

Fighting for the U.S. Cattle Producer!



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Docket No. APHIS-2009-0017,
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-2009-0017, RIN 0579-AD41:
Importation of Beef from a Region in Brazil**

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: *Importation of Beef from a Region in Brazil* (Proposed Rule), published at 78 Fed. Reg. 77,370 - 376 (Dec. 23, 2013). The Proposed Rule would allow the importation of fresh and chilled beef from 14 states in Brazil even though such products can transmit the foot-and-mouth disease (FMD) virus and FMD remains endemic in vast areas of Brazil.¹

For the reasons stated below, R-CALF USA urges APHIS to abandon its Proposed Rule that would, without question, expose the United States livestock industry to an unnecessary and avoidable risk of introducing FMD, which would potentially cause upwards of \$42 billion in damages to the U.S. cattle industry and related businesses.²

A. APHIS Knows the Risk Associated with the Proposed Rule Is Too Great But Its Loyalties to Transnational Corporations and Foreign Governments Are Trumping Its Duty to Protect the Health and Safety of the U.S. Livestock Herd for Independent U.S. Livestock Producers.

APHIS' own choice of terminology used throughout its risk analysis for the Proposed Rule clearly reveals that the agency's so-called scientific conclusions are trumped by its political ambition to allow transnational corporations to begin sourcing substitutes for U.S.-produced beef even from countries that are known to pose a serious threat of introducing FMD into the United

¹ Risk Analysis: Foot-and-Mouth Disease (FMD) Risk from Importation of Fresh (Chilled or Frozen), Maturated, Deboned Beef from a Region in Brazil into the United States, USDA APHIS, December 2013 (hereafter Brazil Risk Analysis), at 65 (stating that FMD is endemic in the northern part of Brazil).

² See *id.*, at 8.

States. APHIS admits that the consequences of an FMD outbreak in the U.S. would be either “very high”³ or “extremely high,”⁴ while it consistently states that the risk of actually introducing FMD into the U.S. as a result of the Proposed Rule is no lower than “low,”⁵ *i.e.*, it is neither very low nor extremely low.

This is telling. From a scientific standpoint APHIS’ choice of words is an admission that the Proposed Rule’s “low” risk for disease introduction nevertheless harbors an unacceptably high probability of causing a catastrophic consequence in the United States. Thus, APHIS’ recommendation to allow the importation of fresh beef from Brazil is wholly inconsistent with its conclusion that there is a high probability of a catastrophic event associated with the risk that APHIS characterizes as “low.” This is because APHIS knows full well that a “low” risk is actually a risk characterization that falls in the exact middle of APHIS’ own science-based, five-degree risk continuum that includes negligible risk, slight risk, low risk, moderate risk, and high risk.⁶ Thus, and unless APHIS’ characterization of the risk of introducing FMD into the U.S. as “low” is arbitrary and capricious, then its risk characterization can only be scientifically interpreted to mean that it is as likely as not that U.S. livestock will become infected with FMD if APHIS were to approve the Proposed Rule.⁷

B. APHIS is Conflicted Because It Has a Vested Interest in a Favorable Outcome for Its Proposed Rule and Should Not be Trusted to Provide an Unbiased, Scientific Analysis.

APHIS states that its Veterinary Services (VS) is intimately involved in a FMD surveillance program in Brazil that is or will be primarily financed by the World Bank and the Inter-American Development bank and is or will be subject to periodic reviews and evaluations.⁸ Thus it appears that APHIS receives remuneration for providing veterinary services to Brazil, presumably for the purpose of helping Brazil to expand its export opportunities. If R-CALF USA’s logical presumption is correct, then APHIS has a pecuniary interest in assisting Brazil to gain greater market access in the United States despite Brazil’s heightened risk for FMD as the achievement of such increased market access would assist APHIS in receiving favorable reviews and evaluations from the programs’ financiers. If APHIS is receiving any financial remuneration for any services related to Brazil’s ongoing FMD problem, then APHIS has a direct conflict of interest and should not be relied on to provide an unbiased, scientific analysis of the risks of introducing FMD into the United States as a result of the agency’s Proposed Rule.

³ *Id.*, at 8, 78.

⁴ *Id.*

⁵ *Id.*, at 8-9, 71, 74, 78.

⁶ See 62 Fed. Reg. 56,029/2 (describing how APHIS has established five benchmarks of general risk characterization).

⁷ APHIS appears to recognize the scientific basis for establishing a continuum for characterizing risks as it references six risk levels used by Brazil. See Brazil Risk Analysis, at 41. Also, when APHIS determines a risk is “very low” rather than simply “low,” it states so as is demonstrated when APHIS asserts that because Brazil’s pH meters are calibrated regularly, machine error is likely to be “very low. . .” *Id.*, at 73.

