



December 6, 2011

Docket No. APHIS-2009-0091
Regulatory Analysis & Development
PPD, APHIS, Station 3A-03.8
4700 River Road Unite 118
Riverdale, MD 20737-1238

To Whom It May Concern:

The Livestock Marketing Association (LMA) welcomes the opportunity to comment on Docket No. APHIS-2009-0091: a proposed rule to establish national official identification (ID) and documentation requirements for animal disease traceability (ADT) of livestock moving interstate. (Livestock Marketing Association represents 800 livestock marketing businesses, principally fixed-facility auction markets, nationwide.) Livestock auction markets, as purveyors of approximately 38 million cattle and calves, 6.5 million hogs and pigs and 4.1 million sheep and lambs annually, have long been considered a pivotal point in the identification and tracking of livestock for animal disease surveillance, and control. Thus APHIS' conscientious consideration of our comments in addressing the unique character and needs of the livestock marketing sector as it relates to animal disease traceability would be greatly appreciated.

Livestock marketing businesses take pride in the role they play in protecting the health of the nation's herd and consequently the financial investment of hundreds of thousands of livestock operations selling and buying livestock through our facilities. The markets' responsibilities in this regard however often come at a heavy price, in the form of added costs in facility requirements and upgrades, additional workers and worker benefits, and compliance with burdensome regulatory program and recordkeeping requirements and the ADT rule is no exception.

Understanding and appreciating the importance of animal ID and traceability in a changing global marketplace, where animal diseases can emerge and become established within hours of transmission all over the world, LMA has taken the lead in bringing together major U. S. cattle interests to help in the design and implementation of USDA's ADT program. We believe the tireless efforts of the Cattle ID Group (CIDG), an ad hoc coalition of 14 national, state, regional cattle, farm and market organizations, beginning in November 2009 with the release of "12 Principles for a National Animal ID Program", to their report of November 17, 2011 commenting on the ADT proposed rule, has consistently provided practical, real-world experience and advice in USDA's design of the ADT program. While USDA has heeded much of the CIDG's advice and

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counsel in drawing up the ADT proposed rule, there remains significant concerns relative to a number of issues in the proposed rule that must be addressed in the final rule. (Since the ADT proposed rule largely addresses the ID and traceability of cattle, LMA's comments, as follow, on the ADT proposed rule are specific to cattle.)

Phase 2 for feeder cattle should established under a separate rule:

The most important of LMA's unresolved issues or concerns respective to the ADT proposed rule is the inclusion of Phase 2—the ID/traceability of cattle less than 18 months of age—in the proposed rule for Phase 1, as opposed to implementing Phase 2 in a separate rulemaking process. LMA is generally supportive of an improved ID/traceability system for the adult breeding/dairy cattle herd of 18 months of age and older as proposed in Phase 1 of the program, predicated of course upon LMA's suggested changes to Phase 1. LMA however believes it is extremely important that Phase 1 be fully implemented and the bugs worked out of the ADT system before any effort is made to move onto the identification of 20-plus million cattle of less than 18 months of age via a simple notice of Phase 2's implementation in the *Federal Register*. Introducing that many cattle of a different class, presents a whole set of unique and significant considerations, such as increased complexities of identifying and tracing young cattle, the addition of huge numbers of cattle moving interstate, the great potential for slowing the speed of commerce throughout the cattle production but particularly through the marketing chain, managing the logistics of a multi-faceted feeder industry, the appreciably greater costs involved, disease risk associated with this group of cattle as well as numerous as yet unknown factors of substantive concern. Also, APHIS has indicated previously that there will be various and numerous technical and financial challenges involved in collecting and recording ID at slaughter for this class of cattle.

It is for these very important known and yet unknown reasons that the entry of this very large group of cattle into the ADT system be done through separate rulemaking. By doing so, necessary changes in the ADT program can be scrutinized and adopted in a transparent process; the cost/benefits as well as feasibility of Phase 2 can be thoroughly vetted by the industry and animal health officials at the time they are being proposed and affected stakeholders will have the singular opportunity to fully consider, review and comment on this important next step in the ADT program.

Also, LMA is concerned that USDA's ADT cost-benefit analysis may be flawed or at least inadequate in identifying the total cost to the cattle industry of Phase 1 and, most particularly, Phase 2 of the program. The true costs of the ADT program are unlikely to be known until Phase 1 is fully implemented and matured over some period of time. Only then, can ADT stakeholders be expected to be in the best position to assess and comment on the unique set of circumstances and costs associated with bringing feeder cattle into the ADT mix.

