

April 26, 2010

The Honorable Tim Johnson  
United States Senate  
Washington, D.C. 20510

The Honorable Michael Enzi  
United States Senate  
Washington, D.C. 20510

The Honorable Jon Tester  
United States Senate  
Washington, D.C. 20510

The Honorable John Thune  
United States Senate  
Washington, D.C. 20510

The Honorable Claire McCaskill  
United States Senate  
Washington, D.C. 20510

The Honorable Byron Dorgan  
United States Senate  
Washington, D.C. 20510

The Honorable Ben Nelson  
United States Senate  
Washington, D.C. 20510

The Honorable John Barrasso  
United States Senate  
Washington, D.C. 20510

The Honorable Kent Conrad  
United States Senate  
Washington, D.C. 20510

The Honorable Stephanie Herseth Sandlin  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Cynthia Lummis  
United States House of Representatives  
Washington, D.C., 20515

**Re: Request for New Legislation to Protect U.S. Cattle from FMD Risk in Brazil**

Dear Senators Johnson, Enzi, Tester, Thune, McCaskill, Dorgan, Nelson, Barrasso, and Conrad and Representatives Herseth Sandlin and Lummis:

We, the undersigned organizations, are grateful for your 2009 sponsorship of the Foot and Mouth Disease Prevention Act of 2009 (2009 Act). We are convinced that your introduction of the 2009 Act had a positive effect on the U.S. Department of Agriculture's (USDA's) decision to not proceed with its plans to lift essential foot-and-mouth disease (FMD) restrictions for Argentina under the agency's misguided regionalization scheme, which would have resulted in an increased risk for FMD exposure to U.S. livestock.

Unfortunately, USDA is now proposing a near identical regionalization scheme for Brazil, a country with a long history of FMD outbreaks and one that has not demonstrated that it is free of the pernicious FMD disease.<sup>1</sup> On April 16, 2010, USDA published a proposed rule in

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<sup>1</sup> See HANDISTATUS II database of the World Organization for Animal Health (OIE) for the period prior to 2005 (From 1996-2004, Brazil reported 9,988 cases of FMD to the OIE.), available at <http://www.oie.int/hs2/report.asp>; see also WAHID Interface database of the OIE for the period beginning 2005 (In 2005-2006 Brazil reported 659 and 30 cases of FMD to the OIE, respectively), available at <http://www.oie.int/wahis/public.php?page=home>; see also

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the *Federal Register* to change the disease status of the Brazilian state of Santa Catarina, which would effectively lift FMD restrictions on the importation into the United States of any ruminant or swine, or any fresh, chilled or frozen meat or fresh, chilled or frozen product of any ruminant or swine from that Brazilian state (Proposed FMD Rule).<sup>2</sup>

We respectfully request that you introduce new legislation similar to the 2009 Act that would expand the list of countries subject to the 2009 Act to include Brazil and any other country that has not been certified to Congress by the Secretary of Agriculture as a country in which every region within is free of FMD – without vaccination. We believe such legislative action is necessary to prevent USDA from creating a dangerous precedent that would unnecessarily expose the U.S. to a heightened risk for disease introduction.

For the reasons stated below, we believe USDA is predisposed to finalizing its misguided plans to regionalize Brazil. Thus, we believe it imperative that Congress take quick and decisive action by introducing legislation to prevent USDA from irresponsibly exposing U.S. livestock to an increased risk of FMD introduction from Brazil and from other FMD-affected countries.

### **1. USDA’s Proposed FMD Rule Unequivocally Demonstrates an Unscientific Bias in Favor of Brazil**

In its Proposed FMD Rule, USDA accords the World Organization for Animal Health (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.<sup>3</sup> The OIE has established presumably 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.<sup>4</sup> Brazil further provided evidence to the OIE that it said 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 . . .”<sup>5</sup> Brazil began the process of stamping out the outbreaks in the State of Paraná on or about March 15, 2006, and by

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List of Foot and Mouth Disease Free Members, OIE (Brazil is not designated by the OIE as a country free of FMD.), available at [http://www.oie.int/eng/Status/FMD/en\\_fmd\\_free.htm](http://www.oie.int/eng/Status/FMD/en_fmd_free.htm).

<sup>2</sup> See 75 Fed. Reg., 19915-920.

<sup>3</sup> 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.)”).

<sup>4</sup> 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>.

<sup>5</sup> 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).

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March 28, 2006, it had killed 6,781 cattle.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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, USDA's Proposed FMD Rule unscientifically and deceptively claims that "the last FMD outbreak in Paraná occurred in 2005."<sup>9</sup> This statement is in direct contradiction to the very OIE standards regarding FMD control and eradication that USDA scientists purports to rely on to convince decision-makers to lift FMD restrictions for Brazil. USDA scientists have unequivocally 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. Given the severity of the potential harm that USDA's unscientific bias likely would inflict on the U.S. live cattle industry, Congress must act decisively to stop USDA from endangering U.S. livestock.

