

*Fighting for the U.S. Cattle Producer!*



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July 14, 2014

Docket No. APHIS-2013-0097,  
Regulatory Analysis and Development,  
PPD, APHIS, Station 3A-03.8  
4700 River Road Unit 118  
Riverdale, MD 20737-1238.

Via E-Mail: [www.regulations.gov](http://www.regulations.gov)

**Re: R-CALF USA Comments in Docket No. APHIS-2013-0097: Notice of Availability of a Draft Framework for Implementing the United States-Canada Foreign Animal Disease Zoning Arrangement and Request for Comments**

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments to the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) regarding the agency's Notice of Availability of a Draft Framework for Implementing the United States-Canada Foreign Animal Disease Zoning Arrangement (Draft Framework), published at 79 Fed. Reg., 77,277-278 (May 13, 2014).

For the reasons described more fully below, R-CALF USA urges APHIS to abandon its Draft Framework that requires the redirection of the agency's already scarce resources to create a new bureaucracy and governance structure consisting of foreign officials that are unaccountable to the citizens of the United States. We believe the Draft Framework would undermine the United States' notice and public comment procedures prior to making important public policy changes and interfere with the current checks and balances system by putting too much control over trade matters in the hands of APHS' Chief Veterinary Officer (CVO).

**A. The Draft Framework Inappropriately Authorizes APHIS' Chief Veterinary Officer to Make Important Public Policy Decisions that Should not be made Without a Public Rulemaking Process.**

The Draft Framework provides that recognition of zoning decisions would occur administratively "and does not involve rulemaking."<sup>1</sup> We interpret this to mean, *e.g.*, that if an outbreak of foot-and-mouth disease (FMD) were detected in one of Canada's eastern provinces and Canada declared its western provinces to be disease free zones, then APHIS' CVO could

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<sup>1</sup> Summary of the U.S. – Canada Foreign Animal Disease (FAD) Zoning Initiative for the Secretary's Advisory Committee on Animal Health – June 2014, USDA APHIS, at 2.

unilaterally decide to continue allowing the importation of cloven-hoofed livestock from Canada's western provinces without first conducting a public notice and comment rulemaking. This proposal is wrongheaded for several reasons:

First, because its meat industries are export dependent, Canada is inherently incentivized to downplay the risks associated with its meat products in order to continue exports even in the face of a foreign animal disease (FAD) outbreak. Therefore, Canada is inherently incentivized to overstate the geographical areas that it declares a disease free zone so as to minimize the economic impact of a FAD outbreak within its national livestock herd. This does not suggest that Canada would be dishonest, it simply acknowledges that the loyalties of Canadian officials will be to Canada, Canada's statutes and regulations, and to Canada's overall welfare and that they have no loyalties whatsoever to the United States, to United States statutes or regulations, or to the overall welfare of the United States. Indeed, the U.S. and Canada are competitors in the global meat market and the very nature of competition is for one competitor to seek a market advantage over another. Continued exports to the United States, even in the wake of a FAD outbreak within its borders, would provide Canada with just such a competitive advantage. Thus, the U.S. should treat Canada's zoning decisions with a healthy dose of skepticism and the importation of livestock or livestock products should not resume after a FAD outbreak in Canada without a public rulemaking process that requires the agency to consider important concerns raised in public comments.

Second, it is the Secretary of Agriculture that is ultimately responsible and accountable for preventing the introduction into and spread within the United States of FADs under the Animal Health Protection Act (AHPA), 7 U.S.C. 8301 et seq. The Draft Framework, however, appears to vest decision making authority over such critical and potentially controversial public policy determinations as to whether to allow the importation of products from a country that has not yet eradicated or controlled a dangerous FAD within its national borders. This proposal appears to usurp the checks and balances between appointed officials and career-service employees and the lines of authority within the USDA. For matters as crucial as whether to accept a higher risk of disease introduction and possible spread, APHIS' CVO should continue making recommendations to the Agriculture Secretary; but only the Secretary should be authorized to make the decision to resume trade with a country that is affected by a FAD, and the Secretary's decision should only be implemented after the agency promulgates rules and considers thoughtful comments submitted by the public.

#### **B. APHIS has a Poor Track Record for Balancing the Competing Interests of International Trade and Domestic Livestock and Food Safety**

APHIS officials have a history of not employing conscientious judgment when declaring foreign countries or regions within those foreign countries free of disease and allowing the resumption of imports from those disease-affected countries for no other reason except to facilitate more imports into the United States. As shown by the examples below, APHIS has failed to properly balance the competing interests of international trade and domestic livestock and food safety and it is only by sheer luck that APHIS has not already facilitated the introduction of FMD into the United States.

1. APHIS Did Not Employ Conscientious Judgment when it Declared Regions in Argentina Free of FMD

In August 1997, APHIS engaged in a high-risk scheme to begin importation of fresh beef from Argentina, even though Argentina was still carrying out vaccination for FMD. *See* 62 Fed. Reg., 56003/2. APHIS claimed that this new scheme “exemplified the opportunity” to regionalize countries with ongoing FMD problems. *See id.* In July 2000, APHIS fully implemented a regionalization scheme for Argentina by prohibiting the importation of beef from animals that had been in specified areas along Argentina’s border. *See* 65 Fed. Reg., 82894/1. In August 2000, just days before the effective date of APHIS’ regionalization rule, Argentina confirmed a new outbreak of FMD. Nevertheless, APHIS concluded the U.S. could continue to safely import fresh beef from Argentina under its regionalization scheme, despite this new outbreak. *See id.*, 82894/3. For nearly a year after its August 2000 outbreak, Argentina remained eligible to export fresh beef to the United States. APHIS, however, was subsequently forced to take emergency, retroactive action in June 2001 to protect U.S. livestock from the introduction of FMD from Argentina because at that time APHIS believed the FMD virus already was present in Argentina for several weeks before Argentina finally reported the first of many new and widespread FMD outbreaks beginning in March 2001. *See* 66 Fed. Reg., 29897/3; 29898/1. APHIS’ regionalization scheme for Argentina was an abject failure that could have easily resulted in the introduction of FMD into the United States.

