



United States Department of Agriculture

Animal and Plant  
Health Inspection  
Service

April 2019

# Factsheet

## Advancing Animal Disease Traceability: A Plan to Achieve Electronic Identification in Cattle and Bison

Animal disease traceability helps animal health officials know where diseased and at-risk animals are, where they've been, and when. This information is essential during a disease outbreak. USDA is currently working to strengthen its traceability system to protect the long-term health, marketability and economic viability of the U.S. livestock industry. Achieving this goal is only possible through continued federal, state and industry collaboration. USDA is committed to keeping our partners informed about our plans and progress as we work together to build the traceability system.

While there are several steps USDA needs to take in order to strengthen its traceability system, the most essential one is to move from metal identification tags to electronic identification tags in beef and dairy cattle, as well as in bison. The electronic tags use radio frequency identification (RFID), which speeds information capture and sharing.

### RFID Benefits

The change to RFID will greatly enhance animal health officials' ability to locate specific animals quickly during an outbreak. It might have taken weeks or months to determine which animals need to be tested using paper records, but with electronic identification (ID), it could be as short as a few hours. This helps producers by significantly reducing the number of animals involved in disease investigations. It will also help animal movements from affected areas happen more quickly – while still ensuring no one else receives exposed animals.

### Implementing RFID

Beginning January 1, 2023, animals that move interstate and fall into specific categories will need official, individual RFID ear tags. This does not include feeder cattle. Under the current regulations feeder cattle as well as other cattle and bison that move directly to slaughter do not require individual identification.

### IMPLEMENTATION TIMELINE

USDA understands producers need time to transition to RFID and has worked with the National Assembly of State Animal Health Officials to establish manageable milestones to achieve this goal.

#### December 31, 2019

USDA will discontinue providing free metal tags. However, approved vendors will still be permitted to produce official metal tags for one additional year. Approved vendor tags will be available for purchase on a State-by-State basis as authorized by each State animal health official through December 31, 2020.

#### January 1, 2021

USDA will no longer approve vendor production of metal ear tags with the official USDA shield. Accredited veterinarians and/or producers can no longer apply metal ear tags for official identification and must start using only Official RFID tags.

#### January 1, 2023

RFID ear tags will be required for beef and dairy cattle and bison moving interstate that meet the above requirements. Animals previously tagged with metal ear tags will have to be retagged with RFID ear tags in order to move interstate. Feeder cattle and animals moving directly to slaughter are not subject to RFID requirements.

**EXHIBIT 1**

Animals that will require official, individual RFID tags include:

#### **Beef Cattle & Bison**

- sexually intact and 18 months or older
- used for rodeo or recreational events (regardless of age)
- used for shows or exhibitions

#### **Dairy Cattle**

- all female dairy cattle
- all male dairy cattle born after March 11, 2013

### **RFID Ear Tag Specifications**

Beginning January 1, 2023, all cattle and bison that are required to have official identification under current regulations must have official RFID ear tags. The tags should be applied at the time of birth or before the animal moves off the farm in interstate commerce.

Tag technology can be low or ultrahigh frequency—whichever the State, producer or industry sector prefers. Tags must be approved by USDA and meet standards for quality and performance, be tamper proof, contain a unique ID, and display the U.S. official ear tag shield. Tags can be part of a matched set with visual identification. RFID tags will be available to replace the orange, metal brucellosis tags.

### **Transition Support**

While electronic identification is critical for modernizing animal disease traceability, USDA understands this represents a big change for the industry and individual producers. Even though implementation of electronic identification is still several years away, USDA is committed to supporting producers as they transition from metal to RFID tags.

USDA will work with State animal health officials to share the cost of official RFID ear tags (instead of the free metal tags currently provided for cattle covered under the current regulation). This will reduce the cost that producers pay for RFID ear tags. USDA and State partners will also provide funding to support electronic readers for markets and accredited veterinarians as a critical component to implementing the electronic system.

As USDA modernizes its tagging system, we will also improve current State and Federal systems for official RFID tag distribution tracking, and record keeping.

### **Getting Official RFID Ear Tags**

A premises identification number (PIN) is required to purchase official ID tags. USDA has a new interactive map that helps direct producers to state-specific resources for obtaining a PIN:

<https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/traceability/state-pin/>

States will approve and allocate discounted tags, managing the process through the current infrastructure. Accredited veterinarians may continue to inventory and apply official ID tags but must adhere to record keeping requirements.

USDA will maintain a list of approved manufacturers. Accredited veterinarians or producers may purchase official, approved tags directly from tag manufacturers or retailers.

### **Other Official Identification**

Brands and tattoos may still be accepted as official identification if both the shipping and receiving State or Tribal animal health authorities agree to accept the markings in place of RFID.

### **For More Information**

If you have additional questions, please email: [traceability@aphis.usda.gov](mailto:traceability@aphis.usda.gov)



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Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, et al.

Traceability for Livestock Moving Interstate; Final Rule

**EXHIBIT 2**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Parts 71, 77, 78, and 86**

[Docket No. APHIS-2009-0091]

RIN 0579-AD24

**Traceability for Livestock Moving Interstate**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are amending the regulations to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under this rulemaking, unless specifically exempted, livestock belonging to species covered by the regulations that are moved interstate must be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. These regulations specify approved forms of official identification for each species but allow the livestock covered under this rulemaking to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The purpose of this rulemaking is to improve our ability to trace livestock in the event that disease is found.

**DATES:** *Effective Date:* March 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737-1231; (301) 851-3539.

**SUPPLEMENTARY INFORMATION:****Background****I. Purpose of the Regulatory Action***a. Need for the Regulatory Action*

Preventing and controlling animal disease is the cornerstone of protecting American animal agriculture. While ranchers and farmers work hard to protect their animals and their livelihoods, there is never a guarantee that their animals will be spared from disease. To support their efforts, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) has promulgated regulations to prevent, control, and eradicate disease. Traceability does not prevent disease, but knowing where diseased and at-risk animals are, where they have been, and when, is

indispensable in emergency response and in ongoing disease control and eradication programs.

We have clear indications that higher levels of official identification enhance tracing capability. For example, through the National Scrapie Eradication Program, 92 percent of the cull breeding sheep are officially identified at slaughter, primarily using flock identification eartags. This level of official identification made it possible in fiscal year 2010 to achieve traceback from slaughter of scrapie-positive sheep to the flock of origin or birth as part of the scrapie surveillance program 96 percent of the time, typically in a matter of minutes. Other diseases, particularly contagious ones, require that we trace to more than the birth premises, i.e., to other premises where the animal has been after leaving the birth premises but before going to slaughter, so the scrapie model is not a complete solution for such diseases.

APHIS believes that we must improve our tracing capabilities now not only to address current concerns, including the increasing number of cases of bovine tuberculosis, but also to ensure that we are well prepared to respond to new or foreign animal diseases in the future.

On August 11, 2011, we published in the *Federal Register* (76 FR 50082-50110, Docket No. APHIS-2009-0091) a proposal<sup>1</sup> to amend the regulations by establishing minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under the proposed regulations, unless specifically exempted, livestock belonging to species covered by the rulemaking that are moved interstate would have to be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or comparable appropriate documentation. The proposed rule specified approved forms of official identification for each species but allowed the livestock covered under the rulemaking to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The purpose of the proposed rule was to improve our ability to trace livestock in the event that disease is found.

*b. Legal Authority for the Regulatory Action*

Under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*), the

<sup>1</sup> To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0091>.

Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock. APHIS' regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock. The regulations in 9 CFR subchapter C establish requirements for the interstate movement of livestock to prevent the dissemination of diseases of livestock within the United States.

**II. Summary of the Major Provisions of the Regulatory Action***a. New or Revised Provisions*

This section provides a brief summary of the more significant changes we are making to this final rule in response to comments on the August 2011 proposed rule. Both the comments and the changes will be discussed in greater detail later in this document. The changes are listed below in the order they are discussed later in this document.

- We are extending the phase-out period for manufacturer-coded AINs from 12 months to 24 months to make the transition less burdensome for producers.
- We are revising the definition of *official eartag* and adding a new definition of *official eartag shield*. These changes will allow the use of State or Tribal postal abbreviation or codes within the U.S. Route Shield in lieu of "U.S."
- We are revising the language of the exemption from the traceability requirements for animals moved interstate to custom slaughter to indicate clearly that the exemption applies to all interstate movement to a custom slaughter facility. The proposed rule contained language that implied that the meat must be consumed by the person moving the animal to custom slaughter. This was not the intent of the proposed rule. A significant number of backyard poultry growers commented and expressed concerns about the official identification requirement for movement of poultry to a custom slaughter facility.
- We are reducing the requirement for the maintenance of interstate movement records for poultry and swine from 5 years to 2 because, as noted by numerous commenters representing those industries, poultry and swine have shorter lifespans than do the other livestock species covered by this rulemaking. The requirement will

remain 5 years for cattle and bison, sheep and goats, cervids, and equines.

- In addition to eartags, in this final rule, we are recognizing brands, when accompanied by an official brand inspection certificate as means of official identification for cattle when the shipping and receiving States or Tribes are in agreement. We are making this change in response to the many comments we received on this issue advocating that we retain brands as a means of official identification for cattle. Additionally, we are allowing similar provisions for tattoos and breed registry certificates.

- In response to many commenters from the cattle industry, we will make feeder cattle (cattle under 18 months of age) subject to our official identification requirements in a separate rulemaking rather than in this one.

- We will continue to allow backtags to be used in lieu of official identification on direct-to-slaughter cattle rather than eventually requiring official identification, as we had originally proposed to do. We are stipulating, however, that for backtags to be used on such animals, the animals will have to be slaughtered within 3 days of their movement to the slaughter plant.

- We are no longer requiring that cattle and bison moved interstate to an approved tagging site be officially identified at the site prior to commingling with cattle or bison from other premises. Under this final rule, commingling can occur prior to official identification provided that other practices are used that will ensure that the identity of the animal's consignor is accurately maintained until the animal is tagged with an official eartag. We are making this change in response to numerous comments expressing concerns that operations at approved tagging sites could be slowed during busy periods.

- We are clarifying the circumstances under which multiple official identification methods, including official eartags, may be used on the same animal.

- We are exempting poultry growers that are not participating in the National Poultry Improvement Plan (NPIP) and that receive chicks from a hatchery or redistributor from the official identification requirements, with the stipulation that the producers maintain certain records, e.g., of the supplier of the birds. Many backyard poultry growers noted that group/lot identification of these birds was not applicable and that individual identification of these chicks was impractical.

- We are allowing the use of other interstate movement documentation, in lieu of an ICVI, as agreed to by the shipping and receiving States or Tribes, for cattle and bison of all ages. The proposed rule only allowed such an exemption for cattle and bison under 18 month of age.

- We are providing additional exemptions from the ICVI requirement for equines moving interstate under certain conditions.

#### *b. New Part Number*

In the August 2011 proposed rule, the new traceability regulations were contained in a new 9 CFR part 90. In this final rule, we are placing them in a new part 86 instead. The discussion below of the comments and our responses to them will reflect this change in numbering. When citing specific changes we are making in this final rule to the regulatory text, we refer to part 86.

### III. Costs and Benefits

While this rulemaking applies to cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids, the focus of this analysis is on expected economic effects for the beef and dairy cattle industries. These enterprises are likely to be most affected operationally by the rule. For the other species, APHIS will largely maintain and build on the identification requirements of existing disease program regulations.

There are two main cost components for this rule: Using eartags to identify cattle and having ICVIs for cattle moved interstate. The combined annual costs of the rule for cattle operations of official identification and movement documentation will range between \$14.5 million and \$34.3 million, assuming official identification will be undertaken separately from other routine management practices; or between \$10.9 million and \$23.5 million, assuming that tagging will be combined with other routine management practices that require working cattle through a chute.

Direct benefits of improved traceability include the public and private cost savings expected to be gained under the rule. Case studies for bovine tuberculosis, bovine brucellosis, and BSE illustrate the inefficiencies currently often faced in tracing disease occurrences due to inadequate animal identification and the potential gains in terms of cost savings that may derive from the rule.

The benefits of this rulemaking are expected to exceed the costs overall.

### IV. Discussion of Comments

We solicited comments concerning our proposal for 90 days ending November 9, 2011. We reopened and extended the deadline for comments until December 9, 2011, in a document published in the Federal Register on October 7, 2011 (Docket No. APHIS-2009-0091, 76 FR 62313). We received 1,618 comments by that date. They were from cattle and other livestock producers and producers' associations, livestock marketers and marketing associations, representatives of State and Tribal governments, and individuals. They are discussed below by topic.

#### *Rationale for and Scope of the Rulemaking*

Some commenters viewed our proposed animal traceability regulations as a one-size-fits-all approach to animal disease management. It was suggested that a risk-based approach focusing on specific animal diseases would be more effective than an overarching animal traceability program.

Traceability is a common epidemiological need, regardless of the disease. If APHIS relied only on the traceability provided by disease control and eradication programs, there would be a void when the programs were concluded. That, in fact, is the case today with our progress toward successful eradication of many diseases. For example, as we noted in the preamble to the August 2011 proposed rule, the success of our brucellosis eradication program, while certainly a positive development, has resulted in a steep decline in the number of cattle required to be officially identified. As a result of decreasing levels of official identification in cattle, the time required to conduct other disease investigations has been increasing. An improved traceability system would help address the risk of new, emerging, foreign, or reoccurring diseases. Our new approach to animal disease traceability provides a flexible solution that is endorsed by the animal health officials who conduct disease control programs.

Other commenters offered criticisms of our approach from the opposite perspective. A commenter stated that to ensure adequate traceability, the rule should apply to all livestock sold commercially, and not just livestock moving interstate. The commenter further stated that covering all commercial livestock under our regulations can be justified under the commerce clause of the U.S. Constitution. A commenter representing

a foreign government stated that our proposed traceability system was not sufficiently comprehensive in that it would cover only animals moving interstate, would exempt animals being slaughtered for personal consumption from the requirements, and would allow different States to have their own traceability systems. Another commenter emphasized the latter point, stating that an overarching national system would be more beneficial for traceability purposes than would allowing States to enact their own requirements.

We are not making any changes to the final rule in response to these comments. Our statutory authority to regulate livestock movement derives from the Animal Health Protection Act (7 U.S.C. 8305), which authorizes the Secretary "to prohibit or restrict the movement in interstate commerce of any animal, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of dissemination of any pest or disease of livestock." *Interstate commerce* is defined in the Act as "trade, traffic, or commerce between a place in a State and a place in another State." The question of when or where that trade or traffic begins is subject to interpretation, and it is possible that some intrastate livestock movements may be regulated under the authority of the Act. Regulating the intrastate movement of livestock, however, would be contrary to the Secretary's vision, laid out on February 5, 2010, for the animal disease traceability system. The Secretary's approach, which called for the establishment of minimum uniform national traceability standards, was nevertheless intended to be sufficiently flexible to allow State and Tribal animal health officials to implement, with the cooperation of industry, the traceability systems that worked best for them; it was not intended to be a top-down system under Federal control. Additionally, it was not the intent behind the proposed rule to provide for a full-scale farm-to-plate traceability system, which would be beyond the scope of our statutory authority. Regarding the comments on the need for greater standardization, as we have noted, the proposed rule did provide for a uniform set of minimum national standards for States and Tribes to follow. This rulemaking allows States and tribes to adapt their individual traceability systems to meet local needs, but those systems will need to comply with these traceability regulations and will need to satisfy the traceability

performance standards that will be set forth in future rulemaking.

Many commenters expressed concern about the possible impact on small producers of the proposed regulations, suggesting that the traceability requirements could be more burdensome to small entities than to large ones. It was recommended by some commenters that we exempt small producers. Specific recommendations included exempting producers with less than 300 or 500 mature livestock and producers who are sole proprietors of their operations.

We note that the size of the herd or flock is not the only factor contributing to the risk of the spread of animal diseases. Much more important is the degree to which the animals are moved interstate and commingled with other animals. Herds with no movement across State lines are exempt from these traceability requirements, regardless of the size of the operation, though the States and Tribes may have their own requirements. Additionally, we do exempt certain interstate movements where the risk of disease spread is minimal or where tracing such animals is easily achieved without additional requirements, e.g., movement of livestock to a custom slaughter facility.

A commenter recommended that we exempt registered heritage livestock from the proposed traceability requirements. The commenter stated that there already are adequate identification standards in place for such animals.

We agree in part with this comment. Specifically, we do agree that the identification provided by purebred registries may be adequate for disease traceability of heritage livestock. Nothing in these regulations would preclude the use of means of identification commonly employed on such animals. Our definition of *official identification device or method* is broad enough to allow for the use of tattoos and identification methods acceptable to a breed association for registration purposes when accompanied by a breed registration certificate, provided that those methods are determined to be official by the receiving State or Tribal animal health authorities. We do not believe, however, that heritage livestock moving interstate should be categorically exempt from all Federal identification and movement documentation requirements.

A commenter recommended that we exempt horses from the proposed traceability regulations and stated that interstate movements of equines should not have to be reported. According to the commenter, an adequate traceability

and notification system, which includes brand inspections, certificates of veterinary inspection, and permits, already exists for equines, rendering additional Federal requirements unnecessary.

We do not agree that horses or other equines should be categorically exempt from traceability requirements; however, we believe that most horse owners are already in compliance with these provisions and need take no further action. A considerable amount of time in the last few years has been related to equine diseases, e.g., contagious equine metritis, equine herpes virus, equine infectious anemia, and equine piroplasmiasis. Additionally, we do not view our traceability requirements as excessively onerous for equine owners, since, under these regulations, methods of identification and movement documentation that are already employed in the equine industry, e.g., written descriptions, digital photographs, and electronic identification methods, and are approved by State and Tribal animal health officials will be recognized as official.

It was recommended by commenters that APHIS recognize existing export verification programs as satisfying the requirements of the proposed rule and that livestock in such programs should not be subject to the animal traceability requirements.

While APHIS does support the use of official animal identification methods for various programs, including age and source verification programs used for export purposes, not all systems that verify age, source, or management processes for marketing animal products are necessarily designed to address the needs of animal disease traceability. Official identification methods used in these programs now can be used on animals moving interstate under these regulations if those methods meet our requirements for officially identifying such animals. Options to ensure that export verification programs cover disease traceability requirements more uniformly in the future will be developed in collaboration between APHIS and the USDA's Agricultural Marketing Service (AMS). States and Tribes currently have the flexibility under these traceability regulations to accept the identification and documentation such programs provide in lieu of official identification and ICVIs for animals moving into their jurisdictions.

Our overall justification for the proposed regulations was questioned by some commenters. It was stated that we did not explain or document how the



proposed rule would correct problems that have occurred in previous traceback investigations. It was further stated that the lack of identification on individual animals was not the sole source of our problems in conducting tuberculosis traceback investigations in the past.

The Regulatory Impact Analysis (RIA) accompanying the proposed rule provided several actual scenarios where the lack of traceability resulted in significant costs to producers and the public in general. We agree that the lack of identification on individual animals is not the only issue related to tuberculosis traceback investigations, but it is an ongoing and significant issue. There is general consensus among animal health officials that insufficient traceability has helped to prevent the successful completion of the tuberculosis eradication program, which began in 1917.

A commenter representing a Tribal Government, while generally supportive of the proposed rule, cautioned that the proposed regulations should not contain language diminishing or implying a waiver of Tribal sovereignty. Tribal lands have defined borders that cannot be bisected by State borders.

We agree with this comment, but on further review, we were unable to identify any language in the proposed rule implying a waiver of Tribal sovereignty, nor did the commenter cite any specific problem areas. Therefore, we are not making any changes to the final rule in response to this comment.

#### Definitions

In the August 2011 proposed rule, definitions were contained in § 90.1; in this final rule, they are contained in § 86.1.

The August 2011 proposed rule included a new definition of *animal identification number (AIN)* that was similar to the one being used elsewhere in the regulations at the time, albeit with one important difference. The proposed definition stated that the AIN consists of 15 digits, with the first 3 being the country code (840 for the United States), except that the alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as alternatives to the 840 prefix until 1 year after the effective date of the final rule for this proposal. Existing definitions of *animal identification number (AIN)* in the regulations contained the same formatting requirements but did not specify a sunset date for the use of AINs beginning with the characters USA or the manufacturer's code. We proposed

to phase out those two AIN formats in order to achieve greater standardization of this numbering system, while providing producers with adequate notice of the change to enable them to work through existing inventories of eartags.

Some commenters suggested that phasing out AINs with manufacturers' codes would economically harm many producers and that we should instead continue to recognize such AINs as official under certain circumstances. Specifically, it was suggested that manufacturer-coded AIN tags should be recognized as official if the cattle bearing them have been enrolled in a process verified program (PVP) or a Quality System Assessment (QSA) program recognized by the AMS; if producers provide listings of the AINs to their State or Tribal animal health official; or if a system were developed whereby private organizations or marketing entities, in cooperation with State and Tribal animal health officials, could coordinate the application, recording, and/or management of the manufacturer-coded AIN tags.

APHIS does support the use of official identification devices for management and marketing purposes and is sensitive to the concerns about additional cost if such systems are not compatible with our traceability regulations. While the commenters did not specifically state what additional cost would result from the transition to 840 AINs, as provided for in the proposed rule, we have evaluated factors that could potentially increase costs. Low frequency radio frequency identification (RFID) AIN tags are based on ISO 11784 and 11785; thus, the manufacturing of tags in regards to technology would be unchanged. Likewise, electronic reading infrastructure currently in place would not need to be replaced. We acknowledge that retagging animals that already have been tagged with AIN tags using manufacturers' codes would increase costs to producers. The phasing out of such tags over time was intended to allow producers to avoid the need to retag animals. AIN tags with manufacturers' codes that are applied to animals before the 840 requirement becomes effective will be recognized as official for the remainder of the animal's life. Cattle enrolled in PVP and QSA programs are primarily feeder cattle, and these animals will be exempt from official identification requirements under this rulemaking; therefore, the need for producers of such cattle to transition to 840 AINs and possibly incur additional costs is further minimized. Future official identification options for feeder cattle, including

options used in PVP and QSA programs, can be evaluated prior to initiating rulemaking to subject feeder cattle to the official identification requirements.

We do recognize that some producers may have larger inventories of manufacturer-coded tags that may not be used by the date previously proposed for the phase-out to be completed. To address the possible economic burden on these producers resulting from the transition, we are amending the definition of *animal identification number (AIN)* in this final rule to extend by 12 additional months the phase-out period for manufacturer-coded AINs. The amended definition states that the provision under which the 840 AIN will be the only one recognized as official will become effective on March 11, 2015. Tamper-evident AIN tags with a manufacturer code or USA prefix that are applied to animals before that date will be recognized as official identification for the life of the animals. In that the date of tagging cannot always be known or documented, we will continue to be flexible through the transition period, realizing that breeding animals with manufacturer-coded tags may be in the population for several years.

APHIS does not oppose the other options suggested by the commenters of having producers provide listings of the manufacturer-coded AINs to their State or Tribal animal health official or having private organizations or marketing entities, in cooperation with State and Tribal animal health officials, coordinate the application, recording, and/or management of the manufacturer-coded AIN tags. These alternatives are best implemented at the local level between the State and Tribal animal health officials and the producers in their area. If the shipping State continues to allow the use of manufacturer-coded AIN tags after APHIS no longer recognizes them as official, the receiving State can refuse shipments of animals identified with such tags.

We are also making a change to the AIN definition in this final rule based on another comment we received. A comment from an association representing Puerto Rican cattle producers noted that Puerto Rico has a unique country code under ISO (PR, PRI, or 630). The commenter requested that we amend the definition of AIN in the final rule to allow producers in Puerto Rico to use the 630 code on RFID tags. We support this recommendation and are amending the definition of the AIN in this final rule to allow Puerto Rico and other U.S. territories to use their country codes instead of the 840

code issued to the United States. However, the territories may continue to use 840 AIN tags if they prefer. We are also updating the Animal Disease Traceability General Standards document to reference these country codes.

Finally, we are making a minor change to the wording of the requirement, contained in the proposed definition of the AIN, that 840 AIN tags be used only on animals born in the United States. The amended provision states that 840 AIN tags may not be applied to animals known to have been born in another country. This change reflects our view that we cannot reasonably expect that the person responsible for tagging an animal, or having it tagged, will, in every instance, possess documentation that verifies a U.S. birth location for the animal. In many cases, our import requirements for live animals in 9 CFR part 93 lessen the need for such documentation. For example, the overwhelming majority of cattle imported into the United States come from Canada or Mexico and are required to have a brand denoting their country of origin. This requirement ensures that almost all cattle of non-U.S. origin, i.e., cattle ineligible for identification with 840 AIN tags, are clearly identified as such.

Some commenters suggested that we should expand the proposed definition of *approved tagging site* to include any location in the receiving State where tagging can be completed prior to commingling, as verified by the State animal health official.

The definition contained in the August 2011 proposed rule provides for locations to become tagging sites when authorized by APHIS, State, or Tribal animal health officials. It is important that such locations are approved by animal health officials to ensure that the exemption from official identification requirements at time of movement interstate to an approved tagging site is properly administered. While livestock markets are frequently referenced as being potential approved tagging sites, other locations, such as feedlots, could become approved tagging sites under our definition. Therefore, it is not necessary to make any changes to the definition of *approved tagging site* in this final rule for the commenters' suggestion to be adopted.

In the August 2011 proposed rule, we defined *commuter herd* as a herd of cattle or bison moved interstate during the course of normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement. Under the

proposed rule, cattle or bison moving interstate as part of a commuter herd were to be exempted from both official identification and ICVI requirements.

One commenter recommended that we amend the definition so that shipments of feeder cattle that are infrequently consigned or leased as rodeo stock could be moved interstate as commuter herds. The commenter stated that the commuter herd exemptions could be justified for such feeder cattle because they are not associated with the same level of disease risk as are cattle regularly used for rodeos or exhibitions.

We do not agree with this comment. Cattle that move interstate, commingle with animals from other locations, and then return to the original location pose a risk for disease transmission. We recently experienced an outbreak of a disease of horses that was disseminated from a regional rodeo to several States. Cattle diseases can also be spread in a similar manner.

Some commenters viewed our proposed definition of *dairy cattle* (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) as vague and overly broad, stating that they thought it would create significant problems for small-scale and diversified dairy operations. In particular, commenters stated that the definition lacked clarity regarding dual-purpose breeds, potentially creating confusion about which cattle are subject to the more stringent dairy cattle requirements.

After considering these comments, we determined that greater precision in the definition of *dairy cattle* would be desirable. In this final rule, therefore, we are adding to the definition of *dairy cattle* a list of some common dairy breeds to serve as examples.

Specifically, we define *dairy cattle* as all cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites. The list of representative dairy breeds we are incorporating into this definition comes from the Purebred Dairy Cattle Association. As noted in the definition, however, the category of dairy cattle is not limited to the listed breeds. While we believe that this new definition of *dairy cattle* is clearer than the original one we proposed, State, Tribal, or Federal animal health officials may still be called upon at times to exercise their judgments as to whether the cattle in a shipment are indeed dairy cattle, taking

into account such factors as the intended use of the animals.

It was also suggested that we should amend the definition of *dairy cattle* to exclude dairy steers and spayed heifers, as such animals will not be in the U.S. herd for an extended period and therefore do not pose a major disease risk.

We disagree with this comment. Dairy steers and spayed heifers are part of an industry that has been identified as posing a high risk for disease transmission. Many dairy heifers and bull calves are moved from the dairy to calf-raising facilities, while some calves, mostly bull calves, are marketed privately or through livestock markets. This degree of movement and commingling at young ages and as yearlings makes them "animals of interest" regardless of whether they become herd replacements or feeder cattle. Furthermore, dairy steers typically are in feeding channels longer than beef cattle due to the length of time required for the former to reach finishing weight. Dairy steers and heifers may also undergo more changes of ownership and movements where commingling occurs than beef calves that typically stay with their dams until they are weaned.

Some commenters took issue with our proposed definition of *directly* as "without unloading en route if moved in a means of conveyance and without being commingled with other animals, or without stopping, except for stops of less than 24 hours that are needed for food, water, or rest en route if the animals are moved in any other manner." A commenter representing the pork industry stated that while these restrictions were acceptable for swine moving for other purposes, swine considered to be in slaughter market channels should be exempted. Another commenter, noting that the proposed definition did not allow the animals to be unloaded from a conveyance even if they aren't commingled, recommended modifying the definition to address "the real risk factor" of commingling.

After reviewing these comments, we have decided to revise the definition of *directly* in this final rule to clarify that it will allow for necessary stops while addressing the risk factor of commingling. We are defining *directly* as "moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops."

A commenter representing an egg producers' association stated that we should clarify the definition of *group/lot*



identification number (GIN) to allow for its use on poultry managed together as a group throughout the production system even if initial placement of birds may occur over a more extended period than a single day. The proposed definition stated that a GIN may be applied to a group of animals managed together as one group throughout the preharvest production chain. The commenter stated that the proposed definition could be interpreted to mean that a group of birds must be assembled in one day in order to be eligible for official identification by means of a GIN. The commenter viewed such a requirement as being problematic for the commercial egg industry because it is a common practice at commercial egg farms to place hens in a laying house over a period of days.

The GIN formatting requirements contained in the Animal Disease Traceability General Standards document do lend some support to the commenter's concerns over the proposed definition. Those formatting standards specify that the GIN must include a six-digit representation of the date on which the group or lot was assembled (MM/DD/YY).

We agree with the commenter on the need to recognize current practices in the commercial egg industry. While we do not judge it to be necessary to amend the definition of *group/lot identification number (GIN)* in the regulations, we are amending the GIN formatting standards in the Animal Disease Traceability General Standards document to specify that the six-digit date component of the GIN may represent either the date on which the group or lot of animals was assembled or the date when the assembly of the group was initiated.

Another commenter suggested that we modify the definition of *group/lot identification number (GIN)* as it applies to cattle to recognize that a GIN may be effectively used for some classes of livestock that may move from one location to another but are not managed as a group throughout the production system.

We do not agree with this comment. The GIN is intended to provide a method of livestock identification that is cost effective without sacrificing traceability. Due to the current gaps in animal disease traceability in the cattle sector, allowing the formation of marketing "groups" using a GIN, meaning that a GIN could, for example, be used when a group of animals is moved from or assembled at one premises but then split and/or commingled in subsequent movements, would be unwise from an epidemiological perspective.

In the August 2011 proposed rule, we defined *interstate certificate of veterinary inspection (ICVI)* as an official document issued by a Federal, State, Tribal, or accredited veterinarian at the location from which animals are shipped interstate. The proposed definition also listed information requirements for the ICVI. A commenter representing a pork industry association expressed concern that the proposed definition could be misconstrued to require the ICVI to be physically issued by the veterinarian at the shipping location. The commenter stated that it is common in the industry for livestock to be inspected at veterinary offices and an ICVI issued while the animals are in transport from origin to destination, a practice that provides a savings to the producer by supporting timely movement and clear identification of animals involved in interstate transportation.

The proposed definition of the ICVI did not prohibit the issuance of an ICVI at a veterinary clinic. The interstate movement could very well begin at a veterinary clinic, with prior movements to the clinic considered to be "intrastate" and not covered by these regulations. In order to clarify that ICVIs may be issued at veterinary clinics, however, as well as the premises at which they originated and other locations, we are amending the definition of *interstate certificate of veterinary inspection (ICVI)* in this final rule. The amended definition states that the ICVI is an official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

A commenter stated that our definition of *livestock* as "all farm-raised animals" is vague and open to problems of interpretation. It was stated that, rather than tying our definition to a farm, we should define *livestock* by species.

As we noted in the preamble to the August 2011 proposed rule, our definition of *livestock* was incorporated directly from the Animal Health Protection Act. As we also noted then, the definition is a broad one covering species that are not included in this rulemaking but that could be commingled at venues, such as approved livestock facilities, with those species that are. Along with the definition of *livestock*, we included in the proposed rule a separate definition of *covered livestock* that listed the species subject to the requirements of the proposed new CFR traceability part. We included the latter definition in the proposed rule to remove any possible

ambiguity regarding which species were covered under the rulemaking. Therefore, we are not making any changes to the final rule in response to this comment.

In the August 2011 proposed rule, we defined *official eartag* as an identification tag approved by APHIS that bears an official identification number for individual animals. The proposed definition further stated that beginning 1 year after the effective date of the final rule, all official eartags applied to animals would have to bear the U.S. shield. Previously, the definition of official eartag used elsewhere in the regulations, e.g., in § 71.1, required that the U.S. shield be used only on official eartags bearing an 840 AIN. We proposed to broaden the U.S. shield requirement to all official eartags in order to achieve greater standardization of this type of official identification device.

Some commenters objected to the proposed U.S. shield requirement for all official eartags. It was stated that the proposed requirement effectively mandated that private property be identified with a U.S. shield. Some commenters recommended that we allow official eartags to bear a State seal rather than the U.S. shield or that we allow States and Tribes to issue their own official identification tags without the U.S. shield, as long as combining the tag number and State identifier resulted in a unique number. It was claimed that a State code on an eartag actually provides the most important information enabling traceback.

After considering these comments, we have decided to amend the definition of *official eartag* in this final rule in a way that will allow the imprinting of a State postal abbreviation or Tribal alpha code within the shield in lieu of "US." Instead of a U.S. shield, official eartags will have to bear an official eartag shield. This final rule includes a new definition of official eartag shield in § 86.1, as well as in §§ 71.1, 77.2, and 78.1. We define *official eartag shield* as the shield-shaped graphic of the U.S. Route Shield, with "US" or the State postal abbreviation or a Tribal alpha code imprinted within the shield. The alpha codes for Tribes, published in the Animal Disease Traceability General Standards document, may be used by Tribes that administer their own traceability systems. The States or Tribes will have the discretion to request that their postal abbreviations or alpha codes be imprinted on tags they obtain from approved manufacturers. Additionally, to ease the transition for producers, the revised definition will state that beginning on March 11, 2013,

all official eartags manufactured will have to bear the official eartag shield, but all official eartags applied to animals will not have to bear that official eartag shield until March 11, 2015.

We believe that these changes are responsive to the issues raised by the commenters, while still achieving greater standardization of official eartags without lessening traceability or increasing costs.

A commenter representing a cattle producers' association favored altering the proposed definition of *official identification device or method*, which stated that such devices or methods were means of applying an official identification number to an animal or group of animals or otherwise officially identifying an animal or group of animals. The commenter wanted the definition to be broadened so that it would not preclude the use of other, non-numerical means of identification, such as brands.

The proposed definition allowed for the use of brands or tattoos or other methods in lieu of official identification devices when agreed to by the States or Tribes involved in the movement. Nevertheless, as discussed in greater detail below, we are making changes in this final rule to recognize brands, tattoos, and other methods as means of official identification for cattle and bison.

The same commenter also suggested that we add a definition to the final rule of *official identification* as "any means of identification agreed upon by animal health officials in the shipping and receiving States or Tribes." Other commenters took a similar view, though they did not recommend adding that specific definition.