## **2. USDA has Experienced a 100 Percent Failure Rate in the Implementation of Its Regionalization Scheme Applied to FMD-Affected Countries Eligible to Export Beef to the United States and USDA Already Has Exposed U.S. Livestock to an Increased Risk for FMD**

In August of 1997, USDA 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.<sup>10</sup> USDA claimed that this new scheme "exemplified the opportunity" to regionalize countries with ongoing FMD problems.<sup>11</sup> In July 2000, USDA did implement a regionalization scheme for Argentina by prohibiting the importation of beef from animals that had been in specified areas along Argentina's border.<sup>12</sup> Within just days of the effective date of USDA's regionalization rule, Argentina confirmed a new outbreak of FMD in August 2000, but USDA concluded in a risk analysis that the U.S. could continue to safely import fresh (chilled or frozen) beef from Argentina under its regionalization scheme despite this new outbreak.<sup>13</sup> For nearly a year after its August 2000 outbreak, Argentina remained eligible to export fresh (chilled or frozen) beef to the United States. USDA, however, was soon forced to take emergency, retroactive action in June 2001 to protect U.S. livestock from the introduction of FMD from

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<sup>6</sup> See Follow-up Reports Nos. 18 and 19, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, March 15 and March 29, 2006, respectively.

<sup>7</sup> See Follow-up Reports No. 27, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, Oct. 23, 2006.

<sup>8</sup> See Follow-up Reports No. 29, Foot and Mouth Disease, Brazil, WAHID Interface database, OIE, July 11, 2007.

<sup>9</sup> 75 Fed. Reg., 19917, col. 1.

<sup>10</sup> See 62 Fed. Reg., 56003, col. 2.

<sup>11</sup> *Ibid.*

<sup>12</sup> See 65 Fed. Reg., 82894, col. 1.

<sup>13</sup> See *id.*, 82894, col. 3.

Argentina because USDA then believed that the FMD virus was present in Argentina for several weeks before Argentina reported the first of many new and widespread FMD outbreaks beginning in March 2001.<sup>14</sup> USDA's regionalization scheme for Argentina was an abject failure that could as easily as not resulted in the introduction of FMD into the United States.

Even while USDA, beginning in July 2000, was allowing fresh (chilled or frozen) beef from Argentina provided it was not from Argentina cattle that had been in close proximity to Uruguay, USDA in October 2000 regionalized, retroactively, Uruguay by removing only Artigas, a Department (state) in Uruguay, from the list of regions considered by the U.S. to be free of FMD.<sup>15</sup> USDA 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 USDA said qualified as a distinct subpopulation for disease control and international trade purposes under its regionalization scheme.<sup>16</sup> 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 in numerous Uruguayan departments beginning in April 2001.<sup>17</sup> By June 22, 2001, there were 1,596 new cases of FMD confirmed in 18 separate Departments in Uruguay.<sup>18</sup>

These two examples empirically demonstrate that the ideological concept of regionalization as a tool to facilitate trade before countries have completely eradicated pernicious diseases like FMD is fundamentally flawed, inherently risky, and incapable of preventing the introduction of diseases into the United States. Cattle producers and consumers in the U.S. are indeed fortunate that USDA's relaxation of essential FMD import restrictions on Uruguayan and Argentinean imports via regionalization did not result in the introduction of FMD into the United States.

Argentina and Uruguay are the only two FMD-affected countries that continued to export beef to the United States following regionalization and, together, they represent a 100 percent failure rate for USDA's fundamentally flawed FMD regionalization scheme.

### **3. USDA's Risk Evaluation Process Used to Reach the Conclusion that FMD Risks in Countries with a History of FMD Outbreaks Are Now Negligible Has Repeatedly Been Proven Inaccurate, Ineffective and Dangerous**

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<sup>14</sup> See 66 Fed. Reg., 29897, col. 3; 29898, col. 1.

<sup>15</sup> See 65 Fed. Reg., 82894, col. 3; see also 65 Fed. Reg., 77772, col. 1.

<sup>16</sup> See 65 Fed. Reg., at 77771-773 (Change in Disease Status of Artigas, Uruguay, Because of Rinderpest and Foot-and-Mouth Disease.).

<sup>17</sup> See 66 Fed. Reg., at 36695-697 (Change in Disease Status of Uruguay Because of Foot-and-Mouth Disease, Interim Rule and Request for Comments.).

