



Fighting for the U.S. Cattle Producer!

R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Fax: 406-252-3176
Phone: 406-252-2516
Website: www.r-calfusa.com
E-mail: r-calfusa@r-calfusa.com

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

Re: R-CALF USA Comments in Docket No. APHIS-2010-0050, Animal Traceability; Public Meetings

Dear Secretary Vilsack,

On behalf of the thousands of cattle-producing members of R-CALF USA, we appreciate this opportunity to submit comments pursuant to the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Notice of Public Meetings regarding animal traceability published at 75 Fed. Reg., 47769-770.

R-CALF USA remains concerned that APHIS' ongoing policy of increasing the United States' risk of introducing foreign animal diseases through overly lax import restrictions undermines the agencies' credibility while it attempts to convince U.S. cattle producers that the health of the U.S. livestock herd is dependent on the implementation of an animal disease traceability program. R-CALF USA's ongoing concern is based on the following facts:

- Despite having conducted a quantitative risk evaluation for bovine spongiform encephalopathy (BSE) in 2006 that predicted the U.S. would import 19 to 105 BSE-infected Canadian cattle, resulting in 2 to 75 infections of U.S.-born cattle over the next 20 years pursuant to USDA's over-30-month rule (OTM Rule);¹ and, despite a July 2008 court-ordered injunction directing USDA to reopen the OTM Rule and "revise any provision of the OTM Rule it deems necessary";² and, despite the occurrence of multiple BSE outbreaks in Canadian cattle that met the OTM Rule's age requirement for importation into the United States, USDA continues to ignore the fully expected, continual reintroduction of Canadian BSE into the United States.
- Despite having full and complete knowledge of a 2006 report by USDA's Office of Inspector General (OIG) that states 75 percent of bovine tuberculosis (bovine TB) cases detected in U.S. slaughtering plants originated in Mexico, and despite repeated requests by R-CALF

¹ See 72 Fed. Reg., 1109, col. 2; 72 Fed. Reg., 53347, col. 1.

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

USA for immediate action to address this known disease source, USDA continues to ignore the continual reintroduction of bovine TB into the United States from Mexico.³

- Despite having full and complete knowledge that Canadian cattle are a source of bovine TB, as evidence by the detection of two bovine TB-infected cattle imported into the U.S. from Canada in 2008, and despite R-CALF USA's request that USDA address this known disease source, USDA continues to ignore the risks for continual reintroduction of bovine TB in imported Canadian cattle.⁴
- Despite having full and complete knowledge that the 11 factors used by the agency to determine the potential risk for foot-and-mouth disease (FMD) outbreaks in both entire countries and regions within a country are wholly incapable of predicting actual FMD risks (as was definitively proven following USDA's FMD risk evaluations for Uruguay,⁵ Argentina,⁶ the Republic of South Africa,⁷ and South Korea.⁸), USDA nevertheless persists in its efforts to apply the same, failed 11 factors to facilitate imports into the United States of beef and cattle from FMD-affected countries, notably from the Patagonia South Region of Argentina⁹ and Santa Catarina, Brazil.¹⁰
- Despite having full and complete knowledge that the relocation of the Plum Island, N.Y., research facility to Manhattan, Kan., will increase the risk of FMD exposure for U.S. livestock, USDA, in conjunction with the U.S. Department of Homeland Security (DHS), proposes to transfer live FMD viruses and research on live FMD viruses to the U.S. mainland. USDA and DHS propose this relocation despite full knowledge that: 1) there is no support for the contention that FMD research can be done as safely at Manhattan, Kansas, as at Plum Island, N.Y.;¹¹ 2) Plum Island is the *only* location determined to be of *low* risk with respect to the likelihood of FMD infection;¹² 3) "Plum Island's lack of animals placed it at an advantage with respect to the likelihood that FMD virus would become established after being released and spread from the site;"¹³ 4) Manhattan, Kansas, is in an area "where the virus would have ample opportunity to spread rapidly after release because of the presence of susceptible livestock and wildlife;"¹⁴ and, 5) "for all sites except Plum Island, the wind could

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

⁴See Canadian Food Inspection Agency Still Mum on TB Reported Cases, 250 News, June 26, 2008.

⁵See 65 Fed. Reg., 82894, col. 3; 65 Fed. Reg., 77772, col. 1; see also 66 Fed. Reg., 36695-697.

⁶See 65 Fed. Reg., 82895, col. 1; see also 66 Fed. Reg., 29897, col. 3; 29898, col. 1.

⁷See 65 Fed. Reg., 65728, col. 3; see also 66 Fed. Reg., 9641-9642.

⁸See 74 Fed. Reg., 68478, col. 3; 479, col. 2; see also 75 Fed. Reg., 1697, col. 1; see also USDA Risk Evaluation of Brazil, at 39.