It is our view that recognizing any identification method agreed to by the shipping and receiving States or Tribes as official would expand the range of identification methods that would be so recognized to an unacceptable degree, thereby hindering traceability. However, in keeping with our goal of having a flexible traceability system, we will allow for the use of other options deemed adequate at the local level by retaining in this final rule the provision that the shipping and receiving States or Tribes may agree to accept any other form of identification in lieu of official identification.

We are making a change to the definition of *recognized slaughtering establishment* in 9 CFR parts 77, 78, and 86 of this final rule. In the proposed rule, *recognized slaughtering establishment* was defined as any slaughtering facility operating under the

Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts. Under the existing regulations in 9 CFR 71.21, slaughtering establishments may receive animals moved in interstate commerce only if they have been approved for that purpose by the Administrator. The amended definition of *recognized slaughtering establishment* in this final rule states that, in addition to meeting the requirements listed above, the establishment must be approved in accordance with § 71.21.

Finally, while we are issuing a revised version of the Animal Disease Traceability Standards document concurrently with this final rule, we are removing the definition of that document from the definitions section because it is not used elsewhere in the regulatory text.

#### *Recordkeeping Requirements*

Recordkeeping requirements, which were contained in § 90.3 of the August 2011 proposed rule, are contained in § 86.3 of this final rule.

Many commenters expressed the view that the requirements in the proposed rule for maintaining official identification device distribution records and interstate movement records would be burdensome for veterinarians, sale barns, livestock markets and/or small producers. Under the proposed rule, any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices was required to maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed. Approved livestock facilities were required to keep for at least 5 years any ICVIs or alternate documentation that is required under the regulations for the interstate movement of any covered livestock entering the facility. It was stated that the proposed requirements were excessive for traceability needs in the poultry industry, since most broilers are slaughtered by about 8 weeks of age. A commenter representing a poultry association recommended that the requirement be for 2 years for poultry. The 5-year requirement was also deemed by some commenters to be excessive for feeder cattle, given their relatively short life spans. It was also suggested that the requirement should be 2 years for swine.

We agree with the commenters who stated that the requirements for maintaining movement records should reflect animal life cycles and industry practices. The lifespans of poultry and

swine are relatively short compared with those of other species of covered livestock. We are therefore reducing the requirement for maintaining movement records to 2 years for poultry and swine.

In this final rule, however, we are retaining the 5-year requirement for the maintenance of official identification device distribution records. This requirement is warranted, as many of the species typically identified with eartags are those with the longer lifespans, with the exception of swine. Also, many official eartag distribution records do not include a species indicator; thus, having tag distribution records maintained specifically by species would often not be practical. Increasingly, these records will be maintained in electronic information systems, rather than on paper, making the recordkeeping requirement less burdensome.

It was also stated that the records that would be required under the proposed rule are maintained by States already, making our proposed requirements duplicative and burdening States unnecessarily.

Many States and Tribes do already have recordkeeping requirements at the local level. For States and Tribes with requirements that meet or exceed those included in this rule, there would be no additional burden. For States and Tribes that do not meet the minimum requirements, additional administrative processes may be needed or new rules may need to be promulgated at the State or Tribal level. States and Tribes receive Federal assistance through cooperative agreements for data processing and recordkeeping for animal disease traceability, lessening their financial burdens. We have the endorsement of the United States Animal Health Association, which has representation from all State animal health officials, for our recordkeeping requirements and for this rulemaking overall.

Contrary to the sentiments voiced by many of the commenters, a few questioned whether a 5-year recordkeeping requirement was adequate, given the long incubation period of such animal diseases as bovine spongiform encephalopathy (BSE). One commenter stated that movement records should be kept for the entire life span of an individual animal.

We will not be making any changes to this final rule as a result of these comments. As States and Tribes convert from paper-based to electronic recordkeeping systems, the length of time that records need to be stored becomes less of an issue. We believe, in fact, that those electronic records will be

maintained well beyond the minimum requirements. At the present time, we believe that the requirements we include in this rulemaking achieve a good balance between what is needed and what is cost effective to achieve.

#### *Official Identification Requirements*

Official identification requirements for covered livestock, which were contained in § 90.4 of the August 2011 proposed rule, are contained in § 86.4 of this final rule.

#### *Cattle and Bison*

The August 2011 proposed rule included a schedule for the phasing in of official identification requirements for cattle and bison. We proposed that, beginning on the effective date of this final rule, the requirements would cover all sexually intact cattle and bison aged 18 months and over; dairy cattle of any age; and cattle and bison of any age used for rodeos, recreational events, shows, or exhibitions. We deemed it essential to apply the official identification requirements immediately to those categories because they tend to live longer than feeder cattle, move around more, and have more opportunities for commingling, thus presenting a great risk of spreading disease via interstate movement. We further proposed to initiate a second implementation phase, in which we would extend the requirements to cover all other classes of cattle and bison, including feeders, after conducting an assessment and determining that the requirements were being implemented effectively throughout the production chain for the cattle and bison covered under the initial phase.

Many commenters objected to our plans to include feeder cattle (cattle under 18 months of age) in the second phase of our implementation of these traceability regulations. It was stated that it was unnecessary to include feeder cattle because most of them are destined for slaughter before the age of 2 years and hence do not pose much risk of spreading disease. Other commenters stated that the sheer number of animals that will be required to be identified and tracked under these regulations will make including feeder cattle very costly for producers, veterinarians, sale barns, and State agencies and that the volume of information that will need to be generated may swamp the whole system, for no significant benefit. The eartagging requirement for feeder cattle was viewed by some commenters as particularly burdensome for producers and others, and it was stated that

identifying feeder cattle will not help in disease control.

We view the inclusion of feeder cattle in the traceability regulations as an essential component of an effective traceability system in the long term. Typical cattle management systems do not isolate feeder cattle from exposure to diseases. The epidemiological factors that support a complete, overarching traceability system in the United States require that all ages and classes of cattle be included in the animal disease traceability framework.

Many other commenters, including several representing cattle producers' organizations, recognized the necessity of adding feeder cattle to the traceability system but stated that such cattle should be added in a separate rulemaking for maximum transparency. Some of these commenters stated that they could not support the proposed rule as written if feeder cattle were not added in a separate rulemaking rather than under the notice-based process that we proposed.

After reviewing these comments, we have concluded that the inclusion of feeder cattle within the traceability framework can best be achieved through a separate future rulemaking, as the commenters recommended.

As noted above, we indicated in the August 2011 proposed rule that we would apply the official identification requirements to feeder cattle only after conducting an assessment and determining that the requirements were being implemented effectively throughout the production chain for those classes of cattle and bison covered under the initial implementation phase. Many industry commenters offered suggestions for an alternative assessment model to the one we described in the proposed rule. While feeder cattle will be subject to the official identification requirements in a future rulemaking rather than the current one, APHIS still recognizes the merits of conducting such an assessment as that future rulemaking is being considered. APHIS plans to consult closely with representatives from States, Tribes, and industry, including individuals from stocker/feeder sectors most affected by applying the official identification requirements to feeder cattle and most knowledgeable about the practical issues and concerns that can arise as a result.

One commenter expressed the concern that by requiring individual identification for sexually intact cattle over 18 months in the current rulemaking, we will inadvertently be including feeder heifers that were never intended to go into a breeding herd but

that are being shipped to feedlots out of State.

When this final rule becomes effective, sexually intact beef heifers less than 18 months of age will be exempt from the official identification requirements, thus avoiding potential conflicts in determining if the animal is in feeder channels or being used for breeding purposes.

Some commenters, including the one who wrote to express concerns about including feeder heifers in this rulemaking, advocated increasing the age for the category of feeder cattle. It was stated that the identification requirements should apply to sexually intact cattle 24 months and older rather than 18 months and older. Another commenter from the same State indicated that 24 months would better represent the age of feeder cattle in that State, as under common operating conditions, calves after weaning may remain on pasture or grass until 2 years of age before being sold as feeder cattle.

We recognize the management and marketing challenges the 18-month age limit may cause, but emphasize the importance of retaining it based on the need to identify cattle and bison for disease control purposes. The 18-month age threshold has been used successfully in the brucellosis eradication program to define test-eligible cattle. Age, when not documented, can more accurately be determined for cattle at 18 months of age, as they would have lost their first pair of temporary incisors, than it can at 24 months. The need to officially identify this class and age category is further demonstrated when we note that since 1995, the number of heifers vaccinated for brucellosis has declined by approximately 50 percent, and the trend continues. Today, fewer than 20 percent of heifers are vaccinated for brucellosis. This low level of official identification is concerning, in particular for a class of animals of which many will be part of the breeding herd. For those heifers that were vaccinated for brucellosis, the official eartag applied to meet the identification requirements for vaccinates would meet the need for official identification required by this rule. We have noted several times that the States and Tribes have the option to recognize alternative forms of identification when both the shipping and receiving animal health officials agree. This flexibility allows unique and/or regional issues to be considered at the local level. In the scenario provided by the commenters, we believe that the alternatives to the official identification requirement for interstate movement of feeder heifers

over 18 months of age to feedlots can best be administered by the shipping and receiving State and Tribe. Exempting all heifers over 18 months of age would hinder traceability nationwide; thus, in these regulations, we are maintaining the 18-month age cut-off for the official identification requirement. Under these regulations, however, calves that remain after weaning on pasture or grass until 2 years of age before being sold as feeder cattle will not have to be officially identified before 24 months because they are not moving interstate until then.

#### Use of Brands as Official Identification for Cattle

One aspect of the August 2011 proposed rule that generated many comments was our decision to recognize only official eartags as a means of officially identifying individual cattle. Many commenters expressed the view that brands should continue to be recognized as an official method of identification for cattle and bison when the shipping and receiving States and Tribes agreed. Many of these commenters also maintained that we should continue to recognize tattoos as official. Commenters pointed out that brands have worked effectively in brand States for many years and that they provide a permanent method of identification, whereas eartags can be removed or lost. It was further stated by one commenter that electronic brand inspection certificates are a great aid to traceability, as they can provide traceback to the premises of origin for individual animals in less than 30 minutes. It was also claimed that the delisting of brands as a means of official identification would strip from States and Tribes the option of continuing to rely upon the brand accompanied by a brand certificate. A commenter further claimed that removing brands from the regulations as a means of official identification for cattle would discriminate against producers in States that require brand inspection as a condition of leaving a brand inspection area because such producers would have to pay for both the brand inspection and for other identification as well, as required by the proposed rule.

APHIS recognizes that brands and brand-certificate information can provide timely information that may enhance disease traceback investigations. The original intent of the proposed official identification requirements was to define as official identification devices and methods those that could easily be administered

by all States and Tribes, since all States and Tribes would be required to accept all official identification devices and methods listed in the regulations for each species. As we noted in the preamble to the proposed rule, we did not view brands as suitable for listing as a means of official identification for cattle because 36 States currently do not have brand inspection authorities. The option for States and Tribes to accept other identification methods, such as brands, in lieu of official identification was provided for in the proposed rule.

Some commenters provided recommendations for alternative text that would maintain the initial intent of the proposed requirements, while achieving the recognition of brands as an official identification method under specific conditions. Several commenters suggested that brands be accepted as official identification via bilateral or multilateral agreements or memorandum(s) of understanding between or among agreeing shipping and receiving States or Tribes.

APHIS appreciates and supports the suggested text revisions, and in this final rule, we are modifying § 86.4(a)(1) to add to the list of official identification devices and methods for cattle brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate if the shipping and receiving State or Tribal animal health authorities agree to recognize them as such. We are also amending the paragraph to recognize as official identification tattoos and other identification methods acceptable to a breed association for registration purposes, provided that the animals are accompanied by a breed registration certificate and that the shipping and receiving States or Tribes agree to recognize them as such.

Some commenters cited as a concern the possible effects of the proposed official identification requirements for cattle on our import requirements. A commenter stated that in the in an earlier rulemaking (70 FR 459-553, Docket No. 03-080-3) in which we established requirements for the importation of animals and animal products from minimal-risk regions for BSE, we cited brands as a permanent form of identification and acknowledged that eartags may be lost. Under that rulemaking, imported bovines had to be identified with both brands and eartags. Another commenter stated that since cattle imported from Canada and Mexico are currently required to have a hot-iron brand, if we were to stop recognizing hot-iron brands as official identification for domestic cattle, those nations could claim that the

United States is imposing a higher standard on their producers than on domestic producers. The commenter stated that we may not be able to keep the branding requirement in effect for imported cattle.

This rulemaking does not affect our import/export requirements. While brands may be used as official identification for cattle moving interstate in accordance with the provisions of this final rule, the branding of imported cattle from Canada and Mexico is not intended to provide official individual identification, but is rather a permanent mark used to designate the country that exported the animal.

One commenter stated that brands, accompanied by a certificate from a recognized brand inspection authority, should be allowed as a group/lot identifier. It was claimed that brands are more effective than any other means of group/lot identification provided for in the proposed rule and are the only means that would enable a traceback of a group/lot that inadvertently becomes separated from a herd and for which the paperwork is lost or destroyed.

The GIN provides a uniform standard for identifying groups of animals that are managed together throughout the preharvest production chain. In such a situation, the group is identified in its entirety as it moves from location to location with the GIN. The Animal Disease Traceability General Standards document provides the format specifications for the GIN. This standard number format is needed to establish and maintain compatibility of information systems.

Animals that are not maintained with the group will need to be identified with an official eartag or as otherwise agreed to by the animal health officials of the shipping and receiving State or Tribe. The revised definition of *official identification device or method* recognizes brand certificates as official when agreed to by the shipping and receiving State and Tribe. While we will be maintaining the numbering format specification for the GIN, States and Tribes have the option to accept other methods of identification, including those of groups of animals.

Finally, in contrast to the general trend of the comments on branding, one commenter supported the delisting of brands as a means of individual identification because of the cost to producers of brand inspections and health papers in brand-inspection States.

We are not making any changes to this final rule in response to this comment. Health papers and brand inspection are

two different activities. States that have elected to administer brand inspections have done so for purposes of determining ownership and preventing theft. Health papers, such as ICVIs, provide documentation that an accredited veterinarian has examined the health of the animals.

#### Identification of Direct-to-Slaughter Cattle

Many commenters favored exempting all direct-to-slaughter cattle from any identification requirements. It was stated that the risks to animals and the personnel that would be tasked with tagging them, along with the costs of tagging and reading tags, outweigh the benefits of tagging.

We agree that cattle moving directly to slaughter pose less of a disease risk than do other cattle, and we did allow in the August 2011 proposed rule for the use of backtags in lieu of official identification for cattle moving directly to slaughter. We view exempting such animals from any identification requirements as a hindrance to traceability, however.

In the August 2011 proposed rule, we indicated that our recognition of backtags in lieu of official identification for direct-to-slaughter cattle was to be phased out. Many commenters opposed the phase-out of backtags for identifying slaughter cattle. It was stated that while backtags have a poor reputation when placed improperly and when not collected by USDA's Food Safety and Inspection Service (FSIS) or plant personnel at slaughter, when they are properly placed, carefully collected, and recorded, backtags are an economically efficient, easily readable, and recordable form of identification for slaughter cattle.

After reviewing these comments, we have decided to amend § 86.4(b)(1) in this final rule to allow permanently the use of backtags in lieu of official identification, albeit with some new stipulations. One commenter who supported the proposed phase-out of the use of backtags in lieu of official identification for direct-to-slaughter animals thought the phase-out appropriate because some slaughter establishments put some cattle on feed after they arrive at the plant for conditioning purposes. After this extended period of time, the backtags are unlikely to be on the animals when the animals are harvested. Therefore, we are stipulating that the exemption from the requirement for official identification only applies when the animals going directly to slaughter are harvested within 3 days of their movement to the slaughter plant. This

exemption is intended to apply only to cattle that are moving directly to a slaughter plant to be slaughtered shortly after arrival. We agree with the commenter's concern about the practicality of using backtags for slaughter animals when the animals are not going to be slaughtered shortly after their arrival. We believe that the 3-day timeframe adequately address that concern. Cattle moved to slaughter will typically be slaughtered within 3 days of that movement. If they are not slaughtered within 3 days, the movement is not considered to be directly to slaughter, and permanent official identification is required to ensure that proper identification is maintained until slaughter. If the determination to hold animals for more than 3 days is made after the animals arrive at the slaughter establishment, the animals must be officially identified with an official identification device. Such identification will be considered a retagging event in accordance with § 86.4(d)(4)(ii).

Another commenter stated that backtags used on slaughter cattle can sometimes be lost during high-pressure washing prior to slaughter. To address this issue, we have amended § 86.4(d)(2) in this final rule to account for the cross referencing of all animals, as well as their carcasses, with backtags or other identification received by the slaughter plant. Requiring the cross-referencing of the devices with the live animals, and not just their carcasses, will help to ensure that traceback capability is not lost between arrival at the plant and slaughter.

#### Approved Tagging Sites

In the August 2011 proposed rule, we provided an exemption to the requirement that cattle and bison must be officially identified prior to interstate movement if the cattle or bison were moved directly to an approved tagging site and officially identified prior to commingling with cattle and bison from other premises. Some commenters favored allowing approved tagging sites to tag cattle moved interstate with a back tag prior to commingling, which then could be correlated with the official eartag once the cattle are sold and sorted and before further movement. It was suggested that such an approach would enable markets that become approved tagging sites to better manage the flow of cattle in and out of the sites on a sale day, since having to tag cattle and bison with an eartag prior to commingling could prevent such facilities from operating at the speed of commerce.

We recognize that applying the official eartag on cattle or bison received at approved tagging sites before they are commingled can be problematic in some situations. Therefore, this final rule allows the use of backtags prior to commingling, as well as other practices that will enable approved tagging sites to efficiently manage livestock while ensuring that the identity of each animal is accurately maintained until tagging so that official eartags may be correlated to the person responsible for shipping the animals to the tagging site.

#### Commuter Herds

Another exemption from the official identification requirements was provided for cattle and bison moving interstate as part of a commuter herd with a copy of the commuter herd agreement. It was recommended that we also allow the use of other documentation or forms as agreed to by the States or Tribes involved in these movements that may not specifically be labeled or called commuter herd agreements. We agree with this comment, as it is in keeping with our approach to developing a traceability system that will allow States and Tribes to use the methods that work best for them, and we are amending § 86.4(b)(1) accordingly.

#### Use of Multiple Eartags

In the August 2011 proposed rule, we prohibited the use of multiple official identification devices on a single animal with the following exceptions:

- A State or Tribal animal health official or an area veterinarian in charge could approve the application of a second official identification device in specific cases when the need to maintain the identity of an animal is intensified, such as for export shipments, quarantined herds, field trials, experiments, or disease surveys, but not merely for convenience in identifying animals.

- An eartag with an AIN beginning with the 840 prefix (either RFID or visual-only tag) may be applied to an animal that is already officially identified with an eartag with a NUES number, as AIN devices are commonly used for herd management purposes.

- A brucellosis vaccination eartag with a NUES number could be applied for management purposes in accordance with the existing brucellosis regulations to an animal that is already officially identified under the traceability regulations.

Many commenters opposed the proposed restrictions, with some questioning our rationale that the use of multiple official identification devices

on the same animal can cause confusion and impede efforts to track the movements of that animal. Some of these commenters stated that, contrary to our view, using multiple official identification devices on the same animal can create redundancies and thereby aid traceability. Other commenters requested clarification of the requirements, suggesting that if brands or tattoos were to be allowed as official identification for cattle in the final rule, then the prohibition on multiple official identification devices would seem to preclude the use of eartags on branded or tattooed cattle.

As stated in the preamble of the August 2011 proposed rule, the use of multiple official eartags with multiple official identification numbers for a single animal can cause confusion and impede efforts to track the movements of that animal. This problem has primarily occurred when the same animal had multiple National Uniform Eartagging System (NUES) eartags, sometimes as many as three or more. We acknowledge that having more than one NUES tag may provide additional points of reference for the animal's location. For example, if the animal with multiple NUES tags is the index animal that has tested positive for the disease under investigation, the multiple NUES tag numbers for that animal are all recorded when the traceback investigation is initiated. While applying an additional NUES eartag effectively identifies the cattle in the shipment, however, the animals become difficult to trace when the official number on the new official eartag is not recorded or aligned with the initial or existing NUES tag number. An investigating animal health officer often sees tag numbers on epidemiological reports of suspect animals that need to be located for testing. Without being able to cross-reference the multiple official identification numbers, the animal health official can only assume that each official identification number that becomes part of the investigation represents a different animal that must each be traced. This increases the complexity of the traceback and lengthens the investigation.

After reviewing the comments on this issue, we considered requiring recording the initial number(s) when applying an additional official eartag to align the official identification numbers of the new tag and the tag(s) already attached to the animal and reflect that both the existing eartag(s) and the new eartag are on the same animal. However we determined it was more practical to adhere to the general approach we took in the proposed rule, which was to

prohibit the application of additional official identification devices to a single animal unless warranted by a specific situation. We are, however, clarifying that the restriction applies to official eartags only. As noted above, under the provisions of this final rule, brands, tattoos, and breed registry certificates may be recognized as official by shipping and receiving States and Tribes. Because only the use of multiple official eartags will be restricted, it will be permissible to tag animals already identified with brands or tattoos.

Adjusting for instances where stakeholders have indicated that additional official eartags would provide herd management advantages, we are also clarifying the language of the above-listed exceptions, including information recording requirements, and adding an exception that will allow the use of multiple official eartags with the same official identification number on a single animal. Producers often use AIN tags to manage herds because the tags are large enough to contain both management numbers and the AIN. Tag manufacturers, at the request of producers, have provided sets of two or three tags with the same AIN. This allows the AIN eartag to be applied in each ear; in some situations, a smaller button or RFID tag with the same number is applied to one of the ears. AIN tags with the same number thus may be applied to the same animal. While metal NUES tags have not been provided in sets, this option will apply to any official eartag produced with the same number and attached to the same animal.

#### Removal or Loss of Official Identification Devices

Some cattle producers stated that traceability considerations are often ignored by slaughterhouses, and the traceability of an animal is lost and open to fraud once an animal is dismembered and its tags separated from the meat. It was suggested that such noncompliance could continue to hinder traceability even after traceability program is implemented. Many of these commenters stated that before the proposed rule is finalized, APHIS must have a defined plan and agreement in place with FSIS and/or the harvesting establishments relative to the collection and recording of retired tags at slaughter. Such recording and retirement is necessary for a bookend system to function.

We recognize that compliance with all the regulations is important to support traceability and plan to work with FSIS and slaughter plants to ensure the collection of identification devices. A

memorandum of understanding (MOU) will be established between APHIS and FSIS regarding the responsibilities of the two agencies for the collection of identification at the slaughter plants. We are also amending § 86.4(d)(2) to state explicitly that collecting identification devices at slaughter and providing them to APHIS and FSIS is the responsibility of the slaughter plant. Additionally, this rulemaking requires that a cross reference of the carcass and the animal's identification be maintained through carcass inspection. Maintaining the identity past that inspection is outside the scope of these regulations, however. When the carcass passes inspection, the collected identification devices are to be provided to APHIS, which will be responsible for the administration of tag and animal termination recording.

#### Replacement of Official Eartags

Some commenters stated that our proposed process for replacing lost tags would necessitate additional recordkeeping and place an unrealistic burden on small producers. It was recommended that producers be exempted from the 5-year recordkeeping requirement associated with applying a new device after one has been lost.

The vast majority of the records that support the traceability regulations will be maintained by individuals other than producers. Since producers may retag animals that lose their official eartags, they may be the only ones that have such information. Therefore, these records must be maintained by the producer. While tag loss is expected, the percentage of animals that lose their eartags is a small percentage of all animals tagged. Therefore, the volume of records any producer will need to maintain for this requirement is expected to be quite low.

Some commenters requested that we amend the final rule to allow producers to obtain a replacement AIN tag with the same 840 AIN when a tag has been lost or is no longer a viable tag. It was stated that because these tags are already used for management purposes in many dairies and some beef operations, allowing producers to replace AIN/840 tags with duplicates would avoid unnecessary confusion that could be caused by assigning an animal more than one number and thus help to maintain the viability and integrity of the national traceability system.

We agree with this comment. In fact, while the proposed rule did not include regulatory text allowing for the issuance of such duplicate tags, it did not expressly prohibit such issuance either. The existing Animal Identification



Management System (AIMS) has had a tag reporting option established for AIN device manufacturers for reporting the distribution of duplicate AIN eartags. Additionally, ISO 11784, which AIN radio frequency tags adhere to, provides for the encoding of a portion of the code for the administration of duplicate replacement tags. Nonetheless, we are amending § 86.4(d)(4) in this final rule to allow for both the retagging of animals with tags imprinted with different official identification numbers from the ones being replaced and retagging of animals with replacement or duplicate tags that have the same official identification number as was imprinted on the animal's initial official eartag. While the commenters referenced the issuance of duplicate replacement eartags for 840 AIN tags only, the amended text allows for the use, as well, of other animal numbering systems that can readily be produced with the animal's original number. The protocol for the administration of duplicate replacement eartags is provided for in the Animal Disease Traceability General Standards document, a revised version of which is being released in conjunction with this final rule.

#### Other Issues Pertaining to the Use of Official Eartags on Cattle

Some commenters recommended that the final rule should allow the use of owner-shipper tags, for feeder cattle only, at receiving locations for cattle owners or shippers who lack tagging facilities and who sell directly to buyer in another State. A few of these commenters, while supporting the recommendation, stated that this tagging option should be allowed only at an approved tagging site.

While markets are likely to be the most common locations that become approved tagging sites, animal health officials may approve feedlots to tag animals on behalf of the producer that shipped or sold the animals. This exemption from the requirement for official identification prior to interstate movement, however, is limited to locations that are approved tagging sites. Producers that elect to use a tagging site may choose to obtain the official eartags and provide them to the personnel of the tagging site to have those official tags applied to their animals. We consider the option of officially identifying animals at any destination to be too broad, potentially leading to deficiencies in the maintenance of identification records. The approval process for tagging sites allows for oversight of these locations to ensure that necessary records are properly

maintained and provides adequate flexibility to allow States and Tribes to determine the extent to which tagging sites are utilized.

Some commenters suggested that we should require a State code to be imprinted on official eartags. It was claimed that a State code provides the most important information needed to enable traceback.

While the numbering system for the NUES utilizes State and Tribal codes, the 840 AIN does not. States that obtain AIN devices may elect to have the State abbreviation imprinted on the AIN eartags, and several States are doing so when they obtain the tags. Unlike NUES tags, the AIN tags are available in many tag types, currently exceeding 40. The inventorying of multiple tag types by States and Tribes creates significant logistical challenges, and to minimize the options would lessen the flexibility currently provided. While States and/or producers that obtain the tags may have their State or Tribal codes imprinted on them, we determined that requiring it to be imprinted on the tag or to be part of the AIN would cause tag distribution inefficiencies that outweighed the potential advantages. For example, because the distribution of AIN tags is not limited to direct shipment from the manufacturer to the producer's farm at the time of manufacture, the State where the farm receiving the tags is located may be unknown. Additionally, maintaining distribution records of both NUES tags and AIN tags in electronic systems is imperative for timely retrieval of tag distribution data for traceback investigations, as the State designations alone are typically not specific enough for this purpose.

Our reliance on eartags for official identification in the proposed traceability regulations was questioned by some commenters on the grounds that tagging is not necessarily synonymous with effective traceability.

We agree that official identification in itself is not sufficient for an effective traceability system. When combined, however, with the information obtained from the records of tag distribution and the availability of management records and movement documents with nationally unique numbers, eartags have been and will continue to be invaluable to traceback investigations.

In our earlier discussion of the definition of *official eartag*, we noted that some commenters opposed the U.S. shield requirement, and we amended the definition in response to those comments. Some of those commenters recommended that we allow States and Tribes to issue their own official identification tags without the U.S.

shield, as long as combining the tag number and State identifier resulted in a unique number.

A standardized way of marking all official tags is considered critical to help clarify the confusion that currently exists relative to eartags being official. Standardization will support a more user-friendly system and help increase the level of compliance. We believe it is important to have a simple and standardized means of determining if a tag is official. The standardization of numbers also allows for automated error checking, resulting in greater data integrity in information systems. The addition of the definition of *official eartag shield*, discussed above, to the regulations allows the States and Tribes to imprint their postal abbreviations or alpha codes instead of "US" on the tag. States and Tribes will be able to administer their own official eartags, provided that those eartags adhere to our definition of *official eartag*.

A commenter questioned how a producer or organization would request printed AIN tags for a location without a national premises identification number (PIN). The commenter recommended allowing AIN eartags to be ordered with a State location identifier in lieu of a national PIN.

In this rulemaking, while continuing to allow for the use of the PIN, we also provide for the use of a *location identification (LID) number*, which we define as a nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. As noted in Section B of the Animal Disease Traceability General Standards document, producers may obtain AIN tags provided they have either a PIN or an LID.

Some commenters recommended that we add language to the final rule to provide a method for the use of electronic identification of cattle that are currently located in the United States but that originated in another country.

APHIS does recognize that limiting the use of 840 AINs to cattle born in the United States and the transition from accepting manufacturer-coded AINs as official will cause a void in the availability of official RFID tags for imported livestock. The use of the manufacturer-coded RFID AIN tags will provide an option for the identification of such cattle until the date such tags are no longer recognized as official at time of application. Consideration of a long-term solution to this issue is being given, and any resulting changes will be reflected in future updates of the

Animal Disease Traceability General Standards document.

A commenter recommended that we require official 840 RFID tags for all female dairy cattle and those male dairy cattle used for reproductive purposes and that we require an official 840 "brite" or RFID tag for those male dairy cattle (bull calves) used for meat purposes, i.e., fed veal or dairy beef steers.

In keeping with the vision for the animal disease traceability system set out by the Secretary on February 5, 2010, we have elected not to specify which eartag is required for any sector of the cattle population, as it is our thinking that this decision is best made by the producers and animal owners.

A commenter stated that we should not allow exemptions from official identification requirements for cattle and bison moving to approved livestock facilities, as he believed we did in the August 2011 proposed rule. The commenter stated that such facilities may be high-risk facilities due to the possibility of commingling of animals on the premises.

In the proposed rule, we provided an exemption from the official identification requirements for cattle and bison moving interstate to an approved tagging site. This exemption was intended to allow producers to have their animals tagged at such a site when they were unable to tag the animals themselves. We did not propose to exempt cattle and bison moving interstate to an approved livestock facility from the official identification requirements. The exemption for movement to an approved livestock facility applies to the ICVI and was provided because livestock markets are the approved facilities where accredited veterinarians are typically available on sale days to conduct the necessary inspections and issue the ICVIs.

#### Miscellaneous Cattle Identification Issues

Under the August 2011 proposed rule, beef cattle under the age of 18 months did not have to be officially identified prior to interstate movement during the initial phase of the implementation process, but dairy cattle, regardless of age or sex or current use, were required to be officially identified. Some dairy producers stated that the age for requiring official identification prior to interstate movement should be the same for dairy and beef cattle.

We do not agree with this comment. Dairy calves are raised much differently than calves in the beef sector, which typically stay with their dams until weaning. The significant movement of

dairy calves and yearlings and their commingling with cattle from multiple dairies increases the risk of disease spread, justifying their inclusion in the current rulemaking. As we have already noted, we now intend to subject feeder cattle to the official identification requirements in a separate future rulemaking.

A commenter requested clarification on whether steers of dairy origin would be exempted from identification requirements when this final rule became effective.

Under the proposed rule, all dairy cattle were to be subject to the official identification requirements beginning on the effective date of this final rule. Upon further consideration, we have concluded that there would be minimal value in officially identifying for the first time older dairy steers that may have already moved interstate before the effective date of this final rule. While the identification of animals in the dairy sector is important, in particular at young ages, we have determined it to be appropriate, at this point, to apply the official identification requirements only to male dairy animals born after the effective date of this final rule. We have revised the provision pertaining to the official identification of dairy cattle for interstate movement to state that beginning on March 11, 2013, all dairy females, regardless of age, and all male dairy animals that are born after that date will be required to be officially identified prior to interstate movement.

A commenter requested that we include third-party traceability programs, such as the above-mentioned AMS-recognized programs, currently used by numerous cattle producers to verify the age and source of livestock as an official identification method.

The use of the official identification devices or methods allowed for cattle under these regulations can easily support such programs if the eartags used in the programs bear numbers that meet our definition of *official identification number*. The AMS programs referred to earlier require a unique number only within their certified programs, however. Since there are a number of other systems that verify processes, feeding claims, exports, quality system assessment, or product label claims, relying only on system-specific or proprietary numbers would cause problems in traceability systems that require nationally unique numbers. Therefore, we are not making any changes to the final rule in response to this comment. However, as noted earlier, APHIS will work with AMS to establish greater standardization, in particular for animal numbering

systems, to ensure that identification methods meet the requirements necessary for both programs.

A commenter stated that the cattle industry cannot afford to have individual tags read and that APHIS should allow tags or brands to be used to identify groups of cattle.

These traceability regulations do allow for the use of group identification when the animals move through the preharvest production chain as one group. In such a situation, the group can be identified in its entirety. However, when individual animals are moved and commingled with cattle from other premises, the determination of which animal was at what location can no longer be achieved with a group identifier; therefore, we cannot allow for the broad use of group identification for cattle that the commenter recommends. APHIS does recognize the complexity of recording official identification numbers on the ICVI and has limited that requirement in this rulemaking to those cattle and bison that will be covered by the official identification requirements on the date when this final rule becomes effective.

A commenter took the position that APHIS should allow one PIN to apply to all cattle at various ranches owned by a single operation.

Location identifiers are administered by the States and Tribes. The use of one location identifier is often appropriate when cattle typically move among those locations. Allowing the use of a single location identifier to designate multiple premises or locations, however, can be problematic if there are large distances between the various locations. For example, consider an operation with a home location and one or more locations at various distances, one of which is 20 miles from the home premises. In this example, suppose that a disease is traced to the home farm and a 10-mile quarantine zone is placed around it. If at the time of quarantine, the animal health official is only aware of the location of the home premises (because all locations are reported as one), the operations outside the 10-mile zone would initially be left out of the investigation. As the investigation is further conducted, the quarantine zone will be extended, but having knowledge of those additional locations early on helps animal health officials quickly determine the scope of the disease and reduces the time and expense of the investigation. Since States and Tribes administer location identifiers, it is their prerogative to determine how to issue them in such situations.

It was suggested by a commenter that APHIS should require the approval of

both the sending and receiving States or Tribes for use of group/lot identification with cattle. A location-based GIN would appear to be most useful in identifying calves from the ranch of origin to the backgrounding feedlot, according to the commenter. A location-based GIN, particularly when associated with a registered brand, would provide a level of traceability that is cost-effective for the producer, and would likely yield the level of granularity that animal health officials seek when conducting a disease traceback investigation.

