

**FARM AND RANCH FREEDOM ALLIANCE  
AND  
WESTON A PRICE FOUNDATION**

December 2, 2009

Docket No. APHIS-2009-0073 and APHIS-2009-006  
Regulatory Analysis and Development, PPD  
APHIS  
Station 3A-03.8  
4700 River Road, Unit 118  
Riverdale, MD 20737-1238

Re: Docket No. APHIS-2009-0073 and Docket No. APHIS-2009- 006

Dear APHIS:

The Farm and Ranch Freedom Alliance (FARFA) is a non-profit organization headquartered in Texas with members in 45 states. FARFA advocates for farmers, ranchers, and homesteaders through public education and lobbying to assure their independence in the production and marketing of their food, and to prevent the imposition of unnecessary regulatory burdens that are not in the public interest. FARFA also advocates for consumers' access to information and resources to obtain healthy foods of their choice. FARFA promotes connections between rural and urban communities to support diversified, local agricultural systems.

The Weston A. Price Foundation (WAPF) is a nonprofit organization with members in every state and internationally, founded in 1999 to disseminate the research of Dr. Weston Price, whose studies of isolated nonindustrialized peoples established the parameters of human health and determined the optimum characteristics of human diets. WAPF is dedicated to restoring nutrient-dense foods to the human diet through education, research and activism.

FARFA and WAPF jointly submit these comments on behalf of their approximately 13,000 members. The comments address both Docket No. APHIS-2009-0073 and Docket No. APHIS-009-006, the concept papers on the Bovine Brucellosis and Bovine Tuberculosis programs.

The first issue in considering changes to either program is to determine what is inadequate about the current processes. Both papers identify several challenges that we agree pose issues in the current program:

1. Imported animals
2. Reservoirs of the disease in wildlife
3. Large herd sizes due to consolidation in the livestock industry

Unfortunately, while a few of the proposed changes address these challenges, the Concept Papers include several significant proposals that would not improve on the current program and in fact would cause harm to both livestock owners and disease control efforts. Specifically:

- 1) We urge the agency not to move forward with its proposal to “modernize the regulatory framework,” because the proposal is inconsistent with governing law and is bad policy.
- 2) We urge the agency not to adopt electronic movement certificates or other portions of the National Animal Identification System as part of the TB and brucellosis programs, but rather to use less expensive and less burdensome methods to achieve traceability, including brands and metal or plastic tags.
- 3) We urge the agency not to replace State-based approaches with zoning approaches, but rather to use zones within States to allow for flexibility.

#### **I. Any regulatory changes must allow for notice and involvement by all affected individuals**

Before addressing specific regulatory proposals, there is a fundamental principle that must be respected: Those impacted by the regulations are entitled to due process, including notice and an opportunity to comment.

The Concept Papers complain about the delays in changing regulations using the notice and comment process under the Administrative Procedures Act (APA), 5 U.S.C. §§ 551 et seq. The APA requires that the agency publish the proposed rule in the federal Register, allow an opportunity for public comment, and then consider those comments before making a final decision. *See* 5 U.S.C. §553.

In the Concept Papers, the agency proposes bypassing the procedural requirements of the APA by using policy statements, rather than regulations, to impose specific regulatory requirements. Specifically, the Concept Papers propose that the agency use the substantive rulemaking process for “performance standards to describe a regulatory goal or desired outcome rather than including prescriptive, inflexible design standards,” and then “stating specific guidelines or approaches ... in ... policy documents.” (TB Concept Paper at p.7, Brucellosis Concept Paper at p.6.) This fundamental change in regulatory structure would be both illegal and poor policy.

The provisions of the APA were developed to address the significant Constitutional issues presented by agency rulemaking. Agencies are part of the Executive Branch, the implementation arm of the government. Yet, in the rulemaking process, agencies exercise legislative power. Several early Supreme Court cases addressed the requirements for such power to be exercised constitutionally, and Congress passed the Administrative Procedures Act in 1964, setting out clear steps that agencies must follow to keep them within the boundaries of the Constitution. The Concept Papers’ proposal violates both the APA and the Constitutional separation of powers.

