June 6, 2012

Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, DC 20503
Via facsimile: 202-395-7245 & 202-395-5806
Via email: OIRA_submission@omb.eop.gov

Re: USDA-APHIS Animal Disease Traceability Final Rule
RIN: 0579-AD24

Dear OMB:

The undersigned organizations urge you to return USDA's final rule on Animal Disease Traceability (ADT) to the agency for a thorough and complete cost analysis.

Contrary to assertions made by USDA, the proposed rule exceeded the threshold to be recognized as **economically significant.** As discussed below, the cost of the proposed rule to the U.S. cattle industry alone exceeds $100 million, and there will be additional significant costs to cattle-related businesses (such as sale barns and veterinarians) in addition to small-scale poultry farmers and backyard poultry owners.

We would appreciate the opportunity to meet with you to discuss these issues in more depth.

I. USDA significantly underestimated the costs that will be imposed on cattle owners.

As proposed, the ADT rule would ultimately require that every cow that crosses state lines be tagged with official form of identification.[1] The identification number would have to be recorded on a certificate of veterinary inspection (CVI).[2] Businesses such as livestock sale barns and veterinarians would have to keep records of the official identification for each animal for five years.[3] The implementation of these requirements would occur in two phases, beginning with cattle over the age of 18 months (commonly referred to as "breeder cattle") and then covering cattle under that age (commonly referred to as "feeder cattle").[4]

[1] Traceability for Livestock Moving Interstate, Proposed Rule,76 Fed. Reg. 50082, 50107, Sec. 90.4: Official Identification (Aug. 11, 2011) (hereinafter "Proposed Rule").
[2] Proposed Rule,76 Fed. Reg. at 50109, Sec. 90.5: Documentation requirements for interstate movement of covered livestock.
[3] Proposed Rule,76 Fed. Reg. at, 50107, Sec. 90.3: Recordkeeping requirements.
[4] Proposed Rule,76 Fed. Reg. at 50108, Sec. 90.4: Official identification (see chart on that page).

A. USDA failed to use available data to accurately estimate the number of cattle that would be subject to new regulatory requirements

To accurately assess the costs of the proposed rule, the first logical step would be to determine how many cattle will be subject to the new tagging and record-keeping requirements. Yet the USDA claimed it was unable to determine the number of cattle for which official identification would be required under the proposed rule because relevant sources "do not provide information on interstate livestock movements specific to the categories of cattle that would be directly affected by the proposed rule."[5] But the agency simultaneously claimed that "[c]urrently all 50 States require a certificate of veterinary inspection [(CVI)] for breeder cattle and 48 States require one for feeder cattle."[6] The agency therefore could easily have provided an estimate of the number of cattle for which official identification would be required simply by surveying each state to determine the number of cattle (classified as either breeder or feeder) associated with the annual issuance of CVIs. With respect to the two states that do not require a certificate for feeder cattle (California and Texas), the USDA indicated that it has data showing the number of feeder cattle moved into those two states despite the lack of CVIs.[7]

Instead of using information readily available to it due to its relationship with the state agencies, the USDA arbitrarily assumed that only 30 million cattle would be subject to the proposed rule's identification requirements.[8]

The agency's arbitrary assumption is contradicted by the publicly available data on the cattle industry. The vast majority of cattle industry's capacity for feedlots and slaughterhouses are concentrated in just six states: Colorado, Iowa, Kansas, Nebraska, Oklahoma and Texas.[9] Yet approximately 60% of the cattle in the country – 55 million cows and calves -- are located *outside* of those six states.[10] Eventually, all 55 million cattle in these outlying states will go to a slaughterhouse (either directly or through a feedlot) and likely will enter interstate commerce at least once, if not more often. In addition, many of the 37.5 million cattle located within the six central states will also cross state lines at least once, since the slaughterhouses in those states often source cattle from surrounding states (for example, cattle fed in Colorado may go to slaughter in Texas and vice versa).

