

No. 21-8042

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

RANCHERS CATTLEMEN ACTION LEGAL FUND UNITED STOCKGROWERS
OF AMERICA; TRACY and DONNA HUNT, d/b/a THE MW CATTLE CO., LLC;
and KENNY and ROXY FOX,

Petitioners-Appellants,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE;
ANIMAL AND PLANT HEALTH INSPECTION SERVICE; TOM VILSACK, in his
official capacity as Secretary of Agriculture; and KEVIN SHEA, in his official
capacity as Administrator of the Animal and Plant Health Inspection Service,

Respondents-Appellees.

**On Appeal from the U.S. District Court
for the District of Wyoming
No. 1:19-cv-00205-NDF; Judge Nancy D. Freudenthal**

JOINT APPENDIX - VOLUME I

Harriet Hageman
(Counsel of Record)
Richard A. Samp
Kara Rollins
NEW CIVIL LIBERTIES ALLIANCE
1225 19th Street NW, Suite 450
Washington, DC 20036
202-869-5210
harriet.hageman@ncla.legal

Counsel for Appellants

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APPEAL,TERMED

**U.S. District Court
District of Wyoming (Casper)
CIVIL DOCKET FOR CASE #: 1:19-cv-00205-NDF**

Ranchers Cattlemen Action Legal Fund United Stockgrowers of
America et al v. United States Department of Agriculture et al
Assigned to: Honorable Nancy D Freudenthal
Referred to: Honorable Kelly H Rankin
Case in other court: USCA, 21-08042
Cause: 05:551 Administrative Procedure Act

Date Filed: 10/04/2019
Date Terminated: 05/14/2021
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review or
Appeal of Agency Decision
Jurisdiction: U.S. Government Defendant

Petitioner

**Ranchers Cattlemen Action Legal Fund
United Stockgrowers of America**

represented by **Harriet M Hageman**
NEW CIVIL LIBERTIES ALLIANCE
1225 19th Street NW Suite 450
Washington, DC 20036
202/869-5210
Email: Harriet.Hageman@NCLA.legal
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Petitioner

Tracy Hunt
doing business as
The MW Cattle Company LLC

represented by **Harriet M Hageman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Petitioner

Donna Hunt
doing business as
The MW Cattle Company LLC

represented by **Harriet M Hageman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Petitioner

Kenny Fox

represented by **Harriet M Hageman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Roxy Fox

represented by **Harriet M Hageman**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent

United States Department of Agriculture

represented by **Nicholas Vassallo**
 US ATTORNEY'S OFFICE
 P O Box 668
 Cheyenne, WY 82003-0668
 307/772-2124
 Fax: 307/772-2123
 Email: nick.vassallo@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

**United States Department of Agriculture
 Animal and Plant Health Inspection
 Service**

represented by **Nicholas Vassallo**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

**United States Department of Agriculture
 Secretary**
in his official capacity
also known as
 Sonny Perdue

represented by **Nicholas Vassallo**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

**United States Department of Agriculture
 Animal and Plant Health Inspection
 Service Administrator**
in his official capacity
also known as
 Kevin Shea

represented by **Nicholas Vassallo**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/04/2019	<u>1</u>	PETITION FOR REVIEW AND COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (Filing fee \$400 receipt #CAS002299.), filed by Donna Hunt, Roxy Fox, Tracy Hunt, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibits 1-8, # <u>2</u> Civil Cover Sheet) (Court Staff, stbd) (Entered: 10/04/2019)
10/04/2019	<u>2</u>	NOTICE of Attorney Appearance by Harriet M Hageman on behalf of Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (Court Staff, stbd) (Entered: 10/04/2019)
10/04/2019	<u>3</u>	CORPORATE DISCLOSURE filed by Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Court Staff,

11/05/2019	4	<p>PLEADING TO BE REFILED BY COUNSEL AS SUMMONS RETURNED EXECUTED-US GOV CERTIFICATE OF SERVICE by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (Hageman, Harriet) Modified text on 11/6/2019 (Court Staff, sjlg). (Entered: 11/05/2019)</p>
11/06/2019	5	<p>SUMMONS Returned Executed by Donna Hunt, Roxy Fox, Tracy Hunt, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. United States Department of Agriculture served on 10/10/2019, answer due on 12/9/2019; United States Department of Agriculture Animal and Plant Health Inspection Service Administrator served on 10/10/2019, answer due on 12/9/2019; United States Department of Agriculture Animal and Plant Health Inspection Service served on 10/10/2019, answer due on 12/9/2019; United States Department of Agriculture Secretary served on 10/10/2019, answer due on 12/9/2019 (Hageman, Harriet) Modified answer due date on 11/7/2019 (Court Staff, sjlg). (Entered: 11/06/2019)</p>
11/06/2019	6	<p>DUPLICATE PLEADING. PLEASE SEE <u>5</u> SUMMONS Returned Executed by Donna Hunt, Roxy Fox, Tracy Hunt, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. Served through the USDA, APHIS, Perdue, Shea. (Hageman, Harriet) Modified on 11/7/2019 (Court Staff, sjlg). (Entered: 11/06/2019)</p>
11/06/2019		<p>Incorrect event used. US Government Defendants allowed 60 days to respond. Set/Reset Deadlines/Hearings: United States Department of Agriculture answer due 12/9/2019; United States Department of Agriculture Animal and Plant Health Inspection Service Administrator answer due 12/9/2019; United States Department of Agriculture Animal and Plant Health Inspection Service answer due 12/9/2019; United States Department of Agriculture Secretary answer due 12/9/2019 (Court Staff, sjlg) (Entered: 11/07/2019)</p>
12/10/2019	7	<p>NOTICE of Attorney Appearance by Nicholas Vassallo on behalf of United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary (Vassallo, Nicholas) (Entered: 12/10/2019)</p>
12/10/2019	8	<p>MOTION REFERRED TO Judge Kelly H Rankin. Joint MOTION for Extension of Time (Non-Dispositive) requesting extension of Response Date filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas) (Entered: 12/10/2019)</p>
12/11/2019	9	<p>(TEXT-ONLY) ORDER by the Honorable Kelly H Rankin granting <u>8</u> Motion for Extension of Time. Having considered the Joint Motion and finding good cause, the Court orders Defendants to answer or otherwise respond to the Complaint or, in the alternative, file a motion requesting a ruling that no answer or response is required under Local Rule 83.6(b), on or before January 15, 2020. (Court Staff, sem) (Entered: 12/11/2019)</p>
01/15/2020	10	<p>MOTION to Dismiss filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 01/15/2020)</p>

01/15/2020	<u>11</u>	BRIEF in Support of <u>10</u> Motion to Dismiss, filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit) (Vassallo, Nicholas) Modified text on 1/16/2020 (Court Staff, sjlg). (Entered: 01/15/2020)
01/24/2020	<u>12</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION for Extension of Time (Non-Dispositive) requesting extension of Extension of deadline for response brief filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Proposed Order)(Hageman, Harriet) Modified text on 1/28/2020 (Court Staff, sjlg). (Entered: 01/24/2020)
01/27/2020	<u>13</u>	(TEXT-ONLY) ORDER by the Honorable Kelly H Rankin granting <u>12</u> Motion for Extension of Time. Finding good cause, the Court grants the Motion. Petitioners have until February 5, 2020, to file a response to the pending motion to dismiss. (Court Staff, sem) (Entered: 01/27/2020)
02/03/2020	<u>14</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION to Stay the Deadline for Lodging the Administrative Record Pending Resolution of Defendants' Motion to Dismiss, or In The Alternative, MOTION to Extend the Administrative Record Deadline for 21 Days filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas). Modified text and added event on 2/4/2020 (Court Staff, sjlg). (Entered: 02/03/2020)
02/04/2020	<u>15</u>	ORDER by the Honorable Kelly H Rankin granting <u>14</u> MOTION to Stay the Deadline for Lodging the Administrative Record Pending Resolution of Defendants' Motion to Dismiss. The deadline to lodge the administrative record is stayed pending resolution of the motion to dismiss. However, Defendants shall be prepared to lodge the administrative record within twenty-one days of the motion's resolution. (Court Staff, sem) Modified text on 2/4/2020 (Court Staff, sjlg). (Entered: 02/04/2020)
02/05/2020	<u>16</u>	RESPONSE in Opposition re <u>10</u> MOTION to Dismiss filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 02/05/2020)
02/06/2020	<u>17</u>	MOTION for Hearing re Respondents' <u>10</u> Motion to Dismiss filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Proposed Order)(Hageman, Harriet) Modified text and added link on 2/6/2020 (Court Staff, sjlg). (Main Document 17 replaced on 2/6/2020) (Court Staff, sjlg). (Entered: 02/06/2020)
02/06/2020	<u>18</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION for Extension of Time (Non-Dispositive) requesting extension of Time to File Reply Brief filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas) (Entered: 02/06/2020)
02/07/2020	<u>19</u>	ORDER by the Honorable Nancy D Freudenthal denying <u>17</u> Motion for Hearing.(Court Staff, sal) (Entered: 02/07/2020)
App.4		

02/07/2020 Date Case: 21-EX-040 ONLY D ORDER by the Honorable Kelly H Ramkin granting 18 Motion for Extension of Time. Finding good cause, the Court grants the Motion. Defendants shall have until 2/20/20 to file a reply in support of the pending motion to dismiss 10 .(Court Staff, sem) (Entered: 02/07/2020)

02/07/2020		21	ORDER by the Honorable Nancy D Freudenthal granting <u>10</u> Motion to Dismiss. Petitioners' Petition for Review is dismissed for lack of jurisdiction. (Court Staff, sal) (Entered: 02/13/2020)
02/13/2020		22	MOTION to Alter/Amend Judgment filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 02/18/2020)
02/18/2020		23	MOTION to Alter/Amend Judgment filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Proposed Order)(Hageman, Harriet) (Entered: 02/27/2020)
02/27/2020		24	MEMORANDUM in Support of <u>23</u> Motion to Alter/Amend Judgment filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Supplement) (Hageman, Harriet) (Attachment 2 replaced on 2/28/2020) (Court Staff, sjlg). (Entered: 02/28/2020)
02/28/2020		25	RESPONSE in Opposition re <u>22</u> MOTION to Alter/Amend Judgment , <u>23</u> MOTION to Alter/Amend Judgment filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) Modified docket text and document link on 3/4/2020 (Court Staff, stmo). (Entered: 03/03/2020)
03/03/2020		26	ORDER by the Honorable Nancy D Freudenthal granting <u>22</u> Motion Related to Federal Advisory Committee Act (FACA) and denying <u>23</u> Petitioner's Supplemental Rule 60 Motion Seeking Relief from Order Dismissing Case for Lack of Jurisdiction. Petitioners shall file a pleading amending their original Petition and Complaint on or before 4/6/20. If an amended pleading is not timely filed, the Clerk of Court will close this case. (Court Staff, sal) (Entered: 03/06/2020)
03/06/2020		27	AMENDED COMPLAINT against Defendant United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary, filed by Donna Hunt, Roxy Fox, Tracy Hunt, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F) (Court Staff, stmo) (Entered: 04/06/2020)
04/06/2020		28	STATUS REPORT re <u>27</u> Amended Complaint,, by United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 04/20/2020)
04/20/2020		29	NOTICE of Filing Administrative Record by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary
07/06/2020			

07/07/2020	<u>30</u>	SCHEDULING ORDER by the Honorable Nancy D Freudenthal.(Court Staff, sal) (Entered: 07/07/2020)
07/16/2020	<u>31</u>	MOTION REFERRED TO Judge Kelly H Rankin. NON-PUBLIC DOCUMENT pursuant to the Judicial Conference Policy on Privacy and Public Access MOTION for Extension of Time (Non-Dispositive) requesting extension of Administrative Record Review filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Proposed Order)(Hageman, Harriet) Security modified on 7/16/2020 (Court Staff, sal). (Entered: 07/16/2020)
07/17/2020	<u>32</u>	ORDER by the Honorable Kelly H Rankin granting <u>31</u> Motion for Extension of Time. All Local Rule 83.6(b)(3) motions must be filed on or before August 19, 2020.(Court Staff, sem) (Entered: 07/17/2020)
08/13/2020	<u>33</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION for Extension of Time (Non-Dispositive) requesting extension of Motion to Reset Deadlines filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas) (Entered: 08/13/2020)
08/17/2020	<u>34</u>	ORDER by the Honorable Kelly H Rankin granting <u>33</u> Motion for Extension of Time. It is ordered that Respondents shall lodge the Supplemental Administrative Record by 8/28/20. All Local Rule 83.6(b)(3) Motions shall be filed on or before 9/28/20. (Court Staff, sem) Modified on 8/24/2020 (Court Staff, sjlg). (Entered: 08/17/2020)
08/17/2020	<u>35</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION to Compel <i>Defendants to Answer Amended Complaint and for Discovery</i> filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Proposed Order)(Hageman, Harriet) (Entered: 08/17/2020)
08/17/2020	<u>36</u>	MEMORANDUM in Support of <u>35</u> Motion to Compel, filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit) (Hageman, Harriet) (Entered: 08/17/2020)
08/26/2020	<u>37</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION for Extension of Time (Non-Dispositive) requesting extension of Time to Respond to Petitioners' Motion to Compel Responsive Pleading Or, Alternatively, to Permit Discovery filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas) (Entered: 08/26/2020)
08/27/2020	<u>38</u>	(TEXT-ONLY) ORDER by the Honorable Kelly H Rankin granting <u>37</u> Motion for Extension of Time. Finding good cause, the Motion is granted. Respondents have until 9/14/2020 to respond to Petitioners' Motion to Compel <u>35</u> . (Court Staff, sem) (Entered: 08/27/2020)
08/28/2020	<u>39</u>	NOTICE by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator,

		United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary of Lodging Supplemental Administrative Record (Attachments: # <u>1</u> Affidavit) (Vassallo, Nicholas) Received - 1 disc containing Supplement to NDF chambers on this dte and 1 disc kept in Clerk's Office on 8/28/2020 (Court Staff, sal). (Entered: 08/28/2020)
09/14/2020	<u>40</u>	RESPONSE to <u>35</u> MOTION to Compel <i>Defendants to Answer Amended Complaint and for Discovery</i> filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 09/14/2020)
09/21/2020	<u>41</u>	REPLY BRIEF re <u>35</u> Motion to Compel, <u>36</u> Memorandum in Support of Motion to Compel filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 09/21/2020)
10/13/2020	<u>42</u>	ORDER by the Honorable Kelly H Rankin denying <u>35</u> Motion to Compel (Court Staff, sjgc) (Entered: 10/13/2020)
10/22/2020	<u>43</u>	MOTION for Reconsideration re <u>42</u> Order on Motion to Compel , filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 10/22/2020)
11/05/2020	<u>44</u>	RESPONSE to <u>43</u> Motion for Reconsideration of <i>Denial of Motion to Compel Responsive Pleading, or, Alternatively, Permit Discovery</i> filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 11/05/2020)
11/12/2020	<u>45</u>	REPLY BRIEF re <u>43</u> Motion for Reconsideration filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 11/12/2020)
11/16/2020	<u>46</u>	ORDER by the Honorable Nancy D Freudenthal denying <u>43</u> Motion for Reconsideration (Court Staff, sal) (Entered: 11/16/2020)
11/30/2020	<u>47</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplement to Administrative Record</i> filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Proposed Order)(Hageman, Harriet) Unreferred on 12/1/2020 (Court Staff, sal). (Entered: 11/30/2020)
12/01/2020		Motions No Longer Referred: <u>47</u> MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplement to Administrative Record</i> (Court Staff, sal) (Entered: 12/01/2020)
12/14/2020	<u>48</u>	RESPONSE to <u>47</u> MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplement to Administrative Record</i> filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 12/14/2020)

12/21/2020	<u>49</u>	REPLY BRIEF re <u>47</u> Motion for Leave to File Reply/Brief/Supplement (Non-Dispositive), filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit) (Hageman, Harriet) (Entered: 12/21/2020)
12/23/2020	<u>50</u>	ORDER by the Honorable Nancy D Freudenthal granting in part and denying in part <u>47</u> Petitioners' Motion for Completion of Record or for consideration of extra-record evidence.(Court Staff, sal) (Entered: 12/23/2020)
02/08/2021	<u>51</u>	BRIEF <i>Opening Brief on FACA Claim</i> filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 02/08/2021)
02/12/2021	<u>52</u>	MOTION REFERRED TO Judge Kelly H Rankin. Supplemental MOTION for Completion of Record filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proposed Order)(Hageman, Harriet) Text modified on 2/17/2021 (Court Staff, sal). Unreferred on 5/5/2021 (Court Staff, sal). (Entered: 02/12/2021)
02/26/2021	<u>53</u>	RESPONSE to <u>52</u> Second MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplemental Motion for Completion of Record</i> filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 02/26/2021)
03/05/2021	<u>54</u>	REPLY BRIEF re <u>52</u> Motion for Leave to File Reply/Brief/Supplement (Non-Dispositive), filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 03/05/2021)
03/08/2021	<u>55</u>	MOTION REFERRED TO Judge Kelly H Rankin. MOTION for Extension of Time (Non-Dispositive) requesting extension of time to file response brief on the merits filed by Respondent United States Department of Agriculture. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas) (Entered: 03/08/2021)
03/08/2021	<u>56</u>	ORDER by the Honorable Kelly H Rankin granting <u>55</u> Motion for Extension of Time. Respondents shall file their Response Brief on the Merits response on or before March 17, 2021. Petitioners may serve and file a reply brief within fourteen days after service of the brief of the Respondents/Defendants.(Court Staff, smh) (Entered: 03/08/2021)
03/16/2021	<u>57</u>	MOTION REFERRED TO Judge Kelly H Rankin. Emergency MOTION for Extension of Time (Non-Dispositive) requesting extension of time to file response brief on the merits filed by Respondent United States Department of Agriculture. (Attachments: # <u>1</u> Proposed Order)(Vassallo, Nicholas) (Entered: 03/16/2021)
03/17/2021	<u>58</u>	ORDER by the Honorable Kelly H Rankin granting <u>57</u> Motion for Extension of Time (Court Staff, sjgc) (Entered: 03/17/2021)
03/24/2021	<u>59</u>	RESPONSE to <u>51</u> Brief filed by Respondent United States Department of Agriculture. (Vassallo, Nicholas) (Entered: 03/24/2021)
03/29/2021	<u>60</u>	CORRECTED RESPONSE to <u>51</u> Brief filed by Respondent United States Department of Agriculture. (Vassallo, Nicholas) Modified text on 3/31/2021 (Court Staff, sjlg). (Entered: 03/29/2021)
03/29/2021	<u>61</u>	NOTICE by Respondent United States Department of Agriculture re <u>60</u> Response (Vassallo, Nicholas) (Entered: 03/29/2021)

03/30/2021	<u>62</u>	MOTION REFERRED TO Judge Kelly H Rankin. Second MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplemental Motion for Completion of Record</i> filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Proposed Order) (Hageman, Harriet) Motion unrefereed on 5/5/2021 (Court Staff, sal). (Entered: 03/30/2021)
03/31/2021	<u>63</u>	MOTION for Extension of Time (Dispositive) requesting extension of Deadline for Reply Brief on Merits filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Attachments: # <u>1</u> Proposed Order)(Hageman, Harriet) (Entered: 03/31/2021)
03/31/2021	<u>64</u>	ORDER by the Honorable Nancy D. Freudenthal granting <u>63</u> Motion for Extension of Time. Plaintiffs shall file their Reply Brief on the Merits on or before April 21, 2021. (Court Staff, sbh) (Entered: 03/31/2021)
04/13/2021	<u>65</u>	RESPONSE to <u>62</u> Second MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplemental Motion for Completion of Record</i> filed by Respondents United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary. (Vassallo, Nicholas) (Entered: 04/13/2021)
04/20/2021	<u>66</u>	REPLY BRIEF re <u>62</u> Motion for Leave to File Reply/Brief/Supplement (Non-Dispositive), <i>Supplement to Administrative Record</i> filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 04/20/2021)
04/21/2021	<u>67</u>	REPLY BRIEF <i>in Support of FACA Claim</i> filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 04/21/2021)
05/05/2021		Motions No Longer Referred: <u>62</u> Second MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplemental Motion for Completion of Record</i> , <u>52</u> Second MOTION for Leave to File Reply/Brief/Supplement (Non-Dispositive) <i>Supplemental Motion for Completion of Record</i> (Court Staff, sal) (Entered: 05/05/2021)
05/13/2021	<u>68</u>	ORDER by the Honorable Nancy D Freudenthal granting <u>52</u> Plaintiff's Supplemental Motion for Completion of Record and granting <u>62</u> Plaintiff's Second Supplemental Motion for Completion of Record. Plaintiff's Amended Complaint for Violation of the Federal Advisory Committee Act is dismissed with prejudice. (Court Staff, sal) (Entered: 05/13/2021)
05/14/2021	<u>69</u>	JUDGMENT in favor of Defendants against Plaintiffs (Court Staff, sal) (Entered: 05/14/2021)
07/07/2021	<u>70</u>	NOTICE OF APPEAL as to <u>68</u> Order on Motion to File Reply/Brief/Supplement (Non-Dispositive),,, <u>69</u> Judgment filed by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Hageman, Harriet) (Entered: 07/07/2021)
07/07/2021	<u>71</u>	Preliminary Record of appeal sent to USCA and counsel re <u>70</u> Notice of Appeal (Attorney), The procedures and appeals forms may be obtained from the U.S. Court of Appeals website: www.ca10.uscourts.gov. (Attachments: # <u>1</u> Preliminary Record on Appeal Including Notice of Appeal) (Court Staff, stbd) (Entered: 07/07/2021)

07/08/2021	<u>72</u>	Appeal Number <u>21-8042</u> received from USCA for <u>70</u> Notice of Appeal (Attorney), filed by Donna Hunt, Tracy Hunt, Roxy Fox, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. Fee is due by 07/22/2021 for Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt and Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. Docketing statement due 07/22/2021 for Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt and Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. Transcript order form due 07/22/2021 for Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt and Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. Notice of appearance due on 07/22/2021 for Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary and United States Department of Agriculture and Plant Health Inspection Service Administrator. (Court Staff, stbd) (Entered: 07/08/2021)
07/12/2021		Notice of Civil Case Filing Fee Payment. Filing Fee \$505 was paid with Receipt Number: CHY034994. (Court Staff, stmo) (Entered: 07/12/2021)
07/12/2021	73	USCA Appeal Fees received \$505, receipt number CHY034994 re <u>70</u> Notice of Appeal (Attorney), filed by Donna Hunt, Tracy Hunt, Roxy Fox, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. (Court Staff, sjk) (Entered: 07/12/2021)
07/13/2021	<u>74</u>	TRANSCRIPT REQUEST (No Transcripts Necessary) by Petitioners Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America re <u>70</u> Notice of Appeal (Attorney),. (Hageman, Harriet) (Entered: 07/13/2021)
07/13/2021	75	(TEXT-ONLY) APPEAL ORDER from USCA as to <u>70</u> Notice of Appeal (Attorney), filed by Donna Hunt, Tracy Hunt, Roxy Fox, Kenny Fox, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America Record on appeal/Notice due 7/20/2021 (Court Staff, stbd) (Entered: 07/13/2021)
07/15/2021	<u>76</u>	Transcript Letter transmitted to USCA re <u>70</u> Notice of Appeal (Attorney). No transcripts have been ordered for this appeal. For purpose of appeal, the record is now ready. (Court Staff, stbd) (Entered: 07/15/2021)
07/15/2021	77	Appeal Remark re <u>70</u> Notice of Appeal (Attorney). Appellant's brief and appendix due on 08/24/2021 for Kenny Fox, Roxy Fox, Donna Hunt, Tracy Hunt and Ranchers Cattlemen Action Legal Fund United Stockgrowers of America. [21-8042] (Court Staff, stbd) (Entered: 07/15/2021)

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Description:	Docket Report	Search Criteria:	1:19-cv-00205-NDF
Billable Pages:	9	Cost:	0.90

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2020 FEB 13 AM 11:24
MARGARET BOTKINS, CLERK
CHEYENNE

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA, et al,

Petitioners,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, et al,

Respondents.

Case No: 19-CV-205-NDF

ORDER DISMISSING CASE FOR LACK OF JURISDICTION

This matter is before the Court on Respondents' Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. (CM/ECF Document [Doc.] 11). By their motion, Respondents argue the United States Department of Agriculture, Animal and Plant Health Inspection Service (DOA-APHIS) withdrew the Factsheet at issue in this case on October 25, 2019 (Doc. 11, 11-1 at 4, 11-2 & 11-3). Because of the withdrawal, Respondents argue the case should be dismissed as moot and/or not ripe. In addition, Respondents argue the claim under the Federal Advisory Committee Act (FACA) should be dismissed for failure to state a claim. Finally, Respondents argue to the extent Petitioners seek to bring a claim under the Congressional Review Act, the Court lacks subject matter jurisdiction over any such claim.

Petitioners respond against dismissal arguing the case falls under the exception to mootness as DOA-APHIS's conduct is merely a voluntary cessation of illegal activity which constitutes an exception to the mootness doctrine.

For the reasons stated below, the Court finds there is no live controversy at issue and the "voluntary cessation" exception does not apply in this case. Therefore, the case is DISMISSED AS MOOT.

Statement of Relevant Facts

On October 4, 2019, Petitioners filed a Petition for Review of Agency Action and Complaint for Declaratory Judgment and Injunctive Relief (Petition). (Doc. 1). By their Petition, they challenge the action by DOA-APHIS in issuing the April 2019 "Factsheet" (Doc. 1-1) entitled "Advanced Animal Disease Traceability: A Plan to Achieve Electronic Identification of Cattle and Bison" (2019 Factsheet). (Doc. 1-1). Petitioners allege the 2019 Factsheet unlawfully mandates the use of radio frequency identification (RFID) eartags and technology for certain categories of livestock. (Doc. 1 at 2). Petitioners further allege the 2019 Factsheet phases out, by January 1, 2023, the use of other types of animal identification specifically allowed under 9 C.F.R. Part 86 (branding, official non-RFID eartags, tattoos, group/lot identification numbers, and backtags). (*Id.*). In addition to other relief, Petitioners request the Court declare unlawful, enjoin the implementation of, and set aside the 2019 Factsheet and any related efforts to impose additional identification requirements on livestock producers. (*Id.* at 7-8).

On October 25, 2019, DOA-APHIS posted a statement on its website announcing that it had removed the 2019 Factsheet from its website, "as it is no longer representative

of current agency policy.” (Doc. 11-3). As further explanation for the removal action, DOA-APHIS commented:

Recent executive orders have highlighted the need for transparency and communication on the issues set forth in the Factsheet before placing any new requirements on American farmers and ranchers. See Executive Orders 13891 and 13892. Consistent with these orders, APHIS has decided not to implement the requirements outlined in the April 2019 Factsheet regarding the type of identification devices that USDA-APHIS will regard as official eartags and the dates by which they must be applied to cattle.

While the need to advance a robust joint Federal-State-Industry Animal Disease Traceability (ADT) capability remains an important USDA-APHIS objective, we will take the time to reconsider the path forward and then make a new proposal, with ample opportunity for all stakeholders to comment.

Discussion

“Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction.” *Disability Law Ctr. v. Millcreek Health Ctr.*, 428 F.3d 992, 996 (10th Cir. 2005) (quoting *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996)). The Tenth Circuit recently summarized the mootness doctrine as follows:

In cases involving mootness, “[t]he starting point for [our] analysis is the familiar proposition that ‘federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.’” *DeFunis v. Odegaard*, 416 U.S. 312, 316, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 30 L.Ed.2d 413, (1971)). The mootness doctrine “derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.” *Id.* The Supreme Court has described it as “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 397, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980) (quoting Henry P. Monaghan, *Constitutional Adjudication: The Who and When*, 82 Yale L.J. 1363, 1384 (1973)). “The crucial question is whether granting a present determination of the issues offered will have some effect in the real world.”

Wyoming v. U.S. Dep't of Agric., 414 F.3d 1207, 1212 (10th Cir. 2005) (quoting *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 11[7]4, 1223 (10th Cir. 2001)). “Put another way, a case becomes moot ‘when a plaintiff no longer suffers “actual injury that can be redressed by a favorable judicial decision.” ’ ” *Ind v. Colo. Dep't of Corr.*, 801 F.3d 1209, 1213 (10th Cir. 2015) (quoting *Rhodes v. Judiscak*, 676 F.3d 931, 933(10th Cir. 2012)).

Ghailani v. Sessions, 859 F.3d 1295, 1300-1301 (10th Cir. 2017).

Further, actions seeking a declaratory judgment “must be sustainable under the same mootness criteria that apply to any other lawsuit.” *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010).

In opposition to DOA-APHIS’s argument that the case is moot, Petitioners rely on the “voluntary cessation” exception:

“One exception to a claim of mootness is a defendant's voluntary cessation of an alleged illegal practice which the defendant is free to resume at any time.” *Chihuahuan Grasslands Alliance v. Kempthorne*, 545 F.3d 884, 892 (10th Cir. 2008). “The rule that ‘voluntary cessation of a challenged practice rarely moots a federal case . . . traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior.’” *Unified Sch. Dist. No. 259*, 491 F.3d at 1149 (quoting *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n. 1, 121 S.Ct. 743, 148 L.Ed.2d 757 (2001)). “In other words, this exception exists to counteract the possibility of a defendant ceasing illegal action long enough to render a lawsuit moot and then resuming the illegal conduct.” *Chihuahuan Grasslands Alliance*, 545 F.3d at 892.

Rio Grande, 601 F.3d at 1115. Voluntary actions will moot litigation if two conditions are satisfied: “(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

Petitioners argue that DOA-APHIS does not promise it “won’t do it again” nor admit wrongdoing, nor provide any substantive or enforceable assurance to follow the law (noting the Administrative Procedure Act (APA) and “other relevant statutory and regulatory requirements”). (Doc. 16 at 2). Petitioners also argue DOA-APHIS’s removal of the 2019 Factsheet, as well as the Shea affidavit both reaffirm the value of RFID technology and make “abundantly clear . . . that the agencies absolutely intend to proceed with requiring RFID eartags and to prohibit the use of other forms of identifications.” (*Id.* at 10). Because of this, along with the “transience” of Executive Orders, Petitioners argue the withdrawal is nothing but a naked attempt to moot the case and deprive the Court of jurisdiction. (*Id.* at 11-12). Thus, according to Petitioners, the voluntary cessation exception applies, and the case is not moot. Petitioners also argue the case is ripe inasmuch as they are not challenging future actions, but only DOA-APHIS’s prior illegal actions related to adoption of the 2019 Factsheet. (*Id.* at 19).

1. Will the alleged violations reoccur?

Petitioners allege violations by DOA-APHIS in the publication of the 2019 Factsheet which adopted a new livestock identification and traceability framework contrary to the 9 C.F.R. Part 86 (the 2013 Final Rule) and without compliance with: (1) the APA rule-making process; (2) the Congressional Review Act (CRA); (3) the Federal Advisory Committee Act (FACA); or (4) the Regulatory Flexibility Act (RFA). (Doc. 1). Petitioners complain that the 2019 Factsheet: (1) nullifies “the most important and substantive aspects of the 2013 Final Rule”; (2) imposes “the most onerous, burdensome, expensive, disruptive, and complicated method of animal identification and traceability currently

available”; and (3) mandates states and tribes require RFID for livestock notwithstanding the 2013 Final Rule prohibiting such a requirement. (*Id.* at 30-33).

In a statement posted on its website, DOA-APHIS removed the 2019 Factsheet “as it is no longer representative of current agency policy.” (Doc. 11-3 at 1). In that statement DOA-APHIS clearly says it “has decided not to implement the requirements outlined in the April 2019 Factsheet regarding the type of identification devices that USDA-APHIS will regard as official eartags and the dates by which they must be applied to cattle.” (*Id.*) DOA-APHIS goes on to say, “we will take the time to reconsider the path forward and then make a new proposal, with ample opportunity for all stakeholders to comment.” (*Id.*) In sum, DOA-APHIS has undertaken “reconsideration of whether or when to put new requirements in place, while still encouraging the use of RFID devices through financial incentives.” (*Id.*)

There is no question that the removal of the 2019 Factsheet is voluntary conduct by DOA-APHIS. Petitioners argue this voluntary conduct was taken to deprive the Court of jurisdiction. This is not persuasive given DOA-APHIS’s explanation that the action was taken because of “[r]ecent executive orders [which] have highlighted the need for transparency and communication on the issues set forth in the Factsheet before placing any new requirements on American farmers and ranchers.” (*Id.*) There is no basis to conclude this explanation is a sham to defeat jurisdiction and continue with implementation.

Petitioners also argue DOA-APHIS will simply proceed with requiring RFID eartags and prohibit the use of other forms of identifications. That may be true, but it is not an argument against the claim of mootness. While Petitioners object to RFID devices,

their complaint is styled as a violation of the Final 2013 Rule and the APA along with other statutory and regulatory requirements associated with rulemaking. Therefore, if DOA-APHIS does decide to proceed with RFID devices, which is speculative at this time, that will occur within a completely different procedural framework, which may include a repeal of the 2013 Rule. Such a procedural framework along with any future decision's scope, requirements and timeline are completely unknown to the Court. What is known is that the 2019 Factsheet is not recognized as agency policy and DOA-APHIS has unambiguously stated that the requirements of the 2019 Factsheet **will not be implemented**. There is no reason to discount DOA-APHIS's corrective action and the commitments contained therein.¹ Given DOA-APHIS's unambiguous statements that (1) the 2019 Factsheet is not agency policy; (2) DOA-APHIS will not implement its requirements; and (3) any new proposal will afford ample opportunity for all stakeholders to comment, the Court concludes it can be said with assurance that there is no reasonable expectation that DOA-APHIS will reverse course and implement the 2019 Factsheet, or revert to using the same process which resulted in the 2019 Factsheet.

2. Have events completely and irrevocably eradicated the effects of the alleged violation?

Petitioners comment that the effort by DOA-APHIS to implement RFID devices pursuant to the requirements outlined in the 2019 Factsheet had a “destabilizing impact on the livestock industry by trying to force universal compliance with an RFID mandate.”

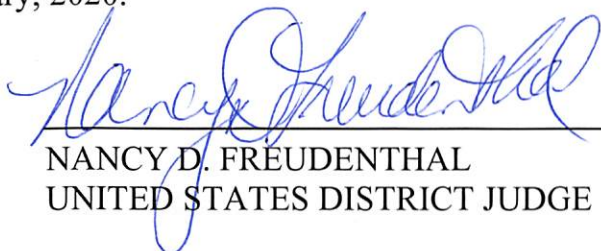
¹ The Tenth Circuit has recognized that some courts will accord governmental actors a “presumption of good faith” as to commitments that the objectionable behavior will not recur. *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1116, n. 15 (10th Cir. 2010).

(Doc. 16 at 2). Petitioners also contend that the removal of the 2019 Factsheet “created even more uncertainty in the livestock industry.” (*Id.* at 21). These claims are conclusory and nothing in the record suggests any lingering effects from DOA-APHIS’s alleged violations of the 2013 Final Rule, the APA, or related statutory and regulatory requirements associated with rulemaking. As discussed above, any injury inflicted upon Petitioners by DOA-APHIS’s purported failure to comply with statutes and regulatory requirements cannot be said to have survived the removal of the 2019 Factsheet along with DOA-APHIS’s statements that it did not represent agency policy and would not be implemented. Therefore, the Court concludes the corrective action taken by DOA-APHIS completely and irrevocably eradicated the effects of the alleged violations associated with issuing the 2019 Factsheet.

For all these reasons, the Court finds that Petitioners’ Petition seeking relief from the 2019 Factsheet is moot and this Court lacks jurisdiction to review the agency decision to issue the Factsheet, which is no longer effective.

IT IS ORDERED that Petitioners’ Petition for Review is DISMISSED FOR LACK OF JURISDICTION.

Dated this 13 day of February, 2020.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE

FILED



2:34 pm, 3/6/20

Margaret Botkins
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA, et al.,

Petitioner,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, et al.,

Respondents.

Case No: 19-CV-205-NDF

**ORDER ON RULE 60 MOTIONS FOR CORRECTION OF AND
RELIEF FROM ORDER DISMISSING CASE**

This matter is before the Court on Petitioners' Rule 60(a) Motion Related to Federal Advisory Committee Act (FACA) Claim (CM/ECF Document [Doc.] 22) and their Supplemental Rule 60 Motion Seeking Relief from Order Dismissing Case for Lack of Jurisdiction (Doc. 23).

By their first Rule 60 motion, Petitioners argue the Court should correct its February 13, 2020 Order Dismissing Case for Lack of Jurisdiction (Doc. 21) specifically to address their claim based upon the Federal Advisory Committee Act. According to Petitioners, the basis for the Court's decision finding the case moot based on the agencies' withdrawal of the 2019 Factsheet did not address Petitioner's independent FACA claim. In the alternative, Petitioners argue to the extent their FACA claim is somehow inadequate under a Rule 12(b)(6) standard, Petitioners should be allowed leave to amend the Petition for

Review. Respondent United States Department of Agriculture, Animal and Plant Health Inspection Service (DOA-APHIS) argues that Petitioner’s FACA-based claims are subject to dismissal under Rule 12(b)(6) for reasons explained in their Brief in Support of Motion to Dismiss (Doc. 11). Specifically, according to DOA-APHIS, Petitioners “do not identify the membership of the “advisory committee(s)” of which they complain, nor do they allege that the meetings were held for any purposes other than those identified in 2 U.S.C. § 1534(b)(2).”

By their second Rule 60 Motion, Petitioners argue they have recently come into possession of additional information related to what they allege is “the ongoing effort to require livestock producers to use radio frequency identification (‘RFID’) eartags for cattle and bison.” (Doc. 24 at 2). The additional information is a one-page “informational page” published in the February 2020 publication of *Nebraska Cattleman*. (Doc. 24-2 at 3). The information page was apparently funded through a cooperative agreement between the Nebraska Department of Agriculture and USDA-APHIS. (*Id.*). Based on this publication, Petitioners argue that DOA-APHIS has “not actually changed course” and thus Petitioners seek relief from the entirety of the Court’s Order Dismissing Case for Lack of Jurisdiction. (*Id.*).

The Court assumes familiarity with the facts associated with the Petition for Review of Agency Action and Complaint for Declaratory Judgment and Injunctive Relief (Petition) (Doc. 1), as well as the Court’s Order Dismissing Case which includes an overview of the facts giving rise to the case (Doc. 23). Upon review of the briefing, there is no dispute among the parties that the Court neglected to address Petitioners’ FACA Claim in its Order

Dismissing Case dated February 13, 2020. Rather than address the issues raised by Respondents, the Court concludes it is appropriate to allow Petitioners leave to amend their pleading associated with the FACA claim and relief requested.

As to Petitioner's second Rule 60 Motion, the Court declines Petitioners' request for relief. Petitioners provide no plausible argument that the information page published in or by *National Cattlemen* constitutes "agency action" as an "agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). In short, Petitioners fail to identify any specific federal conduct at issue, nor do they explain how it is "final agency action" within the meaning of Administrative Procedure Act. *Colo. Farm Bureau Fed'n v. U.S. Forest Service*, 220 F.3d 1171, 1173 (10th Cir. 2000). A publication by a third party is certainly not the consummation of DOA-APHIS's decisionmaking process, nor is it an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* at 1173-1174 (internal quotation marks omitted, quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796-97, 112 S. Ct. 2767, 120 L.Ed.2d 636 (1992); *Bennett v. Spear*, 520 U.S. 154, 178, 117 S. Ct. 1154, 137 L.Ed.2d 281 (1997)).

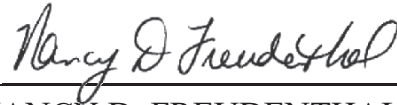
For all these reasons, the Court finds that Petitioners' Rule 60(a) Motion Related to Federal Advisory Committee Act (FACA) Claim (CM/ECF Document [Doc.] 22) is granted with direction that Petitioners shall file a pleading amending their original Petition and Complaint on or before April 6, 2020. Petitioner's Supplemental Rule 60 Motion Seeking Relief from Order Dismissing Case for Lack of Jurisdiction (Doc. 23) is denied.

IT IS THEREFORE ORDERED that this case be reopened by the Clerk of Court;
and

IT IS FURTHER ORDERED that Petitioners' Rule 60(a) Motion Related to Federal Advisory Committee Act (FACA) Claim (CM/ECF Document [Doc.] 22) is GRANTED. Petitioners shall file a pleading amending their original Petition and Complaint on or before April 6, 2020. If an amended pleading is not timely filed, the Clerk of Court will close this case.

IT IS FINALLY ORDERED THAT Petitioner's Supplemental Rule 60 Motion Seeking Relief from Order Dismissing Case for Lack of Jurisdiction (Doc. 23) is DENIED.

Dated this 6th day of March, 2020.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE



1:04 pm, 4/6/20

Margaret Botkins
Clerk of Court

Harriet M. Hageman (Wyo. Bar. # 5-2656)
New Civil Liberties Alliance
1225 19th Street NW, Suite 450
Washington, DC 20036
Telephone: 202-869-5210
Harriet.Hageman@ncla.legal

222 East 21st Street
Cheyenne, Wyoming 82001
Telephone: 307-635-4888

ATTORNEYS FOR PETITIONERS/PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION)
LEGAL FUND UNITED)
STOCKGROWERS OF AMERICA;)
TRACY and DONNA HUNT, d/b/a THE MW)
CATTLE COMPANY, LLC; and KENNY and)
ROXY FOX,)

No. 19-CV-205-F

Petitioners/Plaintiffs,)

vs.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE; ANIMAL AND PLANT)
HEALTH INSPECTION SERVICE;)
SONNY PERDUE, in his official)
capacity as the Secretary of Agriculture;)
and KEVIN SHEA, in his official)
capacity as Administrator of the Animal)
and Plant Health Inspection Service,)

Respondents/Defendants.)

PLAINTIFFS' AMENDED COMPLAINT FOR VIOLATION OF
THE FEDERAL ADVISORY COMMITTEE ACT

Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (“R-CALF USA”); Tracy and Donna Hunt, d/b/a The MW Cattle Company, LLC (“Hunt”); and Kenny and Roxy Fox (“Fox”), by and through their attorneys, Harriet M. Hageman and the New Civil Liberties Alliance, hereby file this Amended Complaint against the named Respondents/Defendants seeking Declaratory Judgment and Injunctive Relief for their violation of the Federal Advisory Committee Act, 5 U.S.C. app. 2 §§ 1-16, as well as to recover those attorneys’ fees and costs incurred in bringing this action.

INTRODUCTION AND BACKGROUND

1. On January 9, 2013 the Animal and Plant Health Inspection Service (APHIS), a division of the United States Department of Agriculture (USDA) (collectively, “the Agencies”), published the regulation entitled “Traceability of Livestock Moving Interstate,” 78 Fed. Reg. 2040 (*see* ECF 1-1), with an effective date of March 11, 2013 (referred to below as the “2013 Final Rule”).
2. The 2013 Final Rule (set forth in the newly created 9 C.F.R. Part 86) established requirements for the official identification and documentation necessary for the interstate movement of certain types of livestock.
3. In April 2019 the Agencies issued a two-page “Factsheet” (*see* ECF 1-1) entitled “Advanced Animal Disease Traceability: A Plan to Achieve Electronic Identification of Cattle and Bison” (referred to below as the “2019 Factsheet”). The 2019 Factsheet is attached as Exhibit A.
4. The 2019 Factsheet was not adopted or issued pursuant to a formal notice-and-comment rulemaking procedure under the Administrative Procedure Act (“APA”) and was not published in the *Federal Register*. It instead resulted from the work and collaboration between the

Defendants and one or more of the advisory committees that are the subject of this Amended Complaint.

5. The 2019 Factsheet was intended as a “substantive” or “legislative” rule that was designed to impose legally binding obligations on livestock producers.
6. The 2019 Factsheet unlawfully mandated the use of “radio frequency identification” (“RFID”) eartags and technology for certain categories of livestock, and quickly phased out the use of other types of animal identification, including those methods specifically approved by the 2013 Final Rule (branding, official non-RFID eartags, tattoos, group/lot identification numbers, and backtags).
7. According to the 2019 Factsheet, “[b]eginning January 1, 2023, animals that move interstate and fall into specific categories will need official, individual RFID ear tags.” The Defendants, however, had no legal authority to mandate such RFID use.
8. The 2019 Factsheet stated that “[a] premises identification number (PIN) is required to purchase official ID tags[.]” (*id.*), a requirement that was rejected in the 2013 Final Rule.
9. Defendants intended for the 2019 Factsheet requirements to repeal and replace critically important aspects of the 2013 Final Rule, including the approved livestock identification methods, the types of livestock covered, and requirements related to the registration of premises where livestock are raised or fed.
10. On October 4, 2019 the above-named Plaintiffs filed their “Petition for Review of Agency Action and Complaint for Declaratory Judgment and Injunctive Relief” (Petition for Review) (ECF 1) challenging the 2019 Factsheet.

11. The Petition for Review requested an Order from this Court declaring that the Defendants' actions in issuing the 2019 Factsheet violate the 2013 Final Rule (9 C.F.R. Part 86); the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 *et seq.*; the Congressional Review Act ("CRA"), 5 U.S.C. §§ 801-808; the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. (1972); and the Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601 *et seq.* (1980).
12. The Petition for Review sought an injunction barring Defendants from implementing, imposing, or otherwise requiring compliance with the 2019 Factsheet.
13. On October 25, 2019, three weeks after Plaintiffs filed their lawsuit, APHIS posted a statement on its website announcing that it had removed the April 2019 Factsheet from its website, claiming that "it is no longer representative of current agency policy." Attached as Exhibit B.
14. The statement posted on the APHIS website is not branded in any way, having no official USDA or APHIS letterhead, logo, or other markings identifying where it came from.
15. The statement posted on APHIS's website does not contain a date, identify an author, and is ambiguous.
16. Upon information and belief, Defendants have not otherwise sought to inform the industry that producers who seek to move or sell their livestock across state lines are not required to use RFID eartags for identification purposes.
17. To the contrary, published in the February and March, 2020 issues of the Nebraska Cattleman, one of the largest cattle industry trade magazines in that state, USDA partnered with the Nebraska Department of Agriculture to publish an almost identical version of the 2019 Factsheet to inform livestock producers that they were required to convert to RFID eartags.

18. The Defendants have claimed that by their action in posting the statement to the APHIS website that they have withdrawn the 2019 Factsheet effective as of October 25, 2019. Such claim does not comport with the Agencies' internal policies and ongoing efforts to require livestock producers to use official RFID eartags in order to be able to move their cattle and bison across state lines.
19. The Defendants intend to pursue and impose RFID eartag requirements on the livestock industry in the future.
20. Defendant Kevin Shea has in fact specifically stated as such under oath, explaining that "While the need to advance a robust joint Federal-State-Industry ADT capability *remains an important USDA-APHIS and State Animal Health Official objective*, we will take time to reconsider the path forward." ECF 11-1 at 4. (Emphasis added).
21. On January 15, 2020 Respondents filed a motion to dismiss the Petition for Review (ECF 11) arguing that because they had withdrawn the 2019 Factsheet the case was moot.
22. This Court entered its Order Dismissing Case for Lack of Jurisdiction on February 13, 2020 (ECF 21), having concluded that Defendants had successfully mooted this lawsuit by withdrawing the 2019 Factsheet in October of last year.
23. The Court did not address Petitioners FACA claim in the February 13, 2020 Order.
24. In response to Petitioners' Rule 60(a) Motion addressing the FACA claim the Court stated that "there is no dispute among the parties that the Court neglected to address Petitioners' FACA Claim in its Order Dismissing Case dated February 13, 2020." ECF 26 at 2-3.
25. The Court granted Petitioners leave to file an amended complaint associated with the FACA claim and the related relief requested.

26. Regardless of whether Respondents have withdrawn the 2019 Factsheet, Petitioners' FACA claim remains justiciable and is ripe for review.

NATURE OF THE ACTION

27. Petitioners/Plaintiffs file this Amended Complaint pursuant to the FACA to bring transparency and fair balance to a matter of great public importance: the operation of the advisory committees that USDA and APHIS established and utilized following adoption of the 2013 Final Rule to provide advice and recommendations, and to otherwise develop policy, regarding how to pursue mandatory electronic animal identification and traceability of livestock.

28. In 2017, Defendant APHIS arranged for the establishment of one or more advisory committees—the “Cattle Traceability Working Group” (CTWG) as well as several subcommittees thereof—to assist APHIS in developing plans to amend the existing 2013 Final Rule (found in 9 C.F.R. Part 86) governing the identification and traceability of livestock. The CTWG's members consisted of private citizens, with USDA officials regularly participating in meetings.

29. In May 2019, soon after the April 2019 Factsheet was issued, the CTWG disbanded. In its place, APHIS arranged for the establishment of a new advisory committee, the “Producers Traceability Council” (PTC), to provide similar advice and recommendations to APHIS. A senior USDA official is a member of the PTC and has attended one or more of its meetings.

30. The CTWG, its subcommittees, and the PTC (collectively, “the Committees”) are FACA “advisory committees” within the meaning of 5 U.S.C. app. § 3(2) and are thus subject to and must comply with all of the FACA requirements.

31. Among the FACA requirements are the following: the federal government must file a charter

that defines each committee's objectives, duties, and other information before it first meets; announcements of meetings must be published in advance in the *Federal Register*; all committee meetings must be open to the public, and detailed minutes of each meeting must be published; all documents made available to or prepared for or by the advisory committee must be made public; and the membership of the committee must be fairly balanced in terms of the points of view represented. *See* 5 U.S.C. app. 2 §§ 5(b), 9(c), 10(a)-(c).

32. The Agencies took none of the steps identified above with respect to the Committees. Defendants have violated FACA by convening meetings of the Committees without first filing a charter and by failing to abide by FACA's public access and disclosure requirements.
33. The CTWG was fairly balanced in terms of the points of view represented, having a membership that included producers, packers, veterinarians, and others. Upon discovering that the fairly balanced CTWG was not producing the recommendations the Agencies desired—mandatory RFID use—Defendants acquiesced to the dissolution of the CTWG and replaced it with a committee (the PTC) that did not then and does not now satisfy FACA's fair-balance requirement.
34. The PTC excludes cattle producers who are opposed to new animal-traceability measures being considered by USDA, most specifically the idea of mandating RFID-only eartag requirements.
35. This lawsuit seeks to hold the government to its obligations under FACA, provide the transparency the law requires, disclose to the public the documents to which the public is entitled (so that the public can better understand the decision-making process being used by Defendants as they go forward with plans to amend existing rules governing the identification and traceability of livestock), and enjoin Defendants from relying upon any of the Committees'

materials, reports and recommendations.

JURISDICTION AND VENUE

36. The Court has jurisdiction under 28 U.S.C. § 1331 (federal question).
37. The Court may award declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706.
38. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (e).

THE PARTIES AND STANDING

Plaintiffs

39. Plaintiff R-CALF USA was formally organized in 1999 as a public benefit corporation pursuant to the Montana Nonprofit Corporation Act, Montana Statutes §§ 35-2-113 *et seq.* R-CALF USA is the country's largest producer-only membership organization representing cattle producers on domestic and international trade and marketing issues. The purpose of R-CALF USA is to address and protect the market interests of cattle producers in the United States, primarily focusing upon the threats posed to the domestic live cattle industry by unfair and illegal trade practices and imports, and other economic factors (including regulatory burdens that increase production costs). R-CALF USA addresses both national and international issues that affect profitability of domestic cattle producers.
40. R-CALF USA represents the educational, economic, business, and social interests of over 280 cattle producers within the State of Wyoming, and over 5,300 livestock producers around the United States. Its members are located in 43 States. R-CALF USA's membership is made up of a broad spectrum of cattle producers, including but not limited to cow-calf producers, cattle backgrounders, and feeders.

41. R-CALF USA was an active participant in federal administrative proceedings that led to adoption of the 2013 Final Rule that currently governs the traceability of livestock moving interstate. R-CALF has continued to monitor, participate in, and work with Defendants in relation to issues associated with the identification and traceability of livestock.
42. R-CALF USA and its members have informational interests in materials reviewed or produced by FACA advisory committees that have addressed or are addressing whether to revise the 2013 Final Rule, and if so, how they will do so.
43. R-CALF USA and its members have protectable property interests in ensuring that Defendants do not revise the 2013 Final Rule based on information or recommendations supplied by a FACA advisory committee that has not operated in compliance with FACA requirements. The interests at stake in this lawsuit are germane to R-CALF USA's purpose as described above.
44. Plaintiffs Tracy and Donna Hunt are cow-calf operators in northeastern Wyoming near Newcastle. They do business as The MW Cattle Company, LLC, which is organized under the laws of Wyoming. Ms. Hunt is a third-generation rancher, with her grandfather first purchasing land in this area in 1926.
45. The Hunts are members of R-CALF USA and the Wyoming Stock Growers Association. They run livestock in both Wyoming and South Dakota and move their cattle across the state line in the spring/summer and in the fall of each year.
46. The 2013 Final Rule states that cattle producers need not use "radio frequency identification" (RFID) eartags for their livestock.
47. It is not operationally or economically feasible for the Hunts to use RFID eartags, given the nature of the terrain, the size of the pastures, the manner in which the livestock are managed

and moved, and the lack of available corrals.