Using policy documents instead of rules promulgated under the APA is also bad policy. The notice and comment procedure allows for affected individuals to provide input, and for the

agency to take the time to reflect and consider on the ramifications of its proposed actions. The agency has often made changes, or even withdrawn, proposed rules based on public input. Allowing the agency to simply impose its ideas through policy documents, without going through that process, could lead to numerous harmful, burdensome, and counterproductive requirements being imposed on livestock owners.

## **II. Animal identification is a tool, not a goal in and of itself, and can be addressed through existing, low-tech methods**

The Concept Papers claim that progress in the TB and brucellosis programs has been hampered by the lack of a national animal identification system. (TB Concept Paper at p.2 & 6, Brucellosis Concept Paper at p.6.) Yet, as is the case with all of USDA's claims on NAIS, there is no supporting evidence or even logic. The agency continues to fail to address the issues that our organizations have raised over the course of several years.

### **A. No analysis or quantification of the alleged benefits.**

USDA has made unsupported assertions that our country needs 48-hour traceback of all animal movements for disease control. Yet USDA has failed to provide any scientific basis, including risk analysis or scientific review of existing programs, to support this claim. USDA has also asserted that NAIS would provide 48-hour traceback, but has failed to address the many technological and practical barriers. Existing disease control programs, combined with measures such as brand registries and normal private record-keeping, provide cost-effective traceback. A new and costly program such as NAIS is unnecessary and potentially counterproductive.

In particular, while the Concept Papers claim that identification has been a significant challenge to addressing bovine tuberculosis and bovine brucellosis, they do not support that claim. Increasing tracking of animals cannot improve our ability to address animal disease because tracking is not the weak link in the chain of our animal health system. In 2005, the GAO analyzed the government's provisions for preventing agroterrorism, assessing livestock diseases in particular. The GAO did *not* identify any deficiencies in current livestock tracking, or recommend that resources be allocated to programs such as NAIS. Rather, the GAO identified multiple deficiencies in other aspects of animal disease programs, including the lack of training for veterinarians in foreign animal diseases, USDA's failure to use rapid diagnostic tools to test animals at the site of an outbreak, USDA's complex decision making process for deploying vaccines, and the decline in agricultural inspections at ports of entry.<sup>1</sup> The federal government should allocate its resources to these deficiencies.

### **B. NAIS rewards vertical integration and consolidation.**

The Concept papers recognize that consolidation of livestock is one of the challenges in disease control efforts. Yet the agency is continuing to promote an animal identification program that

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<sup>1</sup> United States Government Accountability Office, GAO-05-214, Homeland Security: Much is being done to protect agriculture from a terrorist attack, but important challenges remain (Mar. 2005) (hereinafter "GAO Report on Agriculture") at p.6-7.

would increase consolidation! The USDA's guidance documents provide that "animals that typically move through the production chain as a group of animals of the same species can be identified by Group/Lot Identification Numbers (GINs), rather than individual numbers. This practice is most common in the poultry and pork industries. However, group/lot identification may be an option for other species when they move through the production chain as a group." In practice, this means that companies who maintain ownership of the animals throughout their lives – as is done in vertically integrated confinement operations – will be relieved of most of the costs and paperwork burdens of NAIS.

If the agency truly recognizes the problems posed by consolidation, then it should do a review of its existing and proposed regulations to identify those that impose unfair burdens on small producers, and change its regulatory strategies to promote decentralized agricultural production in this country.

