



FARM AND RANCH FREEDOM ALLIANCE

P.O. Box 809
Cameron, TX 76520
www.farmandranchfreedom.org

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Submitted through www.regulations.gov

Re: Docket No.APHIS–2009–0091
Proposed Rule
Traceability for Livestock Moving Interstate

Dear Secretary Vilsack:

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 urges the Secretary to recognize that moving forward with the proposed rule is not necessarily progress. Unless some fundamental problems are addressed, the proposed rule will impose significant, unnecessary burdens on both animal owners and related businesses. This will not help in the controlling disease, but will further alienate the public from the agency and harm both rural and urban communities.

Section 1: The proposed rule should be withdrawn because its benefits do not outweigh its costs.

I. The agency has failed to provide scientific support of the need for the new regulation

The U.S. has been very successful in several efforts to control and eradicate diseases. To the extent that we have had problems, it is far from clear that the problems can be solved by increasing requirements for identification of livestock. The agency has provided anecdotal examples of cases where tracebacks have failed, but has not provided the sort of comprehensive analysis that would allow the public to form a judgment as to where the problems lie.

With the proposed rule, the USDA is shifting from using traceability as one part of an overall disease program to focusing on traceability in an isolated, one-size-fits-all manner. The proposed rule takes a novel, unproven approach, separating the concept of traceability from the methods that have proved successful in programs such as tuberculosis and brucellosis.

FARFA has requested multiple times that USDA provide solid facts and data to support this dramatic change in policy. **Most recently, in January 2011, as part of the proceedings of the Secretary's Advisory Committee on Animal Health, FARFA's Executive Director, Judith McGeary, requested the following information:**

1. Data relating to traceability under existing programs
 - a. What is the total number of tracing events in the last 5 years?
 - b. How many failed? How many were successful?
 - i. How is "failure" defined? How far back was the animal able to be traced? Was the event defined as a failure based on an inability to trace the animal of interest, its cohorts, and/or its offspring?
 - ii. For each event, how many producers were affected?
 - iii. For each event, how many head of animals were affected?
 - c. What animal health consequences resulted from the failed traces?
 - d. What are the costs for successful traces? Failed traces?
 - i. Estimated employee hours, divided between federal and state employees?
 - ii. Costs of quarantines to federal and state agencies? To livestock owners?
 - iii. What were the costs for the additional testing, euthanasia, or other steps taken to federal and state agencies? To livestock owners?
 - e. Looking at just traces of sheep, what are these numbers?
 - f. What were the numbers of failed versus successful traces for cattle 20 years ago?
 - g. Has any data been collected yet from the recent outbreaks of FMD in other countries, to look at what (if any) difference their traceability programs made?
2. Analysis of the failures
 - a. What analysis has been done to determine why some traces fail and some succeed?
 - b. What percentage of failed traces involve a gap in existing regulations (i.e. the failure occurred because the animal was not required to be identified) as opposed to a failure to comply with existing regulations (i.e. the animal should have been identified, but the ID was illegally removed or failed to be removed at slaughter)? Failures to comply with existing regulations also include such failures on the part of animal health officials or private veterinarians to report and maintain required records.
 - c. What role does the IT infrastructure at the state and federal agencies play? I.e. what improvements can be made by using electronic technology

within the agencies without requiring electronic technology to be used by producers and veterinarians?

3. Analysis of the goals and costs
 - a. The USDA has set various performance goals, ranging from being able to notify the State where the animal was identified 95% of the time within 1 business day to identifying the state where the animal was last shipped from 95% of the time within 7 business days. Yet there has been no explanation of why these numbers were selected as goals. What analysis has been done to estimate the differences in outcome based on different traceability times?
 - b. Based on the presentation to the Committee, a key part of the program from USDA's perspective is moving CVIs from paper-based systems to electronic-based systems. One way to do this is through electronic CVIs, but those would pose significant burdens for many livestock veterinarians and the producers they serve. The other way to achieve this goal, as noted by USDA, is to accept paper CVIs from veterinarians and establish a data entry system within the state agencies to place key pieces of data in searchable form. What are the estimated costs of the latter approach?
 - c. Has any modeling been done to compare the likely success rate of traces under different options? For example, a comparison of the likely success rates of traces with feeder cattle included versus excluded?
 - d. What will the program, as currently proposed by USDA, cost, to the federal government, state government, and animal owners? What financial contributions does USDA plan to make to the program?
4. Analysis of the role of traceability within animal health as a whole
 - a. The analysis should also address the role of traceability as one part of animal health, rather than a goal in and of itself. Preventative measures, such as preventing high-risk imports and promoting healthy animal management, may be more effective (and cost-effective) than increasing levels of tracking.