LMA also expects the State and Tribe Traceability Performance Standards, which are not yet fully formulated, to have a significant impact on the management and associated cost of the program. Assuming this to be the case, stakeholders must be permitted the opportunity to

fully voice their support or lack thereof to the introduction of this larger more complicated cattle group into the ADT system within the confines of a distinct and separate rule.

LMA agrees that targeting older breeding animals in the first phase of a risk-based animal disease traceability program makes good sense. It is less clear however where young feeder cattle rank in a risk-based approach as there is no significant discussion of this issue in the proposed rule. Thus, given the countless issues to be addressed with the inclusion of feeder cattle in the ADT program, LMA strongly urges the Agency to proceed to Phase 2, if and when necessary, under a separate proposed rule.

Brands should be retained as an official ID method with conditions:

LMA supports retaining brands and tattoos as an “official” ID method for animal disease traceability between and among agreeing States and Tribes. A new subsection providing for the recognition of brands and tattoos as official identification could be accomplished by adding a new subsection (iii) to Section 90.4(a)(1) Official identification, to read: “(iii) Brands or tattoos when agreed upon by bilateral or multilateral agreement or memorandum(s) of understanding between or among agreeing shipping and receiving State(s) and Tribe(s) animal health officials.”

Maintaining brands and tattoos as official identification would eliminate potential legal issues for States or Tribes where the brand is currently considered an “official” method of identification for traceability and ownership. Also, it would clearly resolve the issue of forcing the brand, as an “official” ID method, onto States or Tribes where the brand is not currently used or accepted as an official ID method. The current recognition of brands as an official ID method is working today, even among brand and non-brand States and Tribes, so we see no reason to delist it as an “official” method when the same end can be accomplished in another way.

Allow markets to better manage the tagging of cattle moving interstate:

It is our understanding that the proposed rule permits cattle to be moved interstate without official ID if they are moved directly to an approved livestock facility and officially identified before commingling with cattle from other premises. LMA agrees with this exemption as far as it goes. We however wish to suggest a means to better manage the flow of cattle in and out of livestock markets on sale day.

In those livestock markets that handle a high volume of cattle coming from other states, tagging cattle with an eartag prior to commingling could present a significant problem in slowing the speed of commerce in the market on sale day. Thus, we propose that livestock markets be permitted to tag cattle moved interstate with a back tag prior to commingling in the market, which then could be correlated with the official eartag once the cattle are sold and sorted and before further movement. Accordingly, this would facilitate the management of cattle on sale day, as they arrive in the market from other states, in a manner necessary to achieve official ID and traceability on those cattle, while maintaining the normal flow of business on sale day in livestock markets.

Backtags should be retained through Phase 2 in identifying cattle 18-months of age or older moving direct to slaughter:

Under the proposed rule, the use of backtags, as a “temporary” device for cattle 18 months of age or older moving direct to slaughter, would be phased out once all cattle moving interstate are required to be tagged in Phase 2. APHIS officials have indicated that their decision to phase out the backtag for identifying adult cattle moving direct to slaughter was based on the expectation that once all cattle are identified in Phase 2, most adult animals moving direct to slaughter already will be identified with an official eartag. APHIS in making this unfounded assumption shows neither a full understanding nor appreciation for the real world management of adult cattle in this country. In fact, if a survey were done of beef cattle/dairy producers on the likelihood that adult cattle on their farms or ranches had been on their premises 5 years or more or even over their entire lifetime, the number would be in the many tens of thousands. Thus removing the use of a simple backtag for identifying older, possibly weaker compromised animals moving interstate direct to slaughter from livestock markets based upon unsupported, baseless information or no information at all, is unacceptable for the proper management of this class of animals and the marketing facilities that handle them.

All the good reasons for using the backtag for adult cattle going direct to slaughter, such as: reduced stress on the animals, optimization of the speed of commerce, less animal handling/welfare issues, worker safety, low-cost efficient tagging, etc., remain once Phase 2 for all cattle is implemented. Properly applied, backtags are as good as other ID devices or methods for tracing adult animals going direct to slaughter. Also, since small-size cattle operations typically use livestock markets to sell their adult cattle direct to slaughter, the economic burden for requiring an eartag in adult animals moving direct to slaughter that do not already have an official eartag, would be placed squarely on the backs of small production operations and livestock market operations. Therefore, lacking a better justification or disease-risk rationale for eliminating the use of the backtag in Phase 2, APHIS should reconsider discontinuing the use of backtags for the purpose of moving adult cattle to slaughter where no official ID already exist. (Given USDA/APHIS currently provides backtags free of charge to the markets for official animal disease traceability purposes, we would anticipate that they would continue to do so under the ADT program.)