⁸ Brazil Risk Assessment, at 31.

C. APHIS Environmental Assessment Draws Conclusions Regarding the Risk of Introducing FMD Into the United States That Are Not Supported by APHIS' Risk Assessment.

APHIS' Proposed Rule and supporting documents read more like a cheerleader's playbook than a scientific analysis of the impact of relaxing the United States' crucial disease-prevention border controls. APHIS' documents suggest that no risk is too great and the agency is willing to write virtually anything to win support for its cause, even if there is absolutely no basis for its boisterous claims. For example, and as discussed above, the risk of introducing FMD into the United States as a result of the Proposed Rule is "low" according to APHIS' 86-page risk analysis. But, this does not stop the agency from making the wholly unsupported claim in its environmental assessment that the risk of introducing FMD as a result of the Proposed Rule has miraculously become "extremely unlikely."⁹

APHIS employs a dizzying array of adjectives that effectively render its characterizations of risk meaningless, unscientific, and uninformative. APHIS has exceeded the bounds of reason by capriciously characterizing a risk that falls midway between APHIS' negligible risk classification and its high risk classification (*see supra*) as "extremely unlikely." If a "low" risk is synonymous with "extremely unlikely," what then is a "slight risk" or a "negligible risk"? Are we to believe that these higher-degreed risks are even less likely than "extremely unlikely" to occur? This is nonsensical. APHIS' flowery and gaudy characterizations of risk, which are unsupported and have no place in science, makes it impossible to ascertain the true risk associated with the agency's Proposed Rule. What can be ascertained, however, is that the Proposed Rule increases the risk of FMD introduction and it harbors a high probability that the U.S. will suffer a catastrophic event if the Proposed Rule goes into effect. R-CALF USA believes this risk is totally unacceptable.

D. APHIS is Ominously Silent Regarding Brazil's Abject Failure to Timely Notify the United States of a Significant Disease Event, Which Belies APHIS' Flowery Appraisal of Brazil's Diagnostic Capabilities.

On December 7, 2012, Brazil officials notified the World Organization for Animal Health (OIE) that an incident caused its laboratory diagnostic system to become overloaded and, consequently, Brazil had failed to notify the OIE of a reportable cattle disease until after the lapse of nearly two years.¹⁰ Further, Brazil failed to provide such notification for nearly six months after the overload problem was resolved and Brazil's National Reference Laboratory, National Agricultural Laboratory (LANAGRO-PE), Recife, Pernambuco, confirmed the presence of the reportable disease.¹¹ Despite the fact that APHIS was fully aware of Brazil's abject failure to provide timely notice to the United States regarding the outbreak of a reportable

⁹ Proposed Rule for Importation of Fresh Beef from a Region in Brazil, Environmental Assessment, USDA-APHIS, December 2013 (hereafter Environmental Assessment), at 28.

¹⁰ See Brazil's notification to the World Organization for Animal Health, OIE, Dec. 7, 2012, available at http://www.oie.int/wahis_2/public/wahid.php/Reviewreport/Review?reportid=12682.

¹¹ See *id.*

disease,¹² APHIS remains not only silent regarding this unacceptable failure, but also, the agency reverts to showering Brazil with baseless accolades. For example, the 2013 APHIS team stated that Brazil's "laboratory work flow was efficiently designed, facilitating optimal turnaround times in laboratory results and enabling rapid response." Brazil Risk Assessment, at 66. APHIS' failure to assess the risk of Brazil's known and documented failure to provide timely notification of a disease outbreak is an abuse of discretion and renders APHIS' Brazil Risk Assessment woefully incomplete and unsuitable for making any science-based determination regarding the risks of allowing the importation of fresh beef from Brazil.

E. Without Sufficient Scientific Support, APHIS Improperly Dismisses the Risk that Brazilian Wildlife Can be FMD Carriers and Can Transmit FMD to Cattle.

In contradiction to empirical evidence indicating that wildlife can transmit FMD to domestic livestock,¹³ APHIS inexplicably assumes that wildlife in Brazil are somehow different and incapable of such transmission and it relies on this assumption to conclude that the risk of introducing FMD into the United States as a result of the Proposed Rule is low. However, APHIS provides no discussion regarding the likelihood that wildlife in Brazil have developed a natural immunity to the disease, which has been strengthened from one generation to the next, in response to the endemic distribution of FMD in Brazil in the past. Thus, wildlife could be asymptomatic carriers of the disease and because Brazil has been vaccinating cattle for FMD for a considerable period of time, the transmission of the FMD virus between wildlife and domestic livestock would not be expected to result in a symptomatic response.

