

Fighting for the U.S. Cattle Producer!



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Docket No. APHIS-2009-0034,
Regulatory Analysis and Development,
PPD, APHIS, Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238.

Via E-Mail: www.regulations.gov

**Re: R-CALF USA Comments in Docket No. APHIS-2009-0034, RIN 0579-AD12:
Changes in Disease Status of the Brazilian State of Santa Catarina with
Regard to Certain Ruminant and Swine Diseases**

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 the agency's proposed rule: *Changes in Disease Status of the Brazilian State of Santa Catarina with Regard to Certain Ruminant and Swine Diseases* (Proposed Rule), published at 75 Fed. Reg. 19915-19920 (April 16, 2010). The Proposed Rule would relieve, *inter alia*, certain foot-and-mouth disease (FMD) restrictions on the importation into the United States of live swine, swine semen, pork meat, pork products, live ruminants, ruminant semen, ruminant meat, and ruminant products, all of which could potentially carry FMD into the United States from Santa Catarina, Brazil. *See id.*, 19916, col. 2.

R-CALF USA is a non-profit association that represents thousands of U.S. cattle farmers and ranchers in 46 states across the nation. 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, stockers and feedlot owners. Various main street businesses are associate members of R-CALF USA.

For the reasons set forth below, R-CALF USA urges APHIS, in the strongest way possible, to not only immediately withdraw its Proposed Rule; but also, to immediately initiate a rulemaking to disallow *any* relaxation of U.S. import restrictions for *any* country that has not scientifically demonstrated that foot-and-mouth disease (FMD) has been eradicated *completely* in every region within its national borders.

A. APHIS' Risk Evaluation Methodology Is Incapable of Accurately Assessing the Risk for FMD Outbreaks in Countries with Histories of FMD

APHIS' conclusion that Santa Catarina is free of FMD and has adequate veterinary infrastructures in place to prevent, control, and manage FMD outbreaks if they were to occur was based on APHIS' evaluation conducted according to the 11 factors identified in 9 CFR § 92.2, "Application for recognition of the animal health status of a region." *Id.*, 19916, cols. 2, 3.

Importantly, the 11 factors relied on by APHIS to evaluate the potential for dangerous and destructive communicable diseases to enter the United States were not proposed or developed for the purpose of preventing the introduction of such diseases into the United States; but rather, they were proposed and developed pursuant to international trade agreements and at the behest of the international trade facilitating body known as the Office International des Epizooties (World Organization for Animal Health or OIE). For example, APHIS' original, 1996 proposed rule to relax U.S. disease restrictions by allowing regions within FMD-affected countries to nevertheless import higher-risk products into the United States was proposed for the express purpose of achieving compliance with "U.S. obligations under NAFTA-SPS and WTO-SPS with respect to the importation of live animals and animal products." 61 Fed. Reg., 16979, col. 1. As was the agency's final rule to relax U.S. disease restrictions: "The fundamental purpose of the changes we are making to the regulations . . . is to fulfill U.S. commitments under international trade agreements." 62 Fed. Reg., 56010, col. 2. And, ". . . our overriding goals in implementing regionalization are to facilitate trade in accordance with international agreements. . ." 62 Fed. Reg., 56005, col. 1. Moreover, APHIS granted complete and total deference to the OIE, thus abrogating its congressional mandate to protect U.S. livestock from the introduction of dangerous and destructive diseases, when, in 2001, it resumed imports of high-risk products from Japan on the basis that, "According to international disease standards set by the Office International des Epizooties . . . that country [Japan] can regain its FMD-free status 3 months after the last case. Therefore . . . we have determined that Japan meets *our* requirements for being recognized as free of FMD." 66 Fed. Reg., 46228, col. 3 (emphasis added).

Using those *same* 11 factors incorporated into U.S. disease regulations by international, rather than national, interests and by granting inexplicable deference to the OIE, APHIS previously reached the *same* conclusion it now has reached for Santa Catarina with respect to the potential for FMD outbreaks in Argentina, Uruguay, South Africa, South Korea and Japan. As discussed more fully below, each of these countries/regions subsequently experienced widespread FMD outbreaks after APHIS' cavalier and overly optimistic conclusions that each of these countries/regions was free of FMD.