### C. The use of electronic technology and databases create additional problems.

The Concept Papers specifically call for the use of electronic movement certificates. Yet the agency fails to address the problems inherent in a high-tech system. Anyone who has worked with computers is well aware of the potential for them to fail at critical moments. We have also seen numerous intentional and accidental releases of data from government databases, including USDA's databases. In addition, RFID technology is subject to problems that do not exist with traditional identification methods such as branding or tattoos. Depending on the security of the technology used, the microchips can be cloned or infected with computer viruses (which can then be passed to other chips through the scanner).<sup>2</sup> In fact, the specific type of RFID to be used in NAIS, the ISO 11784/11785 chip, is designed to be programmed in the field before it is applied to animals or even *reprogrammed after application*. This problem with the ISO standard is well known in the technology community and has been debated for years.<sup>3</sup> It is irresponsible to abandon traditional identification techniques in favor of unproven, flawed systems.

In addition, based on the 2007 Census, almost half of farmers do not have internet access. Aside from the costs, some individuals have religious objections to the technology or simply lack the knowledge to use it. Will these individuals be forced to stop owning livestock? Or will State agriculture departments have to accept written reports mailed to their agencies or telephone reports that will be transcribed, creating a burden on State resources and increasing problems due to human error in data input.

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<sup>2</sup> See Annalee Newitz, *The RFID hacking underground*, WIRED, [www.wired.com/wired/archive/14.05/rfid\\_pr.html](http://www.wired.com/wired/archive/14.05/rfid_pr.html); John Markoff, *Study says chips in ID Tags are vulnerable to viruses*, NEW YORK TIMES (Mar. 15, 2006); Rieback, M.R., B. Crispo and A. Tanenbaum, *Is your cat infected with a computer virus?*, Vrije Universiteit Amsterdam, Computer Systems Group.

<sup>3</sup> In 1998, ISO received a formal petition calling for revisions or suspension of the standards, and identifying multiple flaws in the ISO 11784/85 standard, including the lack of unique ID codes. See letter from Gosstandrat of Russia, Committee of Russian Federation for Standardization, Metrology and Certification, to Rudolf Zens, Secretary, SC 19 (Mar. 2, 1998) at <http://www.rfidnews.com/images/3-2-98.gif>. See also *The Controversial ISO 11784/85 Standard, ISO 11784/85: A Short Discussion*, at [www.rfidnews.com/iso\\_11784short.html](http://www.rfidnews.com/iso_11784short.html)

Collecting the information in massive databases also poses a barrier to successful traceback. Colorado researchers developed a mock data set and algorithms for using a NAIS-type database for tracing animal movements and the cohorts of diseased animals.<sup>4</sup> Although the research indicated that traceback of a diseased animal was quite rapid, the tracing of the cohorts (the animals that had come into contact with the diseased animal and then with other animals) took vastly longer, especially if the data was kept in more than one database. Their simulation of 100 million animals with the data held in multiple databases indicated that it could take *more than 39 years* to trace the cohorts.

### **III. Zones should be part of the State-based system, not replace it**

We urge the agency not to replace State-based approaches with zoning approaches, but rather to use zones within States to allow for flexibility. The geopolitical boundaries of States have significant impacts on disease control. Each State has its own human and animal health authorities, with expertise in their State's unique human, economic, and ecological factors.

As noted by the Concept Papers, States can apply for split-state status to avoid having trade sanctions imposed on the entire State. If that process is too burdensome, then the agency should take steps to streamline it, *without* eliminating the role of the State.

### **IV. Conclusion**

As noted in the Concept Papers, TB and Brucellosis have been significantly reduced using the existing programs. Although some modifications could improve the existing programs, establishing a national animal identification system that has no proven scientific basis is unreasonable and unjustified. Relying on zones is also an unproven and risky approach. Establishing these systems using a regulatory procedure that denies stakeholders the right to comment is indefensible.

Sincerely,

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<sup>4</sup> J.A. Scanga et al, *Development of computational models for the purpose of conducting individual livestock and premises traceback investigations utilizing National Animal Identification System-compliant data*, J ANIM SCI 2007.85:503-211.