48. In compliance with the 2013 Final Rule, the Hunts have relied exclusively on branding, as well as metal tags and tattoos, to satisfy federal identification and traceability requirements for the interstate movement of their cattle.
49. The Hunts have informational interests in materials reviewed or produced by FACA advisory committees that have addressed or are addressing whether to revise the 2013 Final Rule, and if so, how they will do so.
50. The Hunts have protectable property interests in ensuring that Defendants do not revise the 2013 Final Rule based on information or recommendations supplied by a FACA advisory committee that has not operated in compliance with FACA requirements.
51. The Hunts have an interest in ensuring that any FACA advisory committees that consider changes to the 2013 Final Rule with respect to RFID eartags comply fully with FACA's requirements, and that they are fully informed about the operation of those committees.
52. Plaintiffs Kenny and Roxy Fox are third-generation ranchers. They have owned and operated a cow-calf ranching enterprise near Belvidere, South Dakota since 1988. Mr. Fox is also chairman of R-CALF USA's Animal Identification Committee and past president of the South Dakota Stockgrowers Association.
53. The Foxes use brands to identify and trace their cattle and have been doing so since they began ranching (and as their fathers and grandfathers did before them). They also vaccinate their replacement heifers for brucellosis, at which time the heifers are identified with a tattoo and a permanent metal eartag. These procedures comply fully with the 2013 Final Rule.
54. Requiring RFID eartags would be cost-prohibitive for the Foxes' ranching operations.

55. The Foxes have informational interests in materials reviewed or produced by FACA advisory committees that have addressed or are addressing whether to revise the 2013 Final Rule, and if so, how they will do so.
56. The Foxes have protectable property interests in ensuring that Defendants do not revise the 2013 Final Rule based on information or recommendations supplied by a FACA advisory committee that has not operated in compliance with FACA requirements.
57. The Foxes have an interest in ensuring that any FACA advisory committees that consider changes to the 2013 Final Rule with respect to RFID eartags comply fully with FACA's requirements, and that they are fully informed about the operation of those committees.
58. Kenny Fox became a member of the CTWG in 2017, where he was a vocal critic of proposals to require RFID eartags. He was not permitted to participate in all meetings held or correspondence between other CTWG members and APHIS for advice and recommendations on RFID-related issues. He is not a member of the PTC, the successor to the CTWG, which continues to offer advice and recommendations on RFID-related issues.
59. Mandatory use of RFID eartags will impose substantial costs on livestock producers, including the Plaintiffs, with such costs being associated with retrofitting infrastructure (barns, corrals, etc.), investing in the RFID technology, and the handling of livestock.
60. Mandatory use of RFID eartags will force producers, including the Plaintiffs, to dramatically change how they manage their livestock and operate their farms and ranches. The costs of the administration associated with RFID use may well exceed the cost of the eartags themselves.
61. Mandatory use of RFID eartags raises numerous privacy and constitutional concerns, including for the Plaintiffs, with questions such as how the data will be transmitted, stored, used, and

disseminated remaining unanswered.

62. RFID eartags have not been shown to provide any more benefit to actual livestock producers, including the Plaintiffs, than the current assortment of animal identification techniques approved in the 2013 Final Rule.
63. The primary beneficiaries of mandatory RFID regulations are the eartag manufacturers and the four large beef packers, and both of those industries are well represented on the advisory committees at issue here.
64. The Defendants have repeatedly touted and continue to tout the benefits of using RFID eartags for the identification and traceability of livestock in the United States. Their decisions and policies in that regard were informed, in whole or in part, by the advisory committees that are the subject of this Amended Complaint.
65. Many of the members of those advisory committees, including representatives of eartag manufacturing companies and the packers, have a financial interest in requiring the livestock producers, including the Plaintiffs, to purchase and use RFID eartags.
66. Eartag manufacturing companies and the packers have a vested interest in advising the Defendants to impose mandatory RFID requirements on livestock producers, including the Plaintiffs.
67. Eartag manufacturing companies and the packers, by their participation on the advisory committees at issue here, have had an unfair influence on Defendants, while the livestock producers, including Plaintiffs, have been excluded from participating.
68. The Plaintiffs have a substantial interest in obtaining all of the information exchanged, reviewed, discussed, drafted, evaluated, and disseminated by the Agencies as they developed

the 2019 Factsheet and made their decision to impose mandatory RFID requirements on the livestock industry. This interest remains regardless of whether the Defendants later withdrew the 2019 Factsheet.

69. The Plaintiffs have a substantial interest in challenging Defendants' violation of FACA regardless of whether Defendants later withdrew the 2019 Factsheet.

Defendants

70. Defendant USDA is an executive branch agency of the United States of America.

71. Defendant Sonny Perdue is the Secretary of Agriculture. He has a statutory duty to comply with FACA, the APA, and the agency's own regulations. He is sued in his official capacity only.

72. Defendant APHIS is a subagency of the USDA and is subject to the direction and control of Defendant Perdue in his official capacity as Secretary.

73. Defendant Kevin Shea is the Administrator of APHIS. He has a statutory duty to comply with FACA, the APA, and the agency's own regulations. He is sued in his official capacity only.

FACTUAL BACKGROUND

Statutory and Regulatory Framework

74. Congress passed FACA, 5 U.S.C. app. 2 §§ 1-16, in 1972 to address whether and to what extent advisory committees should be maintained to advise Executive Branch officers and agencies. 5 U.S.C. app. 2 § 2(a).

75. Congress's enactment of FACA was driven by its concerns over executive reliance on secretive committees through which non-governmental actors could wield governmental power behind closed doors and outside the public's view.

76. In passing this “sunshine” statute, Congress explicitly recognized the risk that “interest groups may use their membership on such bodies to promote their private concerns,” pointing to past committees that excluded representatives from many groups of stakeholders. H.R. Rep. 92-1017 (1972), reprinted in 1972 U.S.C.C.A.N. 2491, 3496.

77. To guard against the danger that committees would be captured by one small group of stakeholders, Congress prescribed rules for advisory committees “to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals.” *National Anti-Hunger Coalition v. Executive Office of the President’s Private Sector Survey on Cost Control*, 711 F.2d 1071, 1072 (D.C. Cir. 1983).

78. FACA defines an “advisory committee” as:

[A]ny committee, board commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof ... which is

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

5 U.S.C. § 3(2).

79. FACA excludes from its coverage committees consisting solely of government employees. *Id.*

In addition, certain other committees are excluded from FACA’s reach by limited statutory exemptions, none of which apply here.

80. FACA requires both that an advisory committee be formally established and that its activities be public. The “requirement of openness is a strong safeguard of the public interest.” H.R. Rep. No. 92-1017 (1972), reprinted in 1972 U.S.C.C.A.N. 3491, 3500.
81. To promote transparency, an advisory committee is not permitted to “meet or take any action” until it files a charter with “the head of the agency to whom any advisory committee reports.” 5 U.S.C. app. 2 § 9(c). The charter must contain, *inter alia*, “the committee’s objectives and the scope of its activity,” “the period of time necessary for the committee to carry out its purposes,” “the agency or official to whom the committee reports,” “the estimated number and frequency of committee meetings,” and “a description of the duties for which the committee is responsible.” *Id.*
82. In addition to publicizing an advisory committee’s creation and purpose, FACA demands transparency in the structure, procedures, and meetings of advisory committees. A “committee meeting” includes “any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.” 41 C.F.R. § 102-3.25.
83. Under FACA, an “officer or employee of the Federal Government” must be designated to “chair or attend each meeting of each advisory committee.” 5 U.S.C. app. 2 § 10(e). No meeting shall be held in the absence of the Designated Federal Officer (DFO). *Id.* The DFO of an advisory committee is required to, *inter alia*, “[a]pprove or call the meeting of the advisory committee,” “[a]ttend the meetings,” “[a]djourn any meeting when he or she determines it to be in the public interest,” and “[c]hair the meeting when so directed.” 41

C.F.R. § 102-3.120.

84. FACA's meeting requirements are designed to guarantee transparency by facilitating open access to the public.
85. "Each advisory committee meeting shall be open to the public," 5 U.S.C. app. 2 § 10(a)(1), and shall be held "at a reasonable time and in a manner or place reasonably accessible to the public." 41 C.F.R. § 102-3.140(a). An advisory committee must provide "timely notice" of its meetings in the *Federal Register*, 5 U.S.C. app. 2 § 10(a)(2), "at least 15 calendar days in advance." 41 C.F.R. § 102-3.150. To close any part of an advisory committee meeting from the public, the DFO must justify the closure, obtain advance approval pursuant to specific procedures, and make the determination of closure available to the public. 41 C.F.R. § 102.3-155.
86. These notice requirements are not a mere formality; they exist to ensure the representation of all stakeholders as well as the general public.
87. "Interested persons" must be permitted to "attend, appear before, or file statements with [the] committee, subject to such reasonable rules or regulations as the [General Services Administration] Administrator may prescribe." 5 U.S.C. app. 2 § 10(a)(3).
88. FACA mandates that "[d]etailed minutes of each meeting of each advisory committee shall be kept," including a "record of the persons present, and a complete and accurate description of matters discussed and conclusions reached." *Id.* § 10(c).

89. FACA further requires that “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying.” *Id.* § 10(b).

90. Section 10(b)’s disclosure requirement “serves to prevent the surreptitious use of advisory committees to further the interests of any special interest group.” H.R. Rep. No. 92-1017 (1972), reprinted in 1972 U.S.C.C.A.N. 3491, 3500.

91. It is contrary to federal law for advisory committees to work in secret or to impact government action based on consultations that are shielded from the public and from some of an advisory committee’s own members. *Cummock v. Gore*, 180 F.3d 282, 291 (D.C. Cir. 1999).

92. Advisory committee are affirmatively obligated to provide access to the Section 10(b) materials, *even in the absence of a particular request.* *Id.* at 289.

93. To ensure that advisory committees provide advice representing a broad cross-section of interested parties, FACA requires membership of advisory committees “to be fairly balanced in terms of the points of view represented.” 5 U.S.C. app. 2 § 5(b)(2). Courts are entitled to enforce the fair-balance requirement, and individuals with standing to raise fair-balance issues include those excluded from advisory committee membership in violation of the requirement. *Colorado Environmental Coalition v. Wenker*, 353 F.3d 1221 (10th Cir. 2004).

2013 Final Rule and Its Aftermath

94. The 2013 Final Rule governs the identification and traceability of certain types of livestock.

95. The stated purpose of the 2013 Final Rule is “to improve our ability to trace livestock in the event that disease is found”; “to prevent, control, and eradicate disease”; and “to establish minimum national official identification and documentation requirements for traceability of

livestock movement interstate.” *See* 78 Fed. Reg. 2040 (Jan. 9, 2013). The Plaintiffs are primarily concerned with the 2013 Final Rule as it relates to the identification and interstate movement and sale of cattle.

96. The 2013 Final Rule establishes acceptable methods for identifying livestock. The rule supports use of “low-cost technology” for cattle identification by allowing for the use of metal eartags. *APHIS Factsheet, Questions and Answers* (Dec. 2012) (ECF 1, ECF 1-1 at 3) (“to encourage its use, USDA plans to provide these eartags at no cost to producers to the extent funds are available.”).

97. The 2013 Final Rule prohibits States and Tribes from requiring the use of RFID technology. *Id.*

98. Following adoption of the 2013 Final Rule, APHIS undertook an Animal Disease Traceability Program review.

99. In 2017, a State-Federal Animal Disease Traceability Working Group recommended that the cattle industry should increase reliance on RFID technology and that RFID should become mandatory for all cattle by January 1, 2023.

100. The State-Federal Working Group presented its preliminary recommendations at a September 2017 “Traceability Forum” in Denver, Colorado, an event sponsored by USDA and attended by its representatives. During a break-out session “facilitated” by USDA officials, they called on cattle-industry participants to form a task force to review the State-Federal Working Group’s mandatory-RFID proposal and to provide APHIS with reports and recommendations on how best to carry out that proposal. Participants at the break-out session agreed, and the result was creation of the CTWG in the fall of 2017.

101. Later USDA publications confirm that USDA provided the impetus, direction and

instruction for establishing the CTWG.

102. The recommendations of the State-Federal Working Group were published in an April 2018 USDA report entitled, “Animal Disease Traceability - Summary of Program Review and Proposed Directions from State-Federal Working Group.” Attached as Exhibit C. *This USDA report acknowledged that “there continues to be some stakeholders that are not supportive of [electronic identification (EID)] for livestock in general.”* *Id.* at 17. The report nonetheless identified the need for an industry-led advisory group to address technical issues that would have to be resolved in order to move toward mandatory RFID by January 2023:

Proposal. The United States must move toward an EID system for cattle with target implementation date of January 1, 2023. A comprehensive plan is necessary to address the multitude of very complex issues related to the implementation of a fully integrated electronic system. *A specialized industry-lead [sic] task force with government participation should develop the plan....*

Id. (Emphasis added).

103. USDA’s need for an industry-led advisory group was also endorsed by Gregory Ibach, Under Secretary of Agriculture for Marketing and Regulatory Programs, in his keynote address at the National Institute for Animal Agriculture’s annual conference in April 2018 in Denver. Ibach stated:

The USDA envisions several actions in the facilitation of steps toward national disease traceability. The first [USDA action] is to exit the mechanical and technology discussions and turn those over to industry. Industry is better able to develop their preferred technology with input and support from the USDA.

Keynote Address attached as Exhibit D.

104. Pursuant to this policy, USDA had previously facilitated the creation of the CTWG and its various subcommittees and directed them to provide USDA with recommendations regarding implementation of an RFID mandate.

105. In April 2019, APHIS issued the 2019 “Factsheet” which stated that, “Beginning January

1, 2023, animals that move interstate and fall into specific categories will need official, individual RFID ear tags.”

106. The 2019 Factsheet listed the livestock categories included within this new requirement, including all beef cattle that are sexually intact and 18 months or older; all female dairy cattle; all male dairy cattle born after March 11, 2013; and bison.

107. Plaintiffs filed their initial Petition for Review (ECF 1) in this Court in October 2019, challenging the new USDA policy as announced in the Factsheet for the reason that it violated, *inter alia*, the 2013 Final Rule, the APA and the FACA. In response to the lawsuit, APHIS announced that it had “removed the Factsheet from its Web site, as it is no longer representative of current agency policy.”

108. APHIS’s announcement nonetheless emphasized that its “goals to enhance Animal Disease Traceability (ADT) have not changed.” APHIS indicated that it is developing a new proposal and, before adopting it in final form, will provide an “opportunity for all stakeholders to comment.”

109. APHIS has continued to express its support for mandatory use of RFID devices in the cattle industry.

110. Many cattle producers, including Plaintiffs Tracy and Donna Hunt, Plaintiffs Kenny and Roxy Fox, and other members of Plaintiff R-CALF USA, oppose mandatory use of RFID eartags.

111. Such RFID eartags are operationally and economically unfeasible for the Hunts and the Foxes and for many of R-CALF USA’s members.

112. When the CTWG was formed in 2017, cattle producers who opposed the RFID mandate were fairly represented on the committee. One such member was Plaintiff Kenny Fox.

113. Some members of the livestock industry, particularly those not directly involved in cattle production and those who have a financial interest in expansion of RFID technology, *e.g.*, eartag manufacturers, support mandatory RFID. Those members were also fairly represented on the CTWG.
114. Because of the balance of the CTWG membership, deliberations of the CTWG were largely deadlocked during 2017-2019. Supporters of mandatory RFID took the position that the CTWG should develop recommendations for APHIS on how best to implement the recommendations of the State-Federal Working Group. Opponents focused deliberations on whether the CTWG should support any such recommendations at all.
115. As a result of the deadlock, several pro-RFID members of the CTWG announced in late March 2019 (shortly before Defendants issued the 2019 Factsheet) that they would cease participating in the CTWG unless the CTWG could “develop consensus” on going forward with mandatory RFID. They reiterated that announcement at an April 8, 2019 meeting of the CTWG in Des Moines, Iowa.
116. USDA/APHIS officials participated in the Des Moines, Iowa meeting.
117. No such consensus developed among the members of the CTWG. As a result, the pro-RFID members withdrew from the CTWG at the beginning of June 2019, and the CTWG ceased to exist.
118. Pro-RFID members of the CTWG then announced formation of a new advisory committee, the PTC, which would work with APHIS to develop the methods for implementing the State-Federal Working Group’s recommendations to force RFID tags’ use.
119. The Pro-RFID members stated that membership in the PTC would be open only to those “producers that will be interested in helping advance ADT.”

120. On information and belief, pro-RFID members of the CTWG consulted privately with USDA/APHIS officials before announcing plans to abandon the CTWG and form a new committee whose members would be limited to those individuals, businesses and groups committed to advancing the goals set forth in APHIS's April 2019 Factsheet.
121. Members of the CTWG who opposed mandatory RFID, including Plaintiff Kenny Fox, were excluded from those conversations between the pro-RFID members and the Agencies.
122. The PTC was created for the purpose of blocking anyone who was opposed to mandatory RFID use from participating.
123. The PTC began meeting in June 2019. Its members include Dr. Sarah Tomlinson, a senior employee in APHIS's Veterinary Services branch.
124. A July 2, 2019 press release stated that the PTC "is an independent offshoot of the [CTWG]" and "was established to provide guidance on key issues relating to advancement of the Animal Disease Traceability (ADT) requirements." *See* Exhibit E.
125. For example, at its June 2019 meeting, the PTC examined privacy concerns that may arise when industry participants share animal disease traceability data with the federal Animal Health Event Repository (AHER). *Id.* After hearing presentations from APHIS's Tomlinson and Rich Baca (a senior IT official at USDA), the PTC adopted "preliminary recommendations" on privacy concerns, including that third-party management systems which house data for livestock producers should be required to share certain of that data with AHER. *Id.*
126. The PTC does not publicize its meetings.
127. On information and belief, the PTC continues to meet and continues to provide reports and recommendations to USDA/ APHIS "on key issues relating to advancement" of ADT.

Operation of the CTWG and the PTC

128. The PTC and CTWG and their subcommittees are “advisory committees” within the meaning of FACA. 5 U.S.C. app. 2, § 3(2).
129. The PTC’s membership consists almost entirely of non-governmental individuals, as was true of the CTWG and its subcommittees while they still existed. As noted above, APHIS and USDA established and utilize the CTWG and the PTC to provide advice and recommendations to the federal government on animal identification and traceability issues.
130. Because the Committees qualify as “advisory committees,” Defendants were and are required to comply with all procedural requirements imposed by FACA.
131. Defendants have not complied with any of the FACA requirements.
132. Defendants have not: (i) filed a charter for the Committees; (ii) designated a federal employee to serve as DFO for the Committees for the purpose of approving and attending all meetings; (iii) provided timely notice of meetings in the *Federal Register*; (iv) opened the meetings to the general public or allowed interested persons to attend, appear, or file statements; (v) kept detailed minutes of each meeting, including a record of persons present and a complete and accurate description of matters discussed and conclusions reached; and (vi) made all “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agendas, or other documents which were made available to or prepared for or by each advisory committee” available for public inspection and copying.
133. The Committees have provided advice and recommendations to USDA and APHIS on animal disease traceability issues.
134. On March 23, 2020, counsel for Plaintiffs wrote to APHIS, requesting production of the

documents covered by FACA. A copy of the letter is attached as Exhibit F. No documents have been produced in response to that request. However, no such request is necessary to trigger Defendants' FACA obligations; they are required to make all FACA documents available for public inspection whether or not a document request has been submitted.

135. In establishing and utilizing the PTC, Defendants have failed to comply with FACA's requirement that advisory committees be "fairly balanced in terms of the points of view represented." 5 U.S.C. app. 2 § 5(b)(2).

136. The primary reason for abolishing the CTWG and replacing it with the PTC was to eliminate the fair balance that had existed on the CTWG.

137. Membership in the PTC was limited to individuals who supported the State-Federal ADT Working Group's recommendation to impose mandatory RFID by 2023.

138. A large percentage of cattle producers, including Plaintiff Kenny Fox, oppose mandatory RFID and thus were automatically excluded from consideration for membership on the PTC. The PTC membership includes few, if any, individuals who derive a significant portion of their livelihoods from cattle production.

CLAIM I

Violation of the Federal Advisory Committee Act § 9(c)

139. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 138 of this Amended Complaint.

140. No charter has been filed for the PTC, for the CTWG, or for their subcommittees.

141. FACA and its implementing regulations prohibit any action by the Committees until after charters have been filed. 5 U.S.C. app. 2 § 9(c) ("No advisory committee shall meet or take any action until an advisory committee charter has been filed."); 41 C.F.R. § 102-3.70.

142. Any activities undertaken by the Committees therefore violated FACA and its implementing regulations.

143. The Court's intervention is necessary to enforce FACA'S charter requirement.

144. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants' continuing violation of FACA.

CLAIM II

Violations of the Federal Advisory Committee Act § 10(a)

145. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 144 of this Amended Complaint.

146. The Committees have held meetings without ever publishing notice of such meetings in the *Federal Register*.

147. The Committees' holding of meetings without providing public notice violated FACA and its implementing regulations.

148. The Court's intervention is necessary to enforce FACA's public notice requirements.

149. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants' continuing violation of FACA.

CLAIM III

Violations of the Federal Advisory Committee Act § 10(a)

150. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 149 of this Amended Complaint.

151. The Committees have held meetings without ever publishing notice of such meetings in the *Federal Register*.

152. The meetings of the Committees have not been open to the public so that interested parties

could attend, nor has any determination of closure been provided to the public.

153. The Committees' holding of meetings without providing public access violated FACA and its implementing regulations.

154. The Court's intervention is necessary to enforce FACA's public-access requirements.

155. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants' continuing violation of FACA.

CLAIM IV

Violation of Federal Advisory Committee Act § 10(b)

156. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 155 of this Amended Complaint.

157. Defendants have failed to keep detailed minutes of each meeting, including a record of persons present and a complete and accurate description of matters discussed and conclusions reached.

158. The Court's intervention is necessary to enforce FACA's record-keeping and public-disclosure requirements.

159. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants' continuing violation of FACA.

CLAIM V

Violation of Federal Advisory Committee Act § 10(b)

160. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 159 of this Amended Complaint.

161. Defendants have failed to make available to the public for inspection and copying the "records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agendas, or

other documents which were made available to or prepared for or by” the Committees (including records of contacts between Defendants and individual members of the Committees with respect to Committee matters), as required by FACA. This failure has continued despite Plaintiffs’ March 23, 2020 letter explicitly requesting production of such materials.

162. The Court’s intervention is necessary to enforce FACA’s public-disclosure requirements.

163. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants’ continuing violation of FACA.

CLAIM VI

Violation of Federal Advisory Committee Act § 10(e)

164. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 163 of this Amended Complaint.

165. Defendants have failed to designate a federal employee to serve as the DFO for the Committees, and to ensure that the DFO approves and attends all meetings of the Committees.

166. The Court’s intervention is necessary to enforce FACA’s federal-employee designation requirements.

167. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants’ continuing violation of FACA.

CLAIM VII

Violation of Federal Advisory Committee Act § 5(b)

168. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 167 of this Amended Complaint.

169. Defendants have failed to comply with FACA’s fair-balance requirements with respect to the composition of the PTC. In particular, Defendants have excluded from membership on the

PTC representation for the many cattle producers who oppose adoption of mandatory RFID rules.

170. The Court's intervention is necessary to enforce FACA's fair-balance requirements.

171. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants' continuing violation of FACA.

CLAIM VIII

Violation of the Administrative Procedure Act

172. Plaintiffs repeat and incorporate by reference the allegations of Paragraphs 1 through 171 of this Amended Complaint.

173. Defendants have violated the APA by: (i) failing to file required charters; (ii) failing to designate a federal employee to serve as DFO for the Committees, and to ensure that the DFO approves and attends all meetings of the Committees; (iii) failing to provide public notice of meetings of the Committees in the *Federal Register*; (iv) failing to provide public access to such meetings; (v) failing to make Committee records available for public inspection, even after an explicit request for access; (v); (vi) failing to keep detailed minutes of each meeting, including a record of persons present and a complete and accurate description of matters discussed and conclusions reached; and (vii) failing to ensure that membership of the PTC is fairly balanced in terms of the points of view represented. Therefore, under the APA, Defendants have unlawfully withheld or unreasonably delayed agency action, 5 U.S.C. § 706(1), and acted contrary to law. 5 U.S.C. § 706(2)(A).

174. These failures to comply with FACA's requirements constitute arbitrary and capricious agency action in violation of the APA.

175. These failures to comply with FACA's requirements constitute "final agency action for

which there is no other adequate remedy in a court,” and therefore are “subject to judicial review.” 5 U.S.C. § 704; *see id.* § 702.

176. The Court’s intervention is necessary to enforce the APA.

177. Absent declaratory and injunctive relief, Plaintiffs will suffer irreparable harm from Defendants’ continuing violation of the APA.

178. Defendants’ failure to comply with FACA’s statutory requirements prevented and continues to prevent public notice and access to the activities of the Committees.

179. The Defendants’ failure to comply with FACA’s fair-balance requirements prevented and continues to prevent the PTC from operating in a statutorily approved manner, and it prevented and continues to prevent Plaintiff Kenny Fox (or any other like-minded cattle producers) from attending and/or serving on the PTC.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray that this Court award the following relief:

A. A declaration that the PTC and the CTWG (including all of their subcommittees) were and are subject to FACA and all its requirements.

B. A declaration that Defendants violated FACA and/or the APA by failing to file charters for the Committees.

C. A declaration that Defendants violated FACA and/or the APA by failing to provide public notice and access to Committee meetings.

D. A declaration that Defendants violated FACA and/or the APA by failing to provide public access to the Committees’ records.

E. A declaration that Defendants violated FACA and/or the APA by failing to keep detailed minutes, including a record of persons present and a complete and accurate description of the

matters discussed and conclusions reached.

F. A declaration that Defendants violated FACA and/or the APA by failing to designate a federal employee to serve as the Designated Federal Officer for each of the Committees, and to ensure that the DFO approved and attended all meetings of the Committees.

G. A declaration that Defendants violated FACA and/or the APA by failing to comply with FACA's fair-balance requirements with respect to the composition of the Producers Traceability Council.

H. An order that Defendants make available for public inspection and copying all records of the Committees.

I. An order requiring the Producers Traceability Council to comply with all applicable FACA requirements, including but not limited to the charter, public notice and access, keeping detailed minutes, disclosure, DFO, and fair-balance requirements.

J. An order enjoining and restraining Defendants, while addressing RFID issues and/or other animal identification and disease traceability issues, from considering or making use of any of the materials generated by or recommendations made by the Committees at a time when the Committees were not in compliance with all FACA requirements.

K. Such other relief as the Court deems just and proper, including an award of attorneys' fees and costs.

Dated this 6th day of April 2020

Attorneys for Petitioners/Plaintiffs

/s/ Harriet M. Hageman
Harriet M. Hageman (Wyo. Bar # 2656)
Senior Litigation Counsel
New Civil Liberties Alliance
1225 19th Street NW, Suite 450
Washington, DC 20036
Harriet.Hageman@NCLA.legal
(202) 869-5210

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on April 6, 2020, a copy of this PETITIONERS AMENDED COMPLAINT FOR VIOLATION OF THE FEDERAL ADVISORY COMMITTEE ACT was filed with the Court's CM/ECF system, which will send notice of electronic filing to counsel of record.

/s/ Harriet M. Hageman
Harriet M. Hageman

EXHIBIT A
(FACA CLAIM)

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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.

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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

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EXHIBIT B

(FACA CLAIM)

APHIS Statement on Animal Disease Traceability

Last April, APHIS posted a factsheet to provide producers with information about the Agency's guidelines and goals related to Animal Disease Traceability. Since the Factsheet was posted, APHIS has listened to the livestock industry's feedback. In light of these comments and current Executive Branch policy, APHIS believes that we should revisit those guidelines. APHIS has removed the Factsheet from its Web site, as it is no longer representative of current agency policy.

Recent executive orders have highlighted the need for transparency and communication on the issues set forth in the Factsheet before placing any new requirements on American farmers and ranchers. *See* Executive Orders 13891 and 13892. Consistent with these orders, APHIS has decided not to implement the requirements outlined in the April 2019 Factsheet regarding the type of identification devices that USDA-APHIS will regard as official eartags and the dates by which they must be applied to cattle.

While the need to advance a robust joint Federal-State-Industry Animal Disease Traceability (ADT) capability remains an important USDA-APHIS objective, we will take the time to reconsider the path forward and then make a new proposal, with ample opportunity for all stakeholders to comment.

As we undertake this reconsideration of whether or when to put new requirements in place, we will encourage the use of Radio Frequency Identification (RFID) devices through financial incentives that are also consistent with suggestions we have received from cow/calf producers and others. We continue to believe that RFID devices will provide the cattle industry with the best protection against the rapid spread of animal diseases, as well as meet the growing expectations of foreign and domestic buyers.

It is important to note that despite any future actions USDA-APHIS may take regarding official identification devices, the underlying ADT regulations apply only to sexually intact beef animals over 18 months of age moving in interstate commerce, cattle used for exhibition, rodeo and recreational events, and all dairy cattle. **Those regulations permit brands and tattoos as acceptable identification if the shipping and receiving States agree.**

USDA's goals to enhance Animal Disease Traceability (ADT) have not changed; our aim is to:

- Encourage the use of electronic identification for animals that move interstate under the current ADT regulation;
- Enhance electronic sharing of basic animal disease traceability data;
- Enhance the ability to track animals from birth to slaughter; and

- Increase the use of electronic health certificates

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EXHIBIT C (FACA CLAIM)

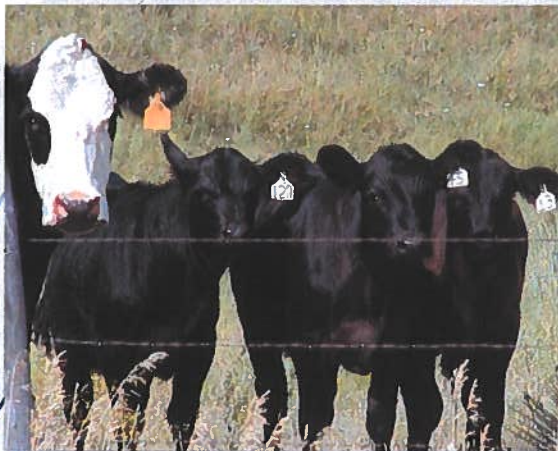
Animal Disease Traceability

Summary of Program Reviews and Proposed Directions from State-Federal Working Group

April 2018

This report provides an overview of the Animal Disease Traceability (ADT) Program review, a summary of stakeholder feedback received during listening sessions in 2017, and the preliminary recommendations of the State-Federal Animal Disease Traceability Working Group.

USDA does not necessarily endorse the recommendations included in this report. USDA will continue to review and explore opportunities and recommendations to improve the current ADT Program and enhance animal disease traceability.



United States Department of Agriculture
Animal and Plant Health Inspection Service
Veterinary Services



Animal Disease Traceability

Summary of Program Reviews and Preliminary “Next Step” Proposals

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Preface

This report provides a brief overview of the ADT framework and summarizes the reports prepared and the reviews conducted to evaluate its overall impact on animal disease traceability. Feedback obtained from industry stakeholders, and State and Federal animal health officials during extensive outreach efforts in 2017 provides details on the progress of ADT, successes, and challenges or problematic areas of the initial framework.

A State and Federal working group with substantial experience and knowledge of animal disease traceability comprehensively reviewed stakeholder feedback and prepared the preliminary proposals contained in this report. Members of the working group presented a preliminary draft of these proposals at the Traceability Forum hosted by the National Institute for Animal Agriculture (NIAA) and the United States Animal Health Association (USAHA) in Denver, Colorado on September 26 and 27, 2017.

Introduction and ADT Program Description

Background

The U.S. Department of Agriculture (USDA) provides various programs that support the economic viability of animal agriculture. The Veterinary Services (VS) unit of the USDA's Animal and Plant Health Inspection Service (APHIS) works to improve the health, productivity, and quality of life for animals and people by maintaining and promoting the safety and availability of animals, animal products, and veterinary biologics.

Animal disease traceability- or knowing the whereabouts of diseased and at-risk animals are, where they have been, and when – is important to ensuring a rapid response when animal disease events take place. Although animal disease traceability does not prevent disease, an efficient and accurate traceability system reduces the number of animals and response time involved in a disease investigation, which, in turn, reduces the economic impact on owners and affected communities.

ADT Focus

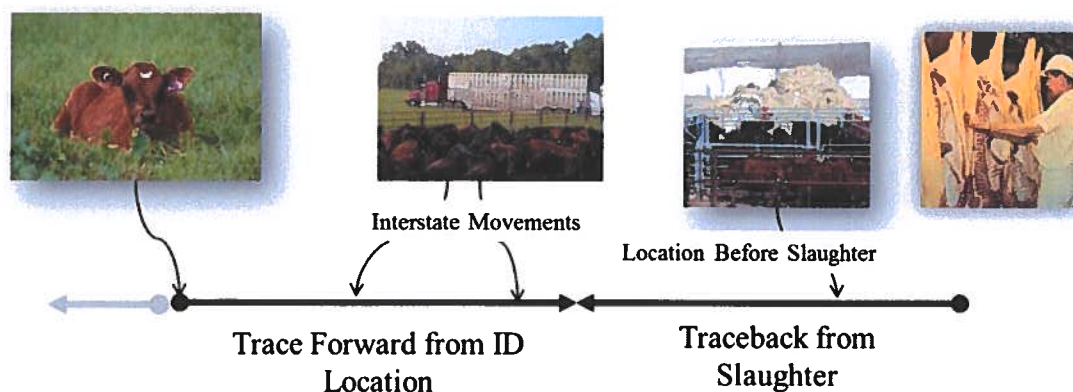
The current approach to traceability in the United States is the result of significant discussion and compromise. Federal policy regarding traceability has been amended several times over the past decade based on stakeholder feedback, particularly from the cattle industry. In early 2010, USDA announced a new approach for responding to and controlling animal diseases, referred to as the ADT framework. Key principles of the 2010 framework include:

- Application to animals moved interstate.
- Administration by the States and Tribal Nations to increase flexibility.
- Encouraging utilization of lower cost technology.
- Transparent implementation through the full Federal rulemaking process.

USDA published a proposed rule, "Traceability for Livestock Moving Interstate," on August 11, 2011, and the final rule on January 9, 2013. Under the final rule, unless specifically exempted, livestock moved interstate must be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other documentation. Covered livestock include cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids. The requirements do not apply to livestock moving:

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

As currently structured, ADT is a "bookend" system (Figure 1) which enables animal health officials to trace a covered animal forward from the location of official identification and backward from the animal's last location, which is often the termination point or slaughter plant. The rule includes identification (ID) and movement documentation exemptions that support the principle of flexibility at local levels.

Figure 1. U.S. Traceability with ADT – “Bookend System.”

ADT also focuses on interstate animal movements to provide information on the originating and destination premises for animals moved from one State to another. Animal disease programs, brand inspection and in certain situations, industry programs like breed registries, performance recording systems, or marketing programs also provide traceability data.

While 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 leverage the strengths and expertise of States, Tribes, and producers and provide them the flexibility to develop the most effective traceability approaches to identify animals moving interstate nationally.

Although the requirements apply to multiple livestock species, the ADT program’s primary focus has been enhancing traceability in cattle as bovine disease eradication programs are phased out. For example, the success of the U.S. brucellosis eradication program, while certainly a positive development, has resulted in a steep decline in the number of cattle required to be tested and therefore officially identified. As a result of fewer cattle with official ID, the time required to trace animals during a disease investigation had steadily increased until the implementation of the ADT program.

Since the rule went into effect in March 2013, the focus of ADT has been the following areas:

- Educating stakeholders about the requirements;
- Identifying animals by using official ID;
- Collecting animal movement information;
- Increasing the number of records in searchable data systems; and
- Monitoring compliance.

Traceability performance measures (TPM), administered through trace test exercises, examine the successful administration of key ADT program elements, particularly official ID devices, ICVI and other movement documents.

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ADT Reviews

ADT has been one of APHIS' top ten priorities since 2013, after the Agency issued a final rule to improve the United States' ability to trace livestock and poultry when disease events occur. In fiscal year (FY) 2015, the APHIS Administrator selected the ADT program for an internal review, as part of ongoing periodic assessments of Agency activities. More recently, APHIS initiated a program and stakeholder review in late 2016, to determine the effectiveness of the framework, as well as implementation successes and shortfalls over the past 3 years. In addition to the program staff assessment, APHIS conducted extensive outreach activities in 2017 with State, Tribal, and Federal animal health officials and industry to obtain grassroots feedback from producers and other sectors of the livestock industry.

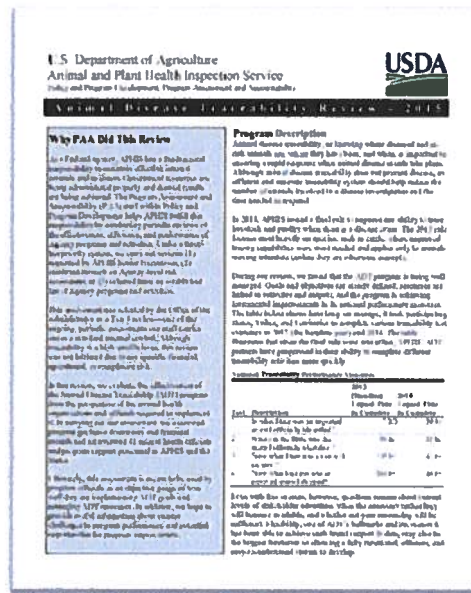
The multiple reviews provide insight into how well the program is being managed; the efficiencies gained in administering tracebacks, aspects of ADT that are working well, traceability regulations that are problematic and/or creating confusion, and gaps remaining in tracing capabilities since the implementation of the framework. Such program reviews provide essential feedback, which APHIS uses to identify program priorities and future collaborative opportunities with industry.

Internal APHIS Review

In FY 2015, two years after the publication of the ADT final rule, the APHIS Administrator selected the program for review by an independent Agency assessment staff that conducts periodic reviews of the effectiveness, efficiency, and performance of APHIS programs and activities. The review team evaluated the effectiveness of the ADT program from the perspective of the animal health organizations and officials that implement it. The assessment team were implementing goals and managing resources. It also provided information regarding challenges to program performance and opportunities for improvement.

In brief, the review team found:

- The ADT program was well managed, had clearly defined goals and objectives, and was helping State and Federal animal health officials achieve incremental improvements in their animal disease tracing capability.
- APHIS was managing its ADT resources capably. APHIS applied the majority of ADT funding to cooperative agreements with the States, Tribes, and Territories, and to Agency employee salaries. In both cases, direct links existed between the resource application and program activities, outputs, and outcomes. The review team noted, however, that FY 2015 resource levels might not be sufficient to sustain continual program improvement.



- Achieving a more comprehensive and effective traceability system was still a distant goal. Despite the progress recorded, at the time of the 2015 review, most animal health officials indicated that to achieve a truly effective traceability system, the ADT program must:
 - Mandate electronic ID devices for cattle (after officials ensured that appropriate tag and reader technology solutions were available);
 - Incorporate beef cattle under 18 months into the ADT rule.

The review listed several outstanding challenges that APHIS and its cooperators faced in ADT implementation: (1) the program's flexibility, which helped it achieve broad support but also allowed for differing regulatory requirements among the States, potentially affecting compliance, traceability efficiency, and long-term feasibility; (2) available technology, which was limited by effectiveness, cost, and acceptance by stakeholders; (3) resource levels, which may not have been adequate to sustain continual ADT improvement into the future; and (4) the lack of compelling external forces or messaging to influence stakeholders who were opposed or ambivalent towards ADT.

The review also noted opportunities on which APHIS could focus to ensure the program was as well positioned as possible for continuing successful ADT implementation. These opportunities included: (1) conducting more data analysis to focus implementation efforts; (2) continuing to invest in technology that would allow individual animal movements to be recorded at a reasonable cost without impeding commerce; (3) encouraging greater Federal/State collaboration at all levels; (4) setting priorities for ADT funds that became available unexpectedly; (5) leveraging stakeholder relationships to spread information about ADT; and (6) ensuring an updated plan is in place for a full traceability system should a worst-case scenario animal disease event occurrence prompt the immediate implementation of such a system.

In addition to the identified challenges and opportunities, the review team recommended the ADT program focus on establishing definitive performance levels within the current system and structure, identifying the ultimate goal for ADT, and ensuring APHIS is positioned to achieve this goal over the long term.

ADT Program Assessment

The objective of the assessment conducted by ADT program staff in late 2016 was to evaluate the program and the effectiveness of Title 9, *Code of Federal Regulations* (9 CFR) Part 86 pertaining to animal disease traceability related to cattle and bison. The assessment included evaluation of documentation on actual program traces (e.g., tuberculosis) and trace exercises administered to capture TPMs under the ADT cooperative agreements with States; review of monitoring and compliance efforts including Investigative and Enforcement Services (IES) investigations; and informal discussions with State and Federal animal health officials.

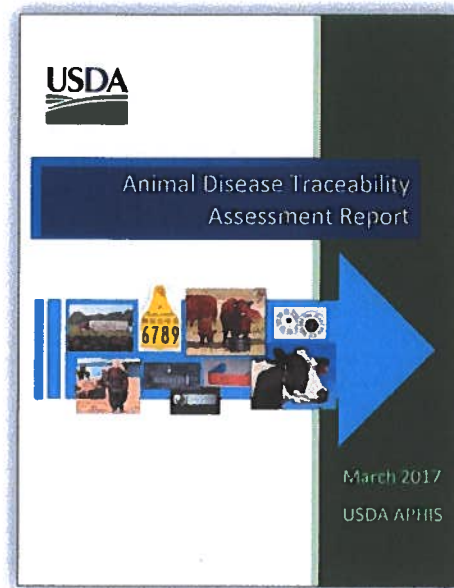
The assessment report reflects that the basic framework of ADT established in 2013 is successfully implemented. The TPMs denote an improvement in the administration of official ID and movement documentation for covered livestock. Specifically the elapsed times to complete TPMs have decreased, and the percent of traces successfully completed each fiscal year has increased. The TPM improvements are primarily attributed to the timely retrieval of electronic records for official ID (tags distributed and tags applied) and movement documents.

While APHIS is confident that implementation of the basic ADT framework was successful, some of its parameters limit the progress of the program, and significant gaps still exist within current tracing capabilities. Examples of these gaps include:

- Application of the official ID requirement only to livestock moving interstate creates significant confusion in marketing channels and enforcement challenges.
- Use of visual-only low cost ID eartags presents obstacles for collecting animal ID efficiently and accurately.
- The traceability regulations do not include feeder cattle, which APHIS views as an essential component of an effective traceability system in the long-term.
- Some federally approved slaughter plants could improve the collection of ID devices at slaughter and the correlation of the devices to the carcass through final inspection.

The full assessment report is available at:

<https://www.aphis.usda.gov/traceability/downloads/adt-assessment.pdf>

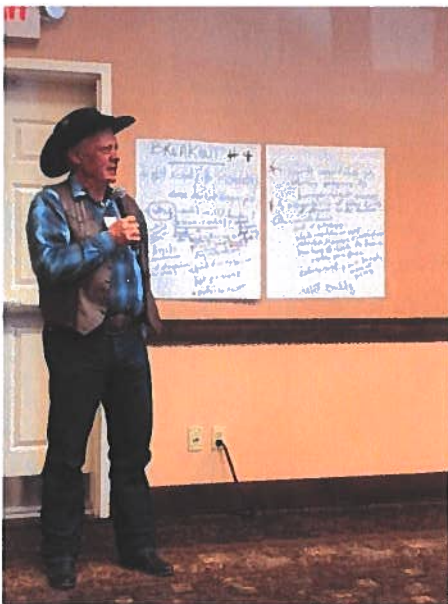


Public Meetings

As an adjunct to the ADT program assessment, APHIS felt it was essential for industry stakeholders from all sectors of the cattle industry to offer their opinions on relevant issues to help define traceability objectives and how they want to achieve those goals. APHIS conducted nine ADT public

meetings at the locations listed below as part of the outreach efforts in 2017. The purpose of these meetings was to solicit industry input regarding their experiences with ADT: What areas are working well? What aspects are challenging, confusing, or problematic? How can these obstacles be rectified? What level of traceability should be considered if we are to move beyond the basic traceability framework?

Stakeholders also had the opportunity to comment on the current ADT framework via *regulations.gov* through July 31, 2017. APHIS received 462 written comments during this period. A summary of the feedback obtained from the public meetings and written comments are included on page 11.



Location / Dates of Public Meetings

Oklahoma City, OK – April 11, 2017
 Riverdale, MD – April 13, 2017
 Nashville, TN – April 20, 2017
 Bloomington, MN – May 2, 2017
 Denver, CO – May 4, 2017
 Sacramento, CA – May 11, 2017
 Billings, MT – May 24, 2017
 Omaha, NE – July 18, 2017
 Fort Worth, TX – July 20, 2017

State Federal ADT 2017 Working Group

In 2017, APHIS established a State-Federal ADT Working Group in accordance with the Federal Advisory Committee Act to assist APHIS in reviewing the ADT regulation, examine feedback from the public meetings and written comments, and provide input based on their experiences with

disease traceability issues. ADT staff worked through the National Assembly of State Animal Health Officials to obtain representation for each U.S. Animal Health Association district. The working group focused on aspects of ADT related to cattle and bison. The group met every two weeks via conference call starting March 21, 2017.

Members of the working group are listed below and the working group's preliminary proposals for addressing key traceability issues are covered on page 16 of this report.

Name	Affiliation
Geiser-Novotny, Sunny	Cattle Health Staff/ ADT Veterinarian, APHIS VS SPRS
Hammerschmidt, Neil	Manager, ADT, APHIS VS SPRS
Halstead, Steve	District Director, APHIS VS SPRS
Hickam, Linda	State Veterinarian, Missouri Department of Agriculture
Hughes, Dennis	Nebraska State Veterinarian, Nebraska Department of Agriculture
Kitchen, Diane	Veterinarian Manager, Florida Department of Agriculture and Consumer Services
Linfield, Tom	Assistant District Director, APHIS VS SPRS
Massengill, Rose	Animal Identification Coordinator, APHIS VS SPRS
McGraw, Paul	State Veterinarian, Wisconsin Department of Agriculture, Trade and Consumer Protection
Odom, Rick	Animal Health Information Systems Manager, Virginia Department of Agriculture
Schwabenlander, Stacey	Senior Veterinarian, Minnesota Board of Animal Health
Scott, Aaron	National Preparedness and Incident Coordination Center (NPIC), APHIS VS SPRS
Smith Justin	Deputy Animal Health Commissioner, Kansas Department of Agriculture
Steck, Allie	Animal Disease Traceability Coordinator, Pennsylvania Department of Agriculture
Turner, Alex	Traceability Veterinarian, Colorado Department of Agriculture
Westly, Rolf	Veterinary Medical Officer, APHIS VS SPRS
Winslow, Thatch	Assistant State Veterinarian, Wyoming Livestock Board
Zaluski, Marty	State Veterinarian , Montana Department of Livestock

Summary of Feedback on the ADT Program

Since the publication of 9 CFR Part 86 in January 2013, APHIS has sought feedback on the ADT framework from industry, State, Tribal, and Federal animal health officials with the goal of enhancing our tracing capabilities for emergency response, disease control, and eradication programs. This report summarizes the most recent stakeholder feedback that APHIS received during a series of nine public meetings held across the nation this year and through a Federal Registry notice requesting comment on the program.

Participants in attendance at the ADT public meetings expressed appreciation for the opportunity to discuss the ADT framework and collaborate with APHIS on future traceability objectives. Both meeting attendees and written comments acknowledged that the general framework has been successful in improving the official ID of covered livestock, the documentation of interstate movement, and the availability of those records. The information below summarizes the concerns with the original framework and considerations of future traceability opportunities.

General Concerns

Confidentiality and Security of Information Systems: The issue of confidentiality continues to be an issue of concern among producers, as is the overall security of the information technology (IT) systems. The producers indicated support for the ADT implementation changes that placed more responsibility for holding their information at the State-level.

Liability: Producer liability remains an area of concern. Previous discussions on animal ID primarily focused on producer liability when diseased animals are traced to a premises that may have held the animal prior to the infection. Recent discussions involved concern about the liability related to injury of animals or personnel when working cattle for tagging, manually reading tags, etc.

Cost: Meeting attendees and commenters stated that the cost of traceability must be distributed across all sectors of the industry. In particular, if electronic ID (EID) technology is implemented as the only method of official ID, the cow/calf industry should not cover the cost of EID tags when the entire industry benefits. Some commenters noted that other sectors would contribute significantly to the cost of the infrastructure for EID and as a result, the cost to implement EID would not be borne by the cow/calf sector alone.

Small Producers: APHIS should consider issues associated with requiring small producers to comply with an enhanced traceability regulation, including costs that are proportionally higher for this segment of the industry due to economy of scale and management limitations (for example, the ability to tag their own cattle). This sector includes a significant number of producers and cattle. Thus, their viability impacts markets and other service providers. Producers that sell their beef products direct to consumers provided many written comments that expressed their concerns about the cost and burden associated with animal ID, in particular, electronic methods. Individuals from this sector also noted that their animals are already traceable from custom slaughter facilities back to their premises.

Common Issues Regarding the Current ADT Framework

Focus of ADT: Some participants believe that APHIS should administer ADT for animal disease control and leave marketing opportunities to Agricultural Marketing Service (AMS) programs and the private sector. However, feedback also acknowledged the need for the United States to have a national traceability program to meet international trading partners' requirements for animal disease control and felt the two topics are linked to one another.

Beef Feeder Cattle (Beef Feeders): The inclusion of beef feeders in the official ID requirement was the primary topic of discussion at public meetings. While a large number of stakeholders acknowledged that beef feeders need to be part of the official ID requirements at some point, the consensus was to address the gaps in the current framework, which covers beef breeding cattle over 18 months of age and all dairy, before expanding the official ID requirements to beef feeder cattle. Additional points of consensus regarding the official ID for beef feeders included:

- The expansion of regulations for the official ID of beef feeder cattle under 18 months of age must conform to normal rulemaking procedures.
- Beef feeders could be included after an expanded framework is fully functional for breeding animals, including the requirement for official EID and the supporting infrastructure.
- Other individuals suggested incremental implementation of beef feeder requirements; with the initial objective to obtain birth premises ID and tag retirement, then as infrastructure becomes established, phase in the collection of movement data.
- While beef feeder cattle official ID requirements should be delayed, discussion on the processes to include beef feeders in the ADT program should continue ensuring preparation of an implementation plan.
- APHIS should conduct a cost-benefit analysis on official ID/traceability of beef feeder cattle to support future discussions/decisions on this topic and to determine the level of traceability warranted for beef feeder cattle.
- Livestock markets, while supportive of tagging sites for the population currently covered, explained that the burden of tagging beef feeders at their auctions is not feasible and solutions to tagging at the farm/ranch or before arriving at the auctions are essential. An alternative suggestion was to apply the official tag for these cattle at the first receiving premises when working these cattle for management purposes. The records of tags applied should provide contact information of the person responsible for the cattle when sold at the markets.
- Some individuals expressed concern that the official ID of all beef feeders would diminish market advantages and premiums of added-value programs.

ID to Birth Premises: To better achieve traceability, most individuals supported the need to apply official ID at the birth premises for animals covered by the official ID regulation. If that is not practical, they supported tagging at change of ownership or first point of commingling, versus at the time of first interstate movement, provided the animals are traceable to the birth premises. Since beef cattle under 18 months of age would remain exempt until determined otherwise, producers would officially identify adult beef animals when first shipped after 18 months of age for change of ownership or commingling.

Flexibility and Exemptions: Feedback from the meetings indicated that industry feels the current framework is too flexible and that there are too many exemptions, which confuse the interpretation of the regulations. While recalling the reasons for the exemptions and their intent, there was strong consensus that the exemptions create too many traceability gaps in the classes of cattle and bison covered under the current rule. The exemptions also make enforcement of the existing regulation more challenging, as it is difficult to determine if an animal at subsequent locations required official ID earlier in life.

State Differences: There was a strong consensus more standardization and uniformity of State import requirements is necessary. Preparing interstate certificates of veterinary inspection (ICVIs) has become very complicated. Individuals referenced the requirement by some States to record official ID numbers of dairy steers on ICVIs as one example of how State regulations differ from the Federal regulation and from one State to another.

Uniform Enforcement: The livestock markets voiced concerns that enforcement of the current regulation is inconsistent and unfairly targets markets, while private treaty sales and online auctions are not monitored or held to the same degree of accountability. They identified the lack of enforcement for other industry sectors as a gap that must be rectified. There was a strong sentiment that more stringent enforcement actions at the markets would drive sales through non-market venues. However, most individuals agreed that compliance would automatically improve if all cattle (less beef feeders) required official ID on first movement from the birth premises.

EID Technology: Many industry participants and animal health officials agreed that EID is necessary to achieve cost-effective traceability. Producers, market managers, accredited veterinarians, and others expressed concerns about cattle handling challenges and economic losses created by the need to restrain cattle to manually read and record the official ID number on small visual-only eartags. While the National Uniform Eartagging System (NUES) tags – traditionally known as the metal clip “brite” tags – are inexpensive to purchase, individuals from across the industry indicated there is significant expense throughout the production chain associated with their use. Feedback also indicated that many support the phase-out of free NUES tags and that APHIS should eliminate them as an official method of ID. However, multiple issues need to be addressed before the transition to EID can occur, including:

- If radio frequency ID (RFID) is to be utilized, the establishment of standards, including one technology (low-frequency (LF) vs ultra-high frequency (UHF)) is critical. Most stakeholders supported a dual technology tag as an interim measure.
- The infrastructure must be in place to support the transition to EID.
- Cost remains the primary concern of producers and representatives from other sectors of the industry for both the reader infrastructure and tags; however, the use of EID would provide substantial savings due to the increased efficiency associated with the technology.
- Availability and use of electronic forms, in particular, electronic ICVIs. Obtaining records electronically would decrease cost and improve the completeness and accuracy of the data. Additionally, retiring animal numbers at slaughter would be feasible, where it has been cost-prohibitive with visual-only tags.
- A cost analysis on metal NUES tags to show the full cost of tags when working cattle to manually record ID numbers (labor, stress and shrink, injury, etc.), as well as their limitations relative to traceability, e.g., tag retirement, to more accurately illustrate the

costs of both visual-only and EID tags.