⁹See 72 Fed. Reg., 475-480 (USDA has a pending rulemaking to lift FMD restrictions for the Patagonia South Region of Argentina, even though Argentina has not demonstrated it is free of FMD.).

¹⁰See 75 Fed. Reg., 19915-920.

¹¹See Biological Research: Observations' on DHS's Analysis Concerning Whether FMD Research Can Be Done as Safely on the Mainland as on Plum Island, U.S. Government Accountability Office (GAO), GAO-09-747, July 2009 (Hereafter "GAO Report on Plum Island"), at 46.

¹²See *id.*, at 42.

¹³*Ibid.*

¹⁴GAO Report on Plum Island, at 42.

potentially transport viral pathogens significant distances and that this pathway is not limited for them, as it is on Plum Island.”¹⁵

I. THE FRAMEWORK FOR A PROPOSED ANIMAL DISEASE TRACEABILITY RULE

Any framework for a proposed animal disease traceability rule must expressly include remedial standards to prevent the introduction of animal diseases from foreign sources. Unless such standards are established, it is not possible to, e.g., determine the level of redundancy needed in any animal disease traceability rule to effectively arrest diseases that not only are spread after a single outbreak, but also, are continually reintroduced into the U.S. by imported livestock and meat from foreign livestock that enter the U.S. at numerous ports of entry.

A. The Framework Must Prevent the Importation of Serious Cattle Diseases and Pests

R-CALF USA strongly recommends the inclusion of the following prohibitions, requirements and standards as a foundation for any new animal disease traceability rule:

1. Prohibit the importation of livestock from any country that experiences outbreaks of serious zoonotic diseases, including pests, until scientific evidence demonstrates the diseases and/or pests have been eradicated or fully controlled and there is no known risk of further spread. This recommendation includes a request for an immediate ban on live cattle imports from Canada, which harbor a heightened risk for BSE.
2. Require all imported livestock to be permanently and conspicuously branded with a mark of origin so immediate identification can be made if a zoonotic disease or serious pest outbreak occurs in the exporting country subsequent to importation.
3. Require all livestock imported into the United States to meet health and safety standards *identical* to those established for the United States, including adherence to U.S. prohibitions against certain feed ingredients, pesticide use on feedstuffs, and certain livestock pharmaceuticals.
4. Require TB testing of all imported Mexican cattle and further require that all Mexican cattle remain quarantined in designated feedlots until slaughtered.
5. Prohibit international regionalization schemes that attempt to carve out regions within disease-affected foreign countries in order to facilitate imports into the U.S. from the affected country before the disease of concern is fully controlled or eradicated.

¹⁵ GAO Report on Plum Island, at 42.

6. Increase the testing of all imported meat and bone meal to prohibit contaminated feed from entering the United States.

B. The Framework Must Include an Analysis of Current Disease Traceability Capabilities and Identify any Specific Deficiencies the Rule is Intended to Address

R-CALF USA members remain perplexed because APHIS has not articulated the precise problem it is attempting to solve with a new animal disease traceability system; it has not identified the specific reasons why current traceability systems are ineffective; and, it has not demonstrated how differing diseases are expected to be controlled through the identification of individual animals or groups of animals.

For example, APHIS' ongoing assertion that an animal disease traceability system can mitigate the effects of a foot-and-mouth disease (FMD) outbreak is not supported by the recent experiences of either South Korea or Japan.

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.¹⁶ 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.¹⁷ 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.¹⁸ Recently, in APHIS' risk analysis section of its risk evaluation for the agencies proposed rule to regionalize a Brazilian state, APHIS describes Santa Catarina's animal identification systems in significant detail and claims the systems would allow officials to trace the movement of cattle within Santa Catarina, presumably to mitigate the spread of a FMD outbreak in Santa Catarina.¹⁹

It is clear that APHIS assigns 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,²⁰ is empirical evidence of the *ineffectiveness* of a national animal

¹⁶ 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.

¹⁷ 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.

¹⁸ *Ibid.*

¹⁹ 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.

²⁰ See *supra*, fn. 8.

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.

Further, APHIS has made only general, unsubstantiated assertions regarding the need for an animal disease traceability system, claiming, e.g., that the need for a new animal disease traceability system is made obvious by the length of time the agency spends in conducting animal disease tracebacks.

APHIS asserts that as a result of the successful control and eradication of livestock diseases under preexisting systems, fewer livestock producers and fewer livestock are participating in the animal identification systems incumbent to preexisting livestock disease programs. However, and importantly, this general assertion cannot be true for all livestock species. USDA's Chief Veterinarian testified that:

The poultry industry . . . continues to have a high level of traceability – estimated at more than 95 percent today. . . The commercial swine industry utilizes group/lot identification exclusively, thus premises information alone provides a high level of traceability. . . [and] [a]n estimated 95 percent of sheep flocks are listed in the scrapie database.²¹

This testimony reveals that participation in animal identification systems incumbent to preexisting disease programs by the poultry and sheep industries already exceeds the 70 percent “critical mass level of participation” benchmark that USDA had established for NAIS,²² and participation by the hog industry *may* already exceed that benchmark as well. Thus, the argument that there is insufficient participation by poultry and sheep producers, and perhaps by hog producers, to ensure disease traceability in the event of a disease outbreak is without merit.