While State and Tribes have the option to agree on other methods of group/lot identification, for such identification to be recognized under these regulations as official, the animals in a shipment must meet our criteria for recognition as a group or lot, i.e., they must be of the same species and must comprise a "unit" that is managed as one group throughout the preharvest production chain. In such a situation, the entire group of animals is being traced, and one number for the entire group is very adequate for traceability. It is the view of APHIS that these criteria for a group or lot of animals should be uniformly applied, so that, while States and Tribes may agree on alternative forms of group/lot identification, if they do not agree, a receiving State or Tribe will not be required to accept shipments of animals that do not meet the criteria.

Some commenters stated that what they termed "event cattle," meaning cattle that may be used for a single event, are not a high-risk group like rodeo cattle and, therefore, should not be grouped with the classes of cattle and bison subject to the official identification requirements on that date that this final rule becomes effective. It was further suggested that event cattle should not have to be individually identified and, even if they were, that their identification numbers should not have to be recorded on an ICVI.

We do not agree with these comments. The commingling of cattle with rodeo stock, even for a short period of time, increases the risk of disease exposure. Additionally, due to the frequent movement of such animals, the documentation of individual animal numbers is important.

It was suggested that when commuter herds are approved for movement of animals between States or Tribes without meeting the requirements of the proposed regulations, language should be added indicating that if any of these animals are shipped to a different State not included in the commuter herd agreement, then these animals must be

officially identified and documented to the original State of origin.

We agree with this comment and are incorporating it into § 86.4(b)(1)(i)(A) in this final rule.

#### Official Identification Requirements for Poultry

Many commenters opposed our proposed poultry identification requirements. It was stated that the proposed regulations would allow vertically integrated operations to use group identification for thousands of birds, while mandating individually numbered leg bands for any bird that crosses State lines and is not kept in an isolated group "throughout the preharvest chain." Such leg bands are impractical, according to the commenters, and requiring them could be devastating for many pastured poultry and backyard poultry owners. It was also maintained that since many pastured poultry operations and backyard poultry owners order day-old chicks from hatcheries scattered around the country, the proposed regulations would apply to many people who never take their birds across State lines after that first shipment.

We have reviewed these comments and are revising this final rule to take into account the situation of poultry growers that are not part of the National Poultry Improvement Plan (NPIP) but that receive chicks from a hatchery and/or re-distributor (feed store, etc.). Poultry belonging to such growers will be exempted from the official identification requirements under this final rule, but we will require that the persons responsible for the animals received from the hatchery and/or redistributor maintain a record of where they obtained the birds. Redistributors will be required to maintain a record of where they received chicks and which growers received the birds. Most growers already retain these records, so the recordkeeping requirement should not cause an additional burden.

It was suggested by some commenters that we substitute for the proposed poultry identification provisions a statement that interstate movement of poultry would be governed by the NPIP. The existing NPIP program has worked well, according to the commenters, and there is no reason to add new, onerous tagging requirements.

While the voluntary NPIP meets our traceability requirements and has worked well for those States that require it, we acknowledge that not all poultry growers and sectors of the industry participate in NPIP. We believe it is important to maintain poultry, a major commodity group, as a covered species

in these regulations and have done so. We continue to maintain reference to NPIP, but as noted above, we are amending this final rule to address the primary concerns raised by the "backyard" poultry growers.

Some commenters also stated that existing poultry numbering systems have been working well and should be recognized in this rulemaking as group or flock identifiers.

This final rule establishes a standard for identifying groups or flocks of poultry by means of the GIN. Shipping and receiving States or Tribes may also agree, however, to recognize alternate methods of identification in lieu of official identification for animals moved from the shipping State or Tribe into the receiving one, thus allowing for the use of other numbering systems that have been working effectively as group or flock identifiers.

Commenters representing the poultry industry also stated that requiring identification of chickens moved to a custom slaughter facility would cause a significant and unwarranted economic burden for producers.

In the proposed rule, we did exempt from the requirements of these regulations any covered livestock moving interstate to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat for personal consumption. To alleviate concerns expressed by the commenters, we are clarifying the intent of the exemption in this final rule by removing the phrase "for personal consumption." Therefore, under § 86.2(e)(2) of this final rule, all livestock moved to a custom slaughter facility will be exempted from the traceability regulations.

Some commenters suggested that commuter herd provisions, which exempt cattle and bison meeting the commuter herd requirements from official identification requirements, should be extended to include commercial poultry flocks as well. One of the commenters stated that the commercial broiler industry should be allowed to form agreements with States to ensure traceability.

Our commuter herd provisions were intended to address a specific need in the cattle industry, where cattle move across State lines under retained ownership for grazing purposes.

What the commenter is asking for more closely resembles the provisions in 9 CFR 71.19 that provide for the movement of swine within a production system. We do not believe that changes are necessary in this final rule in regards to expanding the concept of commuter herds to the commercial poultry industry, as the NPIP guidelines, which

are well-established in the commercial poultry industry, have provided very good traceability solutions. Additionally, the proposed rule did provide for States and Tribes to use other methods of identification and movement documentation for poultry. That is still the case under this final rule; thus, States and Tribes may enter into agreements with the commercial broiler industry, as suggested by the commenter.

#### Official Identification Requirements for Equines

Many commenters stated that a physical description of the animal should qualify as official identification for equines without that description having to be approved by an official of the receiving State or Tribe, as provided for in the proposed rule.

That proposed requirement was intended to apply only to those situations where the person examining the equine's identity had questions regarding the description provided. Where such uncertainty existed, an animal health official in the receiving State or Tribe was to determine if the description was sufficient or not. In this final rule, § 86.4(a)(2) has been revised to provide, as an option, that the animal health official at the destination may make the determination when called upon, but the use of the animal health official is not required. For example, the accredited veterinarian or authority at an equine exhibition may elect to make the determination of the equine's identity without review by the animal health official.

A commenter suggested that we should provide for additional identification methods for equines, such as existing microchips and biometric measurements.

These traceability regulations do provide for various methods of identification, including physical descriptions, electronic identification, digital photographs or other methods agreed to by the shipping and receiving States or Tribes. Most of these methods are already in use, though biometrics is relatively new. Adding a second microchip that is ISO compliant to an equine that already has an existing non-ISO injectable transponder is not practical. We are, however, amending § 86.4(a)(2) of this final rule to add an option to recognize the non-ISO transponders as official for those applied to the equine on or prior to March 11, 2014. We are also adding a reference to biometric measurements as official identification.

Additionally, in response to other commenters who viewed our proposed

equine official identification requirements as burdensome, we are adding some exemptions from the official identification requirements. Most of these parallel the exemptions allowed for cattle and bison. One, however, reflects the unique nature of equines. Equines moving interstate would be exempted from the official identification requirements if used as a mode of transportation, e.g., for riding or to pull a buggy, provided they then return to the original location. These exemptions will also be added to the ICVI requirements for equines in § 86.5(f).

A commenter questioned the need for imposing additional identification and veterinary inspection requirements for equines when current requirements for Coggins tests are being met.

Horse owners who are meeting vaccination and Coggins-test requirements would likely satisfy the requirements for official identification and documentation of equines under these regulations. Documentation completed in accordance with the equine infectious anemia (EIA) requirements in 9 CFR part 75 may be used in lieu of ICVIs. Identification previously used on EIA test reports may be accepted by the animal health official in the receiving State or Tribe.

#### Official Identification Requirements for Swine

Some commenters representing the swine industry expressed concern that allowing for the use of LIDs in lieu of PINs defeats the purpose of a single nationally standardized number and may lead to unnecessary confusion and difficulties in implementation. The commenters state that the PIN has become the preferred location identifier for the pork industry, with more than 95 percent of swine premises having registered with the standard PIN to date. Members of the industry strongly supported our maintaining the National Premises Allocator, National Premises Information Repository, and the data elements that are currently included in the repository. One comment from a pork producer stated that the use of the PIN should be mandatory on tags applied to sows going to cull markets.

This rulemaking does not disallow the use of a PIN, nor does it prohibit an industry from adopting it as a standard. We are simply providing additional flexibility for States or Tribes that offer an acceptable alternative means of identifying locations where livestock are raised.

Commenters representing the pork industry also expressed concern about our modifying some current definitions

in the CFR by removing the data standards for GINs and PINs and defining them in the Animal Disease Traceability General Standards document. The commenters stated that while the proposed changes would allow for flexibility in defining various location identifiers and for the use of the LID as a component of a GIN, they will lead to unnecessary confusion. To avoid that confusion, these industry commenters requested that APHIS recognize the data standards defined in § 71.1 for the PIN and GIN as the official data standards for the pork industry.

We do not agree that it is the role of APHIS to establish industry standards; rather, it is to set minimum standards for States and Tribes that provide flexibility at the local level. If an industry chooses to adopt a specific standard, that is its prerogative as long as the standard meets the minimum guidelines of these regulations or is agreed to by animal health officials involved in the interstate movement.

Pork industry commenters further stated that, to avoid any possible conflicts that might arise between the requirements set out in this rulemaking and the currently applicable sections of the regulations that deal with the identification of swine in interstate commerce, veterinary inspection, and issuance of ICVI's, APHIS should clearly indicate in this final rule that the requirements of § 71.19 are the ones that govern the interstate movement of swine.

We agree with this comment. The August 2011 proposed rule did, in fact, state that swine moving interstate were subject to the requirements of § 71.19, and this final rule does so as well.

#### Official Identification Requirements for Captive Cervids

A commenter stressed the importance of flexibility in identification requirements for cervids. It was stated that such identification methods as brands, tattoos, and microchips, may be more appropriate than ear tags for some markets within the cervid industry.

This rulemaking does not change the requirements for official identification of captive cervids, which are currently contained in 9 CFR part 77. Those existing regulations provide for various official identification methods, including tattoos and electronic implants.

#### Official Identification Requirements for Sheep and Goats

A commenter representing sheep and goat producers stated that, if in the future, APHIS should determine that identification for sheep is needed

beyond what is currently required for the scrapie program, then group identification should be allowed.

Group/lot identification is allowed under this rulemaking. Group/lot identification is not species-specific and will be available as an option for sheep and goat producers, as well as other livestock producers.

#### Miscellaneous Identification Issues

A commenter questioned how the LID is different from the PIN and stated that having two different numbering systems for the identification or premises may be unnecessarily complex and expensive.

The option of allowing a State or Tribe to issue a location identifier resulted from the strong negative feedback we received from livestock owners opposed to the premises registration component of the NAIS. While having location information on where livestock are raised is critical to traceability, it is recognized that States may have their own systems to maintain information on such locations. The LID option was established to provide that flexibility. Data standards for both LIDs and PINs are contained in the Animal Disease Traceability General Standards document.

A commenter questioned why the proposed regulations allowed the use of other identification methods and devices, if agreed to by the shipping and receiving States or Tribes, in lieu of the official identification devices for the various species of covered livestock. In the commenter's view, allowing the use of other identification devices would result in a lack of standardization of official identification devices and would be detrimental to traceability.

These traceability regulations list official identification devices and methods for each species of covered livestock. The diversification of animal agriculture across the United States is tremendous, and, taking into account all the feedback we received over the last few years, we recognized that "one size does not fit all." Thus we designed these regulations to support the efforts of States and Tribes to work with producers at the local level to implement traceability solutions that work best for all concerned.

A commenter stated that allowing group/lot identification of animals managed together as one group through the production chain would give a competitive advantage to vertically integrated operations over smaller producers.

The group/lot identification option is based on the need to have adequate information available to State, Tribal, and Federal animal health officials to

conduct traceback investigations. Requiring there to be individual identification on each animal that moved through the preharvest production chain would not improve the traceability of those animals. Thus, group/lot identification is a justified option in those situations, regardless of the size of the group.

A commenter stated that there should be a uniform requirement, with no exemptions, that all livestock in interstate commerce be individually officially identified before moving interstate, as is now the case with horses, according to the commenter.

We do not agree with this comment. We recognize that there are circumstances where official identification and/or ICVIs for interstate movement of animals are not warranted from a disease-risk perspective or that the traceability of animals moving interstate may be possible without requiring official identification of individual animals. For example, livestock moved interstate to a custom slaughter facility are already identified to the person responsible for bringing the animal to the facility. An official eartag would not make the animal more traceable; thus, we exempted such livestock from the traceability requirements.

It was the view of some commenters that we should allow States and Tribes to choose the identification methods that work best for them and to select the level of traceability that works best for them, based on their needs and infrastructure constraints.

State and Tribes may use the forms of identification they prefer in lieu of official identification when the receiving States or Tribes agree to accept that method of identification for animals moving into its jurisdiction. Likewise, the level of traceability States or Tribes establish within their jurisdictions is at their discretion.

#### Documentation Requirements

Documentation requirements, which were contained in § 90.5 of the August 2011 proposed rule, are contained in § 86.5 of this final rule.

Many cattle organizations recommended that a fully electronic ICVI system be in place in all the States and Tribes as a prerequisite to expanding the official identification requirements to include cattle and bison exempted in this rulemaking.

The conditions for initiating a second rulemaking to cover those additional classes of cattle and bison have yet to be determined. The merits of electronic ICVIs are fully recognized by APHIS, and we believe their adoption is

important to increase administrative efficiencies and to support timely traceability. APHIS provides an electronic ICVI system that all States and Tribes may utilize and supports options for third-party developed and supported systems. We have established data standards that third-party system providers need to incorporate so that their systems and ours will be compatible.

Some commenters took the argument further, stating that paper copies of ICVIs are not needed at all and that electronic copies are not only sufficient for traceability needs but should be required. It was also stated that the regulations need to allow for the use of electronic ICVI addenda.

We agree that electronic ICVIs have inherent benefits in terms of data retrieval, readability, and ease of execution, but disagree that paper ICVIs have no place in our traceability program. Although all States currently have the electronic ICVIs available for use, full implementation by the majority of accredited veterinarians will take time. We have areas of the country where electronic issuance of certificates that are Web-based is not possible at the locations where they are needed. While moving to increased use of electronic ICVIs is important, paper-based ICVIs will have a role in the foreseeable future. Additionally, even as the use of electronic ICVI systems become more widespread, it will still be necessary for enforcement purposes for the printouts of such certificates to accompany the livestock in transit.

Some commenters stated that the proposed ICVI requirements would be burdensome for producers. Because there are not enough veterinarians available in all States to conduct the necessary inspections on animals preparing to move interstate, having to obtain an ICVI would require some producers to pen their calves longer to arrange for those inspections. The result would be greater stress on the animals and reduced profits for the producers.

We acknowledge that there may be situations where the issuance of an ICVI is an economic burden. For that reason, we allow States or Tribes to issue alternative movement documentation in lieu of ICVIs when agreed to by the States or Tribes involved in the interstate movement. In this final rule, we are extending this exemption to include breeding cattle over 18 months of age, which would have been required to be accompanied by an ICVI under the proposed rule.

A number of commenters viewed the proposed requirement for the recording of individual identification numbers on

the ICVI as burdensome to producers and market operators, stating that the benefits of such recording would not outweigh the costs. It was suggested that State officials should be allowed to waive the recording of individual identification numbers on ICVIs.

An ICVI is a certification that a veterinarian has inspected specific animals. The requirement for recording the animals' identification numbers on the ICVI ensures that the inspections have actually taken place for those specific animals. State and Tribal animal health officials use the ICVIs to help in animal disease investigations. If the animals' identification numbers are not listed on the ICVI, it is more difficult to determine which animals were moved. To limit any possible burdens resulting from the recording requirements, the only animals we require to be listed on the ICVI are those we have determined to be associated with a higher risk of disease spread.

Some commenters stated that we should allow for the stapling of a printed list of RFID tag numbers to a paper ICVI rather than requiring the writing down of the numbers on the ICVI itself.

We agree with this comment and are amending the ICVI definition in this final rule to allow for State-approved addenda that would include an option for an attached printout of official identification numbers generated by computer or other means. The amended definition will also note, however, that such addenda or attachments may only be used if agreed to by the receiving State or Tribe.

Some commenters took the opposite view, stating that when official identification is required, the identification numbers should always be recorded on the ICVI. Attaching another sheet of paper to the ICVI was not seen as adequate because that other sheet seldom accompanies the ICVI to the State of destination.

While this final rule will allow for the use of attachments to the ICVI, as noted above, States and Tribes are not required to accept them if they do not view that method of recording official identification numbers as sufficient to meet their traceability needs.

Some commenters stated that we should allow for greater flexibility than we originally proposed in the use of alternative, State-approved methods of ICVI addenda. It was stated that we should allow for the listing of a series or range of numbers included in a shipment rather than the exact identification tag numbers for each animal in the shipment.

The ability to find individual animals quickly and determine what other animals they had contact with is key to effective epidemiological investigations. If ICVIs did not have individual identification numbers listed for the animals in a shipment, the ability of State, Tribal, and Federal animal health officials to conduct traceback investigations on those animals would be hampered. Alternative methods can only be used if States or Tribes involved in the interstate movement have agreed to them.

Some commenters stated that to avoid placing undue burdens on small entities, there should be a farm, business, or herd size threshold for exemption from the ICVI requirement. Traceability is more related to the number of animals that move interstate than it is to herd size. Regardless of size, herds that do not move animals interstate are exempt. Furthermore, APHIS has no intent to monitor the size of herds, require the reporting of inventory, or conduct any activity along those lines that would be necessary to establish herd size exemptions.

A commenter stated that there is no need to require an ICVI for equines moving interstate because the movement documents already required for equine species are adequate for traceback purposes.

We will not be making any changes to the final rule in response to this comment. It is true that most States already have movement requirements for equines. This rulemaking helps to make existing requirements more uniform throughout the nation. The EIA test chart, commonly required for interstate movement, certifies that a horse is not infected with the disease, but does not document the origin and destination of an interstate movement. The ICVI, issued by a veterinarian, does provide the ship-from and ship-to locations. These regulations also provide that States and Tribes may use other methods of movement documentation, which may include an EIA test chart, when agreed upon by the animal health officials in the States or Tribes involved in the interstate movement.

Some commenters stated that an exemption from the ICVI requirements in the proposed rule for cattle and bison moving interstate to a veterinary clinic and then returning to their farm of origin without a change in ownership should be also be allowed for equines and other species as well.

We acknowledge the support for the exemption, which was included in the proposed rule for poultry as well as for cattle and bison. In this final rule, we

are adding the same exemption for equines.

Under the proposed rule, individual identification numbers of cattle and bison moving interstate were required to be recorded on the ICVI with certain exceptions. Exempted categories were sexually intact cattle and bison under 18 months of age or steers or spayed heifers, excluding sexually intact dairy cattle of any age or cattle or bison used for rodeos, exhibitions, or recreational purposes. Many cattle organizations strongly supported maintaining those exemptions from the ICVI recording requirements rather than phasing them out, as they claimed we proposed to do.

We agree with these comments. The proposed rule did not in fact contain language suggesting that we intended to phase out these exemptions.

Many commenters stated that we should allow the use of other movement documents in lieu of the ICVI for all ages of cattle and bison when the shipping and receiving States or Tribes agree. The potential burden to producers of the ICVI requirement, resulting from a decline in the availability of veterinary coverage around the country, was cited as a reason for this recommended change from the proposed rule, which only allowed such an exemption for cattle and bison under 18 months of age.

We agree with the commenters on the need for flexibility and alternatives in areas of the country where obtaining an ICVI would impose an economic hardship on producers. We are, therefore, amending § 86.5(c)(6) in this final rule to allow for the use of alternative movement documentation for all ages of cattle and bison when agreed to by the animal health officials in the shipping and receiving States or Tribes.

It was recommended that the ICVI exemption contained in the proposed rule for poultry moved directly to a recognized slaughtering establishment should be expanded to cover poultry moved directly to rendering establishments as well.

We agree that the exemption is appropriate for poultry moving directly to either destination and are amending § 86.5(g)(2) of this final rule accordingly.

While we received many comments recommending exemptions to the ICVI requirements, we also received one stating that we should allow no exemptions and no use of alternative forms of documentation. The ICVI, the commenter stated, should be used for all interstate movements because standard documentation is necessary for an effective traceability program.



We do not agree with this comment. Due to the lack of large-animal veterinarians in some areas of the country, allowing only the ICVI to be used for interstate movement could result in significant economic hardship for some producers. We view a more flexible approach, one which allows the use of alternative movement documentation when agreed to by the animal health officials in the shipping and receiving States or Tribes, as more effective and less burdensome.

Some commenters stated that we should allow an ICVI to be valid for a period of time, e.g., 30 days, for brief and frequent out-of-State movements not involving a change of ownership of the livestock. One commenter recommended issuing an alternative document called an "event passport" for equines for this purpose. It was stated that allowing an ICVI to be valid for a period of time would alleviate burdens on livestock owners and veterinarians.

We realize that there are many ways in which livestock move interstate. These include movements in which animals return to their original location and, in some cases, move again a few days later to another location. While a new ICVI for each movement would aid in traceability, we realize that in some situations, other options are more practical for both the animal owner and accredited veterinarian. However, to account specifically for each variable in the regulation would likely create significant confusion. The rule, as proposed, provided the local officials with the authority to utilize other movement documents when agreed to at the local level by the State and Tribes involved. While not specifically referenced, such documents could include an event passport. We have maintained these options in the final rule to support the use of other movement documentation as agreed to by the involved State or Tribe animal health officials. Yet, we do believe that a standard and uniform definition for the ICVI and standard and uniform requirements for its administration are critical, and we have maintained those as proposed.

It was stated by a commenter representing a swine industry association that the ICVI requirements contained in the proposed rule included some data not currently required for swine and could cause some confusion regarding issuance. Specifically, the commenter questioned why it was necessary for an accredited veterinarian to indicate on the ICVI the purpose for which the animals are being moved interstate.

As we explained in the preamble to the August 2011 proposed rule, the information requirements for the ICVI were closely modeled on the requirements for certificates in the brucellosis regulations. The requirement for the accredited veterinarian to state the purpose of the interstate movement is to differentiate between temporary movements (shows, exhibitions, etc.) and permanent movements (sales, retained ownership, etc.). On many existing State-issued ICVIs, there is a box that can be checked indicating the purpose of the movement. In any event, the establishment of these traceability regulations does not affect the documentation requirements for the interstate movement of swine, which will continue to be governed by § 71.19.

A commenter representing the swine industry stated that while swine moved directly to slaughter are not currently required to have an ICVI, under the proposed rule, the requirements would become more stringent, since only animals moved to custom slaughter would be exempt. The commenter requested that, in the final rule, we reference exemptions for ICVIs for swine going into official slaughter channels.

This rulemaking does not alter the documentation requirements for swine moving interstate for slaughter or other purposes. Such swine will continue to be subject to the documentation requirements of § 71.19. Swine that are not moving within a swine production system and that are covered by the pseudorabies regulations in part 85 will continue to be subject to the documentation requirements of that part.

It was stated by commenters that we needed to be clearer regarding the location at which the ICVI must be issued and when the 5-day period for forwarding the ICVI begins.

The ICVI is required to show the address at which the animals in a shipment are loaded for interstate movement. As we noted earlier, however, we are amending this final rule to clarify that veterinary inspection of the animals and issuance of the ICVI do not have to be done at that address. The inspection may take place at an alternate site, such as a veterinary clinic, and the actual completion of the ICVI may take place at another location, such as the office of the issuing veterinarian. To clarify the forwarding requirements, we are also amending § 86.5(b) of this final rule to specify that the ICVI or other document accompanying the covered livestock must be forwarded by the person issuing it to the State or Tribal animal health

official in State or Tribe of origin within 7 calendar days from the date of issuance and that that official must then forward it to the State or Tribe of destination within 7 calendar days of having received it.

Additionally, to close a potential gap in the movement recordkeeping requirements, we are adding a new 86.5(b)(2) to this final rule stating that an animal health official or accredited veterinarian who issues or receives an ICVI or other interstate movement document in accordance with the paragraph above must retain a copy of the ICVI or other document. The timeframes are the same as those for approved livestock facilities: Such documents must be retained for 2 years for poultry and swine and 5 years for cattle and bison, equines, cervids, and sheep and goats.

A commenter expressed concern about the provision in the proposed rule that stated that the person directly responsible for animals leaving a premises would be responsible for ensuring that the animals are accompanied by the ICVI or other interstate movement document. The commenter indicated that it is common in the pork industry for the production system veterinarian to be the person responsible for writing the ICVI or other documents used for interstate movements. It is also common for movements to be arranged by a designated person in the production system. In the view of the commenter, we needed to better define or explain what we meant by "directly responsible."

It is not our intention to single out the accredited veterinarian or any other individual as being the primary responsible party in all cases. To avoid this, and to eliminate any possible ambiguity, we are revising the language of this provision slightly. Specifically, we are inserting, in § 86.5(a) of this final rule, the words "the persons responsible" in place of "the person directly responsible."

Some commenters stated that we should include fitness-to-travel requirements in the ICVI process and should require ICVIs to show the estimated travel times and stops. It was further stated that the ICVI should include a certification of intent to comply with the 28-hour law, which states that animals should not be driven for more than 28 hours without food or rest.

Although these comments may have merit, the suggested requirements are beyond the scope of this rule, which is designed to improve animal disease traceability, and of our statutory

authority under the Animal Health Protection Act.

A few commenters expressed the view, contrary to that of most, that there is no justification for the exemption from ICVI requirements of direct-to-slaughter cattle.

We do not agree with this comment. Cattle, upon arrival at a recognized slaughtering establishment, are inspected ante mortem and throughout the slaughtering process under the veterinary supervision of FSIS or State employees. When animals are shipped directly to slaughter, the location the animals were shipped from is known, and if there is any disease found at slaughter, it can easily be traced to that location. A requirement to have a veterinarian come to a farm to issue an ICVI for animals that are destined for immediate slaughter is unwarranted.

Finally, a commenter stated that we should allow for greater flexibility in documentation by allowing inventory verification by a third party or at a shipment's destination rather than only its origin.

We disagree with this comment. Movement documentation is an essential part of our animal disease tracing capability. Allowing animals to move without documentation and relying instead on the destination to verify the identity of animals, would require a complex and expensive system of reporting and compliance. Although we are aware that at certain times of the year, handling of animals can be difficult, with added risk to animal health, there are management techniques and procedures that can minimize the time required to identify animals and reduce the strain of preparing them for interstate movement.

#### *Regulatory Impact Analysis*

##### *Costs*

It was claimed by some commenters that the regulatory impact analysis (RIA) we published in conjunction with the August 2011 proposed rule grossly underestimated the economic cost to be borne by U.S. cattle producers. Some commenters expressed the view that we did not properly account for the cost of expanding the official identification requirements to cover feeder cattle.

In the RIA, we attempted to estimate the new costs that will be associated with the provisions of the rulemaking. We acknowledged the significant portion of the cattle industry that already uses some method of identification, as reported in the National Animal Health Monitoring System 2007 and 2008 surveys. In the RIA, we noted that two-thirds of the

beef operations and 90 percent of dairy operations use some method of identification. Additionally, within beef operations, over 60 percent of the calves had some form of individual identification. Consideration of these existing practices is important when estimating new costs that may be attributed to the new traceability requirements, as we believe that official eartags, in many cases, will likely be applied at the same time at which cattle are already being tagged or worked through chutes for other management purposes. Additionally, with an array of official eartags, producers may choose a single eartag that meets both management and official identification needs. This option would make the additional cost of official eartags quite small. Likewise, we believe that producers will continue to develop tagging practices that minimize the cost of applying official eartags. Producers that are not able to tag their own cattle may find a tagging site to be the most practical option for meeting the official identification requirements. We believe that the RIA accurately identified tagging costs that may occur at tagging sites. We acknowledge that our estimates for the number of animals moved interstate that would require official identification is based on several assumptions and that the estimation of costs involves many variables. The range of \$12.5 million to \$30.5 million annually for official identification costs to producers resulting from this rulemaking is our best estimate at this time.

Regarding ICVI costs, we noted that most States already require ICVIs for many interstate movements. Thus, we do not believe the overall volume of ICVIs issued will increase significantly as a result of this rule. In this final rule, the exemption that allowed other documentation to be used in lieu of an ICVI, provided that the shipping and receiving States or Tribes agreed, for cattle and bison under 18 months of age moving interstate has been extended to cover all ages and classes of cattle and bison. This revision will likely make the potential increase in the volume of ICVIs issued less than originally anticipated.

One commenter, citing a study on the cost of tagging, asserted that the likely cost of the proposed rule to producers would range from \$1.2 billion to \$1.9 billion.

The commenter cited testimony before the U.S. International Trade Commission (ITC). We believe that the costs described in that testimony included activities not associated with the provisions of the proposed rule. The

estimated costs per calf cited in the U.S. ITC testimony included \$5 for tags, data management, and verification; \$7 for working calves, tag placement, and documentation; and \$8 for feedlot and harvest data collection and chute fees. The U.S. ITC testimony cited estimated losses due to shrinkage as \$10 to \$20 in lost income potential per calf. The U.S. ITC testimony was also based on an electronic animal identification system involving data management and verification activities at the producer level.

We are not disputing the cost factors for the practices referenced in the U.S. ITC report. However, we do not believe they reflect management practices necessary for producers to comply with the identification requirements of the traceability rule and, therefore, do not believe those cost factors are applicable in our economic analysis.

Commenters stated that we ignored the cost to distribute official identification devices and collect and maintain data on people receiving them and animals moved with them. It was stated that we also ignored the costs of official tags bearing the required emblem, the costs of replacing existing tag systems with official tags, the costs of equipment to read the tags, the costs of configuring corrals and handling facilities to allow for collection of identification information, and the costs associated with technology problems when tags are not read.

We included information in the RIA about the cost of the tags, the cost of the labor to work the cattle in chutes and apply the tags, and the cost of the ICVI when the official identification information is recorded. Since the U.S. Shield has been imprinted on the NUES tags obtained by APHIS for disease-control programs for many years, we do not agree that the standardized use of the official eartag shield will increase the cost of official eartags. This rulemaking is designed to allow producers to use tags that do not require any electronic or special equipment to read the official eartags.

As described in the RIA, States and Tribes would bear responsibility for the collection, maintenance, and retrieval of data on interstate livestock movements. Federal funding, as available, would be allocated to assist States and Tribes in meeting program goals. Additionally, APHIS continues to provide information systems that States and Tribes may elect to use at no charge.

Some commenters stated that we underestimated the cost to producers of the rulemaking because we did not factor in the costs of buying chutes in calculating the costs of tagging.

As stated previously, in the RIA, we attempted to determine only the costs and benefits that were associated with the provisions of the proposed rule. While we included estimated costs for chute operations for tagging, we did not include the entire costs of buying or renting chutes because we were only trying to determine the costs associated with the rule. If an operation does not currently own equipment needed for tagging, such as chutes, we note that tagging may take place at an approved tagging site. We do realize that some operations may elect to purchase a chute that will allow them to tag their own animals. However, we do not believe the investment in the chute will be made solely for applying the official ear tags to the operation's cattle. Rather, the chute is likely to be used for many other management practices. Therefore, we believe that analyzing the cost of tagging animals at tagging sites provides a more reliable basis for a reasonable estimate of producer costs for tagging animals than would including the entire costs of buying or renting chutes in such an estimate.

Commenters stated that we did not adequately account for the added costs to producers, sale barns, veterinarians, and veterinary clinics that would be associated with our proposed ICVI requirements.

As mentioned previously, many States already require ICVIs for interstate movements of livestock covered in the traceability rule. Therefore, we do not believe the volume of ICVIs issued is likely to change significantly. We did, however attempt to account for an increase in these cost to producers, which was projected to be \$2.0 million to \$3.8 million. In this final rule, as we have already noted, the exemption allowing the use of other documentation in lieu of ICVIs has been extended to all ages and classes of cattle and bison when agreed to by the receiving and shipping States and Tribes, thus limiting the increase in the number of ICVIs issued. If sale barns and veterinarians are providing services associated with the rulemaking, we anticipate that they would charge an appropriate price for those services. Costs that could be incurred by producers as a result were estimated in the RIA.

One commenter stated that our RIA grossly underestimated the costs of ICVIs for horse owners. Another stated that the increased costs for the ICVI would place a greater burden on the horse industry than on the cattle industry because horses move more regularly.

The RIA included information about estimated costs for equines. We estimated the incremental cost of an ICVI for most horses moved interstate to range between \$4.00 and \$7.50, based on the cost of testing for EIA. We estimated that the total additional cost for the equine industry could range from \$8.8 million to \$16.5 million, given the current number of EIA tests per year.

Many commenters expressed concerns about the potential economic burdens on small producers and livestock markets, arguing that the rulemaking favored larger, vertically integrated entities.

While APHIS is sensitive to these concerns, many commenters did not provide specific information to support these claims or provide traceability solutions that would be more cost effective. While larger, vertically integrated entities may realize economic benefits from the size of their operations, those benefits result from market forces and are not due to specific provisions of this rulemaking. However, in this final rule, we did add exemptions in response to comments from small poultry producers for certain movements, so as not to put such producers at a disadvantage. In particular, we exempted from the official identification requirements chicks moving interstate from a hatchery to a poultry producer or redistributor.

It was stated that the rulemaking would disadvantage U.S. producers because they would be required to meet our traceability requirements when moving cattle across State lines, while we would place no such requirement on foreign producers.

The official identification and documentation requirements for imported livestock are well established through 9 CFR part 93 and are not affected by this rulemaking. The requirements in part 93 are at least equivalent to those specified in this rulemaking, so domestic producers will not be placed at a competitive disadvantage.

It was stated that the proposed rule was unfair in that it would only regulate interstate movement. As a result, producers may choose to take cattle to in-State markets that are farther away, thus incurring increased transportation costs, in order to avoid the cost and burden of the proposed requirements. Producers and markets located in the interiors of States may be given an unfair competitive advantage by not having to comply.

We realize there are many factors that producers will consider when marketing their animals. While the cost of

officially identifying animals moved interstate to a market may be considered, there are many other economic factors associated with marketing decisions, including, but not limited to, transportation costs and the availability of local and out-of-State buyers. Therefore, we cannot conclude that this final rule favors livestock markets based on their geographic location or distance from State borders.

Many commenters viewed the proposed traceability program as an unfunded mandate. For example, it was said that State agencies would have to build database storage, management, and retrieval systems, which could strain their budgets. It was suggested that we provide funds to help States modernize and upgrade their data systems and train people to use them.

The RIA discussed the estimated Federal funding available to support animal disease traceability. A significant portion of the budgeted funds are targeted to field implementation. However, APHIS has taken the position that it will not fund the development of duplicative information systems, as such investments cannot be justified. Rather, APHIS will provide information systems that the States and Tribes may use at no charge. If a State or Tribe elects to develop its own system, however, it will have to cover the cost. Federal funds, however, may be used for the overall administration of the local traceability activities.

It was stated that our proposed traceability system would enhance the bargaining power of packers at the expense of producers.

The commenters who expressed this view did not describe how the proposed rule would alter the relative bargaining power of packers at the expense of producers, and we are unable to determine how this point is applicable to the rulemaking.

Many commenters noted that our RIA did not include a cost analysis for poultry producers.