- Proportionally higher implementation costs for smaller producers, who sell direct to consumers and believe their livestock are already highly traceable.

Movement Documents: Discussions around movement documents focused primarily on the need for an ADT program definition of a movement document, including the necessary data elements as the minimum standards. Importing States should determine additional requirements for animal health certificates, ICVIs, permits, etc. The proposal to establish a nationally standardized, electronic movement document alternative to ICVIs garnered participant support. Additionally, there was support to increase the value and volume of owner-shipper statements (OSS) by implementing an efficient process to collect and store OSS information by offering an electronic version.

Collection of ID at Slaughter: As reported in the ADT assessment, APHIS noted inconsistencies with tag collection and their accurate correlation to the carcass at some slaughter facilities. APHIS is working with field personnel and the Food Safety Inspection Service (FSIS) to address the issue. State animal health officials and industry recognize this shortfall and identify it as a high-priority gap in the current framework that needs to be rectified.

Other Comments

Official ID Tags: There are differing views on using the same eartag for both official ID and management. Some producers prefer the same tag for both purposes, as it makes the tagging process more efficient and the official tag works well with herd management practices. Other producers commented that when they purchase cattle with official IDs with existing management numbers on the same tag, it creates conflict with their management numbering systems and subsequently, they prefer not to have such tags used for ADT. However, there was consensus that APHIS should consider the use of one basic official eartag to increase the awareness of which tag is official, lessen accidental removal, and improve compliance. Additionally, commenters recommended that ID devices approved for AMS' Process Verified Program (PVP) and those designated as official by APHIS ADT should be compatible.

Brand certificates and inspection: Individuals commented on the long-term value of brands and brand inspection. Commenters stated that official ID tags should not be represented as an alternative or promoted to replace brands. Animal health officials in brand States noted the value of brands and brand inspection for proof of ownership and providing information when conducting traceback investigations, but admitted that brands alone do not provide the level of traceability needed for disease control.

Outreach: Many commenters indicated that APHIS and States would need to ensure enhanced outreach efforts to reach producers regarding revisions to traceability requirements.

Recording Official ID Numbers: Participants raised the issue of recording individual ID numbers on ICVIs, and provided the suggestion to list ranges of numbers to avoid having to rework cattle after a sale to obtain the specific IDs going to each premises. Individuals also suggested that a premises ID number tag could suffice for traceability to avoid the current challenge of recording individual IDs.

Cattle Imported to the United States: Some industry participants expressed concern regarding mandated traceability in the domestic herd for ADT while allowing importation of animals and/or products from countries affected with foot-and-mouth disease (FMD) and tuberculosis (TB), such as Brazil and Mexico, respectively. Additionally, attendees raised concerns about the quality of diagnostic tests and vaccination options related to TB and brucellosis, and the lack of available funding to improve those and the FMD vaccine bank.

Data Systems: Many State animal health officials expressed concern that APHIS' data systems are not efficient and indicated that even enhanced traceability would fail without efforts to increase electronic submission of data and data sharing capabilities.

*Proposed Direction from State-Federal Working Group¹

The State-Federal ADT 2017 Working Group reviewed the ADT regulation, examined feedback from the public meetings and written comments, and provided input based on their experiences with disease traceability issues to provide the following preliminary proposals pertaining to traceability of the cattle sector.

1. INTERSTATE MOVEMENTS THAT DO NOT APPLY TO THE TRACEABILITY REGULATIONS

Smaller producers that raise cattle for direct sale of meat products to consumers express concern regarding the cost of future traceability requirements. The regulation does not pertain to interstate movements to a custom slaughter facility for preparation of meat (in accordance Federal and State regulations) as such cattle are highly traceable to the premises of origin in the event of disease detection at the slaughter facility.

Proposal

Maintain the policy that traceability regulations do not apply to interstate movements to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat.

Note: The proposal listed in #3 below clarifies that the exclusion of movements to custom slaughter would pertain only to animals that were born on the premises that ships directly to the custom slaughter facility.

2. CATTLE POPULATION COVERED IN THE OFFICIAL IDENTIFICATION REGULATIONS

The initial ADT regulation excluded beef cattle under 18 months of age from the official ID requirement. While most stakeholders acknowledged that the regulation should include this sector of the cattle industry at some point, there is overwhelming support to address several shortfalls or gaps within the current ADT framework first. Proposal 14 of this report specifically addresses the requirement of official ID for beef feeder cattle.

¹ The proposed direction provides a summary of stakeholder feedback, but does not necessarily represent the position of USDA

Proposal

Maintain the current population of livestock covered by the official ID requirements. The ADT rule will continue to include:

- All dairy
- Beef cattle > 18 months of age
- All rodeo and exhibition cattle

Industry leaders should evaluate the merit and practicality of including official ID requirements for beef bulls and beef heifers under 18 months of age specifically sold for breeding purposes. This approach aligns with the priority to identify breeding animals and would align with some existing State requirements. The working group acknowledges the potential confusion and difficulty of enforcing this requirement, thus recommends industry provide feedback on this issue.

3. LIMITING OFFICIAL IDENTIFICATION REQUIREMENT TO INTERSTATE MOVEMENTS

The most significant impediment to disease traceability resulting from 9 CFR Part 86 is the restriction that the official ID requirement applies only to livestock that move interstate. Cattle movements are quite diverse, often with multiple congregation points and opportunities for disease spread prior to interstate movement. An individual animal infected with a highly contagious disease may never leave the State where it was born, remaining unidentified while spreading disease to many other animals that subsequently move to several new states.

The regulation creates significant confusion in marketing channels where cattle of differing requirements may be mixed, as well as enforcement challenges and complications. The interstate ID requirement often places the onus on livestock markets, where the sorting and tagging of animals is often cumbersome and may fall short of full compliance. Additionally, the ability to determine compliance with the official ID requirement at slaughter plants is nearly impossible due to limited resources.

Proposal

Cattle should be identified to their birth premises², thus the official ID records must provide birth premises information for the animal. APHIS should revise Federal regulations to include interstate commerce and the appropriate authority – either USDA or State officials – should establish regulations that trigger official ID requirements at:

- Change of ownership
- First point of commingling
- Interstate movement (may reflect no sale and no commingling)

4. ELECTRONIC IDENTIFICATION SYSTEM FOR CATTLE

Possibly the most significant change in stakeholder opinion since the establishment of the

² The phrase, “identified to birth premises” is referenced in this report. While it is preferred that cattle are tagged at their birth premises, it is acknowledged that there are situations where the tagging process can be accomplished more efficiently at subsequent locations. The phrase “identified to the birth premises” allows for tagging at other locations with the acknowledgment that the record of tag applied provides the birth premises information for the animal tagged.

current ADT framework in 2013 is an increase in support for EID for cattle. Stakeholders expressed interest in moving forward with EID, or specifically RFID, at each of the nine ADT public meetings in 2017. However, there continues to be some stakeholders that are not supportive of EID for livestock in general.

Many animal health officials, as well as industry stakeholders, acknowledge that the level of traceability necessary in the United States is unachievable with visual only tags. While the NUES tags, traditionally known as the metal clip “brite” tags are inexpensive to purchase, there is significant expense throughout the production chain associated with their use. Producers, market managers, accredited veterinarians and others express concern about animal handling challenges and economic losses created by the need to restrain cattle to manually read and record the official ID number on NUES.

APHIS is conducting a study on the costs associated with NUES tags to reflect the full cost associated with the manual collection of NUES numbers and the inability to retire these numbers after slaughter due to expense.

The ultimate success of an EID system hinges on identifying a high majority of the cattle population with a compatible EID tag to gain the greatest efficiencies possible from the technology. Maintaining a parallel visual only eartag system that requires manual recording of ID’s on a significant portion of cattle would make the cattle handling processes more cumbersome and increase cost.

Many additional questions exist when considering comprehensive EID solutions; particularly, regarding the cost of tags and readers and how to standardize the technology in order to ensure system compatibility across manufacturers. Multiple, or competing, EID technologies would cause significant confusion, conflicts, and financial challenges. Therefore, it will be highly desirable to define a single technology standard. It is also essential that any new standards support the movement of animals at the speed of commerce³.

Proposal

The United States must move toward an EID system for cattle with a target implementation date of January 1, 2023. A comprehensive plan is necessary to address the multitude of very complex issues related to the implementation of a fully integrated electronic system. A specialized industry-lead task force with government participation should develop the plan, with a focus on several key objectives, including:

Standardization

- Propose minimum performance standards that work at the speed of commerce for all cattle handling environments at a highly effective read rate (e.g., >95% read rate).
- Propose a non-proprietary, cost-efficient, and effective technology solution, based on results of performance evaluations that adhere to established technical communication standards and will ensure compatibility of devices across manufacturers.

³ Interpretation of “speed of commerce”: Referred to as, “compatible with existing accepted commerce systems; the ID device/method shall be compatible with existing accepted commerce systems, allowing for the reading/recording of official ID in a safe and humane manner at a pace that does not impede the normal and accepted processing time; and shall be compatible with Beef Quality Assurance (BQA) and Dairy Animal Care and Quality Assurance (DACQA) standards and practices.”

Transitional technology solutions

- Identify solutions that will “bridge” or incorporate other electronic solutions during a defined transition period (ensure workability of current/existing technologies).

Timelines

- Propose a realistic timeline with key steps to support the transition to a fully integrated EID system. Key steps should include:
 - Set a date for when visual only official tags will no longer be available (manufactured, distributed, sold or provided; including “brite” NUES tags from USDA). The objective would be to use a phase-out period to deplete visual tag inventories. Cattle with official visual only tags prior and through the transition period would not need be retagged with an EID tag.
 - Set a date for when all cattle needing official ID must be identified with official EID, e.g., January 1, 2023. Cattle with visual only tags after this date will require retagging with an official EID tag.

Funding

- Consider funding options for addressing cost concerns, such as,
 - Federal startup funds.
 - Startup incentives; cost share, etc.
 - Allow small producers to obtain equivalent of volume discounts, etc. (e.g. 1st 20 tags for \$x.00 regardless of volume purchased).
 - Spread cost equitably across industry sectors.
 - Utilize funds currently in place to support NUES tag acquisition and distribution on EID investments.

In addition, the working group recommends the following actions related to EID:

- APHIS should first discontinue providing free NUES tags, then phase them out according to the EID implementation timeline.
- Utilize compatible EID tags in all cattle disease programs, for example the brucellosis program should move to an orange Official Calfhood Vaccinate EID tag exclusively.
- Reexamine the requirement to record existing official ID numbers when applying an EID tag to individual animals already officially identified with visual only tags. Waiving the recording of the official number of the visual tag(s) when first enacting the official EID tag requirement will help minimize the burden to the industry to fulfill this requirement.
- Solicit industry and other stakeholder feedback on the proposed plan after publication by the task force. USDA should only consider rule making that defines the selected official EID method for cattle if a majority of the cattle industry is supportive of the proposed EID implementation plan.
- Develop an extensive communication plan to support the clear understanding of future requirements.

5. ADMINISTRATION OF ELECTRONIC RECORDS

The working group acknowledges that the full utilization of electronic records is essential for effective administration of the ADT program and considers them part of the overall electronic system. Tremendous gains have been achieved over the past several years in increasing the volume of electronic records to support animal disease control programs. In addition, the establishment of independent State surveillance and traceability information systems has been well received. However, data sharing between these independent systems is becoming an increasing issue of concern among animal health officials since there is no established mechanism for data sharing from State to State or between Federal and State systems. The investments in obtaining electronic records, particularly converting paper based forms to electronic media, has been both successful and costly. Opportunities to capture data electronically in the field is highly supported and essential to minimize ongoing and costly data entry and scanning processes associated with paper documents.

Proposal

APHIS and States must make the advancement of electronic records an immediate high priority. The enhancements recommended below would increase the ease of collecting data in a standardized format and subsequently provide access to accurate data in near real-time, greatly enhancing the effectiveness of U.S. traceability and disease control programs. The responsible parties should address the following points:

Data Element Standardization and Communication Protocol for Information Exchange

- APHIS should develop an expandable messaging service independent of all sending or receiving data systems, to support information sharing among States and Federal stakeholders without concerns about the type of systems originating or receiving the data.
- Address shortfalls in the USAHA Data Standards subcommittee-developed electronic ICVI schema; implement state requirements for electronic ICVI vendors to adhere to standardized formats; and confirm USDA adherence to the standard in the Veterinary Services Process Streamlining (VSPS) system while providing the ability for sharing and receiving information from other ICVI systems.
- Develop a data exchange schema for surveillance events such as tuberculosis testing, brucellosis testing, and vaccination.
- APHIS should provide a web-based application available to State and Federal animal health officials and accredited veterinarians for uploading and manually entering testing, vaccination and movement information, generating the associated forms if necessary and allowing electronic data capture from the web application into the above messaging service.

Animal Health Event Repository (AHER)

AHER provides a comprehensive search tool for internal APHIS data systems that store animal records containing official ID numbers, including VSPS, Surveillance Collaboration Services (SCS), Animal Identification Management System (AIMS) and the Emergency Management Response System (EMRS). Access to AHER is currently only available through an EMRS investigation or the TPM utility.

- Develop external State and private system messages that feed into the above

messaging service to forward metadata information to AHER.

- Fund private system message development through ADT cooperative agreements and invite States to participate at their discretion. Make improvements to the existing user interface to assist with other types of animal tracing queries while providing clear and concise results.

6. ENFORCEMENT OF ADT REGULATIONS

A high level of compliance with the ADT regulations is imperative for successful animal tracing results. The working group discussed feedback from the public meetings regarding the need for greater uniformity of enforcement, particularly concerning private treaty sales. They also note that increased levels of monitoring are necessary in environments where disease spread is a higher risk and where the disease event would have the most significant impact. These locations are where cattle commingle from various premises and then move to multiple additional premises. Such congregating locations include livestock markets, buying stations, consignment sales, etc. The working group also notes that fewer exemptions and revising the regulation to cover more than interstate movement would improve the ability to monitor for compliance as the current rule allows for many cattle to move unidentified. These exemptions and limitations complicate the recognition of animals moving interstate not in compliance with the official ID requirement.

Proposals

- Continue to target noncompliance by repeat offenders with enforcement actions.
- Work with IES to conduct more timely investigations.
- Maintain a higher level of enforcement oversight at locations where there is a higher risk of disease spread, or which would have the most detrimental impact on the industry.
- Evaluate and implement appropriate enforcement procedures for private sales, internet sales, production sales, herd dispersals, etc.
- Work with transportation agencies to perform spot-checks on highways and at transport nodes to monitor compliance with the ADT regulations during movement of animals.
- Cooperate with States that have resources in the field that could help document and report noncompliance situations to the local VS office and APHIS IES personnel.
- Encourage States of destination to inform States of origin of ADT or other violations.
- Survey State and Federal officials to establish a comprehensive listing of compliance oversight methods used across the country.
- Obtain specific proposals from participants attending the NIAA Traceability Forum.
- Share recommended practices and enforcement methods nationally and encourage local APHIS officials to work collaboratively with State animal health officials to implement appropriate actions.
- Activities of cattle dealers, online auctions and others involved in commercial buying/selling of cattle should be enforced by the State when dealer licensing

regulations apply.

- Collaborate with FSIS to ensure collection of ID by slaughter facility personnel and correlation with the animal and its carcass through final inspection. (For more on this topic, please see proposal 7.)

7. COLLECTION OF ID AND ITS CORRELATION TO THE CARCASS AT SLAUGHTER PLANTS

Successful traceability relies on maintaining the animal's identity at slaughter plants through final carcass inspection. Under 9 CFR Parts 86 and 310.2, all ID devices affixed to covered livestock unloaded at slaughter plants must be collected and correlated with the animal and its carcass through final inspection or condemnation by means approved by the FSIS. ID devices must also be packaged with any diagnostic samples from the animal. Success at meeting these requirements is inconsistent across the industry, due to factors such as lack of training and personnel turnover, as well as safety and efficiency concerns related to the collection of ID at the speed of the line. Failure to properly correlate ID to the correct carcass hampers traceability efforts and diminishes the value of the official ID.

Proposal

APHIS should continue the efforts of the State/Federal Slaughter Plant Working Group to improve the rates of ID collection and correlation at slaughter including:

- Development of training and outreach materials on the requirements for new plant, FSIS, and APHIS personnel.
- Monitoring of diagnostic submissions collected to ensure slaughter plants sufficiently apply correlation practices.
- Maintaining constant communication and collaboration with FSIS to assist slaughter plants with correction of failed collection and/or correlation practices.

8. PUBLIC/PRIVATE INFORMATION SYSTEM

Confidentiality and security of data remains a significant concern by many cattle producers and must be resolved to strengthen industry buy-in and support for advancing traceability. Private information systems that support various marketing programs, including AMS PVP, branded products, etc. include traceability data that could assist in achieving ADT objectives.

Proposal

APHIS and States need to establish a partnership with industry that would enable utilization of private information systems for disease surveillance and response events. Ideally, establish a communication protocol between the private systems and an animal disease traceability portal that would allow producer data to be maintained in the private systems and made available to animal health officials only when needed for animal disease control and response. Producers would have the choice to maintain their data in a private or public system. APHIS and the States would continue to protect producer data held in their systems and use it only for disease response. The basic concept of the communication protocol should account for:

- Defining data elements and standards for traceability information to which private systems would adhere (primarily official ID numbering formats and premises data).

- Developing a communication protocol that would allow a government portal to message the private system when a search for animal numbers or premises is necessary to respond to an animal disease event.
- Limited access – only State and Federal animal health officials would have access to the portal.

9. EXEMPTIONS FOR OFFICIAL IDENTIFICATION REQUIREMENTS

Stakeholders broadly acknowledged that the exemptions for official ID create confusion and challenges to enforce ADT requirements uniformly. The working group reviewed each official ID exemption provided in 9 CFR Part 86.4. The direct to slaughter movements – in particular, those through one approved facility – are of the most concern; however, providing a simple revision to resolve this issue is challenging and needs additional input from the industry.

Referenced below are the exemptions to the current official ID regulations with corresponding proposals. (See Appendix III for complete regulatory text for the official ID exemptions.)

Proposal

Commuter herd agreements

APHIS should remove the exemption for official ID. The requirement for individually listing the animals' ID number on the movement document should allow for a range of numbers when a high majority of the animals covered under the agreement has official ID numbers within that range, or as agreed upon by the State animal health officials.

Movements directly from a location in one State through another State to a second location in the original State

The working group maintains the current position that APHIS should not require official ID for these movements.

Tagging sites

APHIS and States should maintain the option to move cattle to a tagging site where they are tagged on behalf of the owner or person responsible.

Official identification options as agreed on by shipping and receiving State

APHIS should remove this exemption allowing alternative methods of ID.

Direct to slaughter movements

The working group recommends APHIS:

- Continue to allow cattle to move from the farm/ranch direct to slaughter on an approved USDA backtag in lieu of the official ID eartag, and retain the stipulation that requires official ID of cattle moved from the slaughter plant.
- Remove the exemptions for cattle moving to slaughter through one approved livestock facility, unless industry, State, and Federal officials collaborate to administer specific control protocols to ensure that these animals move direct to slaughter from the approved facility.
- Consider phasing out the official ID exemptions for direct to slaughter movements, based on the EID implementation timeline, to ensure all cattle covered in the regulation arrive at the slaughter plant with the same technology

tag.

10. ICVI EXEMPTIONS AND MOVEMENT DOCUMENTS

The working group reviewed the importance of ICVIs and the challenges they present. As noted in the section on electronic records, the working group believes continued emphasis on electronic ICVIs and other electronic movement records are a high priority. While the working group is not offering a specific change to the ICVI requirements, they provided the following proposals.

Proposal

Obtaining the key components of traceability – accurate and complete records of official ID numbers and the ship from and ship to locations – is critical to ADT program success. In anticipation of technology changes (specifically EID) and acknowledgement of regional differences in the availability of accredited veterinarians, States should consider use of movement documents, such as import permits or other documents that States have used successfully, as alternatives to ICVIs. Stakeholders support consistent requirements; however, the State of destination should be responsible for determining the documents appropriate for collection and compliance of key traceability components for livestock arriving to that State.

The working group provided further proposals regarding ICVI exemptions below:

- Direct to slaughter, including through one approved facility: The ICVI exemption for direct to slaughter cattle is appropriate and should remain. The current exemption for slaughter movements through one market must be restricted to one market movement regardless if it is an interstate or intrastate shipment.
- Direct to an approved facility with an owner-shipper statement: There is concern about the exemption for interstate movements to an approved facility when the cattle move from the approved facility to a premises other than a slaughter plant. The current regulation allows for the exemption unless the cattle move interstate from the market. Removing this exemption and changing the regulation to cover change of ownership would address this issue.
- The ability for cattle to move under commuter herd agreement documents as agreed upon by the State animal health officials should remain. As noted in the official ID exemptions, the State authorities involved will determine if the listing of individual numbers is required or range of numbers is acceptable on movement documents for commuter herds.

11. UNIFORMITY OF STATE IMPORT REGULATIONS

The working group reviewed the stakeholder feedback pertaining to the confusion and difficulties that result from variations in State import regulations. The working group suggests limiting the exemptions to 9 CFR Part 86 to clarify and improve the uniformity of the federal requirements across States. For example, eliminating the option for the shipping and receiving States to agree on other forms of official ID would help standardize the official ID requirements.

The working group also noted the need to review official ID requirements separately from those associated with testing and other health issues. For example, many of the health requirements established by States are those that industries within their State have

requested to protect the health of their cattle operations and such issues are often specific to certain regions. The working group did not support expanding health requirements to achieve uniformity, as it would actually lead to more import regulations across the country and would be unwarranted from an animal disease control perspective.

Proposal

9 CFR Part 86 should provide the national standards for official ID and movement documentation. APHIS should continue revision of the regulations to increase standardization considering that eliminating various exemptions will lessen confusion and State differences.

- The promotion of the website InterstateLivestock.com should expand to encourage increased use by accredited veterinarians, producers, livestock markets and others who need information on State import regulations.
- It is essential that States maintain the ability to establish more stringent import requirements.
- Uniformity of State regulations is important to increase the understanding of and compliance with import regulations. However, because disease issues are unique to certain areas of the United States, States should regionalize animal health import requirements as appropriate.

12. UNIFORM OFFICIAL IDENTIFICATION EARTAGS

There are differing views on allowing numerous tag types (size, shape, color, etc.), using bangle-like official eartags for both management and official ID purposes, or using one distinct standard tag for official ID. Some producers prefer the same tag for both management and official ID purposes, as it makes the tagging process more efficient. Others indicate a preference for a standard tag for official ID since many producers prefer to remove tags with existing herd management numbers when buying replacements from other dairies and ranches. Comments from stakeholders suggest that one standard tag would increase recognition of official ID and as a result, decrease the accidental removal of official tags. Additionally, there is support for AMS and APHIS to achieve uniformity of devices for both programs. Manufacturers of official ID eartags also indicate that a standard tag would improve manufacturing efficiencies and lower the cost of the official tags.

Proposal

The working group feels there is value in considering a standard, or uniform, official eartag to increase awareness and understanding that it is unlawful to remove the tag. APHIS should conduct a study to determine the potential advantages and disadvantages of having one national ID eartag for cattle. The study should examine the merit a standardized tag might bring to ease of recognizing official tags and its effect on compliance. The study should also include cost comparisons of the use of numerous tag styles, sizes, etc. versus one standard, uniform tag. APHIS should review this information and, if having one uniform tag has significant advantages, publish the one tag concept for public comment through the Federal Register. The actual change, if pursued, would require rulemaking.

13. OFFICIAL EID TAG FOR IMPORTED CATTLE

The definition of official eartags in 9 CFR Part 86.4 stipulates that the application of

animal ID number (AIN) tags (commonly referred to as “840 tags”) is limited to livestock born in the United States. As a result, there is no official EID tag with LF technology available to retag imported animals. This has created some challenges in the marketplace. For example, regulations prohibit dairies that use 840 AIN LF tags for herd management, including parlors with integrated daily milk recording systems, from retagging a Canadian import with an 840 eartag. Since there is no official LF EID device, the producer is limited to retagging with a visual or UHF NUES tag and neither tag is compatible with their electronic herd management system. Conflicts with cattle shows that require AIN LF eartags are also becoming more common. This issue will become a more significant challenge if the United States moves to official EID in the future.

Proposal

The ability to maintain the identity of imported cattle is essential. As such, the working group recommends that APHIS allow the retagging of such animals with an official EID tag by revising the traceability regulation to define an “Import Tag” (with a specific range of AINs and tag color). For example, APHIS could reserve a range of 840 numbers starting with “8409” for use on these tags. To help distinguish “Import Tags” that have a panel component, the panel piece of the tag should include the text “Import”. This ID option would clearly identify animals tagged with an 840 Import Tag after importation to the United States; provide producers the option to use compatible EID technologies as preferred; and allows for re-tagging visual only tagged imported cattle with an 840 EID Import Tag (even if the visual only official tag of the exporting country is in the ear). Producers using UHF technology could use USDA approved UHF 840 tags or the USDA approved UHF NUES tags when the State Animal Health Official authorizes this option. The recordkeeping requirements for tagging imported animals would remain the same as currently written in 9 CFR Part 86 for retagging and adding a second official tag. The working group recommends that APHIS prohibit the use of visual only 840 tags in imported animals.

14. OFFICIAL IDENTIFICATION OF BEEF FEEDERS

The inclusion of beef feeder cattle in the traceability regulations is an essential component of an effective traceability system in the long term. However, addressing other fundamental gaps in the traceability framework must occur first. The working group values the feedback from stakeholders regarding the official ID of beef feeder cattle under 18 months of age, and agrees with these points provided by stakeholders:

- Extensive collaboration with industry stakeholders potentially affected by the ID of beef feeders is critical, and official ID of this sector would require separate rulemaking to ensure appropriate review.
- Tagging large numbers of beef feeder cattle is not practical or feasible at livestock markets during peak periods of feeder sales. Therefore, alternative processes need to be established.
- Consider the timely development of a plan for the inclusion of beef feeders in the official ID requirement. This proactive approach will ensure well-defined processes are in place in the event their inclusion is necessary in response to a worst-case scenario animal disease event with minimal advance notice, such as an outbreak of FMD.

- Consider incremental steps for the official ID of beef feeders, particularly policies that allow official ID to the birth premises. Recording of official ID numbers for movement should be implemented over time as technology is highly proven to work at the speed of commerce.
- Providing the option of tagging beef feeder cattle at the next location upon transfer of ownership, including auctions, feedlots and other locations that receive these cattle is essential.
- The USDA should conduct studies to document the level of traceability necessary for this sector and its cost/benefit.

The working group agrees with these statements above and reaffirms that APHIS should address the official ID of beef feeder cattle under 18 months of age through separate rulemaking.

Appendix

Appendix I – List of Acronyms

ADT	Animal Disease Traceability
AIMS	Animal Identification Management System
AIN	Animal Identification Number
AMS	Agriculture Marketing Service
APHIS	Animal and Plant Health Inspection Service
CFR	Code of Federal Regulations
EID	Electronic Identification
EMRS	Emergency Management Response System
FMD	Foot and mouth disease
FSIS	Food Safety Inspection Service
ICVI	Interstate Certificate of Veterinary Inspection
ID	Identification
IES	Investigative and Enforcement Services
IT	Information Technology
LF	Low Frequency
NIAA	National Institute for Animal Agriculture
NUES	National Uniform Eartagging System
OSS	Owner-Shipper Statement
PVP	Process Verification Program
RFID	Radio Frequency Identification
SCS	Surveillance Collaboration Services
TB	Tuberculosis
TPM	Trace Performance Measure
UHF	Ultra-High Frequency
USAHA	United States Animal Health Association
USDA	United States Department of Agriculture
VS	Veterinary Services
VSPS	Veterinary Services Process Streamlining

Appendix II – Working Group on Slaughter Plant ID Collection & Correlation

On November 9, 2016, APHIS established a working group to address traceability issues and short falls noted in the ADT assessment report.

Objective: Improve the rates of ID collection and correlation to the carcass at slaughter plants, to maximize ADT efforts related to disease programs and surveillance efforts.

Specific goals for the working group include:

1. Review ID collection and correlation processes obtained from the top 40 adult and top 22 fed cattle plants to determine best practices for application to all plants, especially those with demonstrated difficulty in proper ID collection and correlation.
2. Develop and implement a plan for routine DNA matching on non-histocompatible VS Form 6-35 submissions to closely monitor proper correlation of ID to the carcass.
3. Develop a protocol for outreach to plants regarding cases where DNA microsatellite test results indicated that tissue/hair associated with ID did not match the lesioned tissue submitted or matching was not possible because no tissue was submitted with the ID.
4. Develop elements for training State/Vs field personnel on inspection of ID collection and correlation systems within slaughter plants.
5. Collaborate with FSIS to develop and implement training for FSIS Public Health Veterinarians and Inspectors on oversight of ID collection and correlation systems within slaughter plants.
6. In instances requiring additional information for a lot of cattle that contained diseased animals (from which samples were taken and submitted for diagnostic testing), there is often no data available from many adult-kill plants to assist with reconstructing correlation in retrospect since brucellosis blood sampling ceased. Evaluate the capability of adult-kill slaughter plants to reconstruct correlation of man-made ID to carcasses within a lot that contained diseased cattle for one (1) week after slaughter of such diseased cattle, and develop a plan to address this lack of capability where it exists.
7. Develop a guidance document with FSIS for ensuring the issuance of compliance actions for slaughter plants that fail to properly collect man made ID and correlate it to the appropriate carcass.
8. Update the FSIS ADT MOU.

The working group listed below meet monthly via conference call.

Name	Affiliation
Pat Basu	Chief Public Health Veterinarian - FSIS, OPHS
Brian Bohl	TAHC Veterinarian, TX
Debbie Cox	VS Cattle Health Staff FSIS Liaison
Sunny Geiser-Novotny	VS Cattle Health Staff/ ADT Veterinarian
Neil Hammerschmidt	VS Traceability Program Staff
Robert Kerschen	VS EC, CO
Bob Meyer	Assistant State Veterinarian, WY
Kent Munden	VS Animal Identification Coordinator, TX
Barry Pittman	State Veterinarian, UT
Mark Schoenbaum	VS Cattle Health Staff Epidemiologist
Rob Southall	VS Assistant Director, KY
Dawn Sprouls	District Manager, OFO
Debbie Sumpter	VS Animal Identification Coordinator, CA
Beth Wittenbrader	VS Animal Health Technician, PA

Appendix III – Official Identification and ICVI Exemptions

Regulation text from 9CFR Part 86.

§ 86.4 Official Identification.

(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 taggingsite.
- (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).

§ 86.5 Documentation requirements for interstate movement of covered livestock.

(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.

EXHIBIT D
(FACA CLAIM)

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White Paper

Livestock Traceability: Opportunities for Animal Agriculture

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Information synthesized from the National Institute for Animal Agriculture’s Annual Conference, “Livestock Traceability: Opportunities for Animal Agriculture” conducted April 10-11, 2018, in Denver, Colorado. Full presentations are available online at www.animalagriculture.org.

DISCLAIMER: The information provided in this White Paper is strictly the perspectives and opinions of individual speakers and discussions at the 2018 annual conference, ‘Livestock Traceability: Opportunities for Animal Agriculture.’

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Background

The conference, “Livestock Traceability: Opportunities for Animal Agriculture”, conducted April 10-11, 2018, in Denver, CO, was hosted by the National Institute of Animal Agriculture (NIAA). The conference brought together one hundred ninety-one (191) livestock industry professionals, and included producers, representatives of livestock markets, fairs, and shows, veterinarians, representatives of identification technology companies, and regulatory animal health officials. The goal was to present the view of the federal government on ADT and the future, review emerging technologies such as Blockchain, discuss data management technologies and solutions, review Canadian experiences to help give insight into U.S. traceability and the U.S. position globally, and to delve into the relationship between traceability, One Health, and sustainability.

Over the last decade, livestock traceability has been the focus of numerous discussions. In 2013, the Animal Disease Traceability Rule became law. Four years after its implementation, the USDA undertook comprehensive assessment of the ADT program. This Conference provided an opportunity for stakeholders to lead the traceability discussion and push the movement forward, looking to positive outcomes in the future as the U.S. progresses towards national traceability.

The NIAA is a non-profit, membership-driven organization that unites and advances animal agriculture for the challenges facing animal agriculture industries (aquatic, beef, dairy, equine, goat, poultry, sheep and swine). NIAA is dedicated to furthering programs for the eradication of diseases that pose risk to the health of animals, wildlife and humans; promoting the efficient production of a safe and wholesome food supply for our nation and abroad; and promoting best practices in environmental stewardship and animal health and well-being.

The 2018 conference, ‘Livestock Traceability: Opportunities for Animal Agriculture’ was funded in part by Allflex, Agrident, American Angus Association, Bovine Veterinarian magazine, Colorado Cattleman’s Association, Colorado Livestock Association, Dairy Herd Management, Datamars Inc., Drovers, IMI Global, Farm Journal, Inc., Fort Supply Technologies, Global VetLINK, Henke-Sass, Wolf, the USDA, Texas Cattle Feeders Association, Tracefirst, Virox Animal Health and Y-TEX Corporation.

Purpose and Design of the Conference

The purpose of the conference was to bring together livestock industry leaders and animal health officials to lead the traceability discussion and seek informed consensus to advance positive outcomes to this challenging issue. The objective was to provide a national vision for the future of traceability, with insight from our Canadian neighbors and consideration of global marketing issues; to identify potential solutions for data management and security; and to approach traceability through the lens of One Health, with an eye toward sustainability. Conference participants also gained unique insight into the views and initiatives of the various segments of the industry, which will continue to enhance collaborations for advancement of identification and traceability.

Conference Planning Committee Members

Mr. Glenn Fischer, Allflex USA, Inc.
Chelsea Good, J.D., Livestock Marketing Association
Mr. Ernie Birchmeier, Michigan Farm Bureau
Mr. Neil Hammerschmidt, USDA-APHIS-VS
Mr. Todd Low, Hawaii Department of Agriculture
Mr. Dave McElhaney, Allflex USA, Inc.
Dr. Lucas Pantaleon, Virox Animal Health

Conference Topics and Speakers

(in order given at the conference)

Welcome and Opening Remarks, Deputy Commissioner Jennifer Yezak, Colorado Department of Agriculture

Keynote Address: ADT and the Future, Mr. Gregory Ibach, Undersecretary of Agriculture for Marketing and Regulatory Programs, USDA

Traceability: How to Leverage the Lessons from Others, Mr. Brian Sterling, President & Founding Partner, SCS Consulting

Overview of the Canadian Traceability Administration, Ms. Anne Brunet-Burgess, General Manager, Canadian Cattle Identification Agency

Transforming Food Supply with Blockchain, Nigel Gopie, PhD, Global Marketing Leader, IBM Food Trust™, IBM Blockchain

One Health, Traceability and Emerging Technologies, Mr. Thomas Burke, Food Traceability Scientist, Institute of Food Technologies – Global Food Traceability Center

Traceability in an International Context, Mr. Thad Lively, Senior Vice President, Trade Access, U.S. Meat Export Federation

The Role of Traceability in Branded Beef, Mr. Mark McCully, Vice President, Production, Certified Angus Beef

The Intersection Between Traceability and Sustainability, Greg Thoma, PhD, Professor, University of Arkansas, College of Engineering

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Executive Summary

Traceability discussions in the United States were initiated in 2002. The vision for a national traceability program has been introduced, debated, revised, and reintroduced several times. The NIAA Annual Conference focused on four main facets of the current traceability discussion: a national vision for the future of traceability, with insight from our Canadian neighbors and consideration of global marketing issues; identification of potential solutions for data management and security; marketing opportunities and access provided by traceability; and an approach to traceability through the lens of One Health, with an eye toward sustainability. Conference participants also gained unique insight into the views and initiatives of the various segments of the industry, which will continue to enhance collaborations for advancement of identification and traceability.

The USDA is committed to traceability and envisions traceability as it fits into the larger federal government vision of animal disease protection. Safeguarding America's food supply is encompassed by a three-pronged approach to animal disease: prevention, preparedness, and response, which are closely aligned with traceability; expansion of the capabilities of the National Animal Health Laboratory Network (NAHLN), allowing for more rapid detection of animal disease; and development of a national animal vaccine bank to protect U.S. livestock in the event of an animal disease incursion.

Canada implemented a full national traceability system in 2002. Their system provides an example and potential guide for implementation of traceability in the United States. Canada's system is a partnership between government and industry, with government developing the regulations but industry administering the program. Livestock traceability is maintained with the option for value-added capability included. Parts of two large domestic food sectors have also achieved whole chain traceability: produce and seafood. The Produce Traceability Initiative (PTI) was created in 2006 when the vulnerable produce sector identified growing concerns of foodborne illness, food fraud, and consumer demand and decided to act together against those threats. Seafood traceability projects were driven by consumer desire for transparency, government concerns about fraud and illegal fishing, and concern for rising risk to fisheries stocks globally. For these sectors, traceability provides more in value than it costs to implement, thus reducing business risk and failure costs, lowering the cost of poor quality, streamlining the supply chain, and strengthening brand equity and market access.

Ninety-five percent of the world population is outside the United States, and as that population grows in economic status, the global demand for beef increases. The key to global export markets is traceability. Many top international exporters of beef employ traceability as a key component of their own branding programs. Including traceability as a significant part of its export program can make the United States more competitive in this world market. The United States and India are the only major beef export markets without mandatory national traceability, making the U.S. not only vulnerable to stresses on its export capabilities like foreign animal diseases, but also denying the U.S. access to valuable marketing claims that are supported by traceability.

Traceability provides for increased transparency and consumer trust, as well as a framework on which to build value added marketing claims that further increase revenue, consumer trust, and consumer

loyalty. Traceability data can be used to assure the consumer that someone is paying attention and cares about the animal that produced their beef and how it was processed. Traceability can provide claim assurance, market access, and brand and trademark integrity. Sharing data from traceability between partners down the supply chain can provide information that leads to better informed management decisions and ultimately better animal health. A robust traceability system provides the framework on which to build value, enhance animal health, and ultimately increase revenue. These attributes could be a significant driver of traceability acceptance and adoption by the industry.

Traceability is built on ready access to relevant and reliable data about the product being considered. One of the most difficult parts of traceability for the producer is the need to give sensitive data to government authorities. Blockchain technology is a new platform on which safe and secure exchange of sensitive data can occur, through means of a distributed database. It provides a system that enhances data security, interfaces with existing data management systems, provides the option of value-added capabilities, and inherently protects and secures individual producers' data. However, blockchain is only as good as the data that is put into it – for any blockchain system to work, there must be a critical mass of participants.

Finally, traceability is uniquely placed to support initiatives for the advancement of One Health and sustainability, through its ability to collect large datasets. Sustainability in the agriculture industry is of growing importance as the global population expands, and demand for high quality protein increases. The addition of traceability data to the equation greatly enhances our ability to promote and provide sustainability. The One Health approach offers increased cooperation and collaboration between public health entities in human, animal, and plant disciplines with a goal of enhancing the health not only of people, but that of animals and the environment. In short, the goal of One Health is sustainability. Traceability has a unique ability to collect and provide large amounts of data that can be used and interpreted by diverse disciplines to propel the sustainability discussion into the future. Life Cycle Assessment provides a research framework for the interpretation of this data, with a method that enables processes and impacts of the entire system to be condensed and communicated in a meaningful way. Using Life Cycle Assessment, we can identify what parts of the system matter the most for sustainability and communicate those findings.

The United States is making progress towards traceability. We are moving away from the hindrance of old technology and old attitudes, and toward an overall better system. Our Canadian neighbors and other food sector industries within the United States can offer insights and examples of successful traceability practices from which we can build. Blockchain, Life Cycle Analysis, and other developing technologies and research tools provide a new way to overcome old obstacles. There will be a cost, but the gains made in market access, consumer trust, sustainability, and value-added opportunities far outweigh the cost.

Presentation Highlights

Keynote Address: ADT and the Future

Mr. Gregory Ibach, *Under Secretary of Agriculture for Marketing and Regulatory Programs, USDA*

The goal of the USDA is to be the most efficient, effective, customer-focused agency in the federal government. In service to that goal, the USDA strives to be open to new and revised regulations that will facilitate growth in agriculture.

A significant priority of the USDA is safeguarding the domestic food supply and the tools needed to enhance animal disease prevention, such as animal disease traceability, biosecurity, and diagnostic capability. The approach of the USDA to animal disease is a 'three-legged stool' approach. The first leg – and the main leg that addresses animal disease traceability – is prevention, preparedness, and outbreak response. Components include animal disease surveillance; prevention of animal disease through enhanced detection, particularly at high risk entry points; outreach to producers and the public regarding biosecurity; and training to develop rapid outbreak response capability. The second leg is the National Animal Health Laboratory Network (NAHLN). The USDA would like to see expanded laboratory capabilities that support states' local diagnostic abilities, located closer to the producers and animal population that require their services. If directed by Congress, the final leg is development of a vaccine bank. Initial focus would be on the Foot and Mouth Disease (FMD) vaccine, but it would also be prudent to have stocks of vaccine to address other diseases as well. Dr. Julie Smith, University of Vermont, expressed concern about the lack of timely access to vaccines held in the vaccine bank. Mr. Ibach explained that the release of vaccine involves several considerations, not the least of which is the implication for trade. Often use of vaccine has significant trade reduction implications, and that issue will in some cases slow release of banked vaccine.

Over the past few years, the beef industry has shown a real openness to engage in dialogue regarding animal disease traceability. We need to leverage this openness to move past the same 14 points we keep discussing. The USDA's envisions several actions in the facilitation of steps toward national animal disease traceability. The first is to exit the mechanical and technology discussions and turn those over to industry. Industry is better able to develop their preferred technology with input and support from the USDA. The second action is to achieve a bookend traceability system, with identification at farm of origin and again at harvest. Finally, USDA supports action that can improve the performance and adoption of electronic certificates of veterinary inspection (eCVIs). The USDA commits to consider bookend traceability and eCVIs as they develop the framework for an animal disease traceability system that embraces state, federal, and producer needs, with industry to taking that framework and filling in the substance in a manner that supports producer needs and implements full animal disease traceability.

In addition to animal disease traceability, the USDA will be reaching out to producers regarding biosecurity. Biosecurity is one of the best ways to combat disease, via prevention before it can even start. To this end, USDA is considering a requirement for state biosecurity plans as qualification for indemnity programs in the future. Receipt of indemnity will require having a state and farm-level

biosecurity system in place. Dr. Dustin Oedekoven, South Dakota State Veterinarian, asked how USDA's proposed changes to indemnity would protect the 'good' operators from their less secure neighbors. Mr. Ibach explained that at the end of the day, the desire is to create an environment where we mitigate the ability of disease to manifest and spread. Indemnity isn't the first line of defense, but rather a last alternative.

Finally, the president's budget includes a proposal to move the national bioagridefense facility from the Department of Homeland Security to USDA, to be called the National Bio- and Agri-defense Facility. The target would be a 2023 start, with Agricultural Resource Service (ARS) and the Animal and Plant Health Inspection Service (APHIS) operating the facility in partnership.

The three-legged stool, dialogue and partnership with producers, biosecurity, and moving to operate the National Bio- and Agri-Defense Facility are all pieces of USDA's vision for the future of animal agriculture. All of these pieces work together to support animal agriculture and animal health.

Traceability: How to Leverage Lessons from Others

Mr. Brian Sterling, *President & Founding Partner, SCS Consulting*

Whole chain traceability is a proven tool. Its value has been demonstrated among diverse industries (electronics, automotive, pharmaceuticals) and food sectors. Collaboration on traceability has been shown to improve individual business performance.

Traceability is the systematic ability to access all information relating to a food under consideration. Traceability is not the bar codes, radio frequency identification (RFID) tags, and written logs. These are important technologies, but not sufficient for traceability. Traceability is about data that follows a product throughout the entire life cycle, by means of recorded identification. For traceability to work, we need a standardized system that can trace a product backward, from where it came, and forward, to where it went.

Traceability means a change of thinking, but with that change of thinking comes a critical value: consumer trust. Consumers are driving a massive transition in the food industry, bringing food traceability to the forefront and making it mainstream. It's more than recalls and animal health; it encompasses supply chain efficiencies, better marketability, and lower cost along the entire chain, with full transparency for consumers regarding where their food comes from and how it was handled. The consumer is now becoming "the CEO of the food system" and traceability is a key component that builds trust and makes the business opportunities possible.

Traceability is, effectively, free. It provides more in value than it costs to implement, reducing business risk and failure costs, lowering the cost of poor quality, streamlining the supply chain, and strengthening brand equity and market access. Taken together, these values far outweigh the cost of traceability. However, it is often difficult for producers to see those values in dollar terms. The Global Food

Traceability Center (part of the Institute of Food Technologists) has developed online tools that are available to help individual businesses figure out their own traceability value proposition.

There are two categories of traceability: internal and external. Internal traceability is the ability to follow a product within your business. External traceability is the ability to follow a product between businesses. Whole chain traceability builds on both and enables stakeholders to follow the product from the farm to the dinner table. It is this ability to know where products are in the chain that drives the value of traceability.

In order to exchange traceability data regarding a specific food product throughout the supply chain, the system of identification and numbering must be uniform across supply chain steps, subsystems, and states. There are 3 main categories of data needed: identifiers about the product (the “what”), premises identification (the “where”), and movement identification (the “when”). Traceability requires data from all 3 categories.

Arguments resisting traceability often address 4 concerns: the cost, the liability, data security, and loss of efficiency. Most of these arguments are fear-based myths. Traceability reduces exposure to risk and liability, through transparency and improvement of quality afforded by traceability data. Instead of loss of privacy and confidentiality, traceability provides increased transparency and reinforces consumer trust. Traceability does require technology; however, that technology can speed up the rate of commerce and reduce or eliminate human error in data management. The business opportunity offered through traceability leads to an increase in revenue that far outweighs the cost of implementing the system.

While guidelines and requirements for traceability may be set by regulators, it is the business value that will drive adoption. Traceability is a tool for improved business performance.

There are parts of two large food sectors that have achieved whole chain traceability: produce and seafood. The Produce Traceability Initiative (PTI) is a voluntary program created in 2006 when the vulnerable produce sector identified growing concerns – foodborne illness, food fraud, and consumer demand for more information – and decided to act together. Many companies in the produce industry had very good traceability programs in place within their organizations, but they were not linked, and the relevant traceability information was not transferred or captured as product moved through the supply chain. PTI was created to achieve whole chain traceability by incorporating the use of technology and commonly used unique product identification standards (supported by GS1) to serve as linkages between internal traceability programs. An industry steering team guided strategy and planning, and the program focused on traceability through the entire chain, from grower to point of sale.

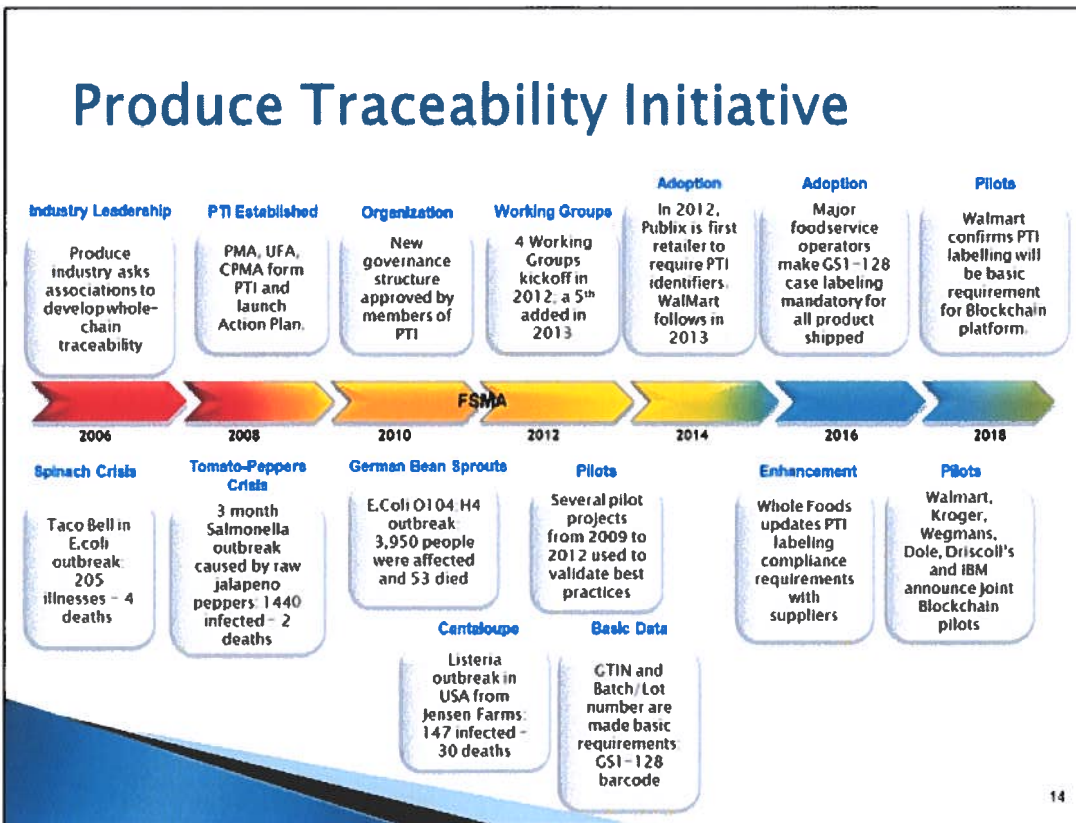


Figure 1. Evolution of the Produce Traceability Initiative.¹

Seafood traceability projects have a global scope, and one major initiative in 2015 included 48 businesses on four continents encompassing nine seafood value chains. In seafood, the drivers were consumer desires for transparency, government concerns about fraud and illegal fishing, and overall concerns for rising risks to fisheries stocks. Seafood firms view traceability from a strategic perspective, letting traceability needs and benefits guide selection of seafood production system, and approaching traceability with big vision, but implementing with achievable small steps.

Traceability is a tool that reduces costs and business risks, while it increases value chain efficiencies, and strengthens brand equity and market access. Traceability is free, but it is not a gift – it requires work to realize its potential.

Finally, collaboration is key. As the seafood traceability projects have proven, the more collaboration that exists between producers, processors, members of the supply chain, retailers, and government, the better the performance of the individual businesses and the entire food system.

Overview of the Canadian Traceability Administration

Ms. Anne Brunet-Burgess, *General Manager, Canadian Cattle Identification Agency*

The Canadian traceability system is a government-industry partnership. The Canadian Food Inspection Agency (CFIA) created and enforces the National Livestock Identification Regulations under the authority of the Health of Animals Act, and industry administers the program with three 'responsible administrators': Agri-Traçabilité Québec (ATQ), PigTrace, and the Canadian Cattle Identification Agency (CCIA).

A responsible administrator must apply to the CFIA and meet several requirements. The main responsibilities of a responsible administrator are to oversee animal indicators and transceivers, allocate and manage regulatory data, allocate identification to manufacturers, communicate regulatory interpretations to stakeholders and the public, and to protect the security and integrity of data. CCIA is a not-for-profit, industry-initiated and led organization incorporated to establish a national livestock identification program and traceability initiatives to support efficient trace back and containment of serious animal health and food safety concerns. The CCIA is the largest of the three responsible administrators, and administers the Canadian Livestock Tracking System (CLTS), the database for both traceability and some value-added information. Data entered into the CLTS database is protected by the Privacy Act - Section XV of the Health of Animals Regulations². The CCIA strives to provide leadership and secure cost-effective traceability services that enhance the Canadian livestock industry. CCIA member organizations represent the species administered by CCIA, as well as dealers and markets, veterinarians, and production groups. CCIA staff is limited, with a main focus on client support. CCIA staff fielded over 19,000 inquiries in 2017.

The three pillars of livestock traceability include premises identification, animal identification, and animal movement. Species currently federally regulated in Canada include bovines (cattle and bison), sheep, and swine, but the system is expected to expand in 2018 to include goats and farmed cervids. All cattle, sheep, and bison must be tagged prior to leaving the farm of origin, although if an animal arrives at an intermediate tagging site without a tag from the farm of origin, a tag may be applied at that intermediate site. It is not illegal to transport an untagged animal from the farm of origin without a tag to a tagging site, as long as that untagged animal travels directly to that intermediate tagging site. At the other end of the production system, it is mandatory for slaughterhouses to report tag retirement for cattle and bison. It is not currently required to report sheep tag retirement.

For tag allocation, manufacturers obtain unique numbers from CCIA. Beef tag inventories are kept at CDMV's warehouses. Tags are then sold via call center, website or through the tag dealers network and once sold, numbers must be issued into a producers account within 24 hours of sale. There are several tags approved for use in cattle, and a more limited number of tag choices available for other regulated species. Tags must be approved for use through the Animal Indicator Approval Process, which requires both a field and a lab test. The responsible administrator facilitates tag testing and makes recommendations to the Minister of Agriculture. Once a tag is approved or revoked, the responsible administrator communicates the information to regulated parties.

Events that can be entered into the CLTS database include cross referencing for tag replacement; movement by groups or individual animals, age verification and birth certificates, and applied vs not applied tag inventory. Client support is provided through call center, the online resource center <http://support.canadaid.ca/>, and a mobile phone app. Additionally, CCIA supports a number of value added activities in the CLTS database, including the Beef Information Exchange System (BIXS), the Dairy industry initiative proAction, Verified Beef Production Plus (VBP+), and others.

The CFIA created the regulations for traceability. Industry, through three responsible administrators, administer the program. The CCIA provides leadership and secure, cost-effective traceability services to the livestock industry while fostering strategic partnerships and developing innovative solutions that will enhance the Canadian livestock industry. Finally, the Canadian Livestock Tracking System is the database that keeps track of it all.