The concern that there are fewer producers and fewer livestock participating in animal identification systems incumbent to preexisting disease programs is applicable perhaps only to the U.S. cattle industry. But, it is both false and disingenuous to assert that a significant number of U.S. cattle are not already participating in official animal identification programs. In fact, APHIS affirms that, “For the past several years, approximately 25-30% of the cattle population has been officially identified,” most of which are identified through preexisting disease programs.²³ Based on the size of the U.S. cattle herd – estimated by USDA to be 104 million head on July 1, 2007²⁴ – approximately 26-31 million cattle in the U.S. herd are “officially identified.”

²¹ Review Animal Identification Systems, Testimony of Dr. John Clifford, Deputy Administrator for Veterinary Services, USDA APHIS, before the House Committee on Agriculture's Subcommittee on Livestock, Dairy, and Poultry (hereafter USDA testimony), March 11, 2009, at 7.

²² A Business Plan to Advance Animal Disease Traceability, USDA APHIS, Version 1.0, September 2008, at 2.

²³ *Id.*, at 67.

²⁴ *Id.*, at 16.

Based on information and belief, R-CALF USA asserts the percentage of identifiable cattle is *significantly* higher than USDA's estimate. There are 15 states that operate state brand programs, which require the permanent identification of individual cattle, some states require identification of breeding age cattle when ownership is transferred,²⁵ and many cattle producers voluntarily participate in export-eligibility programs that incorporate traceable animal identification devices on individual cattle.²⁶

Proponents on a new animal disease traceability system allege that because of what they call an "outdated system of tracking outbreaks of animal diseases to their sources;"²⁷ and a "lack of any official identification" with which to determine the "specific origin of the subject animal . . . [and] without movement data,"²⁸ disease traceback investigations have taken too long to conduct. Both the American Veterinary Medical Association (AVMA) and APHIS cited the same statistics to support their allegations: AVMA stated, "Investigators spent an average of 199 days tracing the sources of animals infected with bovine tuberculosis between October 2005 and August 2007."²⁹ APHIS stated, "The average time spent conducting a traceback involving 27 recent bovine tuberculosis investigations was 199 days."³⁰

However, the Office of Inspector General (OIG) conducted an audit of APHIS' control over its bovine TB eradication program in September 2006. According to the audit, the OIG found that a lack of identification on individual animals was not the sole source of APHIS' problem in conducting its bovine TB investigations. In fact, the OIG found that over half of the investigations that were closed with an outcome of "untraceable" were animals that *were* identified with ear tags, but the ear tags either were not collected at the time of slaughter, had been removed by the feedlot prior to slaughter, or were unable to be traced because there was no requirement to maintain records.³¹ Equally important, the OIG found that APHIS' disease eradication efforts were hampered because the agency was not using its oversight tools in a timely manner, i.e., not timely reviewing and responding to the annual and monthly summaries of program results submitted by States nor was it properly reviewing States for program compliance.³² The OIG also found that APHIS was not following Federal regulations for declaring affected bovine TB herds, which weakened the agency's ability to contain and eradicate the disease and resulted in no additional controls being put in place for the majority of bovine TB cases detected in the past 5 years.³³ The agency was also cited for not timely

²⁵ See, e.g., South Dakota Legislature, Administrative Rules, Chapter 12:68:05:02.

²⁶ For more information on export-eligibility programs, view USDA's Bovine Export Verification procedures available at USDA's Website.

²⁷ The National Animal Identification System, Testimony of W. Ron DeHaven, DVM, MBA, CEO, American Veterinary Medical Association, Before the House of Representatives Committee on Agriculture, Subcommittee on Livestock, Dairy, and Poultry (hereafter "AVMA Testimony"), March 11, 2009, at 5.

²⁸ USDA Testimony, at 3.

²⁹ AVMA Testimony, at 5.

³⁰ USDA Testimony, at 4.

³¹ See Reasons for Closing FY 2004 Investigations as "Untraceable," Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, September 2006, at 38.

³² See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Report No. 50601-0009-Ch, September 2006, at 5-9.