The RIA noted that there would be no additional costs for poultry enterprises that participate in the NPIP. As noted earlier, a primary concern about the cost of identifying individual birds, in particular chicks shipped from hatcheries, has been accounted for in the exemption from the official identification requirements for such poultry shipments. Likewise, it has been clarified that interstate movements to a custom slaughter facility are exempt from these traceability regulations. Poultry moved interstate to live bird markets would need to have an ICVI or other documentation as agreed to by the States. States have the option of

maintaining current requirements for movement documentation, in which case no additional costs will be incurred.

#### Benefits

It was stated by some commenters that the RIA indicated that the primary benefits of this rulemaking would be to minimize losses and enable the reestablishment of foreign and domestic markets. This rationale was questioned. A commenter requested more detailed information on tuberculosis traceouts in the last 5 years and how animal identification has contributed to successful or unsuccessful traceouts. The commenter also requested data on foreign market access lost due to tuberculosis and brucellosis. Some other commenters stated that the discussion of benefits focused too much on the benefits of exports. It was maintained that, while exporters would likely benefit from the proposed rule, the costs would mainly be borne by domestic producers and related businesses.

The ability of U.S. producers to export affects all producers, even those who do not directly sell to an international market. Trade restrictions lead to products intended for the export market being diverted to the domestic market. An increase in the supply of a product that otherwise may have been exported on the domestic market may lead to lower prices in the short run. In the event that exports cannot be re-established, the likely result is a smaller domestic herd.

A commenter stated that since the potential cost-benefit ratio of the rule could not be determined, the costs should be borne by the Federal Government.

The RIA provided our estimate of who would bear the costs and the amount of those costs. In cases where we cannot quantify benefits or costs, we have described those benefits and costs qualitatively. The benefits of an efficient system for tracing animal disease occurrences, as set forth in the proposed rule and in this document, would accrue directly to the livestock and meat industries and indirectly to other sectors of the economy.

#### Performance Standards

Many commenters stated that we should not finalize the proposed rule until the actual traceability performance standards that States and Tribes would have to meet are established through rulemaking. In a system that would be so dependent upon the performance levels achieved by the States and Tribes, the current lack of performance

measures, it was suggested, could be a barrier to successful implementation.

We do not agree with these comments, as we believe that it would be premature to enact traceability performance requirements in this rulemaking. As noted in the preamble to the August 2011 proposed rule, our current thinking is that we will measure the performance of States and Tribes by evaluating their ability to carry out, in a timely manner, certain activities that animal health officials would typically conduct during a trace investigation of covered livestock that have moved interstate. The establishment of actual traceability performance standards, however, can only be done following review and analysis of actual data compiled from animal movement records after these regulations have been implemented. Without such information, the establishment of performance standards would be too subjective. Therefore, we maintain our initial position: We will establish the traceability performance standards at a later date to ensure we have necessary data to objectively define and establish those performance standards. As the rule is implemented, we will continue to work with States and Tribes to measure tracing capabilities resulting from these regulations. Comparing the results obtained earlier on and over time will help document the progress being made.

One commenter stated that the discussion of the performance standards in the preamble to the proposed rule did not adequately address possible consequences for States with traceability systems that do not meet our goals. Several others stated that it would be counterproductive to place additional restrictions on producers from States that do not comply with our traceability standards, as was discussed in the preamble.

This rulemaking does not contain any traceability performance standards or provisions for additional restrictions based on non-compliance. The discussion in the preamble to the August 2011 proposed rule was presented as our "current thinking," with the understanding that any performance and compliance measures will be developed with input from individuals and organizations that would be affected. We made it clear in that discussion that the performance measures will be developed in a separate rulemaking process.

One commenter stated that the performance standards we ultimately implement should be more rigorous than the ones we discussed in the preamble to the proposed rule.

Specifically, the commenter stated that 3 years is too long a time to allow States to come into compliance with our requirements.

As noted above, the discussion in the preamble to the proposed rule reflects our current thinking on performance standards. That thinking is likely to evolve as we accumulate more data after this final rule becomes effective.

#### Preemption

Provisions related to preemption of State and local requirements, which were contained in § 90.8 of the August 2011 proposed rule, are contained in § 86.8 of this final rule.

Some commenters stated that APHIS should not preempt any State's identification requirements.

It is our view that the minimal preemption provisions provided in these regulations are necessary to ensure that no one State or Tribe can establish certain requirements for having livestock moved into their State or Tribe. For example, we do not believe a State should be able to require that all cattle entering its jurisdiction have an RFID eartag, nor should a receiving State be able to require a method of identification that is not listed as official in our regulations unless agreed to by the shipping State.

It was stated that APHIS should preempt States' or Tribes' identification requirements, except when those requirements are stricter than ours. States and Tribes should be able to impose more strict requirements than ours, e.g., requiring the official identification of feeder cattle during the time they are exempt from the Federal regulation.

These regulations only preempt the specific items noted in the preemption clause in § 86.8. A State or Tribe may require official identification for livestock to enter its jurisdiction when these regulations do not, so long as that State or Tribe does not specify a particular official identification device or method to be used if multiple ones are allowed under these regulations, or to impose requirements that would otherwise cause the shipping State or Tribe to have to develop a particular kind of traceability system or modify its existing one.

A commenter representing a State government expressed concern that that State's stricter existing official identification requirements, e.g., requiring official identification of all sexually intact beef cattle as well as all classes of dairy and rodeo cattle prior to importation, could be preempted under this rulemaking.

As noted above, there is no provision in these regulations that would prevent a State from requiring official identification for cattle that are exempted under this rulemaking.

While we are not making any substantive changes to the preemption provisions as a result of the comments we received, we are making some editorial changes for the sake of clarity.

#### *Miscellaneous Comments*

Some commenters stated that the proposed rule did not address the two main reservoirs of cattle disease in the United States: The introduction of tuberculosis from imported Mexican cattle and the spread of brucellosis and tuberculosis from wildlife to livestock. A number of these commenters further stated that it was unfair for U.S. cattle producers to be burdened with additional requirements and costs when a principal cause of the resurgence of cattle diseases is cattle imported from Mexico.

This rulemaking is not intended to provide methods of disease prevention or establish policy for international trade or wildlife issues. Having these traceability regulations in place will help us to build a uniform infrastructure of animal disease traceability that will aid us in disease response.

This rulemaking is intended to put the recordkeeping responsibility and data in the hands of States and Tribes. States and Tribes may choose to use the data systems already developed by APHIS, but the data contained in those systems are controlled at the local level. Maintenance of distribution records of official identification devices is shared among States/Tribes, APHIS, and the private sector. For instance, the distribution of official AIN eartags purchased by private individuals is recorded in an APHIS system by the tag manufacturers and distributors. Other official eartags purchased with State or Tribe resources are recorded in databases or logs at the discretion of the State or Tribe. While APHIS provides NUES tags to States and Tribes, the States and Tribes also may obtain official identification tags from approved manufacturers.

Many commenters faulted the proposed rule for not addressing potential liabilities to producers and associated individuals and entities under our traceability system. It was stated that under the bookend system we are attempting to implement, the person applying an identification tag would be the primary suspect in any disease traceback investigation, even if the animal was sold by that person well before detection of the disease.

Our animal disease programs are not designed to find fault or assign blame for disease, but to find and control disease. With a bookend system of traceability, the point-of-origin identification merely provides a starting point for an epidemiological investigation to trace an animal forward. The identification collected at slaughter is a starting point for tracing the animal backward. Good identification and recordkeeping at the farm level can actually reduce the impact of a disease investigation on producers, livestock markets, and other entities. For example, if a producer has a record that the animal of interest in an investigation was tested prior to movement or that a herd test was conducted, the amount of time Federal, State, or Tribal officials may be required to spend at the farm could be minimized, thereby minimizing the effect on the producer's operations.

It was stated by one commenter that our proposed traceability system would eliminate redundancies built into current systems and actually degrade, rather than enhance, traceability. The commenter did not offer any evidence to support that claim, however.

The same commenter also stated that APHIS lacks the constitutional and statutory authority to establish a traceability system. According to the commenter, the language of the Animal Health Protection Act does not confer broad authority to mandate overt action by producers in the form of an animal traceability system. The commenter claimed that our assertion of such broad powers is contrary to Article 1, Section 8 of the U.S. Constitution.

We do not agree with this comment. The Animal Health Protection Act authorizes the Secretary "to prohibit or restrict the movement in interstate commerce of any animal, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of dissemination of any pest or disease of livestock." The promulgation of regulations establishing an animal disease traceability system is clearly within APHIS' statutory authority.

It was also maintained that the proposed rule represented an unauthorized attempt by APHIS to implement OIE codes and standards domestically.

We do not agree with this comment. In this rulemaking, we are promulgating regulations that improve traceability nationally and yet allow the flexibility at the local level for States and Tribes to implement traceability solutions that work best for them.

One commenter noted that horses are not classified as livestock by the Food and Drug Administration and stated that agencies need to decide on a single classification before traceability requirements for horses go into effect.

We will not be making any changes to the final rule in response to this comment. Horses are classified as livestock under the Animal Health Protection Act, from which we derive our authority to regulate to protect animal health.

A commenter pointed out a possible discrepancy in the regulations regarding cervid herd tuberculosis testing and reaccreditation intervals. In current and proposed §§ 77.25, 77.27, and 77.29, reference is made to requirements for testing within 24 months of interstate movement. In § 77.35, however, there is a reference to a 36-month interval for herd testing for reaccreditation.

While we did not propose any changes to the requirements for testing intervals in these sections, we note that the differing intervals to which the commenter refers are associated with testing for different purposes.

A commenter representing a community of Old Order Amish opposed the proposed rule on religious grounds.

The commenter would only be subject to the traceability regulations if moving livestock interstate, and the availability of alternate tagging sites would make it possible for identification practices to which he might object to be carried out after a change of ownership of the livestock. While we respect the commenter's religious beliefs, we do need to be able to trace animals to prevent the spread of livestock pests and diseases. Congress has authorized the Secretary to regulate animals moving interstate when necessary to prevent the spread of disease.

A commenter representing a State Government stated that the proposed rule did not explain whether an approved livestock facility would be treated the same as the approved livestock markets in the existing regulations. The commenter maintained that cattle buying stations should be considered to be approved livestock facilities.

The regulations in § 71.20 use the term "approved livestock facility," and we use the term in these regulations to provide consistency and a source of reference. Cattle buying stations could be recognized as approved livestock facilities if they are approved under § 71.20.

A commenter stated that a concern in Pennsylvania about the proposed rule was that the proposed traceability plan

would revert to older, more conventional technologies, such as metal tags and paper. Pennsylvania already uses RFID technology and has a rather sophisticated electronic database system. The commenter questioned how APHIS' proposed system would mesh with the electronic system that currently works very well in the State.

This rulemaking does not prohibit the use of RFID technology and electronic records. No State can deny entry to animals identified with electronic eartags and accompanied by electronic records if they met the standards provided for in these regulations. The regulations do, however, prohibit a State or Tribe from mandating the use of RFID or electronic records, or any other specific technology, for animals moving into their jurisdiction.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

*Executive Orders 12866 and 13563 and Regulatory Flexibility Act*

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

We are establishing general traceability regulations for certain livestock moving interstate. The purpose of this rulemaking is to improve APHIS' ability to trace such livestock in the event disease is found.

The benefits of this rulemaking are expected to exceed the costs overall.

While the rule applies to cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids, the focus of this analysis is on expected economic effects for the beef and dairy cattle industries. These enterprises are likely to be most affected operationally by the rule. For the other species, APHIS will largely maintain and build on the identification requirements of existing disease program regulations.

Costs for cattle producers are estimated in terms of activities that will need to be conducted for official animal identification and issuance of an ICVI, or other movement documentation, for livestock moved interstate. Incremental costs incurred are expected to vary depending upon a number of factors, including whether an enterprise does or does not already use eartags to identify individual cattle. For many operators, costs of official animal identification and ICVIs will be similar, respectively, to costs associated with current animal identification practices and the inshipment documentation currently required by individual States. Existing expenditures for these activities represent cost baselines for the private sector. To the extent that official animal identification and ICVIs will simply replace current requirements, the incremental costs of the rule for private enterprises will be minimal.

There are two main cost components for this rule: Using eartags to identify cattle and having ICVIs for cattle moved interstate. Approximately 20 percent of cattle are not currently eartagged as part of routine management practices, and an estimated 45 percent of cattle are identified for management purposes other than by using official identification. Annual incremental costs of official identification for cattle enterprises are estimated to total from \$12.5 million to \$30.5 million, assuming producers who are not already using official identification will tag their cattle as an activity separate from other routine management practices. More likely, some producers who are not already using official eartags can be expected to combine tagging with other routine activities such as vaccination or de-worming, thereby avoiding the costs associated with working cattle through a chute an additional time. Under this second scenario, the total incremental cost of official identification will range from \$8.9 million to \$19.7 million. After considering public comments, we have increased the estimated cost of this second scenario. We recognize that all producers may not combine tagging

with other management activities and therefore some will continue to incur higher costs.

All States currently require a certificate of veterinary inspection, commonly referred to as a health certificate, for the inshipment from other States of breeder cattle, and 48 States require one for feeder cattle. Annual incremental costs of the rule for ICVIs are estimated to range between \$2 million and \$3.8 million. If States currently requiring documentation other than ICVIs, such as owner-shipper statements or brand certificates, continue to accept these documents in lieu of an ICVI, as permitted by this rule, the ICVI requirement in this rule will not result in any additional costs.

The combined annual costs of the rule for cattle operations of official identification and movement documentation will range between \$14.5 million and \$34.3 million, assuming official identification will be undertaken separately from other routine management practices; or between \$10.9 million and \$23.5 million, assuming that some producers will combine tagging with other routine management practices that require working cattle through a chute.

Currently, States and Tribes bear responsibilities for the collection, maintenance, and retrieval of data on interstate livestock movements. These responsibilities will be maintained under this rulemaking, but the way they are administered will likely change. Based on availability, Federal funding will be allocated to assist States and Tribes as necessary in automating data collection, maintenance, and retrieval to advance animal disease traceability.

Direct benefits of improved traceability include the public and private cost savings expected to be gained under the rule. Case studies for bovine tuberculosis, bovine brucellosis, and BSE illustrate the inefficiencies currently often faced in tracing disease occurrences due to inadequate animal identification and the potential gains in terms of cost savings that may derive from the rule.

Benefits of the traceability system are for the most part potential benefits that rest on largely unknown probabilities of disease occurrence and reactions by domestic and foreign markets. The primary benefit of the regulations will be the enhanced ability of the United States to regionalize and compartmentalize animal health issues more quickly, minimizing losses and enabling reestablishment of foreign and domestic market access with minimum delay in the wake of an animal disease event.



Having a traceability system in place will allow the United States to trace animal disease more quickly and efficiently, thereby minimizing not only the spread of disease but also the trade impacts an outbreak may have. The value of U.S. exports of live cattle in 2010 was \$131.8 million, and the value of U.S. beef exports totaled \$2.8 billion. The value of U.S. cattle and calf production in 2009 was \$31.8 billion. The estimated incremental costs of the rule for cattle enterprises—between \$14.5 million and \$34.3 million, assuming official identification is a separately performed activity, and between \$10.9 million and \$23.5 million, assuming some official identification is combined by some operations with other routine management practices that require working cattle through a chute—represent about one-tenth of one percent of the value of domestic cattle and calf production. If there were an animal disease outbreak in the United States that affected our domestic and international beef markets, preservation of only a very small proportion of these markets would justify estimated private sector costs attributable to the animal disease traceability program.

Most cattle operations in the United States are small entities. USDA will ensure the rule's workability and cost effectiveness by collaborating in its implementation with representatives from States, Tribes, and affected industries.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 13175

In accordance with Executive Order 13175, APHIS has consulted with Tribal Government officials. A tribal summary impact statement, published concurrently with the August 2011 proposed rule, includes a summary of Tribal officials' concerns and of how APHIS has attempted to address them.

Copies of the tribal impact summary statement are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov).

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil

Justice Reform. This rule: (1) Preempts State and local laws and regulations that are in conflict with this rule, as provided in § 86.8; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This final rule contains two information collection requirements that were not included in the proposed rule. Specifically, in response to comments we received on the proposed rule, this final rule allows States and Tribes to use eartags with their State or Tribal code printed inside an official eartag shield. The rule also includes an ICVI-related recordkeeping requirement for accredited veterinarians that was not noted in the proposed rule. Notwithstanding these additional requirements, the total paperwork burden is reduced from what we determined it to be in the proposed rule because we did not adequately account for the increasing use by States of electronic recordkeeping for ICVIs and, as a result, overestimated the ICVI reporting burden for the States. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this information collection requirement has been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the Federal Register providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

#### List of Subjects

##### 9 CFR Parts 71, 77, and 78

Animal diseases, Bison, Cattle, Hogs, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

##### 9 CFR Part 86

Animal diseases, Bison, Cattle, Interstate movement, Livestock, Official identification, Reporting and recordkeeping requirements, Traceability.

Accordingly, we are amending 9 CFR chapter I as follows:

#### PART 71—GENERAL PROVISIONS

- 1. The authority citation for part 71 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

- 2. Section 71.1 is amended by revising the definitions of *animal identification number (AIN)*, *group/lot identification number (GIN)*, *livestock, official eartag, official identification device or method*, and *premises identification number (PIN)*, removing the definitions of *moved (movement) in interstate commerce and United States Department of Agriculture Backtag*, and adding definitions of *flock-based number system*, *flock identification number (FIN)*, *move*, *National Uniform Eartagging System (NUES)*, *official eartag shield*, *official identification number*, and *United States Department of Agriculture (USDA) approved backtag* in alphabetical order to read as follows:

#### § 71.1 Definitions.

\* \* \* \* \*

*Animal identification number (AIN)*. A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after March 11, 2015. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside the United States.

\* \* \* \* \*

*Flock-based number system*. The flock-based number system combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

*Flock identification number (FIN)*. A nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

\* \* \* \* \*

*Group/lot identification number (GIN)*. The identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the

preharvest production chain. When a GIN is used, it is recorded on documents accompanying the animals moving interstate; it is not necessary to have the GIN attached to each animal.

\* \* \* \* \*

**Livestock.** All farm-raised animals.

\* \* \* \* \*

**Move.** To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

**National Uniform Eartagging System (NUES).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

\* \* \* \* \*

**Official eartag.** An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured must bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals must bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

**Official eartag shield.** The shield-shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

**Official identification device or method.** A means approved by the Administrator of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species.

**Official identification number.** A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(1) National Uniform Eartagging System (NUES).

(2) Animal identification number (AIN).

(3) Location-based number system.

(4) Flock-based number system.

(5) Any other numbering system approved by the Administrator for the official identification of animals.

\* \* \* \* \*

**Premises identification number (PIN).** A nationally unique number assigned by

a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

\* \* \* \* \*

**United States Department of Agriculture (USDA) approved backtag.**

A backtag issued by APHIS that provides a temporary unique identification for each animal.

#### § 71.18 [Removed and Reserved]

■ 3. Section 71.18 is removed and reserved.

#### § 71.19 [Amended]

■ 4. In § 71.19, paragraphs (b)(2) and (d) introductory text are amended by removing the words "United States Department of Agriculture backtags" and adding the words "United States Department of Agriculture (USDA) approved backtag" in their place each time they occur.

#### § 71.22 [Removed and Reserved]

■ 5. Section 71.22 is removed and reserved.

### PART 77—TUBERCULOSIS

■ 6. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 7. Section 77.2 is amended by revising the definitions of *animal identification number (AIN)*, *livestock*, *official eartag*, and *premises identification number (PIN)*, removing the definitions of *certificate*, *moved*, *moved directly*, and *premises of origin identification*, and adding definitions of *directly*, *interstate certificate of veterinary inspection (ICVI)*, *location-based numbering system*, *location identification (LID) number*, *move*, *National Uniform Eartagging System (NUES)*, *official eartag shield*, *official identification number*, *recognized slaughtering establishment*, and *United States Department of Agriculture (USDA) approved backtag* in alphabetical order to read as follows:

#### § 77.2 Definitions.

\* \* \* \* \*

**Animal identification number (AIN).** A numbering system for the official

identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after March 11, 2015. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside the United States.

\* \* \* \* \*

**Directly.** Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops.

\* \* \* \* \*

**Interstate certificate of veterinary inspection (ICVI).** An official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

(a) The ICVI must show the species of animals covered by the ICVI; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal, except as provided in paragraph (b) of this definition, or group of animals moved that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. An ICVI may not be issued for any animal that is not officially identified if official

identification is required. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., the cattle and bison do not belong to one of the classes of cattle and bison to which the official identification requirements of 9 CFR part 86 apply). If the animals are required to be officially identified but the identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified.

(b) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, another document may be used to provide this information, but only under the following conditions:

(1) The document must be a State form or APHIS form that requires individual identification of animals or a printout of official identification numbers generated by computer or other means;

(2) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(3) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and  
(ii) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

**Livestock.** All farm-raised animals.  
**Location-based numbering system.** The location-based number system combines a State or Tribal issued location identification (LID) number or a premises identification number (PIN) with a producer's unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal.

**Location identification (LID) number.** A nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to

provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

**Move.** To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

**National Uniform Eartagging System (NUES).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

**Official eartag.** An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured must bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals must bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

**Official eartag shield.** The shield-shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

**Official identification number.** A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

- (1) National Uniform Eartagging System (NUES).
- (2) Animal identification number (AIN).
- (3) Flock-based number system.
- (4) Location-based number system.
- (5) Any other numbering system approved by the Administrator for the official identification of animals.

\* \* \* \* \*  
**Premises identification number (PIN).** A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component

of a group/lot identification number (GIN).

**Recognized slaughtering establishment.** Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts that is approved in accordance with 9 CFR 71.21.

\* \* \* \* \*  
**United States Department of Agriculture (USDA) approved backtag.** A backtag issued by APHIS that provides a temporary unique identification for each animal.

\* \* \* \* \*

■ 8. Section 77.5 is amended by removing the definition of *approved slaughtering establishment* and adding a definition of *recognized slaughtering establishment* in alphabetical order to read as follows:

**§ 77.5 Definitions.**

\* \* \* \* \*

**Recognized slaughtering establishment.** Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts that is approved in accordance with 9 CFR 71.21.

\* \* \* \* \*

■ 9. Section 77.8 is revised to read as follows:

**§ 77.8 Interstate movement from accredited-free States and zones.**

Cattle or bison that originate in an accredited-free State or zone may be moved interstate in accordance with 9 CFR part 86 without further restriction under this part.

■ 10. Section 77.10 is revised to read as follows:

**§ 77.10 Interstate movement from modified accredited advanced States and zones.**

Cattle or bison that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 86 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers, and are officially identified.

(b) The cattle or bison are from an accredited herd, are officially identified, and are accompanied by an ICVI stating

that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(c) The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(Approved by the Office of Management and Budget under control numbers 0579-0146, 0579-0220, and 0579-0229)

■ 11. Section 77.12 is revised to read as follows:

**§ 77.12 Interstate movement from modified accredited States and zones.**

Cattle or bison that originate in a modified accredited State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 86 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; are officially identified, and are accompanied by an ICVI stating that they were classified negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(b) The cattle or bison are from an accredited herd, are officially identified, and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement.

(c) The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement, except that the additional test is not required if the animals are moved interstate within 60 days following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

■ 12. Section 77.14 is revised to read as follows:

**§ 77.14 Interstate movement from accreditation preparatory States and zones.**

Cattle or bison that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 86 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 60 days prior to the date of movement; *Except that:* The additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(b) The cattle or bison are from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement and that the animals to be moved were negative to an official tuberculin test conducted within 60 days prior to the date of movement.

(c) The cattle or bison are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to two additional official tuberculin tests conducted at least 60 days apart and no more than 6 months apart, with the second test conducted within 60 days prior to the date of movement; *Except that:* The second additional test is not required if the animals are moved interstate within 60 days following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

**§ 77.16 [Amended]**

■ 13. Section 77.16 is amended by removing the words "an approved" and adding the words "a recognized" in their place.

**§ 77.17 [Amended]**

■ 14. Section 77.17 is amended as follows:

■ a. In paragraphs (a) introductory text and (b) introductory text, by removing the words "an approved" and adding the words "a recognized" in their place.

■ b. In paragraph (a)(4), by removing the words "transportation document" and adding the words "VS Form 1-27" in their place.

■ c. In paragraph (c), by removing the words "to an approved slaughtering establishment" and adding the words "to a recognized slaughtering establishment in accordance with 9 CFR part 86" in their place.

■ 15. Section 77.23 is revised to read as follows:

**§ 77.23 Interstate movement from accredited-free States and zones.**

Notwithstanding any other provisions of this part, captive cervids that originate in an accredited-free State or zone may be moved interstate in accordance with 9 CFR part 86 and without further restriction under this part.

■ 16. Section 77.25 is revised to read as follows:

**§ 77.25 Interstate movement from modified accredited advanced States and zones.**

Captive cervids that originate in a modified accredited advanced State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 86 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The captive cervids are from an accredited herd, qualified herd, or monitored herd; are officially identified; and are accompanied by an ICVI stating that the herd completed the requirements for accredited herd, qualified herd, or monitored herd status within 24 months prior to the date of movement.

(b) The captive cervids are officially identified and are accompanied by an ICVI stating that they were negative to an official tuberculin test conducted within 90 days prior to the date of movement.

(Approved by the Office of Management and Budget under control number 0579-0146)

■ 17. Section 77.27 is revised to read as follows:

**§ 77.27 Interstate movement from modified accredited States and zones.**

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in a modified accredited State or zone, and that are not known to be

infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 86 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The captive cervids are from an accredited herd, are officially identified, and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 24 months prior to the date of movement.

(b) The captive cervids are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the date of movement and that the individual animals to be moved were negative to an additional official tuberculin test conducted within 90 days prior to the date of movement; *Except that:* The additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

■ 18. Section 77.29 is revised to read as follows:

**§ 77.29 Interstate movement from accreditation preparatory States and zones.**

Except for captive cervids from a qualified herd or monitored herd, as provided in §§ 77.36 and 77.37, respectively, captive cervids that originate in an accreditation preparatory State or zone, and that are not known to be infected with or exposed to tuberculosis, may be moved interstate only in accordance with 9 CFR part 86 and, if moved anywhere other than directly to slaughter at a recognized slaughtering establishment, under one of the following additional conditions:

(a) The captive cervids are from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the accredited herd completed the testing necessary for accredited status with negative results within 24 months prior to the date of movement and that the individual animals to be moved were negative to an official tuberculin test conducted within 90 days prior to the date of movement.

(b) The captive cervids are sexually intact animals; are not from an accredited herd; are officially identified; and are accompanied by an ICVI stating that the herd from which they originated was negative to a whole herd test conducted within 1 year prior to the

date of movement and that the individual animals to be moved were negative to two additional official tuberculin tests conducted at least 90 days apart and no more than 6 months apart, with the second test conducted within 90 days prior to the date of movement; *Except that:* The second additional test is not required if the animals are moved interstate within 6 months following the whole herd test.

(Approved by the Office of Management and Budget under control number 0579-0146)

**§ 77.31 [Amended]**

■ 19. Section 77.31 is amended by removing the words “an approved” and adding the words “a recognized” in their place.

**§ 77.32 [Amended]**

■ 20. Section 77.32 is amended as follows:

■ a. In paragraph (a), by removing the words “§§ 77.25(a), 77.27(a), 77.29(a), and 77.31(d)” and adding the words “9 CFR part 86” in their place.

■ b. In paragraph (c), by removing the words “accompanied by a certificate” and adding the words “officially identified and accompanied by an ICVI” in their place.

■ 21. In § 77.35, paragraph (b) is revised to read as follows:

**§ 77.35 Interstate movement from accredited herds.**

\* \* \* \* \*

(b) *Movement allowed.* Except as provided in § 77.23 with regard to captive cervids that originate in an accredited-free State or zone, and except as provided in § 77.31 with regard to captive cervids that originate in a nonaccredited State or zone, a captive cervid from an accredited herd may be moved interstate without further tuberculosis testing only if it is officially identified and is accompanied by an ICVI, as provided in § 77.32(c), that includes a statement that the captive cervid is from an accredited herd. If a group of captive cervids from an accredited herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one ICVI.

\* \* \* \* \*

■ 22. In § 77.36, paragraphs (b)(2), (b)(3), and (b)(4) are revised to read as follows:

**§ 77.36 Interstate movement from qualified herds.**

\* \* \* \* \*

(b) \* \* \*

(2) The captive cervid is officially identified and is accompanied by an ICVI, as provided in § 77.32(c), that

includes a statement that the captive cervid is from a qualified herd. Except as provided in paragraphs (b)(3) and (b)(4) of this section, the ICVI must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a qualified herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one ICVI.

(3) Captive cervids under 1 year of age that are natural additions to the qualified herd or that were born in and originate from a classified herd may move without testing, provided that they are officially identified and that the ICVI accompanying them states that the captive cervids are natural additions to the qualified herd or were born in and originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

(4) Captive cervids being moved interstate for the purpose of exhibition only may be moved without testing, provided they are returned to the premises of origin no more than 90 days after leaving the premises, have no contact with other livestock during movement and exhibition, are officially identified, and are accompanied by an ICVI that includes a statement that the captive cervid is from a qualified herd and will otherwise meet the requirements of this paragraph.

\* \* \* \* \*

■ 23. In § 77.37, paragraphs (b)(2) and (b)(3) are revised to read as follows:

**§ 77.37 Interstate movement from monitored herds.**

\* \* \* \* \*

(b) \* \* \*

(2) The captive cervid is officially identified and is accompanied by an ICVI, as provided in § 77.32(c), that includes a statement that the captive cervid is from a monitored herd. Except as provided in paragraph (b)(3) of this section, the ICVI must also state that the captive cervid has tested negative to an official tuberculosis test conducted within 90 days prior to the date of movement. If a group of captive cervids from a monitored herd is being moved interstate together to the same destination, all captive cervids in the group may be moved under one ICVI.

(3) Captive cervids under 1 year of age that are natural additions to the monitored herd or that were born in and originate from a classified herd may move without testing, provided that they are officially identified and that the ICVI accompanying them states that the captive cervids are natural additions to the monitored herd or were born in and

originated from a classified herd and have not been exposed to captive cervids from an unclassified herd.

\* \* \* \* \*

#### § 77.40 [Amended]

■ 24. In § 77.40, paragraph (a)(3) is amended by removing the words “an approved” and adding the words “a recognized” in their place.

#### PART 78—BRUCELLOSIS

■ 25. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 26. Section 78.1 is amended by revising the definitions of *animal identification number (AIN)*, *dairy cattle, directly, market cattle identification test cattle, official eartag, officially identified*, and *recognized slaughtering establishment*, removing the definitions of *certificate, official identification device or method, and rodeo bulls*, and adding definitions of *commuter herd, commuter herd agreement, interstate certificate of veterinary inspection (ICVI), location-based numbering system, location identification (LID) number, National Uniform Eartagging System (NUES), official eartag shield, official identification number*, and *rodeo cattle* in alphabetical order to read as follows:

#### § 78.1 Definitions.

\* \* \* \* \*

*Animal identification number (AIN)*. A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after March 11, 2015. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside the United States.

\* \* \* \* \*

*Commuter herd*. A herd of cattle or bison moved interstate during the

course of normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement.

*Commuter herd agreement*. A written agreement between the owner(s) of a herd of cattle or bison and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

\* \* \* \* \*

*Dairy cattle*. All cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

\* \* \* \* \*

*Directly*. Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water or rest the animals being moved, and with no commingling of animals at such stops.

\* \* \* \* \*

*Interstate certificate of veterinary inspection (ICVI)*. An official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

(1) The ICVI must show the species of animals covered by the ICVI; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal, except as provided in paragraph (2) of this definition, or group of animals moved that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. An ICVI may not be

issued for any animal that is not officially identified if official identification is required. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., the cattle and bison do not belong to one of the classes of cattle and bison to which the official identification requirements of 9 CFR part 86 apply). If the animals are required to be officially identified but the identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified.

(2) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, another document may be used to provide this information, but only under the following conditions:

(i) The document must be a State form or APHIS form that requires individual identification of animals or a printout of official identification numbers generated by computer or other means;

(ii) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(iii) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(iv) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(A) The name of the document; and  
(B) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

*Location-based number system*. The location-based number system combines a State or Tribal issued location identification (LID) number or a premises identification number (PIN) with a producer's unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal.

*Location identification (LID) number*. A nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to



provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

**Market cattle identification test cattle.** Cows and bulls 18 months of age or over which have been moved to recognized slaughtering establishments, and test-eligible cattle which are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. Such cattle must be identified with an official identification device as specified in § 86.4(a) of this chapter prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach.

**National Uniform Eartagging System (NUES).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

**Official eartag.** An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured must bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals must bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

**Official eartag shield.** The shield-shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

**Official identification number.** A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

- (1) National Uniform Eartagging System.
- (2) Animal identification number (AIN).
- (3) Location-based number system.
- (4) Flock-based number system.
- (5) Any other numbering system approved by the Administrator for the official identification of animals.

**Officially identified.** Identified by means of an official identification

device or method approved by the Administrator.

**Recognized slaughtering establishment.** Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts that is approved in accordance with 9 CFR 71.21.

**Rodeo cattle.** Cattle used at rodeos or competitive events.

■ 27. Section 78.2 is revised to read as follows:

**§ 78.2 Handling of certificates, permits, and "S" brand permits for interstate movement of animals.**

(a) Any ICVI, other interstate movement document used in lieu of an ICVI, permit, or "S" brand permit required by this part for the interstate movement of animals shall be delivered to the person moving the animals by the shipper or shipper's agent at the time the animals are delivered for movement and shall accompany the animals to their destination and be delivered to the consignee or the person receiving the animals.

(b) The APHIS representative, State representative, Tribal representative, or accredited veterinarian issuing an ICVI or other interstate movement document used in lieu of an ICVI or a permit, except for permits for entry and "S" brand permits, that is required for the interstate movement of animals under this part shall forward a copy of the ICVI, other interstate movement document used in lieu of an ICVI, or permit to the State animal health official of the State of origin within 5 working days. The State animal health official of the State of origin shall forward a copy of the ICVI, other interstate movement document used in lieu of an ICVI, or permit to the State animal health official of the State of destination within 5 working days.

(Approved by the Office of Management and Budget under control number 0579-0047)

■ 28. Section 78.5 is revised to read as follows:

**§ 78.5 General restrictions.**

Cattle may not be moved interstate except in compliance with this subpart and with 9 CFR part 86. Cattle moved interstate under permit in accordance with this subpart are not required to be accompanied by an interstate certificate of veterinary inspection or owner-shipper statement.

■ 29. Section 78.6 is revised to read as follows:

**§ 78.6 Steers and spayed heifers.**

Steers and spayed heifers may be moved interstate in accordance with 9 CFR part 86 and without further restriction under this subpart.