Transforming Food Supply with Blockchain

Nigel Gopie, PhD, *Global Marketing Leader, IBM Food Trust™, IBM Blockchain*

The food system faces a number of inherent challenges. Foodborne illness, lack of traceability, fraud and inauthenticity, food waste, and other issues all threaten the system's stability and economic viability. A more transparent food system offers a way to minimize these problems, and traceability can connect the dots. The problem for most food supply chains is that the various members – from growers to distributors to retailers – have their own records kept in disparate and siloed systems that cannot necessarily interface or communicate with each other. Blockchain is a relatively new technology that allows the sharing of disparate database information in a way that is secure, audible, and private.

The IBM Food Trust solution is built on blockchain technology. It consists of a set of three modules providing traceability to improve food transparency and efficiency. Blockchain is used to create a trusted connection with shared value for all ecosystem participants, from growers to distributors to consumers. This solution offers connectors for interoperability between network members based on existing GS1 standards.

Blockchain is a distributed network. Data is held as a 'block' of information with a unique fingerprint, or 'hash'. Hashes are used to align the blocks, and each block that is connected has the hash of the previous block, allowing data to be connected in a chain. The distributed nature of the network offers significant cybersecurity, as all participants in the chain must agree in consensus about altering any data on the existing chain. If someone tries to tamper with a data element, the hash will automatically change, thus subsequent blocks will not be able to connect, and the system will know that there has been a breach. Users can select permissioned data sharing, allowing data to go to certain partners without sharing to all partners. It is also possible to share just parts of data. This allows collaborators to share data with each other while not providing mission critical data to their competitors.

In scaling the IBM Food Trust digital ecosystem, the goal is to ensure shared value, excellent user experience, industry standardization, confidence in a secure system, and extended value through analytical tools that can be added to the system.

Blockchain is only as good as the data that is put into it – for any blockchain solution to be effective, there must be a critical mass of participants. With IBM Food Trust, IBM is creating a vision, not just a product. That vision is of a safer, more sustainable food system, with scalable food traceability based on standards and interoperability between connected systems.

One Health, Traceability and Emerging Technologies

Mr. Thomas A. Burke, *Food Traceability Scientist, Institute of Food Technologies – Global Food Traceability Center*

‘One Health is defined as a collaborative, multisectoral, and trans-disciplinary approach — working at the local, regional, national, and global levels — with the goal of achieving optimal health outcomes recognizing the interconnection between people, animals, plants, and their shared environment.’³ The One Health approach offers increased cooperation and collaboration between public health entities in human, animal, and plant disciplines. This approach leads to a unique marriage of experience and perspective that enables the identification of novel exposures and vulnerabilities that go unrecognized when approached through a single lens. The response to the Highly Pathogenic Avian Influenza (HPAI) outbreak of 2014-2015 exemplified this approach, with ecological, epidemiological, and environmental strategies informing the understanding of what happened.

While One Health holds great promise, the lack of cross-disciplinary research methods, broad range, and data interpretability issues can significantly hinder the realization of that promise. Traceability offers One Health new multidisciplinary research methods that may work better than traditional approaches; holistic data with applicability and interpretability to all three One Health disciplines; and automated, standardized data collection methods that provide understandable data. Enhancements offered through traceability include standardization of data which enables interoperability; technical solutions to emerging issues; and real-time tracking that increases data collection and thus creates larger datasets. Analytics and machine learning can be applied to those larger datasets, creating the meaningful conclusions that are often unreachable through the One Health approach. Through the data solutions it provides, traceability is a tool to accomplish One Health objectives.

There are many emerging technologies on the horizon. One of these, Blockchain, is a technology that shows considerable potential. The decentralized nature of blockchain provides greater user privacy than that of traditional databases, potentially minimizing the fear barrier to database use. It is constantly updated, greatly speeds recall procedures, and can connect disparate parts of the supply chain. Other emerging technologies include the Internet of Things, embedded sensors, and data collected from Low Earth Orbit (LEO) satellites. These also offer the promise of integration, speed, connectivity, and wide-ranging application.

One Health needs better data coordination and methods clarification, and traceability can supply those needs. Traceability initiatives, combined with emerging technologies, have the potential to enable the full realization of the One Health promise. The data and technology offered by traceability support One Health goals and accomplish progress toward a One Health agricultural approach.

Questions were posed by conference attendees regarding collaboration vs. technology, as well as scalability of the approach. The mechanisms of technology and data collection need to happen first, building the large traceability datasets that could inform One Health. Once that data is collected, collaboration is the key to interpreting and using the data across disciplines. The goal is to attach One Health to traceability, using the ability of traceability to collect data as a method to enhance collaboration. Regarding scalability, moving too quickly to expand technologies to include value-added opportunities distracts from making meaningful conclusions on collected data. The initial focus needs to be on the use of traceability for research questions, and once those mechanisms and analysis are in place, the value-added aspects of the technological system can be explored.

Traceability in an International Context

Mr. Thad Lively, *Senior Vice President, Trade Access, U.S. Meat Export Federation*

The U.S. Meat Export Federation is a not-for-profit trade association based in Denver, Colorado. The Federation represents the export interests of the beef, pork, and lamb industries. The work of the Federation falls under two headings: market development (*i.e.* demand-building) and market access.

Beef exports are of growing importance to the global food industry, with 2.8 million pounds exported globally in 2017.⁴ The top three beef exporting countries are Brazil, Australia, and the United States.⁵ All of the top 10 beef exporting countries around the world have instituted traceability systems, and 7 of 10 of these systems are mandatory. Among the beef importing countries that are our customers, all major markets have adopted internal traceability standards, but China is the only one of these that makes traceability a requirement externally, for imports. Almost all major global traceability systems require cattle identification, ear tags, tracking of movements, and a central database.

Disease control, market access, and to a much lesser degree, food safety, were all cited as reasons for the institution of traceability programs among the top 10 beef exporters. The European Union was the leader of the traceability movement in 1997, and their system became the global standard to address the public health concerns generated by animal disease.

The United States does not yet have a robust traceability system. This fact has not kept us out of foreign markets so far, but we are extremely vulnerable to unforeseen developments that could put us at a severe competitive disadvantage. A foreign animal disease (FAD) outbreak such as Bovine Spongiform Encephalopathy (BSE), an increase in the number of export markets that require full traceability, and consumer expectations all loom as potential tipping points to upset our place in world trade. Additionally, traceability is often tied to a 'green and safe' message, with the implication that those nations not fully embracing traceability don't produce a product that is green or safe.

What would make the U.S. adopt traceability? A mandatory legislative initiative, such as a response to an FAD, could close that gap. Voluntary adoption is most likely to occur as a response to market pressure, such as new requirements or consumer expectations in a major export market, or a response to a major domestic customer in the United States.

The United States needs a national traceability program. Traceability is becoming increasingly important in the global market. The U.S. is the only major beef exporting country that doesn't have a national traceability system. Currently China is the only major importing country that requires traceability, but that may change. Other countries are already at a competitive advantage globally as they use their national traceability programs as a selling point, and that advantage will only increase if additional global export markets begin to require traceability. As the only major exporting country without mandatory national traceability, the U.S. is vulnerable – both economically and competitively.

Questions from conference attendees addressed the cost of implementing traceability, consumer desire, and value-added capabilities. It is difficult to put a price on traceability or to determine who would pay for it. In the event of an FAD the cost would likely be shared between taxpayers and industry. Consumers say they want traceability, but data indicates that people are much more likely to say yes to the concept than to be interested in paying more for traceable beef. Finally, value-added capability could be a significant driver of traceability adoption. The EU and Canadian traceability systems discovered one value-added market opportunity associated with their traceability systems in the ability to trace cattle fed genetically modified soy.

The Role of Traceability in Branded Beef

Mr. Mark McCully, *Vice President, Production, Certified Angus Beef*

Certified Angus Beef LLC is a non-profit organization owned and initiated 40 years ago by the American Angus Association. Certified Angus Beef (CAB) is the only owner of the *Certified Angus Beef*[®] brand trademark, and partners with the beef industry in all other endeavors. Five million head of Angus cattle are certified annually, producing over 1 billion pounds of beef for the brand.

As trademark owners, the organization is focused on market demand. In a recent poll, 69% of customers indicated they want more information about a company's social, economic, animal welfare, and environmental practices⁶. These are the expectations of the next generation of consumer. It's important that we track animals from a disease perspective, but that's not the image the consumer has of production agriculture. It is simply the expectation of the consumer that we can trace animals in the event of disease. Traceability in and of itself is not a value-added marketing claim – but traceability does create a framework on which to build the value-added marketing claims that can sell in the premium space.

Traceability provides a variety of benefits for Certified Angus Beef. The first is production claim assurance. The assurances provided by their 'natural' and other lines of products rely on knowing the farm of origin for each pound of beef sold. Second, regionally sourced claims, such as 'product of the

northwest', or 'Fresh from Florida' are made possible by traceability and work with existing systems. Certified Angus Beef superimposes their branding on the existing supply chain to provide value-added products that customers want. Third, traceability provides market access, particularly to export markets that demand traceability. Finally, traceability assures brand and trademark integrity. It ensures that every trademark in use, including those by restaurants and other retailers, is being utilized accurately and correctly.

As we move into the future, brand protection and a proactive traceability system are paramount for maintaining consumer trust. Animal care and handling, environmental practices, employment practices, and other sustainability metrics can be traced and communicated, further bolstering consumer trust in the brand. Traceability offers accurate production sector feedback, providing the backflow of information down the supply chain necessary to improve management practices. As an example, end stage supply chain information provided back down the line to feedyard managers can enable the more efficient identification of feeder cattle with respiratory disease. This enhanced identification then provides the information to improve genetics and ultimately leads to a healthier population of cattle. Supply and risk management could be streamlined as well. For all these management issues, better information and more sophistication through traceability leads to better management decisions.

Traceability provides for increased transparency and consumer trust, with the ability to enhance the brand through that trust. In addition, traceability provides information that can be used to improve overall cattle health and management efficiency. Finally, a traceability system provides the framework on which to build value added marketing claims that further increase revenue.

Discussion from conference attendees focused on the term 'traceability' as understood by consumers. Mr. McCully noted that the consumer buzzword is 'transparency'. Trust and transparency are driving forces for Certified Angus Beef. Consumers just want to know that someone is paying attention and cares about the animal that produced the beef. Dr. Robert Cobb of Georgia pointed out that traceability in the regulatory arena means animal disease traceability. Transparency can be enabled by animal disease traceability, but regulators are concerned that a focus on transparency will overshadow the disease traceability aspect. Additionally, transparency is the aspect of traceability scares producers. Mr. McCully noted that his lens as a brand owner is transparency. He sees transparency and disease traceability as hand-in-glove, working very closely together, and thinks separating the two is redundant and counter-productive. His approach is to think of disease traceability as a framework on which to build transparency. Consumers want assurance that they're buying a quality product. Traceability allows for the transparency that assures consumers, and they don't want any information beyond that.

During the discussion, Mr. McCully noted that Certified Angus Beef has developed a Culinary Center. Ranch tours were developed as part of the Culinary Center experience, and due to high demand are now offered through the Culinary Center almost every week. During these tours, CAB has observed that as soon as the tour meets the rancher, most concerns dissipate. The light bulb comes on, and tour attendees see what it really means to raise a quality animal that provides the quality product on the table. Traceability provides a way to virtually meet that rancher.

The Intersection Between Traceability and Sustainability

Greg Thoma, PhD, Professor, University of Arkansas, College of Engineering

Animal agriculture has a huge land footprint, with about 70% of global agricultural land dedicated to supporting livestock.⁷ Additionally, consumption of animal-sourced food (*i.e.* livestock) is growing worldwide. This increased demand for animal-sourced food intensifies pressure on land and amplifies environmental risk, and we must manage world resources much more efficiently and effectively if we are to sustain the world population's demand.^{8,9} We cannot achieve this efficiency without traceability data.

This efficient and effective use of resources is often what is meant by the term sustainability. Another way to put it is 'living within our means'. To do that, we must continually improve our resource use efficiency. We must enable future generations to provide for themselves. For sustainability and efficient resource use to become reality, there must be measures and metrics to monitor progress, benchmark, and provide a baseline for documenting future improvements. Traceability can provide invaluable information in support of these measures and metrics.

Life Cycle Assessment provides a framework for capturing the information offered by traceability and quantifying the measures and metrics, and this framework is a good place to begin to approach sustainability. It is a wholistic accounting tool for environmental impacts, in this case, animal-sourced food. Life Cycle Assessment systematically quantifies inputs and outputs for a system in terms of a standardized unit of measure. There are four stages: interpretation, inventory, impact, and goal & scope.⁹ (Fig 2).

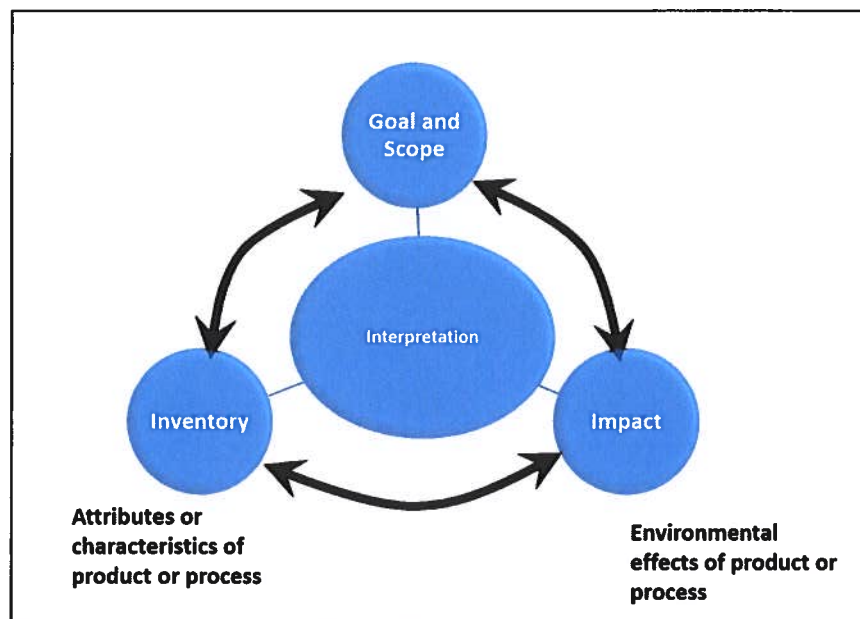


Figure 2. Life Cycle Assessment (LCA)¹⁰

Life Cycle Assessment modelling uses unit processes as building blocks. Each unit process incorporates inputs and outputs, both from nature and other processes. Material and data flows, emissions, and product characteristics are the key data elements captured.¹⁰ (Fig 3)

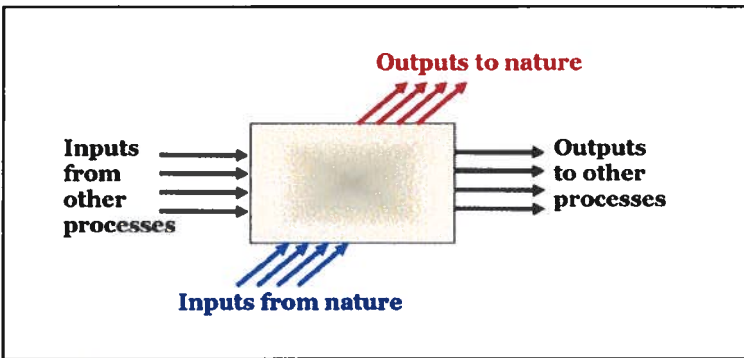


Figure 3. Unit process. The building block for Life Cycle Assessment.¹¹

Unit processes are built together to account for the entire supply chain in a Life Cycle Inventory (LCI) Model.¹⁰ (Fig 4)

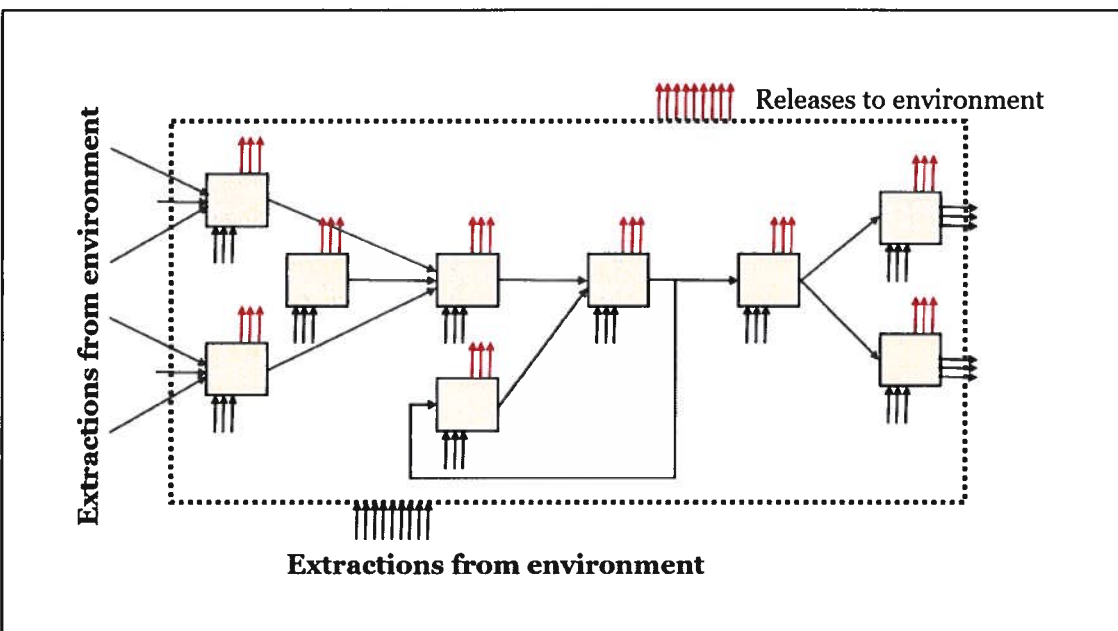


Figure 4. Life Cycle Inventory (LCI) Model. Unit processes are linked together to represent the entire supply chain.¹⁰

Impact assessment methods have been developed within the LCA community that aggregate similar emissions into broader categories such as global warming potential, also known as carbon footprint. In an animal-sourced food supply chain, inputs and outputs such as feed and enteric methane are taken

into account to inform assessments such as global warming potential, which may be aggregated to damage categories (human or ecosystem health) that help people make decisions. Ultimately, all the LCI information and impact analysis may be condensed into a single score that can be used for communication and consumer education. There is increasing uncertainty during progression from LCI Analysis toward that single score, but this process enables the processes and impacts of the entire supply chain to be communicated in a meaningful way to the consumer. Using Life Cycle Assessment, we can identify what parts of the supply chain matter the most for sustainability and communicate those findings.

The National Cattleman's Beef Association (NCBA) recently conducted a national evaluation of the sustainability of beef using LCA. For this evaluation, beef cattle production throughout the country was divided into seven regions, each of which were surveyed to collect production and management practice information. Survey responses from the regions were used to develop an 'archetypal' beef production system for each region in each of three categories: cow-calf, stocker, and finisher. These archetypal beef production systems were simulated in the integrated farm system model (ISFM) to determine resource use and emissions. Finally, ISFM results were used to create LCA models of regional archetypal production systems, which were analyzed and aggregated to provide national benchmarks for beef production.

The preliminary results from the NCBA LCA evaluation of integrated operations in the upper Midwest showed differences between farms driven almost entirely by nitrous oxide emissions, which are in turn driven by soil type. All other results were very similar among farms. The takeaway is that traceability – to farm of origin, and thus to soil type – matters if we are to effect changes to enhance sustainability.

Global agricultural resources are becoming limited as we respond to the increased pressure to provide a safe, affordable supply of food for a growing population. Understanding and documenting supply chain transactions is increasingly important to identify the environmental issues related to food production. LCA is a widely used tool to evaluate sustainability characteristics of products, but it requires detailed knowledge of material and energy flows at all stages of the supply chain. Tools providing traceability along supply chains provide an excellent backbone for collecting and managing the information that enables LCA for animal-sourced food sustainability.

Life Cycle thinking provides a systems framework for assessment and systematic documentation of supply chains with standards and transparency. The addition of traceability data to this perspective and thus to the sustainability equation greatly enhances our ability to promote and provide sustainability.

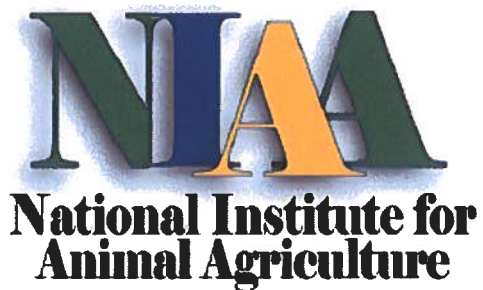
Footnotes

- ¹ Mr. Brian Sterling, SCS Consulting
- ² R.S.C., 1985, c.P-21. Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html> on May 22, 2018.
- ³ Centers for Disease Control. Retrieved from <https://www.cdc.gov/onehealth/basics/index.html> on May 22, 2018
- ⁴ Source: USDA/USMEF
- ⁵ United States Beef Export Association. Retrieved from <http://www.beefmagazine.com/exports/near-record-volume-global-beef-exports-2017-value-highest-2014> on June 12, 2018.
- ⁶ Hartman Group, 2017
- ⁷ FAO, 2009
- ⁸ Foley et al. 2011
- ⁹ Godfray et al. 2010
- ¹⁰ ISO 14040, 14044, 14046 Standards
- ¹¹ Dr. Greg Thoma, Department of Chemical Engineering, University of Arkansas

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CONTACT INFORMATION

National Institute for Animal Agriculture
13570 Meadowgrass Drive, Suite 201
Colorado Springs, CO 80921
Phone: 719-538-8843
www.animalagriculture.org



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- Agrident
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- Drovers
- Fort Supply Technologies
- GlobalVetLINK
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- IMI Global
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- Texas Cattle Feeders Association
- TraceFirst
- USDA
- Virox Animal Health
- Y-TEX Corporation

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EXHIBIT E

(FACA CLAIM)

BEEF.

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Producer council recommends data needs for federal animal ID reporting, privacy

Producer Traceability Council works with USDA to provide industry input on cattle traceability.

Jul 02, 2019

Source: National Institute of Animal Agriculture

One of the USDA's overarching goals for increasing traceability is to advance the electronic sharing of data among federal and state animal health officials, veterinarians and industry. Sharing basic animal disease traceability data with the federal Animal Health Events Repository (AHER) allows state animal health officials and the USDA to quickly trace sick and exposed animals to stop the spread of disease and importantly rule out which animals are not exposed. Currently, sharing information to AHER is voluntary for the states and other systems collecting it.

While in agreement that necessary information should be available to proper authorities in times of an emergency disease event, the Producers Traceability Council recently examined concerns from across the livestock industry about privacy and where data should be stored. Council members discussed and asked questions around the issue of who else may have access to data available to AHER, as well as what information is necessary and how that information is collected and by whom.

The Producers Traceability Council is an independent offshoot of the Cattle Traceability Working Group. The council was established to provide guidance on key issues relating to advancement of the nationwide Animal Disease Traceability (ADT) requirements.

READ: Will a true cattle disease traceability program please stand up?

During its recent meeting in Denver, the council developed preliminary recommendations to the livestock industry that include the following consensus points on database liability:

- In order to advance livestock traceability for emergency disease events, the minimal amount of data that is required should be collected and

transferred electronically to AHER, meeting data standards and USDA standards for security.

- Producers have the flexibility and security to house data in third party management systems. It is recommended that third party data management systems be required to share with AHER the minimal data points necessary for disease traceback.
- As regulations change, the industry should work with policy and legal experts to further expand protection of producers' private information.

Much of the session centered on producer privacy issues. One important point of contention is the idea that a federal database holds tag ID numbers for livestock and associates those IDs with a livestock owner's personal premise ID, or location of their farm or ranch.

However, through discussion with USDA representatives, council members found that the problem may be a labeling issue, rather than a collection issue.

Sarah Tomlinson, DVM, executive director, strategy and policy, Veterinary Services, APHIS, and Rich Baca, director of veterinary services informatics, mapping, and analytical services (USDA) for ADT IT, attended the meeting to provide factual information about USDA data practices. They provided an overview of AHER and how it works in case of an animal disease event.

READ: What's animal ID worth?

A primary data point collected by AHER is "Source System ID" which is a code that directs state or federal health officials to the data system where further information is stored, such as a state database, which would only be needed in an emergency trace situation.

The USDA says that by linking to that information instead of housing it, stakeholder privacy concern is reduced, while still allowing federal or state animal health officials to look up an official ID and connect quickly to the data source.

Discussion around six data points, the animal (tag) ID, event date, provider ID, event type, state and Source System ID, which are currently sent voluntarily to AHER from participating organizations, found some confusion in the industry about what information is actually collected.

The concern expressed in the industry that personal premise IDs are being linked to specific livestock tags in federal data bases is a privacy concern to many. However, it was made clear that an individual producer has multiple means to receive tags, such as through states or tag distributors.

READ: Why participate in a voluntary ID program?

The USDA representatives confirmed that AHER searches are limited to state and federal health officials with access to the APHIS databased used for emergency management response. Additionally, when Freedom of Information Act (FOIA) requests are received, the federal personnel carefully evaluate and consider personal information with an interest of protecting personal privacy and confidential business information.

One data point requested to be shared with AHER is labeled “Provider ID.” The USDA representatives explained it was not necessarily an ID for the location of a livestock owner’s farm or ranch. Instead, it is an ID for a location associated with the event being reported. The event could be the purchase of ID tags, animal siting (such as a certification of veterinary inspection being issued for interstate movement), or retirement of a tag at slaughter.

The location identified by the Provider ID could be a tag retailer, state animal health official's office, private vet's office, market, third party data management company or other location responsible for records of the event, which in turn, would have information to provide for a trace.

The council discussed whether that data was needed on a federal level, as the state and system source would also have that information. The USDA representatives stated that this information will help animal health officials quickly find information to locate where an animal has been, point toward the current location of the animal, and provide timely information pertinent to a disease investigation.

USDA representatives stated that they would provide clarification of definitions and terminology of the requested data elements for AHER which is more easily understood to external audiences.

Recommendations from the council on what individual pieces of information should be shared with AHER will be considered after follow-up and clarification from the USDA. However, there was agreement to keep the data as minimal as possible while still being effective, for ease of consistent collection as well as privacy.

Another large discussion point was about use of private data management systems. To advance animal disease traceability, the council recommends databases, private and public, report mandated minimal data points to AHER of all tagged animals.

ADT-mandated information collected to move cattle across state lines will still go to state systems by law.

Members of the Producers Traceability Council represent the livestock value chain from across the industry and nation and include Chuck Adami, Equity Cooperative Livestock; Mike Bumgarner, United Producers; Ken Griner, Usher Land & Timber, Inc.; Joe Leathers, 6666 Ranch; Jim Lovell, Green Plains Cattle Company LLC; Bob Scherer, Tyson; Justin Smith, Kansas State Veterinarian; Keith York, Wisconsin Livestock ID Consortium; Jarold Callahan, Express Ranches; Cody James, International Livestock Identification Association.

Sarah Tomlinson, DVM, government liaison, USDA, APHIS, Veterinary Services, is a non-voting member of the council.

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Source URL: <https://www.beefmagazine.com/regulatory/producer-council-recommends-data-needs-federal-animal-id-reporting-privacy>

EXHIBIT F (FACA CLAIM)



New Civil Liberties Alliance

March 23, 2020

Ms. Tonya Woods
 FOIA/PA Officer
 U.S. Department of Agriculture
 Animal and Plant Health Inspection Service
 4700 River Road, Unit 50
 Riverdale, Maryland 20737-1232
 FOIA.Officer@aphis.usda.gov

SUBMITTED VIA EMAIL

RE: Freedom of Information Act Request

Dear Ms. Woods:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the New Civil Liberties Alliance (NCLA) requests access to the following records of the Cattle Traceability Working Group and any other working groups that have addressed Animal Disease Traceability issues in the cattle industry—including, but not limited to, email, instant messaging, text messages, handwritten notes, other communications made for official purposes, reports, and calendars—sent or received by certain U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) personnel. The time period of this request is January 1, 2017 to the present.¹ NCLA seeks the records described above from the following individuals²:

1. Dr. Aaron E. Scott (Aaron.E.Scott@aphis.usda.gov);
2. Dr. Sarah M. Tomlinson (Sarah.M.Tomlinson@aphis.usda.gov);
3. Dr. Jack A. Shere (Jack.A.Shere@aphis.usda.gov);
4. Dr. Sunny Geiser-Novotny; and
5. Neil Hammerschmidt (Neil.E.Hammerschmidt@aphis.usda.gov).³

Responsive search terms may include, but are not limited to, “RFID,” “eartag,” “ear tag,” “factsheet,” “timeline,” “traceability,” “Cattle Traceability Working Group,” “CTWG,” “Stock Growers,”

¹ For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002). The term “record” means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016).

² Emails have been provided if known, but any search for responsive records should include all .gov email addresses associated with the identified individuals.

³ At some point during the time period of the request Neil Hammerschmidt left his position as Manager of Animal Disease Traceability for APHIS, NCLA is interested in responsive records in his possession while working for APHIS as well as responsive records in the possession of Aaron E. Scott, Sarah M. Tomlinson, and Jack A. Shere that involve or refer to Neil Hammerschmidt after his departure from APHIS.

“Stockgrowers,” “National Institute for Animal Agriculture,” “NIAA,” “USDA/NIAA,” “U.S. Animal Health Association,” “USAHA,” “Animal ID Working Group,” “U.S. CattleTrace,” “CattleTrace,” “USCT,” “Neil Hammerschmidt,” “nhammerhead@gmail.com,” “Glenn Fischer,” “gfischer@allflexusa.com,” “Joe Leathers,” “jleathers@6666ranch.com,” “Jim Halverson,” “Halverson,” “Kenny Fox,” “Silvia Christian,” “R-CALF USA,” and “R-CALF.” Responsive records may also refer to certain events including the 2019 NIAA Annual Conference held in Des Moines, Iowa from April 8-11, 2019⁴, the 2018 Strategy Forum on Livestock Traceability held in Kansas City, Missouri from September 25-26, 2018, and the Strategy Forum on Livestock Traceability held in Denver, Colorado from September 26-27, 2017. In addition, any records discussing or suggesting the disbanding of the Cattle Traceability Working Group (CTWG) or transferring its responsibilities to new or different committees are also responsive.

NCLA requests a reduction of any and all applicable fees. The FOIA and USDA regulations provide that the Commission shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. App. A to Subpart A of Pt. 1 § 2(b)(5).

NCLA is a nonpartisan, nonprofit public-interest organization with a scholarly interest in the records sought.⁵ NCLA is seeking these records to develop a more precise understanding of the Agency’s attempt to use a guidance document to mandate that cattle producers, who seek to sell across state lines, tag their livestock with RFID eartags.⁶ NCLA intends to use its expertise to review, analyze, and publicize its findings.

NCLA is willing to pay up to \$250.00 in fees for the records. If it is determined that the processing costs will exceed that amount, please contact me with an estimate of the fees.

If practicable, please provide the responsive documents in electronic form in lieu of a paper production. If a portion of the responsive records can be produced more readily, NCLA requests that those records be produced first and the remaining records be produced on a rolling basis.

If you have any questions about this request, please contact me by telephone at (202) 908-6203 or by email at Kara.Rollins@ncla.legal. Thank you for your attention to this matter.

Sincerely,



Kara Rollins, Litigation Counsel

⁴ 2019 Annual Conference, NAT’L INST. FOR ANIMAL AGRICULTURE, <https://animalagriculture.org/2019-AnnualConference> (last visited Mar. 20, 2020).

⁵ *See generally* NCLA Petition for Rulemaking (Jan. 25, 2019) available at <https://nclalegal.org/wp-content/uploads/2019/01/Petition-for-Rulemaking-Dept.-of-Agriculture.pdf>.

⁶ R-CALF USA v. United States Department of Agriculture, et al., NEW CIVIL LIBERTIES ALLIANCE, <https://nclalegal.org/r-calf-usa-v-united-states-department-of-agriculture/> (last visited Mar. 20, 2020).

MARK A. KLAASSEN
United States Attorney
NICHOLAS VASSALLO (WY Bar No. 5-2443)
Assistant United States Attorney
P.O. Box 668
Cheyenne, WY 82003
Telephone: 307-772-2124
nick.vassallo@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA;
TRACY and DONNA HUNT, d/b/a THE MW
CATTLE COMPANY, LLC; and KENNY
and ROXY FOX,

Petitioners/Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE; ANIMAL AND PLANT
HEALTH INSPECTION SERVICE;
SONNY PERDUE, in his official
Capacity as the Secretary of Agriculture;
and KEVIN SHEA, in his official
capacity as Administrator of the Animal
and Plant Health Inspection Service,

Respondents/Defendants.

No. 19-cv-205-F

RESPONDENTS' STATUS REPORT

Respondents/Defendants (“Respondents”), by counsel, respectfully submit this Status Report in response to “Plaintiffs’ Amended Complaint for Violation of the Federal Advisory Committee Act.”

In their “Amended Complaint,” Petitioners/Plaintiffs (“Petitioners”) list multiple claims. Claims I-VII are styled as claims for “violations” of various provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 §§ 1-16. Claim VIII seeks review of those alleged FACA violations under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

FACA provides no private right of action. *Colorado Environmental Coalition v. Wenker*, 353 F.3d 1221, 1234-35 (10th Cir.2004); *Center for Biological Diversity v. Tidwell*, 239 F.Supp.3d 213, 221 (D.D.C. 2017). Claims for violations of FACA are only actionable under the judicial review provisions of the Administrative Procedure Act. *See Wenker* at 1234-35.

Petitioners’ amended pleading seeks “[r]eview of an action taken or withheld by an administrative agency.” Consequently, the case is governed by Local Rule 83.6. Under the Local Rule, Respondents are not required to file a response to Petitioners’ pleading. *See* Local Rule 83.6(b). Respondents are preparing the administrative record, which is to be lodged with the Court within 90 days of service of Petitioners’ pleading. Local Rule 83.6(b)(2). Respondents calculate the administrative record deadline to be July 6, 2020.

Respectfully submitted this 20th day of April, 2020.

MARK A. KLAASSEN
United States Attorney

By: /s/ Nicholas Vassallo
NICHOLAS VASSALLO
Assistant United States Attorney

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on April 20, 2020, a copy of this Respondents' Status Report was filed with the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ Elizabeth Kilmer
Elizabeth Kilmer
United States Attorney's Office

MARK A. KLAASSEN
United States Attorney
NICHOLAS VASSALLO (WY Bar #5-2443)
Assistant United States Attorney
P.O. Box 668
Cheyenne, WY 82003-0668
Telephone: 307-772-2124
nick.vassallo@usdoj.gov

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION)
LEGAL FUND UNITED)
STOCKGROWERS OF AMERICA;)
TRACY and DONNA HUNT, d/b/a)
THE MW CATTLE COMPANY, LLC;)
and KENNY and ROXY FOX,)
Petitioners/Plaintiffs,)

Civil Case No. 19-cv-205F

v.)
UNITED STATES DEPARTMENT OF)
AGRICULTURE; ANIMAL AND)
PLANT HEALTH INSPECTION)
SERVICE; SONNY PERDUE, in his)
official Capacity as the Secretary of)
Agriculture; and KEVIN SHEA, in his)
official capacity as Administrator of the)
Animal and Plant Health Inspection)
Service,)
Respondents/Defendants.)

NOTICE OF LODGING ADMINISTRATIVE RECORD

Undersigned counsel for Respondents hereby lodges the administrative record certified by Aaron Scott, Director of the National Animal Disease Traceability and

Veterinary Accreditation Center, United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on July 2, 2020. Mr. Scott has certified that the Administrative Record contains all of the available documents and materials directly or indirectly considered by Veterinary Services in connection with the Cattle Traceability Working Group and Producers Traceability Council.

The documents comprising the record, along with a hyperlinked index in Microsoft Excel format, are contained on one CD. Two copies are submitted to the Court and two copies have been mailed to counsel for the Petitioners/Plaintiffs.

Respectfully submitted this 6th day of July, 2020.

MARK A. KLAASSEN
United States Attorney

By: /s/Nicholas Vassallo
NICHOLAS VASSALLO
Assistant United States Attorney

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on July 6, 2020, a copy of this **NOTICE OF LODGING ADMINISTRATIVE RECORD** was filed with the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record. Copies of the notice and the CD containing the Administrative Record were also mailed to Petitioners/Plaintiffs' counsel at the following addresses:

Harriet Hageman
New Civil Liberties Alliance
1225 19th St., NW
Suite 450
Washington, DC 20036

222 East 21st Street
Cheyenne, WY 82001

/s/Elizabeth Kilmer
United States Attorney's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION)	
LEGAL FUND UNITED)	
STOCKGROWERS OF AMERICA;)	
TRACY and DONNA HUNT, d/b/a THE)	
MW CATTLE COMPANY, LLC; and)	
KENNY and ROXY FOX,)	
)	
Petitioners/Plaintiffs,)	
)	
v.)	No. 19-CV-205-F
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE; ANIMAL AND)	
PLANT HEALTH INSPECTION)	
SERVICE; SONNY PERDUE, in his)	
official capacity as the Secretary of)	
Agriculture; and KEVIN SHEA, in his)	
official capacity as Administrator of the)	
Animal and Plant Health Inspection)	
Service,)	
Respondents/Defendants.)	

CERTIFICATION OF DR. AARON SCOTT

I, AARON SCOTT, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, as Director of the National Animal Disease Traceability and Veterinary Accreditation Center (NADTVAC). I have served in this position since January 7, 2018.

2. I oversaw the coordination and compilation of Veterinary Services' Administrative Record on the Cattle Traceability Working Group (CTWG) and Producers Traceability Council (PTC).

3. Veterinary Services compiled its Administrative Record in response to the Plaintiff's Second Amended Complaint, ECF No. 27, filed on July 6, 2020.

4. The Administrative Record includes 99 documents that cover 368 pages, Bates Stamped as AR-00001 through AR-00368.

5. To the best of my knowledge, the attached Administrative Record constitutes a true and correct copy of the available documents and materials directly or indirectly considered by Veterinary Services in connection with the Cattle Traceability Working Group and Producers Traceability Council.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and knowledge. Executed this 2nd day of July, 2020, at Fort Collins, Colorado.

Aaron Scott DVM PhD DACVPM (epidemiology)
Director, National Animal Disease Traceability and Veterinary Accreditation Center
(NADTVAC)

MARK A. KLAASSEN
United States Attorney
NICHOLAS VASSALLO (WY Bar No. 5-2443)
Assistant United States Attorney
P.O. Box 668
Cheyenne, WY 82003
Telephone: 307-772-2124
nick.vassallo@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA;
TRACY and DONNA HUNT, d/b/a THE MW
CATTLE COMPANY, LLC; and KENNY
and ROXY FOX,

Petitioners/Plaintiffs,

v.

No. 19-cv-205-F

UNITED STATES DEPARTMENT OF
AGRICULTURE; ANIMAL AND PLANT
HEALTH INSPECTION SERVICE;
SONNY PERDUE, in his official
Capacity as the Secretary of Agriculture;
and KEVIN SHEA, in his official
capacity as Administrator of the Animal
and Plant Health Inspection Service,

Respondents/Defendants.

**RESPONDENTS' STATUS REPORT AND UNOPPOSED
MOTION TO RESET DEADLINES**

Respondents, through counsel, respectfully submit this Status Report and Unopposed Motion to Reset Deadlines.

On July 6, 2020, Respondents lodged the Administrative Record in accordance with Local Rule 83.6(c). ECF 29. On July 16, 2020, Petitioners filed an unopposed motion to extend the deadline for filing Local Rule 83.6(b)(3) motions. ECF 31. The Court granted that motion, extending the deadline to August 19, 2020. ECF 32.

During the pendency of this action, Petitioners submitted a Freedom of Information Act (FOIA) request to Respondent United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS). In processing that request, APHIS has discovered additional emails which, if they had been discovered earlier, would have been included in the Administrative Record in this matter. APHIS has begun de-duplicating, assembling and indexing the supplemental documents. The parties have conferred and Petitioners do not oppose the Respondents supplementing the Administrative Record with those documents. The parties further agree that Petitioners should be given 30 days from the filing of the Supplemental Administrative Record to review the supplemental materials and file any Local Rule 83.6(b)(3) motions. Respondents therefore request that the Court enter an order providing that Respondents lodge their Supplemental Administrative Record by August 28, 2020 and that Rule 83.6(b)(3) motions be filed by September 28, 2020. A proposed order is submitted with this filing.

Respectfully submitted this 13th day of August, 2020.

MARK A. KLAASSEN
United States Attorney

By: /s/ Nicholas Vassallo
NICHOLAS VASSALLO
Assistant United States Attorney

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on August 13, 2020, a copy of the Respondents' Status Report and Unopposed Motion to Reset Deadlines was filed with the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/Elizabeth Kilmer

United States Attorney's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA;
TRACY and DONNA HUNT, d/b/a THE MW
CATTLE COMPANY, LLC; and KENNY
and ROXY FOX,

Petitioners/Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE; ANIMAL AND PLANT
HEALTH INSPECTION SERVICE;
SONNY PERDUE, in his official
Capacity as the Secretary of Agriculture;
and KEVIN SHEA, in his official
capacity as Administrator of the Animal
and Plant Health Inspection Service,

Respondents/Defendants.

No. 19-cv-205-F

ORDERING GRANTING UNOPPOSED MOTION TO RESET DEADLINES

This matter is before the Court on the Respondents' Status Report and Motion to Reset Deadlines. Respondents reported to the Court that they have discovered additional documents which should be included in the Administrative Record and they request that the Court enter an order adjusting the existing deadlines to allow Respondents to prepare and lodge a Supplemental Administrative Record. Respondents further request a corresponding adjustment to allow 30 days, after the Supplemental Administrative Record is lodged, for the filing of motions under Local Rule 83.6(b)(3). Petitioners do not oppose

Respondents' motion. Having reviewed the Respondents' Status Report and Motion, and finding good cause, the Court finds that the motion should be granted.

NOW, THEREFORE, IT IS ORDERED the Respondents' Motion to Reset Deadlines is GRANTED. Respondents shall lodge the Supplemental Administrative Record on or before August 28, 2020. All Local Rule 83.6(b)(3) motions shall be filed on or before September 28, 2020.

Dated this ____ day of August, 2020.

Kelly H. Rankin
United States Magistrate Judge

MARK A. KLAASSEN
United States Attorney
NICHOLAS VASSALLO (WY Bar #5-2443)
Assistant United States Attorney
P.O. Box 668
Cheyenne, WY 82003-0668
Telephone: 307-772-2124
nick.vassallo@usdoj.gov

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION)
LEGAL FUND UNITED)
STOCKGROWERS OF AMERICA;)
TRACY and DONNA HUNT, d/b/a)
THE MW CATTLE COMPANY, LLC;)
and KENNY and ROXY FOX,)
Petitioners/Plaintiffs,)

Civil Case No. 19-cv-205F

v.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE; ANIMAL AND)
PLANT HEALTH INSPECTION)
SERVICE; SONNY PERDUE, in his)
official Capacity as the Secretary of)
Agriculture; and KEVIN SHEA, in his)
official capacity as Administrator of the)
Animal and Plant Health Inspection)
Service,)

Respondents/Defendants.)
)
)
)

NOTICE OF LODGING SUPPLEMENTAL ADMINISTRATIVE RECORD

In accordance with the Court’s order dated August 17, 2020, undersigned counsel for Respondents hereby lodges the supplemental administrative record certified by Aaron

Scott, Director of the National Animal Disease Traceability and Veterinary Accreditation Center, United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on August 27, 2020.

The documents comprising the record, along with a hyperlinked index in Microsoft Excel format and Respondents' Privilege Log, are contained on one CD. Two copies are submitted to the Court and two copies have been mailed to counsel for the Petitioners/Plaintiffs.

Respectfully submitted this 28th day of August, 2020.

MARK A. KLAASSEN
United States Attorney

By: /s/Nicholas Vassallo
NICHOLAS VASSALLO
Assistant United States Attorney

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on August 28, 2020, a copy of this **NOTICE OF LODGING SUPPLEMENTAL ADMINISTRATIVE RECORD** was filed with the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record. Copies of the notice and the CD containing the Administrative Record were also mailed to Petitioners/Plaintiffs' counsel at the following addresses:

Harriet Hageman
222 East 21st Street
Cheyenne, WY 82001

/s/ Elizabeth Kilmer

United States Attorney's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

RANCHERS CATTLEMEN ACTION)	
LEGAL FUND UNITED)	
STOCKGROWERS OF AMERICA;)	
TRACY and DONNA HUNT, d/b/a THE)	
MW CATTLE COMPANY, LLC; and)	
KENNY and ROXY FOX,)	
)	
)	
Petitioners/Plaintiffs,)	
)	
v.)	No. 19-CV-205-F
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE; ANIMAL AND)	
PLANT HEALTH INSPECTION)	
SERVICE; SONNY PERDUE, in his)	
official capacity as the Secretary of)	
Agriculture; and KEVIN SHEA, in his)	
official capacity as Administrator of the)	
Animal and Plant Health Inspection)	
Service,)	
Respondents/Defendants.)	

CERTIFICATION OF DR. AARON SCOTT

I, AARON SCOTT, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, as Director of the National Animal Disease Traceability and Veterinary Accreditation Center (NADTVAC). I have served in this position since January 7, 2018.

2. I oversaw the coordination and compilation of Veterinary Services' supplemental Administrative Record on the Cattle Traceability Working Group (CTWG) and Producers Traceability Council (PTC).

3. Veterinary Services compiled this additional Administrative Record to supplement the Administrative Record lodged with the court on July 6, 2020 in response to the Plaintiff's Second Amended Complaint, ECF No. 27, filed on April 6, 2020.

4. The supplemental Administrative Record includes 262 documents that cover 811 pages, Bates Stamped as AR-00369 through AR-001179.

5. One document is partially redacted to withhold privileged materials.

6. To the best of my knowledge, the attached supplemental Administrative Record constitutes a true and correct copy of all available documents and materials directly or indirectly considered by Veterinary Services in connection with the Cattle Traceability Working Group and Producers Traceability Council.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and knowledge. Executed this 27th day of August, 2020, at Fort Collins, Colorado.

Aaron Scott DVM PhD DACVPM (epidemiology)
Director, National Animal Disease Traceability and Veterinary Accreditation Center
(NADTVAC)



8:41 am, 10/13/20

U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

MORGAN EMMETT,
RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA; *et al.*,

Petitioners/Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE; *et al.*,

Respondents/Defendants,

Case No. 19-CV-205-F

**ORDER DENYING PLAINTIFF/PETITIONER'S MOTION TO COMPEL
RESPONSIVE PLEADING OR, ALTERNATIVELY, TO PERMIT DISCOVERY
[35] AS UNTIMELY**

This matter is before the Court on Plaintiff/Petitioner's Motion to Compel Responsive Pleading or, Alternatively, to Permit Discovery [Doc. 35]. The Court having carefully considered the Motion, Response, and Reply finds as follows:

This action was initiated on October 4, 2019, when Plaintiff/Petitioner's filed a Petition for Review and Complaint for Declaratory Judgment and Injunctive Relief [Doc. 1]. On February 13, 2020, the Court Dismissed the Petition for lack of jurisdiction [Doc. 21]. On February 18, 2020, Plaintiff/Petitioner filed a Motion to Alter/Amend Judgment [Doc. 22]. On March 6, 2020, the Court issued an Order on Rule 60 Motions for Correction and Relief from Order Dismissing Case [Doc. 26]. In this Order the Court granted Plaintiff/Petitioner's Rule 60(a) Motion related to Federal Advisory Committee Act Claim and gave Plaintiff/Petitioner

until April 6, 2020, to file an amended pleading. Plaintiff/Petitioner filed an Amended Complaint on April 6, 2020 [Doc. 27]. On April 20, 2020, Defendant/Respondents filed a Status Report [Doc. 28] asserting that Plaintiff/Petitioner's Amended Complaint amounts to a review of an agency action case and is governed by Local Rule 83.6. Therefore, the administrative record was to be lodged with the Court within ninety days of filing of the amended pleading. Defendant/Respondent lodged the Administrative Record on July 6, 2020 [Doc. 29]. On July 7, 2020, the Court issued a Scheduling Order [Doc. 30] giving Plaintiff/Petitioner until July 20, 2020, to make any request for completion of the record or to consider extra-record evidence. The Scheduling Order also set forth a schedule for the service of the opening brief, responsive brief, and reply and stating the Court would render a decision based on the briefs and the record, unless a request for an oral argument was granted. On July 17, 2020, Plaintiff/Petitioner's Unopposed Motion [Doc. 31] for Extension of Time to Review Administrative Record and to File Local Rule 83.6(b)(3) Motion was granted [Doc. 32]. On August 17, 2020, Defendant/Respondent's Unopposed Motion [Doc. 33] to supplement the Administrative Record was granted [Doc. 34]. On August 17, 2020, Plaintiff/Petitioner filed the instant Motion requesting Defendant/Respondents be ordered to answer the Amended Complaint and that this matter proceed under the Federal Rules of Civil Procedure.

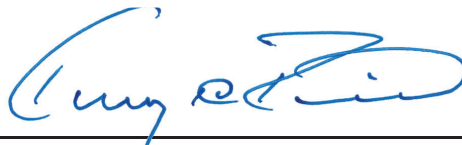
Plaintiff/Petitioner's request for a ruling that this case is not governed by Local Rule 83.6 that sets forth the procedures for Review of Action of Administrative Agencies is untimely. Plaintiff/Petitioner was put on notice on April 4, 2020, that Defendant/Respondent considered this case to be governed by Local Rule 83.6. Plaintiff/Petitioner made no objection or response. Then nearly six weeks later, after the lodging of the administrative record, the Court issued a Scheduling Order setting out a timeline for the case to proceed under Local

Rule 83.6. Again, there was no objection or response of any kind until nearly four months after first being put on notice that Defendant/Respondent, and more importantly, that the Court was treating this action as an administrative review case governed by Local Rule 83.6. Plaintiff/Petitioner offers no reasoning or justification of any kind for failing to address this issue until now. *See Centennial Archaeology, Inc. v. AECOM, Inc.*, 688 F.3d 673, 682 (10th Cir. 2012) (“Ordinarily, however, we defer to the discretion of the district court in deciding whether a motion is too tardy to be considered.”); *Cont’l Indus., Inc. v. Integrated Logistics Sols., LLC.*, 211 F.R.D. 442, 444 (N.D. Okla. 2002) (“Although Fed.R.Civ.P. 37 does not specify any time limit within which a Motion to Compel must be brought, courts have made it clear that a party seeking to compel discovery must do so in timely fashion. *Buttler v. Benson*, 193 F.R.D. 664, 666 (D.Colo.2000) (‘A party cannot ignore available discovery remedies for months and then, on the eve of trial, move the court for an order compelling production.’) Once, as here, a party registers a timely objection to requested production, the initiative rests with the party seeking production to move for an order compelling it. *Clinchfield R. Co. v. Lynch*, 700 F.2d 126, 132 n. 10 (4th Cir.1983). Failure to pursue a discovery remedy in timely fashion may constitute a waiver of discovery violations. *DesRosiers v. Moran*, 949 F.2d 15, 22 n. 8 (1st Cir.1991)”).

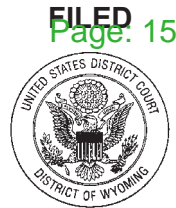
Therefore, Plaintiff/Petitioner’s request that this matter proceed under the Federal Rules of Civil Procedure is denied as untimely.

THEREFORE IT IS ORDERED Plaintiff/Petitioner's Motion to Compel Responsive Pleading or, Alternatively, to Permit Discovery [Doc. 35] is DENIED as untimely.

Dated this 13th day of October, 2020.



Kelly H. Rankin
United States Magistrate Judge



9:58 am, 11/16/20

Margaret Botkins
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,
TRACY and DONNA HUNT, d/b/a THE
MW CATTLE COMPANY, LLC, and
KENNY and ROXY FOX,

Petitioners,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al*,

Defendant.

Case No. 19-CV-205-F

**ORDER DENYING PETITIONERS'/PLAINTIFFS' REQUEST FOR
RECONSIDERATION OF DENIAL OF MOTION TO COMPEL RESPONSIVE
PLEADING OR, ALTERNATIVELY, PERMIT DISCOVERY**

This matter comes before the Court by Plaintiffs'/Petitioners' (hereinafter "R-CALF") objection to and request for reconsideration of the Magistrate Judge's October 13, 2020 Order ("October Order") denying as untimely R-CALF's motion to compel a responsive pleading or, alternatively, to permit discovery. CM/ECF Document ("Doc.") 42 (October Order), Doc. 43 (objections and motion for reconsideration). Upon consideration of R-CALF's objections, I conclude the Magistrate Judge's October Order is neither clearly erroneous nor contrary to law and AFFIRM. However, R-CALF shall be permitted fourteen (14) days from the date of entry of this Order to submit any request under Local

Rule 83.6(b)(3) for completion of the record, or for consideration of extra-record evidence. Any such filing under Local Rule 83.6(b)(3) shall not include discovery requests but must comply with *American Mining Congress v. Thomas*, 772 F.2d 617, 626 (10th Cir. 1985) which recognizes that the circumstances that warrant consideration of extra-record materials are “extremely limited.” Failure to satisfy the narrow conditions warranting an exception to the general rule that judicial review is generally limited to the administrative record will result in a denial of the Local Rule 83.6(b)(3) request.