This likelihood is a grave concern for R-CALF USA and should be of grave concern to APHIS. Unlike in Brazil and in most of the rest of South America, wildlife in the United States would have no natural immunity whatsoever for any of the FMD viral strains prevalent in Brazil. APHIS acknowledges the growing feral swine problem in the United States as well as the growing deer population,¹⁴ though it fails to give any meaningful consideration to the very real pathway for FMD introduction under the following scenario:

1. An asymptomatic carrier of FMD is slaughtered in Brazil and the resulting FMD-infected fresh beef is exported to the United States.¹⁵
2. The beef is purchased by a restaurant or institution that discards trim from the beef prior to cooking.¹⁶ The discarded trim is delivered to a landfill where feral swine consume the FMD virus and become infected.¹⁷

¹² R-CALF USA sent a letter to Secretary Vilsack complaining of Brazil's failure to report on Dec. 10, 2012.

¹³ See 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>; see also Environmental Assessment, at 18 (describing FMD infections in impalas and gazelles).

¹⁴ See Environmental Assessment, at 21 (describing the U.S.' rapidly growing populations of feral swine and deer).

¹⁵ See Brazil Risk Analysis, at 72 (stating it is possible for FMD-infected cattle to remain asymptomatic and for the resulting meat to be exported under the Proposed Rule); see also Environmental Assessment, at 20 (describing how both wild and domestic animals can be carriers without showing clinical signs).

¹⁶ See Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States, Joshua T. Cohen, et al., Harvard Center for Risk Analysis, at 33 (stating that plate waste, or discarded human food, often comes from

3. The FMD-infected feral swine then come into contact with domestic livestock and a full-scale, catastrophic FMD outbreak ensues on U.S. soil, accelerated by a lack of any natural immunity for the FMD virus in either native wildlife or domestic livestock.

F. APHIS Fails to Address the World's Second Most Likely Source of FMD Outbreaks.

Neither APHIS' Proposed Rule nor its supporting documents address a leading source of FMD outbreaks that APHIS itself described as the second-leading source of FMD outbreaks around the world from 1969-1993. That second-leading source is vaccines, "including both contaminated vaccines and escapes of virus from vaccine production facilities."¹⁸ The fact that this leading source of worldwide FMD outbreaks was ignored by APHIS, even though Brazil is likely to be highly susceptible to this outbreak source because it practices widespread vaccination, demonstrates the unscientific and incomplete nature of APHIS' campaign materials.

G. The Proposed Rule Fails to Address Uncontested, Eyewitness Reports of Unmanned Border Inspection Posts and Cross-Border Movement of Livestock.

APHIS fails to address the known, eyewitness report that there were no inspection crews at border inspection stations between Paraguay and Brazil and that cattle were crossing freely between the two countries along 254 miles of frontier between the two countries.¹⁹ Rather than to provide any meaningful, objective analysis of this known deficiency, APHIS retreats to its cheerleading mode whereby it posits that no risk is too great to deter APHIS from its deliberate campaign to introduce FMD into the United States. For example, to support its campaign APHIS emphatically states in direct contradiction to this eyewitness report that "the international borders are actively monitored and cattle populations surveyed."²⁰

H. APHIS' Flowery and Gaudy Reports of Brazil's Disease Control and Eradication Capabilities Are Deceptive Ploys Designed to Trick Americans Into Believing that Brazil's Food Production Systems and Related Food Safety Protocols Are Equal to Those in the United States.

large institutions such as amusement parks or hotels. It is logical to presume that these same institutions would discard uncooked trimmings as well as cooked plate waste).

¹⁷ See Environmental Analysis, at 18-19 (explaining that little is known about wildlife's susceptibility to FMD or about the risk that wildlife may transmit FMD to livestock).

¹⁸ Animal Disease Risk Assessment, Prevention, and Control Act of 2001 (PL 107-9), Final Report, PL 107-9 Federal Inter-agency Working Group, January 2003, at 9 (explaining that animal movements represented 36% of the sources of worldwide outbreak while vaccines represented 25% and products/garbage represented 23%).

¹⁹ See Exhibit 2 of R-CALF USA Comments in Docket No. APHIS – 2007-0158, Information from Foreign Regions Applying for Recognition of Animal Health Status, Proposed Rule, Feb. 27, 2013 (containing the article "*Paraguay Foot-and-Mouth Cattle Crossing to Brazil, Estado Says.*" The article states the reporter had driven through approximately 254 miles of frontier between Brazil and Paraguay and witnessed cattle crossing the border freely and found during a 12-hour drive that there were no inspection crews at two border inspection stations.).

²⁰ Brazil Risk Analysis, at 41.