While we cannot provide a definitive number, it is clear that more than 30 million cattle cross state lines each year. Based on the above date and our cumulative knowledge of the cattle industry, we would estimate that at least 50 million cattle cross state lines each year, if not more.

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[5] Regulatory Impact Analysis & Initial Regulatory Flexibility Analysis, Proposed Rule, APHIS-2009-0091 RIN 0579-AD24, Traceability for Livestock Moving Interstate, at p.15 (hereinafter "Regulatory Impact Analysis").

[6] Regulatory Impact Analysis at p.20.

[7] Regulatory Impact Analysis at p. 27 ("For feeder cattle moving to any State other than California or Texas, there would be no additional cost for ICVI's. Approximately two million cattle are moved into California and Texas.").

[8] Regulatory Impact Analysis at p. 25.

[9] *See United States of America, et al. v. JBS S.A.,* Amended Complaint, at 6, available at http://www.r-calfusa.com/Competition/081107-DOJAmendedComplaintAgainstJBS.pdf.

[10] *See* Cattle, USDA-NASS, January 2011, at 5, available at http://usda01.library.cornell.edu/usda/nass/Catt//2010s/2011/Catt-01-28-2011.pdf (showing that over 55 million of the 92.6 million cattle and calves in the United States on January 1, 2011 resided *outside* those six states).

SUMMARY: The USDA failed to accurately estimate the number of cattle that will be regulated under the ADT rule, resulting in a material understatement of the economic burden this new regulation will place on both cattle owners and ancillary businesses.

B. USDA underestimated the cost of compliance with the proposed rule

For producers who do not currently tag their animals, the USDA estimated that the rule's requirements would cost only $1-$2.50 for the chute operation (the equipment used to isolate and hold a cow to enable the tag to be attached to the ear) and only $0.18 for the labor to attach the ear tag for each animal.[11] This is a gross underestimate that ignores both the reality of working cattle and data that was presented to the agency.

Tagging cattle is an equipment and labor-intensive task. The reason many small producers don't tag at this time is because they have not spent thousands of dollars on equipment such as chutes. Moreover, the claim that it would cost 18 cents for the labor to tag was based on the assumption that it takes only one minute to tag one animal.[12] That may be true in very large, industrial-scale operations when averaged out over thousands of animals, but it is often far from true on a smaller scale. Cattle do not always run quickly and quietly through chutes, then stand still to have their ears tagged. The agency's estimate also does not take into consideration the administrative oversight needed to assure accuracy of the procedure.

Even for those producers who are large enough to afford the necessary equipment, the USDA's cost estimates ignored several significant factors. USDA estimated the total upper-end cost of complying with animal identification provisions in the proposed rule at only $4.68 per head.[13] Yet USDA had been presented a study, explained below, that estimated that the real cost of tagging cattle ranged from $17.00 per head to $27.00 per head, excluding the cost of the tag itself.[14]

Kris Ringwall, Ph.D., Director, Dickinson Research Center Extension and Livestock Specialist, North Dakota State University (NDSU), conducted the study that involved the tagging of 14,432 calves during the three-year period 2004-2006. The study concluded that the cost working each calf, tag placement, and documentation was $7.00 per calf. In addition, Dr. Ringwall's three-year project determined that the tagging of calves was costly to producers because of shrink, which he defined as "weight loss while handling calves."[15] Dr. Rinwall stated in his testimony:

> When we've measured shrink in the cattle we have worked during the project, we estimate up to $10 to $20 in lost income potential per calf, regardless of the management activity applied.[16]

[11] Regulatory Impact Analysis at p.19.
[12] Regulatory Impact Analysis at p.19, Table 1, footnote 7.
[13] Regulatory Impact Analysis at p. 19.
[14] *See* R-CALF USA Comments in Docket No. APHIS-2009-0091, Traceability for Livestock Moving Interstate, Exhibit 12.
[15] *Id*.
[16] *Id*.

Based on Dr. Ringwall's findings, the cost of tagging and documenting calves, and the cost of the income lost due to shrink, ranged from $17.00 per head to $27.00 per head in 2006 or 2007 dollars, excluding the cost of the tag. The cost in 2012 dollars would obviously be greater.