■ 30. Section 78.9 is amended as follows:

■ a. In the introductory text, by revising the first sentence to read as set forth below.

■ b. By revising paragraphs (a)(3)(ii), (a)(3)(iii), (b)(3)(i), (b)(3)(ii), (b)(3)(iv), (c)(1)(i), (c)(1)(ii), (c)(1)(iv)(A), (c)(1)(vi)(A), (c)(2)(ii)(A), (c)(3)(i), (c)(3)(ii), (c)(3)(iv), (d)(1)(i), (d)(1)(ii), (d)(1)(iv)(A), (d)(1)(vi)(A), (d)(2)(ii)(A), and (d)(3) to read as set forth below.

**§ 78.9 Cattle from herds not known to be affected.**

Male cattle which are not test eligible and are from herds not known to be affected may be moved interstate without further restriction under this subpart. \* \* \*

(a) \* \* \*

(3) \* \* \*

(ii) Such cattle are moved interstate as part of a commuter herd in accordance with a commuter herd agreement or other documents as agreed to by the shipping and receiving States or Tribes.

(iii) Such cattle are moved interstate accompanied by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a Class Free State or area.

(b) \* \* \*

(3) \* \* \*

(i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are negative to an official test within 30 days prior to such interstate movement and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

(iv) Such cattle are moved as part of a commuter herd in accordance with a commuter herd agreement or other documents as agreed to by the shipping and receiving States or Tribes..

(c) \* \* \*

(1) \* \* \* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without further restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly

to an approved intermediate handling facility without further restriction under this subpart.

\* \* \* \* \*

(iv) \* \* \*  
 (A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied to slaughter by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(vi) \* \* \*  
 (A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(2) \* \* \*  
 (ii) \* \* \*  
 (A) They are negative to an official test within 30 days prior to such movement and are accompanied by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(3) \* \* \*  
 (i) Such cattle originate in a certified brucellosis-free herd and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd; or

(ii) Such cattle are negative to an official test within 30 days prior to interstate movement, have been issued a permit for entry, and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(iv) Such cattle are moved interstate as part of a commuter herd in accordance with a commuter herd agreement or other documents as agreed to by the shipping and receiving States or Tribes, and

(A) The cattle being moved originate from a herd in which:

(1) All the cattle were negative to a herd blood test within 1 year prior to the interstate movement;

(2) Any cattle added to the herd after such herd blood test were negative to an official test within 30 days prior to the date the cattle were added to the herd;

(3) None of the cattle in the herd have come in contact with any other cattle; and (B) The cattle are accompanied interstate by a document which states

the dates and results of the herd blood test and the name of the laboratory in which the official tests were conducted

\* \* \* \* \*

(d) \* \* \*  
 (1) \* \* \* (i) Such cattle may be moved interstate from a farm of origin or a nonquarantined feedlot directly to a recognized slaughtering establishment without further restriction under this subpart.

(ii) Such cattle may be moved interstate from a farm of origin directly to an approved intermediate handling facility without further restriction under this subpart.

\* \* \* \* \*

(iv) \* \* \*  
 (A) They are negative to an official test conducted at the specifically approved stockyard and are accompanied by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(vi) \* \* \*  
 (A) They are negative to an official test within 30 days prior to such interstate movement and are accompanied by an ICVI or "S" brand permit which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(2) \* \* \*  
 (ii) \* \* \*  
 (A) They are negative to an official test within 30 days prior to such movement and are accompanied by an ICVI which states, in addition to the items specified in § 78.1, the test dates and results of the official tests; or

\* \* \* \* \*

(3) *Movement other than in accordance with paragraphs (d)(1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d)(1) or (2) of this section only if such cattle originate in a certified brucellosis-free herd and are accompanied interstate by an ICVI which states, in addition to the items specified in § 78.1, that the cattle originated in a certified brucellosis-free herd.

\* \* \* \* \*

**§ 78.12 [Amended]**

■ 31. Section 78.12 is amended as follows:

■ a. In the introductory text, by adding the words ", 9 CFR part 86," after the citation "§ 78.10".

■ b. In paragraph (a), by adding the word "further" after the word "without".

■ c. In paragraphs (d)(1)(i), (d)(2)(i), and (d)(3)(ii), by removing the words "a certificate" and adding the words "an ICVI" in their place each time they occur.

■ 32. Section 78.14 is revised to read as follows:

**§ 78.14 Rodeo cattle.**

(a) Rodeo cattle that are test-eligible and that are from a herd not known to be affected may be moved interstate if:

(1) They are classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement: *Provided, however, That:* The official test is not required for rodeo cattle that are moved only between Class Free States;

(2) The cattle are identified with an official eartag or any other official identification device or method approved by the Administrator in accordance with § 78.5;

(3) There is no change of ownership since the date of the last official test;

(4) An ICVI accompanies each interstate movement of the cattle; and

(5) A permit for entry is issued for each interstate movement of the cattle.  
 (b) Cattle that would qualify as rodeo cattle, but that are used for breeding purposes during the 365 days following the date of being tested, may be moved interstate only if they meet the requirements for cattle in this subpart and in 9 CFR part 86.

(Approved by the Office of Management and Budget under control number 0579-0047)

**§ 78.20 [Amended]**

■ 33. Section 78.20 is amended by adding the words "and with 9 CFR part 86" after the word "subpart".

**§ 78.21 [Amended]**

■ 34. Section 78.21 is amended by adding the word "further" after the word "without".

■ 35. Section 78.23, paragraph (c) introductory text, is revised to read as follows:

**§ 78.23 Brucellosis exposed bison.**

\* \* \* \* \*

(c) *Movement other than in accordance with paragraphs (a) or (b) of this section.* Brucellosis exposed bison which are from herds known to be affected, but which are not part of a herd being depopulated under part 51 of this chapter, may move without further restriction under this subpart if the bison:

\* \* \* \* \*

**§ 78.24 [Amended]**

■ 36. Section 78.24 is amended as follows:

- a. In paragraphs (a) and (b), by adding the word "further" after the word "without" each time it occurs.
- b. In paragraphs (d)(1), (d)(2), (d)(3), and (d)(4), by removing the words "a certificate" and adding the words "an ICVI" in their place each time they occur.
- 37. A new part 86 is added to subchapter C to read as follows:

**PART 86—ANIMAL DISEASE TRACEABILITY**

Sec.

- 86.1 Definitions.
- 86.2 General requirements for traceability.
- 86.3 Recordkeeping requirements.
- 86.4 Official identification.
- 86.5 Documentation requirements for interstate movement of covered livestock.
- 86.6 [Reserved]
- 86.7 [Reserved]
- 86.8 Preemption.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

**§ 86.1 Definitions.**

**Animal identification number (AIN).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after March 11, 2015. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside the United States.

**Approved livestock facility.** A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled and that has been approved under § 71.20 of this chapter.

**Approved tagging site.** A premises, authorized by APHIS, State, or Tribal animal health officials, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

**Commuter herd.** A herd of cattle or bison moved interstate during the course of normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement.

**Commuter herd agreement.** A written agreement between the owner(s) of a herd of cattle or bison and the animal health officials for the States or Tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the time period, up to 1 year, that the agreement is effective. A commuter herd agreement may be renewed annually.

**Covered livestock.** Cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids.

**Dairy cattle.** All cattle, regardless of age or sex or current use, that are of a breed(s) used to produce milk or other dairy products for human consumption, including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, Milking Shorthorn, and Red and Whites.

**Directly.** Moved in a means of conveyance, without stopping to unload while en route, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops.

**Flock-based number system.** The flock-based number system combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.

**Flock identification number (FIN).** A nationally unique number assigned by a State, Tribal, or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.

**Group/hot identification number (GIN).** The identification number used to uniquely identify a "unit of animals" of the same species that is managed together as one group throughout the preharvest production chain. When a GIN is used, it is recorded on documents accompanying the animals moving interstate; it is not necessary to have the GIN attached to each animal.

**Interstate certificate of veterinary inspection (ICVI).** An official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement.

(a) The ICVI must show the species of animals covered by the ICVI; the

number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined. Additionally, unless the species-specific requirements for ICVIs provide an exception, the ICVI must list the official identification number of each animal, except as provided in paragraph (b) of this definition, or group of animals moved that is required to be officially identified, or, if an alternative form of identification has been agreed upon by the sending and receiving States, the ICVI must include a record of that identification. If animals moving under a GIN also have individual official identification, only the GIN must be listed on the ICVI. An ICVI may not be issued for any animal that is not officially identified if official identification is required. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., the cattle and bison do not belong to one of the classes of cattle and bison to which the official identification requirements of this part apply). If the animals are required to be officially identified but the identification number does not have to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified.

(b) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, another document may be used to provide this information, but only under the following conditions:

(1) The document must be a State form or APHIS form that requires individual identification of animals or a printout of official identification numbers generated by computer or other means;

(2) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(3) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and  
 (ii) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

**Interstate movement.** From one State into or through any other State.

**Livestock.** All farm-raised animals.

**Location-based numbering system.** The location-based number system combines a State or Tribal issued location identification (LID) number or a premises identification number (PIN) with a producer's unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal.

**Location identification (LID) number.** A nationally unique number issued by a State, Tribal, and/or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

**Move.** To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

**National Uniform Eartagging System (NUES).** A numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

**Official eartag.** An identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured must bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals must bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.

**Official eartag shield.** The shield-shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or Tribal alpha code imprinted within the shield.

**Official identification device or method.** A means approved by the Administrator of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.

**Official identification number.** A nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(1) National Uniform Eartagging System (NUES).

(2) Animal identification number (AIN).

(3) Location-based number system.

(4) Flock-based number system.

(5) Any other numbering system approved by the Administrator for the official identification of animals.

**Officially identified.** Identified by means of an official identification device or method approved by the Administrator.

**Owner-shipper statement.** A statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as required by the regulations, unless the regulations specifically provide that the identification does not have to be recorded.

**Person.** Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

**Premises identification number (PIN).** A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

**Recognized slaughtering establishment.** Any slaughtering facility operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or State meat or poultry inspection acts that is

approved in accordance with 9 CFR 71.21.

**United States Department of Agriculture (USDA) approved backtag.** A backtag issued by APHIS that provides a temporary unique identification for each animal.

#### § 86.2 General requirements for traceability.

(a) The regulations in this part apply only to covered livestock, as defined in § 86.1.

(b) No person may move covered livestock interstate or receive such livestock moved interstate unless the livestock meet all applicable requirements of this part.

(c) The regulations in this part will apply to the movement of covered livestock onto and from Tribal lands only when the movement is an interstate movement; i.e., when the movement is across a State line.

(d) In addition to meeting all applicable requirements of this part, all covered livestock moved interstate must be moved in compliance with all applicable provisions of APHIS program disease regulations (subchapter C of this chapter).

(e) The interstate movement requirements in this part do not apply to the movement of covered livestock if:

(1) The movement occurs entirely within Tribal land that straddles a State line and the Tribe has a separate traceability system from the States in which its lands are located; or

(2) The movement is to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat.

#### § 86.3 Recordkeeping requirements.

(a) **Official identification device distribution records.** Any State, Tribe, accredited veterinarian, or other person or entity who distributes official identification devices must maintain for 5 years a record of the names and addresses of anyone to whom the devices were distributed.

(b) **Interstate movement records.** Approved livestock facilities must keep any ICVIs or alternate documentation that is required by this part for the interstate movement of covered livestock that enter the facility on or after March 11, 2013. For poultry and swine, such documents must be kept for at least 2 years, and for cattle and bison, sheep and goats, cervids, and equines, 5 years.

#### § 86.4 Official identification.

(a) **Official identification devices and methods.** The Administrator has approved the following official

identification devices or methods for the species listed. The Administrator may authorize the use of additional devices or methods for a specific species if he or she determines that such additional devices or methods will provide for adequate traceability.

(1) *Cattle and bison.* Cattle and bison that are required to be officially identified for interstate movement under this part must be identified by means of:

- (i) An official eartag; or
- (ii) Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or
- (iii) Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities; or
- (iv) Group/lot identification when a group/lot identification number (GIN) may be used.

(2) *Horses and other equine species.* Horses and other equine species that are required to be officially identified for interstate movement under this part must be identified by one of the following methods:

- (i) A description sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements). When the identity of the equine is in question at the receiving destination, the State or Tribal animal health official in the State or Tribe of destination or APHIS representative may determine if the description provided is sufficient; or
- (ii) Electronic identification that complies with ISO 11784/11785; or
- (iii) Non-ISO electronic identification injected to the equine on or before March 11, 2014; or
- (iv) Digital photographs sufficient to identify the individual equine; or
- (v) For equines being commercially transported to slaughter, a device or method authorized by 88 of this chapter.

(3) *Poultry.* Poultry that are required to be officially identified for interstate movement under this part must be identified by one of the following methods:

- (i) Sealed and numbered leg bands in the manner referenced in the National Poultry Improvement Plan regulations (parts 145 through 147 of this chapter); or

(ii) Group/lot identification when a group/lot identification number (GIN) may be used.

(4) *Sheep and goats.* Sheep and goats that are required to be officially identified for interstate movement under this part must be identified by a device or method authorized by part 79 of this chapter.

(5) *Swine.* Swine that are required to be officially identified for interstate movement under this part must be identified by a device or method authorized by § 71.19 of this chapter.

(6) *Captive cervids.* Captive cervids that are required to be officially identified for interstate movement under this part must be identified by a device or method authorized by part 77 of this chapter.

(b) *Official identification requirements for interstate movement—*  
(1) *Cattle and bison.* (i) All cattle and bison listed in paragraphs (b)(1)(iii)(A) through (b)(1)(iii)(D) of this section must be officially identified prior to the interstate movement, using an official identification device or method listed in paragraph (a)(1) of this section unless:

(A) The cattle and bison are moved as a commuter herd with a copy of the commuter herd agreement or other documents as agreed to by the shipping and receiving States or Tribes. If any of the cattle or bison are shipped to a State or Tribe not included in the commuter herd agreement or other documentation, then these cattle or bison must be officially identified and documented to the original State of origin.

(B) The cattle and bison are moved directly from a location in one State through another State to a second location in the original State.

(C) The cattle and bison are moved interstate directly to an approved tagging site and are officially identified before commingling with cattle and bison from other premises or identified by the use of backtags or other methods that will ensure that the identity of the animal is accurately maintained until tagging so that the official eartag can be correlated to the person responsible for shipping the animal to the approved tagging site.

(D) The cattle and bison are moved between shipping and receiving States or Tribes with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes.

(ii) Cattle and bison may also be moved interstate without official identification if they are moved directly to a recognized slaughtering establishment or directly to no more than one approved livestock facility and then directly to a recognized

slaughtering establishment, where they are harvested within 3 days of arrival; and

(A) They are moved interstate with a USDA-approved backtag; or

(B) A USDA-approved backtag is applied to the cattle or bison at the recognized slaughtering establishment or federally approved livestock facility.

(C) If a determination to hold the cattle or bison for more than 3 days is made after the animals arrive at the slaughter establishment, the animals must be officially identified in accordance with § 86.4(d)(4)(ii).

(iii) Beginning on March 11, 2013, all cattle and bison listed below are subject to the official identification requirements of this section:

(A) All sexually intact cattle and bison 18 months of age or over;

(B) All female dairy cattle of any age and all dairy males born after March 11, 2013;

(C) Cattle and bison of any age used for rodeo or recreational events; and

(D) Cattle and bison of any age used for shows or exhibitions.

(2) *Sheep and goats.* Sheep and goats moved interstate must be officially identified prior to the interstate movement unless they are exempt from official identification requirements under 9 CFR part 79 or are officially identified after the interstate movement, as provided in 9 CFR part 79.

(3) *Swine.* Swine moving interstate must be officially identified in accordance with § 71.19 of this chapter.

(4) *Horses and other equines.* Horses and other equines moving interstate moved interstate must be officially identified prior to the interstate movement, using an official identification device or method listed in paragraph (a)(2) of this section unless:

(i) They are used as the mode of transportation (horseback, horse and buggy) for travel to another location and then return direct to the original location.

(ii) They are moved from the farm or stable for veterinary medical examination or treatment and returned to the same location without change in ownership.

(iii) They are moved directly from a location in one State through another State to a second location in the original State.

(iv) They are moved between shipping and receiving States or Tribes with another form of identification as agreed upon by animal health officials in the shipping and receiving States or Tribes.

(5) *Poultry.* Poultry moving interstate must be officially identified prior to interstate movement unless:

(i) The shipment of poultry is from a hatchery to a redistributor or poultry

grower and the person responsible for receiving the shipment maintains a record of the supplier; or

(ii) The shipment is from a redistributor to a poultry grower and the person responsible for receiving the chicks maintains a record of the supplier of the chicks; or

(iii) The poultry are identified as agreed upon by the States or Tribes involved in the movement.

(6) *Captive cervids.* Captive cervids moving interstate must be officially identified prior to interstate movement in accordance with part 77 of this chapter.

(c) *Use of more than one official eartag.* Beginning on March 13, 2013, no more than one official eartag may be applied to an animal, except that:

(1) Another official eartag may be applied providing it bears the same official identification number as an existing one.

(2) In specific cases when the need to maintain the identity of an animal is intensified (e.g., such as for export shipments, quarantined herds, field trials, experiments, or disease surveys), a State or Tribal animal health official or an area veterinarian in charge may approve the application of an additional official eartag to an animal that already has one or more. The person applying the additional official eartag must record the following information about the event and maintain the record for 5 years: The date the additional official eartag is added; the reason for the additional official eartag device; and the official identification numbers of both the new official eartag and the one(s) already attached to the animal.

(3) An eartag with an animal identification number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to an animal that is already officially identified with one or more National Uniform Eartagging System tags and/or an official vaccination eartag used for brucellosis. The person applying the AIN eartag must record the date the AIN tag is added and the official identification numbers of both official eartags and must maintain those records for 5 years.

(4) A brucellosis vaccination eartag with a National Uniform Eartagging System number may be applied in accordance with part 78 of this chapter to an animal that is already officially identified with one or more official eartags under this part. The person applying the vaccination eartag must record the date the tag is added and the official identification numbers of both the existing official eartag(s) and the

vaccination eartag and must maintain those records for 5 years.

(d) *Removal or loss of official identification devices.* (1) Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices, including devices applied to imported animals in their countries of origin and recognized by the Administrator as official, is prohibited except at the time of slaughter, at any other location upon the death of the animal, or as otherwise approved by the State or Tribal animal health official or an area veterinarian in charge when a device needs to be replaced.

(2) All man-made identification devices affixed to covered livestock unloaded at slaughter plants after moving interstate must be removed at the slaughter facility by slaughter-facility personnel with the devices correlated with the animal and its carcass through final inspection or condemnation by means approved by the Food Safety Inspection Service (FSIS). If diagnostic samples are taken, the identification devices must be packaged with the samples and be correlated with the carcasses through final inspection or condemnation by means approved by FSIS. Devices collected at slaughter must be made available to APHIS and FSIS by the slaughter plant.

(3) All official identification devices affixed to covered livestock carcasses moved interstate for rendering must be removed at the rendering facility and made available to APHIS.

(4) If an animal loses an official identification device and needs a new one: (i) A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number must record the following information about the event and maintain the record for 5 years: The date the new official identification device was added; the official identification number on the device; and the official identification number on the old device if known.

(ii) Replacement of a temporary identification device with a new official identification device is considered to be a retagging event, and all applicable information must be maintained in accordance with paragraph (d)(4)(i) of this section.

(iii) A duplicate replacement eartag with the official number of the lost tag may be applied in accordance with APHIS' protocol for the administration of such tags.

(e) *Replacement of official identification devices for reasons other than loss.*

(1) Circumstances under which a State or Tribal animal health official or an area veterinarian in charge may authorize replacement of an official identification device include, but are not limited to:

(i) Deterioration of the device such that loss of the device appears likely or the number can no longer be read;

(ii) Infection at the site where the device is attached, necessitating application of a device at another location (e.g., a slightly different location of an eartag in the ear);

(iii) Malfunction of the electronic component of a radio frequency identification (RFID) device; or

(iv) Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

(2) Any time an official identification device is replaced, as authorized by the State or Tribal animal health official or area veterinarian in charge, the person replacing the device must record the following information about the event and maintain the record for 5 years:

(i) The date on which the device was removed;

(ii) Contact information for the location where the device was removed;

(iii) The official identification number (to the extent possible) on the device removed;

(iv) The type of device removed (e.g., metal eartag, RFID eartag);

(v) The reason for the removal of the device;

(vi) The new official identification number on the replacement device; and

(vii) The type of replacement device applied.

(f) *Sale or transfer of official identification devices.* Official identification devices are not to be sold or otherwise transferred from the premises to which they were originally issued to another premises without authorization by the Administrator or a State or Tribal animal health official.

#### § 86.5 Documentation requirements for interstate movement of covered livestock.

(a) The persons responsible for animals leaving a premises for interstate movement must ensure that the animals are accompanied by an interstate certificate of veterinary inspection (ICVI) or other document required by this part for the interstate movement of animals.

(b)(1) The APHIS representative, State or Tribal representative, or accredited



veterinarian issuing an ICVI or other document required for the interstate movement of animals under this part must forward a copy of the ICVI or other document to the State or Tribal animal health official of the State or Tribe of origin within 7 calendar days from the date on which the ICVI or other document is issued. The State or Tribal animal health official in the State or Tribe of origin must forward a copy of the ICVI or other document to the State or Tribal animal health official the State or Tribe of destination within 7 calendar days from date on which the ICVI or other document is received.

(2) The animal health official or accredited veterinarian issuing or receiving an ICVI or other interstate movement document in accordance with paragraph (b)(1) of this section must keep a copy of the ICVI or alternate documentation. For poultry and swine, such documents must be kept for at least 2 years, and for cattle and bison, sheep and goats, cervids, and equines, 5 years.

(c) *Cattle and bison.* Cattle and bison moved interstate must be accompanied by an ICVI unless:

(1) They are moved directly to a recognized slaughtering establishment, or directly to an approved livestock facility and then directly to a recognized slaughtering establishment, and they are accompanied by an owner-shipper statement.

(2) They are moved directly to an approved livestock facility with an owner-shipper statement and do not move interstate from the facility unless accompanied by an ICVI.

(3) They are moved from the farm of origin for veterinary medical examination or treatment and returned to the farm of origin without change in ownership.

(4) They are moved directly from one State through another State and back to the original State.

(5) They are moved as a commuter herd with a copy of the commuter herd agreement or other document as agreed to by the States or Tribes involved in the movement.

(6) Additionally, cattle and bison may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., a brand inspection certificate, as agreed

upon by animal health officials in the shipping and receiving States or Tribes.

(7) The official identification number of cattle or bison must be recorded on the ICVI or alternate documentation unless:

(i) The cattle or bison are moved from an approved livestock facility directly to a recognized slaughtering establishment; or

(ii) The cattle and bison are sexually intact cattle or bison under 18 months of age or steers or spayed heifers; *Except that:* This exception does not apply to sexually intact dairy cattle of any age or to cattle or bison used for rodeo, exhibition, or recreational purposes.

(d) *Sheep and goats.* Sheep and goats moved interstate must be accompanied by documentation as required by part 79 of this chapter.

(e) *Swine.* Swine moved interstate must be accompanied by documentation in accordance with § 71.19 of this chapter or, if applicable, with part 85.

(f) *Horses and other equines.* Horses and other equines moved interstate must be accompanied by an ICVI unless:

(1) They are used as the mode of transportation (horseback, horse and buggy) for travel to another location and then return direct to the original location.

(2) They are moved from the farm or stable for veterinary medical examination or treatment and returned to the same location without change in ownership.

(3) They are moved directly from a location in one State through another State to a second location in the original State.

(4) Additionally, equines may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., an equine infectious anemia test chart, as agreed to by the shipping and receiving States or Tribes involved in the movement.

(5) Equines moving commercially to slaughter must be accompanied by documentation in accordance with part 88 of this chapter. Equine infectious anemia reactors moving interstate must be accompanied by documentation as required by part 75 of this chapter.

(g) *Poultry.* Poultry moved interstate must be accompanied by an ICVI unless:

(1) They are from a flock participating in the National Poultry Improvement

Plan (NPIP) and are accompanied by the documentation required under the NPIP regulations (parts 145 through 147 of this chapter) for participation in that program; or

(2) They are moved directly to a recognized slaughtering or rendering establishment; or

(3) They are moved from the farm of origin for veterinary medical examination, treatment, or diagnostic purposes and either returned to the farm of origin without change in ownership or euthanized and disposed of at the veterinary facility; or

(4) They are moved directly from one State through another State and back to the original State; or

(5) They are moved between shipping and receiving States or Tribes with a VS Form 9-3 or documentation other than an ICVI, as agreed upon by animal health officials in the shipping and receiving States or Tribes.

(6) They are moved under permit in accordance with part 82 of this chapter.

(h) *Captive cervids.* Captive cervids moved interstate must be accompanied by documentation as required by part 77 of this chapter.

§ 86.6 [Reserved]

§ 86.7 [Reserved]

§ 86.8 Preemption.

State, Tribal, and local laws and regulations may not specify an official identification device or method that would have to be used if multiple devices or methods may be used under this part for a particular species, nor may the State or Tribe of destination impose requirements that would otherwise cause the State or Tribe from which the shipments originate to have to develop a particular kind of traceability system or change its existing system in order to meet the requirements of the State or Tribe of destination.

Done in Washington, DC, this 19th day of December 2012.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2012-31114 Filed 1-8-13; 8:45 am]

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## **Final Rule: Traceability for Livestock Moved Interstate**

January 11, 2013

### **Summary of General Requirements by Species**

Effective Date: March 11, 2013

The Traceability for Livestock Moved Interstate rule establishes minimum national official identification and documentation requirements for the traceability of livestock moving interstate. The species covered in the rule include cattle and bison, sheep and goats, swine, horses and other equines, captive cervids (e.g., deer and elk), and poultry. The covered animals moved interstate, unless otherwise exempt, would have to be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other movement document. The requirements do not apply to livestock moving:

- Entirely within Tribal land that straddles a State line and the Tribe has a separate traceability system from the States in which its lands are located; or
- To a custom slaughter facility in accordance with Federal and State regulations for preparation of meat.

Other exemptions are applied on a species-specific basis.

The following summarizes the methods and devices for officially identifying each species and when official identification and an ICVI or other movement documentation would be required.

### **Captive Cervids**

The traceability rule references existing regulations for captive cervids; thus, there is no change in the requirements for interstate movement of these animals.

#### **Official Identification Device and Methods**

Captive cervids required to be officially identified for interstate movement must be identified by a device or method authorized by Title 9, *Code of Federal Regulations* (9 CFR) part 77.

#### **Official Identification Requirements**

Captive cervids moving interstate must be officially identified before interstate movement in accordance with 9 CFR part 77.

#### **ICVI/Movement Requirements**

Captive cervids moved interstate must be accompanied by documentation as required by 9 CFR part 77.

**EXHIBIT 3**

## Summary of Traceability for Livestock Moved Interstate Requirements by Species

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### **Cattle and Bison**

#### **Official Identification Devices and Methods**

Cattle and bison required to be officially identified for interstate movement must be identified by means of:

- An official eartag.
- Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities.
- Tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving State or Tribal animal health authorities.
- Group/lot identification when a group/lot identification number (GIN) may be used.

#### **Official Identification Requirements**

Official identification required for the following cattle and bison, unless exempt as provided below:

- All sexually intact cattle and bison 18 months of age or over;
- All female dairy cattle of any age and all dairy males born after March 11, 2013;
- Cattle and bison of any age used for rodeo or recreational events; and
- Cattle and bison of any age used for shows or exhibitions

Cattle and bison moving interstate are exempt from the official identification requirement when moved:

- As a commuter herd with a copy of the commuter herd agreement or other documents as agreed to by the shipping and receiving States or Tribes. If any of the cattle or bison are shipped to a State or Tribe not included in the commuter herd agreement or other documentation, then these cattle or bison must be officially identified and documented to the original State of origin.
- Moved directly from a location in one State through another State to a second location in the original State.
- Moved interstate directly to an approved tagging site and are officially identified before commingling with cattle and bison from other premises or identified by the use of backtags or other methods that will ensure that the identity of the animal is accurately maintained until tagging so that the official eartag can be correlated to the person responsible for shipping the animal to the approved tagging site.
- Moved between shipping and receiving States or Tribes with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes.
- Moved directly to a recognized slaughtering establishment or directly to no more than one approved livestock facility and then directly to a recognized slaughtering establishment, where they are harvested within 3 days of arrival; and
- They are moved interstate with a USDA-approved backtag; or A USDA-approved backtag is applied to the cattle or bison at the recognized slaughtering establishment or federally approved livestock facility.

## Summary of Traceability for Livestock Moved Interstate Requirements by Species

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The official identification of beef cattle under 18 months of age (feeder/stocker cattle) will be established through a separate rule making at a later date.

### ICVI/Movement Requirements

Cattle and bison moved interstate must be accompanied by an ICVI unless:

- They are moved directly to a recognized slaughtering establishment, or directly to an approved livestock facility and then directly to a recognized slaughtering establishment, and are accompanied by an owner-shipper statement.
- They are moved directly to an approved livestock facility with an owner-shipper statement and do not move interstate from the facility unless accompanied by an ICVI.
- They are moved from the farm of origin for veterinary medical examination or treatment and returned to the farm of origin without change in ownership.
- They are moved directly from one State through another State and back to the original State.
- They are moved as a commuter herd with a copy of the commuter herd agreement or other document as agreed to by the States or Tribes involved in the movement.
- They are moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., a brand inspection certificate, as agreed upon by animal health officials in the shipping and receiving States or Tribes.

The official identification number of cattle or bison must be recorded on the ICVI or alternate documentation unless:

- The cattle or bison are moved from an approved livestock facility directly to a recognized slaughtering establishment.
- The cattle and bison are sexually intact cattle or bison under 18 months of age or steers or spayed heifers. This exception does not apply to female sexually intact dairy cattle of any age or to cattle or bison used for rodeo, exhibition, or recreational purposes.

## Summary of Traceability for Livestock Moved Interstate Requirements by Species

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### Horses and Other Equines

#### Official Identification Device and Methods

Horses and other equines required to be officially identified for interstate movement must be identified by:

- A description sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes, or biometric measurements). When the identity of the equine is in question at the receiving destination, the State or Tribal animal health official in the State or Tribe of destination or APHIS representative may determine if the description provided is sufficient.
- Electronic identification that complies with ISO 11784/11785.
- Non-ISO electronic identification injected to the equine on or before March 11, 2014.
- Digital photographs sufficient to identify the individual equine.
- For equines being commercially transported to slaughter, a device or method authorized by 9 CFR part 88.

#### Official Identification Requirements

Horses and other equines moving interstate must be officially identified before the interstate movement, using an official identification device or method listed above unless:

- They are used as the mode of transportation (horseback, horse and buggy) for travel to another location and then returned directly to the original location.
- They are moved from the farm or stable for veterinary medical examination or treatment and returned to the same location without change in ownership.
- They are moved directly from a location in one State through another State to a second location in the original State.
- They are moved between shipping and receiving States or Tribes with another form of identification as agreed upon by animal health officials in the shipping and receiving States or Tribes.

Horses or other equines being commercially transported to slaughter must be identified in accordance with 9 CFR part 88.

#### ICVI/Movement Requirements

Horses and other equines moved interstate must be accompanied by an ICVI unless:

- They are used as the mode of transportation (horseback, horse and buggy) for travel to another location and then returned directly to the original location.
- They are moved from the farm or stable for veterinary medical examination or treatment and returned to the same location without change in ownership.
- They are moved directly from a location in one State through another State to a second location in the original State.

Additionally, equines may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, e.g., an equine infectious anemia test chart, as agreed to by the shipping and receiving States or Tribes involved in the movement.

## **Summary of Traceability for Livestock Moved Interstate Requirements by Species**

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Equines moving commercially to slaughter must be accompanied by documentation in accordance with 9 CFR part 88. Equine infectious anemia reactors moving interstate must be accompanied by documentation as required by 9 CFR part 75.

### **Poultry**

#### **Official Identification Device and Methods**

Poultry required to be officially identified for interstate movement must be identified by one of the following methods:

- Sealed and numbered leg bands in the manner referenced in the National Poultry Improvement Plan (NPIP) regulations (9 CFR parts 145 through 147).
- Group/lot identification when a group/lot identification number (GIN) may be used.

#### **Official Identification Requirements**

Poultry moving interstate must be officially identified before interstate movement unless:

- (1) The shipment of poultry is from a hatchery to a redistributor or poultry grower.
- (2) The shipment is from a redistributor to a poultry grower and the person responsible for receiving the chick maintains a record of the supplier of the chicks.
- (3) The poultry are identified as agreed upon by the States or Tribes involved in the movement.

#### **ICVI/Movement Requirements**

Poultry moved interstate must be accompanied by an ICVI unless:

- They are from a flock participating in the National Poultry Improvement Plan (NPIP) and are accompanied by the documentation required under the NPIP regulations (9 CFR parts 145 through 147) for participation in that program.
- They are moved directly to a recognized slaughtering or rendering establishment.
- They are moved from the farm of origin for veterinary medical examination, treatment, or diagnostic purposes and either returned to the farm of origin without change in ownership or euthanized and disposed of at the veterinary facility.
- They are moved directly from one State through another State and back to the original State.
- They are moved between shipping and receiving States or Tribes with a VS Form 9-3 or documentation other than an ICVI, as agreed upon by animal health officials in the shipping and receiving States or Tribes.
- They are moved under permit in accordance with 9 CFR part 82.



## **Summary of Traceability for Livestock Moved Interstate Requirements by Species**

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### **Sheep and Goats**

The traceability rule references existing regulations for sheep and goats; thus, there is no change in the requirements for interstate movement of these animals.

#### **Official Identification Device and Methods**

Sheep and goats required to be officially identified for interstate movement must be identified by a device or method authorized by 9 CFR part 79.

#### **Official Identification Requirements**

Sheep and goats moved interstate must be officially identified before the interstate movement unless they are exempt from official identification requirements under 9 CFR part 79 or are officially identified after the interstate movement, as provided in 9 CFR part 79.

#### **ICVI/Movement Requirements**

Sheep and goats moved interstate must be accompanied by documentation as required by 9 CFR part 79.

### **Swine**

The traceability rule references existing regulations for swine; thus, there is no change in the requirements for interstate movement of these animals.

#### **Official Identification Device and Methods**

Swine required to be officially identified for interstate movement must be identified by a device or method authorized by 9 CFR part 71.19.

#### **Official Identification Requirement**

Swine moving interstate must be officially identified in accordance with 9 CFR 71.19.

#### **ICVI/Movement Requirements**

Swine moved interstate must be accompanied by documentation in accordance with 9 CFR part 71.19 and, if applicable, part 85.

