

Fighting for the U.S. Cattle Producer!



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The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Kevin Shea, Administrator
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U.S. Department of Agriculture
4700 River Road
Riverdale, MD 20737-1234

The Honorable Phyllis K. Fong
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Re: R-CALF USA's Data Quality Act Complaint Regarding the USDA APHIS' Animal Disease Traceability (ADT) Summary of Feedback on the ADT Program: Request for Correction of Information Submitted Under USDA's Information Quality Guidelines

Dear Secretary Perdue, Inspector General Fong, Mr. Shea, and Ms. Williams:

On September 18, 2017 the U.S. Department of Agriculture ("USDA") Animal and Plant Health Inspection Service ("APHIS"), released a report titled *Animal Disease Traceability (ADT) Summary of Feedback on the ADT Program* ("ADT Feedback Report").¹ This ADT Feedback Report purportedly "summarizes the most recent stakeholder feedback that APHIS received during a series of nine public meetings held across the country in April thru July of this year and through a Federal Registry notice requesting comment on the program."² This ADT Feedback Report is

¹ Attachment 1.

² *Id.*

intended to serve as the foundation for USDA APHIS' *Animal Disease Traceability (ADT) Summary of Program Reviews and Preliminary Next Step Recommendations* document that will be presented by USDA APHIS at the Traceability Forum—co-hosted by the National Institute for Animal Agriculture (NIAA) and the United States Animal Health Association (USAHA) in Denver, Colorado, on September 26 – 27, 2017.³

As discussed below, however, the ADT Feedback Report is factually inaccurate, unreliable, and biased. It constitutes government-promoted propaganda tilted to favor private corporations by subjugating the interests of the thousands of American ranchers whose written and verbal comments to USDA APHIS are in direct contradiction to the false representations USDA APHIS has included in its ADT Feedback Report. The ADT Feedback Report, therefore, lacks objectivity, utility and credibility.

For the reasons mentioned above and more fully described below, R-CALF USA hereby requests a correction of information regarding the ADT Feedback Report under Section 515 of Public law 106-554 (codified at 44 U.S.C. §3516 and commonly referred to as the “Data Quality Act”) and under the U.S. Office of Management and Budget’s (“OMB’s”) implementing guidelines for the Data Quality Act and USDA’s Information Quality Guidelines (collectively “Information Quality Guidelines”). In addition, R-CALF USA requests that when an investigation into the allegations contained herein is initiated, the USDA issue a formal notice to each recipient of the ADT Feedback Report as well as to the general public informing them that the ADT Feedback Report, along with any and all ensuing reports for which the ADT Feedback Report is used as a foundation, e.g., APHIS' *Animal Disease Traceability (ADT) Summary of Program Reviews and*

³ Notice: Animal Disease Traceability (ADT) Summary of Feedback on the ADT Program, USDA APHIS, September 18, 2017, available at <https://content.govdelivery.com/accounts/USDAAPHIS/bulletins/1b7dbc8>.

Preliminary Next Step Recommendations document, are being withdrawn pending a review of a complaint filed under the Data Quality Act and related Information Quality Guidelines.

R-CALF USA's request for information correction is based on the fact that the ADT Feedback Report fails to meet the minimum standards set forth in the Data Quality Act and the Information Quality Guidelines. Consequently, the ADT Feedback Report, which is a highly influential document, misleads and deceives America's ranchers, Congress and the public regarding the true nature of the concerns that have been formally conveyed to the USDA APHIS regarding the agency's efforts to expand its controversial animal disease traceability system.

The genuine concerns of the thousands of American ranchers who articulated their important concerns through their respective associations should not be so blatantly misrepresented by their federal government as they were by the USDA APHIS. Governmental integrity and accountability dictate that the errors, omissions, biases and falsehoods contained in the ADT Feedback Report, as identified and documented herein, must be immediately corrected.

