

*Fighting for the U.S. Cattle Producer!*



**R-CALF**

**USA**

**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](http://www.r-calfusa.com)  
E-mail: [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com)

---

January 12, 2009

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 Dec. 22, 2008, Memorandum No. 575.19 that Continues to Unlawfully Mandate 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 pleased that the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) canceled, on Dec. 22, 2008, its original Sept. 22, 2008, Memorandum No. 575.19 on the basis that it was improper for APHIS to establish a standardized PIN (premises identification number) as the sole premises identification number under the agency's proposed National Animal Identification System (NAIS) without first conducting a rulemaking as required by the Administrative Procedure Act (APA).

In its cancellation notice contained in the agency's new Memorandum No. 575.19 issued on Dec. 22, 2008 (Dec. 22, 2008 memo), however, APHIS has again violated its own regulations by unlawfully mandating the use of the standardized, NAIS PIN in the administration of federal disease programs. Thus, like the original Sept. 22, 2008 memo, the new Dec. 22, 2008, memo constitutes an unlawful, final regulatory action initiated and implemented without public notice or opportunity for comment, as required by the APA.

Chairmen Harkin and Peterson, Ranking Members Chambliss and Goodlatte, and Secretary  
Schafer  
January 12, 2009  
Page 2

The new, Dec. 22, 2008, memo declares that “[a]ll locations involved in the administration of VS animal disease program activities conducted by VS personnel *will* be identified with a standardized [i.e., NAIS] PIN.” Emphasis added. Yet, the Dec. 22, 2008, memo itself recognizes that APHIS *cannot* establish the standardized, NAIS PIN as the sole premises identification number until and unless the agency completes a rulemaking for that purpose: “APHIS is considering rulemaking to establish the standardized [i.e., NAIS] PIN as the sole premises identification number, when a PIN is otherwise required or assigned.”

The Dec. 22, 2008, memo language unlawfully *mandates* the use of a standardized, NAIS PIN location identifier by all state animal health officials that administer any VS disease program. This directly contradicts both the agency’s regulations that *do not* require a standardized, NAIS PIN location identifier in the administration of VS disease programs and the agency’s own admission that a rulemaking is necessary before the standardized, NAIS PIN can be mandated.

USDA issued a final rule on July 18, 2007, to allow the use of a numbering system (i.e., a standardized, NAIS PIN) to identify premises where animals are managed or held. *See* 72 Fed. Reg., 39301. This regulatory change was intended to allow the use of a standardized, NAIS PIN, which is integral to the agency’s proposed NAIS. *See id.* APHIS, however, has not promulgated rules to implement the NAIS and, further, APHIS expressly states in its final rule that “[u]se of the new numbering system [standardized, NAIS PIN] is *not* required by this final rule.” *Id.* Emphasis added.

In direct defiance of its own published statements contained in its final rule, APHIS has now issued an official policy memo that mandates the very standardized, NAIS PIN that the agency said would *not* be required. This action 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. Until and unless the agency promulgates a rule to *require* the use of a standardized, NAIS PIN, the agency has no authority to mandate that state animal health officials comply with its Dec. 22, 2008, memo.

For the foregoing reasons, we respectfully request that the Dec. 22, 2008, memo immediately be canceled 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 use of the standardized, NAIS PIN 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