Cattle moving interstate direct to a receiving location for tagging, must move to an approved tagging site:

Some members of the CIDG are expected to raise the issue of whether a cattle owner or shipper, who lacks tagging facilities or equipment, when selling direct to a buyer in another state should be permitted to have the cattle tagged at the receiving location with the owner/shipper’s tags. LMA is not opposed to permitting such an option, if the option is limited to the tagging of feeder cattle at whatever point they come into the program, and only at approved tagging sites. To assure fairness and equality in the marketing of cattle under the ADT program, producers moving their cattle direct to a buyer should not be released from the same tagging rules required of producers moving cattle interstate to approved livestock facilities or approved tagging sites.

Provision should be made for duplicate tags for non-viable or lost AIN/840 tags:

The proposed rule does not currently provide for producers to obtain and apply duplicate replacement AIN/840 numbered tags for tags that have been lost or are no longer viable. Because of the importance of preserving the same ID number in animals under rigorous management systems, it is recommended that provision be made in the final rule to allow producers to obtain duplicate AIN/840 tags for those being replaced due to loss or other legitimate reasons, in order to maintain the viability and integrity of the national traceability system.

The collection, recording and retiring of tags at slaughter must be an ADT priority:

The proposed rule requires ID tags to be collected and made available to APHIS at slaughter; it does not however require them to retire and record the tag number or other ID for those states needing or wanting the information. Disease traceouts are always severely hampered, as APHIS well knows, whenever tag or brand information is lost during and at the end of the life of an animal. Thus, a prolonged lapse in designing a data system for the recording of retired tags at slaughter will most certainly lead to lost opportunities in tracing animal diseases to their source as well as complicate the traceouts of diseased animals that appear with a duplicate and/or improperly recorded ID number. The collection of tags and data entry at harvest will likely require additional labor, increased funding and perhaps additional technology solutions as well as better communication between APHIS and USDA's Food Safety and Inspection Service and harvest establishments on this aspect of the program. Since the retiring and recording of tags at slaughter is a key component of a "bookend" traceability approach, it is vital that APHIS have a defined plan and agreement in place with FSIS and/or the harvest establishments on the collection and recording of retired tags at slaughter before finalization and implementation of Phase 1 of the proposed rule.

LMA supports the proposed rule exempting sexually intact cattle or bison under 18 months of age, or steers or spayed heifers from being individually listed on the ICVI:

LMA strongly supports exempting, under Phase 2 of the proposed rule, the recording of individual identification numbers on the Interstate Certificate of Veterinary Inspection (ICVI) or other approved owner/shipper documents for sexually intact cattle under 18 months of age or steers or spayed heifers; with the exception of sexually intact dairy cattle of any age or cattle or bison used for rodeo, exhibition or recreational purposes, which are required to be individual identified on the ICVI in Phase 1.

The use of alternative shipping document to the ICVI should be permitted for all ages of cattle and bison upon agreement of States and Tribes:

Under the proposed rule, cattle less than 18-months of age may be moved interstate 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. This exemption however does not apply to sexually intact cattle or bison over 18-months of age or older and LMA believes it should.

In recognition of the declining availability of accredited veterinarians in many areas of the country to write ICVIs, other official documents, such as spreadsheets or other user-friendly easily transmittable documents, should be permitted between agreeing States and Tribes. This practice already exists and is currently working well between and among States and Tribes. Permitting other, possibly yet defined animal health movement documents for all cattle, including sexually intact cattle over 18 months of age, allows the States and Tribes greater flexibility in determining what works best for their purposes in the transfer of animal movement information.

An electronic ICVI for tracking interstate cattle movements is critical to a fully functioning ADT program:

LMA strongly believes that the establishment of a uniform national electronic ICVI system is critical to the implementation of a fully functional ADT program, particularly upon introduction of feeder cattle into the program. A uniform national electronic ICVI system would greatly facilitate the recovery of traceability information upon the finding of an animal disease of importance as well as provide a level of traceability performance by the States and Tribes necessary for a fully functional ADT system. LMA recognizes and supports current efforts by public and private entities to bring greater uniformity to the countless different ICVI forms that are currently in use by the states and tribes as well as bringing the development of a user-friendly, cost-effective electronic ICVI to the fore. We urge APHIS to provide all necessary support to those efforts as they are critical to arriving at a mandatory national electronic ICVI system sooner than later.

