

FARM AND RANCH FREEDOM ALLIANCE

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Via e-mail

Delores Holubec
Texas Animal Health Commission
2105 Kramer Lane
Austin, TX 78758
comment@tahc.state.tx.us

Re: Proposed 4 TAC § 43.2(n)

Dear Ms. Holubec:

The Farm and Ranch Freedom Alliance (FARFA) is a non-profit organization that represents farmers, ranchers, and other livestock owners. FARFA urges TAHC **not** to adopt the proposed § 43.2(n) because it is an unnecessary burden on both state and private resources. The agency's resources should be directed toward enforcing entry requirements, not creating new requirements for intrastate movement. If the Commission decides to adopt the regulation nonetheless, FARFA urges that the language be modified to explicitly allow for tattoos, brands, and other forms of identification not connected with the National Animal Identification System (NAIS).

- I. The proposed regulation is not a necessary, cost-effective method for addressing the problem of tuberculosis

The proposed Section 43.2(n) would require that all dairy cattle be identified with an "official identification devise" prior to being moved *intrastate*. This is a significant departure from the current regulations, which require identification only after testing or for interstate movement.

As stated in the notice in the Texas Register for this proposed regulation, the USDA "recently approved the state of Texas tuberculosis designation as being accredited-free." This status was achieved *without* requiring intrastate identification of all dairy cattle.

The rationale given for the new regulation is that some other states, including New Mexico and Oklahoma, have recently found TB-infected cattle. While this may be cause for increased vigilance, it is unclear why it should lead to increased intrastate identification requirements. As also stated in the notice, "[t]o ensure that the state maintains a Tuberculosis Free Status the Commission has in place a tuberculosis test requirement for dairy cattle entering Texas." Such entry requirements are the most effective and direct approach to addressing the threat of TB from other states. The agency should make enforcing these entry restrictions its priority, rather than being distracted with new intrastate requirements.

Just as the new regulation will distract the agency's resources from the more important issue – entry requirements – it will also unnecessarily burden producers who have entirely intrastate herds. Why should producers have to spend time and money on identifying Texas cattle, which have been declared TB-free? The burden of addressing the risk of importing TB-positive cattle should properly be placed on those who choose to buy out-of-state cattle.

Identification connected with testing, as has been done with both tuberculosis and brucellosis, provides certain benefits. Identification without testing – as is now being proposed – does not provide benefits that justify the costs and inconvenience to the producer, or that justify the use of our government's resources.

- II. If adopted, the regulation should explicitly provide for low-cost options for identification that do not implicate the National Animal Identification System

If the Commission does adopt intrastate requirements, the language should explicitly provide that cattle can be identified with a variety of non-electronic forms of identification, such as tattoos and brands, and that the identification will not be tied to the National Animal Identification System (NAIS).

Our concern stems from the phrasing of the new regulation, as compared with existing regulations. The proposed regulation states: “All dairy cattle being transported within Texas shall be identified prior to movement with *official identification devise* or identification devise approved by the Commission” (emphasis added). In contrast, the existing tuberculosis regulations provide that “[a]ll 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). The proposed regulation provides fewer options for identification than the existing regulation governing cattle tested for tuberculosis, for no apparent reason.

In addition, the existing regulations define an “official identification device” as “[a]n 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). In contrast, the regulations define “official identification/ officially identified” as “[t]he 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) (emphasis added). The fact that an official identification device is listed separately from eartags and tattoos implies that eartags and tattoos would not be “official identification devices” under the new regulation. There is no valid basis for limiting the form of identification in this manner.

Because of the ambiguity regarding what will be allowable forms of identification, the agency's fiscal note on this regulation is insufficient. It states:

The fiscal impact can not be fully assessed for individuals complying with the requirements. The agency's regulatory functions pose no significant fiscal costs to individuals; it will recur de minimis costs, but such costs are ordinary costs of commerce and doing intra- and interstate commerce. The requirements are intended to protect the

overall animal health industries in Texas from exposure to diseases and the general cost of compliance with the requirements is not intended to create a financial hardship but rather be a typical cost of moving animals in commerce without posing a disease risk. There will be no effect on small or micro businesses.

TAHC cannot properly conclude that there will be no effect on small or microbusinesses from the regulation, when the costs of compliance are not known. If the regulation is applied in a manner that requires electronic identification, the costs could be significant. Estimates for electronic tagging and tracking programs in other countries have ranged from \$37 to \$69 per animal on average. And for those farmers with a small number of cows – operating a micro-dairy business, for example – the costs could be enough to drive them out of business. A spreadsheet developed by agricultural economists at Kansas State University showed that the costs for electronic tagging and tracking went from \$19.15 per animal for herds of 80 cows to \$67.93 per animal for herds of 20 cows. Even this study underestimates the costs, because it did not address the labor and equipment needed for the actual tagging, and it assumes that the cost of the tag is the same regardless of herd size. Unless TAHC allows for inexpensive, non-electronic forms of identification that are not connected to NAIS, the costs of this proposed regulation could be significant and could create serious hardship for small and micro-businesses.

Last, it is important to clarify what constituted “unique identification.” Is it sufficient that the farmer has an internal numbering system such that he can provide the information on each animal if there is a need for it? Or will the Commission limit “unique identification” to an internationally-unique number under the National Animal Identification System? The Michigan Department of Agriculture has issued a policy statement that the only form of identification that is acceptable under its tuberculosis program is NAIS-compliant RFID tags, so that cattle owners are now forced to register their property in the NAIS database in order to receive TB tags. If the TAHC adopts an intrastate identification regulation, it should include clear, unambiguous language that the TB program will not be linked to NAIS.

III. Conclusion

The TAHC’s limited resources would be better used in enforcing entry requirements to prevent TB-positive cattle from entering Texas in the first place, rather than in enforcing a new requirement for intrastate movements. If the Commission nonetheless decides to require identification for intrastate movements, then the language of the proposed provision should be modified to mirror the requirements for tested cattle and allow for all forms of identification, including tattoos, brands, and non-electronic ear tags that are not connected to premises registration or NAIS.

Sincerely,

Judith McGeary
Executive Director
Farm and Ranch Freedom Alliance