be truthful and accurate when representing the U.S.

cattle industry so as to avoid the propagation of erroneous information that invariably leads to bad public policy, such as APHIS' proposed rule now under consideration.

**G. Conclusion.**

There is absolutely no need for a federally mandated animal identification system. The 50 states already have animal health import and export rules that rely upon and reference existing official animal identification devices. If USDA wishes to assist the 50 states and the nation's tribes to improve disease traceability, it should work in cooperation with the states, tribes and cattle producers to develop best practices guidelines for the import and export of cattle among and between the states and tribes and assist those states and tribes in developing specific programs that work best for them.

For all the foregoing reasons APHIS' one-size-fits-all proposed rule is, at best, an absolute boondoggle and must be immediately withdrawn. If APHIS does not immediately withdraw the proposed rule, the U.S. cattle industry will suffer irreparable harm.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard", written in a cursive style.

Bill Bullard, CEO  
R-CALF USA

Exhibits: 1-27