1. APHIS' Risk Evaluation Methodology Resulted in the Miscalculation of FMD Risks in Argentina

In August 1997, APHIS engaged in a high-risk scheme to begin importation of fresh (chilled or frozen) beef from Argentina, even though Argentina was still carrying out vaccination for FMD. *See* 62 Fed. Reg., 56003, col. 2. APHIS claimed that this new scheme "exemplified the opportunity" to regionalize countries with ongoing FMD problems. *See id.* In July 2000, APHIS

fully implemented a regionalization scheme for Argentina by prohibiting the importation of beef from animals that had been in specified areas along Argentina's border. *See* 65 Fed. Reg., 82894, col. 1. In August 2000, just days before the effective date of APHIS' regionalization rule, Argentina confirmed a new outbreak of FMD. Nevertheless, APHIS concluded the U.S. could continue to safely import fresh (chilled or frozen) beef from Argentina under its regionalization scheme, despite this new outbreak. *See id.*, 82894, col. 3. For nearly a year after its August 2000 outbreak, Argentina remained eligible to export fresh (chilled or frozen) beef to the United States. APHIS, however, was subsequently forced to take emergency, retroactive action in June 2001 to protect U.S. livestock from the introduction of FMD from Argentina because at that time APHIS believed the FMD virus already was present in Argentina for several weeks before Argentina finally reported the first of many new and widespread FMD outbreaks beginning in March 2001. *See* 66 Fed. Reg., 29897, col. 3; 29898, col. 1. APHIS' regionalization scheme for Argentina was an abject failure that could have easily resulted in the introduction of FMD into the United States.

2. APHIS' Risk Evaluation Methodology Resulted in the Miscalculation of FMD Risks in Uruguay

In July 2000, APHIS was allowing fresh (chilled or frozen) beef from Argentina provided it was not from Argentina cattle that had been in close proximity to Uruguay. In October 2000 APHIS regionalized, retroactively, Uruguay by removing only Artigas, a department in Uruguay, from the list of regions considered by the U.S. to be free of FMD. *See* 65 Fed. Reg., 82894, col. 3; *see also* 65 Fed. Reg., 77772, col. 1. APHIS had evaluated Uruguay's risk for FMD and concluded it was safe for the U.S. to continue the importation of fresh (chilled or frozen) beef from Uruguay provided it was not from cattle in Artigas, a region APHIS determined to qualify as a distinct subpopulation for disease control and international trade purposes under its regionalization scheme. *See* 65 Fed. Reg., 77771-773. However, within about four months of USDA's presumed scientific conclusion that it was safe to continue the importation of beef in all regions of Uruguay except Artigas – a conclusion presumably based on a careful, scientific risk analysis – widespread FMD outbreaks were reported, beginning in April 2001, in numerous Uruguayan departments. *See* 66 Fed. Reg., 36695-697. By June 22, 2001, there were 1,596 new cases of FMD confirmed in 18 separate departments in Uruguay. *Ibid.*

3. APHIS' Risk Evaluation Methodology Resulted in the Miscalculation of FMD Risks in South Africa

After conducting an on-site visit along with a risk evaluation regarding the risks for FMD in South Africa, APHIS, in April 2000, regionalized the Republic of South Africa and declared it, except the FMD-controlled area (which includes Kruger National Park) free of FMD. *See* 64 Fed. Reg., 7819, col. 2 and fn 1; *see also*, 66 Fed. Reg., 9641, col. 1. In September 2000, APHIS was forced to take emergency action to protect U.S. livestock after a FMD outbreak was confirmed in KwaZulu-Natal, a province in the Republic of South Africa. *See* 65 Fed. Reg., 65728, col. 1; 65729, col. 1. APHIS, however, persisted with its regionalization scheme and simply carved out KwaZulu-Natal as a province ineligible to export fresh (chilled or frozen) beef to the U.S. due to FMD. *See* 64 Fed. Reg., 65728, col. 3. Within a matter of months, in

November 2000, APHIS was again forced to take emergency action to prevent the introduction of FMD into the U.S. by removing all of the Republic of South Africa from the list of regions considered free of FMD following new outbreaks of the disease in additional provinces.

4. APHIS' Risk Evaluation Methodology Resulted in the Miscalculation of FMD Risks in South Korea

After South Korea experienced outbreaks of FMD in 2000 and 2002, APHIS, in October 2008, completed a comprehensive, 56-page evaluation of the risks for FMD in South Korea in accordance with OIE guidelines and determined that South Korea was free of FMD and posed a negligible risk for introducing FMD into the United States.¹ On December 28, 2009, APHIS issued a final rule declaring South Korea free of FMD and eligible to export fresh (chilled or frozen) beef to the United States beginning January 12, 2010. *See* 74 Fed. Reg., 68478, col. 3; 479, col. 2. However, on January 6, 2010, just days before the effective date of APHIS' final rule, South Korea had an outbreak of FMD and APHIS was forced to delay indefinitely the effective date of South Korea's FMD-free designation. *See* 75 Fed. Reg., 1697, col. 1.

