

# FARM AND RANCH FREEDOM ALLIANCE

8308 Sassman Rd  
Austin, Texas 78747  
www.farmandranchfreedom.org

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Texas Animal Health Commission  
Dr. Bob Hillman  
P. O. Box 12966  
Austin, Texas 78711-2966

Dr. Hillman:

Pursuant to 4 TAC § 59.6, the Farm and Ranch Freedom Alliance files this petition for a rule change.

## **I. Purpose of this petition**

On May 10, 2007, the Texas Animal Health Commission (“Commission”) proposed multiple regulations, the stated purpose of which was to address the threat of TB-infected cattle from other states being brought into Texas. Among the proposed regulations was a requirement that, for the first time, would require tagging of livestock for solely intrastate movements, unrelated to any attempt to test for a disease. Specifically, the proposed §43.2(n) required that all dairy cattle be identified with an “official identification device” before being moved intrastate.

On October 5, 2007, the agency published the final adopted rule. As noted in the final publication, the Commission received over thirty comment letters or e-mails on the proposal, but made no changes to the proposed rule to address the public’s concerns.

In adopting the regulation, the Commission did not fully address the impact of the proposed regulation and its interaction with existing regulations. The agency has stated that the proposed regulation is not intended to require electronic identification, nor does it “endorse” NAIS. Yet the language of the regulation itself is not clear and, contrary to the stated intent, would allow the agency to limit identification to NAIS-compliant electronic tags if it should wish to do so.

This petition merely asks the Commission to revise §43.2(n) to make the regulatory language consistent with the alleged intent, namely to require identification, while clearly and unambiguously not requiring premises registration or electronic tagging.

## **II. Statement of facts in support**

Section 43.2(n) states: “All dairy cattle being transported within Texas **shall be identified** prior to movement **with official identification device** or identification device approved by the Commission.” 4 TAC 43.2(n) (emphasis added). Reading this regulation together with the

existing regulatory definitions shows that §43.2(n) would allow the Commission to limit the forms of allowable identification to NAIS-compliant electronic identification.

The regulations define “**official identification device**” as: “An identification device approved by the Commission and/or by the APHIS Administrator that provides unique identification for each individual animal.” 4 TAC § 43.1(26). This definition leaves the question of what qualifies as official identification to the discretion of the agencies.

In contrast, the definition for “**official identification/ officially identified**”, a term which §43.2(n) does not use, states: “The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of APHIS, that provides unique identification for each animal.” 4 TAC § 43.1(27).

Since TAHC has different definitions for "official identification device" and "officially identified", the logical reading is that they mean two different things. The language of the new regulation includes the phrase "official identification device," but does not include the phrase "officially identified" or "official identification." So only the first definition is triggered, and the regulation does not specify that non-electronic eartags, tattoos, or brands would be acceptable.

In addressing the multiple comments raising this concern, the Commission made an error. The response stated:

As a primary response the Commission would note that the commenter appear to have not noted §43.2(e) or understand the meaning of the provisions, which provides for identification with "an official registration tattoo or an official registration brand.'

But Rule 43.2(e) provides: “All animals tested must be permanently individually identified by an official identification device, an official registration tattoo or an official registration brand as specifically recognized or authorized by the commission.” 4 TAC § 43.2(e). This rule applies to identifying cattle after testing for tuberculosis. Therefore, by its terms, §43.2(e) does **not** apply to cattle being tagged without being tested, as is now required under § 43.2(n).

In summary, the Commission approved § 43.2(n) based on an incorrect and incomplete analysis. The clear language of the regulation does not conform to the stated intention that non-electronic form of identification is allowable, but leaves the issue to the discretion of the Commission.

At the public meeting on September 18, the Farm and Ranch Freedom Alliance raised another objection to the proposed regulation: the lack of a definition for the term “dairy cattle.” How does an individual know if this regulation applies to him or her? Does it apply only to commercial dairy operations? To any cow of the most common dairy breeds, such as Holsteins and Jerseys? To any cow, regardless of breed, that is used to produce milk, even if just for personal consumption? To any cow with a full udder? The applicability of this regulation is vague and overly broad.

### **III. Text of proposed rule revision and proposed effective date**

FARFA proposes that the Commission adopt the following amended version of Rule 43.2(n):

(n) Intrastate Movement of Dairy Cattle. All dairy cattle being transported within Texas shall be officially identified prior to movement ~~with official identification device or identification device approved by the commission~~, subject to the following conditions:

(1) any form of identification listed in 4 TAC § 43.1(27) will satisfy the requirements of this section;

(2) no person shall be required to register with the USDA National Premises Information Repository or any other federal registry program in order to satisfy the requirements of this section;

(3) no person shall be required to use electronic identification to satisfy the requirements of this section.

FARFA also proposes that the Commission adopt the following definition for “dairy cattle”:

43.1(10): “Dairy Cattle”-- Holstein-Friesian, Brown Swiss, Guernsey, Ayrshire, Jersey, and Milking Shorthorn breed cattle that are used as part of a commercial dairy operation or sold commercially for such purposes.

The proposed effective date is “Effective immediately upon adoption.” Because the revision to the regulation clarifies and lessens the current regulatory burden, no transition period is needed.

### **IV. Conclusion**

The proposed revision to the regulations satisfies the Commission’s stated purpose of identifying cattle that are at a higher risk of being TB-positive due to the frequent imports of dairy cattle from out-of-state for commercial dairy operations. At the same time, the proposed revised regulation addresses the concerns stated by the public, by stating clearly and unambiguously that the regulation will not be used as a vehicle for requiring NAIS registration or electronic tagging in the future.

Sincerely,

Judith McGeary  
Executive Director, Farm and Ranch Freedom Alliance

Cc: House Agriculture Committee  
Senate Subcommittee on Agriculture, Rural Affairs, and Coastal Resources