I. THE ADT FEEDBACK REPORT IS INFLUENTIAL INFORMATION AND SHOULD BE SUBJECTED TO AN ADDED LEVEL OF SCRUTINY UNDER USDA'S INFORMATION QUALITY GUIDELINES

As a preliminary matter, the ADT Feedback Report meets and exceeds the USDA's Information Quality Guidelines definition of *influential information*. The USDA defines *influential information* as "information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or important private sector decisions."⁴ As stated above, the ADT Feedback Report is intended to serve as the foundation for the agency's preliminary next step recommendations in its document titled *Animal Disease Traceability (ADT) Summary of Program Reviews and Preliminary Next Step Recommendations* ("Next Steps document"), which

⁴ USDA's definition of *Influential Scientific, Financial or Statistical Information*, Background, Office of the Chief Information Officer, available at <http://www.ocio.usda.gov/policy-directives-records-forms/guidelines-quality-information/background>.

clearly demonstrates the importance and influential nature the agency has assigned to its ADT Feedback Report.

Also, the ADT Feedback Report meets and exceeds the USDA's two-factor test of breadth and intensity for determining whether information is influential.⁵ First, the ADT Feedback Report impacts a broad range of parties because any government-mandated expansion of current animal identification requirements will have a clear and substantial impact on the entire U.S. cattle industry, including every producer and every marketing channel representative therein. Second, any government-mandated expansion of current animal identification requirements will have an intense impact on everyone involved in the U.S. cattle industry, including producers and marketing channel representatives, because they will be: 1) subject to added costs to raise their livestock; 2) subject to penalties if they do not comply with the government mandate; 3) burdened with additional record-keeping requirements; and, 4) their rights to privacy and rights to maintain confidential and proprietary business information may be impinged should they be required to disclose the number, age, birthplace, current location and movement of all livestock. Additionally, the ADT Feedback Report constitutes influential information because it provides the very foundation for the agency's Next Steps document that will disclose what steps the USDA APHIS has decided to take in its quest to expand government-mandated animal identification requirements.

As demonstrated below, the highly influential ADT Feedback Report fails in every respect to meet even the most rudimentary of quality standards, let alone the standards of quality established by Congress under the Data Quality Act and by the OMB and the USDA in their respective quality guidelines, and it most certainly fails to meet the added scrutiny required due to its influential nature.

⁵ See *id.*

II. THE ADT FEEDBACK REPORT FAILS TO MEET EVEN THE MOST LENIENT INTERPRETATION OF OBJECTIVITY UNDER THE USDA'S INFORMATION QUALITY GUIDELINES

As herein described, the ADT Feedback Report fails in every respect to meet even the most lenient interpretation of the USDA's objectivity standard that unambiguously requires disseminated information to be "substantially accurate, reliable, and unbiased and presented in an accurate, clear, complete, and unbiased manner."⁶

A. In Its ADT Feedback Report, the USDA APHIS Falsifies Important Concerns Expressed by Thousands of American Ranchers Through Their Respective Associations.

The USDA APHIS has falsified the outcome of its public meetings and the comments submitted pursuant to its Federal Registry notice regarding the agency's Animal Disease Traceability rule. It did this by omitting and misrepresenting important concerns that thousands of American ranchers had expressed to the agency both verbally and in written comments through their respective associations. The ADT Feedback Report falsely states:

While a large number of stakeholders acknowledged that beef feeders need to be included in the official ID requirements at some point, the consensus was to address the gaps in the current framework, which covers beef breeding cattle over 18 months of age and all dairy, before expanding the official ID requirements to beef feeder cattle (emphasis added).⁷

It further falsely states:

Additional points of consensus regarding the official ID for beef feeders included:

...

- Beef feeders could be included after an expanded framework is fully functional for breeding animals, including the requirement for official ID with EID and the supporting infrastructure (emphasis added).⁸

⁶ USDA Office of Chief Information Officer, Information Quality Activities, General Information, available at <http://www.ocio.usda.gov/policy-directives-records-forms/information-quality-activities>.

⁷ Attachment 1, at 2.

⁸ *Id.*

Webster's Dictionary and Thesaurus defines the term consensus as “an opinion held by all or most; general agreement, esp in opinion.”⁹ Having a consensus on a controversial topic, e.g., on whether the government should, at some point in the future, mandate that all cattle under 18 months of age be fitted with an electronic ear tag, is extremely powerful and influential. Every lobbyist and decision-maker knows that under the rubric of a consensus, even the most controversial of issues can be settled in favor of the party to which the consensus tilts. However, the record shows that USDA APHIS obtained no such consensus on the question of whether younger cattle (*i.e.*, cattle under 18 months of age, also referred to as beef feeders) should ever be included under a mandatory animal identification requirement, let alone be included among cattle that must be identified with electronic identification devices.