According to APHIS, every conceivable weakness in Brazil's FMD control programs is adequately mitigated, regardless of its severity, either through Brazil's preexisting internal controls or by the minimal measures that APHIS intends first to impose on Brazil and then expects Brazil to follow. There is no basis for APHIS' fanciful indulgence. To the contrary, a July 28, 2011, news article estimated that "50 percent of all meat in Brazil has not undergone proper inspection nor supervision by the proper health authorities."²¹ Moreover, a recent audit by the USDA Food Safety and Inspection Service (FSIS) to determine if Brazil's food safety system for meat is equivalent to the United States identified serious deficiencies in Brazil's systems such as its failure to consistently implement mad cow disease mitigation requirements and ongoing findings of Ivermectin residue in Brazilian meat.²² The FSIS gave Brazil the lowest passable grade possible and disallowed the certification of any new establishments in Brazil as eligible to export meat to the United States pending a 60-day period during which Brazil must correct its food safety systems.²³ The foregoing findings belie APHIS' fanciful characterization of Brazil's meat production programs and strongly suggest that APHIS' proposed mitigation measures, including but not limited to ante-mortem and post-mortem veterinary inspections, maturation durations, complete separation of meat and certification requirements will likely be implemented is a sub-standard way that will further increase the likelihood of introducing FMD into the United States.

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

The 11 factors relied on by APHIS to evaluate the potential for foreign animal disease 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 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., 16979/1. So too was the purpose of 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., 56010/2. And, ". . . our overriding goals in implementing regionalization are to facilitate trade in accordance with international agreements. . ." 62 Fed. Reg., 56005/1. 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

²¹ Brazil Begins Crackdown on Illegal Cattle Slaughter, Andre Sulluchuco, Meatingplace.com, July 28, 2011.

²² See Brazil Final Audit Report, USDA Food Safety and Inspection Service, January 2014, at <http://www.fsis.usda.gov/wps/portal/phis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports>.

²³ See *id.*

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., 46228/3 (emphasis added).

Using those *same* 11 factors incorporated into U.S. disease regulations by international interests and by granting inexplicable deference to the OIE, APHIS previously reached the *same* conclusion it now has reached for the 14 states in Brazil when it had previously evaluated 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 beef from Argentina, even though Argentina was still carrying out vaccination for FMD. *See* 62 Fed. Reg., 56003/2. 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., 82894/1. 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 beef from Argentina under its regionalization scheme, despite this new outbreak. *See id.*, 82894/3. For nearly a year after its August 2000 outbreak, Argentina remained eligible to export fresh 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., 29897/3; 29898/1. 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 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., 82894/3; *see also* 65 Fed. Reg., 77772/1. APHIS had evaluated Uruguay’s risk for FMD and concluded it was safe for the U.S. to continue the importation of fresh 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., 7819/2, fn 1; *see also*, 66 Fed. Reg., 9641/1. 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., 65728/1; 65729/1. APHIS, however, persisted with its regionalization scheme and simply carved out KwaZulu-Natal as a province ineligible to export fresh beef to the U.S. due to FMD. *See* 64 Fed. Reg., 65728/3. 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.²⁴ On December 28, 2009, APHIS issued a final rule declaring South Korea free of FMD and eligible to export fresh beef to the United States beginning January 12, 2010. *See* 74 Fed. Reg., 68478/3; 479/2. 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., 1697/1.

Similar to its evaluation regarding the risk for FMD posed by the 14 states in Brazil, APHIS' overly optimistic evaluation of South Korea's FMD risk 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.²⁵

²⁴ *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.

²⁵ APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, October 2008, at 39.

However, APHIS was dead wrong and the reality is that South Korea was overwhelmed by the outbreaks that began Jan. 6, 2010, and that APHIS had concluded were unlikely to occur.

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 46228/3, *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 2010.²⁶ 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.²⁷

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 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 recent 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 destroyed or planned 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.²⁸

J. 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, 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

²⁶ *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>

²⁷ *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>.

²⁸ 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.

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“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).

APHIS’ ongoing actions of knowingly and systematically dismantling United States’ disease-prevention border restrictions are progressively increasing the risk that FMD will be introduced into the United States. Such actions are, therefore, in direct violation of USDA’s statutory duty to prevent the introduction of FMD into the United States from countries where FMD is known to exist.

K. Conclusion.

The foregoing discussion demonstrates that APHIS is pursuing a despicable, politically motivated campaign to cause the introduction of FMD into the United States, presumably for the purpose of leveling the global trade arena by pulling the United States down to the lower standards of developing countries. There is simply no other plausible explanation for APHIS’ ongoing, aggressive efforts to systematically dismantle crucial disease-protection border controls that are scientifically proven effective at preventing the introduction of FMD and other foreign animal diseases into the United States.

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 prohibit the importation of fresh or chilled beef from any country that the Secretary of Agriculture has not designated as completely free of FMD without vaccination.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized and cursive, with a large, sweeping flourish at the end.

Bill Bullard