July 24, 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 OIRA staff and leadership:

The 62 undersigned organizations, representing family farmers, ranchers, and consumers, urge you to return USDA's final rule on Animal Disease Traceability (ADT) to the agency for a legally adequate, thorough, and complete cost analysis.

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

Below is an outline of some of the inaccurate assumptions made by USDA in its cost analysis.

I. USDA grossly underestimated the costs to cattle owners due to multiple inaccurate and inappropriate assumptions

As proposed, the ADT rule would ultimately require that every bovine 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 dairy cattle and 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]

In estimating the costs, USDA made several deeply flawed assumptions, discussed below.

[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).

ASSUMPTION: USDA assumed that it would cost only $0.18 per head for producers to comply with the identification requirements in the new rule if they are already using some form of unofficial ID.[5]

ISSUES:

1) It is incorrect to assume that the metal eartags and eartag applicators will cost nothing unless USDA has made an **enforceable** commitment that the rule's requirements will be suspended if there is insufficient federal funding. Particularly in light of the expanding deficit problems, it is more likely than not that, whether this year or in coming years, producers will at some point be forced to shoulder the cost of the tags and applicators.
2) The estimate does not include the time and labor involved in obtaining the tags, nor the labor involved in administering the process and recordkeeping.
3) The estimate that it would cost only eighteen cents in labor costs to apply the tag is based on the claim that it takes only one person one minute to tag a cow. But cattle are living animals, not inanimate objects. Cattle do not always run quickly and quietly through chutes, nor do they stand perfectly still to have their ears tagged. It typically requires a team of multiple people to manage these large, powerful animals.
   a. The time and labor involved is not only the exact moment of placing the tag, but gathering the cattle, sorting the calves from the adult cows, running them through the chutes, restraining each animal individually, and placing the tag. The amount will vary based on the conditions, number of animals, behavior of the animals, type of equipment used, and the handlers' experience. A more realistic estimate for all of the labor involved would be anywhere from 5-12 minutes with a crew of three people, at a cost of $2.70 - $6.48 in labor.
   b. A study from North Dakota, which involved tagging 14,432 calves, estimated the cost of labor at $7 for working the calves, tag placement, and documentation combined.[6]
4) For producers who are already using unofficial forms of identification, the agency assumed that there was no cost due to shrinkage, stress and injury, based on an underlying assumption that the producer would tag the cattle while conducting other management practices and there would be no additional stress on the animal or potential for injury to both the cattle and the personnel involved.
   a. Tagging an animal often involves more time and closer contact between the animal and people than management practices such as vaccination. The additional time imposes additional risk of injury to both people and animals, as well as creating additional stress that increases the amount of stress-related weight loss, also known as "shrink", which creates economic losses.
   b. Some management practices such as de-worming can be accomplished through feed and supplements, avoiding shrinkage and saving both equipment and labor costs as compared to tagging.
   c. As USDA itself noted, it is easier to tag very young calves,[7] which is what many small farmers and ranchers currently do when using unofficial forms of

[5] Regulatory Impact Analysis at p.17-19 (discussing "Group 2").
[6] Dr. Kris A. Ringwall, Director, Dickinson Research Extension Center Extension, Testimony to the United States International Trade Commission, Washington DC (Nov. 15, 2007)
[7] Regulatory Impact Analysis at p.24.

identification for internal management purposes. But tags applied to young calves often fall off before the animal is ready to be sold. Thus, some of the producers who currently tag young calves will be forced to tag them again just before sale, in order to comply with the new rule. The USDA's $0.18 estimate does not account for the labor to monitor and work cattle for a second round of tagging.

i. Proponents of microchipping for cattle have referred to surveys of U.S. ranchers indicating "loss rates for eartags ranging from 15% to 25% annually, depending upon the nature of the operation and the type of tag used."[8]

ii. A study from Louisiana State University estimated replacement rates of conventional ear tags between 10 and 20 percent annually.[9] Depending on feeding practices, ear tag loss in the study using external RFID tags ranged anywhere from 1.5% to 58%.[10]

d. Similarly, in its estimate of how many producers already use a form of unofficial identification, the USDA included back tags.[11] But it is far quicker and easier to apply a back tag than an ear tag; thus, the requirements of the new rule will cause significantly greater stress and risk of injury to both humans and animals for many of the animals that are currently unofficially identified.