On April 7, 2017, R-CALF USA was among four organizations that jointly submitted a letter to the President and to the Acting Secretary of Agriculture urging that the USDA “stop all action directed toward the expansion of the existing ADT program . . .”¹⁰ On July 30, 2017, R-CALF USA was among 40 organizations that jointly submitted written comments to the USDA APHIS under the agency's Federal Register notice requesting comment on the agency's ADT program.¹¹ With approximately 5,000 cattle-producing members, signatory R-CALF USA is the largest producer-only cattle trade association in the United States. Based on information and belief, and certainly subject to check, the other 39 signatories on the joint comments represent thousands more cattle producers impacted by the agency's ADT program. Also subject to check, many of the signatories on these joint comments, including R-CALF USA, were the principal organizations that caused the USDA APHIS to withdraw its proposed National Animal Identification System (NAIS) prior to the agency's issuance of its current, scaled-down version called ADT. In other words, no semblance of a

⁹ Webster's Dictionary and Thesaurus, Second edition (2002), Geddes & Grosset.

¹⁰ Attachment 2.

¹¹ Attachment 3.

consensus could possibly be reached unless these 40 organizations, which represent many if not most of the cattle ranchers and marketing channel representatives that participated in the agency's meetings and Federal Register comments, either acquiesced on a particular issue or at least remained neutral.

But on the critical question of whether the USDA APHIS should ever require younger cattle to be officially identified with electronic ear tags after the current ADT is fully functional (the ADT Feedback Report states this question was the "primary topic of discussion at meetings"¹²), the 40 signatories that clearly represent a major segment, if not the largest segment, of the interests participating in the agency's forums, were neither acquiescent nor neutral. In fact, they were adamantly opposed to this proposal. Those 40 signatories representing many, if not most, of America's ranchers who choose to belong to any association, emphatically stated in their joint comments:

The undersigned organizations urge USDA **not** to take any steps to adopt new requirements related to animal traceability at this time (emphasis in the original).¹³

The undersigned organizations thus raise objections to both (i) Phase Two of the ADT program, and (ii) further expansion of animal ID requirements.¹⁴

Identifying feeder cattle (Phase II of ADT) is not warranted or realistic at this time. . . The undersigned organizations do **not** support such an extension at this time, and the information presented by USDA for these meetings does not support any such extension (emphasis in the original).¹⁵

Further expansion of animal identification requirements is unwarranted and Infeasible. The USDA should not establish requirements for intra-state animal ID, nor for the mandatory use of electronic forms of ID.¹⁶

¹² Attachment 1, at 2.

¹³ Attachment 3, at 1.

¹⁴ *Id.*

¹⁵ *Id.*, at 2.

¹⁶ *Id.*, at 3.

It is not possible for any person or persons of integrity to interpret the joint comments of the 40 organizational signatories as agreeing, in any way, with USDA APHIS' claim that there is industry consensus for the proposition that:

Beef feeders could be included after an expanded framework is fully functional for breeding animals, including the requirement for official ID with EID and the supporting infrastructure (emphasis added).

Although the 40 signatories qualified their adamant opposition to expanding the ADT and including younger cattle with the phrase "at this time," that qualification: 1) does not anywhere apply to the mandatory use of electronic forms of animal identification; and 2) does not anywhere identify any contingency under which the signatories would ever support the inclusion of younger cattle under the ADT. In fact, the 40 signatories specifically addressed the proposal for the inclusion of younger (feeder) cattle by stating:

While the USDA meeting handout calls the lack of feeder cattle ID a problem, no real reasons are provided. The handout mentions the risk of disease, but the agency has provided no data about how many outbreaks have been linked to feeder cattle or the scope of any such outbreaks.¹⁷

The USDA APHIS' claim of a consensus is patently false, deceitful, and constitutes government-promoted propaganda designed to further the interests of private corporations at the expense of America's ranchers. The USDA APHIS has so skewed the outcome of its ADT-related meetings and comments that it can no longer be relied upon to objectively evaluate either the present or future need for revisions to the ADT.

B. The ADT Feedback Report Is Biased Toward a Handful of Private Corporations that Seek Pecuniary Gain By Encouraging the Expansion of the ADT.

