



Fighting for the U.S. Cattle Producer!

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November 29, 2010

The Honorable Tom Vilsack
United States Secretary of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Re: Request for Withdrawal of Final FMD Rule Regarding Santa Catarina, Brazil

Dear Secretary Vilsack,

In light of today's rediscovery of foot-and-mouth disease (FMD) in South Korea, and on behalf of the thousands of U.S. cattle farmers and ranchers who are members of R-CALF USA, we urge you to immediately withdraw the U.S. Department of Agriculture, Animal and Plant Health Inspection Service's (APHIS'), final rule to designate Santa Catarina, Brazil, as free of FMD.¹

The methodology employed by APHIS to declare Santa Catarina, Brazil, free of FMD is precisely the same methodology used less than a year ago by APHIS to declare South Korea free of FMD.² APHIS' methodology principally includes: 1) reliance on a previous FMD-free designation by the World Organization for Animal Health (OIE);³ and, 2) reliance on the 11 factors identified in 9 CFR § 92.2 (11 factors), which presumably are consistent with OIE guidelines.⁴

Today's outbreak of FMD in South Korea was reported by the U.S. Animal Health Association,⁵ and this outbreak occurred just two months after the OIE declared South Korea free of FMD.⁶ Unlike APHIS, the OIE has no statutory responsibility to protect against the introduction of FMD into the U.S. and reliance upon OIE guidelines is demonstrably akin to playing *Russian Roulette* with the health and safety of U.S. livestock. So too is APHIS' reliance on its OIE-compatible 11 factors akin to playing *Russian Roulette* as those 11 factors are likewise demonstrably

¹ See 75 Fed. Reg., 69851-857).

² See 75 Fed. Reg., 69852, col. 3 ("APHIS evaluates. . . countries. . . requesting recognition of disease freedom consistent with OIE guidelines; see also 74 Fed. Reg., 68478 (Dec. 28, 2009) ("We are amending the regulations to add the Republic of Korea to the list of regions that are considered free of . . . foot-and-mouth disease (FMD)."); see also 74 Fed. Reg., 14094, col. 1 ("Our evaluation was conducted according to the 11 factors identified in § 92.2.").

³ See *id.* ("As a signatory to the WTO's Sanitary and Phytosanitary Agreement, the United States is committed to following . . . guidelines on regionalization."); see also *id.*, 69855, col. 2 ("[T]he OIE recognized Santa Catarina as an FMD-free zone . . .").

⁴ See *id.* ("Evaluations are based on science and conducted according to the 11 factors identified in § 92.2.").

⁵ See S. Korea reports outbreak of foot-and-mouth disease, Yonhap News, November 29, 2010, USAHA News Alert Summaries – November 29, 2010, United States Animal Health Association.

⁶ See Korea Declared Foot-and-Mouth Free, Arirang News, September 28, 2010, USAHA News Alert Summaries – November 29, 2010, United States Animal Health Association – September 29, 2010.

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incapable of predicting the reoccurrence of FMD in countries where the disease is known to have existed in recent years.⁷

It is of little comfort to U.S. livestock producers that APHIS believes it can mitigate the risk of FMD introduction into the U.S., which is inherent to its reliance on OIE guidelines and its 11 factors, through quarantine requirements.⁸ This is because a November 2010 report by the Government Accountability Office (GAO), in referencing an August 2010 audit by the Office of Inspector General (OIG), identified material weakness in APHIS' quarantine procedures.⁹ The GAO stated, "According to the report [the OIG report], APHIS officials did not . . . exercise sufficient oversight to ensure import and quarantine requirements were met."¹⁰

Members of R-CALF USA cannot help but believe that APHIS remains intent upon unnecessarily exposing the U.S. to FMD. Based on our experience with APHIS, we believe it is doing this for no other reason than to reduce the United States' more favorable disease status to the less favorable statuses of many of our import/export customers – an action APHIS likely believes will further facilitate trade. We strenuously object to APHIS' apparent strategy.

We trust your Administration does not want to be complicit in APHIS' ongoing perversion of its mandate to protect against the "introduction" into or "dissemination" within the U.S. of foreign animal diseases like FMD.¹¹ APHIS clearly documented its recalcitrance to Congress' mandate when, in 2007, it feigned its responsibility by applying a new criterion for its risk evaluations of "no establishment" of an animal disease, rather than no "introduction" or "dissemination."¹² In fact, APHIS has so perverted its responsibility that it now defines its fictional criterion of "no establishment" as a measurement of the reproductive rate (R₀) of a given disease.¹³

We are convinced that APHIS' disdain for its statutory responsibility underpins the final rule regarding Santa Catarina, Brazil, which it published despite ample evidence showing its risk-methodology is inadequate to protect the U.S. against the introduction and dissemination of FMD.

We appreciate your attention to this critically important matter.

Sincerely,



R.M. Thornsberry, D.V.M.
President of the Board

⁷ For a documented list of repeated failures of APHIS' 11 factors to adequately assess the risk of FMD in countries with previous disease outbreaks, see R-CALF USA's comments in Docket No. APHIS-2009-0034, at pp 2-5.

⁸ See 75 Fed. Reg., 69854, col. 2 ("Considered with the protections afforded by the safeguards contained in § 94.11, the . . . quarantine requirements . . . will effectively mitigate the risk . . .").

⁹ See Live Animal Imports: Agencies Need Better Collaboration to Reduce the Risk of Animal-Related Diseases, U.S. Government Accountability Office, GAO-11-9 (November 2010).

¹⁰ *Id.*, at 11.

¹¹ See 7 U.S.C. § 8301(1); 8303 (a)(1).

¹² See, e.g., 72 Fed. Reg. 53315-18; 53222-23; 53327-329.

¹³ See 72 Fed. Reg., 53364, col. 2.