Background

The October Order appropriately outlines the procedural background of this case:

This action was initiated on October 4, 2019, when Plaintiff/Petitioner’s [sic] filed a Petition for Review and Complaint for Declaratory Judgment and Injunctive Relief [Doc. 1]. On February 13, 2020, the Court Dismissed the Petition for lack of jurisdiction [Doc. 21]. On February 18, 2020, Plaintiff/Petitioner filed a Motion to Alter/Amend Judgment [Doc. 22]. On March 6, 2020, the Court issued an Order on Rule 60 Motions for Correction and Relief from Order Dismissing Case [Doc. 26]. In this Order the Court granted Plaintiff/Petitioner’s Rule 60(a) Motion related to Federal Advisory Committee Act Claim and gave Plaintiff/Petitioner until April 6, 2020, to file an amended pleading. Plaintiff/Petitioner filed an Amended Complaint on April 6, 2020 [Doc. 27]. On April 20, 2020, Defendant/Respondents filed a Status Report [Doc. 28] asserting that Plaintiff/Petitioner’s Amended Complaint amounts to a review of an agency action case and is governed by Local Rule 83.6. Therefore, the administrative record was to be lodged with the Court within ninety days of filing of the amended pleading. Defendant/Respondent lodged the Administrative Record on July 6, 2020 [Doc. 29]. On July 7, 2020, the Court issued a Scheduling Order [Doc. 30] giving Plaintiff/Petitioner until July 20, 2020, to make any request for completion of the record or to consider extra-record evidence. The Scheduling Order also set forth a schedule for the service of the opening brief, responsive brief, and reply and stating the Court would render a decision based on the briefs and the record, unless a request for an oral argument was granted. On July 17, 2020, Plaintiff/Petitioner’s Unopposed Motion [Doc. 31] for Extension of Time to Review Administrative Record and to File Local Rule 83.6(b)(3) Motion was granted [Doc. 32]. On August 17, 2020, Defendant/Respondent’s Unopposed Motion [Doc. 33] to supplement the Administrative Record was granted [Doc. 34]. On August 17, 2020, Plaintiff/Petitioner filed the instant Motion requesting

Defendant/Respondents be ordered to answer the Amended Complaint and that this matter proceed under the Federal Rules of Civil Procedure.

Doc. 42, pp. 1-2.

Since R-CALF's motion, on August 28, 2020, Respondent ("the Government") lodged the supplemental administrative record. Doc. 39. The Order that provided for a supplemental record also stated, "[a]ll Local Rule 83.(b)(3) motions shall be filed on or before September 28, 2020." Doc. 34. Other than briefing related to R-CALF's motion to compel a responsive pleading or, alternatively, to permit discovery, no other pleadings have been filed by the parties. The Magistrate Judge issued his October Order concluding, "[R-CALF's] request for a ruling that this case is not governed by Local Rule 83.6 that sets forth the procedures for Review of Action of Administrative Agencies is untimely." Doc. 42, p. 2.

Applicable Legal Standard for Review

The Court agrees with the legal standard for review recited by the Government:

Upon timely objection to a magistrate judge's decision on a non-dispositive matter, the district judge will "modify or set aside any part of the order that is clearly erroneous or is contrary to law." F.R.C.P. 72(a); see 28 U.S.C. § 636(b)(1)(A); Local Civil Rule 74.1(a). The clearly erroneous standard "requires that the reviewing court affirm unless it 'on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). "Under the 'contrary to law' standard, the district court conducts a plenary review of the magistrate judge's purely legal determinations, setting aside the magistrate judge's order only if it applied an incorrect legal standard." *Jensen v. Solvay Chem., Inc.*, 520 F. Supp. 2d 1349, 1351 (D. Wyo. 2007) (citing *Wyoming v. United States Dep't of Agric.*, 239 F. Supp. 2d 1219, 1236 (D. Wyo. 2002)). "In sum, it is extremely difficult to justify alteration of the magistrate judge's nondispositive actions by the district judge." 12 Wright, Miller & Marcus, *Federal Practice and Procedure* § 3069 (2d ed. 1997).

Doc. 44, pp. 3-4 (quoting *Millward v. Bd. of Cty. Comm'rs*, 17-cv-117-SWS, 2018 WL 9371673, at *2 (D. Wyo. July 17, 2018)).

Furthermore, Local Rule 83.6(b)(3) provides:

To the extent a party believes the record does not contain all document(s) which were considered by the agency, a party may seek leave of Court to complete the record or may oppose a party's request for such completion. Extra-record evidence which was not considered by the agency will not be permitted except in extraordinary circumstances. Any request for completion of the record, or for consideration of extra-record evidence, must be filed within fourteen (14) days after the record was lodged with the Clerk of Court. Local Rule 7.1(b), which pertains to briefing of non-dispositive motions, shall apply.

Discussion

R-CALF argues the October Order was legal error as its motion was not untimely but was filed 42 days in advance of the Court-established deadline of September 28, 2020. Doc. 43, p. 6. This argument is unpersuasive as the September 28, 2020 date referenced by R-CALF was for Local Rule 83.6(b)(3) motions. As referenced above, Local Rule 83.6(b)(3) motions are to complete the record by seeking leave of Court to consider extra-record evidence not considered by the agency. Local Rule 83.6(b)(3) does not permit discovery motions or motions which essentially object to the Government's position that the case must proceed consistent with the procedures for review of agency action.

As noted by the Magistrate Judge, R-CALF made "no objection or response of any kind until nearly four months after first being put on notice that Defendant/Respondent, and more importantly, that the Court was treating this action as an administrative review case governed by Local Rule 83.6. [R-CALF] offers no reasoning or justification of any kind for failing to address this issue until now." Doc. 46, pp. 2-3. The Magistrate Judge is

correct that R-CALF was on notice that the case would proceed under a record review pursuant to Local Rule 83.6 rather than as a civil case where discovery is permitted.

Further, while R-CALF argues it could not have filed its motion earlier until it knew that discovery would be needed, this argument is unpersuasive. R-CALF filed an amended complaint claiming violations of the Federal Advisory Committee Act (“FACA”) and the Administrative Procedure Act (“APA”). Doc. 27, ¶¶ 139-179. Once the Government timely asserted fourteen days later that “FACA provides no private right of action” and that the case must proceed under the APA and Local Rule 83.6, R-CALF knew no answer and no discovery would be afforded. Doc. 28. If R-CALF had a legal basis to assert otherwise, it should have brought that to the attention of the Court rather than waiting nearly four months to file its motion. In short, R-CALF fails to show how the Magistrate Judge’s reasoning is clearly erroneous or contrary to law.

Finally, R-CALF’s argument that it can request discovery is unpersuasive. The Court agrees with the Government that FACA affords no private cause of action “for those seeking to enforce the procedural requirements attending the creation and operation of federal advisory committees.” *Colo. Env’t Coal. v Wenker*, 353 F.3d 1221, 1234-35 (10th Cir. 2004). Therefore, R-CALF’s FACA violation claims must proceed under the judicial review provisions of the APA. *Id.*

R-CALF’s reliance on *Association of American Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993), for the proposition that it can be afforded discovery is unpersuasive. At best, the *Clinton* case appears to assume that FACA provides a private cause of action. More importantly, though, *Clinton* precedes *Alexander v. Sandoval*, 532

U.S. 275 (2001) wherein the Supreme Court provided clear direction for courts on whether Congress created a private remedy. *Id.* at 286 (the “judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy.... Statutory intent on this latter point is determinative”). The Tenth Circuit’s position on this point is clear – FACA did not create a private cause of action. Thus, the out-of-circuit and dated *Clinton* case provides no basis for a remedy outside the APA or for discovery.

Conclusion

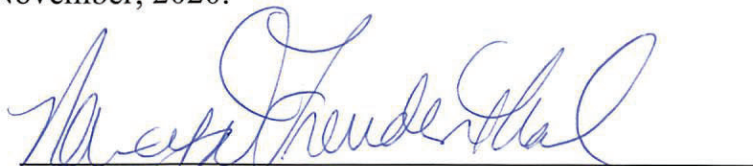
As explained above, R-CALF fails to show how the Magistrate Judge’s October Order is clearly erroneous or contrary to law.

Therefore, it is ordered that R-CALF’s objection to and request for reconsideration of the Magistrate Judge’s October Order is DENIED and the October Order is AFFIRMED; and

It is further ORDERED that R-CALF shall have fourteen (14) days from the date of entry of this Order to submit any request under Local Rule 83.6(b)(3) for completion of the record or for consideration of extra-record evidence; and

It is finally ORDERED that all other provisions of the July 7, 2020 Scheduling Order shall remain in effect. Doc. 30.

Dated this 16th day of November, 2020.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE



8:25 am, 12/23/20

Margaret Botkins
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,
TRACY and DONNA HUNT, d/b/a THE
MW CATTLE COMPANY, LLC, and
KENNY and ROXY FOX,

Petitioners,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al*,

Defendant.

Case No. 19-CV-205-F

**ORDER GRANTING IN PART AND DENYING PETITIONERS' MOTION
FOR COMPLETION OF RECORD OR
FOR CONSIDERATION OF EXTRA-RECORD EVIDENCE**

This matter comes before the Court by Petitioners' (hereinafter "R-CALF") motion for completion of record or for consideration of extra-record evidence. CM/ECF Document (Doc.) 47. This motion came in response to the Court's November 16, 2020 Order. Doc. 46. In the November Order, this Court allowed R-CALF to submit any request under Local Rule 83.6(b)(3) for completion of the record, or for consideration of extra-record evidence. For the reasons that follow, the Court grants R-CALF's motion under Local Rule 83.6(b)(3) to allow consideration of documents 1-4 and 6 attached to R-CALF's motion (Doc. 47-1, 47-2, 47-3, 47-4 and 47-6) and denies the motion in all other respects.

Background

Petitioners accurately state the posture of the case which brings the instant motion before the Court:

The focus here is on whether USDA correctly determined that [the Federal Advisory Committee Act (FACA)] did not apply to its work with the [Cattle Traceability Working Group (CTWG)] and the [Producer Traceability Council (PTC)]. The ultimate question to be decided by this Court is whether USDA “established” or “utilized” these committees. Because the Court has ruled that this case is to be adjudged solely on the basis of an “Administrative Record,” such record must, at a minimum, include all of the documents that are relevant to the “established” and “utilized” issues.

Doc. 47, p. 2.

Petitioners argue the following documents are relevant to the FACA “established” and “utilized” issues and should be included in the Administrative Record:

1. A list of attendees at the September 26-27, 2017 “Strategy Forum on Livestock Traceability,” held at a hotel at the airport in Denver, Colorado (“Strategy Forum”). Petitioners allege this list demonstrates that a significant percentage of attendees at the forum were senior USDA officials. *See* Doc. 47-1.
2. The official program for the 2017 Strategy Forum. Petitioners allege this program confirms that USDA played a major role in organizing the Strategy Forum given that three of the ten members of the “Planning Committee” were senior USDA officials. *See* Doc. 47-2.
3. A September 25, 2017 slide show prepared by USDA and presented at the Strategy Forum. *See* Doc. 47-3.

4. A “White Paper” prepared following the Strategy Forum. Petitioners allege other documents in the record indicate that USDA prepared the White Paper which confirms USDA’s desire that the CTWG be formed to provide advice to USDA. *See* Doc. 47-4.
5. An undated document entitled, “Priority for Discussion and Input; USDA Summary of Feedback Topics.” Petitioners allege this document was prepared in mid-2018 by the “Opportunities and Responsibilities Task Group,” one of the subgroups formed by the CTWG, and that the document was distributed to USDA officials who participated in the subgroup’s proceedings. *See* Doc. 47-5.
6. Minutes of the April 5, 2018 meeting of the “Collection Technology Task Group,” which Petitioner alleges is another of the CTWG subgroups. Petitioners allege the document shows that a senior USDA official, Neil Hammerschmidt, attended the meeting and the minutes quote Hammerschmidt as stating that USDA was looking to CTWG for advice on animal disease-traceability issues. *See* Doc. 47-6.
7. Minutes (perhaps unofficial) of the June 28, 2018 meeting of the CTWG. Petitioners allege the document, entitled, “USDA Summary of Feedback Topics for Discussion & Input by the Opportunities and Responsibilities Task Group” (a title identical to the heading of the “ballot” (Document #4 above)), indicates that the CTWG’s discussions proceeded precisely as USDA suggested. *See* Doc. 47-7.
8. A YouTube video available only at www.youtube.com/watch?v=DP5ZGP3x370 which Petitioners allege displays a slide presentation, prepared and narrated by USDA personnel in the late summer of 2017. Petitioners allege this video is highly

relevant to R-CALF's claim that the CTWG, which was established at the Strategy Forum, should be deemed to have been "established" by USDA for purposes of FACA.

9. A declaration from Plaintiff Kenny Fox dated November 30, 2020, which Petitioners allege provides Mr. Fox's first-hand account of the operations of the CTWG and of USDA's establishment of the PTC (the second advisory committee at issue in this case). *See* Doc. 47-8.

The government generally opposes Petitioners' motion on the basis that it fails to satisfy the extremely limited circumstances which warrant consideration of extra-record evidence. However, the government does not object to the Court withholding a ruling on Petitioners' Attachments 1-4 until consideration of whether USDA established or utilized CTWG and PTC as advisory panels or committees under FACA.

Applicable Legal Standard

Local Rule 83.6(b)(3) provides in relevant part:

To the extent a party believes the record does not contain all document(s) which were considered by the agency, a party may seek leave of Court to complete the record or may oppose a party's request for such completion. Extra-record evidence which was not considered by the agency will not be permitted except in extraordinary circumstances.

The Local Rule is consistent with caselaw from this Circuit which directs that "[t]he circumstances which warrant consideration of extra-record materials are 'extremely limited.'" *Custer Cty. Action Ass'n v. Garvey*, 256 F.3d 1024, 1027 n.1 (10th Cir. 2001) (quoting *American Mining Cong. v. Thomas*, 772 F.2d 617, 626 (10th Cir. 1985)). This rule reinforces the law that a court's "review of agency action is normally restricted to the

administrative record.” *Citizens for Alt. to Radioactive Dumping v. U.S. Dep’t of Energy*, 485 F.3d 1091, 1096 (10th Cir. 2007). *See also Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743 (1985) (“The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.” (quotations omitted)). Therefore, the Court begins with the assumption that the agency “properly designated the Administrative Record absent clear evidence to the contrary.” *Citizens for Alt. to Radioactive Dumping*, 485 F.3d at 1097.

Discussion

In turning first to Petitioners’ attachments 47-1 through 47-4, while the government argues against the inclusion of these documents in the Administrative Record, it does not oppose withholding a ruling pending an order on the merits. This sort of “limbo” status for Petitioners’ documents is untenable. As to the substance of the documents, Petitioners allege the slide show (Doc. 47-3) and white paper (Doc. 47-4) were prepared by the USDA in the context of a “Strategy Forum on Livestock Traceability,” and that the list of attendees (Doc. 47-1) and the program (Doc. 47-2) indicate USDA’s involvement in the Strategic Forum. While the government argues the documents are not relevant to the issues presented in the case, it does not challenge Petitioners’ representations. Furthermore, “relevance” and what the agency considered in reaching a challenged decision are two separate standards. Therefore, the Court allows these documents as supplementation of the Administrative Record.

Next, the Court will consider attachment 47-6, which appears to be minutes from a task force associated with CTWG. Petitioners point to the remarks of Mr. Hammerschmidt

as stating that USDA was looking to CTWG for advice on animal disease-traceability issues. The government opposes inclusion of this document, claiming it does not have it in its possession, has not seen it, and Hammerschmidt had retired from APHIS approximately four months prior to the date of the minutes. The Court notes Hammerschmidt was present according to the minutes, but has no affiliation. In considering the document and Petitioners' briefing, the Court concludes Petitioners have not satisfied their burden to show that this document was considered by the USDA in reaching the challenged decision or that there is some extraordinary circumstance which warrants its consideration as an extra-record document.

In turning next to Attachments 5 and 7 (Doc. 47-5 and 47-7), these appear to be related documents on "Feedback Topics for Discussion & Input by the Opportunities and Responsibilities Task Group." Attachment 5 appears to be a request from some unknown entity to identify the priority level for certain topics, with an email supplied for response purposes (jkritzke@equitycoop.com). Petitioners allege Attachment 5 was prepared by the Task Group as a subgroup formed by the CTWG. Petitioners also allege it was distributed to USDA and USDA participated in the subgroup. Doc. 47, p. 6. The government contends APHIS officials have not seen the document and USDA officials were not part of this Task Group. Attachment 7 appears to be perhaps unofficial minutes. Again, the government contends they were not part of the Task Group and that the text seems to have been "cut and pasted" from a report posted on the APHIS public website. In considering the documents and Petitioners' motion, the Court concludes Petitioners have not satisfied their burden to show that these documents were considered by the USDA in reaching the

challenged decision or that there is some extraordinary circumstance which warrants their consideration as extra-record documents.

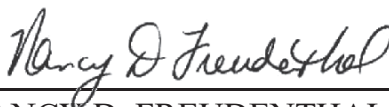
As to the YouTube video (identified as “unattached” Attachment 8 and only available on YouTube), the Court is unable to view this video given the firewalls set up to protect its available technology. Further, the Court is unwilling to bypass these protections simply on Petitioners’ representations that the video is “highly relevant.” It is the Petitioners’ burden to show that this video, which apparently is not in the agency’s possession and was not recorded by the agency, was considered by the USDA in reaching the challenged decision, or that there is some extraordinary circumstance which warrants its consideration as an extra-record supplement to the record. The conclusory allegations by Petitioners have not satisfied their burden.

Finally, the Court denies consideration of the Fox Declaration (Doc. 47-8). This declaration clearly was not considered by the USDA in any decision-making context. Further, other than declarations that Fox was a member of the CTWG and regularly attended meetings where other USDA members were present, it is replete with hearsay and phrased in a passive voice tense which fails to identify who did what, when, where, how or why. Consequently, it offers minimal if any additional probative value. Because of these issues, Petitioners have not satisfied their burden to show that there is some extraordinary circumstance which warrants consideration of the Fox declaration as an extra-record supplement to the record.

Conclusion

For the reasons explained above, the Court GRANTS Petitioners' motion (Doc. 47) as to Attachments 47-1 through 47-4. Petitioners' motion to supplement the record to allow consideration of extra-record documents is otherwise DENIED.

Dated this 22nd day of December, 2020.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,
TRACY and DONNA HUNT, d/b/a THE
MW CATTLE COMPANY, LLC, and
KENNY and ROXY FOX,

Petitioners,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al*,

Respondents.

Case No. 19-CV-205-F

ORDER

The only claim remaining in this case is Petitioners' (collectively, "R-CALF") claim that Respondents (collectively "APHIS"¹) violated the Administrative Procedure Act (APA). More specifically, R-CALF alleges APHIS failed to comply with the Federal Advisory Committee Act (FACA) which constitutes arbitrary and capricious agency action in violation of the APA. CM/ECF Document (Doc.) 27, pp. 28-29. A more focused statement of the issue presented is whether APHIS correctly determined that FACA did not apply to its work with the Cattle Traceability Working Group (CTWG) and the Producer

¹ APHIS refers to Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Traceability Council (PTC). *See* Doc. 47, p. 2. This issue requires the Court to decide whether APHIS “established” or “utilized” these committees.

To aid in this determination, R-CALF seeks to complete the agency record with certain documents R-CALF received in response to a Freedom of Information Act (FOIA) request. Doc. 52, 62. R-CALF argues these documents are relevant to the FACA “established” and “utilized” issues. APHIS opposes completion based primarily on a merits argument as to the meaning of “established.” The Court agrees with R-CALF that its proffered documents for completion of the record are relevant to R-CALF’s argument as to the proper interpretation and application of “established” under FACA. For this reason, the Court grants R-CALF’s motions to complete the agency record and will consider the documents supplied by R-CALF as part of the agency record. Doc. 52-1, 62-1, 62-2, 62-3, 62-4 & 62-5.

Background

On October 4, 2019, R-CALF filed a Petition for Review of Agency Action and Complaint for Declaratory Judgment and Injunctive Relief, challenging APHIS’s issuance of a 2019 “Factsheet” entitled “Advanced Animal Disease Traceability: A Plan to Achieve Electronic Identification of Cattle and Bison.” Doc. 1. R-CALF alleged the Factsheet unlawfully mandated the use of radio frequency identification (RFID) eartags and technology for certain categories of livestock. On October 25, 2019, APHIS posted a statement on its website announcing that it had removed the Factsheet from its website, “as it is no longer representative of current agency policy.” (Doc. 11-3). This Court concluded

R-CALF's petition seeking relief from the Factsheet was moot, and dismissed the case for lack of jurisdiction. Doc. 21.

On R-CALF's Rule 60(a) motion, the Court granted leave for R-CALF to amend its FACA claim. Doc. 26. A timely amended complaint and petition was filed. Doc. 27. That filing led to a dispute concerning whether discovery on R-CALF's FACA claim would be permitted. By Order, this Court reaffirmed that the case would proceed under a record review rather than as a civil case where discovery is permitted. Doc. 46. The Order concluded that FACA affords no private cause of action. Thus, all FACA violation claims would proceed only under the judicial review provision of the APA. *Id.*

APHIS filed its administrative record on July 6, 2020 (Doc. 29), and supplemented the record on August 28, 2020. Doc. 39. By Order entered December 23, 2020, the Court allowed five extra-record documents submitted by R-CALF (Doc, 47-1, 47-2, 47-3, 47-4 and 47-6), to complete the agency record. Doc. 50. Consistent with this Order, the Court will also consider six additional documents supplied by R-CALF. Doc. 52-1, 62-1, 62-2, 62-3, 62-4 & 62-5. The agency record and R-CALF's extra-record documents show the following as to APHIS, the CTWG and the PTC relative to the issue of whether APHIS "established" or "utilized" these two entities:

1. In 2013, APHIS published a rule entitled "Traceability for Livestock Moving Interstate." AR 110. However, internal assessments by APHIS concluded that an electronic ID device (EID) was required for a truly effective Animal Disease Traceability (ADT) program. Administrative Record (AR) 112-114.

2. APHIS established a State-Federal ADT Working Group² in 2017 which provided recommendations to APHIS, including the recommendation that the United States “must move toward an EID system for cattle with a targeted implementation date of January 1, 2023.” AR 124. The recommendation also recognized that a comprehensive plan would be necessary to “address the multitude of very complex issues related to the implementation of a fully integrated electronic system” and “[a] specialized industry-lead task force with government participation should develop the plan....” *Id.*
3. APHIS also acknowledged “we must achieve an industry-driven, pro-traceability position that supports [EID].” To achieve this strategic goal, “APHIS officials must meet with industry leaders frequently and focus discussion on critical issues, while moving forward with any changes to the current system in a transparent manner.” AR 139. APHIS anticipated it would “provide a lead role in communicating the issues at stake” and “[e]ncourage formation of an industry-led task force with input from animal health officials as needed.” *Id.*
4. In September 2017, a Strategy Forum on Livestock Traceability was held, funded in part and co-hosted by APHIS. Doc. 47-2, 47-4 at p. 3. Key recommendations from the State-Federal ADT Working Group were discussed, including the

² In the original pleading (Doc. 1), R-CALF alleged that APHIS’s activities relating to the State-Federal Animal Disease Traceability Working Group violated FACA. In APHIS’s motion to dismiss R-CALF’s original pleading, APHIS pointed out that R-CALF had not pled sufficient facts to establish that the ADT Working Group was a FACA advisory committee. In R-CALF’s Amended Complaint, Petitioners abandoned their FACA claims relating to the State-Federal ADT Working Group and no longer allege that this entity is or was a FACA advisory committee. Doc. 27.

recommendation to put together a group of industry stakeholders in order to drive the ADT movement forward. AR 141; Doc. 47-4. Various APHIS employees actively participated in the Denver meeting. Doc. 47-1, 47-2, 47-4 at pp. 3 & 27.

5. The executive committee for the National Institute for Animal Agriculture (NIAA)³ met on November 8, 2017 to form and name CTWG, and to discuss CTWG's membership. AR 385-87. The group discussed government involvement and was advised by NIAA's Chief Operating Officer that an APHIS official only wanted "to be kept up to speed/informed, and ... participate as needed." *Id.* The NIAA executive committee decided that cost would be a shared responsibility among the participants. *Id.* CTWG's goal was to advance ADT. AR 5, 385, 466, 491, 927-929; Doc. 47-4, p. 25.
6. CTWG first met on November 20, 2017. AR 491. No APHIS officials attended. AR 5. However, CTWG desired to work in parallel with APHIS efforts. *Id.* APHIS officials were invited to a CTWG meeting on April 8, 2019 to provide an update on current activities. AR 927-29.
7. CTWG (and its various subgroups) met regularly. Its purpose was "to work collaboratively across the various segments of the cattle industry to enhance the traceability of animals for purposes of protecting animal health and market access." AR 491. In notes associated with CTWG, APHIS continued to envision moving forward with an EID system for effective traceability. AR 511. CTWG and APHIS

³ NIAA is a nonprofit organization. See <https://www.animalagriculture.org>. R-CALF does not contend that NIAA is in any way a quasi-public organization such as the National Academy of Sciences.

worked closely together, and CTWG made frequent recommendations on ADT and EID technology. AR 795, 830-35, 867, 872-73, 884-87.

8. Internal dissension arose within CTWG, with some participants believing CTWG had served its purpose or reached a point of diminishing returns. AR 869, 879, 882, 915, 929, 957. APHIS expressed a concern with how the dialogue would continue and an interest in an alternative to CTWG. AR 879. One APHIS official observed, “I don’t know what the next group might look like or how we pull them together but something we should consider. It just wont [sic] be able to have NIAA/Katie Ambrose appearing as the helm.” AR 901.
9. APHIS was advised that the “Producers Council” was “a spinoff” from the CTWG, and that this spinoff group would be announced at the April 8, 2019 NIAA Annual Conference. AR 914-915, AR 869, 892, 1018-1021. The co-chairs of the Producers Council were cattle industry representatives who previously served on CTWG. AR 915. These co-chairs were tasked with putting together “a small, action oriented group with the singular goal of looking at the work [CTWG has] done, and the work yet to be done, uniquely through the eyes of the producers we all serve.” *Id.*
10. The Producers Council (also referred to as the Producer Traceability Council (PTC)) first met on May 6-7, 2019. AR 921. An APHIS official attended the meeting and was asked to be identified as a “government liaison” and “non-voting member.” AR 332, 921, 933. NIAA commented to an APHIS official that the APHIS official underestimated her value to PTC as she was able to answer many questions that would have gone unanswered and slowed the process further. AR 945. One or more

APHIS officials attended meetings with PTC. AR 968, 988, 1013, 1018. APHIS edited minutes for at least one meeting. AR 1061-63.

11. By press release dated May 15, 2019, the PTC announced it had reached consensus on two major points to increase the number of cattle identified in the United States. AR 948. One point was to select High Frequency/Ultra High Frequency radio identification system and timeline for adoption of the system to mirror the US Department of Agriculture's timeline for sunseting of metal tags with complete implementation no later than January 1, 2023. *Id.*
12. Throughout 2018-19, CTWG and PTC sent APHIS a regular stream of RFID-related technical advice, approved by formal votes of those committees. AR 864-867 (CTWG); AR 335-36 (PTC).

Discussion

The Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2 § 1, was enacted by Congress in 1972 based upon "a desire to assess" the need for the "numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government." *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 445-46 (1989) (citing 5 U.S.C. § 2(a)). The purpose of FACA is "to ensure that new advisory committees be established only when essential and that their number be minimized; that they be terminated when they have outlived their usefulness; that their creation, operation, and duration be subject to uniform standards and procedures; that Congress and the public

remain apprised of their existence, activities, and cost; and that their work be exclusively advisory in nature.” *Public Citizen*, 491 U.S. at 446 (citing 5 U.S.C. § 2(b)).

An “advisory committee” is defined by FACA as “any committee, board, commission, council, conference, panel, task force, or other similar group” or subcommittee, which is “*established or utilized*” by the President, or by one or more agencies “in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government,” except a committee composed of wholly full-time, or permanent officers or employees of the Federal Government. 5 U.S.C. § 3 (emphasis added). FACA constrains the establishment of advisory committees in that such committees shall not be established unless specifically authorized by statute, by the President or by an agency head through an established procedure. 5 U.S.C. § 9(a).

FACA also imposes specific operational requirements on advisory committees such as: keeping detailed minutes of its meetings, § 10(c); requiring that those meetings be chaired or attended by an officer or employee of the Federal Government who is authorized to adjourn any meeting when such an adjournment is in the public interest, § 10(e); requiring the advisory committee to provide advance notice of meetings and that the meetings be open to the public, § 10(a); requiring that advisory committee minutes, records and reports be made available to the public, provided they do not fall within one of the Freedom of Information Act exceptions, and the Government does not choose to withhold them, § 10(b); and the advisory committees must be fairly balanced in terms of the points of view represented and the functions performed, §§ 5(b)(2),(c). *Public Citizen*, 491 U.S. at 446–47.

A. Did APHIS “establish” CTWG or PTC for purposes of FACA?

R-CALF argues the Administrative Record establishes as a matter of law that APHIS “established” CTWG and PTC in the interest of obtaining advice or recommendations and thus both are subject to FACA’s requirements. According to R-CALF, both came into existence solely because of APHIS’s stated policy goals and efforts to have an industry-led task force with government employee participation to develop a comprehensive plan related to the implementation of a fully integrated EID system. According to R-CALF, both committees then pursued the precise agenda dictated to them by APHIS. R-CALF argues *Public Citizen* did not interpret the meaning of “established” as that was not at issue, but that the Court referenced the Senate Report’s explanation that the phrase “established or organized” should be construed broadly:

Like the House Report, the accompanying Senate Report stated that the phrase “established or organized” was to be understood in its “*most liberal sense*, so that when an officer brings together a group **by formal or informal means**, by contract or other arrangement, and whether or not Federal money is expended, to obtain advice and information, such group is covered by the provisions of this bill.”

Id. at 461 (citing S. Rep. No. 92-1098, p.8 (1972)) (bolded emphasis added).

The government argues for a narrow interpretation of FACA, and relies on out-of-circuit authority which has interpreted *Public Citizen* to conclude that an agency does not “establish” an advisory committee unless it directly or actually forms the committee. *See, Byrd v. U.S. Env’l Protection Agency*, 174 F.3d 239, 245 (D.C. Cir. 1999); *Judicial Watch, Inc. v. U.S. Dept. of Commerce*, 736 F. Supp. 2d 24, 32-33 (D.D.C. 2010) (citing *Byrd*); *VoteVets Action Fund v. U.S. Dep’t of Veterans Affairs*, 414 F. Supp. 3d 61, 68-71 (D.D.C. 2019). Thus, according to APHIS, it is not enough that an agency conceived of the need

for a committee. Because APHIS did not select the membership of either group, was not present at the organizational meeting of CTWG, was not involved in the “spinoff” of PTC from CTWG, and took no action to directly or actually form either group, it did not “establish” CTWG or PTC.

This Court starts with *Public Citizen* to derive the appropriate interpretation of “established” as used in FACA. While “established” may not be as “woolly” as “utilized,” (*Public Citizen*, 491 U.S. at 452), *Public Citizen* instructs against a literalistic meaning of 5 U.S.C. § 3(2). *Id.* at 463-64. Therefore, this Court will consider evidence of congressional intent to lend the term “established” its proper scope. After all, the Supreme Court instructed that “[c]lose attention to FACA’s history is helpful, for FACA did not flare on the legislative scene with the suddenness of a meteor.” *Id.* at 455. In its analysis of FACA’s history, the Court found Executive Order No. 11007, 3 CFR 573 (1959-1963 Comp.) particularly useful:

President Kennedy issued Executive Order No. 11007 . . . which governed the functioning of advisory committees until FACA's passage. Executive Order No. 11007 is the probable source of the term “utilize” as later employed in FACA. The Order applied to advisory committees “**formed by a department or agency of the Government in the interest of obtaining advice or recommendations,**” or “not formed by a department or agency, but only during any period when it is being *utilized* by a department or agency in the same manner as a Government-formed advisory committee.” § 2(a) (emphasis added). To a large extent, FACA adopted wholesale the provisions of Executive Order No. 11007.

Id. at 456-457 (bolded emphasis added). The Court then concluded that FACA’s legislative purpose “could be accomplished, however, without expanding the coverage of Executive Order No. 11007 to include privately organized committees that received no federal funds.”

Id. at 459. Further, in considering the term “utilized” by an agency, the Court contrasted the term “established” in the following way:

This inference [that Executive Order No. 11007 did not encompass the ABA Committee] draws support from the earlier House Report which instigated the legislative efforts that culminated in FACA. That Report complained that committees “utilized” by an agency – as opposed to **those established directly by an agency** – rarely complied with the requirements of Executive Order No. 1107. See H.R. Rep. No. 91-1731, *supra*, at 15. . . . There is no indication in the Report that a purely private group like the APA Committee that was not **formed by the Executive**, accepted no public funds, and assisted the Executive in performing a constitutionally specified task committed to the Executive was within the terms of Executive Order No. 11007 or was the type of advisory entity that the legislation was urgently needed to address.

Id. at 460 (emphasis added).

The Supreme Court then shifted its focus to the Senate bill which “grew into FACA.” *Id.* at 461.

Like the House Report, the accompanying Senate Report stated that the phrase “established or organized” was to be understood in its “most liberal sense, so that when an officer brings together a group by formal or informal means, by contract or other arrangement, and whether or not Federal money is expended, to obtain advice and information, such group is covered by the provisions of this bill.” S.Rep. No. 92–1098, *supra*, at 8. While the Report manifested a clear intent not to restrict FACA's coverage to advisory committees funded by the Federal Government, it did not indicate any desire to bring all private advisory committees within FACA's terms.

Id. Then, in explaining its conclusion in the last sentence, the Supreme Court referenced “groups organized by, or closely tied to, the Federal Government, and thus enjoying quasi-public status.” *Id.*

The Supreme Court then turned to the complete phrase, “established or utilized:”

It is true that the final version of FACA approved by both Houses employed the phrase “established or utilized,” and that this phrase is more capacious than the word “established” or the phrase “established or organized.” But its genesis suggests that

it was not intended to go much beyond those narrower formulations. . . . In the section dealing with FACA's range of application, the Conference Report stated: "The Act does not apply to persons or organizations which have contractual relationships with Federal agencies *nor to advisory committees not directly established by or for such agencies.*" *Id.*, at 10 (emphasis added). The phrase "or utilized" therefore appears to have been added simply to clarify that FACA applies to advisory committees established by the Federal Government in a generous sense of that term, encompassing groups formed indirectly by quasi-public organizations such as the National Academy of Sciences "for" public agencies as well as "by" such agencies themselves.

Id. at 461-462 (emphasis in original). Finally, in explaining the proper interpretation of "utilized," the Supreme Court stated, "[a]nd it comports well with the initial House and Senate bills' limited extension to advisory groups 'established,' on a broad understanding of that word, by the Federal Government, whether those groups were established by the Executive Branch or by statute or whether they were the offspring of some organization created or permeated by the Federal Government." *Id.* at 463.

From *Public Citizen*, this Court concludes that the term "established" should not be read beyond a narrower formulation consistent with Executive Order No. 11007 with the limited expansions⁴ recognized by the Supreme Court. Thus, a group which is not directly formed by a government agency (or by a quasi-public organization such as the National Academy of Sciences for a government agency) is not a committee "established" by the government within FACA's terms. Further, in several comments from *Public Citizen*, the Supreme Court also placed some significance on funding by the government (with the exception of quasi-public entities).

⁴ These expansions are not applicable in this case.

Applying these conclusions to the facts derived from the Administrative Record, it seems clear that APHIS wanted, needed, envisioned and recommended the creation of an industry-led group (like CTWG and PTC) to work in furtherance of APHIS's objective to improve the effectiveness of the ADT program and move toward an EID system for cattle consistent with APHIS's targeted implementation date of January 1, 2023. APHIS also worked with both entities, and corrected work product produced by the entities. However, notwithstanding R-CALF's arguments to the contrary, there is no evidence to suggest that either group was directly formed by APHIS. More specifically, it is not persuasive to find that APHIS directly formed CTWG at the September 2017 Strategy Forum on Livestock Traceability. APHIS presented slides at the 2017 Traceability Forum, and CTWG was formed "as an outcome of" that Forum. AR 5. But it was not directly formed by APHIS at or after that Forum. Rather, it was formed by and composed of industry leaders, as was PTC. *Id.*; AR 331-32, 921.

Further, while R-CALF argues that APHIS officials were members of CTWG and PTC, that fact is not established. Considering the totality of the Administrative Record, the Court finds that APHIS was not a member of either group, but rather it functioned to provide input and to help focus the groups, as well as a resource for the groups. Notwithstanding whether either group was purely private, there is no dispute that neither group was funded by APHIS. There is also no dispute that both groups were led by industry representatives and both were comprised (if not in total, then by a vast majority) of industry representatives.

In summary, considering the term “established” and applying a narrower rather than literalistic interpretation, the Court concludes APHIS did not establish either CTWG or PTC for the purposes or application of FACA.

B. Did APHIS “utilize” CTWG or PTC for purposes of FACA?

Turning again to *Public Citizen*, an agency “utilizes” a group, as that term is used in FACA, only if the group is “amenable to . . . strict management by agency officials.” *Public Citizen*, 491 U.S. at 457-58. This is also reflected in federal regulations, which state:

Utilized for purposes of [FACA], does not have its ordinary meaning. A committee that is not established by the Federal Government is utilized within the meaning of [FACA] when the President or a Federal office or agency exercises actual management or control over its operation.

41 C.F.R. § 102-3.25.

As noted above, the Administrative Record demonstrates only that CTWG and PTC were advancing the same objective as APHIS in support of an effective ADT program, and they were operating for the most part on parallel tracks with APHIS. APHIS participated in certain meetings to provide input and help focus the groups, and edited the work product of the groups. However, nothing in the Administrative Record supports the conclusion that APHIS exercised actual management or control over the operations of either CTWG or PTC. Given this, the Court concludes APHIS did not utilize either CTWG or PTC for the purposes or application of FACA.

Conclusion

For the foregoing reasons, the Court has completed the agency record as requested by R-CALF, and will consider the documents supplied by R-CALF as part of the agency record. *See* Doc. 47-1, 47-2, 47-3, 47-4, 47-6, 52-1, 62-1, 62-2, 62-3, 62-4 & 62-5. The Court further concludes that CTWG and PTC are not subject to FACA. Based on this conclusion, there is no violation of the Administrative Procedure Act and no injunction is appropriate.

Therefore, it is HEREBY ORDERED that

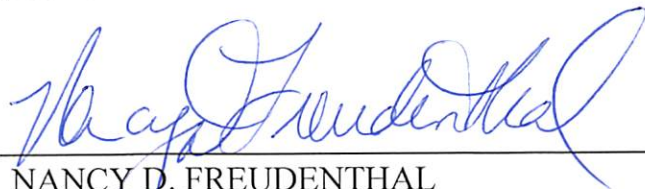
Plaintiff's Supplemental Motion for Completion of Record (Doc. 52) is GRANTED; and

Plaintiff's Second Supplemental Motion for Completion of Record (Doc. 62) is GRANTED; and

Plaintiff's Amended Complaint for Violation of the Federal Advisory Committee Act (Doc. 27) is DISMISSED WITH PREJUDICE.

Judgement shall enter for the Defendants.

Dated this 13th day of May, 2021.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE

FILED

United States District Court
For The District of Wyoming



10:05 am, 5/14/21

Margaret Botkins
Clerk of Court

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA, TRACY
and DONNA HUNT, d/b/a THE MW
CATTLE COMPANY, LLC, and KENNY
and ROXY FOX,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, et al,

Defendants.

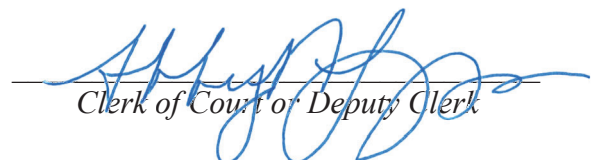
Civil No. 19-CV-205-F

JUDGMENT IN A CIVIL ACTION

The Court having granted Plaintiff's Supplemental Motions for Completion of Record on May 13, 2021 and having ordered that Plaintiff's Amended Complaint for Violation of the Federal Advisory Committee Act be dismissed with prejudice.

Plaintiffs, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, Tracy and Donna Hunt, d/b/a The MW Cattle Company, LLC and Kenny and Roxy Rox, shall take nothing and Defendants, United States Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service, United States Department of Agriculture Secretary and the United States Department of Agriculture Animal and Plan Health Inspection Service Administrator are entitled to judgment in their favor on all claims asserted against them by Plaintiffs.

Dated this 14th day of May, 2021.


Clerk of Court or Deputy Clerk

Harriet M. Hageman (Wyo. Bar. # 5-2656)
New Civil Liberties Alliance
1225 19th Street NW, Suite 450
Washington, DC 20036
Telephone: 202-869-5210
Harriet.Hageman@ncla.legal

222 East 21st Street
Cheyenne, Wyoming 82001
Cell Phone: 307-631-3476

ATTORNEYS FOR PETITIONERS/PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION)	
LEGAL FUND UNITED)	
STOCKGROWERS OF AMERICA;)	
TRACY and DONNA HUNT, d/b/a THE MW)	
CATTLE COMPANY, LLC; and KENNY and)	
ROXY FOX,)	No. 19-CV-205-F
)	
Petitioners/Plaintiffs,)	
)	
vs.)	
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE; ANIMAL AND PLANT)	
HEALTH INSPECTION SERVICE;)	
TOM VILSACK, in his official)	
capacity as the Secretary of Agriculture;)	
and KEVIN SHEA, in his official)	
capacity as Administrator of the Animal)	
and Plant Health Inspection Service,)	
)	
Respondents/Defendants.)	

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (“R-CALF USA”); Tracy and Donna Hunt, d/b/a The MW Cattle Company, LLC (“Hunt”); and Kenny and Roxy Fox (“Fox”), by and through their attorneys, Harriet M. Hageman and New Civil Liberties Alliance, hereby appeal to the United States Court of Appeals for the Tenth Judicial Circuit, from the Order entered in the above-captioned matter on May 13, 2021 (ECF 68), dismissing with prejudice Plaintiff’s Amended Complaint for Violation of the Federal Advisory Committee Act, as well as from the Judgment in a Civil Action entered on May 14, 2021 (ECF 69).

Dated this 7th day of July 2021

Attorneys for Plaintiffs/Petitioners

/s/ Harriet M. Hageman

Harriet M. Hageman (Wyo. Bar #5-2656)

Senior Litigation Counsel

New Civil Liberties Alliance

1225 19th St., NW, Suite 450

Washington, DC 20036

Cell Number: 307-631-3476

Office Number: 202-869-5210

Harriet.Hageman@ncla.legal

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on 7th day of July 2021, a copy of this Notice of Appeal was filed with the Court’s CM/ECF system, which will send notice of electronic filing to the counsel of record.

/s/ Harriet M. Hageman

Harriet M. Hageman

Scott, Aaron E - APHIS

From: Scott, Aaron E - APHIS
Sent: Friday, February 23, 2018 4:10 PM
To: Brian J McCluskey (brian.j.mccluskey@aphis.usda.gov)
Subject: REQUEST and Update on Cattle industry WG
Attachments: Attachement - ADT recommendations edit 2.23.18.docx

Brian,

The Cattle Traceability Work Group (CTWG) that we have discussed previously is composed of about 30 prominent industry leaders from across the industry sectors with a goal to advance ADT. This group was formed as an outcome of the NIAA/USAHA forum that we co-hosted last September. They are very progressive and have formed five task subgroups: 1. Communication and transparency, 2. Collection technology, 3. Responsibility and opportunities, 4. Information liability, and 5. Data storage and access.

USDA was not invited to their initial meetings as they discussed and developed their mission, but this morning indicated they would like to work in parallel with USDA efforts. I will be meeting with their co-chairs on Monday to discuss further. They have interest in the 14 recommendations that were compiled from USDA stakeholder outreach in 2017 (USDA's "Next Steps Report") and presented at the September forum.

That report has not yet been cleared for release; however, it would be helpful if I could at least discuss and/or share the bulleted list with them and our key areas of focus (attachment). This information will help to ensure that we are all working toward common goals to advance ADT.

Thank-you for consideration,

Aaron

Visit [VS Success!](#)

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

USDA APHIS Veterinary Services: (SPRS)

Director: National Animal Disease Traceability & Veterinary Accreditation Center

2150 Centre Ave blding B, MS-3E79

Fort Collins CO, 80526

Office: 970-494-7249

Cell: 970-481-8214

McCluskey, Brian J - APHIS

From: McCluskey, Brian J - APHIS
Sent: Friday, February 23, 2018 4:19 PM
To: Jack A Shere (jack.a.shere@aphis.usda.gov); Burke L Healey (burke.l.healey@aphis.usda.gov)
Cc: Levesque, Ashley - APHIS
Subject: FW: REQUEST and Update on Cattle industry WG
Attachments: Attachement - ADT recommendations edit 2.23.18.docx

I know we don't have permission to share the entire ADT report that includes the 14 recommendations, however, Aaron would like to at least share the bulleted 14 points with this Cattle Industry Working Group to helpfully get them on the same set of tracks we are on.

You okay with that?

See you on Tuesday.

Brian J. McCluskey, DVM, MS, PhD, Dip. ACVPM
Associate Deputy Administrator
Surveillance, Preparedness and Response Services
USDA, APHIS, Veterinary Services
970-494-7395

From: Scott, Aaron E - APHIS
Sent: Friday, February 23, 2018 4:10 PM
To: McCluskey, Brian J - APHIS <brian.j.mccluskey@aphis.usda.gov>
Subject: REQUEST and Update on Cattle industry WG

Brian,
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That report has not yet been cleared for release; however, it would be helpful if I could at least discuss and/or share the bulleted list with them and our key areas of focus (attachment). This information will help to ensure that we are all working toward common goals to advance ADT.

Thank-you for consideration,

From:
Sent: Saturday, March 10, 2018 3:54 AM
To: Brian J McCluskey (brian.j.mccluskey@aphis.usda.gov)
Subject: REQUEST and Update on Cattle industry WG
Attachments: ADT strategy 2017-2023 edit 2.23.18.docx

Brian,

The Cattle Traceability Work Group (CTWG) that we have discussed previously is composed of about 30 prominent industry leaders from across the industry sectors with a goal to advance ADT. This group was formed as an outcome of the NIAA/USAHA forum that we co-hosted last September. They are very progressive and have formed five task subgroups: 1. Communication and transparency, 2. Collection technology, 3. Responsibility and opportunities, 4. Information liability, and 5. Data storage and access.

USDA was not invited to their initial meetings as they discussed and developed their mission, but now would like to work in parallel with USDA efforts. I will be meeting with their co-chairs on Monday. They have interest in the 14 recommendations that were compiled from USDA stakeholder outreach in 2017 (USDA's "Next Steps Report") and presented at the September forum. That report has not yet been cleared for release; however, it would be helpful if I could at least discuss and/or share the bulleted list with them and our key areas of focus (attachment).

Aaron

Visit [VS Success!](#)

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

USDA APHIS Veterinary Services: (SPRS)

Director: National Animal Disease Traceability & Veterinary Accreditation Center

2150 Centre Ave blding B, MS-3E79

Fort Collins CO, 80526

Office: 970-494-7249

Cell: 970-481-8214



Cattle Traceability Working Group

MINUTES

**CATTLE TRACEABILITY WORKING GROUP – COLLECTION TECHNOLOGY TASK GROUP
MARCH 22, 2018**

Call to Order

Task Group Chair Fischer called the teleconference meeting of the Cattle Traceability Working Group (CTWG) – Collection Technology to order at 10:30 a.m. CDT, Thursday, March 22, 2018.

Roll Call

The following CTWG-Collection Technology Task Group Members were present:

Present Absent Member

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Shannon Wharton, CO-Chair, Hy-Plains Feedyard LLC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Glenn Fischer, Co-Chair, Allflex
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Robert Bailey, Datamars
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Chuck Adami, Equity Cooperative Livestock Sales
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Nephi Harvey, Ft. Supply Technologies, LLC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Jill Wagner, GlobalVetLink
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Tom Jones, Hy-Plains Feedyard LLC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Chelsea Good, Livestock Marketing Association
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dr. Dale Blasi, Kansas State University
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Silvia Chrsten, South Dakota Stockgrowers
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Jim Lovell, Texas Cattle Feeders Assn
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Dwight Keller, US Cattlemen’s Assn
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Larry Kindig, US Cattlemen’s Assn
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Eric Metzger, US Jersey Assn
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Stu Marsh, Y-TEX Corporation
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Neil E. Hammerschmidt, Individual

 12 4

Glenn opened the call by sharing about his visit with USDA in their offices in DC recently. Glenn met with Mr. Ibach, Mr. Kevin Shea, Drs. Brian McCluskey, Jack Shere and Dudley Hoskins, Mr. Ibach’s Chief of Staff. They are very encouraged and very supportive of the industry taking the lead on this initiative and the work being done by the CTWG. Glenn shared the schematics with

Cattle Traceability Working Group – Collection
Technology Task Group
March 22, 2018

them that have been developed by Joe Leathers and shared that these diagrams continue to evolve as these conversations continue.

Discussion of Responsibilities/Opportunities task Group

Chuck Adami - Looking for a review of existing systems; associated scope and structure 840 vs. non-840 tags.

Would we advocate 900 series tags acceptance for a period – no decision but believe a transitional period would be beneficial.

Also, the Information Liability Group – need to coordinate with Tech group re: devices to look at Federal and State FOIA requirements and regulations.

It is of important for all sub groups to get timelines together.

Review of January 24 call minutes – Accepted as Is.

Review of ADT Diagrams (adult and Calves – attached herein for your reference).

These diagrams came initially from Joe Leathers and the Responsibilities & Opportunities Task Group. There has been good discussion amongst the Task Group Co-chairs, and some minor revisions have been made and are incorporated in the attached versions.

Review of Adult Diagram

- Appreciation expressed for the work on these diagrams
- Q: do we have enough support from Producers and/or Packers? USDA believes that the packers would support this.

Chuck Adami: Would USDA accept ID being put into database at any point along the line (other than herd of origin)?

Collection of data at different points – eCVIs collect a lot of data – should a line be drawn to Animal Health officials for this data flowing?

Private database labeling – called out explicitly as a distributed database (not a single database)

- Consensus for Distributed Private Database system
- Where would Core 1 data sit? Above State Official box? Does this need to be represented in the diagram along with the eCVI data?

Review of Stakeholders / Segments

Discussion on Identification Technology

Need for single vs multiple technologies: OK for perhaps 2 technologies ·

- Consensus for electronic id
- Jim Lovell: near unanimous support for EID, industry tested technology, favoring LF RFID use to existing infrastructure

Scott, Aaron E - APHIS

From: Scott, Aaron E - APHIS
Sent: Thursday, March 29, 2018 4:58 PM
To: Geiser-Novotny, Sunny - APHIS; Munger, Randy D - APHIS
Cc: Brian J McCluskey (brian.j.mccluskey@aphis.usda.gov)
Subject: Notes FYI: FW: CTWG Updates!
Attachments: Sexually Intact Cattle 18Months Old or Older.pdf; Calves.pdf; CTWG-Technology 3-22-18 Minutes.docx; 3-23-18 Minutes Co-Chairs Only-rev1.pdf

Aaron

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

USDA APHIS Veterinary Services: (SPRS)

Director: National Animal Disease Traceability & Veterinary Accreditation Center

*2150 Centre Ave blding B, MS-3E79
Fort Collins CO, 80526*

*Office: 970-494-7249
Cell: 970-481-8214*

From: Katie Ambrose [mailto:Katie.Ambrose@AnimalAgriculture.org]
Sent: Thursday, March 29, 2018 3:52 PM
To: Scott, Aaron E - APHIS <Aaron.E.Scott@aphis.usda.gov>
Subject: CTWG Updates!
Importance: High

Aaron,

I jumped on someone else's computer as I thought I would be helpful to have you have a chance to review these docs before our call tomorrow. It should help with making our call more productive and efficient!

Have a good evening!

Katie



**National Institute of Animal Agriculture
Cattle Traceability Working Group
Dr. Jack Shere**

Background - Cattle Traceability Working Group (CTWG)

The purpose of the CTWG is to work collaboratively across the various segments of the cattle industry to enhance the traceability of animals for purposes of protecting animal health and market access. The CTWG works to create consensus among stakeholders on key components of traceability so there is an equitable sharing of costs, benefits, and responsibilities across all industry segments. The overarching goal of the CTWG is to enhance cattle identification and traceability to a level that serves the needs of producers, marketers, exporters, and animal health officials.

Animal Disease Traceability (ADT) Framework

- The ADT Framework covers a small portion of what is referred to as full traceability.
- When APHIS initiated ADT, we intentionally agreed to focus on the very basic aspects of traceability, with the understanding that we'd build upon that foundation over time and only when we've successfully implemented what we refer to as Phase I.
- Under APHIS ADT regulations, animals moved interstate, unless otherwise exempt, have to be officially and accompanied by an interstate certificate of veterinary inspection (ICVI) or other movement document.
- Since the rule went into effect in March 2013, the focus of the ADT program has been educating stakeholders about the rule's requirements; identifying animals—particularly cattle—using official ID; collecting animal movement information; increasing the volume of electronic/searchable records; and ensuring rule compliance.
- Implementation of ADT is going well. We have heard strong support to advance traceability, particularly for electronic ID.
- ADT is a performance-based program. States and Tribal Nations have the flexibility to implement ADT in a way that works well for them.
- We track improvements in traceability through exercises called trace performance measures (TPMs). Results have shown that we have succeeded in implementing the basic framework of traceability.
- In 2017, 4 years after implementing the ADT rule, APHIS analyzed the ADT program. The review concluded that the program was working very well to the extent that it was designed;

however, many gaps remain in our ability to trace cattle.¹ These gaps result in some animals being untraceable, a lack of traceability to the birth herd, and visual ID tags for cattle that are incompatible with the speed of commerce.