Similar to its lustrous evaluation regarding the risk for FMD posed by Santa Catarina, Brazil, APHIS' lustrous evaluation of South Korea's FMD risk optimistically concluded:

Based on an evaluation of the 11 factors and observations from the site visit, APHIS considers that the Republic of Korea has the legal framework, animal health infrastructure, disease detection capabilities, reporting systems, and emergency response systems that are necessary for maintaining the Republic of Korea as free of FMD.²

However, APHIS was dead wrong and the reality is that South Korea has been unable to contain the FMD outbreaks that began Jan. 6, 2010, and that APHIS concluded were unlikely to occur. South Korea's FMD outbreaks have now persisted for six months. According to South Korea's recent notification sent to the OIE, South Korea's latest reported outbreak occurred on June 6, 2010.³ A June 1, 2010, news article published in *The Korea Times* reported that South Korea already has destroyed about 50,000 animals since the first of the year.⁴

¹ *See* 74 Fed. Reg., 14093, col. 3; *see also* APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, Oct. 2008, at 5, 39, and 41.

² APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, October 2008, at 39.

³ *See* Foot and Mouth Disease, Korea (Rep. of), Follow-up report No. 4, Weekly Disease Information, OIE, June 7, 2010, available at http://www.oie.int/wahis/public.php?page=weekly_report_index&admin=0.

⁴ *See* Foot-and-mouth disease reappears [S. Korea], Kim Tae-gyu, *The Korea Times*, June 1, 2010, available at http://www.koreatimes.co.kr/www/news/biz/2010/06/123_66910.html.

5. APHIS' Risk Evaluation Methodology Resulted in the Miscalculation of FMD Risks in Japan

Nine years after APHIS declared Japan free of FMD, based exclusively on OIE standards (*see* 66 Fed. Reg., at 46228, col. 3, *supra*), APHIS was forced to take emergency action to ban beef imports from Japan due to numerous outbreaks of FMD that began in that country in April 2010.⁵ On June 9, 2010, Bloomberg News reported that Japan had so far discovered 185,999 cases of FMD and had destroyed 154,000 animals, with plans to destroy an additional 122,000 animals in its attempt to control the ongoing spread of FMD.⁶

The foregoing examples are all near misses – they all represent situations in which APHIS' reckless actions threatened the health and welfare of U.S. livestock and U.S. livestock producers. As a result of APHIS' foregoing actions, the United States was particularly vulnerable to the importation into the United States of products that are known to carry the FMD virus and the importation of such products could have, as likely as not, resulted in widespread outbreaks of FMD in the U.S. livestock herd. These foregoing examples demonstrate unequivocally that APHIS lacks both the ability and capacity to accurately assess the risk of FMD and the effectiveness of FMD risk mitigation measures in countries with histories of FMD outbreaks, including countries where FMD had not been reported for nearly a decade, e.g., Japan and South Korea.

To put the severity of the damage caused by the ongoing FMD outbreaks in South Korea and Japan in perspective, if the U.S. were required to destroy the number of U.S. breeding cattle comparable to the number of animals South Korea and Japan reportedly already have destroyed or are planning to destroy in 2010 (i.e., 326,000 animals), it would wipe out the herds of more than 2,900 South Dakota ranchers, based on South Dakota's average cattle herd size of about 111 head.⁷

B. The Proposed Rule Would Unacceptably Increase the Risk of FMD Introduction Into the United States

APHIS must not await a revised edict from its apparent mentor – the community of international organizations including the OIE – that *may*, based on the devastating effects of ongoing FMD outbreaks in both South Korea and Japan, soon recommend additional precautions to prevent the spread of FMD. Indeed, the United Nations (UN) Food and Agriculture Organization (FAO) already issued an official, global warning calling for more surveillance for FMD and stated it

⁵ *See* U.S. Bans Japan Beef Imports Over FMD Concerns, USAgNet, May 21, 2010 (Reporting that Bloomberg news received an e-mailed statement from USDA regarding the imposition of a U.S. ban on Japanese beef imports), available at <http://www.wisconsinagconnection.com/story-national.php?Id=1027&yr=2010>

⁶ *See* Japan Sees 'High Risk' of Foot-And-Mouth Expansion (Update 1), Bloomberg, June 9, 2010, available at <http://www.businessweek.com/news/2010-06-09/japan-sees-high-risk-of-foot-and-mouth-expansion-update1-.html>.

⁷ Calculation based on state data provided by the National Agricultural Statistics Service (NASS) that show South Dakota had 15,700 cattle operations in 2007 and there were 1.75 million beef cows and dairy cows that calved that year, available at http://www.nass.usda.gov/Statistics_by_State/South_Dakota/index.asp.

was worried “because the rigorous biosecurity measures in place in the two countries [Japan and South Korea] were overwhelmed, pointing to a recent, large-scale weight of infection . . .”⁸ Instead of awaiting leadership from the international community, APHIS must immediately begin to take seriously its congressional mandate to protect U.S. livestock and the people of the United States by taking steps to strengthen, not weaken, United States’ import restrictions that are designed to prevent the introduction into and spread within the U.S. of FMD and other dangerous and destructive livestock diseases. *See* 7 U.S.C. § 8301(1); 8303 (a)(3). The first essential steps APHIS should take are to withdraw the Proposed Rule and initiate a rulemaking to nullify the ineffective and inadequate methodology APHIS has used, and continues to use, to cavalierly justify exposing the United States to an unacceptable risk for FMD introduction and spread.