USDA/APHIS must begin to address the shortage of accredited veterinarians to meet the requirement for veterinary inspection at markets on sale day:

It is becoming increasingly difficult for many marketing businesses to find qualified large-animal veterinary coverage for their facilities on sale day. As a result, there is a growing financial strain and significant economic burden being placed on our market operations as well as on the producers who support our businesses. The current requirements for veterinary coverage at approved livestock markets must be reassessed and a more cost-effective, risk-based alternative applied to current animal health inspection and movement requirements. Failure to do so could put the nation's competitive marketing structure and the animal health protection system at great risk. Thus, before we put a great many more cattle into the ADT system in Phase 2, we recommend that APHIS find a way out of the livestock markets' current dilemma of finding qualified veterinary coverage on sale day to do the health inspections.

The ADT proposed rule should not be finalized until State and Tribal Traceability Performance Standards are established through rulemaking:

USDA has assured the industry that a proposed rule establishing traceability performance standards for the states and tribes is in the offing, though there are few signs right now that the traceability performance standards will be in place by the time the ADT rule is made final. Since successful implementation of the ADT program is highly dependent on the level of performance reached by the individual states and tribes in recording individual animal IDs and tracking cattle moving interstate, it would seem reasonable that neither the ADT proposed rule nor the

traceability performance standards can be implemented independently of each other. Thus, we strongly recommend that USDA initiate and make final a rule establishing traceability performance standards at the time of or before proceeding with final publication of the ADT rule for Phase 1.

Upon initiation of rulemaking for the traceability performance standards, we ask that industry be made an active ongoing participant in the discussions surrounding this issue. It is our strong view, along with many of our colleagues on the CIDG, that the lack of active industry stakeholder involvement in the deliberations of USDA's ADT Working Group, which was made up entirely of Federal, State and Tribe officials, directly impacted its failure to address a number of industry issues throughout the ADT development process. Therefore, it is incumbent on USDA to make industry an integral part of any future discussions on the traceability performance standards to avoid protracted discussions and industry resistance to traceability performance standards.

USDA enforcement of State and Tribe traceability performance standards should not be so restrictive as to do harm to the industry:

The traceability performance standards, under which USDA would assess the performance of the states and tribes in carrying out the ADT program, have yet to be addressed in a separate rulemaking. It is however USDA's current thinking that additional restrictions would be imposed on those states and tribes failing to measure up to certain traceability performance criteria or levels of compliance. While LMA can appreciate the need for a consistent level of performance by the states and tribes in order to achieve successful implementation of the ADT program, it seems inherently counterproductive to the overall success of the ADT plan and ultimately harmful to cattle producers and livestock markets located in non-compliant states or tribes to punish them by placing more restrictions or requirements on an already failing system. Thus, we recommend that USDA carefully consider any decision, when preparing a future regulatory proposal in this regard, that would use the stick rather than the carrot to address the states' or tribes' non-compliance in meeting the traceability performance standards.

Industry stakeholders remain confused as to the meaning of the 70 percent trigger in determining compliance with the ADT requirements in Phase 1:

Beginning one year after USDA has published a notice in the Federal Register that Phase 1 for adult cattle is being "implemented effectively throughout the production chain and that there is a 70 percent rate of compliance with the requirements..." all cattle and bison moving interstate must be "officially" identified. In reaching that determination, USDA intends to carry out an assessment of Phase 1 of the ADT program along with determining that there is a 70 percent rate of compliance with the identification requirements. Industry stakeholders however remain confused, after repeated attempts to get clarity on the issue from USDA/APHIS officials, as to what the 70 percent trigger actually represents in determining compliance with the ADT requirements for the purpose of moving onto Phase 2.

LMA strongly supports APHIS' intentions to conduct a thorough assessment of Phase 1 of the ADT program before proceeding to the inclusion of feeder cattle in the program. We are less

sure however of how the 70 percent rate of compliance, as proposed, fits into the Phase 1 assessment or as a trigger to implementation of Phase 2? Thus APHIS needs to provide ADT stakeholders with considerably more explanation and detail on this aspect of the program before locking in a meaningless arbitrary Phase 1 trigger of 70 percent.

Rather than base initiation of the Phase 1 assessment process on some arbitrary compliance number, especially if that number is open to interpretation, we would prefer to see the assessment process begin after a reasonable period of time, i.e., three years after implementation of Phase 1, in which stakeholders and service providers are given ample time to implement the ADT program and for the program to mature in the marketplace. Also, we recommend the Phase 1 assessment process be repeated periodically in order to gauge the programs ongoing level of performance at the state and federal level in light of likely system and/or programmatic changes. More importantly, the Phase 1 assessment methodology and data analysis must be performed by a credible federal agency or independent contractor acceptable to all stakeholders with the utmost transparency and clarity in order to insure its ultimate success.