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

USDA has an extraordinarily dismal record for accurately predicting the risks for FMD in countries known to have a history of FMD outbreaks. USDA's past and present history of evaluating FMD risks in foreign countries reveals a definite pattern whereby USDA perfunctorily declares a country to have negligible risk for FMD shortly before the occurrence of a major FMD outbreak, causing USDA to scramble to protect U.S. livestock from the introduction of FMD. For example:

- A. After conducting an on-site visit along with a risk evaluation regarding the risks for FMD in South Africa, USDA, 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.<sup>19</sup> In September 2000, USDA 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.<sup>20</sup> USDA, however, persisted with its regionalization scheme and simply carved out KwoZulu-Natal as a province ineligible to export fresh (chilled or frozen) beef to the U.S. due to FMD.<sup>21</sup> Within a matter of months, in November 2000, USDA 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.
  
- B. After South Korea experienced outbreaks of FMD in 2000 and 2002, USDA, 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.<sup>22</sup> On December 28, 2009, USDA 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.<sup>23</sup> However, on January 6, 2010, just days before the effective date of USDA's final rule, South Korea had an outbreak of FMD, and USDA was forced to delay indefinitely the effective date of South Korea's FMD-free designation.<sup>24</sup> An April 20, 2010, a news article published in the *Korea Times* reported that South Korea already has had 6 FMD outbreaks, and that country's Ministry for Food, Agriculture, Forestry and Fisheries reportedly is concerned that FMD may spread further inland.<sup>25</sup>

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<sup>19</sup> See 64 Fed. Reg., 7819, col. 2 and fn 1; see also, 66 Fed. Reg., 9641, col. 1.

<sup>20</sup> See 65 Fed. Reg., 65728, col. 1; 65729, col. 1.

<sup>21</sup> See 64 Fed. Reg., 65728, col. 3.

<sup>22</sup> 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.

<sup>23</sup> See 74 Fed. Reg., 68478, col. 3; 479, col. 2.

<sup>24</sup> See 75 Fed. Reg., 1697, col. 1.

<sup>25</sup> See Foot-and-Mouth Disease Spreads Farther Inland [S. Korea], Cho Jae-hyon, Korea Times, April 20, 2010.

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The foregoing examples demonstrate that USDA lacks the capacity to evaluate the true risks for FMD in countries with a history of FMD outbreaks. In addition, these examples demonstrate that USDA is incapable of predicting when an outbreak of the dangerous FMD virus will occur. Instead, USDA 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 USDA's persistent efforts to lift essential FMD restrictions, the United States is fortunate that USDA's actions have not already resulted in the introduction of FMD. We respectfully, and in the strongest sense possible, urge you to introduce and pass legislation that will provide U.S. livestock and the people of the United States effective protection against the introduction of FMD by preempting USDA's ongoing efforts to regionalize Argentina, Brazil and other countries with histories of FMD outbreaks. The risk posed by USDA's ongoing actions is great, and the threat of FMD is very real.

To put the severity of this matter in perspective, if the State of South Dakota, e.g., were required to destroy as many cattle as were destroyed in Brazil during its 2005-2006 FMD outbreak (84,676 head) it would wipe out the herds of more than 760 South Dakota ranchers, based on South Dakota's average cattle herd size of about 111 head.<sup>26</sup>

Thank you for your consideration of our extremely important request.

Sincerely,

**National Organizations:**

American Grassfed Association  
BueLingo Beef Cattle Society  
Coalition for a Prosperous America (CPA)  
International Texas Longhorn Association  
Food & Water Watch  
National Association of Farm Animal Welfare  
National Farmers Organization (NFO)  
Organization for Competitive Markets (OCM)  
R-CALF USA  
Texas Longhorn Marketing Alliance  
Western Organization of Resource Councils (WORC)

**State, Regional and County Organizations:**

Cattle Producers of Washington

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<sup>26</sup> 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](http://www.nass.usda.gov/Statistics_by_State/South_Dakota/index.asp).

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Citizens for Private Property Rights  
Colorado Independent CattleGrowers Association  
Independent Beef Association of North Dakota (I-BAND)  
Independent Cattlemen of Nebraska  
Independent Cattlemen of Wyoming  
Kansas Cattlemen's Association  
Mississippi Livestock Markets Association  
Missouri's Best Beef Co-Operative  
Nevada Live Stock Association  
Oregon Livestock Producers Association  
Rocky Mountain Farmers Union  
South Dakota Livestock Markets Association  
South Dakota Stockgrowers Association

*For More information or to contact individual organizations, please contact R-CALF USA at 406-252-2516 or [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com).*

Cc: The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture  
The Honorable Edward Avalos, Under Secretary, U.S. Department of Agriculture  
The Honorable John Ferrell, Deputy Under Secretary, U.S. Department of Agriculture  
State Animal Health Officials