There is no justification whatsoever for the Proposed Rule that APHIS itself acknowledges would increase the United States’ current risk for FMD. APHIS emphatically stated:

Although the required mitigations of the preferred alternative [the regionalization of Brazil] have been shown to be effective against all known strains of the viruses causing these five diseases [including FMD] there remains some potential risk that does not exist under the no action alternative [the action of not regionalizing Brazil].” Emphasis added.⁹

As discussed in Section A, above, APHIS’s claim that its required mitigations have been shown to be effective against FMD is demonstrably false. Additionally, the risk of FMD introduction that currently exists in the U.S. *without* the added risk associated with the Proposed Rule is not *de minimus*. The Government Accountability Office (GAO) issued a report in 2002 stating that U.S. livestock already are vulnerable to the disease “because of the nature of the disease and the risk inherent in the ever-increasing volume of international travel and trade.”¹⁰ More recently, the GAO reinforced the magnitude of the existing FMD risk by stating in late 2007 that the global marketplace of agricultural trade and international travel has increased the pathways for the introduction of FMD into the United States.¹¹ To make matters worse, even without the added risk for FMD introduction associated with the Proposed Rule, the GAO last year found that federal efforts to identify the veterinarian workforce that would be needed during multiple introductions of FMD in the U.S. are “insufficient,” and that the United States lacks “crucial” data necessary to respond to a FMD outbreak, such as data regarding “how the disease would

⁸ FAO warns of increased foot-and-mouth threats, Japan, South Korea suffer outbreaks, United Nations Food and Agriculture Organization, Rome, April 28, 2010, available at <http://www.fao.org/news/story/en/item/41702/icode/>

⁹ Proposed Rule for the Status of Santa Catarina, Brazil, Regarding Foot and Mouth Disease, Classical Swine Fever, Swine Vesicular Disease, African Swine Fever, and Rinderpest, Environmental Assessment (hereafter “Brazil Environmental Assessment”), January 2010, U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), at 6.

¹⁰ Foot and Mouth Disease, To Protect U.S. Livestock USDA Must Remain Vigilant and Resolve Outstanding Issues, U.S. Government Accountability Office (formerly General Accounting Office), GAO-02-808, July 2002.

¹¹ Agricultural Quarantine Inspection Program: Management Problems May Increase Vulnerability of U.S. Agriculture to Foreign Pests and Diseases, U.S. Government Accountability Office, GAO-08-96T, Oct. 3, 2007, at 12.

spread to wildlife,” a scenario the GAO stated had happened in the past.¹² The GAO’s findings further reinforces R-CALF USA’s position that APHIS has no justification for exacerbating the United States’ current risk for FMD, and subjecting the U.S. to FMD’s attendant disastrous consequences, as likely would occur if APHIS were to proceed with its foolhardy and irresponsible Proposed Rule.

C. APHIS’ Ongoing Assertion that a National Animal Identification System Can Mitigate the Effects of an FMD Outbreak Is Baseless

In its 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.¹³ 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.¹⁴ APHIS further claimed that a NAIS system would be critical in mitigating the risks posed by potential disease outbreaks, and argued that the costs of a NAIS system must be compared with the estimated billions of dollars in losses the U.S. would be expected to suffer from a FMD outbreak.¹⁵ Now, in APHIS’ risk analysis section of its risk evaluation for the Proposed Rule, 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.¹⁶

It is clear that APHIS has assigned considerable weight to a national animal identification system as a biosecurity measure that it believes would significantly mitigate the risk of a FMD outbreak. However, the fact that the biosecurity measures in Japan and South Korea, where national animal identification systems are in place, have been “overwhelmed,” as described by the United Nation’s FAO,¹⁷ is empirical evidence of the *ineffectiveness* of a national animal identification system to control the spread of FMD. The ongoing experience in both Japan and South Korea demonstrates that APHIS has grossly underestimated the risk of FMD spread and grossly overestimated the effectiveness of an animal identification system to contain or otherwise prevent the spread of FMD after an outbreak of the disease.

¹² Veterinarian Workforce: The Federal Government Lacks a Comprehensive Understanding of its Capacity to Protect Animal and Public Health, GAO-09-424T, February 26, 2009.

¹³ 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.

¹⁴ 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.

¹⁵ *Ibid.*

¹⁶ 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 (hereafter “Brazil Risk Evaluation”), USDA, APHIS, January 16, 2009, at 45-47.

¹⁷ See *supra*, fn. 8.