5) USDA did not include any of the costs associated with record-keeping and retrieval, which is not required for unofficial identification but would be required under the new rule.

ASSUMPTION: USDA assumed that only 20% percent of cattle are not being identified currently with either official or unofficial ID, and thus will face the highest costs of implementation.[12]

ISSUES:

1) The USDA survey looked to how many **adult** cattle are already identified with official or unofficial ID,[13] and found that 80% of cows had some form of individual identification. But, when fully implemented, the rule will cover not only adult cattle, but all cattle crossing state lines. Many producers do not tag their younger animals (commonly known as feeder cattle), so the percentage of cattle that are currently not tagged that will be required to be tagged under the rule is much higher than 20%.
2) The potentially significant increase in the costs of the program due to the inclusion of feeder cattle was one of the reasons the USDA Secretary's Advisory Committee on

---

[8] http://www.rfidnews.com/applications/livestock/livestock.html
[9] Dave Sanson et al., Retention of Radio Frequency Identification Ear Tags by Beef Cattle During Winter Hay feeding, LSU Ag Center Beef and Forage Report, Vol. 34 at p.40 (Introduction) (2007), available at http://text.lsuagcenter.com/en/crops_livestock/livestock/beef_cattle/2007+LSU+AgCenter+Beef+and+Forage+Report.htm
[10] Dave Sanson et al., Retention of Radio Frequency Identification Ear Tags by Beef Cattle During Winter Hay feeding, LSU Ag Center Beef and Forage Report, Vol. 34 at p.41-42 (2007).
[11] Regulatory Impact Analysis at p.14.
[12] Regulatory Impact Analysis at p.17-19 (discussing "Group 3").
[13] Regulatory Impact Analysis at p.14.

Animal Health recommended that the agency remove the provisions for feeder cattle from the rule.[14]

ASSUMPTION: For producers who do not currently use any form of individual identification on their animals, the USDA estimated that the rule's identification requirements would cost only $1-$2.50 for the chutes (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.[15]

ISSUES:

1) The equipment needed for tagging cattle can cost several thousand dollars. Purchasing chutes for a small herd will cost far more than a few dollars per head. If producers do not have the necessary chutes and are forced to take their animals to another property to be tagged, they will incur significant expense in the travel costs as well as the fees that would undoubtedly be charged by the tagging business.
2) As discussed above, the claim that it costs only 18 cents in labor to tag a cow is an extreme underestimate. The labor costs for the entire process are more likely range from $2.70 to $7 per animal.
3) The agency's estimate also does not take into consideration the administrative oversight needed to assure accuracy of the procedure.
4) Even for those producers who are large enough to afford the necessary equipment, the USDA's cost estimates severely underestimated the potential for shrink and injury. USDA estimated these cost as between $0.50 - $2.00, yet a study conducted at the North Dakota State University that estimated that the cost of shrink alone would range between $10 and $20 per head.[16]

In total, the North Dakota study estimated that the cost of tagging animals, even excluding the cost of tags, would range from $17 to $27 per head, as compared to USDA's estimate of $1.68 – to $4.68 per head.

Even assuming that USDA is correct that 35% of the cattle that would be subject to the rule are already using official identification,[17] that means that at least 19.5 million cattle will be subject to new regulatory requirements under the rule. Based on the North Dakota study,[18] that would mean a cost of **$331 million to $526 million for cattle owners**, not including the cost of the tags or the tag applicator. The North Dakota study also did not include the costs from the risk of injury to people or the requirement for certificates of veterinary inspection, so the true costs would be even higher.

---

[14] Secretary's Advisory Committee on Animal Health, November 2011Report, Recommendation #3. Available at http://www.aphis.usda.gov/animal_health/acah/downloads/sacah_report_nov2011.pdf

[15] Regulatory Impact Analysis at p.17-19 (discussing "Group 3").

[16] *See* Dr. Kris A. Ringwall, Director, Dickinson Research Extension Center Extension, Testimony to the United States International Trade Commission, Washington DC (Nov. 15, 2007) (estimating costs per head at $7 for the tagging and recordkeeping, plus $10-$20 for shrink, for a total of $17-$27 per head).