Advancing ADT

- While we've successfully implemented key aspects of the initial framework for ADT, adjustments to the foundation principles are warranted.
- At the time of 9CFR Part 86's publication, APHIS and industry leaders agreed on the importance of having a functioning basic traceability system before considering a more comprehensive approach.
- During the summer of 2017, APHIS conducted nine public meetings to gather stakeholder input on the next steps for ADT. Issues that we heard include:
 - Limit the traceability regulation to interstate movements and currently covered population;
 - Various exemptions allow flexibility, but are confusing and often difficult to implement.
 - While a large number of stakeholders acknowledged that beef feeders need to be included in future, the consensus was to address the gaps in the current framework (beef breeding cattle over 18 months of age and all dairy), before expanding the official ID requirements to beef feeders, including the requirement for official electronic ID with the supporting infrastructure.
 - Issues with multiple ID methods and technologies. The use of visual-only eartags requires extra cattle handling resources, increases stress on the cattle, limits speed of commerce, and is not practical for official ID of beef feeders.
 - Need to have uniform enforcement across the industry sector, particularly in private sales.

Future of ADT – Next Steps

- The APHIS ADT strategy focuses on providing direction and expertise to industry partners, but also recognizes that all livestock sectors must be at the table to drive discussions.
- As part of the strategy, we would increase the overall percent of cattle officially identified; records must reflect the birth premises.
- We would also move forward with an electronic ID (EID) system that includes both the ID methods and reader infrastructure to capture ID's electronically at the speed of commerce.
- Per stakeholder feedback, EID is necessary for effective traceability and should allow for the handling of cattle without unduly slowing business operations.

¹ ADT Assessment: <https://www.aphis.usda.gov/traceability/downloads/adt-assessment.pdf>

- USDA believes that a single technology type is needed. Cattle move widely across the United States to markets in many States, and a single technology would allow identification devices to be read at any location.
- Otherwise, multiple readers and software would be required in each location creating confusion for logistics and increasing cost to support the infrastructure necessary to support multiple technologies.
- In addition, animals would need to be processed as if they were all tagged with LF devices (single file) due to performance constraints.
- APHIS' strategy to select a technology type includes:
 1. Fund unbiased studies to compare technology types. Ensure data is available to the public to provide a foundation for objective comparison and decision making.
 2. Consider input from an industry-led task force representing a broad spectrum of industry organizations to assess alternatives and gather input from industry sectors.
 3. Consider input from all stakeholders.
 4. Select an official animal ID technology standard.
- We should also improve our information technology infrastructure by expanding electronic ICVIs and electronic health forms to streamline data sharing capabilities across State and Federal.
- Our immediate focus should be to rectify existing traceability gaps in the cattle population currently covered in the ADT regulation, reduce confusion, and minimize conflicts in the initial ADT framework by:
 - Identifying cattle currently covered when there is a change of ownership or at first point of commingling, and ensuring the ID information reflects the birth premises.
 - Considering solutions to reduce the number of exemptions and to clarify their interpretation, particularly "direct to slaughter" movements.
 - Enhancing monitoring and enforcement of existing regulations to improve compliance in all sectors with emphasis on higher risk/impact areas.
 - Improve the consistency of ID collection at slaughter with proper correlation to the carcass.
 - Establish data and communication standards and enhance information technology to increase the utilization of electronic testing, interstate movement records, and data sharing capabilities.
 - Support cooperative efforts between industry, States, and APHIS to implement an EID solution for cattle and bison capable of working at the speed of commerce.

Recommendations to USDA from the ADT Working Group

- The State/Federal ADT working group developed 14 preliminary recommendations pertaining to ADT in the cattle sector.

- The Working Group recommendations were based on feedback from industry and animal health officials on the ADT program, comments received from nine public meetings held in 2017, and their experience and knowledge of disease traceability.
- The recommendations include:
 1. Continue to allow interstate movements that do not apply to traceability regulations (e.g., to custom slaughter);
 2. Cattle population covered in the official identification regulations;
 3. Birth premises identification of covered animals;
 4. Electronic identification system for cattle;
 5. Administration of electronic records;
 6. Enforcement of ADT regulations;
 7. Collection of ID and its correlation to the carcass at slaughter plants;
 8. Public/private information system;
 9. Exemptions for official ID requirements;
 10. ICVI exemptions and movement documents;
 11. Uniformity of state import regulations;
 12. Uniform official ID eartags;
 13. Official EID tag for imported cattle; and
 14. Official identification of beef feeders considered in separate rule-making.

Springer, Melinda A - APHIS

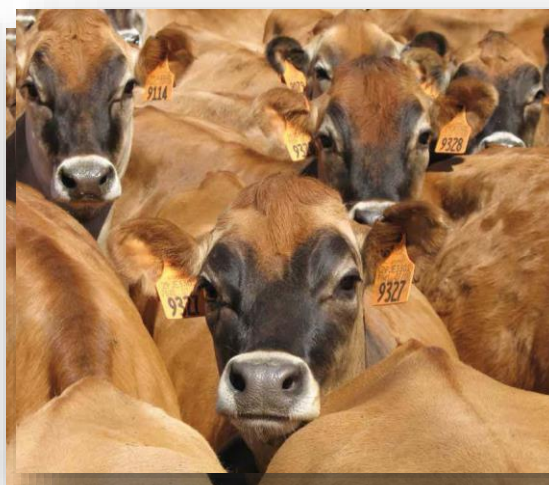
From: Springer, Melinda A - APHIS
Sent: Monday, April 2, 2018 10:24 AM
To: Scott, Aaron E - APHIS
Subject: FW: ADT Next Steps Document
Attachments: ADT Preliminary Next Step Report 11 03 17.docx; ADT strategy 2017-2023 (2) 1.8.18 v3.docx

This is the most recent copy that Justin shared with me. It's from 11/17 so I believe it's the same copy you have.

Animal Disease Traceability

Summary of Program Reviews and Preliminary “Next Step” Recommendations

November 2017



United States Department of Agriculture
Animal and Plant Health Inspection Service
Veterinary Services



Animal Disease Traceability

Summary of Program Reviews and Preliminary “Next Step” Recommendations

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Preface

This report provides a brief overview of the ADT framework and summarizes the reports prepared and the reviews conducted to evaluate its overall impact on animal disease traceability. Feedback obtained from industry stakeholders, and State and Federal animal health officials during extensive outreach efforts in 2017 provides details on the progress of ADT, successes, and challenges or problematic areas of the initial framework.

A State and Federal working group with substantial experience and knowledge of animal disease traceability comprehensively reviewed stakeholder feedback and prepared preliminary recommendations contained in this report. Members of the working group presented a preliminary draft of these recommendations at the Traceability Forum hosted by the National Institute for Animal Agriculture (NIAA) and the United States Animal Health Association (USAHA) in Denver, Colorado on September 26 and 27, 2017. Veterinary Services (VS) will publish the preliminary version of these recommendations for comment in the Federal Register, to solicit additional stakeholder feedback.

Introduction and ADT Program Description

Background

The U.S. Department of Agriculture (USDA) provides various programs that support the economic viability of animal agriculture. The Veterinary Services (VS) unit of the USDA's Animal and Plant Health Inspection Service (APHIS) works to improve the health, productivity, and quality of life for animals and people by maintaining and promoting the safety and availability of animals, animal products, and veterinary biologics.

Animal disease traceability- or knowing the whereabouts of diseased and at-risk animals are, where they have been, and when – is important to ensuring a rapid response when animal disease events take place. Although animal disease traceability does not prevent disease, an efficient and accurate traceability system reduces the number of animals and response time involved in a disease investigation; which, in turn, reduces the economic impact on owners and affected communities.

ADT Focus

The current approach to traceability in the United States is the result of significant discussion and compromise. Federal policy regarding traceability has been amended several times over the past decade based on stakeholder feedback, particularly from the cattle industry. In early 2010, USDA announced a new approach for responding to and controlling animal diseases, referred to as the ADT framework. Key principles of the 2010 framework include:

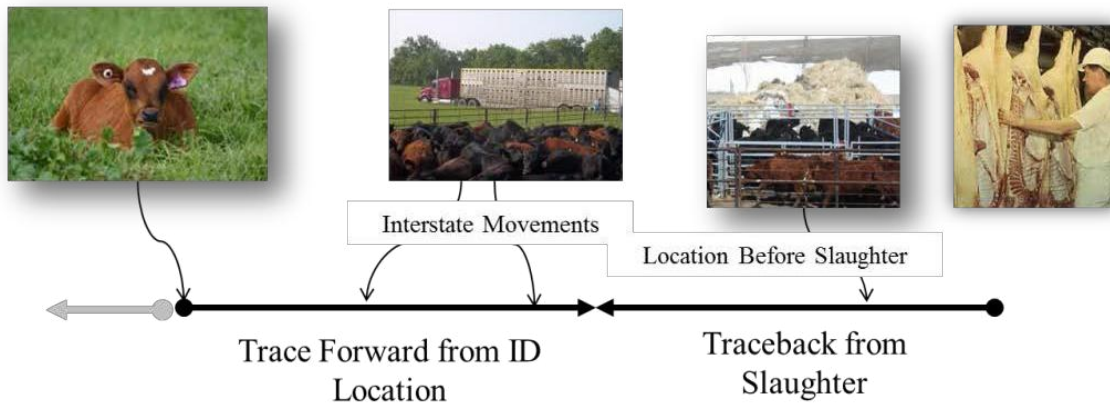
- Application to animals moved interstate.
- Administration by the States and Tribal Nations to increase flexibility.
- Encouraging utilization of lower cost technology.
- Transparent implementation through the full Federal rulemaking process.

USDA published a proposed rule, “Traceability for Livestock Moving Interstate,” on August 11, 2011, and the final rule on January 9, 2013. Under the final rule, unless specifically exempted, livestock moved interstate must be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other documentation. Covered livestock include cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids. The requirements do not apply to livestock moving:

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

As currently structured, ADT is a “bookend” system (Figure 1) which enables animal health officials to trace a covered animal forward from the location of official identification and backward from the animal's last location, which is often the termination point or slaughter plant. The rule includes identification (ID) and movement documentation exemptions that support the principle of flexibility at local levels.

Figure 1. U.S. Traceability with ADT – “Bookend System.”



ADT also focuses on interstate animal movements to provide information on the originating and destination premises for animals moved from one State to another. Animal disease programs, brand inspection and, in certain situations, industry programs like breed registries, performance recording systems, or marketing programs also provide traceability data.

While 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 leverage the strengths and expertise of States, Tribes, and producers and provide them the flexibility to develop the most effective traceability approaches to identify animals moving interstate nationally.

Although the requirements apply to multiple livestock species, the ADT program’s primary focus has been enhancing traceability in cattle as bovine disease eradication programs are phased out. For example, the success of the U.S. brucellosis eradication program, while certainly a positive development, has resulted in a steep decline in the number of cattle required to be tested and therefore officially identified. As a result of fewer cattle with official ID, the time required to trace animals during a disease investigation had steadily increased until the implementation of the ADT program.

Since the rule went into effect in March 2013, the focus of ADT has been the following areas:

- Educating stakeholders about the requirements;
- Identifying animals by using official ID;
- Collecting animal movement information;
- Increasing the number of records in searchable data systems; and
- Monitoring compliance.

Traceability performance measures (TPM), administered through trace test exercises, examine the successful administration of key ADT program elements, particularly official ID devices, ICVI and other movement documents.

ADT Reviews

ADT has been one of APHIS’ top ten priorities since 2013, after the Agency issued a final rule to improve the United States’ ability to trace livestock and poultry when disease events occur. In fiscal year (FY) 2015, the APHIS Administrator selected the ADT program for an internal review, as part of ongoing periodic assessments of Agency activities. More recently, APHIS initiated a program and stakeholder review in late 2016, to determine the effectiveness of the framework, as well as implementation successes and shortfalls over the past 3 years. In addition to the program staff assessment, APHIS conducted extensive outreach activities in 2017 with State, Tribal, and Federal animal health officials and industry to obtain grassroots feedback from producers and other sectors of the livestock industry.

The multiple reviews provide insight into how well the program is being managed; the efficiencies gained in administering tracebacks, aspects of ADT that are working well, traceability regulations that are problematic and/or creating confusion, and gaps remaining in tracing capabilities since the implementation of the framework. Such program reviews provide essential feedback, which APHIS uses to identify program priorities and future collaborative opportunities with industry.

Internal APHIS Review

In FY 2015, two years after the publication of the ADT final rule, the APHIS Administrator selected the program for review by an independent Agency assessment staff that conducts periodic reviews of the effectiveness, efficiency, and performance of APHIS programs and activities. The review team evaluated the effectiveness of the ADT program from the perspective of the animal health organizations and officials that implement it. The assessment provided an objective gauge of how well ADT program officials were implementing goals and managing resources. It also provided information regarding challenges to program performance and opportunities for improvement.

In brief, the review team found:

- The ADT program was well managed, had well-defined goals and objectives, and was helping State and Federal animal health officials achieve incremental improvements in their animal disease tracing capability.
- APHIS was managing its ADT resources capably. APHIS applied the majority of ADT funding to cooperative agreements with the States, Tribes, and Territories and Agency employee salaries. In both cases, direct links existed between the resource application and program activities, outputs, and outcomes. The review team noted, however, that FY 2015 resource levels might not be sufficient to sustain continual program improvement.



- Achieving a more comprehensive and effective traceability system was still a distant goal. Despite the progress recorded, at the time of the 2015 review, most animal health officials indicated that to achieve a truly effective traceability system, the ADT program must:
 - Mandate electronic ID devices for cattle (after officials ensured that appropriate tag and reader technology solutions were available);
 - Incorporate beef cattle under 18 months into the ADT rule.

The review listed several outstanding challenges that APHIS and its cooperators faced in ADT implementation: (1) the program's flexibility, which helped it achieve broad support but also allowed for differing regulatory requirements among the States, potentially affecting compliance, traceability efficiency, and long-term feasibility; (2) available technology, which was limited by effectiveness, cost, and acceptance by stakeholders; (3) resource levels, which may not have been adequate to sustain continual ADT improvement into the future; and (4) the lack of compelling external forces or messaging to influence stakeholders who were opposed or ambivalent towards ADT.

The review also noted opportunities on which APHIS could focus to ensure the program was as well positioned as possible for continuing successful ADT implementation. These opportunities included: (1) conducting more data analysis to focus implementation efforts; (2) continuing to invest in technology that would allow individual animal movements to be recorded at a reasonable cost without impeding commerce; (3) encouraging greater Federal/State collaboration at all levels; (4) setting priorities for ADT funds that became available unexpectedly; (5) leveraging stakeholder relationships to spread information about ADT; and (6) ensuring an updated plan is in place for a full traceability system, should a worst-case scenario animal disease event occurrence prompt the immediate implementation of such a system.

In addition to the identified challenges and opportunities, the review team recommended the ADT program focus on establishing definitive performance levels to be achieved within the current system and structure, identifying the ultimate goal for ADT, and ensuring APHIS is positioned to achieve this goal over the long term.

ADT Program Assessment

The objective of the assessment conducted by ADT program staff in late 2016, was to evaluate the program and the effectiveness of Title 9, *Code of Federal Regulations* (9 CFR) Part 86, pertaining to animal disease traceability related to cattle and bison. The assessment included evaluation of documentation on actual program traces (e.g., tuberculosis) and trace exercises administered to capture TPMs under the ADT cooperative agreements with States; review of monitoring and compliance efforts including Investigative and Enforcement Services (IES) investigations; and informal discussions with State and Federal animal health officials.

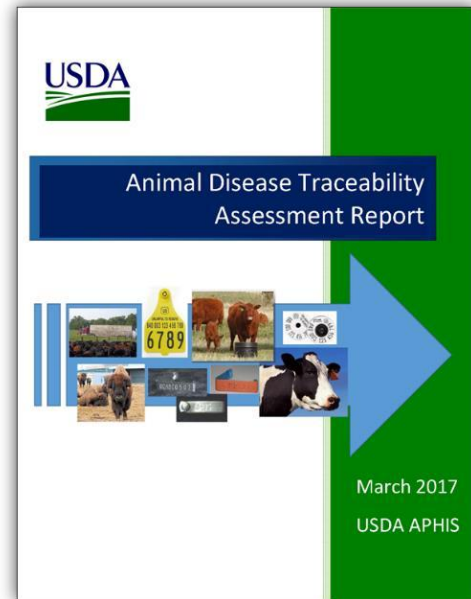
The assessment report reflects that the basic framework of ADT established in 2013 is successfully implemented. The TPMs denote an improvement in the administration of official ID and movement documentation for covered livestock. Specifically the elapsed times to complete TPMs have decreased, and the percent of traces successfully completed each fiscal year has increased. The TPM improvements are primarily attributed to the timely retrieval of electronic records for official ID (tags distributed and tags applied) and movement documents.

While APHIS is confident that implementation of the basic ADT framework was successful, some of its parameters limit the progress of the program, and significant gaps still exist within current tracing capabilities. Examples of these gaps include:

- Application of the official ID requirement only to livestock moving interstate, creates significant confusion in marketing channels and enforcement challenges.
- Use of visual-only low cost ID eartags presents obstacles for collecting animal ID efficiently and accurately.
- The traceability regulations do not include feeder cattle, which APHIS views as an essential component of an effective traceability system in the long-term.
- Some federally approved slaughter plants could improve the collection of ID devices at slaughter and the correlation of the devices to the carcass through final inspection.

The full assessment report may be obtained at:

<https://www.aphis.usda.gov/traceability/downloads/adt-assessment.pdf>

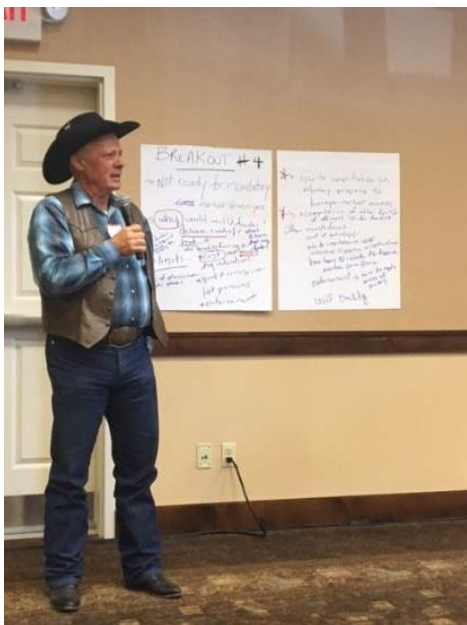


Public Meetings

As an adjunct to the ADT program assessment, APHIS felt it was essential for industry stakeholders from all sectors of the cattle industry to offer their opinions on relevant issues to help define traceability objectives and how they want to achieve those goals. APHIS conducted nine ADT public

meetings, at the locations listed below, as part of our outreach efforts in 2017. The purpose of these meetings was to solicit industry input regarding their experiences with ADT: What areas are working well? What aspects are challenging, confusing, or problematic? How can these obstacles be rectified? What level of traceability should be considered if we are to move beyond the basic traceability framework?

Stakeholders also had the opportunity to comment on the current ADT framework via regulations.gov through July 31, 2017. APHIS received 462 written comments during this period. A summary of the feedback obtained from the public meetings and written comments are included on page 11.



Location / Dates of Public Meetings

- Oklahoma City, OK – April 11, 2017
- Riverdale, MD – April 13, 2017
- Nashville, TN – April 20, 2017
- Bloomington, MN – May 2, 2017
- Denver, CO – May 4, 2017
- Sacramento, CA – May 11, 2017
- Billings, MT – May 24, 2017
- Omaha, NE – July 18, 2017
- Fort Worth, TX – July 20, 2017

State Federal ADT 2017 Working Group

In 2017, APHIS established a State-Federal ADT Working Group in accordance with the Federal Advisory Committee Act to assist APHIS in reviewing the ADT regulation, examine feedback from the public meetings and written comments, and provide input based on their experiences with

disease traceability issues. ADT staff worked through the National Assembly of State Animal Health Officials to obtain representation for each U.S. Animal Health Association district. The working group focused on aspects of ADT related to cattle and bison. The group met every two weeks via conference call starting March 21, 2017.

Members of the working group are listed below and the working group's preliminary recommendations addressing key traceability issues are covered on page 16 of this report.

Name	Affiliation
Geiser-Novotny, Sunny	Cattle Health Staff/ ADT Veterinarian, APHIS VS SPRS
Hammerschmidt, Neil	Manager, ADT, APHIS VS SPRS
Halstead, Steve	District Director, APHIS VS SPRS
Hickam, Linda	State Veterinarian, Missouri Department of Agriculture
Hughes, Dennis	Nebraska State Veterinarian, Nebraska Department of Agriculture
Kitchen, Diane	Veterinarian Manager, Florida Department of Agriculture and Consumer Services
Linfield, Tom	Assistant District Director, APHIS VS SPRS
Massengill, Rose	Animal Identification Coordinator, APHIS VS SPRS
McGraw, Paul	State Veterinarian, Wisconsin Department of Agriculture, Trade and Consumer Protection
Odom, Rick	Animal Health Information Systems Manager, Virginia Department of Agriculture
Schwablander, Stacey	Senior Veterinarian, Minnesota Board of Animal Health
Scott, Aaron	National Preparedness and Incident Coordination Center (NPIC), APHIS VS SPRS
Smith Justin	Deputy Animal Health Commissioner, Kansas Department of Agriculture
Steck, Allie	Animal Disease Traceability Coordinator, Pennsylvania Department of Agriculture
Turner, Alex	Traceability Veterinarian, Colorado Department of Agriculture
Westly, Rolf	Veterinary Medical Officer, APHIS VS SPRS
Winslow, Thatch	Assistant State Veterinarian, Wyoming Livestock Board
Zaluski, Marty	State Veterinarian , Montana Department of Livestock

Summary of Feedback on the ADT Program

Since the publication of 9 CFR Part 86 in January 2013, APHIS has sought feedback on the ADT framework from industry, State, Tribal, and Federal animal health officials with the goal of

enhancing our tracing capabilities for emergency response, disease control, and eradication programs. This report summarizes the most recent stakeholder feedback that APHIS received during a series of nine public meetings held across the nation this year and through a Federal Registry notice requesting comment on the program.

Participants in attendance at the ADT public meetings expressed appreciation for the opportunity to discuss the ADT framework and collaborate with APHIS on future traceability objectives. Both meeting attendees and written comments acknowledged that the general framework has been successful in improving the official ID of covered livestock, the documentation of interstate movement, and the availability of those records. The information below summarizes the concerns with the original framework and considerations of future traceability opportunities.

General Concerns

Confidentiality and Security of Information Systems: The issue of confidentiality continues to be an issue of concern among producers, as is the overall security of the information technology (IT) systems. The producers indicated support for the ADT implementation changes that placed more responsibility for holding their information at the State-level.

Liability: Producer liability remains an area of concern. Previous discussions on animal ID primarily focused on producer liability when diseased animals are traced to a premises that may have held the animal prior to the infection. Recent discussions involved concern about the liability related to injury of animals or personnel when working cattle for tagging, manually reading tags, etc.

Cost: Meeting attendees and commenters stated that the cost of traceability must be distributed across all sectors of the industry. In particular, if electronic ID (EID) technology is implemented as the only method of official ID, the cow/calf industry should not cover the cost of EID tags when the entire industry benefits. Some commenters noted that other sectors would contribute significantly to the cost of the infrastructure for EID, and as a result, the cost to implement EID would not be borne by the cow/calf sector alone.

Small Producers: APHIS should consider issues associated with requiring small producers to comply with an enhanced traceability regulation, including costs that are proportionally higher for this segment of the industry due to economy of scale and management limitations (for example, the ability to tag their own cattle). This sector includes a significant number of producers and cattle. Thus, their viability impacts markets and other service providers. Producers that sell their beef products direct to consumers provided many written comments that expressed their concerns about the cost and burden associated with animal ID, in particular, electronic methods. Individuals from this sector also noted that their animals are already traceable from custom slaughter facilities back to their premises.

Common Issues Regarding the Current ADT Framework

Focus of ADT: Some participants believe that APHIS should administer ADT for animal disease control and leave marketing opportunities to Agricultural Marketing Service (AMS) programs and the private sector. However, feedback also acknowledged the need for the United States to have a national traceability program to meet international trading partners' requirements for animal disease control and felt the two topics are linked to one another.

Beef Feeder Cattle (Beef Feeders): The inclusion of beef feeders in the official ID requirement was the primary topic of discussion at public meetings. While a large number of stakeholders acknowledged that beef feeders need to be part of the official ID requirements at some point, the consensus was to address the gaps in the current framework, which covers beef breeding cattle over 18 months of age and all dairy, before expanding the official ID requirements to beef feeder cattle. Additional points of consensus regarding the official ID for beef feeders included:

- The expansion of regulations for the official ID of beef feeder cattle under 18 months of age must conform to normal rulemaking procedures.
- Beef feeders could be included after an expanded framework is fully functional for breeding animals, including the requirement for official EID and the supporting infrastructure.
- Other individuals suggested incremental implementation of beef feeder requirements; with the initial objective to obtain birth premises ID and tag retirement, then as infrastructure becomes established, phase in the collection of movement data.
- While beef feeder cattle official ID requirements should be delayed, discussion on the processes to include beef feeders in the ADT program should continue ensuring preparation of an implementation plan.
- APHIS should conduct a cost-benefit analysis on official ID/traceability of beef feeder cattle to support future discussions/decisions on this topic and to determine the level of traceability warranted for beef feeder cattle.
- Livestock markets, while supportive of tagging sites for the population currently covered, explained that the burden of tagging beef feeders at their auctions is not feasible and solutions to tagging at the farm/ranch or before arriving at the auctions are essential. An alternative suggestion was to apply the official tag for these cattle at the first receiving premises when working these cattle for management purposes. The records of tags applied should provide contact information of the person responsible for the cattle when sold at the markets.
- Some individuals expressed concern that the official ID of all beef feeders would diminish market advantages and premiums of added-value programs.

ID to Birth Premises: To better achieve traceability, most individuals supported the need to apply official ID at the birth premises for animals that are covered by the official ID regulation. If that is not practical, they supported tagging at change of ownership or first point of commingling, versus at the time of first interstate movement, provided the animals are traceable to the birth premises. Since beef cattle under 18 months of age would remain exempt until determined otherwise, producers would officially identify adult beef animals when first shipped after 18 months of age for change of ownership or commingling.

Flexibility and Exemptions: Feedback from the meetings indicated that industry feels the current framework is too flexible and that there are too many exemptions, which confuse the interpretation of the regulations. While recalling the reasons for the exemptions and their intent, there was strong consensus that the exemptions create too many traceability gaps in the classes of cattle and bison covered under the current rule. The exemptions also make enforcement of the existing regulation more challenging, as it is difficult to determine if an animal at subsequent locations required official ID earlier in life.

State Differences: There was a strong consensus more standardization and uniformity of State import requirements is necessary. Preparing interstate certificates of veterinary inspection (ICVIs) has become very complicated. Individuals referenced the requirement by some States to record official ID numbers of dairy steers on ICVIs as one example of how State regulations differ from the Federal regulation and from one State to another.

Uniform Enforcement: The livestock markets voiced concerns that enforcement of the current regulation is inconsistent and unfairly targets markets, while private treaty sales and online auctions are not monitored or held to the same degree of accountability. They identified the lack of enforcement for other industry sectors as a gap that must be rectified. There was a strong sentiment that more stringent enforcement actions at the markets would drive sales through non-market venues. However, most individuals agreed that compliance would automatically improve if all cattle (less beef feeders) required official ID on first movement from the birth premises.

EID Technology: Many industry participants and animal health officials agreed that EID is necessary to achieve cost-effective traceability. Producers, market managers, accredited veterinarians, and others expressed concerns about cattle handling challenges and economic losses created by the need to restrain cattle to manually read and record the official ID number on small visual-only eartags. While the National Uniform Eartagging System (NUES) tags – traditionally known as the metal clip “brite” tags – are inexpensive to purchase, individuals from across the industry indicated there is significant expense throughout the production chain associated with their use. Feedback also indicated that many support the phase-out of free NUES tags and that APHIS needs to eliminate them as an official method of ID. However, multiple issues need to be addressed before the transition to EID can occur, including:

- If radio frequency ID (RFID) is to be utilized, the establishment of standards, including one technology (low-frequency (LF) vs ultra-high frequency (UHF)) is critical. Most stakeholders supported a dual technology tag as an interim measure.
- The infrastructure must be in place to support the transition to EID.
- Cost remains the primary concern of producers and representatives from other sectors of the industry for both the reader infrastructure and tags; however, the use of EID would provide substantial savings due to the increased efficiency associated with the technology.
- Availability and use of electronic forms, in particular, electronic ICVIs. Obtaining records electronically would decrease cost and improve the completeness and accuracy of the data. Additionally, retiring animal numbers at slaughter would be feasible, where it has been cost-prohibitive with visual-only tags.
- A cost analysis on metal NUES tags to show the full cost of tags when working cattle to manually record ID numbers (labor, stress and shrink, injury, etc.), as well as their limitations relative to traceability, e.g., tag retirement, to more accurately illustrate the costs of both visual-only and EID tags.
- Proportionally higher implementation costs for smaller producers, who sell direct to consumers and believe their livestock are already highly traceable.

Movement Documents: Discussions around movement documents focused primarily on the need for an ADT program definition of a movement document, including the necessary data elements as the minimum standards. Importing States should determine additional requirements for animal health certificates, ICVIs, permits, etc. The recommendation to establish a nationally standardized,

electronic movement document alternative to ICVIs garnered participant support. Additionally, there was support to increase the value and volume of owner-shipper statements (OSS) by implementing an efficient process to collect and store OSS information by offering an electronic version.

Collection of ID at Slaughter: As reported in the ADT assessment, APHIS noted inconsistencies with tag collection and their accurate correlation to the carcass at some slaughter facilities. APHIS is working with field personnel and the Food Safety Inspection Service (FSIS) to address the issue. State animal health officials and industry recognize this shortfall and identify it as a high-priority gap in the current framework that needs to be rectified.

Other Comments

Official ID Tags: There are differing views on using the same eartag for both official ID and management. Some producers prefer the same tag for both purposes, as it makes the tagging process more efficient and the official tag works well with herd management practices. Other producers commented that when they purchase cattle with official IDs with existing management numbers on the same tag, it creates conflict with their management numbering systems and, subsequently, they prefer not to have such tags used for ADT. However, there was consensus that APHIS should consider the use of one basic official eartag to increase the awareness of which tag is official, lessen accidental removal, and improve compliance. Additionally, commenters recommended that ID devices approved for AMS' Process Verified Program (PVP) and those designated as official by APHIS ADT should be compatible.

Brand certificates and inspection: Individuals commented on the long-term value of brands and brand inspection. Commenters stated that official ID tags should not be represented as an alternative or promoted to replace brands. Animal health officials in brand States noted the value of brands and brand inspection for proof of ownership and providing information when conducting traceback investigations, but admitted that brands alone do not provide the level of traceability needed for disease control.

Outreach: Many commenters indicated that APHIS and States would need to ensure enhanced outreach efforts to reach producers regarding revisions to traceability requirements.

Recording Official ID Numbers: Participants raised the issue of recording individual ID numbers on ICVIs, and provided the suggestion to list ranges of numbers to avoid having to rework cattle after a sale to obtain the specific IDs going to each premises. Individuals also suggested that a premises ID number tag could suffice for traceability to avoid the current challenge of recording individual IDs.

Cattle Imported to the United States: Some industry participants expressed concern regarding mandated traceability in the domestic herd for ADT while allowing importation of animals and/or products from countries affected with foot-and-mouth disease (FMD) and tuberculosis (TB), such as Brazil and Mexico, respectively. Additionally, attendees raised concerns about the quality of diagnostic tests and vaccination options related to TB and brucellosis and the lack of available funding to improve those and the FMD vaccine bank.

Data Systems: Many State animal health officials expressed concern that APHIS' data systems are not efficient and indicated that even enhanced traceability would fail without efforts to increase

electronic submission of data and data sharing capabilities.

Preliminary Recommendations on Key Issues

The State-Federal ADT 2017 Working Group reviewed the ADT regulation, examined feedback from the public meetings and written comments, and provided input based on their experiences with disease traceability issues to provide the following preliminary recommendations pertaining to traceability of the cattle sector.

1. INTERSTATE MOVEMENTS THAT DO NOT APPLY TO THE TRACEABILITY REGULATIONS

Smaller producers that raise cattle for direct sale of meat products to consumers express concern regarding the cost of future traceability requirements. The regulation does not pertain to interstate movements to a custom slaughter facility for preparation of meat (in accordance Federal and State regulations), as such cattle are highly traceable to the premises of origin in the event of disease detection at the slaughter facility.

Recommendation

Maintain the policy that traceability regulations do not apply to interstate movements to a custom slaughter facility in accordance with Federal and State regulations for preparation of meat.

Note: The recommendation listed in #3 below clarifies that the exclusion of movements to custom slaughter would pertain only to animals that were born on the premises that ships directly to the custom slaughter facility.

2. CATTLE POPULATION COVERED IN THE OFFICIAL IDENTIFICATION REGULATIONS

The initial ADT regulation excluded beef cattle under 18 months of age from the official ID requirement. While most stakeholders acknowledged that the regulation should include this sector of the cattle industry at some point, there is overwhelming support to address several shortfalls or gaps within the current ADT framework first. Recommendation 14 of this report specifically addresses the requirement of official ID for beef feeder cattle.

Recommendation

Maintain the current population of livestock covered by the official ID requirements. The ADT rule will continue to include:

- All dairy
- Beef cattle > 18 months of age
- All rodeo and exhibition cattle

Industry leaders should evaluate the merit and practicality of including official ID requirements for beef bulls and beef heifers under 18 months of age specifically sold for breeding purposes. This approach aligns with the priority to identify breeding animals and would align with some existing State requirements. The working group acknowledges the potential confusion and difficulty of enforcing this requirement, thus recommends industry provide feedback on this issue.

3. LIMITING OFFICIAL IDENTIFICATION REQUIREMENT TO INTERSTATE MOVEMENTS

The most significant impediment to disease traceability resulting from 9 CFR Part 86 is the restriction that the official ID requirement applies only to livestock that move interstate. Cattle movements are quite diverse, often with multiple congregation points and opportunities for disease spread prior to interstate movement. An individual animal infected with a highly contagious disease may never leave the State where it was born, remaining unidentified while spreading disease to many other animals that subsequently move to several new states.

The regulation creates significant confusion in marketing channels where cattle of differing requirements may be mixed, as well as enforcement challenges and complications. The interstate ID requirement often places the onus on livestock markets, where the sorting and tagging of animals is often cumbersome and may fall short of full compliance. Additionally, the ability to determine compliance with the official ID requirement at slaughter plants is nearly impossible due to limited resources.

Recommendation

Cattle should be identified to their birth premises¹, thus the official ID records must provide birth premises information for the animal. APHIS should revise Federal regulations to include interstate commerce and the appropriate authority – either USDA or State officials – should establish regulations that trigger official ID requirements at:

- Change of ownership
- First point of commingling
- Interstate movement (may reflect no sale and no commingling)

4. ELECTRONIC IDENTIFICATION SYSTEM FOR CATTLE

Possibly the most significant change in stakeholder opinion since the establishment of the current ADT framework in 2013, is an increase in support for EID for cattle. Stakeholders expressed interest in moving forward with EID, or specifically RFID, at each of the nine ADT public meetings in 2017. However, there continues to be some stakeholders that are not supportive of EID for livestock in general.

Many animal health officials, as well as industry stakeholders, acknowledge that the level of traceability necessary in the United States is unachievable with visual only tags. While the NUES tags, traditionally known as the metal clip “brite” tags are inexpensive to purchase, there is significant expense throughout the production chain associated with their use. Producers, market managers, accredited veterinarians and others express concern about animal handling challenges and economic losses created by the need to restrain cattle to manually read and record the official ID number on NUES.

APHIS is conducting a study on the costs associated with NUES tags to reflect the full cost associated with the manual collection of NUES numbers and the inability to retire these numbers after slaughter due to expense.

¹ The phrase, “identified to birth premises” is occasionally referenced in this report. While it is recommended that cattle should be tagged at their birth premises, it is acknowledged that there are situations where the tagging process can be accomplished more efficiently at subsequent locations. The phrase “identified to the birth premises” allows for tagging at other locations with the acknowledgment that the record of tag applied provides the birth premises information for the animal tagged.

The ultimate success of an EID system hinges on identifying a high majority of the cattle population with a compatible EID tag to gain the greatest efficiencies possible from the technology. Maintaining a parallel visual only eartag system that requires manual recording of ID's on a significant portion of cattle would make the cattle handling processes more cumbersome and increase cost.

Many additional questions exist when considering comprehensive EID solutions. Particularly, regarding the cost of tags and readers, and how to standardize the technology in order to ensure system compatibility across manufacturers. Multiple, or competing, EID technologies would cause significant confusion, conflicts, and financial challenges. Therefore, it will be imperative to define a single technology standard. It is also essential that any new standards support the movement of animals at the speed of commerce².

Recommendation

The United States must move toward an EID system for cattle with a target implementation date of January 1, 2023. A comprehensive plan is necessary to address the multitude of very complex issues related to the implementation of a fully integrated electronic system. A specialized industry-lead task force with government participation should develop the plan, with a focus on several key objectives, including:

Standardization

- Propose minimum performance standards that work at the speed of commerce for all cattle handling environments at a highly effective read rate (e.g., +95% read rate).
- Propose a non-proprietary, cost-efficient, and effective technology solution, based on results of performance evaluations that adhere to established technical communication standards and will ensure compatibility of devices across manufacturers.

Transitional technology solutions

- Identify solutions that will “bridge” or incorporate other electronic solutions during a defined transition period (ensure workability of current/existing technologies).

Timelines

- Propose a realistic timeline with key steps to support the transition to a fully integrated EID system. Key steps should include:
 - Set a date for when visual only official tags will no longer be available (manufactured, distributed, sold or provided; including “brite” NUES tags from USDA). The objective would be to use a phase-out period to deplete visual tag inventories. Cattle with official visual only tags prior and through the transition period would not need be retagged with an EID tag.
 - Set a date for when all cattle needing official ID must be identified with

² Interpretation of “speed of commerce”: Referred to as, “compatible with existing accepted commerce systems; the ID device/method shall be compatible with existing accepted commerce systems, allowing for the reading/recording of official ID in a safe and humane manner at a pace that does not impede the normal and accepted processing time; and shall be compatible with Beef Quality Assurance (BQA) and Dairy Animal Care and Quality Assurance (DACQA) standards and practices.”

official EID, e.g., January 1, 2023. Cattle with visual only tags after this date will require retagging with an official EID tag.

Funding

- Consider funding options for addressing cost concerns, such as,
 - Federal startup funds.
 - Startup incentives; cost share, etc.
 - Allow small producers to obtain equivalent of volume discounts, etc. (e.g. 1st 20 tags for \$x.00 regardless of volume purchased).
 - Spread cost equitably across industry sectors.
 - Utilize funds currently in place to support NUES tag acquisition and distribution on EID investments.

In addition, the working group recommends the following actions related to EID:

- APHIS should first discontinue providing free NUES tags then phase them out according to the EID implementation timeline.
- Utilize compatible EID tags in all cattle disease programs, for example the brucellosis program should move to an orange Official Calhoo Vaccinate EID tag exclusively.
- Reexamine the requirement to record existing official ID numbers when applying an EID tag to individual animals already officially identified with visual only tags. Waiving the recording of the official number of the visual tag(s) when first enacting the official EID tag requirement will help minimize the burden to the industry to fulfill this requirement.
- Solicit industry and other stakeholder feedback on the proposed plan after publication by the task force. USDA should only consider rule making that defines the selected official EID method for cattle if a majority of the cattle industry is supportive of the proposed EID implementation plan.
- Develop an extensive communication plan to support the clear understanding of future requirements.

5. ADMINISTRATION OF ELECTRONIC RECORDS

The working group acknowledges that the full utilization of electronic records is essential for effective administration of the ADT program and considers them part of the overall electronic system. Tremendous gains have been achieved over the past several years in increasing the volume of electronic records to support animal disease control programs. In addition, the establishment of independent State surveillance and traceability information systems has been well received. However, data sharing between these independent systems is becoming an increasing issue of concern among animal health officials since there is no established mechanism for data sharing from State to State or between Federal and State systems. The investments in obtaining electronic records, particularly converting paper based forms to electronic media, has been both successful and costly. Opportunities to capture data electronically in the field is highly supported and essential to minimize ongoing and costly data entry and scanning processes associated with paper documents.

Recommendation

APHIS and States must make the advancement of electronic records an immediate high priority. The enhancements recommended below would increase the ease of collecting data in a standardized format and subsequently provide access to accurate data in near real-time, greatly enhancing the effectiveness of U.S. traceability and disease control programs. The responsible parties should address the following points:

Data Element Standardization and Communication Protocol for Information Exchange

- APHIS should develop an expandable messaging service independent of all sending or receiving data systems, to support information sharing among States and Federal stakeholders without concerns about the type of systems originating or receiving the data.
- Address shortfalls in the USAHA Data Standards subcommittee-developed electronic ICVI schema; implement state requirements for electronic ICVI vendors to adhere to standardized formats; and confirm USDA adherence to the standard in the Veterinary Services Process Streamlining (VSPPS) system while providing the ability for sharing and receiving information from other ICVI systems.
- Develop a data exchange schema for surveillance events such as tuberculosis testing, brucellosis testing, and vaccination.
- APHIS should provide a web-based application available to State and Federal animal health officials and accredited veterinarians for uploading and manually entering testing, vaccination and movement information, generating the associated forms if necessary and allowing electronic data capture from the web application into the above messaging service.

Animal Health Event Repository (AHER)

AHER provides a comprehensive search tool for internal APHIS data systems that store animal records containing official ID numbers, including VSPPS, Surveillance Collaboration Services (SCS), Animal Identification Management System (AIMS) and the Emergency Management Response System (EMRS). Access to AHER is currently only available through an EMRS investigation or the TPM utility.

- Develop external State and private system messages that feed into the above messaging service to forward metadata information to AHER
- Fund private system message development through ADT cooperative agreements and invite States to participate at their discretion. Make improvements to the existing user interface to assist with other types of animal tracing queries while providing clear and concise results.

6. ENFORCEMENT OF ADT REGULATIONS

A high level of compliance with the ADT regulations is imperative for successful animal tracing results. The working group discussed feedback from the public meetings regarding the need for greater uniformity of enforcement, particularly concerning private treaty sales. They also note that increased levels of monitoring are necessary in environments where disease spread is a higher risk and where the disease event would have the most significant impact. These locations are where cattle commingle from various premises and then move to multiple additional premises. Such congregating locations include livestock markets,

buying stations, consignment sales, etc. The working group also notes that fewer exemptions and revising the regulation to cover more than interstate movement would improve the ability to monitor for compliance, as the current rule allows for many cattle to move unidentified. These exemptions and limitations complicate the recognition of animals moving interstate not in compliance with the official ID requirement.

Recommendations

- Continue to target noncompliance by repeat offenders with enforcement actions.
- Work with IES to conduct more timely investigations.
- Maintain a higher level of enforcement oversight at locations where there is a higher risk of disease spread, or which would have the most detrimental impact on the industry.
- Evaluate and implement appropriate enforcement procedures for private sales, internet sales, production sales, herd dispersals, etc.
- Work with transportation agencies to perform spot-checks on highways and at transport nodes to monitor compliance with the ADT regulations during movement of animals.
- Cooperate with States that have resources in the field that could help document and report noncompliance situations to the local VS office and APHIS IES personnel.
- Encourage States of destination to inform States of origin of ADT or other violations.
- Survey State and Federal officials to establish a comprehensive listing of compliance oversight methods used across the country.
- Obtain specific recommendations from participants attending the NIAA Traceability Forum.
- Share recommended practices and enforcement methods nationally and encourage local APHIS officials to work collaboratively with State animal health officials to implement appropriate actions.
- Activities of cattle dealers, online auctions and others involved in commercial buying/selling of cattle should be enforced by the State when dealer licensing regulations apply.
- Collaborate with FSIS to ensure collection of ID by slaughter facility personnel and correlation with the animal and its carcass through final inspection. (For more on this topic, please see recommendation 7.)

7. COLLECTION OF ID AND ITS CORRELATION TO THE CARCASS AT SLAUGHTER PLANTS

Successful traceability relies on maintaining the animal's identity at slaughter plants through final carcass inspection. Under 9 CFR Parts 86 and 310.2, all ID devices affixed to covered livestock unloaded at slaughter plants must be collected and correlated with the animal and its carcass through final inspection or condemnation by means approved by the FSIS. ID devices must also be packaged with any diagnostic samples from the animal. Success at meeting these requirements is inconsistent across the industry, due to factors such as lack of training and personnel turnover, as well as safety and efficiency concerns related to the collection of ID at the speed of the line. Failure to properly correlate ID to the correct

carcass hampers traceability efforts and diminishes the value of the official ID.

Recommendation

APHIS should continue the efforts of the State/Federal Slaughter Plant Working Group to improve the rates of ID collection and correlation at slaughter including:

- Development of training and outreach materials on the requirements for new plant, FSIS, and APHIS personnel.
- Monitoring of diagnostic submissions collected to ensure slaughter plants sufficiently apply correlation practices.
- Maintaining constant communication and collaboration with FSIS to assist slaughter plants with correction of failed collection and/or correlation practices.

8. PUBLIC/PRIVATE INFORMATION SYSTEM

Confidentiality and security of data remains a significant concern by many cattle producers and must be resolved to strengthen industry buy-in and support for advancing traceability. Private information systems that support various marketing programs, including AMS PVP, branded products, etc. include traceability data that could assist in achieving ADT objectives.

Recommendation

APHIS and States need to establish a partnership with industry that would enable utilization of private information systems for disease surveillance and response events. Ideally, establish a communication protocol between the private systems and an animal disease traceability portal that would allow producer data to be maintained in the private systems and made available to animal health officials only when needed for animal disease control and response. Producers would have the choice to maintain their data in a private or public system. APHIS and the States would continue to protect producer data held in their systems and use it only for disease response. The basic concept of the communication protocol should account for:

- Defining data elements and standards for traceability information to which private systems would adhere (primarily official ID numbering formats and premises data).
- Developing a communication protocol that would allow a government portal to message the private system when a search for animal numbers or premises is necessary to respond to an animal disease event.
- Limited access – only State and Federal animal health officials would have access to the portal.

9. EXEMPTIONS FOR OFFICIAL IDENTIFICATION REQUIREMENTS

Stakeholders broadly acknowledged that the exemptions for official ID create confusion and challenges to enforce ADT requirements uniformly. The working group reviewed each official ID exemption provided in 9 CFR Part 86.4. The direct to slaughter movements – in particular, those through one approved facility – are of the most concern; however, providing a simple revision to resolve this issue is challenging and needs additional input from the industry.

Referenced below are the exemptions to the current official ID regulations with

corresponding recommendations. (See Appendix III for complete regulatory text for the official ID exemptions.)

Recommendation

Commuter herd agreements

APHIS should remove the exemption for official ID. The requirement for individually listing the animals' ID number on the movement document should allow for a range of numbers when a high majority of the animals covered under the agreement has official ID numbers within that range, or as agreed upon by the State animal health officials.

Movements directly from a location in one State through another State to a second location in the original State

The working group maintains the current position that APHIS should not require official ID for these movements.

Tagging sites

APHIS and States should maintain the option to move cattle to a tagging site where they are tagged on behalf of the owner or person responsible.

Official identification options as agreed on by shipping and receiving State

APHIS should remove this exemption allowing alternative methods of ID.

Direct to slaughter movements

The working group recommends APHIS:

- Continue to allow cattle to move from the farm/ranch direct to slaughter on an approved USDA backtag in lieu of the official ID eartag, and retain the stipulation that requires official ID of cattle moved from the slaughter plant.
- Remove the exemptions for cattle moving to slaughter through one approved livestock facility, unless industry, State, and Federal officials collaborate to administer specific control protocols to ensure that these animals move direct to slaughter from the approved facility.
- Consider phasing out the official ID exemptions for direct to slaughter movements, based on the EID implementation timeline, to ensure all cattle covered in the regulation arrive at the slaughter plant with the same technology tag.

10. ICVI EXEMPTIONS AND MOVEMENT DOCUMENTS

The working group reviewed the importance of ICVIs and the challenges they present. As noted in the section on electronic records, the working group believes continued emphasis on electronic ICVIs and other electronic movement records are a high priority. While the working group is not offering a specific change to the ICVI requirements, they provided the following recommendations.

Recommendation

Obtaining the key components of traceability – accurate and complete records of official ID numbers and the ship from and ship to locations – is critical to ADT program success. In anticipation of technology changes (specifically EID) and acknowledgement of regional differences in the availability of accredited veterinarians, States should consider use of movement documents, such as import permits or other documents that States have used

successfully, as alternatives to ICVIs. Stakeholders support consistent requirements; however, the State of destination should be responsible for determining the documents appropriate for collection and compliance of key traceability components for livestock arriving to that State.

The working group provided further recommendations regarding ICVI exemptions below:

- Direct to slaughter, including through one approved facility: The ICVI exemption for direct to slaughter cattle is appropriate and should remain. The current exemption for slaughter movements through one market must be restricted to one market movement regardless if it is an interstate or intrastate shipment.
- Direct to an approved facility with an owner-shipper statement: There is concern about the exemption for interstate movements to an approved facility when the cattle move from the approved facility to a premises other than a slaughter plant. The current regulation allows for the exemption unless the cattle move interstate from the market. Removing this exemption and changing the regulation to cover change of ownership would address this issue.
- The ability for cattle to move under commuter herd agreement documents as agreed upon by the State animal health officials should remain. As noted in the official ID exemptions, the State authorities involved will determine if the listing of individual numbers is required or range of numbers is acceptable on movement documents for commuter herds.

11. UNIFORMITY OF STATE IMPORT REGULATIONS

The working group reviewed the stakeholder feedback pertaining to the confusion and difficulties that result from variations in State import regulations. The working group suggests limiting the exemptions to 9 CFR Part 86, to clarify and improve the uniformity of the federal requirements across States. For example, eliminating the option for the shipping and receiving States to agree on other forms of official ID would help standardize the official ID requirements.

The working group also noted the need to review official ID requirements separately from those associated with testing and other health issues. For example, many of the health requirements established by States are those that industries within their State have requested to protect the health of their cattle operations and such issues are often specific to certain regions. The working group did not support expanding health requirements to achieve uniformity, as it would actually lead to more import regulations across the country and would be unwarranted from an animal disease control perspective.

Recommendation

9 CFR Part 86 should provide the national standards for official ID and movement documentation. APHIS should continue revision of the regulations to increase standardization, considering that eliminating various exemptions will lessen confusion and State differences.

- The promotion of the website InterstateLivestock.com should expand to encourage increased use by accredited veterinarians, producers, livestock markets and others who need information on State import regulations.
- It is essential that States maintain the ability to establish more stringent import requirements.

- Uniformity of State regulations is important to increase the understanding of and compliance with import regulations. However, because disease issues are unique to certain areas of the United States, States should regionalize animal health import requirements as appropriate.

12. UNIFORM OFFICIAL IDENTIFICATION EARTAGS

There are differing views on allowing numerous tag types (size, shape, color, etc.), using bangle-like official eartags for both management and official ID purposes, or using one distinct standard tag for official ID. Some producers prefer the same tag for both management and official ID purposes, as it makes the tagging process more efficient. Others indicate a preference for a standard tag for official ID since many producers prefer to remove tags with existing herd management numbers when buying replacements from other dairies and ranches. Comments from stakeholders suggest that one standard tag would increase recognition of official ID and as a result, decrease the accidental removal of official tags. Additionally, there is support for AMS and APHIS to achieve uniformity of devices for both programs. Manufacturers of official ID eartags also indicate that a standard tag would improve manufacturing efficiencies and lower the cost of the official tags.

Recommendation

The working group feels there is value in considering a standard, or uniform, official eartag to increase awareness and understanding that it is unlawful to remove the tag. APHIS should conduct a study to determine the potential advantages and disadvantages of having one national ID eartag for cattle. The study should examine the merit a standardized tag might bring to ease of recognizing official tags and its effect on compliance. The study should also include cost comparisons of the use of numerous tag styles, sizes, etc. versus one standard, uniform tag. APHIS should review this information and, if having one uniform tag has significant advantages, publish the one tag concept for public comment through the Federal Register. The actual change, if pursued, would require rulemaking.

13. OFFICIAL EID TAG FOR IMPORTED CATTLE

The definition of official eartags in 9 CFR Part 86.4 stipulates that the application of animal ID number (AIN) tags (commonly referred to as “840 tags”) is limited to livestock born in the United States. As a result, there is no official EID tag with LF technology available to retag imported animals. This has created some challenges in the marketplace. For example, regulations prohibit dairies that use 840 AIN LF tags for herd management, including parlors with integrated daily milk recording systems, from retagging a Canadian import with an 840 eartag. Since there is no official LF EID device, the producer is limited to retagging with a visual or UHF NUES tag and neither tag is compatible with their electronic herd management system. Conflicts with cattle shows that require AIN LF eartags are also becoming more common. This issue will become a more significant challenge if the United States moves to official EID in the future.

Recommendation

The ability to maintain the identity of imported cattle is essential. As such, the working group recommends that APHIS allow the retagging of such animals with an official EID tag by revising the traceability regulation to define an “Import Tag” (with a specific range of AINs and tag color). For example, APHIS could reserve a range of 840 numbers starting

with “8409” for use on these tags. To help distinguish “Import Tags” that have a panel component, the panel piece of the tag should include the text “Import”. This ID option would clearly identify animals tagged with an 840 Import Tag after importation to the United States; provide producers the option to use compatible EID technologies as preferred; and allows for re-tagging visual only tagged imported cattle with an 840 EID Import Tag (even if the visual only official tag of the exporting country is in the ear). Producers using UHF technology could use USDA approved UHF 840 tags or the USDA approved UHF NUES tags when the State Animal Health Official authorizes this option. The recordkeeping requirements for tagging imported animals would remain the same as currently written in 9 CFR Part 86 for retagging and adding a second official tag. The working group recommends that APHIS prohibit the use of visual only 840 tags in imported animals.