The information requested is important to understanding the current status of traceability in this country and identifying where problems may lie. Without this data, it is impossible to develop a program that has a reasonable chance of success. While the agency provided a little of this information in its Regulatory Impact Analysis, the majority of the questions remain unanswered.

II. The agency has failed to properly address the costs of the proposed rule.

The agency's Regulatory Impact Analysis is significantly flawed.

First, the agency has significantly underestimated the costs to cattle producers and related businesses. For producers who do not currently tag their animals, the agency estimates that it will cost only \$1-\$2.50 for the chute and only \$0.18 for the labor to attach the ear tag. Yet what about the costs of buying chutes to begin with? The reason many small

producers don't tag at this time is because they lack the equipment, which can cost several thousand dollars. Moreover, the claim that it would cost less than 20 cents for the labor to tag was based on the assumption that it takes only one minute to tag one animal. While that may be true in a perfect setting, or when averaged out over thousands of animals, it is often far from true on a small scale. Cattle do not always run quickly and quietly through chutes, standing still to have their ears tagged.

In addition, the agency does not address the costs to sale barns or veterinarians, both of whom will be subject to legal requirements under the proposed rule. The agency "anticipates" that veterinarians will charge producers for the costs of keeping such records – but the agency then fails to address what that cost is likely to be. Similarly, the agency's assumption about the costs for veterinary services fails to include the typical charges for having a vet come out to the farm (or, in the alternative, for hauling animals to the vet). Whether the sale barns and vets pass on the costs to the producers or absorb it themselves, someone must pay those costs.

Moreover, the regulatory impact analysis does not address how the proposal will be implemented using a realistic budget. There is no provision to ensure sufficient funding to support IT and data entry upgrades in all 50 States and all the Tribes. It makes little sense for animal owners to be required to tag their animals and pay for certificates of veterinary inspection (CVIs) when the agencies will be unable to handle the information generated.

Notably, in considering alternatives to the proposed rule, the agency did not consider the alternative – proposed by many cattle organizations – of identifying only the breeding herd and not phasing in feeder cattle. By ignoring this alternative, and instead comparing the proposed rule to the failed NAIS program, the agency skewed its analysis in favor of its own proposal.

With respect to the benefits, the agency's Analysis focuses almost entirely on the monetary benefits from exports. The argument is fundamentally flawed for two reasons. First, the benefits are based on models of varying degrees of traceability. *See* Regulatory Impact Analysis at p.57. Yet tagging is not synonymous with traceability. An animal may have had an ear tag attached prior to crossing state lines and then still ultimately be untraceable later for a variety of reasons, from lost tags to poor recordkeeping at the state agencies themselves. That is why FARFA requested a thorough analysis of where the flaws lie in the current system. But, instead of conducting a proper analysis, the agency continues to operate on the false premises that tagging equals traceability.

Second, as has been shown repeatedly and acknowledged by USDA officials, market access often depends more on politics than on traceability or other measures. Moreover, the financial benefits of exports accrue almost entirely to the companies who sell the exports. Since the costs of the program will rest almost entirely on livestock producers and related businesses (sale barns, veterinarians, etc), it is inappropriate to justify those costs on the basis of benefits to other entities.

As the agency notes, the number of cattle operations has dropped 28% in the last 20 years. This reflects the loss of hundreds of thousands of small businesses, causing harm to both individuals and rural communities as a whole. Yet the agency fails to consider how its proposed regulation may continue, or even accelerate, the trend of concentration in the cattle industry.

With respect to poultry, the agency has done no analysis of the costs in its Regulatory Impact Analysis. The agency acknowledges in a sentence or two that there will be an impact on live bird markets, but also admits that it does not know what those costs will be. The agency does not even acknowledge that there will be costs imposed on other individuals, 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 makes the false assumption that “incremental costs for most ... poultry enterprises are expected to be minimal.” Regulatory Impact Analysis at p. 13. 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. It is wholly inappropriate for the agency to propose new regulatory requirements without an assessment of the costs.