[17] Regulatory Impact Analysis at p.17-19 ("Group 1").

[18] Dr. Kris A. Ringwall, Director, Dickinson Research Extension Center Extension, Testimony to the United States International Trade Commission, Washington DC (Nov. 15, 2007)

II. USDA did not account for the costs to ancillary businesses

ASSUMPTION: The USDA assumed that there would be no costs imposed on sale barns from the new tagging requirements.

ISSUES: Since many cattle owners do not have the equipment to tag cattle, sale barns will undoubtedly be placed in the position of having to offer this service prior to sales, as many already do for breeder cattle. In order to address the new requirements for the large number of feeder cattle that are currently not ear tagged, the sale barns will need to purchase more equipment and hire more staff. Because of the additional time spent working the animals, the sale barns will also have higher premiums for workers' compensation. Some of these costs will be passed on to cattle owners, but the experience with existing programs is that the sale barns will be required to shoulder some of the cost in order to remain in business.

ASSUMPTION: Sale barns will be subject to long-term record-keeping and retrieval requirements under the proposed rule,[19] but the USDA did not even attempt to quantify the costs because it claimed that sale barns are already required to keep records on the cattle sold.[20]

ISSUES:

1) The agency ignored the fact that many states have phased out, or are phasing out, the requirements from the existing programs. Indeed, the phase-out of these programs is a significant part of USDA's justification for the new rule.[21] Yet the agency then effectively pretends that these programs are continuing, and ignores the fact that sales barns in several states would no longer be subject to these recordkeeping requirements were it not for this new rule.
2) The agency ignored that the current recordkeeping requirements do not require long-term individual documentation for feeder cattle, while the proposed rule would do so, vastly expanding the sheer quantity of paper or data that must be maintained by the sale barns.

ASSUMPTION: The USDA did not account for the costs that will be incurred by veterinarians because the agency "anticipated" that veterinarians will charge producers for the costs of issuing and keeping such records and then failed to address what those costs are likely to be.[22]

ISSUES: Whether 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.

---

[19] Proposed Rule,76 Fed. Reg. at 50107, Sec. 90.3: Recordkeeping requirements.
[20] Regulatory Impact Analysis at p.32.
[21] Regulatory Impact Analysis at p.8 ("Our eradication efforts have been tremendously successful, and now all 50 States are brucellosis-free. While this is certainly a positive development, it has resulted in a steep declaine in the number of officially identified cattle.")
[22] Regulatory Impact Analysis at p.32.

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

Under the proposed rule, poultry moving interstate must be officially identified either through group identification or with a permanent sealed and numbered leg band.[23] There are no exceptions to the ID requirement, and they apply to both the person who sends and the person who receives the animals.[24] "Group identification" is defined so that it only applies when a "unit of animals" is managed together as one group "throughout the preharvest chain."[25] 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.

In part because of the issues discussed below, the USDA Secretary's Advisory Committee on Animal Health recommended that no new regulatory requirements be imposed on poultry owners.[26]

ASSUMPTION: The agency made the false assumption that "incremental costs for most … poultry enterprises are expected to be minimal."[27] This assumption appears to be based on the claim that the new requirements would "not result in any additional costs for poultry enterprises that participate in NPIP", the National Poultry Improvement Plan.[28]

ISSUES:

1) While the agency is probably correct that poultry businesses that are already participating in the NPIP will face few additional costs, most poultry owners are **not** part of the NPIP.
2) The primary businesses that participate in NPIP are commercial breeders. For example, the USDA lists only thirty-eight participants in the NPIP in the entire state of Texas,[29] although the state has over 14,500 farms with laying hens.[30]
3) **The vast majority of people who own poultry have only a few birds, do not breed commercially, and are not part of the NPIP.** According to the NASS 2007 Census of Agriculture, out of the 145,615 farms that have laying hens in this country, 125,195 of them have **fewer** than 50 hens.[31] Thousands more people in both rural and urban settings own a few birds for food, show, or as pets, but were not included in the NASS survey.