D. Although APHIS Persists in Subjecting the U.S. Cattle Industry to Heightened Disease Risks Associated with the Inadequate Import Restrictions Recommended by the OIE, It Does Not Require Foreign Countries to Shoulder Such Increased Risks

Although APHIS seeks to subject the U.S. cattle industry to an increased risk for FMD from beef exporting countries that present an increased disease risk simply to satisfy the international desires of the WTO and OIE,¹⁸ APHIS does *not* require reciprocity from Brazil or other countries it has sought, or continues to seek, to regionalize (e.g., Argentina, Uruguay and South Africa): Brazil, Argentina, Uruguay and South Africa continue to ban completely the importation of U.S. beef.¹⁹

APHIS' position in this regard is indefensible and the agency appears to have lost all semblances of responsibility and loyalty to the U.S. cattle industry and the people of the United States. When, as here, APHIS works aggressively to unjustly undermine U.S. industry in favor of international tribunals and foreign countries, it deserves to be shunned and distrusted by the hard-working men and women who comprise the U.S. cattle industry.

E. APHIS Has Failed Completely to Assess FMD Risks Associated with Wildlife Populations in Brazil

Although APHIS is well aware that FMD can be transmitted by cloven-hoofed wildlife, the agency makes no effort to assess the risk of FMD transmission by Brazilian wildlife.²⁰ This deficiency is profound because the principal control over the movement of animals into Santa Catarina, Brazil, from surrounding areas is administrative, meaning there are only limited natural

¹⁸ See Brazil Environmental Assessment, January 2010, USDA, APHIS, at 1 (“Animal and Plant Health Inspection Service (APHIS) considers all of Brazil to be a county affected with foot-and-mouth-disease (FMD) . . . This regionalization action was designed to facilitate trade while maintaining a low risk of animal disease introduction to the United States.”); see also *id.*, at 4 (“However, selection of this alternative [the action of not regionalizing Brazil] may not satisfy international trade regulations . . . In compliance with SPS measures stipulated by the World Trade Organization, APHIS is obligated to consider less restrictive sanitary measures that provide comparable protection against disease risks.” Emphasis added.).

¹⁹ See Export Requirements of Argentina, Brazil, and Uruguay, U.S. Department of Agriculture, Food Safety and Inspection Service (Argentina, Brazil and South Africa prohibit all U.S. products and by-products of bovine origin and beef is not listed as eligible for export to Uruguay.), available at http://www.fsis.usda.gov/regulations_&_policies/Index_of_Import_Requirements_by_Country/index.asp.

²⁰ See APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, U.S. Department of Agriculture, APHIS, at 28 (USDA explains that an objective of South Korea's FMD surveillance program is to look for the presence of the disease in wildlife, though no mention of wildlife is made in its evaluation of Brazil); see also Brazil Environmental Assessment, at 5, 7, and 24 (Despite its omission of the risk of FMD transmission in Brazilian wildlife, USDA purports to evaluate the risk of FMD on the health of U.S. wildlife, including woodland caribou, Columbian white-tailed deer, key deer, Sonoran pronghorn, Sierra Nevada bighorn sheep, and peninsular bighorn sheep.); see also WAHID Interface database, World Organization for Animal Health (OIE) (According to FMD disease notifications submitted to the OIE, the Republic of South Africa attributes its 2009 outbreak of FMD to “contact with wild species;” Botswana likewise attributes its recent FMD outbreaks to “contact with wild species.”), available at <http://www.oie.int/wahis/public.php?page=home>.

barriers to prevent both wildlife and domestic wildlife from entering Santa Catarina.²¹ APHIS fails completely to address how administrative controls would prevent FMD-susceptible wildlife species from freely entering Santa Catarina and spreading FMD. Moreover, and as discussed in Section B. above, APHIS lacks data regarding the potential for FMD to spread to U.S. wildlife populations as had occurred during the 1920s when the U.S. had its last outbreak of FMD, and as had occurred with both brucellosis in the Greater Yellowstone Area and bovine tuberculosis in the Michigan deer population.

As a result of APHIS' failure to adequately assess the risks of FMD introduction and spread in wildlife populations, APHIS has grossly understated the potential risks for FMD outbreaks in Santa Catarina, Brazil, as well as the potential risks for an uncontrollable FMD outbreak in the United States should FMD be spread to U.S. wildlife populations as a result of APHIS' proposed relaxation of import restrictions for Brazil.

F. APHIS Fails Completely to Assess the Risk of FMD Posed by Climatological Events in Santa Catarina, Brazil

Though APHIS is well aware that the international regionalization concept it has adopted is dependent on an assessment of climatological factors,²² APHIS makes no effort to assess the risk of FMD posed by climatological events known to occur in Santa Catarina, Brazil. For example, although APHIS identifies unmonitored garbage dumps as posing a significant risk for FMD transmission in Brazil, it summarily dismisses these risks based on its finding that the enforcement of Brazilian laws makes animal garbage feeding unlikely.²³ Yet, APHIS ignores completely the climatological propensity for widespread, major flooding in Brazil, which would negate completely any legal-based mitigation against the consumption of garbage by susceptible animals.²⁴ As a result of this significant deficiency, APHIS has grossly understated the potential risk for FMD outbreaks and FMD spread in Santa Catarina, Brazil.