**Summary of Traceability for Livestock Moved Interstate Requirements by Species**

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## **Appendix A - Summary for Referenced Regulations**

Complete information on these and other existing regulations may be found at:

**<http://www.gpoaccess.gov/cfr/index.html>**

### **9 CFR Part 71 - General Provisions**

#### **§ 71.19 Identification of Swine in Interstate Commerce**

Swine that are required to be officially identified for interstate movement must be identified by one of the following methods:

- Official eartags for any swine;
- USDA backtags, for swine moving to slaughter;
- Official swine tattoos, for swine moving to slaughter, when the use of the official swine tattoo has been requested by a user or the State animal health official, and the Administrator authorizes its use in writing based on a determination that the tattoo will be retained and visible on the carcass of the swine after slaughter;
- Tattoos of at least four characters for swine moving to slaughter, except sows and boars as provided in 9 CFR 78.33;
- Ear notching for any swine, if the ear notching has been recorded in the book of record of a purebred registry association;
- Tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association;
- For slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated; and
- Any other official identification device or method that is approved by the Administrator.

### **9 CFR Part 75 - Communicable Diseases in Horses, Asses, Ponies, Mules and Zebras**

#### **§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, and research facilities.**

(a) *Officially identified.* The permanent identification of a reactor using the National Uniform Tag code number assigned by the United States Department of Agriculture to the State in which the reactor was tested, followed by the letter "A", which markings shall be permanently applied to the reactor by an APHIS representative, State representative, or accredited veterinarian who shall use for the purpose a hot iron or chemical brand, freezemarking, or a lip tattoo. If hot iron or chemical branding or freezemarking is used, the markings shall be not less than 2 inches high and shall be applied to the left shoulder or left side of the neck of the reactor. If a lip tattoo is

## Summary of Traceability for Livestock Moved Interstate Requirements by Species

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used, each character of the tattoo shall be not less than 1 inch high and three-fourths of an inch wide and shall be applied to the inside surface of the upper lip of the reactor.

(b) *Interstate movement.* No reactor may be moved interstate unless the reactor is officially identified, is accompanied by a certificate, and meets the conditions of either paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section: *Provided*, That official identification is not necessary if the reactor is moved directly to slaughter under a permit and in a conveyance sealed with an official seal.

## 9 CFR Part 79 Scrapie in Sheep and Goats

### § 79.2 Identification of sheep and goats in interstate commerce

The sheep or goats must be identified by one of the following means of identification, and must remain so identified until they reach their final destination:

- Electronic implants for animals required to be identified by the Scrapie Flock Certification Program (SFCP), when used in a flock participating in the SFCP and when accompanied by a certificate or owner statement that includes the electronic implant numbers and the name of the chip manufacturer;
- Official eartags, including tags approved for use in the SFCP or APHIS-approved premises identification number eartags when combined with a unique animal identification number;
- USDA backtags or official premises identification backtags that include a unique animal identification number, when used on sheep or goats moving directly to slaughter and when applied within 3 inches of the poll on the dorsal surface of the head or neck;
- Legible official registry tattoos that have been recorded in the book of record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or a certificate of veterinary inspection. These tattoos may also be used as premises identification if they contain a unique premises prefix that has been linked in the National Scrapie Database with the assigned premises identification number of the flock of origin;
- Premises identification eartags or tattoos, if the premises identification method includes a unique animal number or is combined with a flock eartag that has a unique animal number and the animal is accompanied by an owner statement;
- Premises identification when premises identification is allowed by 9 CFR 79.3 (general movement restrictions) and the animal is accompanied by an owner statement; or
- Any other official identification method or device approved by the Administrator.

**Summary of Traceability for Livestock Moved Interstate Requirements by Species**

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**9 CFR part 88 Commercial Transportation of Equines for Slaughter  
§ 88.4 Requirements for transport**

Prior to the commercial transportation of equines to a slaughtering facility, the owner/shipper must:

- For a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance, provide each equine appropriate food (i.e., hay, grass, or other food that would allow an equine in transit to maintain well-being), potable water, and the opportunity to rest;
- Apply a USDA backtag to each equine in the shipment;
- Complete and sign an owner-shipper certificate for each equine being transported. The owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include the following information, which must be typed or legibly completed in ink:
  - The owner or shipper's name, address, and telephone number;
  - The receiver's (destination) name, address, and telephone number;
  - The name of the auction or market, if applicable;
  - A description of the conveyance, including the license plate number;
  - A description of the equine's physical characteristics, including such information as sex, breed, coloring, distinguishing markings, permanent brands, tattoos, and electronic devices that could be used to identify the equine;
  - The number of the USDA backtag applied to the equine;
  - A statement of fitness to travel at the time of loading, which will indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip;
  - A description of any preexisting injuries or other unusual condition of the equine, such as a wound or blindness in one eye, that may cause the equine to have special handling needs;
  - The date, time, and place the equine was loaded on the conveyance; and
  - A statement that the equine was provided access to food, water, and rest prior to transport.

## Questions and Answers: Animal Disease Traceability Final Rule

### Q. What is animal disease traceability?

**A.** Animal disease traceability, or knowing where diseased and at-risk animals are, where they've been, and when, is very important to ensuring a rapid response when animal disease events take place. Animal disease traceability does not prevent disease; yet, an efficient and accurate traceability system helps reduce the number of animals involved in a disease investigation and reduces the time needed to respond. Reducing the number of animal owners impacted by an animal disease event reduces the economic strain on owners and affected communities.

### Q. Why is the U.S. Department of Agriculture (USDA) Issuing this final rule on animal disease traceability?

**A.** USDA is issuing this final rule to improve our ability to trace livestock and poultry when there is a disease event. While existing animal disease programs provide USDA and its partners with pertinent traceability information, the tracing capabilities vary widely by species. Thus, these animal disease traceability regulations focus on those species, such as the cattle sector, where improved capabilities are most needed. That sector's inconsistent use of official identification coupled with the significant movement of cattle interstate warrants regulations that enhance the current traceability infrastructure. Certain other species – sheep for example – are already supported with adequate traceability through existing disease program requirements, such as the current scrapie eradication program. For those species, no additional traceability requirements will be needed.

### Q. How are these regulations any different than the National Animal Identification System (NAIS)?

**A.** In 2006, under the previous Administration, USDA initiated the National Animal Identification System (NAIS). This voluntary program asked producers to register their premises and identify their animals with a national animal tracking database. After seeing low enrollment in NAIS, the Department launched

a series of efforts in 2009 to assess the issues and concerns which were preventing widespread acceptance of NAIS in the livestock community. Producers raised several serious concerns about the protection of proprietary information through premise registration and the program's overall lack of flexibility. As a result, NAIS was never fully implemented and eventually discontinued. The new animal disease traceability framework, announced today seeks a new and different approach with the following key principles:

- Allows for maximum flexibility for States, Tribal Nations, and producers to work together to find identification solutions that meet their local needs;
- Only applies to animals moving interstate;
- Will be owned, led, and administered by the States and Tribal Nations with Federal support focused entirely on animal disease traceability;
- Encourages the use of low-cost technology; and
- Ensures that animal disease traceability data are maintained at the discretion of the States and Tribal Nations.

### Q. How does the final rule differ from the proposed rule issued in August 2011?

**A.** USDA kept the proposed rule open for comment from August 11 through December 9, 2011. During that time, 1,618 comments were received from a wide variety of commenters. When drafting the final rule, USDA took all of these comments into consideration. As a result, the final rule has several differences from the proposed rule. Some of these changes include:

- Accepting the use of brands, tattoos and brand registration as official identification when accepted by the shipping and receiving States or Tribes
- Permanently maintaining the use of backtags as an alternative to eartags for cattle and bison moved directly to slaughter
- Accepting movement documentation other than an Interstate Certificate of Veterinary Inspection (ICVI) for all ages and classes of cattle when accepted by the shipping and receiving States or Tribes
- Clarifying that exemption to the regulation applies to all livestock moved interstate to a custom slaughter facility
- Exempting chicks moved interstate from a hatchery from the official identification requirements

Beef cattle under 18 months of age, unless they are moved interstate for shows, exhibitions, rodeos,

or recreational events, are exempt from the official identification requirement in this rule. Additional traceability requirements for this group will be addressed in separate rulemaking in the future, allowing more time for APHIS to work closely with industry to ensure the requirements are effective and can be implemented.

The Supplementary Information section of the final rule provides the complete explanation of these changes.

## Benefits

### Q. How does this rule benefit producers?

A. The animal disease traceability final rule will benefit producers in several ways. Low levels of official identification in the cattle sector require more herds and cattle—often thousands of animals—to be tested during animal disease investigations than necessary, drastically increasing an investigation's duration. For example, bovine tuberculosis disease investigations frequently now exceed 150 days. This means USDA and State investigative teams spend substantially more time and money in conducting tracebacks.

As a result of the rule, accurate traceability information will be more readily available, enabling USDA to shorten investigation timelines, more quickly control the spread of certain diseases, and reduce the number of quarantined or disposed of animals. All of these improvements will help make animal disease outbreaks less costly for producers and help interstate animal movements continue.

## Development and Implementation

### Q. Did you gather feedback on the framework for animal disease traceability?

A. Yes. In spring and summer of 2010, USDA hosted eight public meetings to discuss Secretary Vilsack's new framework for animal disease traceability. In these meetings, USDA provided additional details about the new framework and learned from States, Tribes, and industry representatives, and producers how best to develop workable traceability systems. The final rule was developed not only through feedback collected from these meetings but also through input from a State-Tribal-Federal working group, Tribal consultations, and additional discussions with producers and industry.

In addition, Secretary Vilsack established the Secretary's Advisory Committee on Animal Health, which has representation from States, Tribes, and industry. The committee has already met twice and

offered feedback on the new framework.

Moving forward, USDA will work collaboratively with State, Tribal Nation and industry representatives on implementation of the regulations.

### Q. What role will States and Tribes play in the implementation of the final rule?

A. While animal disease traceability is a USDA cooperative program, the States and Tribes will be the primary administrators of the traceability activities. This approach to improving animal disease traceability allows States and Tribes to develop their own systems for tracing animals, designing what works best for them and for producers and others in their jurisdiction.

## Basic Requirements for Interstate Movement

### Q. Under the new regulation, what do I need to have to move my animal interstate?

A. Unless specifically exempted, livestock moved interstate would have to be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other documentation agreed upon by the shipping and receiving States, such as an owner-shipper statement or a brand certificate. The regulations specify approved forms of official identification for each species, but would also allow livestock to be moved between the shipping and receiving States or Tribes with another form of identification, as agreed upon by animal health officials in the two jurisdictions.

## Official Identification

### Q. What is an official identification number?

A. The rule defines an official identification number as a nationally unique number permanently associated with an animal or group of animals. The official identification number would have to adhere to one of the following systems, most of which are already in use:

- National Uniform Eartagging System (NUES) (typically, metal eartags such as silver USDA tag);
- Animal Identification Number (AIN);
- Location-based number system (e.g., sheep scrapie tags); or
- Any other numbering system approved by the Administrator for the official identification of animals.



**Q. How do I know what eartags are official? What types of eartags are recognized as “official” under the rule?**

**A.** Official eartags are a common method of official identification of several species. Official eartags have one of the following official identification numbers imprinted on the tag:

- National Uniform Eartagging System (NUES).
- Animal Identification Number (AIN).
- Location-based number system.
- Flock-based number system.

The regulation also requires that the Official Eartag Shield is imprinted on the tag.

**Q. How does this rule support the use of low-cost technology as a form of official identification?**

**A.** Official identification is defined for each species. For cattle, the low-cost NUES (metal eartag) may be used. To encourage its use, USDA plans to provide these eartags at no cost to producers to the extent funds are available. While other producers may elect to use official eartags with radio frequency (RF), no State or Tribe may require official RF eartags for cattle moving into their jurisdiction. This ensures that all producers using the low cost official eartags may move their cattle to any other State or Tribal land using that method of official identification. This is a change to existing regulations in that a State or Tribe could currently require a specific method of official identification for livestock entering their jurisdiction.

**Q. What happens if my animal loses its official identification eartag or other device?**

**A.** If an animal loses its official eartag and needs a new one, the person applying the new one would have to record the following information and maintain the following information for five years:

- Date the new official identification device was added;
- Official identification number on the new device; and
- Official identification number on the old device, if known.

This recordkeeping requirement will aid State, Tribal, and Federal officials when it is necessary to trace animals.

**Q. How do official eartags enhance traceability?**

**A.** The required tag distributions records associate the official identification number with the person that received the device. Such records provide animal health officials with a specific starting point from which to trace diseased or potentially diseased animals, such as a traceforward. Without official identification,

animal health officials’ ability to accurately trace an animal’s movements can take months or may never be achieved. Official eartags provide the opportunity to conduct a disease investigation from two points of reference rather than just one.

The sheep industry has had tremendous success with official identification expediting traceability for scrapie. As part of the National Scrapie Eradication Program (NSEP), a cooperative State-Federal-industry program, 92 percent of cull breeding sheep bear an official identification tag at slaughter, primarily using flock identification eartags applied at the farm of origin. This identification made it possible in 2010 for USDA, as part of the scrapie surveillance program, to trace scrapie-positive sheep from slaughter to the flock of origin or birth 96 percent of the time, typically in a matter of minutes.

**Q. How is the lack of official identification in the cattle sector hurting us?**

**A.** Simply, low levels of official identification in the cattle sector require more herds and cattle—often thousands of animals—to be tested than necessary and drastically increase the time required to conduct investigations. For example, bovine tuberculosis disease investigations frequently now exceed 150 days, as USDA and State investigative teams spend substantially more time and money in conducting tracebacks. When animals cannot be traced to specific locations, epidemiologists often need to expand herd testing to ensure that cattle with any potential for exposure are tested. Also, expanded timeframes for tracebacks may cause longer, more encompassing quarantines and/or imposed limitations on animal movement. At the same time, the potential for disease spread increases.

**Q. How will the traceability regulation help fix these problems?**

**A.** Increasing the levels of official identification will help State and Federal animal health official more quickly identify animals that do not need to be held and tested during an animal disease investigation. This information will reduce the number of locations and animals tested, thereby decreasing the length of the investigation and the cost to producers and the government.

**Q. How does the final rule work with existing USDA disease programs, for example tuberculosis and brucellosis?**

**A.** The final rule creates a new section of the Code of Federal Regulations (CFR) with species-specific identification requirements. The other sections of the CFR related to disease program requirements were

revised as necessary to be consistent with the final rule. These revisions recognize the different animal disease traceability needs of various animal species and build upon existing animal disease traceability successes. These revisions also clarify how our new framework for animal disease traceability works with existing disease control programs. While this rule establishes minimum traceability requirements, the disease program regulations may contain additional, or more specific, requirements necessary to control or eliminate livestock diseases. For instance, the traceability requirements of suspect, exposed, or reactor animals will be contained in the program regulations, not in the new traceability section. The disease program requirements supersede the minimum requirements of the traceability rule.

## Interstate Movement Documentation

### **Q. What is an interstate certificate of veterinary inspection or ICVI?**

**A.** An ICVI, often referred to as a health certificate, is an official document issued by a Federal, State or Tribal Animal Health Official, or accredited veterinarian for the animals that are being shipped interstate. The ship from and ship to locations are listed on the certificate. If the animal is not required to be officially identified, the person completing the ICVI would specify the exemption that applies. Under specific circumstances, the traceability regulation provides options other than ICVIs for the interstate movement of livestock.

### **Q. What documents are acceptable in place of an ICVI?**

**A.** Movement documents other than an ICVI may be used when shipping and receiving States or Tribes agree to them; for example, an owner-shipper statement or a brand certificate.

### **Q. Why are movement documents necessary for traceability?**

**A.** A key principle of the animal disease traceability framework is to minimize burden to producers. Therefore, producers will not have to report livestock movements on and off their farm or ranch as part of this final rule. Instead, producers can continue to use existing movement documents that are already widely used – ICVIs, owner-shipper statements, or brand inspection certificates. These documents will provide valuable information to help determine an animal's movements in a disease event.

### **Q. Why is there a recordkeeping requirement for ICVIs for approved livestock facilities?**

**A.** USDA requires that approved livestock facilities

keep ICVIs, or alternate documentation used in lieu of an ICVI, for livestock that enter the facility on or after the effective date of the final rule. An approved livestock facility is defined as a stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary inspection where livestock are assembled.

Because the lifespans of poultry and swine are relatively short, while other livestock, especially breeding cattle, typically live to be 5 or more years old, traceability information that fully supports disease control, eradication, and surveillance needs to be maintained for at least 2 years for poultry and swine and 5 years for all other livestock species.

## Exemptions

### **Q. Are there any exceptions for animals moving interstate that are uniformly applied to all species?**

**A.** There are two circumstances when traceability requirements would not apply to interstate movement of livestock of any species:

- The movement occurs entirely within Tribal land that straddles a State line, and the Tribe has a separate traceability system from the States in which its lands are located; or
- The movement is to a custom slaughter facility in accordance with Federal and State regulations for the preparation of meat.

### **Q. Will the size of my herd have any relation to the standards I must meet and who must participate?**

**A.** The only threshold for participation is whether the producer has animals moving interstate. Producers who raise animals and move them within a State, Tribal Nation, and others that may move their animals interstate to a custom slaughter facility are exempt. Other exemptions are provided for through species specific situations.

### **Q. Are producers who only market or sell animals locally required to participate?**

**A.** No, as long as the movement is within the State or Tribal land. Only producers whose animals move interstate will be covered by the Federal animal disease traceability framework.

### **Q. Can you explain more about the movement of livestock on Tribal land?**

**A.** Under this rulemaking, Tribal lands, whether entirely within a State or straddling State lines, would be covered by the same traceability system as the State or States within which they are contained, unless the Tribal representatives choose to have their

own traceability system separate from the State(s). If a Tribe's land straddles a State line and does have a separate traceability system from the State within which it is contained, then, because of Tribal sovereignty, livestock movements taking place entirely within that Tribal land, even across State lines, would not be regarded as interstate movement. Therefore, the traceability requirements for interstate movement would not apply.

## Cost

### **Q. What is compliance with the final rule going to cost the individual producer?**

**A.** One of USDA's priorities when it designed the framework for animal disease traceability was to ensure that producers were not adversely impacted by the cost of the program by focusing on low-cost technologies. USDA plans to provide the NUES tags (metal ear tags) available at no cost to producers to the extent funds are available. The final rule also allows for a variety of official identification methods that have been approved by APHIS, so the producer can choose a format that works best for their operation. Some of the choices can be used both for identification and herd management, minimizing the need to buy multiple tags.

The regulatory impact analysis for this rule shows that most producers already identify their livestock and move them interstate with documentation. For them, the cost of compliance is negligible. By allowing flexibility for States and Tribes to recognize alternative forms of identification and movement documentation that fit the needs of their producers, the cost to producers is minimized. The costs of the program are expected to vary by both operation preference and whether traceability would be by individual animal or by lot or group.

### **Q. Will USDA provide funding to States and Tribal Nations to develop their animal disease traceability approaches?**

**A.** It is USDA's intent that animal disease traceability not be an unfunded mandate. As such, if available, USDA would provide Federal funding to assist States and Tribes to carry out activities that align with the scope of the new framework.

### **Q. USDA spent a lot of money on the National Animal Identification System. What did you do with the money? Did it go to waste?**

**A.** U.S. taxpayers made a significant investment in USDA's past animal disease traceability efforts, and the money invested in NAIS will not go to waste.

USDA will be fiscally responsible and use some elements from NAIS in the new approach. Elements, such as IT infrastructure and the unique location identifier process, have been updated to work with the traceability regulation, and remain available for the States and Tribal Nations to use. The 840 tags also remain available for producers who wish to use them.

Funding was also provided directly to the States and Tribes through cooperative agreements. Through these agreements, they were able to conduct pilot projects and field tests, enhance their communication infrastructure, and develop industry working groups. These activities have helped the States and Tribes develop their tracing capabilities, which they can leverage as appropriate for their producers moving forward.

## Performance Standards

### **Q. What is the current thinking on the traceability performance standards?**

**A.** USDA, through the new approach to animal disease traceability, is not prescribing the methods or systems that States and Tribes must use in order to trace animals. This outcome-based approach to improving traceability allows States and Tribes to develop systems for tracing animals that work best for them and for producers and others in their jurisdictions.

Through cooperative efforts, USDA, State and Tribes will measure our tracing capability by evaluating activities that animal health officials would typically conduct during an investigation of livestock that have moved interstate. The establishment of actual traceability performance standards, however, can only be done following review and analysis of actual data compiled from animal movement records after these regulations have been implemented. Without such information, the establishment of performance standards would be too subjective. Therefore, USDA will establish the traceability performance standards at a later date to ensure necessary data is available to objectively define and establish those performance standards. As the rule is implemented, USDA will continue to work with States and Tribes to measure tracing capabilities. Comparing the results obtained earlier on and over time will help document the progress being made.

### **Q. What is the General Standards Document?**

**A.** The Animal Disease Traceability General Standards Document provides specific detail on, among other things, numbering systems, official identification devices, and ICVIs and other animal movement

documents. The document is available online at [www.aphis.usda.gov/traceability/](http://www.aphis.usda.gov/traceability/).

## Confidentiality

**Q. Who will hold the information needed to conduct traces? How will USDA gain access to this information when a disease event occurs?**

**A.** Under the framework traceability, information is maintained at the discretion of the States and Tribal Nations, though USDA will continue to assist States and Tribal Nations as requested. The information systems used to support animal disease traceability follow secure data standards to ensure compatibility of databases, so information can be provided to USDA and other States/Tribes when needed for animal disease programs.

**Q. How will animal disease traceability information be maintained?**

**A.** Animal disease traceability information will be maintained at the discretion of the State and Tribal Nations.

**Q. What will USDA do to keep my information confidential?**

**A.** These regulations uphold and build on existing USDA disease program regulations, under which confidentiality has always been maintained. USDA believes that producer information gathered through animal disease traceability efforts should be treated as information maintained under existing disease program regulations and, therefore, is exempt from provisions of the Freedom of Information Act.

## Food Safety

**Q. How does the final USDA rule relate to food safety?**

**A.** The final rule is specifically focused on controlling animal diseases; it is not a food safety initiative. USDA's traceability regulations will assist animal health officials in quickly finding out where diseased animals have been and identify other at-risk animals.

**Q. Will animal disease traceability allow USDA to trace an animal back to a package of meat?**

**A.** No. USDA's Animal and Plant Health Inspection Service (APHIS) is the lead Federal agency for animal disease traceability. This type of pre-harvest traceability is focused on animal health and allows for the tracing of an animal's movements during its lifespan. Currently, animal disease traceability ends when an animal is slaughtered. USDA's Food Safety and Inspection Service (FSIS) is the lead agency

dealing with food safety in meat and poultry. They have a wide range of programs designed to ensure food safety.

**Q. How will traceability protect consumers?**

**A.** Food security involves dependability in terms of supply and quality, among other attributes. Should there be an animal disease event, including zoonotic disease concerns, animal disease traceability as outlined in the final rule would allow for efficient traceback of infected animals and the rapid quarantine of potentially exposed animals. This ensures that healthy animals can continue to move freely to processing facilities, providing a dependable and affordable source for consumers as well as protecting producer's livelihoods. At that point, FSIS' methods for quality assurance take over and assure further safety and security of the food supply.

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## **Animal Disease Traceability Requirements for Cattle and Bison Moving Interstate**

### **Q. What are the requirements for moving cattle and bison interstate under the final rule?**

**A.** Unless otherwise exempt, cattle and bison will have to be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other movement document.

Additional traceability requirements for this group will be addressed in separate rulemaking in the future, allowing more time for APHIS to work closely with industry to ensure the requirements are effective and can be implemented.

### **Q. Are all interstate movements of cattle and bison included in the regulation?**

**A.** No. All animals moved directly to a custom slaughter facility are exempt from the regulation. Likewise, regulations do not apply to the movement of livestock onto and from Tribal lands when the movement is across a State line. There are also exemptions specific to official identification and others specific to the movement documentation requirements. These are reviewed in more detail below.

### **Q. What exemptions apply to the official identification requirements?**

**A.** Cattle and bison will be permanently exempt from the identification requirements if they are:

- Moved as a commuter herd with a copy of the commuter herd agreement or other document agreed upon by both the shipping and receiving States or Tribes.
- Moved directly from a location in one State through another State to a second location in the original State.
- Moved interstate directly to an approved tagging site and officially identified before commingling with cattle and bison from other premises or by other practices that will ensure the identity of the animals' consignor is accurately maintained.

Additionally, cattle and bison moved directly to a recognized slaughtering establishment, or through no more than one approved livestock facility and then directly to a recognized slaughtering establishment, may be identified with a U.S. Department of Agriculture-approved backtag. However, these animals must be slaughtered within three days of leaving the ship-from premises in order to be eligible to use backtags.

Beef cattle under 18 months of age, unless they are moved interstate for shows, exhibitions, rodeos, or recreational events, are also exempt from the official identification requirement in this rule. Additional traceability requirements for this group will be addressed in separate rulemaking in the future, allowing more time for APHIS to work closely with industry to ensure the requirements are effective and can be implemented.

### **Q. What are the exemptions that apply to movement documents for cattle and bison?**

**A.** Cattle and bison moved interstate must be accompanied by an ICVI unless:

- They are moved directly to a recognized slaughtering establishment, or directly to a livestock facility approved to handle "for slaughter only" animals and then directly to a recognized slaughtering establishment, and accompanied by an owner-shipper statement.
- They are moved directly to an approved livestock facility with an owner-shipper statement and do not move interstate from the facility unless accompanied by an ICVI.
- They are moved from the farm of origin for veterinary medical examination or treatment and returned to the farm of origin without change in ownership.
- They are moved directly from one State through another State and back to the original State.
- They are moved as a commuter herd with a copy of the commuter herd agreement.

Additionally, cattle and bison of any age may be moved between shipping and receiving States or Tribes with documentation other than an ICVI, such as a brand inspection certificate, owner-shipper statement, etc., as agreed upon by animal health officials in the shipping and receiving States or Tribes.

**Q. What would be the official identification methods and devices for cattle moving interstate?**

**A. Official identification for cattle would include:**

- An official eartag.
- Group/lot identification when a group/lot identification number is applicable.
- Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when determined to be official by the receiving State or Tribal animal health authorities.
- Tattoos and identification methods acceptable to a breed association for registration purposes and accompanied by a breed registration certificate, when determined to be official by the receiving State or Tribal animal health authorities.

A complete listing of official eartags can be found at:  
[http://www.aphis.usda.gov/traceability/downloads/eartag\\_listing.pdf](http://www.aphis.usda.gov/traceability/downloads/eartag_listing.pdf)

The official identification requirement for cattle and bison will be phased in.

**Q. What types of records must I maintain for interstate livestock movement?**

**A.** While the person responsible for the animals leaving their farm or ranch for interstate movement is required to ensure that a copy of the ICVI or other interstate movement document accompanies the shipment, there is no requirement that the producer maintain a copy of the movement documents. However, it is highly encouraged that herd records with this information be maintained to assist animal health officials in the event that any of the animals are part of a disease investigation.

**Q. Where can I find more information on cattle and bison identification requirements for interstate movement?**

**A.** More information is available at <http://www.aphis.usda.gov/traceability/> or from your State animal health official's office.

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United States  
Department of  
Agriculture

# Animal Disease Traceability (ADT)

## Monitoring and Compliance Overview

Title 9 of the *Code of Federal Regulations* (9 CFR), part 86 - Traceability for Livestock Moving Interstate

On January 9, 2013, the Animal and Plant Health Inspection Service (APHIS) published the regulation entitled "Traceability for Livestock Moving Interstate," which establishes requirements for the official identification of livestock and documentation for certain interstate movements at title 9 of the *Code of Federal Regulations* (9 CFR), part 86. The traceability rule resulted from extensive collaboration with industry, States, and Tribes to arrive at a workable approach to traceability. Covered livestock include cattle and bison; horses and other equine species; poultry, sheep, and goats; swine; and captive cervids. The rule requires animals of these species, unless otherwise exempt, to be officially identified and accompanied by an Interstate Certificate of Veterinary Inspection (ICVI) or other movement documentation. The identification and documentation requirements provide basic information essential for traceability and are the main elements for monitoring compliance.

For some species, in particular swine, poultry, sheep, and goats, the U.S. Department of Agriculture (USDA) maintained existing disease program regulations that provided adequate traceability. A summary of the requirements by species is on the ADT Web site at: [http://www.aphis.usda.gov/traceability/downloads/ADT\\_summary\\_species.pdf](http://www.aphis.usda.gov/traceability/downloads/ADT_summary_species.pdf)

USDA continues to prioritize informing stakeholders of the regulatory requirements of the new rule. The program must have a high-level of compliance to achieve a solid infrastructure for tracing livestock. USDA, after 1 year of working with State and Tribal animal health officials and industry to educate the public about the regulations, will start issuing penalties when a person repeatedly violates the regulation. USDA will focus monitoring and compliance activities on areas that have the greatest impact on traceability. These areas include official identification, proper completion of ICVIs when use is required, and the collection of identification at slaughter plants.

The document "ADT Monitoring and Compliance" provides general guidelines USDA will use to help ensure consistent administration of monitoring and compliance activities. Additionally, collaboration with State and Tribal animal health officials, when feasible, is highly encouraged.

The following information, obtained from the ADT Monitoring and Compliance document, explains violations and related actions.

- **Alleged Violation:** A claim of fact by APHIS, which, if proven, will constitute a violation of a Veterinary Services (VS)-administered statute or regulation.
- **Enforcement Actions:** Options available for resolving alleged violations of VS-administered statutes and regulations, including:

**EXHIBIT 6**

- “Official Warning, Violation of Federal Regulations” (APHIS Form 7060): An official warning of an alleged violation of a VS-administered statute or regulation. It also notifies the subject that APHIS may seek civil or criminal penalties for the alleged violation if the subject again violates APHIS-administered statutes and regulations. APHIS generally issues Form 7060s to resolve minor to moderate alleged violations or alleged violations that are not appropriate to pursue through the Office of the General Counsel (OGC) or the U.S. Department of Justice (DOJ).
- Stipulation: A pre-litigation monetary settlement between APHIS and the subject. The stipulation gives the subject notice of the alleged violation, allows the subject to ask for an administrative hearing, and allows the subject to waive the hearing and pay (generally within 30 days) a monetary penalty calculated in accordance with VS Civil Penalty Guidelines. APHIS generally issues stipulations in connection with moderate to serious alleged violations that are appropriate for referral to OGC or DOJ, if unpaid.
- Administrative Enforcement Action: A referral to OGC recommending that it file, on behalf of APHIS, a formal administrative complaint that alleges violations of VS-administered statutes and regulations, and requesting appropriate penalties, in accordance with the VS Civil Penalties Guidelines. A referral may also recommend that OGC refer the matter to DOJ for criminal or civil prosecution.
- Letter of Information: An official letter or notice that informs the subject of the relevant regulatory requirements and is used as a means of education in cases of minor violations. A Letter of Information is not considered an enforcement action.

The following explains the framework for determining the seriousness of violations, but are not intended to replace the judgment of the VS program official and the Chief of Animal Health and Horse Protection Enforcement Branch when determining the seriousness of the alleged violations documented in an investigation.

- **Serious Alleged Violations**

A serious alleged violation may involve one of the following issues:

- Actual or potential disease introduction or transmission, such as the unapproved interstate shipment of diseased animals (for example, movement of a known equine infectious anemia-positive equine), quarantined animals, or feral swine;
- Mishandling of biologics or biological materials (for example, select agents or marketing of unlicensed biologics);
- Criminal and fraudulent activities under VS-administered statutes and regulations, such as counterfeiting import or export documents or assaulting a Federal officer (these cases are handled by other authorities, with APHIS Investigative and Enforcement Services and OGC serving in a supporting role); and
- Inhumane treatment of animals, such as shipments of blind or lame horses going to slaughter, animals for export that are unfit for travel, or alleged violations of the Twenty-Eight Hour Law.

- **Moderate Alleged Violations**

A moderate alleged violation may involve one of the following issues:

- Individuals or legal entities with several alleged violations, prior enforcement actions, or who demonstrate willfulness or blatant disregard for the regulations;
- Repeated interstate or international movement of animals or animal products without a valid permit or health certificate;
- Repeated violations of the Commercial Transportation of Equines to Slaughter Act that do not involve the inhumane treatment of animals; and
- The animals or products in the violation have been confiscated, destroyed, or returned to the point of origin.

- **Minor Alleged Violations**

Minor alleged violations may involve one of the following issues:

- A first-time violator or subject;
- An alleged violation that does not increase risks of disease transmission or negatively affect animal health (for example, not completing forms correctly, incorrectly moving animals that are not diseased, confiscating unlawful products or animals);
- The alleged violation that does not involve commercial quantities of product (where commercial quantity is defined as an amount reasonably believed to be in excess of that needed for personal use or consumption);
- Improper movement of unprocessed noncommercial trophies and hides from an area with low disease risk; and
- A determination has been or can be made that any stipulation issued in the case would be less than \$1,000.

USDA will continue to inform stakeholders of the regulatory requirements of the new regulation. However, through the process described above, penalties will be considered when an individual repeatedly violates the regulation. Keys to advancing traceability include the proper use of official identification and ICVIs and the collection of ID at slaughter; these areas will receive enforcement priority. More information on the ADT can be found at: [www.aphis.usda.gov/traceability](http://www.aphis.usda.gov/traceability).



**R-CALF United Stockgrowers of America**  
P.O. Box 30715  
Billings, MT 59107  
Fax: 406-252-3176  
Phone: 406-252-2516  
Website: [www.r-calfusa.com](http://www.r-calfusa.com)  
E-mail: [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com)

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December 9, 2011

Docket No. APHIS-2009-0091  
Regulatory Analysis and Development, PPD  
APHIS, Station 3A-03.8  
4700 River Road, Unit 118  
Riverdale, MD 20737-1238

**Sent Via Electronic Mail:** [www.regulations.gov](http://www.regulations.gov)

**Re: R-CALF USA Comments in Docket No. APHIS-2009-0091, Traceability for Livestock Moving Interstate**

Dear Sir or Madam:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments to the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) regarding its proposed rule, *Traceability for Livestock Moving Interstate* (proposed rule), published at 76 Fed. Reg. 50082-110 (Aug. 11, 2011).

R-CALF USA is a non-profit association that represents thousands of U.S. cattle farmers and ranchers in 45 states. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of U.S. agriculture. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

For the reasons stated below, R-CALF USA urges APHIS to immediately withdraw, in its entirety, the proposed rule. R-CALF USA further urges APHIS to, instead, proceed to engage the states, tribes, and industry participants in a collaborative effort to establish best practices

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guidelines to assist individual states and tribes in the development of improved state/tribe import and export standards. The development of such best practices guidelines would enable states and tribes to identify and correct any deficiencies manifest in their respective import and export regulations, and the identification and correction of such deficiencies on a state-by-state and tribe-by-tribe basis would effectively and measurably improve the United States' ability to trace livestock from anywhere in the United States in the event that disease is found.