The USDA APHIS' bias that tilts decisively in favor of ear tag companies that seek pecuniary gain should the ADT be expanded permeates the entire ADT Feedback Report. As stated above, when the USDA APHIS announced the issuance of its ADT Feedback Report, it concurrently

¹⁷ Attachment 3, at 2.

announced that the report would be included in the agency's presentation to be held at the Traceability Forum co-hosted by two private corporations, the National Institute for Animal Agriculture (NIAA) and the United States Animal Health Association (USAHA). In order to participate in this government unveiling of public comments (e.g., the ADT Feedback Report) and related government decisions (e.g., the Next Steps document), the public has to pay a fee in the amount of \$160 to \$185 to a private, membership-based corporation just for the privilege of participating at the venue the government has chosen to conduct its important, purportedly public work.¹⁸ And, that private membership-based corporation is a virtual who's who of private ear tag and related companies that seek pecuniary gain from the USDA APHIS' proposal to require electronic ear tags on younger cattle.¹⁹ Indeed, commercial companies that stand to gain from the USDA APHIS' proposal are seated on the NIAA's board of directors.²⁰

Taken together, the USDA APHIS' falsification of the outcome of its ADT-related meetings and comment period, and its decision to unveil those false outcomes and subsequent documents based upon those false outcomes in the belly of the commercial enterprises that stand to benefit from the USDA APHIS' actions, clearly demonstrate that USDA APHIS' ADT Feedback Report is biased in favor of private corporations who stand to gain from the USDA APHIS' actions and tilted against American ranchers.

III. THE ADT FEEDBACK REPORT LACKS ANY SEMBLANCE OF UTILITY

¹⁸ See Strategy Forum on Livestock Traceability, National Institute for Animal Agriculture, Registration available at <http://www.animalagriculture.org/LTF-Registration-Information>.

¹⁹ See, e.g., Member Directory, National Institute for Animal Agriculture (listing commercial ear tag companies including AniTrace, Y-Tex Corp. and Allflex USA, to name a few), available at <http://www.animalagriculture.org/Member-Directory>.

²⁰ See NIAA Board, National Institute for Animal Agriculture (listing two representatives from Allflex), available at <http://www.animalagriculture.org/Board-Members>.

R-CALF USA incorporates by reference all the foregoing allegations as if fully restated here. Further, R-CALF USA asserts that USDA APHIS' dissemination of false information that directly contradicts the important concerns expressed by many, if not most, of the cattle producers and marketing channel representatives who participated in the ADT meetings and comment period lacks any semblance of usefulness and is, therefore, lacking in utility.

IV. THE ADT FEEDBACK REPORT FAILS TO MEET EVEN THE MOST LENIENT INTERPRETATION OF THE TERM INTEGRITY UNDER INFORMATION QUALITY GUIDELINES.

R-CALF USA incorporates by reference all the foregoing allegations as if fully restated here. Further, R-CALF USA asserts that USDA APHIS' dissemination of false information that directly contradicts the important concerns expressed by many, if not most, of the cattle producers and marketing channel representatives who participated in the ADT meetings and comment period constitutes a demonstrable lack of integrity.

V. CONCLUSION

The foregoing discussion demonstrates that the USDA's highly influential ADT Feedback Report is a sham. It violates the Data Quality Act and both the OMB's and the USDA's Quality Information Guidelines because it is demonstrably inaccurate, unreliable and biased. These deficiencies render the report useless for its intended purpose and extraordinarily harmful to R-CALF USA members and other United States cattle ranchers.

Honesty, integrity and accountability demand that the ADT Feedback Report be corrected to accurately reflect the actual outcomes of the USDA APHIS' ADT meetings and comment period. The general public and America's ranchers are being irreparably harmed by this factually inaccurate, unreliable, and biased ADT Feedback Report.

R-CALF USA recommends that the ADT Feedback Report be corrected by the issuance of an official notice stating that the ADT Feedback Report and all subsequent documents associated with it are being withdrawn pending the initiation of a new analysis that meets the Data Quality Act's standards for accuracy, reliability, objectivity, integrity and utility.

Time is of the essences regarding this Request for Correction of Information.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized and cursive, with a large initial "B" and "B".

Bill Bullard, CEO

Attachments: Attachments 1-3