The goals of the ADT program they can be summarized as follows:

1. Increase the percentage of mature cattle that are officially identified, and
2. Increase the traceability of those animals within a bookend system.

In assessing the functionality of the program and to determine if the core goals of the program are being met, reasonable useful measurements must be established to determine the number of animals identified and the degree to which they can be traced to some point in the production and marketing chain, within a reasonable time period, under a real world animal disease event scenario. In that spirit, the following assessment model is offered for USDA's consideration:

1. Randomly select a statistically significant number of processors representing a statistically significant number of cattle 18 months of age or older presented for slaughter on a given day.
2. Measure the number of animals that are officially identified when presented at slaughter. The goal for this measure would be 98%.
3. Through the review of slaughter plant business records, identify those animals without an official ID and determine to the degree possible:
 - a. Were they ever identified?
 - b. With what form of ID were they identified?
 - c. When, where and why did they lose that ID?
4. Within the officially identified cattle population, additional performance measures would be:
 - a. What is the distribution of the various types of official ID devices/methods utilized in the identification cattle 18 months of age or older?
 - b. What percentage of the animals is accompanied by compliant documentation, such ICVIs or other approved owner/shipper documents?

5. In order to measure the successful implementation of the different components and/or functionalities of the ADT system, establish through a statistically significant random sample of animals from within the officially identified cattle population, presented at slaughter, that:
 - a. 95% of the animals are traceable to the state of origin within 48 hours of processing of the animal.
 - b. 90% of the animals are traceable to the shipper within 72 hours.
 - c. 95% of the animals are traceable to the official ID application location within 72 hours.
 - d. 85% of the animals are traceable one step back from the shipper within 5 working days.

States and Tribes are respectfully requested to not abuse their authority to initiate Phase 2 for all cattle in advance of a federal determination:

The industry has repeatedly and vociferously expressed to federal, state and tribe animal health officials their trepidations with the introduction of 20-plus million feeder cattle into the ADT program. The costs as well as the operational challenges associated with moving into Phase 2 for all cattle are daunting, to say the least. At best, the identification of less than 18 month of age cattle is of questionable benefit in a disease risk-based ID/traceability system and also in an increasingly value-added marketplace.

In responding to the cattle industry's concerns, USDA established the ADT program for cattle in two phases or steps, with Phase 2 for feeder cattle being phased in only upon a determination that Phase 1 for adult cattle was fully functional and the system could bear the introduction of a much larger group of animals. While there may be differences of opinion within the ranks of the cattle industry on if, when or how to bring feeder cattle into the ADT program, we do not believe you will find any great divergence of opinion among those associated with the feeder/fed cattle sectors on if and when this group of cattle come into the program, that it be done under an orderly, comprehensive national edict and not state by state or tribe by tribe. Thus, while LMA has chosen not to challenge the States and Tribes authority to make laws and rules outside of or in addition to federal statute and rules by requesting that USDA preempt the states and tribes authority in the identification and listing of individual IDs on the ICVI for less than 18 month of age cattle, we respectfully urge state and tribe animal health officials to respect the commitments made and the orderly process established by USDA/APHIS in responding to the industry's concerns in this regard.

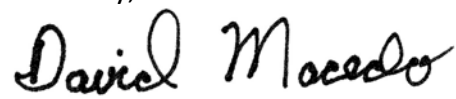
Commitments that ADT program will not be an unfunded mandate to the States and Tribes and to the industry must be honored by USDA:

USDA officials on numerous occasions have promised that the ADT program will not be realized as an unfunded mandate to the States and Tribes and indirectly to the industry. We expect USDA, under the current and subsequent administrations to honor that commitment or lose any and all support for the program in the future. At this particular time when the federal government is already reeling in debt and the country and the cattle industry and market sector are under great economic pressure, there is little to no tolerance for heaping additional

regulatory mandates and their associated cost on to a weakened economy at all ends of the public and private spectrum. Thus, we urge USDA to move cautiously and judiciously in implementing the ADT program, even it requires many more years to implement than desired by animal health officials, to avoid doing great economic harm to an industry and its allied partners, such as the marketing sector, that are responsible for providing an important food source for its own citizens as well as consumers around the world.

LMA appreciates USDA/APHIS openness and transparency in the design of the ADT Framework and the proposed rule implementing the ADT program and hope that our comments will be helpful in achieving an animal disease traceability program that is practical, workable, efficient and effective for industry as well as our public sector partners.

Sincerely,

A handwritten signature in black ink that reads "David Macedo". The signature is written in a cursive, flowing style.

Mr. David Macedo
President