²¹ See Brazil Risk Evaluation, USDA, APHIS, January 16, 2009, at 30 (APHIS states that "most of the controls of animal movement and their products are administrative," meaning that there are limited natural barriers to wildlife and animal movements into Santa Catarina from surrounding areas.).

²² See, e.g., 62 Fed. Reg., 56027, col. 2 ("APHIS is altering its traditional country-based import restrictions by recognizing that there are identifiable and measurable gradations in the degree of disease risk presented by imported animals and animal products, and that these gradations are often tied more to climatological, geographical, and biological factors than to national political boundaries."); see also Appendices to PL107-9 Inter-Agency Working Group Final Report, Animal Disease Risk Assessment, Prevention, and Control Act of 2001 (PL 107-9), PL 107-9 Inter-Agency Working Group, Final Report, January 2003, at 1-3. (USDA defines regionalization as "A procedure implemented to define geographical areas of differing animal disease risk based on biological, climatological, and geographical factors within a country or among multiple countries, usually for the purpose of facilitating international trade of animals or animal products.").

²³ See Brazil Risk Evaluation, USDA, APHIS, January 16, 2009, at 62.

²⁴ See Floods in Santa Catarina, Brazil, Earth Observatory, NASA ("As of November 26, 2008, at least 86 people had died in southeastern Brazil as a result of flooding and landslides brought about by a period of heavy rain, reported CNN."), available at <http://earthobservatory.nasa.gov/NaturalHazards/view.php?id=36035>; see also, Brazil in "state of emergency" after destructive storm, Hazel Heyer, ETN Staff Writer, Sep. 13, 2009 ("Authorities in Brazil has called a state of emergency in its southern state of Santa Catarina following a powerful storm that swept through the south of the country earlier in the week.").

G. APHIS' Proposed Rule Demonstrate an Unscientific Bias in Favor of Brazil

In the Proposed Rule, APHIS accords the OIE and OIE's recommended guidelines inexplicable though great scientific deference to validate its decision to lift FMD restrictions, rather than the agency to undertake its own scientific due diligence to determine the actual risk for FMD in Brazil.²⁵ The OIE has established presumably uncontroverted scientific standards for determining when an outbreak of FMD is to be reported by member countries. In 2006, Brazil followed the OIE's scientific standards for reporting FMD outbreaks and 6 new outbreaks of FMD and 20 new FMD cases were reported in February 2006 in the Brazilian State of Paraná.²⁶ Brazil further provided evidence to the OIE that it stated was consistent with OIE's standard for determining the occurrence of a FMD outbreak and that "prove that infection by the FMD virus is present in the State of Paraná . . ."²⁷ Brazil began the process of stamping out the outbreaks in the State of Paraná on or about March 15, 2006, and by March 28, 2006, it had killed 6,781 cattle.²⁸ It was not until Oct. 18, 2006, that Brazil was able to confirm that the FMD virus was no longer circulating in the Brazilian State of Paraná.²⁹ On July 11, 2007, Brazil reported that 84,676 Brazilian cattle were destroyed as a result of FMD outbreaks in 2005 and 2006, which would include cattle destroyed in the Brazilian State of Paraná.³⁰

Notwithstanding the fact that Brazil, in presumed conformity with OIE's presumed scientific guidelines, continued to fight and report the presences of the FMD virus in the Brazilian State of Paraná in 2006, APHIS' Proposed FMD Rule unscientifically and deceptively claims that "the last FMD outbreak in Paraná occurred in 2005." 75 Fed. Reg., 19917, col. 1. This statement is in direct contradiction to the very OIE standards regarding FMD control and eradication that APHIS scientists purport to rely on to convince decision-makers to lift FMD restrictions for Brazil. APHIS scientists have thereby demonstrated unscientific bias in favor of Brazil by touting OIE standards when it furthers their own agenda and omitting factual OIE data when it does not.

H. APHIS' Proposed Rule Is Inconsistent with USDA's Congressional Mandate to Protect Against the Introduction and Spread of Animal Diseases and Pests

The U.S. Animal Health Protection Act (AHPA) charges USDA with protecting the American people and the U.S. cattle herd from FMD. Congress was clear that "the prevention, detection,

²⁵ See, e.g., 75 Fed. Reg., 19918, col. 3 (With respect to the adequacy of Brazil's disease surveillance USDA states, "The surveillance and monitoring [in Brazil] follow OIE guidelines, therefore, APHIS concluded that the serologic sampling is valid and the sampling coverage is adequate. (Emphasis added.)).

²⁶ See Detailed Country (ies) Disease Incidence, Foot and Mouth Disease, Brazil, WAHID Interface database of the OIE for the period beginning 2005, available at <http://www.oie.int/wahis/public.php?page=home>.