14. OFFICIAL IDENTIFICATION OF BEEF FEEDERS

The inclusion of beef feeder cattle in the traceability regulations is an essential component of an effective traceability system in the long term. However, addressing other fundamental gaps in the traceability framework must occur first. The working group values the feedback from stakeholders regarding the official ID of beef feeder cattle under 18 months of age, and agrees with these points provided by stakeholders:

- Extensive collaboration with industry stakeholders potentially affected by the ID of beef feeders is critical, and official ID of this sector would require separate rulemaking to ensure appropriate review.
- Tagging large numbers of beef feeder cattle is not practical or feasible at livestock markets during peak periods of feeder sales. Therefore, alternative processes need to be established.
- Consider the timely development of a plan for the inclusion of beef feeders in the official ID requirement. This proactive approach will ensure well-defined processes are in place in the event their inclusion is necessary in response to a worst-case scenario animal disease event with minimal advance notice, such as an outbreak of FMD.
- Consider incremental steps for the official ID of beef feeders, particularly policies that allow official ID to the birth premises. Recording of official ID numbers for movement should be implemented over time as technology is highly proven to work at the speed of commerce.
- Providing the option of tagging beef feeder cattle at the next location upon transfer of ownership, including auctions, feedlots and other locations that receive these cattle is essential.
- The USDA should conduct studies to document the level of traceability necessary for this sector and its cost/benefit.

The working group agrees with these statements above and reaffirms that APHIS should address the official ID of beef feeder cattle under 18 months of age through separate rulemaking.

Conclusion of Preliminary Recommendations

Industry, States and APHIS worked collaboratively to develop the initial ADT framework, resulting in improved buy-in and support from many stakeholders; we must continue to collaborate on addressing complex issues regarding ADT and partner to advance traceability by:

- Increasing the overall percentage, or proportion, of the cattle population officially identified and whose ID records reflect the animal's birth premises.
- Moving forward with a comprehensive electronic system; including the ID methods and the reader infrastructure to capture ID electronically at the speed of commerce.
- Improving our IT infrastructure, electronic data capture systems, and data information sharing, including options with private systems, to increase our ability to more efficiently capture and utilize animal ID, animal sighting, and movement information; resulting in a more effective and efficient traceability system.

The immediate focus should be to rectify existing traceability gaps in the cattle population currently covered in the ADT regulation, reduce confusion, and minimize conflicts in the initial ADT framework by:

- Identifying cattle currently covered in the official ID requirement when there is a change of ownership or at first point of commingling, and ensuring the ID information reflects the birth premises.
- Considering solutions to reduce the number of exemptions and to clarify their interpretation, particularly "direct to slaughter" movements.
- Enhancing monitoring and enforcement of existing regulations to improve compliance in all sectors with emphasis on higher risk/impact areas.
- Improving the consistency of ID collection at slaughter with proper correlation to the carcass.
- Establishing data and communication standards to increase the utilization of electronic records and data sharing capabilities.
- Supporting the immediate establishment of an industry and State/Federal Task Force to prepare a plan for targeting implementation of an EID solution for cattle and bison by January 1, 2023. The plan should include recommendation on the technology most capable of working effectively at the speed of commerce and defining other key implementation target dates.

APHIS and States should work to address programmatic issues, in particular, electronic records. APHIS should consider using the rule making process to make changes to the traceability regulation only with industry support. Following feedback on this report from stakeholders, the ADT working group will finalize their recommendations for USDA's consideration.

Appendix

Appendix I – List of Acronyms

ADT	Animal Disease Traceability
AIMS	Animal Identification Management System
AIN	Animal Identification Number
AMS	Agriculture Marketing Service
APHIS	Animal and Plant Health Inspection Service
CFR	Code of Federal Regulations
EID	Electronic Identification
EMRS	Emergency Management Response System
FMD	Foot and mouth disease
FSIS	Food Safety Inspection Service
ICVI	Interstate Certificate of Veterinary Inspection
ID	Identification
IES	Investigative and Enforcement Services
IT	Information Technology
LF	Low Frequency
NIAA	National Institute for Animal Agriculture
NUES	National Uniform Eartagging System
OSS	Owner-Shipper Statement
PVP	Process Verification Program
RFID	Radio Frequency Identification
SCS	Surveillance Collaboration Services
TB	Tuberculosis
TPM	Trace Performance Measure
UHF	Ultra-High Frequency
USAHA	United States Animal Health Association
USDA	United States Department of Agriculture
VS	Veterinary Services
VSPS	Veterinary Services Process Streamlining

Appendix II – Working Group on Slaughter Plant ID Collection & Correlation

On November 9, 2016, APHIS established a working group to address traceability issues and short falls noted in the ADT assessment report.

Objective: Improve the rates of ID collection and correlation to the carcass at slaughter plants, to maximize ADT efforts related to disease programs and surveillance efforts.

Specific goals for the working group include:

1. Review ID collection and correlation processes obtained from the top 40 adult and top 22 fed cattle plants to determine best practices for application to all plants, especially those with demonstrated difficulty in proper ID collection and correlation.
2. Develop and implement a plan for routine DNA matching on non-histocompatible VS Form 6-35 submissions to closely monitor proper correlation of ID to the carcass.
3. Develop a protocol for outreach to plants regarding cases where DNA microsatellite test results indicated that tissue/hair associated with ID did not match the lesioned tissue submitted or matching was not possible because no tissue was submitted with the ID.
4. Develop elements for training State/Vs field personnel on inspection of ID collection and correlation systems within slaughter plants.
5. Collaborate with FSIS to develop and implement training for FSIS Public Health Veterinarians and Inspectors on oversight of ID collection and correlation systems within slaughter plants.
6. In instances requiring additional information for a lot of cattle that contained diseased animals (from which samples were taken and submitted for diagnostic testing), there is often no data available from many adult-kill plants to assist with reconstructing correlation in retrospect since brucellosis blood sampling ceased. Evaluate the capability of adult-kill slaughter plants to reconstruct correlation of man-made ID to carcasses within a lot that contained diseased cattle for one (1) week after slaughter of such diseased cattle, and develop a plan to address this lack of capability where it exists.
7. Develop a guidance document with FSIS for ensuring the issuance of compliance actions for slaughter plants that fail to properly collect man made ID and correlate it to the appropriate carcass.
8. Update the FSIS ADT MOU.

The working group listed below meet monthly via conference call.

Name	Affiliation
Pat Basu	Chief Public Health Veterinarian - FSIS, OPHS
Brian Bohl	TAHC Veterinarian, TX
Debbie Cox	VS Cattle Health Staff FSIS Liaison
Sunny Geiser-Novotny	VS Cattle Health Staff/ ADT Veterinarian
Neil Hammerschmidt	VS Traceability Program Staff
Robert Kerschen	VS EC, CO
Bob Meyer	Assistant State Veterinarian, WY
Kent Munden	VS Animal Identification Coordinator, TX
Barry Pittman	State Veterinarian, UT
Mark Schoenbaum	VS Cattle Health Staff Epidemiologist
Rob Southall	VS Assistant Director, KY
Dawn Sprouls	District Manager, OFO
Debbie Sumpter	VS Animal Identification Coordinator, CA
Beth Wittenbrader	VS Animal Health Technician, PA

Appendix III – Official Identification and ICVI Exemptions

Regulation text from 9CFR Part 86.

§ 86.4 Official identification.

(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).

§ 86.5 Documentation requirements for interstate movement of covered livestock.

(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.

APHIS Strategic Plan for Advancement of Animal Disease Traceability

The Animal and Plant Health Inspection Service's (APHIS) strategy to advance traceability relies heavily on stakeholder support and reflects a major change in perspective for many industry stakeholders who were opposed to mandated animal identification (ID) 10 years ago. USDA's initial traceability strategy, the National Animal Identification System (NAIS), was a comprehensive vision of a complete traceability system that would support disease tracing and trade. APHIS stopped pursuing NAIS in lieu of the current Animal Disease Traceability (ADT) program under title 9, *Code of Federal Regulations (CFR)*, Part 86, in 2013. ADT is a compromise system that requires tracing of adult animals from the location of shipment in one State to their destination in another and documentation of the movement. The current ADT program does not cover beef cattle under 18 months of age and also includes other exceptions to the regulation. At the time of the publication of 9CFR Part 86, APHIS and industry leaders agreed on the importance of having a functioning basic traceability system before considering a more comprehensive approach.

APHIS Goal: Make significant progress in demonstrating and delivering value to producers for complying with Animal Disease Traceability (ADT) framework.

- Complete comprehensive review of stakeholder comments and concerns delivered during ADT 2017 listening sessions;
- Identify channels of interest to develop value added opportunities for producers who embrace ADT by 07-2018; and
- Fully implement an electronic Health Certificate System for interstate movement of livestock by 07-2019.

In 2017, 4 years after implementing the ADT rule, APHIS analyzed the program and published a review of ADT. The review determined that the program was working very well to the extent that it was designed; however, many gaps remain in our ability to trace cattle.¹ These gaps result in some animals being untraceable, a lack of traceability to the birth herd, and visual ID tags for cattle that are incompatible with the speed of commerce. This analysis provided the background for industry leaders and State officials to consider changes to ADT. Since completing this analysis, APHIS, State officials, and industry leaders have worked collaboratively to determine the next steps for stakeholders to consider in moving forward.²

To be successful today, we must achieve an industry-driven, pro-traceability position that supports electronic identification (EID), electronic certificates of veterinary inspection (CVI), and value-added opportunity from a more complete traceability system.

Figure 1 shows a flow chart of events APHIS implemented in 2017 and planned actions for advancement in 2018-2023. Key actions to accomplish this strategy include:

1. We must develop changes to the current system with support from the cattle industry. The APHIS ADT strategy focuses on providing direction and expertise to industry partners; however, it also recognizes that all livestock sectors must be at the table to drive discussions to ends that meet their needs. To achieve this strategic goal, APHIS officials must meet with industry leaders

¹ ADT Assessment: <https://www.aphis.usda.gov/traceability/downloads/adt-assessment.pdf>

² (DRAFT) Animal Disease Traceability: Summary of Program Reviews and Preliminary "Next Step" Recommendations (November 2017)

frequently and focus discussion on critical issues, while moving forward with any changes to the current system in a transparent manner.

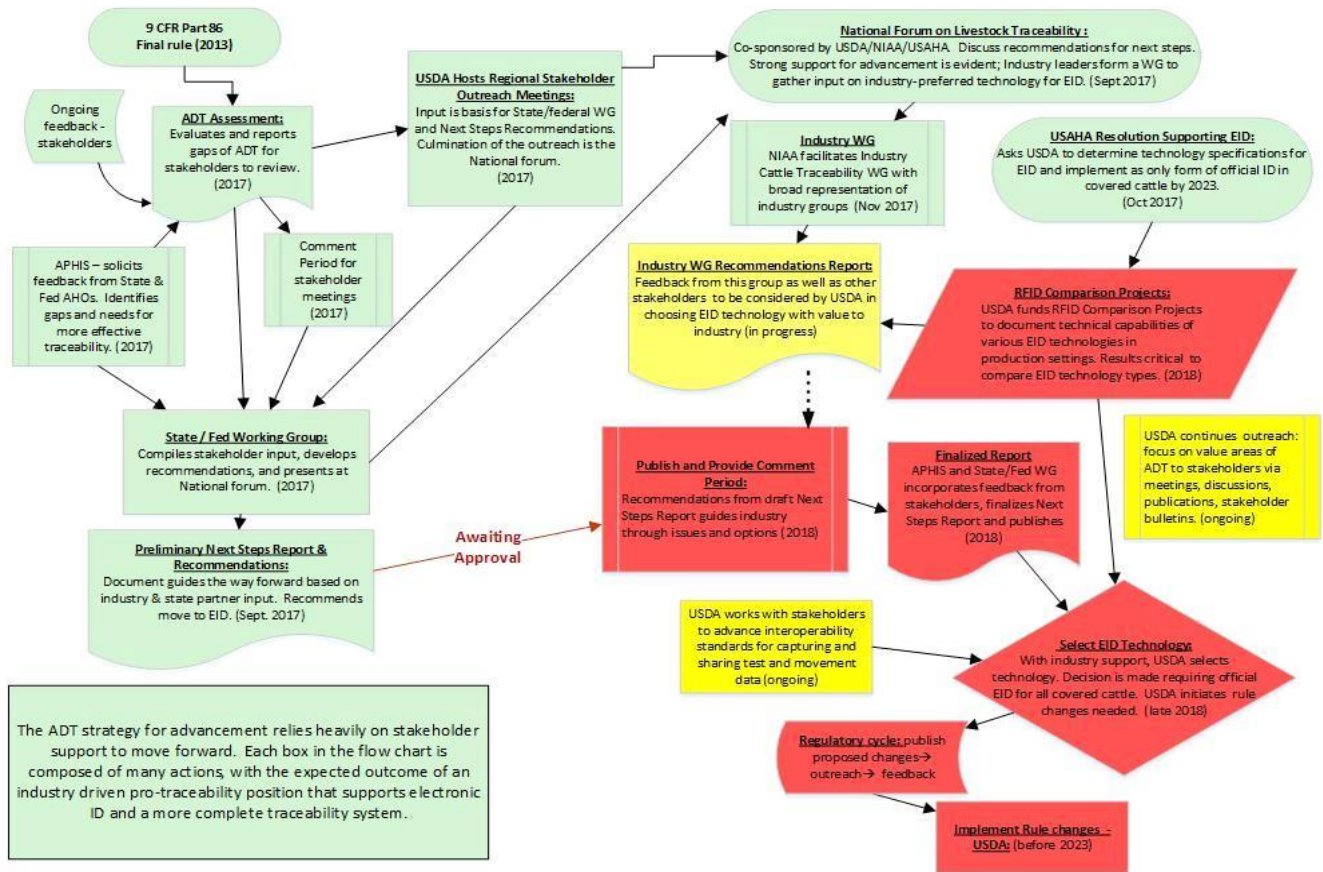
2. Although industry and State partners are critical players in the ADT discussion, APHIS must provide a lead role in communicating the issues at stake. Leading this diverse set of opinions across the Nation will require coordination through stakeholder forums such as the U.S. Animal Health Association and National Institute for Animal Agriculture,³ stakeholder communications through the Federal Register, and stakeholder bulletins, outreach meetings, and publications that help define ADT issues and possible solutions.⁴
3. This plan does not include official ID of beef feeder cattle. While some parts of industry expressed support for ID of beef cattle less than 18 months of age during 2017 outreach meetings, other industry sectors remain opposed. Recognizing that feeder cattle may transmit disease, this discussion should continue; however, greater support from industry stakeholders is necessary for inclusion of beef feeder cattle to move forward effectively.
4. Per stakeholder feedback, EID is necessary for effective traceability and should allow for the handling of cattle at the speed of commerce. At this time, there is no agreement on the specific technology most suitable for industry and regulatory needs. For logistical reasons resulting from widespread cattle movement and commingling, a single technology type for official use is needed. Many argue that ultra-high frequency tag technology is the only feasible answer for many facilities, while others argue in favor of the low-frequency technology already widely used in the United States and by trading partners. APHIS acknowledges that addressing this question is a high priority; however, each type of technology has adamant advocates, with political and public backlash likely for any choice that APHIS might make. Also, there is limited performance data from production environments that provides an unbiased comparison of the capability of each technology type. APHIS' strategy to select a technology type includes four steps:
 - a. Fund unbiased studies to compare technology types. Ensure data from these studies is available to the public to provide a foundation for objective comparison and decision making.
 - b. Encourage formation of an industry-led task force with input from animal health officials, as needed. The task force would represent a broad spectrum of industry organizations to thoroughly assess alternatives and gather input from industry sectors.
 - c. Evaluate input from all stakeholders.
 - d. After considering recommendations from industry and State stakeholders, and evaluating unbiased performance data, select an official animal ID technology standard.
5. The ability to share data between State and Federal data systems is necessary to leverage the value gained from EID. Interoperability standards that allow electronic messaging of test and movement data, user-friendly web access for veterinarians, and mobile information technology are essential to capture and exchange information rapidly and accurately. To this end, APHIS

³ U.S. Animal Health Association (www.USAHA.org) ; National Institute for Animal Agriculture (www.animalagriculture.org)

⁴ Animal Disease Assessment Report (April 2017) <https://www.aphis.usda.gov/traceability/downloads/adt-assessment.pdf>

and State partners have worked to advance electronic CVIs, share data, and standardize data collection and movement.

Figure 1: ADT Action Flowchart: Green signifies actions completed, yellow are ongoing, and red are planned.
Animal Disease Traceability Strategy for Cattle Covered Under 9 CFR Part 86
(Feeder Cattle Under 18 Months of Age are Excluded)



ADT Strategy Milestones

- Publication of the ADT Summary of Program Reviews and Preliminary “Next Step” Recommendations report in the Federal Register for a 45-day comment period to solicit stakeholder feedback on the working group’s recommendations (2018).
- APHIS reviews stakeholder comments and finalizes recommendations on ADT next steps (2018).
- Completion of USDA-funded 2018 radio frequency ID (RFID) projects that build on prior RFID work by comparing capabilities and providing field environment performance data on existing RFID technologies (2018).
- APHIS evaluates proposed information technology solution for interoperability messaging and determines path forward to support and fully implement an electronic Health Certificate System (2018).
- APHIS supports U.S. Animal Health Association working group on electronic CVI XML standardized message and determines implementation strategy for XML messages in Veterinary Services Process Streamlining system (2018).
- APHIS designates industry-approved EID as the official identification for cattle and bison in the United States (2018-2019).
- APHIS initiates regulatory/program changes (2018-2019).
- APHIS conducts outreach and feedback cycle on proposed rule changes (2019-2020).
- All cattle and bison meeting the requirement for official identification under 9CFR Part 86 possess electronic official ID tags that meet USDA standards (2023).

- There is potential for collaboration with the Kansas Department of Agriculture on a project designed to “test methodology for tracking individual animals through multiple locations and points of commerce”.
- These studies also provide an opportunity to demonstrate new ID devices that may bridge the gaps of UHF and LF. Companies would need to demonstrate performance, durability, and retention (e.g., dual readers (limited efficiency due to cost) or dual tags (none have been made available to USDA for approval at this time))
- 2. Our strategy aims to consider input from all stakeholders, as well as an industry-led task force representing a broad spectrum of industry organizations to assess alternatives and gather input from industry sectors.
- 3. Select an official animal ID technology standard.
- We should also improve our information technology infrastructure by expanding electronic ICVIs and electronic health forms to streamline data sharing capabilities across State and Federal.
- Our immediate focus should be to rectify existing traceability gaps in the cattle population currently covered in the ADT regulation, reduce confusion, and minimize conflicts in the initial ADT framework by:
 - Identifying cattle currently covered when there is a change of ownership or at first point of commingling, and ensuring the ID information reflects the birth premises.
 - Considering solutions to reduce the number of exemptions and to clarify their interpretation, particularly “direct to slaughter” movements.
 - Enhancing monitoring and enforcement of existing regulations to improve compliance in all sectors with emphasis on higher risk/impact areas.
 - Improve the consistency of ID collection at slaughter with proper correlation to the carcass.
 - Establish data and communication standards and enhance information technology to increase the utilization of electronic testing, interstate movement records, and data sharing capabilities.
 - Support cooperative efforts between industry, States, and APHIS to implement an EID solution for cattle and bison capable of working at the speed of commerce.



Cattle Traceability Working Group

**MINUTES
(CTWG) DATA STORAGE AND ACCESS TASK GROUP
JUNE 29, 2018**

Call to Order

The teleconference meeting of the Data Storage and Access Task Group was called to order at 3:30 p.m. CT, Friday, June 29, 2018.

Roll Call

The following Task Group Members and NIAA staff members were present:

<u>Present</u>	<u>Absent</u>	<u>Member</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Chuck Adami, Equity Cooperative Livestock and NLPA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Kathryn Britton, IMI Global
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Silvia Christensen, SD Stockgrowers
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Terry Fankhauser, Colorado Cattlemen’s Assn.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Tony Forshey, Ohio Department of Agriculture
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Chelsea Good, LMA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Nephi Harvey, Fort Supply Technologies
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Jennifer Houston, NCBA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Dwight Keller, USCA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Larry Kendig, USCA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Justin Sexten, Certified Angus Beef
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Larry Stewart, HAVI
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Jill Wagner, GlobalVetLINK
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dr. Jessica Watson, NCBA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Ross Wilson, Texas Cattle Feeders Assn.
5	10	

Mr. Josh White of NCBA participated on the call for Dr. Jessica Watson

NIAA Staff members present: Angela Luongo

Data Storage and Access Task Group
June 29, 2018

Adding Members to the CTWG

"The addition of new member to CTWG shall follow the broader procedure for proposal and voting on 'consensus points' as previously unanimously approved by the CTWG membership. As such, a new member discussion shall be initiated at the Working Group level, and needs to be recommended to the broader CTWG by one of said Working Groups. Once nominated by a Working Group, the Co-chairs will send out information regarding the nomination of a new member, will set up a call for discussion and set a time for a vote of membership organizations to decide on the inclusion of the nominated party."

Action Items

It will be recommended to the full CTWG membership that Mr. Larry Stewart of HAVI be added as a member and set time for a vote.

Selecting a Co-Chair

There is a vacant Co-chair position for this Working Group, and there is a need to formalize a procedure to fill this (and other similar future) vacancies. As discussed and decided, we will:

"Each Working Group shall fill any co-chair vacancies via an internal nomination and voting process within the Group – there shall be no need for broader consent or approval from the entire CTWG to fill such a vacancy. It is further noted that the vote inside the Working Group shall follow the broader agreed rule of "One organization-One vote" as decided for all votes within the broader CTWG."

Action Items

Following no further recommendations, Ms. Chelsea Good volunteered to become the new co-chair of the Data Storage and Access Task Group. The group agreed unanimously.

14 Points – USDA ADT Summary Document Review

The Collection Technology Working Group has recommended that each of the Working Groups undertake a review of the April 2018 USDA ADT Summary Document. The following are the selected direction points that the Data Storage & Access Task Group will focus on:

(Rank of Importance has been listed as Priority, Secondary & Comment)

3. LIMITING OFFICIAL IDENTIFICATION REQUIREMENT TO INTERSTATE MOVEMENTS (**COMMENT**)
4. ELECTRONIC IDENTIFICATION SYSTEM FOR CATTLE (**SECONDARY**)
5. ADMINISTRATION OF ELECTRONIC RECORDS (**PRIORITY**)
7. COLLECTION OF ID & ITS CORRELATION TO THE CARCASS AT SLAUGHTER PLANTS (**COMMENT**)
8. PUBLIC/PRIVATE INFORMATION SYSTEM (**PRIORITY**)
9. EXEMPTIONS FOR OFFICIAL IDENTIFICATION REQUIREMENTS (**COMMENT**)
10. ICVI EXEMPTIONS AND MOVEMENT DOCUMENTS (**SECONDARY**)
13. OFFICIAL EID TAG FOR IMPORTED CATTLE (**SECONDARY**)
14. OFFICIAL IDENTIFICATION OF BEEF FEEDERS (**COMMENT**)

Action Items

Group will compile initial remarks on the direction points in preparation for next conference call in 2-3 weeks.

- The next call will take place approximately 2-3 from today. Dates will be proposed via Doodle Poll and emailed to the group.

As there was no further business, the meeting adjourned at 4:07 p.m. CT

Respectively submitted by:

A handwritten signature in black ink that reads "Angela M. Luongo". The signature is written in a cursive, flowing style.

Angela M. Luongo

Glenn Fischer

From: Glenn Fischer
Sent: Tuesday, February 26, 2019 9:17 AM
To: Shere, Jack A - APHIS; Tomlinson, Sarah M - APHIS; Scott, Aaron E - APHIS; nevil speer
Cc: Katie Ambrose; angela.luongo@animalagriculture.org
Subject: CTWG Topic Into e-mail - ADT Point 4
Attachments: ADT Point 4 .docx

Good morning all,

Thanks again for the good discussion on yesterday's call... as discussed, herein is my suggested message to the CTWG to invite them to begin the discussion on this important point. Please comment/correct liberally – no pride of authorship here... just want to get this right. Thanks.

Good morning CTWG members,

As we progress towards the important NIAA Annual Conference Meetings in Des Moines this April, we will pivot to work as a consolidated CTWG Group these coming weeks to work on a key topic – Electronic ID Technology. This is one of the more important topics as it relates to the evolution of the ADT system, and one that will likely involve some very spirited discussion.

As we begin to work on this topic, we initiated a conference call with USDA earlier this week to seek some further clarifications and insights into the Proposal put forth on ADT Point 4 in the ADT Program Summary Review. On this call, we focused on the 4 key elements of the proposal (Standardization, Transitional Technology Solutions, Timelines and Funding), which you will find in the attached text of ADT Point 4. The following is some relevant commentary on each point for your information and consideration:

General comment re: Covered Population:

- ADT only addresses the current population of livestock covered by the official ID requirements. The ADT rule will continue to (only) include:
 - All dairy
 - Beef cattle > 18 months of age
 - All rodeo and exhibition cattle
- It is acknowledged that many segments of the industry favor inclusion of Feeder Cattle into the ADT Program, however no new rules have been proposed at this time (and such a change would require rule-making with public comment and review).

Standardization:

- Low Frequency (LF) RFID is currently standardized as per ISO and ICAR Standards, which includes application, retention, electronic and performance standards. Ultra High Frequency (UHF) does not yet have International Standards in place, and the USDA Interim Standards for UHF only partially address these standards. USDA will continue to work on such standards for UHF – both for Interim Standards and via engagement on ISO and ICAR Working Groups.
 - USDA is currently working on enhanced standards for all RFID technology, and this draft document should be available within the next 60-90 days.

- Both LF and UHF technologies have been accredited by USDA for many years; the market uptake of these technologies has been in excess of 100:1 in favor of LF technology.
- Should Industry favor a move to a single technology, it will be subject to USDA rule-making which will be put forward for public comment and review.

Transitional Technology Solutions:

- Broadly, this is considered to include both LF and UHF device as currently approved through an undefined transitional period.
 - This also would contemplate inclusion of dual LF/UHF devices during this period.

Timelines:

- USDA will sunset metal/'brite' tags for purchase at end of 2019; tags in state/veterinary inventory may be sold through the end of 2020, and all approved metal/'brite' tags will be considered as official through the end of 2022.
- On January 1, 2023, only approved EID tags will be designated as official tags.

Funding:

- USDA continues to work with the States to develop a Cost sharing system for implementation of approved RFID technology.
 - Focus for funding is on 'Program Tags' – currently the silver 'brite' tags and orange Bangs tags – and redirecting these funds (currently used to purchase circa 8 million metal tags) to the RFID program.
 - Only 'Program Tags' replacements will be considered for funding, not general market use of ADT RFID tags.

As we begin our discussions, we will focus on each of the 5 categories noted above, in turn, over the next 5 weeks in our joint (all CTWG Working Groups) calls. We will have our first call next Tuesday, March 5th at 2:00pm Central (Angela will send out an invite to all), during which we will address the *Covered Population* category, and we will also discuss/set the dates and time for future calls... likely one per week, leading up the NIAA Annual Conference.

Thanks, as always for your dedication and participation on this topic – we look forward to some very good discussion on this topic in the weeks to come!

Kind regards,
CTWG Co-Chairs

Thanks and kind regards,
Glenn



GLENN FISCHER / President

ALLFLEX USA, INC.

Office: 972.456.3686, Fax: 972.456.3882, Mobile: 972-523-0229

P.O. Box 612266, 2805 E. 14th Street, DFW Airport, TX 75261-2266

Visit our web site at www.allflexusa.com

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Scott, Aaron E - APHIS

From: Scott, Aaron E - APHIS
Sent: Wednesday, February 27, 2019 12:39 PM
To: Glenn Fischer
Cc: Katie Ambrose; angela.luongo@animalagriculture.org; Shere, Jack A - APHIS; Tomlinson, Sarah M - APHIS; nevil speer
Subject: RE: CTWG Topic Into e-mail - ADT Point 4

Glenn,
Thanks for the opportunity to review- see my suggested edits below.

Aaron

Aaron Scott DVM PhD DACVPM (epidemiology)
Director: National Animal Disease Traceability and Veterinary Accreditation Center (NADTVAC)
USDA-APHIS-VS Strategy and Policy
Desk (970) 494-7249
Cell (970) 481-8214

2150 Centre Ave Blding B, MS3E79
Fort Collins, CO, 80526

From: Glenn Fischer [mailto:gfischer@allflexusa.com]
Sent: Tuesday, February 26, 2019 9:17 AM
To: Shere, Jack A - APHIS <Jack.A.Shere@aphis.usda.gov>; Tomlinson, Sarah M - APHIS <Sarah.M.Tomlinson@aphis.usda.gov>; Scott, Aaron E - APHIS <Aaron.E.Scott@aphis.usda.gov>; nevil speer <nevil.speer@turkeytrack.biz>
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 - o USDA is currently working **to update the Traceability Program General Standards which are compatible with ICAR and ISO and provide information on ID numbering systems, administration and use of ID devices, and approval of new devices. on enhanced standards for all RFID technology, and this This draft document should be available within the next 60-90 days.**
- ~~Both LF and UHF technologies have been accredited~~ **approved for official ID** by USDA for many years; ~~the current market share of these technologies has been in excess of 100:1 in favor of LF technology.~~
- Should Industry favor a move to a single technology, **mandating it will would be subject to USDA rule-making process and which will would include be put forward for public comment and review; at this time, USDA is not considering such rule-making.**

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 - o This also would contemplate inclusion of dual LF/UHF devices during this period.

Timelines:

- USDA will **no longer provide free metal bangs and 'brite' tags at end of 2019; tags may be purchased and applied inventory may be sold through the end of 2020, and all approved metal bangs and 'brite' tags applied prior to 2021 will be considered as official through the end of 2022.**
- On January 1, 2023, only approved EID tags will be designated as official tags.

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- USDA continues to work with the States to develop a Cost sharing system for implementation of approved RFID technology.
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Levesque, Ashley - APHIS

From: Levesque, Ashley - APHIS
Sent: Friday, March 1, 2019 7:25 AM
To: Healey, Burke L - APHIS
Subject: FW: CTWG All-member Discussion: Thursday March 7th

Can't remember if I sent this to you or not.

Ashley Levesque
Chief of Staff
Veterinary Services
USDA – Animal Plant Health Inspection Service
[1400 Independence Ave, SW, 320-E Whitten](#)
[Washington, DC 20250](#)
Ashley.Levesque@aphis.usda.gov
Office: [202-799-7151](tel:202-799-7151)
Cell: [202-868-3777](tel:202-868-3777)

From: Glenn Fischer <gfisher@allflexusa.com>
Sent: Thursday, February 28, 2019 11:10 PM
To: angela.luongo@animalagriculture.org; jleathers@6666ranch.com; nevil.speer@turkeytrack.biz;
DaleM@fb.org; John Newton - FASContact <jnewton@fb.org>; scottb@fb.org; ggottswiller@angus.org;
Pdykstra@certifiedangusbeef.com; terry@coloradocattle.org; robert.bailey@datamars.com;
Linda.Mills@datamars.com; adami@equitycoop.com; linda@foleypeden.com; nephi@fort-supply.com;
jwagner@globalvetlink.com; Jhoynoski@holstein.com; TomJones231@gmail.com; Swharton@wbsnet.org;
Jsaunders@imiglobal.com; Renee.Strickland - FASContact <stricklandexports@gmail.com>;
cgood@lmaweb.com; tstarks67@hotmail.com; dblasi@ksu.edu; jhouston@beef.org; jwatson@beef.org;
Jwhite@beef.org; katie.ambrose@animalagriculture.org; jamesh@southdakotastockgrowers.org;
FoxRanch@gwtc.net; ross@tcfa.org; Jim.lovell@gpreinc.com; kbhr@westriv.com; lwkendig@hotmail.com;
emetzger@usjersey.com; mbumgarner@uproducers.com; kbritton@wherefoodcomesfrom.com;
smarsh@ytex.com; nhammerhead@gmail.com; jjonker@nmpf.org; larry@larrystewart.net;
tforshey@agri.ohio.gov
Cc: Scott, Aaron E - APHIS <Aaron.E.Scott@aphis.usda.gov>; Tomlinson, Sarah M - APHIS
<Sarah.M.Tomlinson@aphis.usda.gov>; Shere, Jack A - APHIS <Jack.A.Shere@aphis.usda.gov>
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 - o All dairy
 - o Beef cattle > 18 months of age
 - o All rodeo and exhibition cattle
- It is acknowledged that many segments of the industry favor inclusion of Feeder Cattle into the ADT Program, however no new rules have been proposed at this time (and such a change would require rule-making with public comment and review).

Standardization:

- Low Frequency (LF) RFID is currently standardized as per ISO and ICAR Standards, which includes application, retention, electronic and performance standards. Ultra High Frequency (UHF) does not yet have International Standards in place; however, USDA has developed interim standards for use in the United States and will continue to work with ISO and ICAR Working Groups to develop international standards.
 - o USDA is currently working to update the Traceability Program General Standards which are compatible with ICAR and ISO and provide information on ID numbering systems, administration and use of ID devices, and approval of new devices. This draft document should be available within the next 60-90 days.
- Both LF and UHF technologies have been approved for official ID by USDA for many years, and there has been considerable investment in both devices and infrastructure during this time.
- Should Industry favor a move to a single technology, mandating it would be subject to USDA rule-making process and would include public comment and review; at this time, USDA is not considering such rule-making.

Transitional Technology Solutions:

- Broadly, this is considered to include both LF and UHF device as currently approved through an undefined transitional period.
 - o This also would contemplate inclusion of dual LF/UHF devices during this period.

Timelines:

- USDA will no longer provide free metal bangs and 'brite' tags at end of 2019; tags may be purchased and applied through the end of 2020, and all approved metal bangs and 'brite' tags applied prior to 2021 will be considered as official through the end of 2022.
- On January 1, 2023, only approved EID tags will be designated as official tags.

Funding:

- USDA continues to work with the States to develop a Cost sharing system for implementation of approved RFID technology.
 - o Focus for funding is on 'Program Tags' – currently the silver 'brite' tags and orange Bangs tags – and redirecting these funds (currently used to purchase circa 8 million metal tags) to the RFID program.
 - Only 'Program Tags' replacements will be considered for funding, not general market use of ADT RFID tags.

As we begin our discussions, we will focus on each of the 5 categories noted above, in turn, over the next 5 weeks in our joint (all CTWG Working Groups) calls. We will have our first call next Thursday, March 7th at 2:00pm Central (Angela will send out an invite to all), during which we will address the *Covered Population* category, and we will also discuss/set the dates and time for future calls... likely one per week, leading up

Thanks, as always for your dedication and participation on this topic – we look forward to some very good discussion on this topic in the weeks to come... Please make sure your voice, and that of your constituencies is well heard!

Kind regards,
CTWG Co-Chairs



GLENN FISCHER / President

ALLFLEX USA, INC.

Office: 972.456.3686, Fax: 972.456.3882, Mobile: 972-523-0229

P.O. Box 612266, 2805 E. 14th Street, DFW Airport, TX 75261-2266

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----- Original Appointment -----

From: angela.luongo@animalagriculture.org <angela.luongo@animalagriculture.org>

Sent: Tuesday, February 5, 2019 10:41 AM

To: angela.luongo@animalagriculture.org; jleathers@6666ranch.com; nevil.speer@turkeytrack.biz; Glenn Fischer; DaleM@fb.org; jnewton@fb.org; scottb@fb.org; ggottswiller@angus.org; Pdykstra@certifiedangusbeef.com; Terry@ColoradoCattle.org; robert.bailey@datamars.com; Linda.Mills@datamars.com; adami@equitycoop.com; linda@foleypeden.com; nepi@fort-supply.com; jwagner@globalvetlink.com; Jhoynoski@holstein.com; TomJones231@gmail.com; Swharton@wbsnet.org; Jsaunders@imiglobal.com; stricklandexports@gmail.com; cgood@lmaweb.com; tstarks67@hotmail.com; dblasi@ksu.edu; jhouston@beef.org; Jwatson@beef.org; Jwhite@beef.org; katie.ambrose@animalagriculture.org; jamesh@southdakotastockgrowers.org; FoxRanch@gwtc.net; ross@tcfa.org; Jim.lovell@gpreinc.com; kbhr@westriv.com; lwkendig@hotmail.com; emetzger@usjersey.com; mbumgarner@uproducers.com; kbritton@wherefoodcomesfrom.com; smarsh@ytex.com; nhammerhead@gmail.com; jjonker@nmpf.org; larry@larrystewart.net; tforshey@agri.ohio.gov

Subject: CTWG Conference Call, Tuesday March 5, 9:30 am Central Time

When: Tuesday, March 5, 2019 8:30 AM-9:30 AM (UTC-07:00) Mountain Time (US & Canada).

Where: 1-800-309-2350; Code: 712-1758#

Good Morning CTWG Members,

Please plan on joining the conference call on Tuesday, March 5th, 2019 at 9:30 am Central Time!

Call Information: 1-800-309-2350; Participant Code: 712-1758#

The purpose for the call will be to discuss the following consensus point most recently passed by the Collection and Technology Task Group before sending out for a formal group electronic vote, which will immediately follow.

CTWG Collection Technology Position on ADT Point 12 – “Uniform Official Identification

Eartags

The CTWG understands the current USDA position of “Technology Neutrality” which allows for the use of visual and electronic identification, including both Low Frequency and High Frequency Radio Frequency Identification (RFID) tags as official Identification devices under the ADT program. It is further well understood that trials are underway – supported by both private and governmental entities – to evaluate the use of these specific RFID technologies under the ADT program; the CTWG believes these trials should be allowed to continue to completion, and the information learned/conclusions reached from these varied activities (across all segments of the market, including commercial activities on farm and throughout all production channels) should be evaluated in the context of reconsidering whether industry may wish to consider one uniform tag as noted in the ADT document Proposal. The CTWG further recommends that USDA does not sunset any existing official tag technology until a decision is taken – jointly by Industry and Government - regarding the specific technology to be used (“one standard, uniform tag”) under the ADT program.

Thank you in advance for your time and we look forward to having everyone on the call to discuss.

Angela Luongo
NIAA
Project Coordinator

NEWS RELEASE



For Immediate Release
May 15, 2019
Contact: Katie Ambrose
719-538-8843 ext. 14

Producer Traceability Council Reaches Consensus on Key Elements to Increase Cattle Traceability in the U.S.

May 15, 2019 (Denver, CO)---In meetings last week, the Producer Traceability Council reached consensus on two major points to increase the number of cattle identified in the U.S. The Council unanimously agreed the best option for the cattle industry moving forward is to work toward the adoption of a High Frequency/Ultra High Frequency (HF/UHF) radio identification system and the timeline for adoption of the system mirror that of USDA’s timeline for the sunseting of the metal tags with complete implementation no later than January 1, 2023.

The newly formed Producer Traceability Council has evolved and was established independently of the Cattle Traceability Working Group (CTWG). The focus is specifically on ways to increase the number of cattle identified with electronic identification devices, increase the number of sightings of identified cattle, identify methods of data storage, and suggest cost sharing scenarios, while taking into consideration and minimizing negative effects on producers.

“The cattle traceability issue is complex and concerns nearly everyone involved in the production, marketing, processing, and animal health aspects of the industry,” said Chuck Adami, co-chair of the Council and CEO of Equity Cooperative Livestock Sales Assn. “The importance of a workable traceability system cannot be overstated given the need to effectively trace animals in the event of an animal health event. In addition, increasing pressure from

consumers and our export partners demanding a robust traceability system solidifies the need to get a system in place sooner rather than later.”

Currently, cattle in the U.S. are traced using a variety of systems and methods depending on the state in which the cattle are located, the age of cattle, and the type of identification the cattle may, or may not have. In some cases, this lack of consistency and use of effective technology hampers the efforts to complete timely and effective tracebacks and trace-outs.

“Being deeply involved in the cattle business, I feel it is imperative that we come together as producers and help lead the effort to enhance cattle traceability,” said Joe Leathers, Council co-chair and General Manager of the 6666 Ranch near Guthrie, Texas. “It just makes sense that we, as producers, use the best technology available so that while traceability is being achieved, we are also able to better manage our operations using that technology.”

While there continue to be obstacles that will need to be overcome, including how such technology will be paid for and by whom, protection from the misuse of data collected, and the development of secure data systems to transfer information, the Producer Traceability Council is optimistic that continuing this work will lead to success.

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Tomlinson, Sarah M - APHIS

From: Tomlinson, Sarah M - APHIS
Sent: Wednesday, May 15, 2019 9:48 AM
To: Healey, Burke L - APHIS; Levesque, Ashley - APHIS
Cc: Sifford, Rosemary B - APHIS
Subject: FOR IMMEDIATE AWARENESS: FW: Producer Traceability Council News Release
Attachments: CTWG News Release - May - 2019 FINAL.pdf

First- just learned they are trying to get this out this am, so not writing this in a mm format and just sending directly. Maybe need to let folks know up the chain.

Second- how do you want me to be listed if at all? Probably not as a participant. . . . please advise ASAP.

Thanks, Sarah

Sarah M. Tomlinson, DVM
Executive Director, Strategy and Policy
VS, APHIS, USDA
2150 Centre Ave, Bldg B.
Fort Collins, CO 80526
Office: 970.494.7152
Cell: 970.217.7433
Email: Sarah.M.Tomlinson@aphis.usda.gov

From: Katie Ambrose [mailto:katie.ambrose@animalagriculture.org]
Sent: Wednesday, May 15, 2019 9:24 AM
To: Tomlinson, Sarah M - APHIS <sarah.m.tomlinson@usda.gov>
Cc: Nelson, Janell R - APHIS <janell.r.nelson@usda.gov>
Subject: Producer Traceability Council News Release
Importance: High

Sarah,

Can you let me know how best to describe your role as a participant at last week's meeting in Denver?

Suggestions:

1. After your name in (in an advisory capacity only)
2. Or (Resource only)
3. Or ??

If you could let me know right away, that would be great as we are waiting to send this out this morning.

Thanks.



Ms. Katie Ambrose
National Institute for Animal ...
Executive Director

(719) 538-8843 Work
(719) 314-6133 Mobile
katie.ambrose@animalagricul...
13570 Meadowgrass Drive
Suite 201
Colorado Springs, CO 80921

Levesque, Ashley - APHIS

From: Levesque, Ashley - APHIS
Sent: Wednesday, May 15, 2019 11:19 AM
To: Healey, Burke L - APHIS
Subject: FW: FOR IMMEDIATE AWARENESS: FW: Producer Traceability Council News Release
Attachments: CTWG News Release - May - 2019 FINAL.pdf

Did you answer this one? I'm thinking they remove Sarah; it looks like the majority of people are industry. But your call.

Ashley Levesque
Chief of Staff
Veterinary Services
USDA – Animal Plant Health Inspection Service
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@usda.gov
Office: 202-799-7151
Cell: 202-868-3777

From: Tomlinson, Sarah M - APHIS
Sent: Wednesday, May 15, 2019 11:48 AM
To: Healey, Burke L - APHIS <burke.l.healey@usda.gov>; Levesque, Ashley - APHIS <ashley.levesque@usda.gov>
Cc: Sifford, Rosemary B - APHIS <rosemary.sifford@usda.gov>
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Email: Sarah.M.Tomlinson@aphis.usda.gov

From: Katie Ambrose [<mailto:katie.ambrose@animalagriculture.org>]

App.248

AR- 000322

Sent: Wednesday, May 15, 2019 9:24 AM

To: Tomlinson, Sarah M - APHIS <sarah.m.tomlinson@usda.gov>

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Thanks.



Katie Ambrose

From: Katie Ambrose
Sent: Thursday, May 16, 2019 6:10 PM
Subject: Corrections to Producers Traceability Council - News Release
Attachments: Producers Traceability Council News Release - May - 2019 FINAL.pdf

Good Afternoon,

Please note two corrections to yesterday's news release from the Producers Traceability Council:

1. The consensus was for the adoption of an Ultra High Frequency (UHF) radio identification system only. High Frequency was stated in error.
2. Dr. Sara Tomlinson, Government Liaison, USDA, APHIS, VS, supports the Producer Traceability Council in an advisory capacity only and is a non-voting member.

A corrected copy of the news release is attached as the "Producers Traceability Council News Release – May-2019 Final."

Please accept our apologies for any confusion.

NEWS RELEASE



For Immediate Release
May 15, 2019
Contact: Katie Ambrose
719-538-8843 ext. 14

Producer Traceability Council Reaches Consensus on Key Elements to Increase Cattle Traceability in the U.S.

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consumers and our export partners demanding a robust traceability system solidifies the need to get a system in place sooner rather than later.”

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From: Katie Ambrose
Sent: Thursday, May 16, 2019 6:23 PM
To: Tomlinson, Sarah M - APHIS
Subject: FW: Corrections to Producers Traceability Council - News Release
Attachments: Producers Traceability Council News Release - May - 2019 FINAL.pdf; Ms Katie Ambrose.vcf

Sarah,

Please accept my apologies as I understand you heard from Glenn today who, as you know, is quite upset on many different levels including my listing you incorrectly. I thought listing you as a government liaison would have been sufficient.

I have already heard from Glenn who is feeling much better now that I have corrected the error.

Frankly, Sarah, I was more concerned about you and wanting you to know that I would never, ever want to put you in any position where there are concerns or questions about your important role in this council from anyone!

Again, I am sincerely sorry.

Warm Regards,



From: Katie Ambrose <katie.ambrose@animalagriculture.org>
Sent: Thursday, May 16, 2019 6:10 PM
Subject: Corrections to Producers Traceability Council - News Release
Importance: High

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Katie Ambrose

From: Katie Ambrose
Sent: Monday, November 13, 2017 8:18 AM
To: Hammerschmidt, Neil E - APHIS
Subject: FW: Cattle Traceability Working Group
Importance: High

Good Morning Neil,

Please see email below. I have also received a phone call from him as well stating that he knows you.

He would like to participate on a the conference call re: ADT taking place next week.

I am not sure how he was made aware of the call but before I call him back, I wanted to visit with you first to find out more about him.

Have time for a visit today or tomorrow?

Thanks.



From: Larry [mailto:lwkendig@hotmail.com]
Sent: Saturday, November 11, 2017 11:42 AM
To: Katie.ambrose@animalagriculture.org
Subject: Cattle Traceability Working Group

Katie,

I would very much like to be part of this group to help solve the traceability issues in our industry. I am a long time producer and I am a member of various producer organizations. I am not interested in the politics of this issue. I want to do as much as possible to help build a program which will best benefit the industry.

Larry Kendig
phone 785-346-6259

Hammerschmidt, Neil E - APHIS

From: Hammerschmidt, Neil E - APHIS
Sent: Tuesday, November 14, 2017 7:38 AM
To: 'Katie Ambrose'
Subject: RE: Cattle Traceability Working Group

Katie, I am available any time before 12:00 eastern time today. Give me a shout if that works for you.

H

Neil Hammerschmidt, Program Manager
Animal Disease Traceability
USDA APHIS Veterinary Services

Office & Cell: 240-463-0098
<http://www.aphis.usda.gov/traceability/>

From: Katie Ambrose [mailto:katie.ambrose@animalagriculture.org]
Sent: Monday, November 13, 2017 10:18 AM
To: Hammerschmidt, Neil E - APHIS <Neil.E.Hammerschmidt@aphis.usda.gov>
Subject: FW: Cattle Traceability Working Group
Importance: High

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Subject: Cattle Traceability Working Group

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Larry Kendig
phone 785-346-6259

Katie Ambrose

From: Katie Ambrose
Sent: Tuesday, November 14, 2017 10:36 AM
To: Hammerschmidt, Neil E - APHIS
Subject: FW: IMPORTANT - PLEASE READ - NIAA Cattle Traceability Working Group (CTWG) Invitation
Attachments: Resolution 8 ID in Cattle.doc
Importance: High

Neil,

Please see the invitation below that was sent out to the parties that expressed an interest in participating on this working group. I will reach out to Jamie Jonker with the same email. Let me know if you have other thoughts of folks you think ought to be included.

Thanks much ☺



November 9, 2017

Good Afternoon,

I was in communication with Dr. Nevil Speer earlier this week and he suggested that you would be a great candidate to consider a role as a possible participant, and of course, I could not agree more. . . please read on. . .

As you may know there was a *Strategy Forum on Livestock Traceability*, hosted by the National Institute for Animal Agriculture (NIAA) and the United States Animal Health Association (USAHA), this past September in Denver!

There was much discussion at the end of the Forum regarding the next steps necessary to further progress of a more robust traceability system for cattle and that industry representatives should be the ones to develop and lead a cattle traceability working group.

The USAHA Board of Directors adopted a resolution which calls for electronic identification of cattle required to be identified by January 1, 2023 with the cost of such a system equitably shared among the industry and government. To some this is an ambitious timeline, while to others it is not ambitious enough. Regardless, there are many issues that need to be addressed by industry in order to make this ambition a reality. (Please see resolution attached).

Therefore, this letter is written to invite participation from all sectors of the cattle industry and technology providers in a Cattle Traceability Work Group (CTWG) to be facilitated by NIAA, and led by key stakeholders in the beef industry. It is anticipated this group will focus on the areas of tag and reader technologies, application responsibilities, reporting responsibilities, and cost-sharing possibilities. State and Federal input will be crucial and, while not being members of the Working Group, it is anticipated governmental representatives will serve as resources for the work.

NIAA's role will be to facilitate teleconferences and meetings, provide staff assistance, and to provide documentation of the work of the Working Group. The costs associated with facilitation of the CTWG will be shared among the group and through underwriting opportunities.

We invite you to join the CTWG or identify a representative from your sector of the beef industry to be a participant. Industry associations are welcome to have one staff member and one producer, to be engaged in this dialogue.

The inaugural teleconference will be held on November 20, 2017 at 2pm Central Time. An Outlook invitation will be sent out next week confirming this date and time.

Please respond to this invitation at your earliest convenience to Katie.ambrose@animalagriculture.org. If you have questions, please feel free to email or call Katie at or 719-538-8843, ext. 14!

Look forward to hearing from you and hope you will be able to join the discussion as we believe your input around this topic is vitally important!

Sincerely,



Dr. Tony Forshey, Chairman
National Institute for Animal Agriculture

Hammerschmidt, Neil E - APHIS

From: Hammerschmidt, Neil E - APHIS
Sent: Wednesday, November 15, 2017 4:32 AM
To: Munger, Randy D - APHIS; Geiser-Novotny, Sunny - APHIS; Scott, Aaron E - APHIS; Witherspoon, Daisy M. - APHIS; Reed, Alexandra A - APHIS
Subject: FW: IMPORTANT - PLEASE READ - NIAA Cattle Traceability Working Group (CTWG) Invitation
Attachments: Resolution 8 ID in Cattle.doc
Importance: High

FYI

From: Katie Ambrose [mailto:katie.ambrose@animalagriculture.org]
Sent: Tuesday, November 14, 2017 12:36 PM
To: Hammerschmidt, Neil E - APHIS <Neil.E.Hammerschmidt@aphis.usda.gov>
Subject: FW: IMPORTANT - PLEASE READ - NIAA Cattle Traceability Working Group (CTWG) Invitation
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As you may know there was a *Strategy Forum on Livestock Traceability*, hosted by the National Institute for Animal Agriculture (NIAA) and the United States Animal Health Association (USAHA), this past September in Denver!

There was much discussion at the end of the Forum regarding the next steps necessary to further progress of a more robust traceability system for cattle and that industry representatives should be the ones to develop and lead a cattle traceability working group.

The USAHA Board of Directors adopted a resolution which calls for electronic identification of cattle required to be identified by January 1, 2023 with the cost of such a system equitably shared among the industry and government. To some this is an ambitious timeline, while to others it is not ambitious enough. Regardless, there are many issues that need to be addressed by industry in order to make this ambition a reality. (Please see resolution attached).

Therefore, this letter is written to invite participation from all sectors of the cattle industry and technology providers in a Cattle Traceability Work Group (CTWG) to be facilitated by NIAA, and led by key stakeholders in the beef industry. It is anticipated this group will focus on the areas of tag and reader technologies, application responsibilities, reporting responsibilities, and cost-sharing possibilities. State and Federal input will be crucial and, while not being members of the Working Group, it is anticipated governmental representatives will serve as resources for the work.

NIAA's role will be to facilitate teleconferences and meetings, provide staff assistance, and to provide documentation of the work of the Working Group. The costs associated with facilitation of the CTWG will be shared among the group and through underwriting opportunities.

We invite you to join the CTWG or identify a representative from your sector of the beef industry to be a participant. Industry associations are welcome to have one staff member and one producer, to be engaged in this dialogue.

The inaugural teleconference will be held on November 20, 2017 at 2pm Central Time. An Outlook invitation will be sent out next week confirming this date and time.

Please respond to this invitation at your earliest convenience to Katie.ambrose@animalagriculture.org . If

Look forward to hearing from you and hope you will be able to join the discussion as we believe your input around this topic is vitally important!

Sincerely,

A handwritten signature in black ink that reads "Tony M. Forshey DVM". The signature is written in a cursive, slightly slanted style.

Dr. Tony Forshey, Chairman
National Institute for Animal Agriculture

Katie Ambrose

From: Katie Ambrose
Sent: Monday, November 27, 2017 10:33 AM
To: Hammerschmidt, Neil E - APHIS
Subject: NIAA Cattle Traceability Working Group Minutes and Preliminary Purpose and Goals
Attachments: 11-8-2017 LT Working Group CC Minutes.docx; Preliminary Purpose and Goals.docx

Good Morning Neil,

I hope you had a great Thanksgiving and enjoyed the fabulous weather like we did in CO! It was heaven especially having those couple of extra days! Just think you will be living that dream in just about another month!