Applying Dr. Ringwall's findings to the likely number of cattle that cross state lines each year, the cost of the proposed rule to U.S. cattle producers ranges from $850 million to $1.35 billion, using our estimate of 50 million head of cattle crossing state lines each year. Even if only the cattle moved to slaughter in 2010 were considered (32.25 million head), the cost to U.S. cattle producers would range from $582 million to $924 million.[17]

SUMMARY: By understating labor and capital costs, as well as the impact on the animals' weight (and therefore value) associated with this regulation, the USDA significantly under-estimated the economic burden on cattle owners due to the ADT rule.

II. USDA improperly dismissed the costs to cattle-related businesses

The ADT's costly requirements do not stop with the people who own cattle. Both sale barns and veterinarians will be subject to long-term record-keeping requirements under the proposed rule.[18]

The agency dismissed the cost to sale barns by stating that they are already required to keep records on the cattle sold.[19] The agency ignored, however, that the current record-keeping requirements do not require separate documents for each animal or even group of animals, while the proposed rule would do so, vastly expanding the sheer quantity of paper or data that must be maintained by the sale barns. Even more disingenuously, the agency anticipated that veterinarians will charge producers for the costs of keeping such records and then failed to address what those costs are likely to be.[20] Whether the sale barns and vets pass on the costs to the producers or absorb it themselves, **someone must pay those costs.** In addition, the agency's assumption about the costs for veterinary services failed to include the typical charges for having a vet come out to the farm (or, in the alternative, for hauling animals to the vet), which can range from $30 to over $100 for each visit.

The USDA failed to address the costs imposed by the ADT rule on a broad segment of support services provided to livestock producers or to account for how these costs might be absorbed or passed on to farmers and ranchers, in addition to the direct costs imposed on cattle owners.

III. USDA wholly failed to address the costs to poultry owners

Under the proposed rule, poultry moving interstate must be official identified either through group identification or with a permanent sealed and numbered leg band.[21] There are no

[17] *See id*.
[18] Proposed Rule,76 Fed. Reg. at 50107, Sec. 90.3: Recordkeeping requirements.
[19] Regulatory Impact Analysis at p.32.
[20] Regulatory Impact Analysis at p.32.
[21] Proposed Rule, 76 Fed. Reg. at 50107-108, §90.4: Official Identification at (a)(3) & (b)(5).

exceptions to the ID requirement, and they apply to both the person who sends and the person who received the animals.[22] "Group identification" is defined so that it only applies when a "unit of animals" is managed together as one group "throughout the preharvest chain."[23] This definition describes the management practices at large, vertically-integrated facilities, but does not apply to the majority of small-scale poultry owners who frequently commingle poultry of different ages and from different sources.

With respect to poultry, the agency conducted <u>no</u> analysis of the costs in its Regulatory Impact Analysis. The agency acknowledged in a sentence or two that there will be an impact on live bird markets, but also admitted that it does not know what those costs will be.[24] The agency did not even acknowledge that there will be costs imposed on individuals and farmers who operate on a small scale, such as those who order day-old chicks from out-of-state or those who take birds to slaughterhouses across state lines. Instead, the agency made the false assumption that "incremental costs for most … poultry enterprises are expected to be minimal."[25] Yet the vast majority of people who own poultry are not part of a vertically integrated operation and will have to use individual identification for their poultry, creating very significant costs in both time and out-of-pocket expenses.

To understand the impact the rule would have on poultry owners, it's important to first understand the complexity of the poultry industry. From commercial pastured broilers and pastured laying hens to backyard flocks to pets, hundreds of thousands of people own millions of birds under diverse conditions. For example, in USDA's 2007 survey of agriculture, the agency identified over 140,000 farms with between 1 and 399 layer hens.[26] The survey did not include the many people in both rural and urban settings who own a few birds for food, show, or as pets, although urban and backyard poultry production is growing at an exponential rate.