²⁷ See Follow-up Report No. 14, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, June 1, 2006 (The report states that certain establishments in the Brazilian State of Paraná remain under a ban as of June 1, 2006, due to an FMD outbreak and confirmation of that outbreak is cited by reference to Brazil's Follow-up Report No. 12, which is the specific report from which the quote was taken).

²⁸ See Follow-up Reports Nos. 18 and 19, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, March 15 and March 29, 2006, respectively.

²⁹ See Follow-up Reports No. 27, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, Oct. 23, 2006.

³⁰ See Follow-up Reports No. 29, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, July 11, 2007.

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).

Clearly, APHIS’ admission that lifting FMD restrictions for Brazil (or any other FMD-affected country), through its regionalization scheme, will increase the United States’ risk for FMD above its current level of risk demonstrates that the Proposed Rule, and the agency’s regionalization scheme underpinning the Proposed Rule, is in direct violation of USDA’s statutory duty to take action to prevent the introduction of FMD into the United States from countries known to be FMD-affected.

I. APHIS’ Argument that the United States Must Adopt Regionalization to Preserve Global Export Markets in the Event of a U.S. FMD Outbreak is Meritless

Recent history clearly demonstrates that when it comes to dangerous and destructive livestock diseases, U.S. export markets *do not* reciprocate when APHIS unilaterally lifts U.S. disease-related import restrictions to comply with the WTO or OIE directive to facilitate trade. For example, the U.S. unilaterally lifted its BSE-related prohibition against the importation of beef from cattle over thirty months of age (OTM) for both Japan (in 2005)³¹ and Canada (in 2007).³² Yet today, several years later, U.S. export markets, including Japan, South Korea and Mexico, continue to prohibit OTM beef from the United States.³³ Moreover, and as discussed above, Brazil, Argentina, Uruguay and South Africa – countries either with past or pending requests to be regionalized by the United States – continue to prohibit the importation of *any* U.S. beef.³⁴ As a practical matter, regionalization is a one-way street.

It is highly unlikely that international regionalization, which was designed specifically for disease-affected developing countries, would even be applicable to the United States should an outbreak of FMD occur. This is because of the unique concentrated structure of the U.S. cattle industry and beef industry combined with the general absence of geographical formations, such as mountain ranges or large expanses of water, that would serve as a barrier for *livestock and wildlife* within the High Plains region of the U.S. – the region where about 75 percent of all U.S. beef is produced and where 80 percent of U.S. cattle are fed.³⁵ If an outbreak of FMD were to occur in the High Plains, the vast majority of U.S. livestock on feed and the vast majority of U.S. beef would be ineligible for export. Moreover, because there is insufficient packing and feeding

³¹ See 70 Fed. Reg., 73905-919 (Dec. 14, 2005) (USDA lifted BSE restrictions for Japan to allow the importation of whole muscle cuts of boneless beef derived from cattle of any age that were born, raised, and slaughtered in Japan.).

³² See 72 Fed. Reg., 53314-378 (Sept. 18, 2007) (USDA lifted BSE restrictions for Canada to allow the importation of beef from cattle of any age.).

³³ See Index of Export Requirements for Meat & Poultry Products, USDA, Food Safety and Inspection Service (FSIS), available at http://www.fsis.usda.gov/regulations_&_policies/Index_of_Import_Requirements_by_Country/index.asp.

³⁴ *Ibid.*

³⁵ See Amended Complaint, United States of America, et al. v. JBS S.A. and National Beef Packing Company, Civil Action No. 08-CV-5992, U.S. District Court, Northern District of Illinois, Eastern Division, Nov. 7, 2008, at 6 (The U.S. Department of Justice states, “Approximately three-quarters of the fed cattle packing capacity in the United States is found in this region [the High Plains], along with close to 80% of all cattle on feedlots.”).

capacity outside the High Plains to accommodate all the feeder cattle produced outside the High Plains, the prospects for U.S. cattle producers to continue exporting beef from either east of the Mississippi River or west of the Rocky Mountains would be exceedingly slim. Conversely, if an outbreak occurred outside the High Plains, the value of those cattle remaining outside the High Plains likely would fall dramatically because there is insufficient packing capacity outside the High Plains to even bring the beef derived from those outlying cattle to the domestic market. And, movement restrictions would preclude the transport of cattle into the High Plains for feeding and slaughter as such transport would result in the commingling of livestock between free and non-free regions, which would jeopardize the ability of High Plains' packers to export beef.

The only effective strategy to minimize, to the greatest extent possible, the risk of FMD introduction into the United States is for the U.S. to reinstate strict disease import restrictions, which means the U.S. should not regionalize foreign countries that are not completely free of FMD. Regionalization was neither designed nor intended for the United States. It was designed and intended to enable developing countries to access the U.S. market before those developing countries make the necessary investment and take the necessary steps to eradicate FMD. The regionalization of foreign disease-affected countries increases the United States' risk of FMD introduction, without providing the United States with any compensation or benefit.