---

[23] Proposed Rule, 76 Fed. Reg. at 50107-108, §90.4: Official Identification at (a)(3) & (b)(5).
[24] Proposed Rule, 76 Fed. Reg. at 50107, §90.2: General requirements for traceability.
[25] Proposed Rule, 76 Fed. Reg. at 50106, §90.1: Definitions.
[26] Secretary's Advisory Committee on Animal Health, November 2011Report, Recommendation #1. Available at http://www.aphis.usda.gov/animal_health/acah/downloads/sacah_report_nov2011.pdf
[27] Regulatory Impact Analysis at p.13.
[28] Regulatory Impact Analysis at p.29.
[29] http://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/states/texas.pdf
[30]http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Texas/st48_1_027_028.pdf
[31] *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.

4) Most of these small laying hen farms and personal operations buy day-old chicks from hatcheries scattered across the U.S., or from local businesses that have in turn purchased the chicks from these same few hatcheries. Because there are only a few hatcheries that are willing to sell to small, independent producers, tens of thousands of these farms buy day-old chicks from out-of-state operations.
5) These small-scale and pasture-based laying farms will often commingle multiple batches of birds from different locations over a period of many years, culling individuals in the flock only as needed.
6) In addition, many people have to cross state lines to process their birds because so few slaughterhouses accept poultry from independent producers.
7) 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. The profit margin is extremely slim, perhaps $1 on an entire bird or 25 cents on a dozen eggs.
8) 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.

<u>ASSUMPTION</u>: Although acknowledging that the new rule would impose costs on people selling birds at live bird markets, the USDA provided no estimate of such costs.

<u>ISSUES</u>: The USDA has in fact conducted studies on the costs that would be imposed if people are required to tag birds at live bird markets. 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,[32] yet the USDA ignored the work conducted by its own staff in proposing the new requirements for poultry under the ADT rule.

Conclusion

The USDA has failed to conduct the required comprehensive 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.

---

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

Respectfully submitted,

American Grassfed Association
American Policy Center
Ashtabula Geauga Lake Counties Farmers Union (Ohio)
Buckeye Quality Beef Association
Carolina Farm Stewardship Association
Cattle Producers of Louisiana
Cattle Producers of Washington
Cattlemen’s Texas Longhorn Registry
Center for Media and Democracy/ Food Rights Network
Central City Coop (WA)
Certified Naturally Grown
Community Farm Alliance (KY)
The Cornucopia Institute
Constitutional Alliance
Dakota Rural Action
Davis Mountain Trans Pecos Heritage Association (TX)
Edible San Marcos (TX)
Family Farm Defenders
Farm and Ranch Freedom Alliance
Farm-to-Consumer Legal Defense Fund
Food and Water Watch
Food Democracy Now!
Independent Cattlemen of Nebraska
Independent Cattlemen of Wyoming
Kansas Cattlemen’s Association
Local Harvest
Maine Alternative Agriculture Association
Maine Organic Farmers and Gardeners Association
Michigan Land Trustees
Mission in Citrus Homeless Shelters (FL)
Mississippi Livestock Markets Association
Missouri Rural Crisis Center
Montana Farmers Union
Montana Organic Producer Coop
Natural Environmental Ecological Management
National Family Farm Coalition
Nebraska Sustainable Agriculture Society
North Country Sustainability Center (MA)
Northeast Organic Farming Association – Interstate Council
Northeast Organic Farming Association - Connecticut
Northeast Organic Farming Association – Massachusetts
Northeast Organic Farming Association – Vermont
Northern Illinois Draft Horse and Mule Association
Northern Plains Resource Council (MT)

Oglala Sioux Livestock and Landowners Association
Ohio Ecological Food and Farm Association
Oregon Livestock Producers Association
Organization for Competitive Markets
Organic Consumers Association
Powder River Basin Resource Council (WY)
R-CALF USA
Rural Vermont
Slow Food Austin (TX)
Slow Food Nebraska
South Dakota Stockgrowers Association
Sustainable Food Center (TX)
Turner Farm
Virginia Land Rights Coalition
Western Organization of Resource Councils
Weston A. Price Foundation
Why Hunger
Wintergarden Sustainable Agriculture Coalition (TX)

For more information, please contact Judith McGeary, Farm and Ranch Freedom Alliance, at 254-697-2661 or Judith@FarmAndRanchFreedom.org