R-CALF USA remains deeply concerned regarding APHIS' ongoing failure and refusal to properly discharge its authorities under the U.S. Animal Health Protection Act (AHPA) that charges USDA and APHIS with protecting the American people and the U.S. cattle herd from the introduction and spread of foreign animal diseases. Congress was clear that "the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect . . . animal health [and] the health and welfare of the people of the United States." 7 U.S.C. § 8301(1). In order to provide this protection, the AHPA authorizes the Secretary of Agriculture to "prohibit or restrict...the importation or entry" of cattle or beef "if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock." *Id.* at § 8303 (a)(3).

**A. APHIS' Failure and Refusal to Properly Prevent the Introduction and Spread of Foreign Animal Diseases Belies APHIS' Claim that the Proposed Rule Is Needed to Support Efforts by U.S. Cattle Producers to Protect their Herds from Disease**

APHIS' ongoing policy of willfully and knowingly allowing the perpetual and extensive introduction and reintroduction and subsequent spread of the very diseases APHIS identifies as justification for the proposed rule, e.g., bovine spongiform encephalopathy (BSE), bovine

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tuberculosis (TB), and bovine brucellosis (brucellosis) (*see* 76 Fed. Reg., at 50097, col. 2), is indefensible, unconscionable, and constitutes outright defiance of the agency's statutory obligation to protect U.S. livestock from the introduction and spread of foreign animal disease.

Further, APHIS' ongoing policy of willfully and knowingly exposing U.S. livestock to an increased risk of foreign animal disease introduction, e.g., the risk of introduction of foot-and-mouth disease (FMD), is equally indefensible, unconscionable, and likewise constitutes outright defiance of the agency's statutory obligation to protect U.S. livestock from the introduction and spread of foreign animal disease.

Specific examples of APHIS' failure and refusal to prevent the introduction and spread of foreign animal diseases, along with examples of its actions to expose U.S. livestock to a heightened risk for disease, are enumerated below. The following list clearly demonstrates that *APHIS is a leading cause, if not the leading cause, of livestock disease problems experienced in the United States*. Because APHIS is a leading cause, if not *the* leading cause, for ongoing animal disease outbreaks in the United States, its claimed intent within the proposed rule to protect the safety of U.S. livestock is both baseless and absurd.

1. Despite having conducted a 2006 quantitative risk evaluation for BSE that predicts the U.S. would import 19 to 105 BSE-infected Canadian cattle, resulting in 2 to 75 infections of U.S.-born cattle over the next 20 years pursuant to USDA's over-30-month rule (OTM Rule);<sup>1</sup> and, despite a July 2008 court-ordered injunction directing APHIS to reopen the OTM Rule and "revise any provision of the OTM Rule it deems necessary;"<sup>2</sup> and, despite the

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<sup>1</sup> *See* 72 Fed. Reg., 1109, col. 2; 72 Fed. Reg., 53347, col. 1. Exhibit 1.

<sup>2</sup> R-CALF USA v USDA, Memorandum Opinion and Order on Motion for Preliminary Injunction, July 3, 2008, 21, Exhibit 2.



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detection of 12 BSE infected Canadian cattle that meet the OTM Rule's age requirement for importation into the United States (including the February 2011 case of BSE detected in a Canadian cow), APHIS continues to ignore the fully expected, continual reintroduction of Canadian BSE into the United States.

2. Despite having full and complete knowledge of a 2006 report by USDA's Office of Inspector General (OIG) that states 75 percent of bovine TB cases detected in U.S. slaughtering plants originated in Mexico;<sup>3</sup> and, despite the OIG's other findings that, "These infected animals were identified in 12 different States" and "animals of Mexican origin spent up to 14 months at U.S. farms before going to slaughter, with each case potentially spreading the disease;"<sup>4</sup> and, despite APHIS' own report that states, "From 2001 through February 2009, 236 out of 329 slaughter cases were traced to Mexico," which means nearly 72 percent of all TB cases detected at slaughter were caused by APHIS' inadequate import restrictions for Mexican cattle imports;<sup>5</sup> and, despite APHIS' own finding that states, "Each year 1-2 infected animals per 100,000 animals imported from Mexico are identified [as bovine TB-infected] through slaughter detection or epidemiologic investigations;"<sup>6</sup> and, despite repeated requests by R-CALF USA for immediate action to address this willful introduction of bovine TB into the U.S. cattle herd, APHIS continues to cause the annual introduction and spread of bovine TB by failing to implement adequate import restrictions for Mexican cattle.

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<sup>3</sup>See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, USDA, Office of Inspector General, Report No. 50601-0009-Ch, September 2006, at 19, 20, Exhibit 3.

<sup>4</sup>*Id.*, at iii.

<sup>5</sup>Assessment of Pathways for the Introduction and Spread of *Mycobacterium bovis* in the United States, 2009, USDA-APHIS, March 2011, at 62, Exhibit 4.

<sup>6</sup>*Id.*, at 1.

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3. Despite having full and complete knowledge that Canadian cattle imports introduce bovine TB into the U.S. as evidenced by three bovine TB-infected cattle imported into the U.S. from Canada in 2008, with a total of five TB-infected Canadian cattle detected in the U.S. during the past seven years,<sup>7</sup> and, despite R-CALF USA's request that APHIS address this known disease source, APHIS continues to cause the introduction of bovine TB from Canadian cattle by failing and refusing to adequately strengthen U.S. import restrictions for Canadian cattle.
  
4. Despite having full and complete knowledge that the 11 factors used by the agency to determine the potential risk for foot-and-mouth disease (FMD) outbreaks in both entire countries and regions within a country are wholly incapable of predicting actual FMD risks (as was definitively proven following APHIS' FMD risk evaluations for Uruguay,<sup>8</sup> Argentina,<sup>9</sup> the Republic of South Africa,<sup>10</sup> and South Korea.<sup>11</sup>), APHIS nevertheless persists in its efforts to apply the same, failed 11 factors to facilitate imports into the United States of beef and cattle from FMD-affected countries, notably from the Patagonia South Region of Argentina<sup>12</sup> and Santa Catarina, Brazil.<sup>13</sup>

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<sup>7</sup> See Assessment of Pathways for the Introduction and Spread of *Mycobacterium bovis* in the United States, 2009, USDA-APHIS, March 2011, at 61, 62, Exhibit 4.

<sup>8</sup> See 65 Fed. Reg., 82894, col. 3; 65 Fed. Reg., 77772, col. 1; see also 66 Fed. Reg., 36695-697.

<sup>9</sup> See 65 Fed. Reg., 82895, col. 1; see also 66 Fed. Reg., 29897, col. 3; 29898, col. 1.

<sup>10</sup> See 65 Fed. Reg., 65728, col. 3; see also 66 Fed. Reg., 9641-9642.

<sup>11</sup> See 74 Fed. Reg., 68478, col. 3; 479, col. 2; see also 75 Fed. Reg., 1697, col. 1.

<sup>12</sup> See 72 Fed. Reg., 475-480 (USDA has a pending rulemaking to lift FMD restrictions for the Patagonia South Region of Argentina, even though Argentina has not demonstrated it is free of FMD.).

<sup>13</sup> See 75 Fed. Reg., 19915-920.

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5. Despite having full and complete knowledge that the relocation of the Plum Island, N.Y., research facility to Manhattan, Kansas, will increase the risk of FMD exposure for U.S. livestock, APHIS, in cooperation with the U.S. Department of Homeland Security (DHS), proposes to transfer live FMD viruses and research on live FMD viruses to the U.S. mainland. APHIS and DHS propose this relocation despite full knowledge that: 1) there is no support for the contention that FMD research can be done as safely at Manhattan, Kansas, as at Plum Island, N.Y.;<sup>14</sup> 2) Plum Island is the *only* location determined to be of *low* risk with respect to the likelihood of FMD infection;<sup>15</sup> 3) “Plum Island’s lack of animals placed it at an advantage with respect to the likelihood that FMD virus would become established after being released and spread from the site;”<sup>16</sup> 4) Manhattan, Kansas, is in an area “where the virus would have ample opportunity to spread rapidly after release because of the presence of susceptible livestock and wildlife;”<sup>17</sup> and, 5) “for all sites except Plum Island, the wind could potentially transport viral pathogens significant distances and that this pathway is not limited for them, as it is on Plum Island.”<sup>18</sup>

The foregoing discussion reveals and documents that APHIS is a leading cause, if not *the* leading cause, for the continual introductions and spread of foreign animal diseases by failing and refusing to comply with its statutory responsibility to prevent the introduction and spread of

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<sup>14</sup> See Biological Research: Observations’ on DHS’s Analysis Concerning Whether FMD Research Can Be Done as Safely on the Mainland as on Plum Island, U.S. Government Accountability Office (GAO), GAO-09-747, July 2009 (Hereafter “GAO Report on Plum Island”), at 46, Exhibit 5.

<sup>15</sup> See *id.*, at 42.

<sup>16</sup> *Ibid.*

<sup>17</sup> GAO Report on Plum Island, at 42, Exhibit 5.

<sup>18</sup> *Ibid.*

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foreign animal diseases. The diseases APHIS is causing to be introduced and spread in the United States include the very diseases claimed as justification for its proposed rule. APHIS' proposed rule would burden each and every U.S. cattle producer that moves cattle interstate by mandating the individual identification of their cattle. APHIS could not be more disingenuous in its claim that the proposed rule is intended to support U.S. cattle producers in their effort to protect their cattle herds from disease (*see* 76 Fed. Reg., 50082, col. 2) when APHIS itself is actively facilitating the introduction of dangerous foreign animal diseases

APHIS' actions are akin to the hideous and unlawful scheme of organized crime to rob business owners of their money and then offer to mitigate the affect of their robberies in exchange for regular payments from the business owners, while making no commitment to prevent others from continually robbing their businesses. Like those victimized business owners, U.S. cattle producers have no moral or ethical obligation to pay the cost of mitigating diseases in the United States that are directly caused by APHIS' recalcitrance, and they should have no legal obligation either.

If APHIS proceeds in any way other than to immediately withdraw it proposed rule, it must thoroughly and comprehensively explain to U.S. livestock producers why it is planning to burden them with the cost of a mandatory animal identification system to control diseases that APHIS is willfully and knowingly allowing into the United States each year in direct defiance of its statutory responsibility under the AHPA.

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**B. APHIS' Flip-Flop Regarding Its Principal Justification for a Mandatory Animal Identification System Demonstrates that APHIS has an Ulterior Motive for the Proposed Rule that Is Unrelated to the Prevention or Control of Animal Diseases**

Remarkably, while APHIS touted the risk of FMD introduction and spread as the principal justification – indeed its “poster-child disease” – for a national animal identification system (NAIS) in the years, months and days leading up to its publication of the proposed rule, FMD is no longer included among the diseases APHIS identifies as justification for its proposed rule. In fact the voluminous, 28-page proposed rule does not even mention FMD, let alone reference it as a disease APHIS would expect to prevent or control should it finalize its proposed rule. Any mention of FMD is now relegated to a small, hypothetical and ambiguous section in APHIS' supporting documents, in which APHIS provides the disclaimer that its hypothetical FMD discussion “does not specifically model conditions that may exist under the proposed rule;” and in which APHIS provides no explanation regarding how its proposed rule would, in any way, protect against a potential outbreak or spread of FMD. *See* Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis (hereafter “ supporting document), at 57-60.

It is abundantly clear that while APHIS has long assigned substantial weight to the potential to mitigate FMD introduction and spread in the United States in its historical and ongoing effort to impose a national animal identification system on the U.S. cattle industry, it has now completely abandoned its flagship disease.

In its 2008 risk evaluation of South Korea, APHIS described in detail South Korea's evolving national animal identification system to highlight the system as a measure to effectively

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mitigate FMD spread following a FMD outbreak.<sup>19</sup> Similarly, in recent congressional testimony, APHIS testified that Japan had adopted a national animal identification system and that the need for such a unified national animal identification system had assumed greater urgency in the U.S. due to FMD.<sup>20</sup> APHIS further claimed that a national animal identification system would be critical in mitigating the risks posed by potential FMD outbreaks, and vehemently argued that the costs of a national animal identification system must be compared with the estimated billions of dollars in losses the U.S. would be expected to suffer from a FMD outbreak.<sup>21</sup> Recently, in APHIS' risk analysis section of its risk evaluation for the agency's proposed rule to regionalize a Brazilian state, APHIS describes Santa Catarina's animal identification systems in significant detail and claims the systems would allow officials to trace the movement of cattle within Santa Catarina, presumably to mitigate the spread of a FMD outbreak in Santa Catarina.<sup>22</sup> Then, within just days of publishing the proposed rule, APHIS published a notice of availability (notice) and request for comment that referenced its *APHIS Evaluation of the Foot and Mouth Disease Status of Japan* risk analysis as the basis for deciding whether to resume trade in FMD-susceptible products with Japan (*see* 76 Fed. Reg. 44503-504 (July 26, 2011)). APHIS stated in its notice: "The risk analysis will also serve as the basis for our determination whether to allow the resumption of the importation of whole cuts of boneless beef from Japan." *Id.*, 504, col 1. APHIS' referenced risk analysis regarding the potential risk of FMD introduction from Japan

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<sup>19</sup> *See* APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, October 2008, at 24, 25, Exhibit 6.

<sup>20</sup> Testimony of Dr. John Clifford, Deputy Administrator for Veterinary Services, APHIS, Before the House Committee on Agriculture's Subcommittee on Livestock, Dairy, and Poultry Hearing to "Review Animal Identification Systems," March 11, 2009, Exhibit 7.

<sup>21</sup> *Ibid.*

<sup>22</sup> *See* APHIS Evaluation of the Status of the Brazilian State of Santa Catarina Regarding Foot-and-Mouth Disease, Classical Swine Fever, Swine Vesicular Disease, and African Swine Fever, USDA, APHIS, January 16, 2009, at 45-47, Exhibit 8.



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stated, “Japan’s cattle identification system ensures adequate trace-back capability in the event of an [FMD] animal disease outbreak.”<sup>23</sup>

As demonstrated above, APHIS for many years concocted a virtual taxpayer-funded fervor, both publicly and within the entire U.S. livestock industry, to advance its goal to establish a mandatory animal identification system in the United States – which goal manifested into the proposed rule – principally, if not exclusively, by claiming a mandatory animal identification system is *essential to prevent the introduction and/or spread of FMD in the United States*. APHIS’ absolute silence regarding *any* potential for the proposed rule to mitigate the introduction or spread of FMD in the U.S. is inexplicable and provides compelling evidence that APHIS has an ulterior motive for proposing the proposed rule, which ulterior motive has absolutely nothing to do with prevention or control of animal diseases.<sup>24</sup>

APHIS’ proposed rule is a complete scam. APHIS provides no support whatsoever for its proposed rule *based on its multi-year, multi-million dollar,<sup>25</sup> taxpayer-funded public-relations and nationwide marketing campaign to hype a mandatory animal identification system as essential to protecting U.S. livestock from the most contagious disease known to cloven-hoofed animals – FMD*; and, as will be discussed below, APHIS’ proposed rule directly contradicts APHIS’ claimed objective to carry out its statutory responsibilities using a scientific, risk-based approach.

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<sup>23</sup> APHIS Evaluation of the Foot and Mouth Disease Status of Japan, USDA-APHIS, April 1, 2011, at 17, Exhibit 9.

<sup>24</sup> APHIS’ only assertion, albeit unsupported and unexplained, is that the proposed rule “would provide added assurance that APHIS has the capability to respond to a foreign disease outbreak such as foot and mouth disease quickly and efficiently. . .” Supporting Document, at 60.

<sup>25</sup> See Questions and Answers: New Animal Disease Traceability Framework, APHIS Fact Sheet, February 2010, disclosing that USDA spent \$120 million in its failed effort to implement a national animal identification system, at 1, Exhibit 10.

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APHIS' inexplicable abandonment of the threat of an FMD introduction as its principal justification for a mandatory animal identification system as is clearly revealed in the proposed rule is akin to the hideous and unlawful scheme known as bait-and-switch in the retail industry. Under a bait-and-switch scheme, retailers lure consumers into their establishment by advertising an item known to attract consumers; but, when the consumer arrives at the establishment, the item that lured them there is unavailable, and the retailer hopes the unsuspecting consumer will nevertheless purchase an alternative item. This deceptive tactic is precisely what APHIS has employed to coerce unsuspecting cattle producers to buy into the proposed rule – it aggressively advertised FMD as the principal disease necessitating a mandatory identification system and when the proposed rule is published, FMD suddenly is abandoned as justification for the proposed rule, with only less contagious diseases remaining.

Like the victimized consumer duped by a retailer's deceptive bait-and-switch scheme, cattle producers have no moral or ethical obligation to comply with APHIS' equally deceptive bait-and-switch tactic deployed in the proposed rule, and they should have no legal obligation either.

If APHIS proceeds in any way other than to immediately withdraw the proposed rule, it must fully and comprehensively explain why APHIS abruptly abandoned FMD as a justification for the proposed rule. As part of that explanation, APHIS must describe in detail the specific role that a mandatory animal identification system played, if any, during the outbreaks of FMD that occurred very recently during this decade in the United Kingdom, South Korea, Japan, and Paraguay. Specifically, APHIS must describe in detail the degree to which traceability in those nations reduced the spread of FMD or otherwise assisted in combating the disease.

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Further, and in addition to the proposed rule's failure to address APHIS' historical insistence that a mandatory animal identification system is needed to address FMD, the proposed rule also fails to explain or describe what measures and operations APHIS will deploy to control or eradicate any specific diseases. APHIS' authority to control or eradicate diseases (note that "control" and "eradicate" have very different meaning) is conferred by the AHPA's authorization to carry out operations and measures for those purposes.<sup>26</sup> However, the proposed rule is silent on any specific "operations and measures" the agency intends to carry out to eradicate or control any specific disease.

Due to this additional deficiency contained in the proposed rule, and if the agency proceeds in any way other than to immediately withdraw the proposed rule, the agency must explain and describe to the U.S. cattle industry:

1. The specific diseases APHIS intends to "control" under the proposed rule.
2. The specific nature of the "operations and measures" APHIS intends to use to "control" each of the specific diseases APHIS intends to "control" and a detailed description of the role of the traceability contemplated in the proposed rule in carrying out such "operations and measures."
3. The specific diseases APHIS intends to "eradicate" under the proposed rule.
4. The specific nature of the "operations and measures" APHIS intends to use to "eradicate" each of the specific diseases APHIS intends to "eradicate" and a detailed description of

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<sup>26</sup> 7 U.S.C. 8308 (a), ("The Secretary may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock. . .").

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the role of the traceability contemplated in the proposed rule in carrying out such “operations and measures.”

**C. APHIS Grossly Understates the Economic Cost of the Proposed Rule that Will be Borne by U.S. Cattle Producers**

**1. A three-year study shows the proposed rule will cost U.S. cattle producers hundreds of millions of dollars, if not billions of dollars**

USDA data show the 2010 U.S. calf crop was 35.685 million head and the U.S. commercially slaughtered 34.249 million cattle in 2010.<sup>27</sup> Based on the assumption that all of those cattle had to be moved at least once in 2010 – from herd of origin to grass or backgrounder, or from herd of origin to feedlot and/or slaughter plant, respectively – there was a potential for all those cattle to be moved in interstate commerce and to be subject to the proposed rule’s requirements (it is noted the requirement for indentifying feeder cattle would be only temporarily delayed under the proposed rule). Thus, there was the potential in 2010 for nearly 70 million head of cattle to be required to be individually identified if the proposed rule were fully implemented.

A study presented to the U.S. International Trade Commission (USITC) in 2007 by Kris Ringwall, Ph.D., Director, Dickinson Research Center Extension and Livestock Specialist, North Dakota State University (NDSU), that involved the tagging of 14,432 calves during the three-year period 2004-2006, concluded that the cost working each calf, tag placement and documentation was \$7.00 per calf.<sup>28</sup> In addition, Dr. Ringwall’s three-year project determined

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<sup>27</sup> See Overview of U.S. Livestock, Poultry, and Aquaculture Production in 2010 and Statistics on Major Commodities, USDA National Animal Health Monitoring System, at 19, Exhibit 11.

<sup>28</sup> See U.S. ITC Testimony, K. A. Ringwall, PhD, Nov. 15, 2007, at 2, Exhibit 12.

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that the tagging of calves was costly to producers because of shrink, which he defined as “weight loss while handling calves.”<sup>29</sup> Dr. Rinwall stated in his testimony:

When we’ve measured shrink in the cattle we have worked during the project, we estimate up to \$10 to \$20 in lost income potential per calf, regardless of the management activity applied.<sup>30</sup>

Based on Dr. Ringwall’s findings, the cost of tagging and documenting calves, *excluding the cost of the tag itself*, and the cost of the income lost due to shrink, ranged from \$17.00 per head to \$27.00 per head in 2006 or 2007 dollars. Based on information and belief, that cost in 2010 dollars likely is as high as \$30.00 per head, if not higher. However, applying Dr. Ringwall’s 2007 findings to all cattle – cows, bulls, and calves – the likely cost of the proposed rule to U.S. cattle producers ranges from \$1,190,000,000 (\$1.2 billion) to \$1,890,000,000 (\$1.9 billion) (70 million head of cattle multiplied by \$17.00 per head and \$27.00 per head, respectively). Even if only the cattle moved to slaughter in 2010 were considered, the cost to U.S. cattle producers would be \$924,723,000, or about \$920 million (34.249 million head of commercial slaughter cattle multiplied by \$27.00 per head).

Applying Dr. Ringwall’s findings to APHIS’ assertion that “[a]pproximately 20 percent of cattle are not currently eartagged as part of routine management practices” (*see* 76 Fed. Reg., 50097, col. 1) and based on the assumption that APHIS used the Jan. 1, 2011, U.S. cattle and calves inventory number of 92,582,400 head, it would cost U.S. cattle producers a high of nearly \$500 million to tag the 20 percent of cattle not already tagged (20 percent of 92,582,400 cattle equals 18,516,480 cattle multiplied by \$27 per head).

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<sup>29</sup> *See* U.S. ITC Testimony, K. A. Ringwall, PhD, Nov. 15, 2007, at 2, Exhibit 12.

<sup>30</sup> *Id.*

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Using APHIS' data relied on in its supporting document, only 3.1 million of the 35.685 million head annual calf crop is tagged with official identification. Therefore, the cost of tagging the remaining 2010 calf crop would range from \$554 million to \$880 million.

Thus, based on an actual study of tagging actual cattle – not on a study of available literature upon which APHIS relies – the cost to U.S. cattle producers to comply with the proposed rule will likely be hundreds of millions of dollars, if not billions of dollars. APHIS' upper cost estimate for the proposed rule of only \$34.3 million (*see* 76 Fed. Reg., 50097, cols. 2, 3) is based on a complete lack of understanding of the U.S. cattle industry, and it grossly understates the cost that U.S. cattle producers actually will bear if USDA does not immediately withdraw the proposed rule.

**2. APHIS likely relied on misinformation when it calculated its grossly understated cost estimate for the proposed rule.**

APHIS commissioned a study in 2009 titled “Benefit-Cost Analysis of the National Animal Identification System”<sup>31</sup> (APHIS ID Study), which study APHIS heavily relied on to arrive at its grossly understated cost estimate for the proposed rule. The assumptions used in APHIS' ID Study are erroneous and do not reflect actual costs by U.S. cattle producers for tagging cattle. For example, the APHIS ID Study estimated the cost of working (i.e., tagging) cattle based on a 2005 NDSU Article by Dr. Ringwall and assumed it took only 66 seconds to work an animal in a squeeze chute that took 15 minutes to set up; and the chute cost per head was \$1.00.<sup>32</sup> However, the article referenced by the APHIS ID Study that was used to calculate an artificially low cost to the cattle industry for tagging cattle explained that the cost estimates

<sup>31</sup> *See* Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team, Jan. 14, 2009, Exhibit 13.

<sup>32</sup> *See Id.*, at 16.



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were based on the use of a state-of-the-art mobile cattle working system that likely is not available to many, if not most, U.S. cattle producers:

The team utilized the For-Most portable hydraulic double alley with a 750 chute. The system, as described by For-Most, has a 14-foot adjustable double alley, adjustable overhead grill and a 4-foot funnel section to a 9-foot single alley behind the model 750 squeeze chute and scale.

Cattle were fed into the For-Most system through a portable Wilson Wheel Corral, a series of hinged panels that unfold from the travel position to a complete corral for 140 head of calves (600 pound) and can be set up by one person in seven minutes (as described by Wilson). The team found setup time was quick and easy, utilizing available hydraulics and skill and experience with fifth-wheel driving.<sup>33</sup>

In addition, the setup and teardown time for the state-of-the-art equipment that enabled Dr. Ringwall's team to work each animal in only 66 seconds actually took 56 minutes and 34 minutes, respectively,<sup>34</sup> which is much longer than the 15-minute setup time used in the APHIS ID Study, and that APHIS used in its supporting document.

Further, while the APHIS ID Study estimated that the cost to beef cow operators for a bookend-type identification system, as manifested in the proposed rule, was only \$3.919 per head,<sup>35</sup> and APHIS' upper-end cost estimate was only \$0.76 per head more, the articles by Dr. Ringwall actually relied on by the APHIS ID Study estimated the actual cost of working the cattle, excluding the cost of ear tags, using the state-of-the-art cattle working system was a total

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<sup>33</sup> Beef Talk: Tagging Cattle Challenges Time Management Concept, Kris Ringwall, Beef Specialist, NDSU Extension Service, Jan. 6, 2005, Exhibit 14.

<sup>34</sup> See *Id.*

<sup>35</sup> See Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team, Jan. 14, 2009, at vii, Exhibit 13.

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of \$7.27 per head, *provided that 10,000 head of cattle were worked through the cattle working system on an annual basis.*<sup>36</sup>

This is but one glaring example of how the authors of the APHIS ID Study deceived the public and APHIS by misusing legitimate data for the purpose of generating an inaccurate and fictitious low estimate for the cost that typical U.S. cattle producers would incur under a bookend-type animal ID system, as is contemplated in the proposed rule. This example alone reveals that the APHIS ID Study manipulated data to underestimate the basic cost of working cattle by \$3.35 per head, even when worked in a state-of-the-art cattle handling facility that is beyond the reach of many, if not most, U.S. cattle producers.

Another glaring example of data manipulation in the APHIS ID Study is its treatment of shrink. For the cow/calf industry, the APHIS ID Study included only 25 percent of the expected shrink as a cost to the cow/calf producer.<sup>37</sup> The APHIS Study rationalized this deceptive ploy on the basis that the *buyer* of the shrunken cattle would realize a compensatory gain when the cattle were sold and subsequently afforded an opportunity to eat and drink.<sup>38</sup> The practical effect of this misuse of data, of course, is that the true cost of shrink borne by U.S. cow/calf producers for tagging their cattle was understated by 75 percent. Based on the fact that APHIS used the APHIS ID Study's shrink estimate, it too reduced the true cost of shrink that cow calf producers will realize when tagging cull cows and calves by 75 percent.

APHIS is dead wrong to assume that "the cattle industry" would realize only a 25 percent net loss because the buyer would benefit from a compensatory gain. This is because the cattle

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<sup>36</sup> See Beef Talk: Overhead Costs Loom Big in Working Cattle on the Range, Kris Ringwall, Beef Specialist, NDSU, Ph.D., Jan. 13, 2005, Exhibit 15.

<sup>37</sup> See Benefit-Cost Analysis of the National Animal Identification System, NAIS Benefit-Cost Research Team, Jan. 14, 2009, at 18, Exhibit 13.

<sup>38</sup> See *Id.*

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industry is a distinct and separate industry from the meatpacking industry and when a cattle industry participant sells cull cows to a meatpacking industry participant and APHIS assigns only 25 percent of the cattle industry participant's cost to the cattle industry, then APHIS has affectively robbed 75 percent of the cost actually realized by the cattle industry and gifted the monetary value of that cost directly to the meatpacking industry. By slight-of-hand, APHIS silently attempted to rob Peter to pay Paul in its effort to artificially lower the true cost of its ridiculously expensive mandatory animal identification scheme.

It must be noted that despite APHIS' intimation that that the U.S. cattle herd, as it measured by dividing the total cattle and calf inventory by the total number of U.S. cattle operations, "is now nearly 100 head" (*see* supporting document, at 12), the average size of the U.S. beef cow herd remains at less than 42 mother cows per herd (as measured by dividing the total number of beef cows by the total number of beef cow operations). It is those cow/calf producers, which collectively have an average herd size of less than 42 head, who will be directly burdened and financially disadvantaged by the proposed rule. And, many, if not most, of those cow/calf producers do not have access to the state-of-the-art cattle working system used in Dr. Ringwall's study. Therefore, the actual costs borne by U.S. cow/calf producers would be expected to be higher than Dr. Ringwall projected.

For the foregoing reasons, APHIS' reliance on the 2009 APHIS ID Study to estimate the cost of the proposed rule on U.S. cattle producers is unjustified, erroneous, and deceitful. As a result of APHIS' direct reliance on the APHIS ID Study, APHIS' cost estimates likewise are unjustified, erroneous and deceitful. Based on the realistic cost estimates generated by Dr. Ringwall's study, the proposed rule's start-up costs and annual costs, which would range from a low of \$554 million to a high of \$1.9 billion, are unfeasible. APHIS' proposed rule is a

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financially unworkable albatross that will economically harm U.S. cow/calf producers who will not be afforded any opportunity to recoup their costs in the marketplace.

- 3. APHIS's cost estimates completely overlook and ignore the market value of the information intrinsic to an individually identified animal and the effect of APHIS' proposed rule will be to steal that value from U.S. cattle producers and gift it to the U.S. meatpacking industry.**

APHIS asserts the primary benefit of the proposed rule would be to minimize losses and quickly reestablish foreign and domestic markets. *See* 76 Fed. Reg. 50097, col. 3. But, APHIS completely overlooks and ignores the fact that foreign markets already have assigned a market value to information that would enable traceability to the herd of origin. Primary export markets such as Japan, South Korea, and Hong Kong already require beef exported to them to be from animals that are traceable. Japan requires beef to be derived from cattle that are individually identified and traceable back to ranch records.<sup>39</sup> South Korea requires beef to be derived from cattle that are of U.S. origin or fed in the U.S. for at least 100 days if they originate from Mexico or Canada, which requirement necessitates individual animal identification.<sup>40</sup> Hong Kong requires beef from cattle that are traceable to the last location and to the herd of origin in the event of a BSE outbreak.<sup>41</sup>

The fact that the above mentioned export markets each require some form of traceability of cattle from which the exported beef is derived indicates they each have assigned a market value for traceability and are willing to pay for that additional value in the price they pay for U.S.

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<sup>39</sup> *See* USDA Export Verification (EV) Program: Specified Product Requirements for Beef – Japan, USDA Agricultural Marketing Program (hereafter “AMS”), Dec. 12, 2005, Exhibit 16.

<sup>40</sup> *See* USDA Export Verification (EV) Program: Specified Product Requirement for Bovine – Republic of Korea, USDA AMS, Feb. 7, 2001, Exhibit 17.

<sup>41</sup> *See* USDA Export Verification (EV) Program: Specified Product Requirement for Bovine – Hong Kong, USDA AMS, Dec. 23, 2008, Exhibit 18.

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beef. This market driven incentive to provide traceability as a product attribute for foreign markets has already been embraced by many R-CALF USA members. Anecdotal information from R-CALF USA members indicates that the marketplace has assigned economic premiums ranging from \$30 to \$60 per head for producers who are voluntarily providing traceable livestock for use in the beef export market.

Dr. Kris Ringwall's 2007 testimony to the U.S. ITC succinctly explained that traceability has a market value:

Steve Holcombe, founder and chief executive officer of Pardalis, Inc. (which is a third-party data storage company that values and treats data the same as money) noted: "The challenge is to effectuate regulations that are inclusive of small producers, and that recognize that there now are two distinct products being produced along agricultural supply chains today: (1) the traditional livestock product (the calf) and (2) an informational product that describes the 'pedigree' of the traditional product."

This is important to understand. Today's producer markets a calf but also markets the information about that calf, a process that is still struggling in the pens and alleyways of the cattle business. The free marketplace determines calf value, but the value of the information associated with the calf has not been determined. But one point is becoming very clear; the actual information contains the keys to unlock the various doors needed to enter the more complex market place, not only domestically but also internationally.<sup>42</sup>

The proposed rule is void of any economic analysis regarding the potential loss of all or part of the economic premiums that export-oriented cattle producers are presently receiving by choosing to add information to their cattle that describes the pedigree of their cattle. The proposed rule would interfere with the free market system by forcing all cattle producers to pay the cost of providing traceability and then gifting any and all of the market value associated with traceable cattle directly to the nation's meatpackers, which, of course, are in the business of

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<sup>42</sup> See U.S. ITC Testimony, K. A. Ringwall, PhD, Nov. 15, 2007, at 1, Exhibit 12.

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selling beef, not cattle. APHIS' failure to analyze the loss of economic premiums, specifically the portion of the economic premium assigned to basic traceability, is fatal as the effect of its proposed rule would be to transfer wealth from U.S. cattle producers to the purveyors of the commodity beef – the U.S. meatpacking industry.

Based on APHIS' estimate that 3.1 million calves were officially identified in 2010 (*see* supporting document, at 8), and assuming that those cattle are receiving market-driven premiums in the range of \$30 to \$60 per head, the proposed rule would financially damage those producers in a range of between \$93 million and \$186 million. This would be in addition to the proposed rule's costs addressed in Section C. 2. *supra*. This loss would be realized by U.S. cattle producers because, once the rule is implemented, those producers who already officially identify their cattle will no longer be able to differentiate their cattle based on all or part of the valuable "pedigree" information they are now "selling" in the marketplace.

R-CALF USA is concerned that APHIS intends to persuade export countries to abandon, in whole or in part, their current requirements for cattle traceability as specified in the USDA Export Verification (EV) program as soon as APHIS can demonstrate that all or most cattle in the U.S. are traceable under APHIS' mandatory identification scheme. When this inevitability occurs, U.S. cattle producers will be deprived of the income discussed above that they can now earn by voluntarily participating in currently available EV programs.

R-CALF USA's concern is not mere conjecture. In the June 3, 2005, Declaration of John R. Clifford, D.V.M., then deputy Administrator, APHIS, Veterinary Services, which included exhibits, Dr. Clifford stated that he did not believe the *voluntary* Export Verification Program was needed:



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The program, called the Beef Export Verification program, will set forth policies, procedures and requirements for an independent process verification of participants.

It is a voluntary, user-fee service available to suppliers of beef and beef products derived from cattle slaughtered in the United States.

The USDA Agricultural Marketing Service will conduct process verification audits of suppliers, program documentation and procedures with regard to the Beef Export Verification program requirements.

Details of this program are being shared with the industry and will be posted on the USDA website starting today. It will be operational on or before September 1<sup>st</sup>.

As I said before, we do not believe such a program is necessary.<sup>43</sup> (Emphasis added.)