Section 2: Issues with specific provisions of the proposed rule.

1. Feeder cattle should not be included in the rule.

The rule proposes a two-stage implementation process, under which cattle over 18 months of age (“breeding cattle”) will be identified and tracked in Phase 1 and cattle under 18 months of age (“feeder cattle”) will be identified and tracked in Phase 2.

Past traceability programs have been successful without including feeder cattle, and USDA has not identified a basis that justifies including feeder cattle in the new program. The burden of identifying feeder cattle threatens to harm both producers and sales barns, while also potentially swamping the system with more data than can be efficiently handled.

For producers, the requirement may require multiple taggings, since calves may frequently lose tags. It requires additional facilities and significant labor, both creating costs.

The inclusion of feeder cattle will also impose extensive costs on sale barns. Sale barns face challenges in tagging breeding cattle at the necessary speed of commerce. The inclusion of feeder cattle, with their significantly greater numbers, could make it impossible for sale barns to be able to complete sales in a timely fashion. Even if possible, the additional labor to accomplish this task will be expensive, and the stress on the animals will be considerable.

FARFA urges the agency to exclude feeder cattle from the proposed rule.

2. Poultry should not be subjected to new regulations.

Under the proposed rule, poultry moving interstate must be official identified either through group identification or with a permanent sealed and numbered leg band. *See* §90.4(a)(3) & 90.4(b)(5). There are no exceptions to the ID requirement. The proposed rule also includes requirements for interstate certificates of veterinary inspection (ICVIs). *See* §90.5(g). “Group identification” is defined such that it only applies when a “unit of animals” is managed together as one group “throughout the preharvest chain.” *See* §90.1. **This definition does not apply to the majority of small-scale poultry owners, who commingle poultry of different ages and from different sources as part of their normal management practices.** The poultry-specific provisions are applied under the general proposed rule that no person may move “**or receive**” covered livestock unless they meet the requirements of the new rule. *See* §90.2.

There are several problems with the proposed rule for poultry:

- 1) 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.
- 2) Even for adults, the cost of the tags and ICVI’s could easily be more than the value of the entire animal.
- 3) New regulations can create a disincentive for small-scale poultry owners to seek help from veterinarians or diagnostic labs when they encounter a health problem, due to the threat of penalties for noncompliance. The result can be a disaster for animal health. For example, the 2002 outbreak of Exotic Newcastle Disease in California was started and spread by illegal cockfighting flocks. The illegal roosters had been smuggled in from Mexico, and the poultry owners involved failed to seek veterinary or diagnostic help at the initial stages of the outbreak, undoubtedly due to their illegal status, which led to widespread problems.

New regulations for identification of poultry are not necessary and will most likely be counter-productive from an overall animal health perspective, as they will discourage poultry owners from seeking veterinary assistance. FARFA urges the agency to exclude the poultry provisions from the proposed rule and not impose any new regulatory requirements.

3. Brands and tattoos should be officially recognized forms of identification, subject to States' ability to opt out.

The proposed rule downgrades brands to an unofficial form of identification. Yet producers in brand states know that branding is an extremely reliable method for identifying animals.

The proposed rule similarly removes tattoos from the list of official identification. The reliability of tattoos as a form of identification has been amply demonstrated through breed registration tattoos. Tattoos remain with the animal even when tags are lost, as shown by their use in the brucellosis program.

If brands and tattoos are not listed as an official form of identification by the USDA, it could have an impact on their legal and practical status in a variety of contexts. For cattle owners who brand or tattoo their animals, these are more reliable and less expensive option for identification than ear tagging.

Requiring States and Tribes to enter into individual agreements to allow brands or tattoos to be used could lead to a morass of complicated agreements and bureaucratic barriers.

FARFA urges the agency to include brands and tattoos as official forms of identification, **as they are under current law**. States and Tribes should be allowed to adopt rules or make agreements that limit the use of these forms of identification. The State or Tribe could decide not to accept brands or tattoos at all or to take a partial approach of accepting these forms of identification under certain circumstances or conditions. Provisions for both two-state and multi-state agreements should be explicitly included for ease of use.

