

Fighting for the U.S. Cattle Producer!



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November 10, 2008

The Honorable Tom Harkin
Chairman
Senate Committee on Agriculture,
Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC 20510

The Honorable Collin Peterson
Chairman
House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

The Honorable Saxby Chambliss
Ranking Member
Senate Committee on Agriculture,
Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte
Ranking Member
House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

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

Re: Request for Immediate Retraction of USDA's Veterinary Services Memorandum No. 575.19 that Unlawfully Mandates Registration of Producers' Premises Under NAIS (National Animal Identification System)

Dear Chairmen Harkin and Peterson, Ranking Members Chambliss and Goodlatte, and Secretary Schafer:

We are requesting that the Administration and/or Congress take immediate steps to retract the Veterinary Services Memorandum No. 575.19 (memo) issued on Sept. 22, 2008, by the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service, Veterinary Services (APHIS-VS) on the grounds that the memo constitutes an unlawful, final regulatory action initiated and implemented without public notice or opportunity for comment, as required by the Administrative Procedure Act.

The memo declares that the Premises Identification Number (PIN) established under the agency's National Animal Identification System (NAIS) "is to be the sole and standard location identifier for all VS program activities" and that premises "will be registered in the NAIS."

The effect of this requirement is that premises registration under NAIS is now *mandatory* for persons engaged in interstate commerce and who participate in any one of the dozen or more regulated disease programs, despite APHIS' express promise to the industry and to Congress that the NAIS would remain a voluntary system.

Background

APHIS administers animal disease programs to prevent the spread of livestock and poultry diseases within the United States. *See* 69 Fed. Reg., 64644, col. 3. In 2004, APHIS proposed an interim rule (IR) to, *inter alia*, include additional numbering systems for the identification of animals in interstate commerce and for cooperative disease control programs. *See id.*, col. 1. Among the new numbering systems proposed by APHIS was a revision to the premises identification number (PIN) to associate the PIN with an address or legal description, i.e., a premises. *See id.*, 64646, cols. 2, 3.

APHIS' IR authorized several numbering systems that could be used on official ear tags. The optional numbering systems include: National Uniform Eartagging System, animal identification number (AIN), premises-based number system (PIN), and any other numbering system approved by the Administrator. *See id.*, 64645, col. 3. Importantly, APHIS states in its IR that:

In keeping with the objectives of the NAIS, the use of the new numbering system is voluntary. This interim rule merely provides the use of these numbering systems in instances when official identification is required. Other animal and premises numbering systems that are already recognized by the regulations, such as the National Uniform Eartagging System, will still be recognized by APHIS for purposes of official identification.

69 Fed. Reg., 64645, col. 2.

APHIS finalized its list of alternative numbering systems that can be used on official ear tags in its final rule published July 18, 2007 (Final Numbering Rule). *See* 73 Fed. Reg., 39301-39307. The agency stated that the Final Numbering Rule allows the use, for official purposes, of the new numbering systems but “[u]se of the new numbering systems is not required by this final rule.” *Id.*, 39301, col. 1. Emphasis added.

Thus, the agency's current regulations, and its Final Numbering Rule, allow the use of at least four types of numbering systems on official APHIS ear tags for the disease programs regulated by the agency. For example, the agency's Brucellosis Program allows the use of either 1) a National Uniform Eartagging System; 2) an animal identification number (AIN); 3) a premises-based number system (PIN); or, 4) any other numbering system approved by the Administrator. *See* 9 CFR §78.1.

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Status

In direct contradiction of its regulations, and in defiance of its own published statements contained in its rulemakings, APHIS has now issued an official policy memo that disallows all other numbering systems contained in its regulations except the premises-based numbering system for livestock producers who participate in a regulated disease program and/or who are engaged in interstate commerce. Moreover, the memo states that the locations where any regulated disease program activities occur “will be registered in the NAIS.” Memo at 2. Emphasis added. This effectively converts APHIS’ so-called ‘voluntary’ NAIS program into a scheme that mandates strict compliance with NAIS.

This final agency action by APHIS is unlawful. It constitutes an amendment to the agency’s regulations without providing notice and public comment as required by the APA. For these reasons, we respectfully request that the memo immediately be retracted by the Administration, either on its own or by congressional action. In addition, we request that APHIS be directed to immediately inform each state animal health official that the agency no longer is requiring the registration of premises as a condition of producer participation in regulated animal disease programs, or for any other purpose.

Sincerely,



R.M. Thornsberry, D.V.M.
President, R-CALF USA Board of Directors

cc: Select Members of Congress
State Animal Health Officials