Based on Dr. Clifford's representation that APHIS was opposed to the very inception of the Beef Export Verification program, it is R-CALF USA's belief that it is more likely than not that Dr. Clifford and APHIS will work aggressively to dismantle this voluntary, market-driven program as soon as the proposed rule is implemented.

If R-CALF USA's concern materializes, APHIS' proposed rule would effectively steal the market value associated with "pedigree" information that enables livestock traceability (estimated at between \$93 million and \$186 million in 2010 alone) away from U.S. cattle producers and gift it to the U.S. meatpacking industry, even though it is the cattle producers who will continually bear the cost of providing such valuable market information.

As explained above, APHIS' proposed rule directly interferes with the United States' free market system and if the losses estimated for 2010 were calculated on the basis of the cattle

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<sup>43</sup> Declaration of John R. Clifford, D.V. M, Deputy Administrator, APHIS Veterinary Services, June 3, 2005, at Exhibit 1, pp. 2 of 10 and 3 of 10, Exhibit 19.

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industry's lost future income potential, those losses would compound astronomically and result in an acceleration of the already contracting U.S. cattle industry. For this reason, the proposed rule must be immediately withdrawn.

**D. APHIS' Proposed Rule Ignores Differences in Risk Inherent to the United States' Diverse Cattle Industry; Is a One-Size-Fits-All Solution to an Ill-Defined Problem; and, Contradicts APHIS' Pledge to Manage Animal Health Using a Risk-Based Approach to Trade and Disease Management**

APHIS has long advocated that trade-related disease management and domestic disease management be addressed using a scientific, risk-based approach, as opposed to, presumably, a precautionary-based, geopolitical-boundary-based, or one-size-fits-all approach.

APHIS stated in 1997 that its goal "was to create a mechanism to establish regionalized, risk-based import requirements that are consistent with obligations of VS [APHIS Veterinary Services] under the World Trade Organization's Sanitary and Phytosanitary Agreement."<sup>44</sup> (Emphasis added.)

As discussed in Section C. 3. *supra*, the Deputy Administrator of APHIS represented that APHIS was opposed to the voluntary Beef Export Verification program from its inception. He claimed at the time of its inception that trade decisions should be risk-based and stated in regard to the Beef Export Verification program:

It could have been avoided if there were a more practical, risk-based approach to trade with countries, such as Canada, that have had only isolated occurrences of BSE and have responded aggressively with appropriate mitigation measures.<sup>45</sup>

<sup>44</sup> Process for Foreign Animal Disease Status Evaluations, Regionalization, Risk Analysis, and Rulemaking, APHIS Veterinary Services, (October 1997 is the only date referenced in the document), Exhibit 20.

<sup>45</sup> Declaration of John R. Clifford, D.V. M, Deputy Administrator, APHIS Veterinary Services, June 3, 2005, at Exhibit 1, p. 3 of 10, Exhibit 19.

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In a July 2007 report by the U.S. Government Accountability Office (GAO) regarding APHIS' efforts to implement the national animal identification system (NAIS), the GAO stated that APHIS officials told GAO that the agency did not expect that equal levels of involvement in the NAIS across all species "will be necessary, and that new, risk-based participation benchmarks for premises registration, animal ID, and animal tracking may be developed accordingly, which could vary by species."<sup>46</sup>

In a July 2009 report describing APHIS' action plan to address bovine TB, APHIS explained it was proposing to replace the current split-state status system used to address bovine TB with a risk-based approach that imposes movement restrictions that associate with a zone rather than an entire state.<sup>47</sup>

In a September 2010 concept paper for a new approach to address brucellosis, APHIS stated its new approach to managing brucellosis would "employ a flexible risk-based disease management system."<sup>48</sup>

The foregoing discussion clearly reveals APHIS' ongoing intention of using a risk-based approach to trade as well as for managing domestic disease issues. The proposed rule, however, is the antithesis to a risk-based approach to either trade or disease management. This is because the proposed rule expressly targets all livestock that are imported and exported among and between each and every geopolitical, state boundary, i.e. it targets livestock engaged in trade

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<sup>46</sup> National Animal Identification System: USDA Needs to Resolve Several Key Implementation Issues to Achieve Rapid and Effective Disease Traceback, U.S. Government Accountability Office, July 2007, at 13, Exhibit 21,

<sup>47</sup> See A New Approach for Managing Bovine Tuberculosis: Veterinary Services' Proposed Action Plan, USDA APHIS, July 2009, at 8, Exhibit 22.

<sup>48</sup> A Concept Paper for a New Direction for the Bovine Brucellosis Program, APHIS Veterinary Services, September 2009, at 14, Exhibit 23.

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between and among each of the 50 states. Thus, the imposition of the proposed rule would be an economic burden on all domestic trade in livestock between and among each state, regardless of the degree of risk associated with livestock from *any* state.

Not only is the proposed rule void of any risk-based consideration, but also, APHIS' implementation of the proposed rule would constitute unfair and discriminatory treatment against domestic cattle producers when compared to foreign cattle producers. This is because domestic cattle producers that must cross a state boundary to access a slaughter plant would be required to incur the cost of APHIS' mandatory animal identification scheme as a precondition to marketing their products into the U.S. beef supply chain. Foreign cattle producers, however, are not required by APHIS, or any other agency of USDA, to participate in any mandatory animal identification scheme as a precondition for marketing their products into the U.S. beef supply chain, regardless of whether they must ship cattle across provinces, states, or departments within their respective countries to access a slaughter plant that is eligible to export beef into the United States.

Thus, the proposed rule would financially disadvantage certain U.S. cattle producers who have no option other than to cross a state line to access a slaughter facility while the U.S. cattle producers' competitor – foreign cattle producers – remain unencumbered by any U.S. requirement to meet the same standards as a precondition for marketing the beef commodity in the U.S. beef supply chain.

Further, the proposed rule discriminates against U.S. cattle producers who must cross state boundaries to access a U.S. slaughter plant when compared to U.S. cattle producers that reside in a state with one or more slaughter plants. Because only those producers who must cross state lines to access a slaughter plant would be compelled to bear the cost of an APHIS-mandated

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animal identification scheme, U.S. producers who do not need to cross state lines to access a slaughter plant would be accorded an economic advantage in the U.S. beef supply chain by not having to comply with APHIS' mandatory animal identification scheme.

The effect of the proposed rule, therefore, would be to financially discriminate against every U.S. cattle producer who is not lucky enough to conduct his or her cattle business in one of the few states in which the handful of remaining meatpackers have decided to set-up a slaughter plant. For example, If Cattle Feeder A is equidistant from a slaughter plant as Cattle Feeder B, but Cattle Feeder A must cross a state boundary to access the slaughter plant, then APHIS' proposed rule has accorded Cattle Feeder B upwards of a \$27.00 per head (*see* Section C. 2. *supra*) financial advantage in the marketplace because APHIS' proposed rule would not require Cattle Feeder B to pay the mandatory cost of identifying cattle.

APHIS' proposed rule is oblivious to the fact that known disease reservoirs (including wildlife and foreign countries) and locations where cattle are comingled are the most likely and second most likely, respectively, source of a potential disease outbreak. The location where breeding-age cattle are comingled with known disease reservoirs and with imported cattle should be the origination point for any form identification program, not at the point where a farmer or rancher ships cattle interstate. An interstate shipment of breeding-aged cows from a closed herd is least likely to be the subject of a disease investigation. USDA's proposed rule completely ignores this fundamental and science-based principle. Only by issuing best practices guidelines and working with the states to assist them in developing a program that works best for them can USDA even hope to achieve a science-based and functional disease-traceback program for the entire United States.

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The foregoing discussion demonstrates that APHIS' proposed rule, which imposes a requirement to incur the cost of mandatory animal identification based solely on whether livestock cross a state boundary, which requirement is oblivious to whether or not the livestock originate from an area of negligible risk or high risk for any disease, would financially advantage some cattle producers while financially disadvantaging many others. As a direct consequence, the proposed rule would interfere with domestic commerce by financially discriminating against cattle producers based solely on where they live in the United States, and those that would be discriminated against when compared to domestic cattle producers also would be discriminated against when compared to foreign cattle producers.

**E. APHIS' Proposed Rule Discriminates Against States that Require Brand Inspections and Brand Inspection Certificates as a Condition for Leaving a Brand Inspection Area and Discriminates Against Cattle Producers Within Those States that Pay for and Rely on Brands and Brand Certificates to Identify Their Cattle**

**1. USDA-APHIS has deceived U.S. cattle producers by proposing to remove brands from the list of official animal identification devices or methods.**

APHIS' proposal in the proposed rule to delist the hot-iron brand accompanied by a certificate from a recognized brand authority as an official form of animal identification constitutes a broken promise made by USDA to U.S. cattle producers. In February 2010, USDA stated in regard to its new animal disease traceability framework, which has materialized into the proposed rule:

USDA will maintain a list of official identification devices, which can be updated or expanded based on the needs of the States and Tribal Nations. There are many official identification options available, such as branding, metal tags, RFID, just to name a few.<sup>49</sup> (Emphasis added.)

<sup>49</sup> Questions and Answers: New Animal Disease Traceability Framework, APHIS Factsheet, USDA APHIS, February 2010, Exhibit 10.

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Cattle producers have been outright deceived by USDA due to APHIS' proposal to remove brands from the list of official identification devices or methods. The construction of the above sentence, along with the usual and customary meaning attached to its words and phrases, unambiguously implies that *brands will remain an official identification option on USDA's list of official identification devices or methods*. Only under a perverted interpretation of that sentence could it mean otherwise.

The consequence of APHIS' action strips from the states and tribes the option to decide to continue relying upon the brand accompanied by a brand certificate from a recognized brand authority to identify livestock. This reduces flexibility for states and tribes to adopt a system that works best for them. In addition, it strips from individual producers within each state the flexibility to decide to continue their reliance on the brand, which flexibility each individual producer could influence by persuading their respective states' elected officials.

Under the proposed rule, however, the decision to use brands must be made jointly by two or more states or tribes. Thus, any single state or tribe would be subject to decisions made outside their jurisdiction regarding their ability to use brands for identification. This is an affront on state sovereignty. Moreover, the rights of individual cattle producers in a brand state to continue relying upon their brands would be subject to the decisions made in other states, over which they would have no control.

And, the proposed rule would effectively discriminate against cattle producers in states with mandatory brand inspection programs, which are funded in whole or in part by producer fees, by not reimbursing the producers for the cost of brand inspection fees paid when those producers leave the jurisdiction of their brand inspection authority, which generally is the state's



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border, when they are required by APHIS to apply a new form of animal identification. If APHIS does not reimburse producers that are required by their respective state to obtain a brand inspection before leaving their state, and if APHIS nevertheless requires them to incur the cost of applying a second form of identification (i.e., requires them to apply an ear tag in addition to their preexisting brand), then APHIS would effectively financially disadvantage those producers in interstate commerce by the per head cost for their mandatory brand inspection.

At the very least, USDA-APHIS has an absolute moral and ethical obligation to treat U.S. cattle producers honestly and fairly. Stating one thing and doing another is dishonest and unfair. In this case, USDA-APHIS stated one thing and did another without providing any notice to the public that it had deviated from its official commitment. Regardless of any rationalization USDA-APHIS may espouse to defend its deviant action, it has acted dishonestly, unfairly, and deceptively. For this reason alone, USDA-APHIS must restore the brand's rightful status as an official animal identification device and withdraw its proposed rule.

**2. APHIS's proposed rule ignores the historical effectiveness, functionality and permanence of the hot-iron brand as a means of identifying cattle and groups of cattle.**

APHIS is acutely aware of the superior permanence of the hot-iron brand as compared to ear tags. In its final rule to allow the importation of Canadian cattle 30 months of age or older (OTM rule), APHIS distinguishes brands as "permanent identification," while separately requiring, in addition to permanent identification, an official ear tag to be placed in imported Canadian cattle.<sup>50</sup> In fact, ear tags are not even mentioned as acceptable means of permanent

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<sup>50</sup> See Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines, 72 Fed. Reg., 53378, col. 1, (Sept. 18, 2007), Exhibit 24.

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identification, with only freeze brands, hot-iron brands, and tattoos expressly listed among the acceptable, permanent means of identification.<sup>51</sup> In addition to permanent identification, the OTM rule also requires the individual identification with an official ear tag of the country of origin.<sup>52</sup>

APHIS' purpose for requiring permanent brands on Canadian cattle along with ear tags is succinctly explained in the OTM rule. APHIS stated, "We recognize that animals can lose eartags at various points in the process. . ."<sup>53</sup>

The foregoing discussion reveals that for disease traceback purposes, even for cattle originating in regions that APHIS has deemed a "minimal-risk" for disease, APHIS requires a three-prong traceback system: 1) it requires the permanent identification of the animal using a brand or tattoo; 2) it requires individual identification with an official ear tag; and, 3) it requires visible information on the animal to denote the animal's origin.<sup>54</sup>

R-CALF USA agrees that this three-prong traceback system is a science-based means of achieving functional traceability on livestock that may be subject to a disease investigation. The system has needed redundancy to address the inherent propensity for ear tags to be lost, and it provides visible information that enables any person to identify the origin of the animal.

APHIS' proposed rule fails completely to explain why the three identification elements needed from minimal-risk regions are not needed to provide a science-based traceback system for U.S. cattle. Nor does APHIS explain which of the three elements are most important to ensure the ability to conduct tracebacks, e.g., is it more important to have permanent

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<sup>51</sup> See Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived from Bovines, 72 Fed. Reg., 53378, col. 1, (Sept. 18, 2007), Exhibit 24.

<sup>52</sup> See *Id.*

<sup>53</sup> See *Id.*, at 53340, col. 1.

<sup>54</sup> See *Id.*, at 53379, col. 1.

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identification or are loss-prone ear tags equally functional for disease tracebacks? And, APHIS fails completely to explain why the ability to visibly identify the origin of the animal is not even necessary for domestic traceback purposes.

If the requirement contained in the OTM rule is science-based, than the proposed requirements in the proposed rule are not. This is because the proposed rule incorporates only one of the three elements required in the OTM rule, and the one it has incorporated is not even recognized by APHIS as a permanent form of identification. The proposed rule depends exclusively on an official ear tag that bears a U.S. shield and a number: it does not require permanent identification (indeed it expels permanent identification from its list of official animal identification devices), and it does not require ear tags to bear visible information to identify even the state from which the animal originated. APHIS further fails to explain why privately-owned U.S. cattle must bear a U.S. shield for the privilege of moving across a state line. Such a shield is of no use to disease investigators and if a shield is to be required at all, it should be the shield of the state from which the animal originated, at least then a person could immediately initiate a disease investigation by calling the animal health officials in the state of origin should an animal be detected with a disease. Better yet, the animal should bear the shield of the property's owner – which is precisely what is accomplished with a registered hot-iron brand.

APHIS contends it cannot require all states to accept brands because all states do not have brand inspection programs. At the same time, however, APHIS' proposed rule requires all states to accept ear tags that do not allow any visible means with which to ascertain the origin of an animal. For example, the APHIS approved 840 ear tag does not contain an identifier that denotes the state of origin. Therefore, an animal health official without immediate access to an expensive, electronic wand or a national database has no means of initiating an immediate

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traceback of the animal. On the other hand, if an animal was transported to a state with a brand, then the animal health official could immediately narrow the animal's potential origin to those states that have a recognized brand authority that issues brand certificates. APHIS is disingenuous in its claim that non-brand states cannot accept brands while it simultaneously requires non-brand states to accept 840 electronic tags.

APHIS' proposed identification requirements for cattle lack any scientific justification. APHIS has thrown the proverbial baby out with the bath water by refusing to adopt even the core elements of current U.S. disease programs that APHIS itself acknowledges were "tremendously successful" in the agency's efforts to eradicate brucellosis. *See* 76 Fed. Reg. 50081, col. 3. The highly successful brucellosis program, not surprisingly, incorporated each of the three prongs APHIS requires of Canada: 1) the program recognized brands as official identification, which provided a high level of redundancy; 2) the program required an official ear tag; and, 3) the ear tag contained visible information with which to immediately identify the state of origin.

APHIS' claim that its goal is to shorten the time necessary to conduct disease tracebacks is proved false by APHIS' failure to adopt the historically proven, simple, and visible state identifier, such as two-digit numeric code that denotes the tag's state of origin, on all of its approved ear tags.

The role of the permanent brand in contributing to the United States' "tremendously successful" disease program is profound. In a March 9, 2010, article by James C. Clement, D.V.M., Cow-Calf Research & Consulting, Dr. Clement explains the profound contribution that brands and brand programs make to generating animal tracking data every day, along with describing how critical tracking data are compiled. Dr. Clement states:

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Animal tracking data is generated every day in Brand States and is the byproduct of routine record-keeping processes that involve cattle marketing businesses and SBIS [State Brand Inspection Systems]. SBIS create inspection certificates associated with the movement of 27,000,000 head of livestock (primarily cattle) on an annual basis.<sup>55</sup>

APHIS cites no study, nor does it have any nationwide experience in conducting animal disease tracebacks without relying upon the animal tracking data generated by brand states. Indeed, APHIS has not cited any system in the world that can hold a candle to the brand states' ongoing generation of animal tracking data for 27 million head of livestock, primarily cattle, which represents about one-third of the entire U.S. population of cattle and calves.

APHIS has no scientific basis for delisting the hot-iron brand accompanied by a certificate from a recognized brand authority from the list of official animal identification devices or methods, or in any way demoting the hot-iron brand to a level below any other form of animal identification.

Based on the hot-iron brand's role in generating animal tracking data for tens of millions of livestock, APHIS' proposed rule that delists the brand from the list of official animal identification devices will reduce the United State's ability to timely trace disease suspects to the disease source.

**3. APHIS' inexplicable failure to include hot-iron brands accompanied by a certificate from a recognized brand inspection authority as a group/lot identifier is unscientific.**

APHIS has failed to recognize brands as an official means of providing group/lot identification, *under any circumstance*. This is more than just alarming because of the obvious fact that each animal in a group of branded cattle is traceable even in the event the group/lot

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<sup>55</sup> Animal ID: Another View, James C. Clement, D.V.M., Cow-Calf Research & Consulting, March 9, 2010, Exhibit 25.

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identification number is lost or destroyed, or in the event the group of animals, or any member of the group of animals, is inadvertently separated. APHIS cannot make this claim for any other group/lot identification device it is proposing.

The ability to identify each individual member of the group as a member of the group is scientifically and practicably superior to any of the group/lot identification devices proposed by APHIS in the proposed rule. It is unconscionable that APHIS would reject the single most effective means of group/lot identification, and the only means that would enable a trace back of a group/lot that inadvertently becomes separated or for which the paperwork is lost or destroyed.

APHIS must universally recognize the hot-iron brand accompanied by a certificate from a recognized brand authority as an officially approved group/lot identification method. Further, U.S. cattle producers that move in interstate commerce a group/lot of branded cattle accompanied by a certificate from a recognized brand authority should have no further obligation to place any other type of animal identification on their cattle. When the group lot arrives at its destination, which may be another brand state wherein the cattle likely will be rebranded, the buyer or buyers of those cattle should be responsible for applying any type of identification that may be required by the receiving state if the group is to be separated. If the group is not separated, e.g., if the entire group is sold to a feedlot for finishing, than the owner or manager of those cattle in the receiving state should have no obligation to apply any other form of identification.

**4. Under no circumstances should APHIS include feeder cattle in any mandatory animal identification rule.**

The U.S. all but eradicated diseases such as bovine TB and brucellosis by focusing on the identification of breeding cattle only. The principal culprits that have caused the resurgence of

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those diseases are imported cattle (primarily from Mexico, *see supra*) and wildlife reservoirs. APHIS has the authority, recourses and means to fully prevent the continual reintroduction of disease that are spread by imported cattle as well as to minimize disease reservoirs in wildlife, but it refuses to implement stricter import standards and effective wildlife mitigations. Instead, USDA wants to burden the owners of our nation's 31.4 million beef mother cows with its onerous, overreaching rule that effectively forces U.S. cattle producers to pay costs associated with other country's disease problems and site-specific wildlife problems. This proposed rule is anything but a scientific, risk-based proposal.

APHIS has failed to explain how past disease programs were so "tremendously successful" without ever imposing mandatory identification on feeder cattle and why, suddenly, APHIS deems it necessary.

As stated above, the cost of ear tagging the 2010 calf crop, again using APHIS' estimate that 3.1 million calves already bear official identification, would be between \$554 million and \$880 million. This cost would be expected to be incurred year after year if feeder cattle were subjected to the proposed rule. Even using APHIS' grossly understated cost of \$4.68 per head, the proposed rule would cost U.S. cattle producers \$152.6 million annually.

For comparison purposes, APHIS estimates the annual cost to states and the federal government for bovine TB testing is \$2.6 million. However, this cost does not come close to justifying the mandatory imposition of hundreds of millions of dollars in additional costs on U.S. cow/calf producers.

- 5. APHIS has failed to disclose the full nature of the problem the proposed rule is intended to address or to explain how the proposed rule would be expected to correct the serious problems APHIS failed to disclose.**



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APHIS has failed to disclose significant problems that have been identified in its disease traceback operations and has failed to explain how the proposed rule would be expected to correct those problems. For example, APHIS attempts to justify its proposed rule on the basis that some bovine TB investigations exceed 150 days. *See* supporting document, at 8. APHIS, along with other proponents of the proposed rule's precursor – NAIS – alleged that because of what they call an “outdated system of tracking outbreaks of animal diseases to their sources;”<sup>56</sup> and a “lack of any official identification” with which to determine the “specific origin of the subject animal . . . [and] without movement data,”<sup>57</sup> disease traceback investigations have taken too long to conduct. Both the American Veterinary Medical Association (AVMA) and APHIS cited the same statistics to support their allegations: AVMA stated, “Investigators spent an average of 199 days tracing the sources of animals infected with bovine tuberculosis between October 2005 and August 2007.”<sup>58</sup> APHIS stated, “The average time spent conducting a traceback involving 27 recent bovine tuberculosis investigations was 199 days.”<sup>59</sup>

However, the Office of Inspector General (OIG) conducted an audit of APHIS' control over its bovine TB eradication program in September 2006. According to the audit, the OIG found that a lack of identification on individual animals was not the sole source of APHIS' problem in conducting its bovine TB investigations. In fact, the OIG found that over half of the investigations that were closed with an outcome of “untraceable” were animals that *were* identified with eartags, but the eartags either were not collected at the time of slaughter, had been

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<sup>56</sup> The National Animal Identification System, Testimony of W. Ron DeHaven, DVM, MBA, CEO, American Veterinary Medical Association, Before the House of Representatives Committee on Agriculture, Subcommittee on Livestock, Dairy, and Poultry (hereafter “AVMA Testimony”), March 11, 2009, at 5, Exhibit 26.

<sup>57</sup> USDA Testimony, at 3, Exhibit 7.

<sup>58</sup> AVMA Testimony, at 5, Exhibit 26.

<sup>59</sup> USDA Testimony, at 4, Exhibit 7.

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removed by the feedlot prior to slaughter, or were unable to be traced because there was no requirement to maintain records.<sup>60</sup> Equally important, the OIG found that APHIS' disease eradication efforts were hampered because the agency was not using its oversight tools in a timely manner, i.e., not timely reviewing and responding to the annual and monthly summaries of program results submitted by States nor was it properly reviewing States for program compliance.<sup>61</sup> The OIG also found that APHIS was not following Federal regulations for declaring affected bovine TB herds, which weakened the agency's ability to contain and eradicate the disease and resulted in no additional controls being put in place for the majority of bovine TB cases detected in the past 5 years.<sup>62</sup> The agency was also cited for not timely downgrading the TB status of States after the agency knew that the disease was not isolated in one herd;<sup>63</sup> not having adequate controls to restrict the introduction of bovine TB in Mexican cattle;<sup>64</sup> not requiring slaughtering facilities to conduct surveillance at the recommended rate;<sup>65</sup> not monitoring high-risk herds and the corresponding on-farm testing that is required;<sup>66</sup> and not providing sufficient training to investigators so investigations could be completed in a timely manner.<sup>67</sup>

APHIS has failed to provide the livestock industry with sufficient data to identify *all* significant problems associated with current animal disease traceability systems and provide

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<sup>60</sup> See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Office of Inspector General, September 2006, at 38, Exhibit 27.

<sup>61</sup> See *id.*, at 5-9.

<sup>62</sup> See *id.*, at 11-14.

<sup>63</sup> See *id.*, at 16-17.

<sup>64</sup> See *id.*, at 19-21.

<sup>65</sup> See *id.*, at 22-24.

<sup>66</sup> See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Office of Inspector General, Report No. 50601-0009-Ch, September 2006, at 28-29, Exhibit 27.

<sup>67</sup> See Audit Report: Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Eradication Program, Office of Inspector General, Report No. 50601-0009-Ch, September 2006, at 22, 25, 28, Exhibit 27.

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documentation to show how any new animal disease traceability system would be expected to resolve any such specific problems. The systemic problems described above are internal management problems that impede disease control and eradication as well as disease investigations and would *not* be solved by implementing the proposed rule.

Because the proposed rule fails to address how APHIS intends to address the systemic problems disclosed and discussed above, it is as likely as not that APHIS' internal management problems would continually hamstring disease investigations and no measurable improvement would be made to the timeliness of the Agency's disease investigation simply by imposing an outrageously expensive identification requirement on U.S. cattle producers.

#### **F. Additional Concerns Regarding APHIS' Proposed Rule**

**1. APHIS' proposed rule is functionally deficient because it is silent on producer liability.**

The proposed rule fails to address one of the most critical concerns raised by thousands of cattle producers during USDA's NAIS listening sessions. That critical concern was producer liability. Under APHIS' proposal, which is a book-end identification system, the person who applied the animal's tag likely would be the primary suspect in any disease traceback, even if he/she sold the animal years earlier and the animal was later comingled with higher-risk Mexican cattle or trader cattle on multiple occasions. As a primary suspect, the original ear-tagger likely would bear the cost of testing and retesting his/her entire herd. This is unacceptable and APHIS has not even attempted to estimate the tremendous cost that U.S. cattle producers likely would bear as a result of APHIS' proposed rule.

**2. APHIS' proposed rule will significant disrupt interstate commerce by prohibiting the use of back tags on cattle destined for slaughter.**

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USDA's proposed rule will significantly increase the cost of interstate movement by disallowing the use of expedient back-tags for cattle destined for slaughter. Back tags are a proven, effective, humane and expedient means of identifying cattle destined for slaughter and the elimination of this device will disrupt commerce, increase animal injuries, and add unnecessary cost to an industry incapable of passing additional costs to those that may benefit from USDA's new imposition on cattle producers.

**3. APHIS justifies its proposed rule based on false cattle industry information and information that is too broad and ambiguous to meaningfully inform decision makers.**

R-CALF USA remains concerned that APHIS continues to not only ignore the unique characteristics of the U.S. cattle industry, but also, it continually presents misleading information to the public. For example, APHIS' supporting documents for the proposed rule states:

Although the total cattle inventory fell by 15 percent between 1979 and 2009, commercial beef production grew by 22 percent. The decline in cattle inventory has been offset by a 23 percent increase in the average dressed weight of federally inspected cattle.

APHIS, fails to inform the public that the 22 percent growth in beef production between 1979 and 2009 also was due to the influx of imported live cattle that were subsequently slaughtered in the U.S., with their resulting beef added to the United States' commercial beef production. Live cattle imports from Mexico and Canada increased by 1,269,560 head between 1979 and 2009. Based on the average carcass weight in 2009 of 748 pounds, those imported cattle contributed about 950 million additional pounds to commercial beef production.

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Commercial beef production increased from 21.262 billion pounds to 25.966 billion pounds between 2007 and 2009. This represents about a 4.7 billion pound increase during that period. However, nearly one billion pounds (about 950 million pounds) of that increase was attributable to beef derived from imported cattle. Therefore, the growth in commercial beef production attributable to increased dressed weights was less than 18 percent while the contribution of imports to that growth was 20 percent, i.e., beef from imported cattle accounted for approximately 20 percent of the growth in domestic beef production between 2007 and 2009.

Thus, APHIS' assertion that the decline in cattle inventory has been offset by a 23 percent increase in the average dressed weight of federally inspected cattle is false. APHS would have been accurate to state, however, that 1.2 million head of the U.S. mother cow herd had been offset by the growth in imported cattle, which increased by 1.2 million head between 1979 and 2009.

Also, and as mentioned previously, APHIS describes the U.S. cattle industry as one in which the average number of cattle per cattle operation has increased to nearly 100 head for all cattle operations. This description fails to recognize, describe, or disclose the profound, segmented nature of the U.S. cattle industry. For example, in 2010 the average size of the U.S. beef cow herd was fewer than 42 head per herd; the average size of the U.S. dairy herd was 146 head; the average number of cattle in the 75,000 remaining farmer feedlots with capacities of less than 1,000 head was only 34 head per feedlot; and, the average number of cattle in the 2,140 commercial feedlots with capacities of more than 1,000 head was 5,380 head per feedlot.

This information provides a far more accurate description of the U.S. cattle industry and provides far more valuable information to people making decisions that impact the U.S. cattle industry. R-CALF USA urges APHIS to be truthful and accurate when representing the U.S.

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cattle industry so as to avoid the propagation of erroneous information that invariably leads to bad public policy, such as APHIS' proposed rule now under consideration.

**G. Conclusion.**

There is absolutely no need for a federally mandated animal identification system. The 50 states already have animal health import and export rules that rely upon and reference existing official animal identification devices. If USDA wishes to assist the 50 states and the nation's tribes to improve disease traceability, it should work in cooperation with the states, tribes and cattle producers to develop best practices guidelines for the import and export of cattle among and between the states and tribes and assist those states and tribes in developing specific programs that work best for them.

For all the foregoing reasons APHIS' one-size-fits-all proposed rule is, at best, an absolute boondoggle and must be immediately withdrawn. If APHIS does not immediately withdraw the proposed rule, the U.S. cattle industry will suffer irreparable harm.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard", written in a cursive style.

Bill Bullard, CEO  
R-CALF USA

Exhibits: 1-27



# Animal Disease Traceability Assessment Report



April 2017

USDA APHIS

EXHIBIT 8



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## I. Acronym List

ADT	Animal Disease Traceability
AIN	Animal Identification Number
APHIS	Animal and Plant Health Inspection Service
CFR	Code of Federal Regulations
FSIS	Food Safety Inspection Service
FMD	Foot and Mouth Disease
ICVI	Interstate Certificate of Veterinary Inspection
IES	Investigative and Enforcement Services
NUES	National Uniform Eartagging System
OSS	Owner-Shipper Statement
RFID	Radio Frequency Identification
TB	<i>Mycobacterium bovis</i>
TPM	Trace Performance Measure
USDA	United States Department of Agriculture

# Animal Disease Traceability

## Assessment Report

April 2017

### II. Executive Summary

The objective of this assessment is to evaluate the Animal Disease Traceability (ADT) program and the effectiveness of the Code of Federal Regulations (CFR) Title 9 Part 86, Animal Disease Traceability, to enhance our tracing capabilities for emergency response, disease control and eradication programs. The assessment is based on an evaluation of traceability parameters since the publication of Part 86 through September 30, 2016.

On January 11, 2013, the United States Department of Agriculture (USDA) published the final rule, "Traceability for Livestock Moving Interstate." Official identification requirements for beef feeder cattle were excluded from the final rule based on comments received from stakeholders. USDA acknowledged that the component of traceability for beef cattle under 18 months of age would be addressed in a separate rulemaking process or implementation phase, and would be considered after assessing whether the requirements were being implemented effectively throughout the production chain for the cattle and bison covered under the initial phase.

The ADT framework was established to improve the ability to trace animals back from slaughter and forward from premises where animals are officially identified in addition to tracing animals' interstate movements. While the Animal and Plant Health Inspection Service (APHIS) focuses on interstate movements of livestock, States and Tribal Nations remain responsible for the traceability of livestock within their jurisdictions. This approach was designed to embrace the strengths and expertise of States, Tribes, and producers, while giving them the flexibility to find and use the most effective traceability approaches to identify animals moving interstate nationally.

APHIS established trace performance measures (TPM) to document progress in ADT, and by these measures the ADT program has been very successful in its administration in the context of the framework of official identification and movement documentation for covered livestock. Specifically the elapsed times to complete TPMs has decreased, and the percent of traces successfully completed for each fiscal year has increased. This improvement can largely be attributed to the timely retrieval of official identification records (records of tags distributed and tags applied) and movement documents through the use of databases for storing the associated information in an easily searchable format. However, while ADT has been successful in the context of the intended framework, significant gaps still exist within our tracing capabilities since the publication of 9 CFR Part 86:

- The most significant impediment resulting from the current framework is the restriction that the official identification requirement is only applicable to livestock that move

interstate. Cattle movements are quite diverse, often with multiple congregation points and opportunities for local spread of disease prior to moving interstate. The requirement that official identification be limited to interstate movements also creates significant confusion in marketing channels and creates enforcement challenges and complications.

- The ADT framework relies on the use of the basic, cost-effective identification methods used in APHIS' disease eradication programs and are widely accepted by producers. However, the challenges and limitations resulting from visual-only low cost identification eartags are evident. Yet the implementation of radio frequency identification (RFID) technology, while preferred by many, also has obstacles. The implementation of a RFID solution for traceability, if undertaken, would be a significant challenge and would require a lengthy implementation period and a well thought out and detailed plan.
- Although there are other fundamental gaps in the traceability framework that need to be addressed foremost, APHIS views the inclusion of feeder cattle in the traceability regulations as an essential component of an effective traceability system in the long-term. The success of animal disease control efforts hinges on including all sectors of the cattle industry. However, it is important to note that the requirement for collecting official identification numbers on movement documents and/or interstate certificate of veterinary inspection (ICVIs) for feeder cattle will be unduly cumbersome with visual only tags and therefore should only be considered when an RFID infrastructure is in place.
- Lastly, while all federally approved slaughter plants are required to collect all identification devices at slaughter and maintain correlation of the devices to the carcass through final inspection, compliance with this regulation is inconsistent. Although successful tracing is not guaranteed by the availability of identification collected at slaughter, it provides a significant advantage for regulatory personnel in disease investigations. In addition, the termination or retirement of official identification numbers at slaughter would greatly increase tracing efficiency as it would document which animals have been removed from the population. While the termination of visual-only tags is not logistically feasible, it would systematically be achieved at the slaughter plants when the RFID technology and infrastructure is established.

APHIS is confident that the basic framework of ADT is being successfully implemented and believes discussions with industry to consider potential next steps are appropriate at this time. It is essential for producers and other industry stakeholders to offer their opinions on relevant issues to help define the level of traceability they want to achieve and how best to reach those goals. Just as APHIS worked through issues and achieved compromises in the initial ADT framework that resulted in improved buy-in and support from many stakeholders, the next phase needs to follow that collaborative approach. APHIS has numerous outreach efforts scheduled in 2017 to obtain feedback from all sectors of the industry and will be providing more information on those activities.