J. APHIS Has Misapprehended Santa Catarina's Inherent Risk for FMD Associated with the Size, Scope, Density, and Complexity of Santa Catarina's Cattle Industry

APHIS attempts to dismiss the potential risk posed to the U.S. from the regionalization of Brazil in large part by downplaying the size and scope of the cattle industry and beef industry in Santa Catarina, Brazil. APHIS states that, "As noted in the risk evaluation for this rule, Santa Catarina contains less than three percent of Brazil's cattle, most of which are dairy animals."³⁶ However, this minimization of the potential impact that Santa Catarina, may have on increasing the risk of FMD introduction into the U.S. based on the size and scope of Santa Catarina's cattle industry and beef industry is highly misleading. When compared to the 50 U.S. States, Santa Catarina, with over 164,000 cattle operations, has more cattle operations than any State in the United States.³⁷ The U.S. State of Texas, with 152,000 cattle operations, has more cattle operations than any other U.S. State, and yet, it is far surpassed by Santa Catarina.³⁸ Also, Santa Catarina, with 2.75 million cattle,³⁹ would rank tenth in the United States in terms of the size of its cattle inventory.⁴⁰ In fact, Santa Catarina has more cattle than are in the U.S. States of Montana, Colorado, Kentucky, Minnesota, North Dakota, and Wyoming, to name just a few of the 41 U.S. States that have fewer cattle than are in Santa Catarina. In addition, Santa Catarina has four federally inspected slaughterhouses and 34 State inspection service slaughterhouses that

³⁶ Economic Analysis and Certification Statement, Proposed Rule: Recognition of the Brazilian State of Santa Catarina as free of foot-and-mouth disease, rinderpest, swine vesicular disease, classical swine fever, and African swine fever to allow importation of live ruminants, live swine, and their products from Santa Catarina, USDA, APHIS, Docket No. 09-034-1, July 1, 2009, at 1.

³⁷ See Brazil Risk Evaluation, USDA, APHIS, January 16, 2009, at 41.

³⁸ See Farms, Land in Farms, and Livestock Operations 2008 Summary, USDA National Agricultural Statistics Service (hereafter "NASS"), February 2009, at 18.

³⁹ See Brazil Risk Evaluation, USDA, APHIS, January 16, 2009, at 41.

⁴⁰ See Cattle, USDA, National Agricultural Statistics Service, January 2010, at 2,

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slaughter cattle, for a total of 38 cattle slaughterhouses.⁴¹ When compared to the number of bonded livestock packers in the United States, there are more cattle slaughtering houses in Santa Catarina than there are bonded packers in any one of the United States' 50 states.⁴²

Thus, when compared to any State in the United States, the size and scope of Santa Catarina, Brazil's, cattle industry and beef packing industry is huge. It has more cattle operations than any State in the Union, it has more cattle slaughter houses than any State in the Union has bonded packers, and its cattle inventory would rank tenth in size in the United States. Santa Catarina, Brazil, has a huge population of cattle as well as a huge potential to produce substantial volumes of beef, both of which are factors that significantly heighten the risk of introducing FMD into the United States from Brazil. APHIS is doing a tremendous disservice to U.S. citizens through its attempts to downplay the size, scope, density and complexity of Santa Catarina, Brazil's, cattle industry and beef industry.

K. Conclusion

The foregoing discussion demonstrates that APHIS lacks the capacity to evaluate the actual risks for FMD in countries with a history of FMD outbreaks and is incapable of predicting when an outbreak of the dangerous FMD virus will occur. Instead, APHIS is engaged in a high-risk and dangerous exercise of granting undeserved deference to the OIE, making optimistic conclusions when faced with scientific uncertainty, and acting in a reactionary manner following the occurrence of FMD outbreaks rather than exercising precaution to protect U.S. livestock from the introduction of FMD.

Given the overwhelming failure of APHIS' persistent efforts to lift essential FMD restrictions, the United States is fortunate that APHIS' actions have not already resulted in the introduction of FMD. R-CALF USA is deeply disappointed in the agency's cavalier attitude toward its duty to protect the U.S. against the introduction of foreign animal diseases, a duty the agency continues to spurn as is so clearly evidenced by the Proposed Rule.

For the reasons set forth above R-CALF USA urges APHIS, in the strongest way possible, to not only immediately withdraw its Proposed Rule; but also, to immediately initiate a rulemaking to disallow *any* relaxation of U.S. import restrictions for *any* country that has not scientifically demonstrated that foot-and-mouth disease (FMD) has been eradicated *completely* in every region within its national borders.

Sincerely,



R.M. (Max) Thornsberry, D.V.M.

R-CALF USA President of the Board

⁴¹ See Brazil Risk Evaluation, USDA, APHIS, January 16, 2009, at 46.

⁴² See Packers and Stockyards Statistical Report, 2006 Reporting Year, USDA, Grain Inspection Packers and Stockyards Administration, May 2008, at 67, 68.