As promised, please see the minutes from the first conference call for the Cattle Traceability Working Group (CTWG) that took place on November 20th along with a document suggesting the purpose and goals of this group.

Please do not hesitate to share your thoughts and or feedback from this call.

The next call is scheduled for December 4th at 2pm Central time.

You know I will keep you in the loop and can pull you into the loop at the appropriate time if you wish.

Questions? Let me know.

Thanks so much.

Warm Regards,

PS: Any update yet on the White Paper? The deadline for edits, etc. is fast approaching on November 30th!

☺





Ms. Katie Ambrose
National Institute for Animal A...
Chief Operating Officer

(719) 538-8843 Work
(719) 314-6133 Mobile
katie.ambrose@animalagricultu...
13570 Meadowgrass Drive
Suite 201
Colorado Springs, CO 80921

**MINUTES
NIAA EXECUTIVE COMMITTEE
CONFERENCE CALL
NOVEMBER 8, 2017**

Call to Order

Chair Forshey called the teleconference meeting of the NIAA Executive Committee to order at 2:00 p.m. Central Time, Wednesday, November 8, 2017.

Roll Call

Executive Committee members present: Tony Forshey, Nevil Speer, Chelsea Good, Kevin Maher and Michael Coe

Staff members present: Scott Stuart, Katie Ambrose and Angela Luongo

Cattle Traceability Working Group Selection

Speer led the conversation regarding the shaping of the Cattle Traceability Working Group. The Executive Committee was provided a list which encompassed organizations, associations, and individuals, which were included due to their participation at the Strategy Forum on Livestock Traceability in Denver. He requested opinions on the list as submitted.

Initial concerns were size and inclusiveness (is there enough industry, more associations).

Stuart stated that too large of a group can be a concern, however, too small can appear too selective.

Speer suggested the idea of a "pointed invite" to be aimed at a select few that were not at the forum, however would encompass the sectors that are lacking. He mentioned reaching out to Mark Duffell, one of the producers from the recent Antibiotic Symposium. (Whitestone Angus)

Stuart questioned what would be the level of government involvement; as needed or specific people? Ambrose replied that based on a recent conversation with Dr. Burke Healy (USDA) he only wants to be kept up to speed/informed, and will participate as needed. He is the point person for the time being.

To the existing list, the following Organizations/Associations/Individuals will be added and the revised list will be distributed to the Executive Committee within the day:

- *South Dakota Stockgrowers*
- *U.S. Cattlemen's Association*
- *Angus Association*
- *American Hereford Association*
- *National Livestock Producers Association*
- *Global VETLINK*
- *IMI Global*
- *Dr. Nevil Speer (note: this was an oversight, as he should have been on the list initially)*

NIAA EXECUTIVE COMMITTEE
November 8, 2017

Stuart brought up the matter of financing this project. Who is going to finance it? NIAA cannot absorb all of the cost. It was determined and agreed by the Executive Committee that the working group member would be advised up front that the cost will be a shared responsibility among those who participate in the working group. Being a part of the working group needs to be viewed as an investment. This communication will be drafted as part of the letter to the potential working group member for Forshey to approve.

Ambrose gave "second-hand" suggestions for working group co-chairs provided to her through Dr. Burke Healy. Mr. Monte Bordner, an Angus Producer from Michigan and NIAA Board Member, Mr. Ernie Birchmeier, also from Michigan. Good expressed opposition to the idea of having co-chairs for this working group. She explained that it would be best to have a person in that role that is neutral.

After discussion, it was decided that this working group would function more effectively without leadership roles (co-chairs). A facilitator would be more effective in establishing neutrality. NIAA will be named as the facilitator for the Cattle Traceability Working Group.

Before closing the discussion, Stuart confirmed with the Executive Committee everyone agrees on the current name being used for the working group: Cattle Traceability Working Group. All agreed.

Ambrose proposed that the next call to discuss the working group to be on Monday, November 20, at 2:00 p.m. Central Time. There were no conflicts with the proposed date and time.

2019 Annual Conference City Selection

Cities proposed for the 2019 Annual Conference are as follows:

- **Phoenix**
- **Salt Lake City**
- **Kansas City**
- **St. Louis**
- **Des Moines**

Comments regarding proposed cities pertained to cost and locale. Phoenix will be expensive, St. Louis and Kansas City would be ideal as they are centrally located. Des Moines will begin as a focal point due to the State's supportive nature of Agriculture, Iowa State University, etc. Maher provided a website: www.iowaecomonicdevelopment.com to begin research on hosting a conference in the area. NIAA will begin the process of hotel selection.

Other Business

Ambrose notified the Executive Committee on the resignation of Dr. Charlie Hatcher from the NIAA Board due to mounting commitments with his new position with USAHA. Suggestions to represent the Southeast are Dr. Robert Cobb (GA) and Dr. Michael Short (FL).

As there was no further business, the meeting adjourned at 2:45 p.m. Central Time.

Respectively submitted by:

A handwritten signature in black ink, appearing to read "Angela M. Luongo". The signature is written in a cursive, flowing style.

Angela M. Luongo, Assistant Secretary



Cattle Traceability Working Group

DRAFT CTWG Purpose, Goals and Objectives

Based on discussions during the inaugural teleconference of the Cattle Traceability Working Group (CTWG) on November 20, 2017, the following Purpose and Goals are being suggested:

CTWG Purpose

The purpose of the Cattle Traceability Working Group is to work collaboratively across the various segments of the cattle industry to enhance the traceability of animals for purposes of protecting animal health and market access. The CTWG will strive to create consensus among all stakeholders on key components of the system so there is an equitable sharing of costs, benefits, and responsibilities across all industry segments.

CTWG Goals and Objectives

The overarching goal of the CTWG is to enhance cattle identification and traceability to a level that serves the needs of producers, marketers, exporters, and animal health officials. To achieve that goal, the following objectives must be met:

- 1) Communicate complete and effective messages about the work of the CTWG to all producers, marketers, exporters and animal health officials so that a full understanding of traceability needs, responsibilities, costs, benefits and liability is ensured.
- 2) Identify and evaluate technologies that have the greatest ability to enhance collection and processing of animal identification data at the speed of commerce.
- 3) Fully identify and understand the responsibilities at the various levels of the industry regarding identification application, maintenance and reporting in order to evaluate the true costs and benefits of an enhanced traceability system.
- 4) Fully identify and understand all potential liabilities (legal and financial) either created or diminished as a result of an enhanced traceability system so that information may be used to protect all levels of the industry.
- 5) Identify data storage options that have the highest potential to ensure all traceability data is stored and made accessible to authorized users in a secured manner to protect all industry levels.
- 6) Provide guidance to all industry segments on implementation of an enhanced traceability system and identify cost-sharing opportunities to minimize impacts at all levels.



Cattle Traceability Working Group

**MINUTES
CATTLE TRACEABILITY WORKING GROUP MINUTES
November 20, 2017**

Call to Order

Facilitator Stuart called the inaugural teleconference meeting of the Cattle Traceability Working Group (CTWG) to order at 2:00 p.m. CDT, Monday, November 20, 2017.

Roll Call

The following initial CTWG Members and NIAA staff members were present:

Present Absent Member

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Chuck Adami, Equity Livestock and NLPA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Robert Bailey, Datamars
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Lia Biondo, USCA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Kathryn Britton, IMI Global
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Mike Bumgarner, United Producers
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Silvia Christen, SD Stockgrowers
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Terry R. Fankhauser, Colorado Cattlemen’s Assn.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Glenn Fischer, Allflex
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dr. Tony Forshey, Ohio Dept. of Ag.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Chelsea Good, LMA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Ginette Gottswiller, American Angus Assn.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Nephi Harvey, Fort Supply Tech.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mrs. Jennifer Houston, NCBA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Dwight Keller, USCA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Larry Kindig, USCA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Joe Leathers, 6666 Ranch
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Stu Marsh, Y-Tex
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Katelyn McCulloch, AFBF
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Eric Metzger, American Jersey Assn.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. John Newton, AFBF
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Maureen Phelon, Holstein Assn., USA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Justin Sexten, Certified Angus Beef
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dr. Nevil Speer, AgriClear
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dr. Tim Starks, LMA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Renee Strickland, Livestock Exporters Assn.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Jill Wagner, Global VetLink

Cattle Traceability Working Group
November 20, 2017



Mr. Josh White, NCBA
Mr. Ross Wilson, Texas Cattle Feeders Assn.

21 7

NIAA Staff members present: Scott Stuart Katie Ambrose, and Angela Luongo

Background on formation of Working Group

Speer and Fischer addressed the group and thanked everyone for their swift response and willingness to participate in working together to facilitate solutions that makes sense. A system built for industry by industry. Fischer mentioned the Canadian program and the success they have enjoyed though not without their challenges. Fischer also mentioned that the 2018 NIAA Conference titled: *Livestock Traceability: Enabling Opportunities for Animal Agriculture* could be the ideal time to bring forth some of these discussions (and possible successes) from this working group to this conference.

Broad overview of current Animal Disease Traceability (ADT)

Stuart provided a brief history of what had been done regarding ADT including industry efforts in 2010 and 2011 to help further traceability in the cattle industry.

Stuart stated that NIAA felt it best to have staff facilitate these meetings so that all members would have the freedom to express their thoughts without being bound by being leadership of the working group. In addition, NIAA will also have responsibility to maintain written records, organize calls as well as face to face meetings when needed.

Opening Comments from CTWG members on purpose of Group

Each member was asked to give a one-minute comment on their view of what the purpose of the working group should be.

Leathers – This is a much needed and monumental task. Smaller groups are recommended to work together to funnel towards the larger goal.

Gottswiller – Looking forward to progress and bringing ideas to the table.

Newton – Dale Moore is the representative from American Farm Bureau who is presently on a conference call; therefore he was in listening mode only on his behalf.

Sexton – Traceability should add value to all sectors of the beef industry.

Good – The auction markets are in a tough spot. True traceability should begin on the farm; however, we know that is not always the case. This system must work for the markets as well without incurring all the costs. This system must be a shared system in order for the markets to agree.

Starks – In agreement that it needs to be an industry driven program, and fair responsibility

Cattle Traceability Working Group
November 20, 2017

among all the sectors.

Houston – Understands the importance of this initiative however, the industry is large and the problems within the industry are different from one section of the country to the other. NCBA will be releasing a report being developed by World Perspectives, Inc. on the value of traceability during the NCBA Annual Convention in January in Phoenix. It was suggested that a face to face meeting could take place during this convention to discuss this report and seek feedback from the working group and have the opportunity for this group to get together to continue the dialogue.

Adami – Agrees with Good that this has been a long standing issue and now we are trying to move forward. To move it forward in an integrated fashion and pass the savings along to the producer would bring about the best results.

Forshey – Pleased that this working group has formed and agrees that it should be an industry driven solution.

Christen – Appreciates the opportunity to be part of the group; however her members have many questions regarding cost liability, logistics, etc.

Wilson – This cannot be a regulatory “push through”. If this is to succeed, it must be a “pull through” by industry.

Biondo- Questions on implementation.

Bumgarner – Concerned about unity within the beef industry. Benefits of a system must accrue to all stakeholders in the industry.

Britton – This is a much needed system because market access is important. She looks forward to continuing the conversation.

Marsh – Interested to see how the conversation develops regarding technology. Will we be able to pick up where we left off? He feels the Canadian solution is viable if we are able to emulate what they are doing. If it is good for the producers, it will work.

Identification and discussion of CTWG major goals

Members were asked to identify 1-3 goals to be achieved by the Working Group:

Fischer – Consensus across the Industry

Christen – Refer to NAIS Industry Documents / Standards on compliance

Marsh – Protect the industry

Identification and discussion of major challenge areas

- Identify sub-groups

Members were asked to identify sub-groups to target challenge areas:

- **Technology**
- **Responsibilities**
- **Funding/Benefits**
- **Liability/Legal Analysis**
- **Implementation**
- **Housing of Data**
- **Communication to Producers**

Discussion of CTWG work plan and timeline

It was reiterated by Stuart that most of the meetings would be done via conference call in order to keep costs at a minimum. In the event that a face-to-face meeting is necessary, it would be a shared expense. Stuart mentioned the possibility for underwriters to support the NIAA effort given the staff time that will be involved for this initiative. He confirmed with the group that the next conference call will take place in 2 weeks on Monday, December 4, 2017 at 2:00 p.m. CDT. There were no conflicts with the group at this time. Stuart advised that the minutes from this conference call as well the agenda would be provided in advance of the next call.

Future CTWG Meeting Schedule

- Monday, December 4, 2017 @ 2:00 p.m. CDT

As there was no further business, the meeting adjourned at 3:05 p.m. CDT

Respectively submitted by:



Angela M. Luongo, Assistant Secretary

Hammerschmidt, Neil E - APHIS

From: Hammerschmidt, Neil E - APHIS
Sent: Thursday, December 14, 2017 8:51 AM
To: 'Katie Ambrose'; Geiser-Novotny, Sunny - APHIS
Subject: RE: CTWG Update

Katie,

Thanks for sharing. This is great! Reminds me of USAIP days.

Be good,

Neil

From: Katie Ambrose [mailto:katie.ambrose@animalagriculture.org]
Sent: Thursday, December 14, 2017 10:40 AM
To: Hammerschmidt, Neil E - APHIS <Neil.E.Hammerschmidt@aphis.usda.gov>; Geiser-Novotny, Sunny - APHIS <Sunny.Geiser-Novotny@aphis.usda.gov>
Subject: CTWG Update
Importance: High

Neil and Sunny,

Please see the attached document for the latest update on the Cattle Traceability Working Group as discussed on the last conference call.

Next call is scheduled for tomorrow, Friday, December 15th. Of course, I will forward minutes etc.

There will also be our first face to face meeting during the Cattle Convention in Phoenix. We will be meeting on January 31st from 8 am – 12 noon. Approximately 12 -15 are expected to attend.

Please feel free to share your thoughts / comments as we go along.

Many thanks.

Warm Regards,





Cattle Traceability Working Group

**MINUTES
CATTLE TRACEABILITY WORKING GROUP
JANUARY 31, 2018 – Phoenix, Arizona**

Call to Order

Co-facilitators Speer and Fischer called the meeting of the Cattle Traceability Working Group (CTWG) to order at 8:30 p.m. MST, Wednesday, January 31, 2018.

Roll Call and Introductions

The following CTWG Members and NIAA staff members were present:

Present Absent Member

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Chuck Adami, Equity Livestock and NLPA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Robert Bailey, Datamars
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Lia Biondo, USCA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dr. Dale Blasi, Kansas State University
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Kathryn Britton, IMI Global
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Mike Bumgarner, United Producers
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Linda Chezem, Foley Peden & Wisco
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Silvia Christen, SD Stockgrowers
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Terry R. Fankhauser, Colorado Cattlemen’s Assn.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Glenn Fischer, Allflex
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dr. Tony Forshey, Ohio Dept. of Ag.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Kenny Fox, SD Stockgrowers
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ms. Chelsea Good, LMA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Ginette Gottswiller, American Angus Assn.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Nephi Harvey, Fort Supply Tech.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mrs. Jennifer Houston, NCBA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Tom Jones, Hy-Plains Feedyard, LLC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Dwight Keller, USCA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Larry Kindig, USCA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Joe Leathers, 6666 Ranch
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Jim Lovell, Texas Cattle Feeders Assn.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mr. Stu Marsh, Y-Tex
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ms. Katelyn McCulloch, AFBF
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Eric Metzger, American Jersey Assn.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. Dale Moore, AFBF
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Mr. John Newton, AFBF

Katie Ambrose

From: Katie Ambrose
Sent: Wednesday, February 21, 2018 11:46 AM
To: 'Glenn Fischer'; kbritton@wherefoodcomesfrom.com; 'Nephi Harvey'; Shere, Jack A - APHIS; jleathers@6666ranch.com
Cc: 'Nevil Speer'; 'Angela Luongo'; bparr@clemson.edu; Lee, Paula J - APHIS
Subject: NIAA Livestock Traceability: Opportunities for Animal Agriculture & Traceability & Real World Interactive Workshop - Request to Participate on a Panel Discussion with USDA & CTWG
Importance: High

Good Morning Joe, Kathryn, Nephi, and Dr. Shere,

As part of the Animal ID & Technology Council meeting taking place on Wednesday, April 11th beginning at 9:15-11:15, the co-chairs, Mr. Glenn Fischer and Dr. Boyd Parr would like to invite you to participate as panelists for a discussion with a working title:
USDA / Cattle Traceability Working Group Update with Dr. Nevil Speer as moderator. Each of you will represent the task group you have been working on over the past couple of months and will most likely be expected to provide a brief update from your group during this panel discussion.

We will schedule a conference call a week or so before the start of the conference to work through the logistics of this conversation.

This panel will immediately follow Dr. Shere's presentation on the *Current State of ADT*.

Questions? Don't hesitate to ask!

Please confirm receipt of this email and your participation on this panel.

Many thanks for all the work that has been accomplished so far!

Warm Regards,

	<p>Ms. Katie Ambrose National Institute for Animal A... Chief Operating Officer</p> <p>(719) 538-8843 Work (719) 314-6133 Mobile katie.ambrose@animalagricultu... 13570 Meadowgrass Drive Suite 201 Colorado Springs, CO 80921</p>
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**Click Here to Register Now
for the
2018 Annual Conference & Traceability
Interactive Workshop
April 10-12, 2018 - Denver, CO**

McCluskey, Brian J - APHIS

From: McCluskey, Brian J - APHIS
Sent: Saturday, February 24, 2018 8:13 AM
To: Levesque, Ashley - APHIS
Cc: Shere, Jack A - APHIS; Healey, Burke L - APHIS
Subject: Re: REQUEST and Update on Cattle industry WG

Okay! Thanks for trying. Have a good weekend.

Sent from my iPhone

On Feb 23, 2018, at 4:29 PM, Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov> wrote:

Hey Brian -

Trust me when I say that I too am growing a tad impatient with waiting on this one! So much so that I had Beth Gaston go back to Mr. Shea again (end of last week) and ask if we could release this thing!

However, we are told that Ibach wishes to be the ONE to release these 14 points at NIAA. I tried to argue that we had a joint working group and that industry already knows what 14 points were put forward. Thus, he wouldn't be "releasing" anything they weren't aware of already. I also said that we've been waiting many months now to release this document and people are getting impatient. Nonetheless, Mr. Shea said that we cannot release the 14 points or anything else until Ibach gives his big announcement at NIAA.

I'm very sorry!!! I truly have tried to shake something loose on this one.

Ashley Levesque
Deputy Chief of Staff
USDA - APHIS - Veterinary Services
1400 Independence Ave, SW, 320-E Whitten
Washington, DC 20250
Ashley.Levesque@aphis.usda.gov
Office: 202-799-7151
Cell: 202-868-3777

On Feb 23, 2018, at 6:18 PM, McCluskey, Brian J - APHIS
<brian.j.mccluskey@aphis.usda.gov> wrote:

I know we don't have permission to share the entire ADT report that includes the 14 recommendations, however, Aaron would like to at least share the bulleted 14 points with this Cattle Industry Working Group to helpfully get them on the same set of tracks we are on.

You okay with that?

See you on Tuesday.

Brian J. McCluskey, DVM, MS, PhD, Dip. ACVPM
Associate Deputy Administrator
Surveillance, Preparedness and Response Services
USDA, APHIS, Veterinary Services
970-494-7395

From: Scott, Aaron E - APHIS
Sent: Friday, February 23, 2018 4:10 PM
To: McCluskey, Brian J - APHIS <brian.j.mccluskey@aphis.usda.gov>
Subject: REQUEST and Update on Cattle industry WG

Brian,
The Cattle Traceability Work Group (CTWG) that we have discussed previously is composed of about 30 prominent industry leaders from across the industry sectors with a goal to advance ADT. This group was formed as an outcome of the NIAA/USAHA forum that we co-hosted last September. They are very progressive and have formed five task subgroups: 1. Communication and transparency, 2. Collection technology, 3. Responsibility and opportunities, 4. Information liability, and 5. Data storage and access.

USDA was not invited to their initial meetings as they discussed and developed their mission, but this morning indicated they would like to work in parallel with USDA efforts. I will be meeting with their co-chairs on Monday to discuss further. They have interest in the 14 recommendations that were compiled from USDA stakeholder outreach in 2017 (USDA's "Next Steps Report") and presented at the September forum.

That report has not yet been cleared for release; however, it would be helpful if I could at least discuss and/or share the bulleted list with them and our key areas of focus (attachment). This information will help to ensure that we are all working toward common goals to advance ADT.

Thank-you for consideration,

Aaron

Visit [VS Success!](#)

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

*USDA APHIS Veterinary Services: (SPRS)
Director: National Animal Disease Traceability & Veterinary Accreditation Center*

*2150 Centre Ave blding B, MS-3E79
Fort Collins CO, 80526*

Office: 970-494-7249

Scott, Aaron E - APHIS

From: Scott, Aaron E - APHIS
Sent: Tuesday, March 6, 2018 2:54 PM
To: Geiser-Novotny, Sunny - APHIS
Subject: CTWG notes
Attachments: 1-31-18 CTWG Face to Face Agenda.docx; 11-20-2017 CTWG Minutes.docx; CTWG Binder 2-12-18.pdf; CTWG Task Group Members.xlsx; CTWG Working Group Members_Face to Face in Phoenix.XLS; Preliminary Purpose and Goals.docx

Notes sure which of these you may already have so sent all.

Aaron

Visit [VS Success!](#)

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

USDA APHIS Veterinary Services: (SPRS)

Director: National Animal Disease Traceability & Veterinary Accreditation Center

2150 Centre Ave blding B, MS-3E79

Fort Collins CO, 80526

Office: 970-494-7249

Cell: 970-481-8214



Cattle Traceability Working Group

Task Group Members

***Co-Chair**

<u>Communications & Transparency</u>	<u>Collection Technology</u>	<u>Responsibilities & Opportunities</u>	<u>Information Liability</u>	<u>Data Storage & Access</u>
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Nevil Speer*	Glenn Fischer*	Joe Leathers*	Ross Wilson *	Terry Fankhauser*
Lia Biondo*	Shannon Wharton*	Chuck Adami*	Kathryn Britton*	Maureen Phelon*
Renee Strickland	Nephi Harvey	Nevil Speer	Justin Sexten	Nephi Harvey
Jim Lovell	Jill Wagner	Ginette Gottswiller	Jill Wagner	Jill Wagner
Dwight Keller	Tom Jones	Justin Sexten	Dwight Keller	Chuck Adami
Larry Kindig	Dale Blasi	Terry Fankhauser	Larry Kindig	Tony Forshey
Chelsea Good	Chuck Adami	Maureen Phelon	Chelsea Good	Ross Wilson
Silvia Christensen	Jim Lovell	Shannon Wharton	Silvia Christensen	Dwight Keller
Josh White	Dwight Keller	Renee Strickland	Linda Chezem	Larry Kindig
Jessica Watson	Larry Kindig	Ross Wilson	Jessica Watson	Kathryn Britton
	Erick Metzger	Dwight Keller		Silvia Christensen
	Chelsea Good	Larry Kindig		Chelsea Good
	Silvia Christensen	Kathryn Britton		Jessica Watson
	Stu Marsh	Tim Starks		Jennifer Houston
	Robert Bailey	Chelsea Good		
	Jennifer Houston	Mike Bumgarner		
	Jessica Watson	Silvia Christensen		
		Jessica Watson		

Unassigned Members

- Dale Moore
- John Newton
- John Saunders
- Kenny Fox
- Jamie Jonker
- Tony Drake



Cattle Traceability Working Group

DRAFT CTWG Purpose, Goals and Objectives

Based on discussions during the inaugural teleconference of the Cattle Traceability Working Group (CTWG) on November 20, 2017, the following Purpose and Goals are being suggested:

CTWG Purpose

The purpose of the Cattle Traceability Working Group is to work collaboratively across the various segments of the cattle industry to enhance the traceability of animals for purposes of protecting animal health and market access. The CTWG will strive to create consensus among all stakeholders on key components of the system so there is an equitable sharing of costs, benefits, and responsibilities across all industry segments.

CTWG Goals and Objectives

The overarching goal of the CTWG is to enhance cattle identification and traceability to a level that serves the needs of producers, marketers, exporters, and animal health officials. To achieve that goal, the following objectives must be met:

- 1) Communicate complete and effective messages about the work of the CTWG to all producers, marketers, exporters and animal health officials so that a full understanding of traceability needs, responsibilities, costs, benefits and liability is ensured.
- 2) Identify and evaluate technologies that have the greatest ability to enhance collection and processing of animal identification data at the speed of commerce.
- 3) Fully identify and understand the responsibilities at the various levels of the industry regarding identification application, maintenance and reporting in order to evaluate the true costs and benefits of an enhanced traceability system.
- 4) Fully identify and understand all potential liabilities (legal and financial) either created or diminished as a result of an enhanced traceability system so that information may be used to protect all levels of the industry.
- 5) Identify data storage options that have the highest potential to ensure all traceability data is stored and made accessible to authorized users in a secured manner to protect all industry levels.
- 6) Provide guidance to all industry segments on implementation of an enhanced traceability system and identify cost-sharing opportunities to minimize impacts at all levels.

Geiser-Novotny, Sunny - APHIS

From: Geiser-Novotny, Sunny - APHIS
Sent: Tuesday, March 6, 2018 3:54 PM
To: Munger, Randy D - APHIS
Subject: FW: Follow up question from last Friday CTWG
Attachments: CTWG-Technology 1-24-18 Minutes.docx

Here you go. Off the phone

From: Scott, Aaron E - APHIS
Sent: Tuesday, March 06, 2018 2:52 PM
To: Geiser-Novotny, Sunny - APHIS <Sunny.Geiser-Novotny@aphis.usda.gov>
Subject: FW: Follow up question from last Friday CTWG

Notes from tech sub-group attached with 11 industry sectors.

Aaron

Visit [VS Success!](#)

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

*USDA APHIS Veterinary Services: (SPRS)
Director: National Animal Disease Traceability & Veterinary Accreditation Center*

*2150 Centre Ave blding B, MS-3E79
Fort Collins CO, 80526*

*Office: 970-494-7249
Cell: 970-481-8214*

From: Glenn Fischer [<mailto:gfischer@allflexusa.com>]
Sent: Tuesday, March 6, 2018 12:22 PM
To: Scott, Aaron E - APHIS <Aaron.E.Scott@aphis.usda.gov>
Cc: Katie Ambrose <Katie.Ambrose@AnimalAgriculture.org>
Subject: RE: Follow up question from last Friday CTWG

Of course, Aaron... I had intended to do so, but Katie said the minutes of our sub-group meeting was already sent to you. In any case, it is attached herein. Thanks for the follow-up and please reach out if there is anything further that I can assist with in any way.

Thanks and kind regards,
Glenn

Glenn Fischer
President



ALLFLEX USA, INC.

P.O. Box 612266
2805 E. 14th Street
Dallas Ft. Worth Airport, Texas 75261-2266

Telephone: (972) 456-3686
Cell: (972) 523-0229
Fax: (972) 456-3882

Visit our web site at www.allflexusa.com

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From: Scott, Aaron E - APHIS [<mailto:Aaron.E.Scott@aphis.usda.gov>]
Sent: Tuesday, March 6, 2018 12:39 PM
To: Glenn Fischer <gfischer@allflexusa.com>
Subject: Follow up question from last Friday CTWG

Hi Glenn,

I was just on the phone with Katie Ambrose discussing the CTWG call we had on Friday. In my notes, (I think it was your voice) mentioned that your sub-group had identified 11 production categories of cattle of interest for EID technology. I can think of most of them off-hand, but wondered if you could share those categories?

Thanks!

Aaron

Aaron Scott DVM, PhD, Diplomate ACVPM (epidemiology)

*USDA APHIS Veterinary Services: (SPRS)
Director: National Animal Disease Traceability & Veterinary Accreditation Center*

2150 Centre Ave blding B, MS-3E79
Fort Collins CO, 80526

*Office: 970-494-7249
Cell: 970-481-8214*

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- Our immediate focus should be to rectify existing traceability gaps in the cattle population currently covered in the ADT regulation, reduce confusion, and minimize conflicts in the initial ADT framework by:
 - Identifying cattle currently covered when there is a change of ownership or at first point of commingling, and ensuring the ID information reflects the birth premises.
 - Considering solutions to reduce the number of exemptions and to clarify their interpretation, particularly “direct to slaughter” movements.
 - Enhancing monitoring and enforcement of existing regulations to improve compliance in all sectors with emphasis on higher risk/impact areas.
 - Improve the consistency of ID collection at slaughter with proper correlation to the carcass.
 - Establish data and communication standards and enhance information technology to increase the utilization of electronic testing, interstate movement records, and data sharing capabilities.
 - Support cooperative efforts between industry, States, and APHIS to implement an EID solution for cattle and bison capable of working at the speed of commerce.

Recommendations to USDA from Animal Disease Traceability Working Group

The State/Federal Animal Disease Traceability (ADT) working group developed 14 preliminary recommendations pertaining to ADT in the cattle sector. The Working Group recommendations were based on (1) feedback from industry and animal health officials of the ADT program, (2) comments received from nine public meetings held in 2017, and (3) their experience and knowledge of disease traceability. The recommendations include:

1. Continue to allow interstate movements that do not apply to traceability regulations (e.g., to custom slaughter);
2. Cattle population covered in the official identification regulations;
3. Birth premises identification of covered animals;
4. Electronic identification system for cattle;
5. Administration of electronic records;
6. Enforcement of ADT regulations;
7. Collection of ID and its correlation to the carcass at slaughter plants;
8. Public/private information system;
9. Exemptions for official ID requirements;
10. ICVI exemptions and movement documents;
11. Uniformity of state import regulations;
12. Uniform official ID eartags;
13. Official EID tag for imported cattle; and
14. Official identification of beef feeders considered in separate rule-making.

Industry led, Cattle Traceability Working Group (CTWG):

Purpose statement: The purpose of the Cattle Traceability Working Group is to work collaboratively across the various segments of the cattle industry to enhance the traceability of animals for purposes of protecting animal health and market access. The CTWG will strive to create consensus among all stakeholders on key components of the system so there is an equitable sharing of costs, benefits, and responsibilities across all industry segments.

Goals and Objectives: The overarching goal of the CTWG is to enhance cattle identification and traceability to a level that serves the needs of producers, marketers, exporters, and animal health officials.

- 1) Communicate complete and effective messages about the work of the CTWG.
- 2) Identify and evaluate technologies that have the greatest ability to enhance collection.

**National Institute of Animal Agriculture
Cattle Traceability Working Group
Dr. Jack Shere**

Background - Cattle Traceability Working Group (CTWG)

The purpose of the CTWG is to work collaboratively across the various segments of the cattle industry to enhance the traceability of animals for purposes of protecting animal health and market access. The CTWG works to create consensus among stakeholders on key components of traceability so there is an equitable sharing of costs, benefits, and responsibilities across all industry segments. The overarching goal of the CTWG is to enhance cattle identification and traceability to a level that serves the needs of producers, marketers, exporters, and animal health officials.

Animal Disease Traceability (ADT) Framework

- The ADT Framework covers a small portion of what is referred to as full traceability.
- When APHIS initiated ADT, we intentionally agreed to focus on the very basic aspects of traceability, with the understanding that we'd build upon that foundation over time and only when we've successfully implemented what we refer to as Phase I.
- Under APHIS ADT regulations, animals moved interstate, unless otherwise exempt, have to be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other movement document.
- Since the rule went into effect in March 2013, the focus of the ADT program has been educating stakeholders about the rule's requirements; identifying animals—particularly cattle—using official ID; collecting animal movement information; increasing the volume of electronic/searchable records; and ensuring rule compliance.
- Implementation of ADT is going well. We have heard strong support to advance traceability, particularly for electronic ID.
- ADT is a performance-based program. States and Tribal Nations have the flexibility to implement ADT in a way that works well for them.
- We track improvements in traceability through exercises called trace performance measures (TPMs). Results have shown that we have succeeded in implementing the basic framework of traceability.
- In 2017, 4 years after implementing the ADT rule, APHIS analyzed the ADT program. The review concluded that the program was working very well to the extent that it was designed;

however, many gaps remain in our ability to trace cattle.¹ These gaps result in some animals being untraceable, a lack of traceability to the birth herd, and visual ID tags for cattle that are incompatible with the speed of commerce.

Advancing ADT

- While we've successfully implemented key aspects of the initial framework for ADT, adjustments to the foundation principles are warranted.
- At the time of 9CFR Part 86's publication, APHIS and industry leaders agreed on the importance of having a functioning basic traceability system before considering a more comprehensive approach.
- During the summer of 2017, APHIS conducted nine public meetings to gather stakeholder input on the next steps for ADT. Issues that we heard include:
 - Limit the traceability regulation to interstate movements and currently covered population;
 - Various exemptions allow flexibility, but are confusing and often difficult to implement.
 - While a large number of stakeholders acknowledged that beef feeders need to be included in future, the consensus was to address the gaps in the current framework (beef breeding cattle over 18 months of age and all dairy), before expanding the official ID requirements to beef feeders, including the requirement for official electronic ID with the supporting infrastructure.
 - Issues with multiple ID methods and technologies. The use of visual-only eartags requires extra cattle handling resources, increases stress on the cattle, limits speed of commerce, and is not practical for official ID of beef feeders.
 - Need to have uniform enforcement across the industry sector, particularly in private sales.

Future of ADT – Next Steps

- The APHIS ADT strategy focuses on providing direction and expertise to industry partners, but also recognizes that all livestock sectors must be at the table to drive discussions.
- As part of the strategy, we would increase the overall percent of cattle officially identified; records must reflect the birth premises.
- We would also move forward with an electronic ID (EID) system that includes both the ID methods and reader infrastructure to capture ID's electronically at the speed of commerce.
- Per stakeholder feedback, EID is necessary for effective traceability and should allow for the handling of cattle without unduly slowing business operations.

¹ ADT Assessment: <https://www.aphis.usda.gov/traceability/downloads/adt-assessment.pdf>

- USDA believes that a single technology type is needed. Cattle move widely across the United States to markets in many States, and a single technology would allow identification devices to be read at any location.
- Otherwise, multiple readers and software would be required in each location creating confusion for logistics and increasing cost to support the infrastructure necessary to support multiple technologies.
- In addition, animals would need to be processed as if they were all tagged with LF devices (single file) due to performance constraints.
- APHIS' strategy to select a technology type includes:
 1. Fund unbiased studies to compare technology types. Ensure data is available to the public to provide a foundation for objective comparison and decision-making.
 2. Consider input from an industry-led task force representing a broad spectrum of industry organizations to assess alternatives and gather input from industry sectors.
 3. Consider input from all stakeholders.
 4. Select an official animal ID technology standard.
- We should also improve our information technology infrastructure by expanding electronic ICVIs and electronic health forms to streamline data sharing capabilities across State and Federal.
- Our immediate focus should be to rectify existing traceability gaps in the cattle population currently covered in the ADT regulation, reduce confusion, and minimize conflicts in the initial ADT framework by:
 - Identifying cattle currently covered when there is a change of ownership or at first point of commingling, and ensuring the ID information reflects the birth premises.
 - Considering solutions to reduce the number of exemptions and to clarify their interpretation, particularly "direct to slaughter" movements.
 - Enhancing monitoring and enforcement of existing regulations to improve compliance in all sectors with emphasis on higher risk/impact areas.
 - Improve the consistency of ID collection at slaughter with proper correlation to the carcass.
 - Establish data and communication standards and enhance information technology to increase the utilization of electronic testing, interstate movement records, and data sharing capabilities.
 - Support cooperative efforts between industry, States, and APHIS to implement an EID solution for cattle and bison capable of working at the speed of commerce.

Recommendations to USDA from the ADT Working Group

- The State/Federal ADT working group developed 14 preliminary proposals pertaining to ADT in the cattle sector.

- The Working Group proposals were based on feedback from industry and animal health officials on the ADT program, comments received from nine public meetings held in 2017, and their experience and knowledge of disease traceability. These proposals are not necessarily the view of the USDA.

- The proposals include:
 1. Continue to allow interstate movements that do not apply to traceability regulations (e.g., to custom slaughter);
 2. Cattle population covered in the official identification regulations;
 3. Birth premises identification of covered animals;
 4. Electronic identification system for cattle;
 5. Administration of electronic records;
 6. Enforcement of ADT regulations;
 7. Collection of ID and its correlation to the carcass at slaughter plants;
 8. Public/private information system;
 9. Exemptions for official ID requirements;
 10. ICVI exemptions and movement documents;
 11. Uniformity of state import regulations;
 12. Uniform official ID eartags;
 13. Official EID tag for imported cattle; and
 14. Official identification of beef feeders considered in separate rule-making.

Katie Ambrose

From: Katie Ambrose
Sent: Wednesday, July 25, 2018 4:12 PM
To: Scott, Aaron E - APHIS
Subject: FW: Conference Call to Discuss upcoming NIAA meetings!
Attachments: Ms Katie Ambrose2.vcf; 2018 ADT Draft Agenda 7-16-18-gf Js comments_clean - GFcomments added.docx; Symposium Agenda Draft #5_Speakers Confirmed_ECBinder_Copy.docx; Ms Katie Ambrose.vcf



From: Katie Ambrose
Sent: Wednesday, July 25, 2018 7:33 AM
To: Lee, Paula J - APHIS <Paula.J.Lee@aphis.usda.gov>
Cc: Floyd, Rosalyn N - APHIS <Rosalyn.N.Floyd@aphis.usda.gov>; Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov>; Jack.A.Shere@aphis.usda.gov; Healey, Burke L - APHIS <Burke.L.Healey@aphis.usda.gov>; 'nevil speer' <nevil.speer@turkeytrack.biz>
Subject: Conference Call to Discuss upcoming NIAA meetings!
Importance: High

Good Morning Paula,

Can you please assist me in getting a conference call set up with Drs. Shere and Healey as I would like to have Dr. Nevil Speer, NIAA Chair and myself visit with them about the two meetings we have coming up where we would like to have USDA's participation. Dr. Shere should already have on his calendar but would like to confirm his participation for:

1. Strategy Forum on Livestock Traceability – Tuesday, September 25th & Wednesday, September 26th. We would like for him to moderate a session beginning at 8:10-9:10 on Tuesday morning. This will be an interactive session discussing the 14 points with an update from the Cattle Traceability Working Group and where they intersect with USDA! (A **draft** agenda is attached).
2. In this same vain, I would also like to visit about the 14 points from the CTWG standpoint and what does USDA consider to be the *most important* to be sure we are tracking on the same page with USDA. Perhaps there is someone from the State/Federal Working Group that Dr. Shere would like to see participate as a member on the CTWG working group? For example, Dr. Thach Winslow would be very interested in this opportunity. Is that agreeable or do you have someone else in mind?

Katie Ambrose

From: Katie Ambrose
Sent: Thursday, September 6, 2018 1:30 PM
To: Shere, Jack A - APHIS
Cc: Levesque, Ashley - APHIS; Duong, Nhu-Phuong - APHIS; Lee, Paula J - APHIS
Subject: FW: Conference Call on Friday, September 7th
Attachments: Ms Katie Ambrose.vcf; Ms Katie Ambrose2.vcf; Ms Katie Ambrose3.vcf

Good Afternoon Jack,

In the event you may not have seen the email below, I thought it would be best to send to you again in preparation for the conference call tomorrow morning with the CTWG. The key point for this discussion is highlighted in yellow below.

I understand that Nhu has populated your calendar with the call information so you should be all set.

If you would like to visit beforehand either this afternoon or tomorrow morning, please don't hesitate to give me a call. I am here today until 5pm MT usually here by 7 am.

Thanks so much, Jack.

Warm Regards,



From: Katie Ambrose
Sent: Wednesday, September 5, 2018 7:47 AM
To: Duong, Nhu-Phuong - APHIS <Phuongnhu.Duong@aphis.usda.gov>
Subject: FW: Conference Call on Friday, September 7th
Importance: High



From: Katie Ambrose

Sent: Monday, September 3, 2018 12:58 PM

To: Jack.A.Shere@aphis.usda.gov

Cc: Levesque, Ashley - APHIS <Ashley.Levesque@aphis.usda.gov>; Lee, Paula J - APHIS <Paula.J.Lee@aphis.usda.gov>

Subject: Conference Call on Friday, September 7th

Good Afternoon Jack,

I hope you are enjoying the last of the summer days and without any labor today!

The Cattle Traceability Working Group (CTWG) have been having weekly calls especially as we head into the *Strategy Forum on Livestock Traceability* beginning on Monday evening, September 24th with a reception and Jennifer Houston as our guest speaker!

To that end, the CTWG would like to ask if you could join the conference call this Friday at 7:30 MT, 8:30 CT and 9:30 ET as they would like to visit with you in advance of your presentation on Tuesday, September 25th and the CTWG presentation on Wednesday, September 26th!

The purpose is to review where they are and share their Traceability Advancements update with you so as to be sure we continue to be in alignment with the work of USDA. **In addition, there is great interest and discussion taking place around the topic of a cost share program. And, hope that we can learn and understand, in advance of the symposium, where / how USDA may be able to partner with industry on this issue.**

These weekly calls are only an hour and we would be happy to have you listed first on the agenda for the September 7th call. Does this date/time work with your schedule? If not, perhaps you would suggest a couple of other times that may suit your calendar better.

Please advise and I will provide you with the call information needed to join this discussion.

Warm Regards,



Shere, Jack A - APHIS

From: Shere, Jack A - APHIS
Sent: Tuesday, October 16, 2018 10:34 AM
To: Levesque, Ashley - APHIS; Burke Healey (burke.l.healey@aphis.usda.gov)
Subject: FW: Participation in CTWG Co-chair call

Let's discuss.

Jack A. Shere DVM, PhD
Deputy Administrator
USDA, APHIS, Veterinary Services
1400 Independence Ave. SW
Room 317-E Whitten Building
Washington DC 20250
Office (202)-799-7146

From: Glenn Fischer [mailto:gfischer@allflexusa.com]
Sent: Tuesday, October 16, 2018 9:13 AM
To: Shere, Jack A - APHIS <Jack.A.Shere@aphis.usda.gov>
Cc: Katie Ambrose <Katie.Ambrose@AnimalAgriculture.org>
Subject: Participation in CTWG Co-chair call

Good morning Jack,

I would like to request your participation on our CTWG Co-chair call this Friday at 9:30am (Eastern)... it is our desire to maintain a more active dialog, and to continue to vet key issues directly with USDA as they are addressed by our Working Groups.

I know this may be a bit of a large ask, but we also would like to establish this on a more regular basis – say every other week – to maintain good dialog and alignment over time. Knowing that this may be a large time commitment for you, we would, of course, be happy if you might add one of your colleagues into this mix as well, ensuring good coverage.

Thanks so much for your consideration.

Thanks and kind regards,
Glenn



GLENN FISCHER / President

ALLFLEX USA, INC.

Office: 972.456.3686, Fax: 972.456.3882, Mobile: 972-523-0229

P.O. Box 612266, 2805 E. 14th Street, DFW Airport, TX 75261-2266

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Tomlinson, Sarah M - APHIS

From: Tomlinson, Sarah M - APHIS
Sent: Tuesday, November 6, 2018 2:28 PM
To: Glenn Fischer
Cc: Katie Ambrose
Subject: RE: CTWG Chairs/Co-Chairs Conference Call

Glen,

On last Friday's call you mentioned that you would send some questions regarding tag standards to me as a follow up to the discussion; and we would discuss on the Collection Technology group call. I just want to ensure that I haven't missed them and that I get the call on my calendar and arrange for whomever should join me from here too.

Take your time- just checking in.
Thanks, Sarah

Sarah M. Tomlinson, DVM
Executive Director, Strategy and Policy
VS, APHIS, USDA
2150 Centre Ave, Bldg B.
Fort Collins, CO 80526
Office: 970.494.7152
Cell: 970.217.7433
Email: Sarah.M.Tomlinson@aphis.usda.gov

From: Glenn Fischer [mailto:gfischer@allflexusa.com]
Sent: Tuesday, November 6, 2018 12:52 AM
To: angela.luongo@animalagriculture.org; Tony.Forshey@Agri.ohio.gov; Katie Ambrose <Katie.Ambrose@AnimalAgriculture.org>; Nevil Speer <Nevil.Speer@TurkeyTrack.biz>; Swarton@wbsnet.org; jleathers@6666ranch.com; adami@equitycoop.com; ross@tcfa.org; kbritton@wherefoodcomesfrom.com; terry@coloradocattle.org; cgood@lmaweb.com; Tomlinson, Sarah M - APHIS <Sarah.M.Tomlinson@aphis.usda.gov>
Subject: RE: CTWG Chairs/Co-Chairs Conference Call

Good morning all,

As a quick follow-up to our call on Friday, we wanted to launch a bit of a discussion topic to each of our individual sub-groups this week, in the context of understanding how we want to begin codifying our current work topics and begin setting up our Communications channels to the boarder stakeholders and overall cattle market. As such, please keep these questions/points in mind, and let's be prepared to discuss the group findings on our call on Friday:

- As we have moved through establishing a position on ADT work point #2, have we set the stage – and are we prepared – to continue this work and address the balance of the 14 ADT working points?
- From a Communications standpoint, how do we want to bring decision like this to the industry:
 - o Release information as we come to agreement/consensus points (as with ADT

work point #2, noted above)?

- Do we wait for a broader 'critical mass' of such consensus points to go to market with a bit broader 'story'
- Do we wait until we feel that we have a comprehensive approach fully vetted and all consensus points in place.

Looking forward to hearing the position of our sub-groups on this on Friday...

Also – please begin discussing which specific point each of the sub-groups wish to take on as a 'primary sponsor' for discussion... we will need to know which points will be vetted by which of the sub-groups so we can begin to put a bit of a work plan together to get all of the ADT work points addressed (or at least all of the points that we wish to comment on).

Thanks and kind regards,
Glenn



GLENN FISCHER / President

ALLFLEX USA, INC.

Office: 972.456.3686, Fax: 972.456.3882, Mobile: 972-523-0229

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----- Original Appointment -----

From: angela.luongo@animalagriculture.org <angela.luongo@animalagriculture.org>

Sent: Friday, October 26, 2018 9:42 AM

To: angela.luongo@animalagriculture.org; Tony.Forshey@Agri.ohio.gov; Katie Ambrose; Nevil Speer; Glenn Fischer; Swarton@wbsnet.org; jleathers@6666ranch.com; adami@equitycoop.com; ross@tcfa.org; kbritton@wherefoodcomesfrom.com; Terry@ColoradoCattle.org; cgood@lmaweb.com; sarah.m.tomlinson@aphis.usda.gov

Subject: CTWG Chairs/Co-Chairs Conference Call

When: Friday, November 9, 2018 7:30 AM-8:30 AM (UTC-07:00) Mountain Time (US & Canada).

Where: 1-800-309-2350; Participant Code: 712-1758#

Good Morning CTWG Co-Chairs,

Please plan on joining the discussion with the Co-Chairs, starting **Friday, November 2nd at 8:30 a.m. Central Time.**

The Co-Chairs will continue to meet every Friday through the end of the year, unless otherwise notified.

Call Instructions: 1-800-309-2350, Participant Code: 712-1758#

Thank you
Angela

Glenn Fischer

From: Glenn Fischer
Sent: Wednesday, November 7, 2018 12:36 AM
To: Tomlinson, Sarah M - APHIS
Cc: Katie Ambrose
Subject: RE: CTWG Chairs/Co-Chairs Conference Call

Good morning Sarah,

With apologies for the oversight on my part – I have been in Europe in Global Strategic Meetings for the past week +, and have been afforded little time to catch up with important topics Stateside... but only a few more days, then finally back home.

In regards to the Standards questions that came out of our call, there were a couple key topics that could help our group get a good 'baseline' for our continued discussion, as follows:

- As regards the UHF Backtag, is there an approved device and if so:
 - What were the approval standards for this device?
 - Is it approved as part of the ADT and/or 840 approval systems?
 - Does the technical coding standard fully parallel the 840 UHF tag standards?
- Can you provide insight as to the different level of Standards that UHF tags have been subject to as compared to LF devices? On the call Neil noted that there were no true performance standards put in place for UHF, and it would be helpful to understand the differences.
- More broadly, can you compare/contrast the existing USDA LF and UHF Standards across the following parameters:
 - Retention standards (both technical specifications and specific lab and field test Standards)
 - Specifically, have approved UHF tags been subject to similar testing regimens as LF tags must go through for ICAR approval (application force, pull-apart force, etc.)?
 - Electronic Standards / Performance and Interoperability
 - Once again, LF tags have strict ICAR Standards to pass – can you provide the criteria that USDA has used to ensure strict adherence to universal coding and reading process?
 - As a side note, Robert Bailey of Datamars raised a concern that devices were on the market in both 96-bit and 128-bit configurations – can USDA comment how this might be acceptable in ensuring interoperability across reading systems?
- There has been discussion that USDA is reviewing Standards at the current time – can you give us a progress report, including key areas of focus for your review?

Thanks and kind regards,
Glenn



GLENN FISCHER / President

ALLFLEX USA, INC.

Office: 972.456.3686, Fax: 972.456.3882, Mobile: 972-523-0229

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From: Tomlinson, Sarah M - APHIS <Sarah.M.Tomlinson@aphis.usda.gov>

Sent: Tuesday, November 6, 2018 3:28 PM

To: Glenn Fischer <gfischer@allflexusa.com>

Cc: Katie Ambrose <Katie.Ambrose@AnimalAgriculture.org>

Subject: RE: CTWG Chairs/Co-Chairs Conference Call

Glen,

On last Friday's call you mentioned that you would send some questions regarding tag standards to me as a follow up to the discussion; and we would discuss on the Collection Technology group call. I just want to ensure that I haven't missed them and that I get the call on my calendar and arrange for whomever should join me from here too.

Take your time- just checking in.

Thanks, Sarah

Sarah M. Tomlinson, DVM

Executive Director, Strategy and Policy

VS, APHIS, USDA

2150 Centre Ave, Bldg B.

Fort Collins, CO 80526

Office: 970.494.7152

Cell: 970.217.7433

Email: Sarah.M.Tomlinson@aphis.usda.gov

From: Glenn Fischer [<mailto:gfischer@allflexusa.com>]

Sent: Tuesday, November 6, 2018 12:52 AM

To: angela.luongo@animalagriculture.org; Tony.Forshey@Agri.ohio.gov; Katie Ambrose <Katie.Ambrose@AnimalAgriculture.org>; Nevil Speer <Nevil.Speer@TurkeyTrack.biz>;

Swharton@wbsnet.org; jleathers@6666ranch.com; adami@equitycoop.com; ross@tcfa.org;

kbritton@wherefoodcomesfrom.com; terry@coloradocattle.org; cgood@lmaweb.com; Tomlinson, Sarah M - APHIS <Sarah.M.Tomlinson@aphis.usda.gov>

Subject: RE: CTWG Chairs/Co-Chairs Conference Call

Good morning all,

As a quick follow-up to our call on Friday, we wanted to launch a bit of a discussion topic to each of our individual sub-groups this week, in the context of understanding how we want to begin codifying our current work topics and begin setting up our Communications channels to the broader stakeholders and overall cattle market. As such, please keep these questions/points in mind, and let's be prepared to discuss the group findings on our call on Friday:

- As we have moved through establishing a position on ADT work point #2, have we set the stage – and are we prepared – to continue this work and address the balance of the 14 ADT working points?
- From a Communications standpoint, how do we want to bring decision like this to the industry:
 - Release information as we come to agreement/consensus points (as with ADT work point #2, noted above)?
 - Do we wait for a broader ‘critical mass’ of such consensus points to go to market with a bit broader ‘story’
 - Do we wait until we feel that we have a comprehensive approach fully vetted and all consensus points in place.

Looking forward to hearing the position of our sub-groups on this on Friday...

Also – please begin discussing which specific point each of the sub-groups wish to take on as a ‘primary sponsor’ for discussion... we will need to know which points will be vetted by which of the sub-groups so we can begin to put a bit of a work plan together to get all of the ADT work points addressed (or at least all of the points that we wish to comment on).

Thanks and kind regards,
Glenn



GLENN FISCHER / President

ALLFLEX USA, INC.

Office: 972.456.3686, Fax: 972.456.3882, Mobile: 972-523-0229

P.O. Box 612266, 2805 E. 14th Street, DFW Airport, TX 75261-2266

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----- Original Appointment -----

From: angela.luongo@animalagriculture.org <angela.luongo@animalagriculture.org>

Sent: Friday, October 26, 2018 9:42 AM

To: angela.luongo@animalagriculture.org; Tony.Forshey@Agri.ohio.gov; Katie Ambrose; Nevil Speer; Glenn Fischer; Swharton@wbsnet.org; jleathers@6666ranch.com; adami@equitycoop.com; ross@tcfa.org; kbritton@wherefoodcomesfrom.com; Terry@ColoradoCattle.org; cgood@lmaweb.com; sarah.m.tomlinson@aphis.usda.gov

Subject: CTWG Chairs/Co-Chairs Conference Call

When: Friday, November 9, 2018 7:30 AM-8:30 AM (UTC-07:00) Mountain Time (US & Canada).

Where: 1-800-309-2350; Participant Code: 712-1758#

Good Morning CTWG Co-Chairs,

Please plan on joining the discussion with the Co-Chairs, starting **Friday, November 2nd at 8:30 a.m. Central Time**.

The Co-Chairs will continue to meet every Friday through the end of the year, unless otherwise notified.

Call Instructions: 1-800-309-2350, Participant Code: 712-1758#

Thank you
Angela

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2021, I electronically filed Volume I of the Joint Appendix with the Clerk of the Court for the U.S. Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/CF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Harriet Hageman
Harriet Hageman