³³ See *id.*, at 11-14.

downgrading the TB status of States after the agency knew that the disease was not isolated in one herd;³⁴ not having adequate controls to restrict the introduction of bovine TB in Mexican cattle;³⁵ not requiring slaughtering facilities to conduct surveillance at the recommended rate;³⁶ not monitoring high-risk herds and the corresponding on-farm testing that is required;³⁷ and not providing sufficient training to investigators so investigations could be completed in a timely manner.³⁸

APHIS must provide the livestock industry with data that identifies any specific problems associated with current animal disease traceability systems and provide documentation to show how a new animal disease traceability system would be expected to resolve any such specific problems. The systemic problems described above are internal management problems that impede disease control and eradication as well as disease investigations and would *not* be solved by implementing a new animal disease traceability system, unless these systemic problems are specifically addressed within the framework of any new rule.

C. The Framework Must Clearly Establish that Livestock Are to be Associated with Contact Information of the Livestock Owner and Not to Real Property

State and federal regulatory agencies have worked closely with cattle producers for over a century to successfully eradicate cattle diseases and to successfully administer state brand laws and state and federal animal health programs *without* ever requiring producers to register their real property with either state governments or the federal governments.³⁹ We urge APHIS to clearly and definitively state that contact information of the owner of livestock is all that is required under any animal disease traceability system and that APHIS does not encourage or require the registration of real property (premises registration) by states, tribes, or the federal government.

D. The Framework Must Require Only the Low-Cost, Low-Technology Components of the Preexisting Brucellosis Program

The inexpensive, metal eartag and ear tattoo used in the preexisting brucellosis program, as well as brands and backtags are time-proven methods of identifying animals in interstate commerce and should be promoted by APHIS as the least-cost method for indentifying animals in interstate commerce.

³⁴ *See id.*, at 16-17.

³⁵ *See id.*, at 19-21.

³⁶ *See id.*, at 22-24.

³⁷ *See* Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Report No. 50601-0009-Ch, September 2006, at 28-29.

³⁸ *See id.*, at 22, 25, 28.

³⁹ *See* 69 Federal Register, at 64646, col. 3 ("The new definition of premises identification number (PIN) differs from the definition it is replacing not only in recognizing the new numbering system but also in recognizing a premises based on a State or Federal animal health authority's determination that it is a geographically, rather than epidemiologically, distinct animal production unit.").

E. The Framework Must Require Only the Identification of Breeding-Age Cattle in Interstate Commerce and Exempt Feeder Cattle from Individual Identification

Only breeding-age animals (cattle over 18 months of age excluding those going into terminal feeding channels) should be included in the framework for an animal disease traceability rule. Feeder cattle (cattle less than 18 month of age) should be expressly excluded from any requirements of individual identification.

II. SPECIFIC DETAILS THAT WOULD HELP FORM THE ANIMAL DISEASE TRACEABILITY RULE

- A. State and Tribal animal health officials should be solely responsible for maintaining a statewide database for all metal tags applied within their respective jurisdictions.**
- B. The Federal government should enter into coordination agreements with State and Tribal animal health officials to pay for the States' and Tribal governments' costs of identifying breeding-aged cattle and maintaining the State and Tribal databases, as well as bolstering disease surveillance at livestock collection points such as livestock auction yards and slaughtering plants, including increased surveillance for bovine spongiform encephalopathy (BSE).**
- C. The Federal government should coordinate with the States and Tribes to establish electronic interface standards and to establish improved communication protocols so it can more effectively coordinate with the States and Tribes in the event of a disease outbreak.**
- D. The Federal government should coordinate with the States and Tribes to establish improved protocols for the retention and searchability of State and Tribal health certificates, brand inspection documents and other documents used to facilitate interstate movement of livestock.**
- E. APHIS should establish specific disease programs and focus increased resources toward the eradication of diseased wildlife in States where wildlife populations are known to harbor communicable diseases.**
- F. To address the challenge of increased incidences of tainted meat products, USDA must substantially reform the current hands-off inspection system known as Hazard Analysis and Critical Control Point (HACCP). HACCP has fundamentally failed to ensure adequate sanitary practices at major slaughterhouse establishments. As part of the HACCP reform, USDA should implement a requirement that meat sold at retail and at food service establishments be traceable back to the slaughterhouse that produced the meat from live animals, not just back to the processor that may have further**

processed tainted meat. This simple improvement would enable investigators to determine and address the actual source of meat contamination – primarily the unsanitary conditions that allow enteric-origin pathogens, such as *E. coli* O157:H7, to contaminate otherwise healthful meat.

III. CONCLUSION

R-CALF USA appreciates USDA's responsiveness to U.S. livestock producers who expressed their concerns regarding the inappropriateness of the National Animal Identification System during the agencies listening sessions last year. However, many of the concerns expressed by those producers remain unaddressed. We have attempted to restate the major concerns here. We urge you to consider and implement these recommendations.

Sincerely,

A handwritten signature in cursive script that reads "R. M. Thornsberry DVM". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

R.M. (Max) Thornsberry, D.V.M.
R-CALF USA President of the Board