4. Dairy cattle should be clearly defined and, like beef cattle, limited to animals over the age of 18 months and/or large-scale commercial operations

The proposed rule requires that, during the first phase of the rule, “dairy cattle” be identified and accompanied by ICVIs (interstate certificate of veterinary inspection) no matter their age, while beef cattle need only be identified if they are 18 months or older. The reasons for imposing greater requirements on dairy cattle than on beef cattle appear to be the extensive commingling and high-density populations that are common at many commercial dairies.

The proposed rule defines “dairy cattle” as “all cattle, regardless of age or sex or current use, that are of a breed(s) typically used to produce milk or other dairy products for human consumption”

While dairy cattle in large commercial operations may be at a higher risk for disease, many small farmers keep dairy cattle at a low density with infrequent commingling. It is

unwarranted to impose additional regulatory burdens on these farmers based on problems observed at large dairies. In 2010, herds with 500 cows or more produced more than 60% of the milk in this country. http://usda01.library.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-11-2011_revision.pdf

In addition, there is a growing interest in “dual purpose” breeds among sustainable farmers and individuals raising food for their own families. These breeds are not used in commercial dairies and pose no greater disease risk than beef cattle. Dual-purpose breeds include (but are not limited to) Dutch Belted, Shorthorns, Devons, Dexters, and Red Polled. While they are dual-purpose, some producers raise these breeds solely for meat production. These breeds are not common, and sale barn operators may not reliably recognize them.

As a result, the definition of dairy cattle in the proposed rule is both overbroad and vague. Cattle owners and sale barns will have to guess whether certain cattle are covered, creating uncertainty and increasing the burdens in both time and money. This confusion will lead to unequal treatment under the rule, since it will depend on a person’s interpretation of the unclear definition.

First, the issue of ambiguity can be addressed by listing the breeds that are considered “dairy cattle.” For example, the definition of dairy cattle should be: “All cattle, regardless of age or sex that are of the Holstein, Brown Swiss, Guernsey, Ayrshire, and Jersey breeds.”

Second, dairy cattle should be treated the same as beef cattle (i.e. identification only required for animals 18 months of age or over in Phase 1). To the extent that there is a higher disease risk in the large commercial operations, the appropriate solution is to impose new requirements on those operations, not on every single person who owns a dairy cow. Thus, the requirement to tag dairy cows under the age of 18 months of age should be limited to those animals owned or used by a commercial dairy operation with 500 cattle or more.

5. Cattle moving directly to slaughter should be identified with backtags, not ear tags.

Under the current proposal, cattle moving directly to slaughter are initially exempt, but then are phased in when feeder cattle are phased in.

There are many good reasons to use backtags for cattle going directly to slaughter: such as reduced stress on the animals, optimum speed of commerce, animal handling/welfare, worker safety, and low-cost efficient tagging. Properly applied, backtags are as good as other ID devices or methods for tracing adult animals going direct to slaughter.

Since small-size cattle operations typically use livestock markets to sell their adult cattle direct to slaughter, the economic burden for requiring an eartag in adult animals that do

not already have an official eartag would be placed squarely on the backs of small production operations and livestock market operations.

FARFA urges the agency to provide for the continued use of backtags, without additional ear tags, in identifying cattle moving interstate direct to slaughter.

6. The record-keeping requirements should be reduced to avoid undue burdens, particularly on veterinarians.

The proposed rule requires States, tribes, vets, and anyone else who “distributes official identification devices” to maintain records of the names and addresses of the people they were distribute to for 5 years. Similarly, sale barns and other “approved livestock facilities” must keep ICVIs of any covered livestock that enter their facility for 5 years.

Veterinarians and sale barns will have to charge fees to cover their costs for this extensive recordkeeping requirement. The agency’s stated justification is that diseases such as brucellosis and tuberculosis may have incubation periods of several years, making long-term record-keeping important for traceability. But this argument does not make sense in the context of a plan to require the same recordkeeping on feeder cattle, the vast majority of which will be dead for several years before the vets and sale barns are allowed to dispose of their records.

This is an important example of how the “traceability for traceability’s sake” approach does not make sense when applied to the real-world conditions of livestock ownership and management. The agency needs to either significantly reduce the record-keeping requirements or remove feeder cattle from the rule.