There are myriad variations in how people buy poultry outside of vertically-integrated operations. Many people order day-old chicks from hatcheries, commonly out-of-state. Some buy chicks from local feed and supply stores, who in turn usually have ordered the day-old chicks from hatcheries. Some buy juvenile or grown birds directly from farms. And many homeowners or smaller operations purchase "spent" laying hens for their personal use from commercial-scale operations, after they have become uneconomic to commercial egg producers.

There are also many variations in how people manage their poultry. Pastured broiler operations often raise birds in discrete all-in-all-out units that might be amenable to group identification. In contrast, pastured layer operations will often commingle multiple batches of birds from different locations over a period of many years, culling individuals in the flock only as needed. Many people have to cross state lines to process their birds because so few slaughterhouses accept poultry from independent producers. The backyard owners and live bird markets have, if anything, even more complicated systems.

[22] Proposed Rule, 76 Fed. Reg. at 50107, §90.2: General requirements for traceability.
[23] Proposed Rule, 76 Fed. Reg. at 50106, §90.1: Definitions.
[24] Regulatory Impact Analysis at p.30.
[25] Regulatory Impact Analysis at p.13.
[26] *See* 2007 Census of Agriculture, Volume I: U.S. Summary and State Data, Table 27, Poultry: Inventory and Number Sold, www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_US/st99_1_027_028.pdf.

The costs of raising poultry on a small-scale, from one bird to a few hundred, are very high, and there are no economies of scale. From buying feed in small quantities to the natural supplements to maintain health and necessary to certified organic production (such as diatomaceous earth, kelp, oyster and clam shell, and anti-parasitic herbs), small-scale poultry owners face costs that equal or even exceed their ability to recover those costs through sales. While pastured poultry products may sell at a seemingly high price, the profit margin is extremely slim, perhaps $1 on an entire bird or 25 cents on a dozen eggs.

Very few of these individuals have employees to care for the birds, and almost none have employees to handle administrative functions. Thus the paperwork involved in tracking groups, even "dynamic groups" as is done in the vertically integrated hog operations, would impose significant costs in time and effort. The farmers would have to develop database or paperwork systems capable of tracking the merging and divided groups, and then enter and maintain all of the information.

It's far from clear how the tagging could even be accomplished. Permanently tagging baby chicks or young chickens is simply impossible because of the growth of their legs. That growth would require holders of poultry to change leg bands a number of times as they grew, and documenting each change in identification. Even for adults, the cost of the tags and CVI's could easily be more than the value of the entire animal.

At a meeting of the USDA Secretary's Advisory Committee on Animal Health, a USDA official stated that the agency had conducted several studies on the issue of tagging poultry in the context of the live bird market system. Dr. Hegngi's testimony indicates that there simply is no cost-effective, reliable way to individually tag poultry on this scale.[27] Yet the USDA ignored the work conducted by its own staff in proposing the new requirements for poultry under the ADT rule.

SUMMARY: The USDA completely failed to examine the economic impacts to the poultry industry, especially on smaller scale operations. If the rule is implemented as proposed, it will place disproportionate, onerous burdens on both small-scale farmers and those who seek to raise poultry for their personal use and enjoyment.

IV. USDA failed to consider alternatives to its ADT proposal

In considering alternatives to the proposed rule, the agency did not consider the alternative that was proposed by many cattle organizations to identify only the breeding herd and not phasing in feeder cattle. Nor did the agency consider the alternative of not imposing new regulatory burdens on poultry owners.

Instead, the agency compared the proposed rule only to its failed proposal for the National Animal Identification System (NAIS). NAIS, which was withdrawn by the USDA in February 2010 after widespread, vocal opposition from tens of thousands of people, would have required

[27] *See* Appendix A to this letter.

that every single person who owned even one livestock or poultry animal register their property in a government database, identify each animal (in many cases with electronic forms of identification), and report a long list of "events" to a database within 24 hours. The NAIS was an absurdly expensive and unnecessary program, and using it as the baseline against which to compare the ADT rule was inappropriate and inconsistent with the reasons behind requiring regulatory impact analyses.

