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September 13, 2004

Docket No. 04-047-1
Regulatory Analysis and Development
PPD, APHIS, Station 3C71
4700 River Road, Unit 118
Riverdale, MD 20737-1238

Dear Sir or Madam:

Re: APHIS Docket No. 04-047-01

On behalf of our client organization, the Western Organization of Resource Councils (WORC), we are submitting these comments on Advance Notice of Proposed Rulemaking on Federal Measures To Mitigate BSE Risks: Consideration for Further Action, dated July 14, 2004, as published in the Federal Register at 69 Fed. Reg. 42288 (Advance Notice). WORC is a network of grassroots organizations from seven states that includes 8,750 members and 48 local community groups. WORC's seven state organizations are: the Dakota Resource Council (North Dakota), Dakota Rural Action (South Dakota), the Idaho Rural Council (Idaho), the Northern Plains Resource Council (Montana), Oregon Rural Action (Oregon), the Powder River Basin Resource Council (Wyoming), and the Western Colorado Congress (Colorado). WORC is also part of the Americans for Country of Origin Labeling, a coalition that strongly supports mandatory Country of Origin Labeling (COOL) and opposed the recently enacted two-year delay of COOL.

These comments will focus on the following two questions on which APHIS seeks public comments on a national identification system.

Question 24: When and under what circumstances should the program transition from voluntary to mandatory?

WORC believes that it is critical for USDA to ensure continued consumer confidence in the safety and health of the U.S. food supply while ensuring the economic viability of independent family farmers and ranchers. However, WORC and its member groups have serious concerns about a mandatory national identification system, particularly the United States Animal Identification Plan (USAIP) (see <http://www.usaip.info/>), on

which it appears APHIS intends to base its national animal identification system (NAIS). See http://www.aphis.usda.gov/lpa/pubs/fsheet_faq_notice/faq_ahnais.html. WORC opposes the implementation of a mandatory program that is administered solely by USDA for the following reasons:

1. A national animal identification system does not address the most immediate needs in the wake of the discovery of BSE in the United States: preventing introduction of foreign animal disease to the U.S. food supply, and informing consumers of the country of origin of their food. As a policy matter, WORC believes it is more important that Country of Origin Labeling become mandatory than that any national animal identification system become mandatory.

The USAIP, as drafted, provides for trace-back of animals once an outbreak occurs; it does not prevent introduction of BSE or other diseases in imported meat and livestock. It imposes no identification requirements on imported meat or livestock and still would not inform consumers of the country of origin of their food. At a minimum, no new domestic animal identification requirements should be mandatory until USDA can ensure that animals imported into the United States are permanently marked, identified, and traceable.

2. The USAIP also fails to address what may be the most significant area of concern with regard to animal diseases, namely the traceability of meat and meat products. The USAIP ends at the point of slaughter, and does not provide for traceability of meat or meat products after slaughter.
3. While the Advance Notice sets out several laudable key objectives for a national identification system at 69 Fed. Reg. 42294, the USAIP, as currently drafted, does not address the burdens that would be placed on family farmers and ranchers if such a system were to become mandatory. WORC and its members believe that any identification plan should build on existing animal identification and trace-back programs, and should be administered by state agencies. For example, a longstanding, effective program that identifies cattle vaccinated for brucellis already allows trace-back ability. See 9 C.F.R. pt. 78 . Similar programs exist for sheep and hogs. See 9 C.F.R. pt. 54 (Control of scrapie); 9 C.F.R. pt. 79 (Scrapie in Sheep and Goats); and 9 C.F.R. pt. 85 (Pseudorabies). The USAIP envisions electronic eartags, and a cost of approximately \$500 million over five years, but it contains no provisions to relieve producers of the burden of those costs. The existing systems have proven track records and have been highly effective. In addition, existing systems are administered by state governments and agencies, that allow for greater accessibility and local input and control. WORC therefore opposes any centralized identification system that does not utilize existing systems, and opposes any system that places additional financial burdens on producers.

4. The Advance Notice notes that one of USDA's objectives is to use an identification system that is "technology neutral." WORC supports this concept insofar as it permits the use of existing technologies. However, any identification plan needs to ensure that packers and processors cannot implement their own, separate systems that producers will have to follow in order to sell their livestock. Such systems, while "technology neutral" in theory, would allow private parties (packers and processors) to make technology choices and impose them on producers, eliminating the neutrality.
5. WORC applauds APHIS' recognition of "the need to be able to ensure that data provided by producers is protected...." 69 Fed. Reg. 42298. WORC and its members are adamantly opposed to any identification system that does not provide strong protections for proprietary and confidential information collected from producers. As currently drafted, the USAIP does not specify how it would provide such protections. WORC believes that data collected under any identification system should be accessible only to state and tribal animal health agencies, APHIS, and Homeland Security, and then only for the purposes of official disease investigation. Any plan should ensure that information provided pursuant to the plan will be exempt from FOIA requirements, and would ensure that packers, vendors, private associations, and other government agencies do not have access to it, and that the data is secure from disclosure, whether inadvertent or accessed by deliberate hacking.
6. The USAIP includes certain provisions that would allow private livestock commodity organizations and for-profit entities to manage or subcontract certain portions of the plan. The USAIP, as drafted, therefore is vulnerable to exploitation by private livestock commodity organizations or for-profit entities. WORC notes that many of the livestock commodity organizations participated directly in the drafting of the USAIP, and USDA and APHIS have not sought participation from other producers or public comments on a specific national animal identification plan through proposed rulemaking. WORC and its members are opposed to the implementation of any privately drafted plan that permits livestock commodity organizations or for-profit entities to profit at the expense of producers.
7. WORC and its members are concerned that animal identification information could be used to shift liability for food contamination incidents from packers and processors back to farmers and ranchers. WORC opposes any plan which does not ensure that livestock producers are not liable for claims other than those made by the governmental agencies authorized to access data collected under the system that are related to the system itself.
8. Finally, WORC notes that there may be some question as to USDA's and APHIS's authority to implement a mandatory identification system. While no such authority has been specifically conferred upon USDA, Congress specifically

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prohibited the Secretary from establishing a mandatory identification system as part of the Country of Origin Labeling Act. See 7 U.S.C. § 1638a(f)(1).

Question 25: What species should be covered, both initially and in the longer term? Specifically, should the initial emphasis be on cattle, or also cover other species? If so, which? Which species should be covered by the program when it is fully implemented? What priority should be given to different species?

As noted above, WORC believes priority should be placed on implementing Country of Origin Labeling, and on marking and identifying imported animals, especially cattle and other animals susceptible to Foot and Mouth Disease (FMD). WORC opposes a new mandatory program, and believes that current, effective programs already exist for other species. Creating a duplicative national program will only add burdens to producers of all types of livestock.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/Susan E. Stokes

Legal Director
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