In addition, as USDA acknowledges, the existing requirements for certificates don’t always require that they be issued by a veterinarian. The new rule would change that. But there is a critical shortage of accredited large animal veterinarians in many areas. Vets traveling long distances must charge high travel fees or go out of business. The economic burden for ranchers and sale barns to obtain the required veterinary services threatens the economic viability of many businesses and producers marketing their cattle in interstate commerce.

FARFA urges the agency to reduce the recordkeeping requirements to two years and to provide greater flexibility for owner-shipper statements.

7. The provision for horses should be clarified to remove ambiguities.

Under the proposed rule, there are multiple options for identifying horses that cross state lines, including a physical description “sufficient to identify” the horse. This is a common standard used already. But the proposed rule qualifies this form of identification by saying that whether or not the description is sufficient “as determined

by” a “State or Tribal animal health official in the State or Tribe of destination or APHIS representative.” This creates a significant level of uncertainty for both horse owners and for the veterinarians who are often the persons responsible for writing physical descriptions on health papers.

In addition, the proposed rule provides for “other documentation” as agreed to “by the State or Tribes involved in the movement” to be used in place of an ICVI. This language differs from that used for cattle, which provides that the other documentation must be agreed to by the “shipping and receiving” States or Tribes. The reason for the difference in the language is unclear and arguably could be used to require horse owners to receive approval from each and every State the horse travels through on its way to its destination. FARFA urges the agency to maintain consistent language for alternative documentation and to explicitly recognize both bilateral and multilateral state agreements.

8. The standards for using more than one form of official identification should be consistent and reasonable.

The proposed rule would prohibit multiple official identification devices or methods on the same animal, with certain exceptions.

The proposed rule effectively gives a preference to electronic 840 tags by making it easy to use them as a second form of official identification, while placing multiple barriers to any other form of identification being used as a second form of ID.

In particular, if the agency provides for brands and tattoos to continue to be listed as an official identification method between or among agreeing States and Tribes, then the current prohibition on a different second official device or method would preclude the addition of an official eartag in branded cattle moving interstate into non-brand or non-agreeing states to the use of a brand for interstate movement. This is an absurd result.

FARFA urges the agency to permit more than one different official ID device or method for interstate movement, with consistent requirements for all second forms of identification.

9. The proposed rule should not be adopted until performance standards and evaluations have been determined.

The USDA’s initial framework proposal included provisions for performance standards to assess whether States and Tribes had “acceptable” traceability for animals moved interstate.

FARFA expressed concern about the application of these standards, particularly whether additional burdens would fall on private producers if their State or Tribe failed to meet the standards. But simply dropping the standards – with the intention of adopting them in a separate rulemaking – was not an appropriate solution.

In effect, the agency is asking producers to provide it with a “blank check,” signing on to a program when the consequences are unknown. That blank check could be expensive. The agency has not accurately evaluated all of the direct and indirect costs of the proposed rule to producers and sale barns, such as the costs in time and potential injuries to both people and animals. In addition, the costs to States remain unknown, an issue of deep concern at a time when many State agencies are facing dramatic cuts to their budgets.

FARFA urges the agency to delay in finalizing the proposed rule until it has proposed and received comments on performance standards.

10. Definitional problems

The definition of livestock as “all farm-raised animals” is vague and open to problems of interpretation. What if goats are raised on an urban garden? What about people who raise dogs on their farms? There is no valid reason that the definition of livestock should be tied to the “farm.” The agency should clearly define livestock by species.

In addition, the definition of “directly” does not allow the animals to be unloaded from a conveyance, even if they aren’t commingled. There are multiple reasons animals may need to be unloaded, including reasons of animal health and welfare, and producers should not be penalized for doing so. The definition of “directly” should be modified to address the real risk factor, namely commingling with other livestock en route to the final destination.

Conclusion

Due to the significant problems with the proposed rule, the agency should withdraw it at this time. The agency should compile the data and information requested in Section One of these comments (as has been requested before). In addition, the agency should conduct a complete cost analysis that addresses the costs to all parties affected by the proposal, including those who were essentially overlooked in the current analysis, such as backyard poultry owners, pastured poultry farmers, veterinarians, sales barns, and state agencies.

Only after taking these steps and addressing the specific comments above, together with the comments received from other individuals and organizations, should the agency propose provisions for new traceability requirements.

Sincerely,

Judith McGeary

Judith McGeary

Executive Director

Farm and Ranch Freedom Alliance