V. Conclusion

The USDA has failed to conduct a proper cost-benefit analysis of the ADT rule. At numerous points in its analysis, the agency failed to consider available data showing that the scope of the rule and its impact on the industry would be far broader, and its costs far more extensive, than the agency admitted.

We urge the OMB to return the rule to USDA for a thorough and complete analysis, which must acknowledge that the rule is economically significant.

We would appreciate the opportunity to discuss these issues with you in more detail. Please contact Judith McGeary at 254-697-2661 or Judith@FarmAndRanchFreedom.org to coordinate.

Respectfully submitted,

Carolina Farm Stewardship Association
Cattle Producers of Louisiana
Community Farm Alliance (KY)
The Cornucopia Institute
Family Farm Defenders
Farm and Ranch Freedom Alliance
Farm-to-Consumer Legal Defense Fund
Kansas Cattlemen's Association
National Family Farm Coalition
Organization for Competitive Markets
Powder River Basin Resource Council (WY)
R-CALF USA
South Dakota Stockgrowers Association
Virginia Independent Farmers and Consumers Association
Western Organization of Resource Councils
Weston A. Price Foundation

Appendix A
Excerpts from statement by Dr. Fidelis Hegngi, national coordinator of the live bird marketing system program of USDA-APHIS,
to the USDA Secretary's Advisory Committee on Animal Health (SACAH)
November 1, 2012

We look at this issue of ID, if you go and look at the uniform standard that was written for the live bird marketing system with the efforts of USHA and the transmitting of poultry it was stated in there that including (unintelligible) would need a form of individual bird identification for birds moving in the market.

So what did we do as APHIS? And I have a working group with the live bird marketing system. What we did in 2005 we sponsored a research with (Cadix) looking at individual bird ID. Was it something that can really work?

Because if you look at the system the world market system is a very complicated system. I always say when you talk about movement, I don't know any commodity that moves as poultry so when - everybody compares pigs, cattle and all that. The way poultry moves is more than anything that you can ever think in your life. So when we looked at just movement in the world market system just in the east coast, so this just to give you a good example.

There are about 26 million birds that move from the east coast to go to the world markets in New York, New Jersey and New England states. Sometimes when we trace back on the positive in the market to try to figure out where that bird came from, sometimes it had moved 350 times.

Okay, in different locations, so folks were like we need an ID system. When we did the first study of the ID system looking at glue tags and back tags, because when you talk about putting ID on birds going through this ethnic groups, you can't use IDs that adulterate what they eat.

Okay so people eat the neck of a bird, people eat the shanks of the bird, people eat the wings. You cannot put ID on them, because that was the one thing that we found out.

So we came up looking at glue tags and back tags, putting it on the feathers and the retention rate of that came up to almost 95%. The issue that arose from that discussion and this was heated debates between the states and the participating industry was the fact that when you start dealing with tagging and you go to the market and you get a cage that has 50 birds in it. And one bird in that cage doesn't have a tag, who is liable for that? Okay that producer or the hatchery that tried to use a glue tag has done their job. But at the end you don't have 100% compliance, who is liable for that?

…

For some of the proponents that said that we can do more on what is already in the regulation, we've been able to clean the markets over the past four years without bird ID.

…

And some of the suggestions that they made when we did the overt technology we did a little proof of concept, he ended, the company could not continue to the next phase.

Because first of all we lacked funding and then the second thing they also lacked personnel to carry on. But it comes down to technology. To do this for it to be effective is easy to put it in a regulation. But in that implementation it comes down to technology to make it work for poultry.

…

And I just had one more comment, we've looked at cost when we did all those ID studies and in anything that you do with poultry if it's not as if - if that cost is not 0.05 of a percent you're just wasting your time, it's not going to be implemented.

FTS-USDA Office of Communications, Moderator: RJ Cabrera, 11-01-11, Confirmation #8017069, Transcript, pages 56-59 & 76.