2. APHIS Did Not Employ Conscientious Judgment when it Declared Regions in Uruguay Free of FMD

In October 2000 APHIS regionalized, retroactively, Uruguay by removing only Artigas, a department in Uruguay, from the list of regions considered by the U.S. to be free of FMD. *See* 65 Fed. Reg., 82894/3; *see also* 65 Fed. Reg., 77772/1. APHIS had evaluated Uruguay’s risk for FMD and concluded it was safe for the U.S. to continue the importation of fresh beef from Uruguay provided it was not from cattle in Artigas, a region APHIS determined to qualify as a distinct subpopulation for disease control and international trade purposes under its regionalization scheme. *See* 65 Fed. Reg., 77771-773. However, within about four months of USDA’s presumed scientific conclusion that it was safe to continue the importation of beef in all regions of Uruguay except Artigas – a conclusion presumably based on a careful, scientific risk analysis – widespread FMD outbreaks were reported, beginning in April 2001, in numerous Uruguayan departments. *See* 66 Fed. Reg., 36695-697. By June 22, 2001, there were 1,596 new cases of FMD confirmed in 18 separate departments in Uruguay. *Ibid.*

3. APHIS Did Not Employ Conscientious Judgment when it Declared Regions in the Republic of South Africa Free of FMD

After conducting an on-site visit along with a risk evaluation regarding the risks for FMD in South Africa, APHIS, in April 2000, regionalized the Republic of South Africa and declared it, except the FMD-controlled area (which includes Kruger National Park) free of FMD. *See* 64 Fed. Reg., 7819/2, fn 1; *see also*, 66 Fed. Reg., 9641/1. In September 2000, APHIS was forced to

take emergency action to protect U.S. livestock after a FMD outbreak was confirmed in KwaZulu-Natal, a province in the Republic of South Africa. *See* 65 Fed. Reg., 65728/1; 65729/1. APHIS, however, persisted with its regionalization scheme and simply carved out KwoZulu-Natal as a province ineligible to export fresh beef to the U.S. due to FMD. *See* 64 Fed. Reg., 65728/3. Within a matter of months, in November 2000, APHIS was again forced to take emergency action to prevent the introduction of FMD into the U.S. by removing all of the Republic of South Africa from the list of regions considered free of FMD following new outbreaks of the disease in additional provinces.

4. APHIS Did Not Employ Conscientious Judgment when it Declared South Korea Free of FMD

After South Korea experienced outbreaks of FMD in 2000 and 2002, APHIS, in October 2008, completed a comprehensive, 56-page evaluation of the risks for FMD in South Korea in accordance with OIE guidelines and determined that South Korea was free of FMD and posed a negligible risk for introducing FMD into the United States.<sup>2</sup> On December 28, 2009, APHIS issued a final rule declaring South Korea free of FMD and eligible to export fresh beef to the United States beginning January 12, 2010. *See* 74 Fed. Reg., 68478/3; 479/2. However, on January 6, 2010, just days before the effective date of APHIS' final rule, South Korea had an outbreak of FMD and APHIS was forced to delay indefinitely the effective date of South Korea's FMD-free designation. *See* 75 Fed. Reg., 1697/1.

Similar to its evaluation regarding the risk for FMD posed by the 14 states in Brazil, APHIS' overly optimistic evaluation of South Korea's FMD risk concluded:

Based on an evaluation of the 11 factors and observations from the site visit, APHIS considers that the Republic of Korea has the legal framework, animal health infrastructure, disease detection capabilities, reporting systems, and emergency response systems that are necessary for maintaining the Republic of Korea as free of FMD.<sup>3</sup>

However, APHIS was dead wrong and the reality is that South Korea was overwhelmed by the outbreaks that began Jan. 6, 2010, and that APHIS had concluded were unlikely to occur.

5. APHIS Did Not Employ Conscientious Judgment when it Declared Japan Free of FMD

Nine years after APHIS declared Japan free of FMD, based exclusively on OIE standards (*see* 66 Fed. Reg., at 46228/3, *supra*), APHIS was forced to take emergency action to ban beef imports from Japan due to numerous outbreaks of FMD that began in that country in April

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<sup>2</sup> *See* 74 Fed. Reg., 14093, col. 3; *see also* APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, Oct. 2008, at 5, 39, and 41.

<sup>3</sup> APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest, USDA-APHIS, October 2008, at 39.

2010.<sup>4</sup> On June 9, 2010, Bloomberg News reported that Japan had then discovered 185,999 cases of FMD and had destroyed 154,000 animals, with plans to destroy an additional 122,000 animals in its attempt to control the spread of FMD.<sup>5</sup>

The foregoing examples are all near misses – they all represent situations in which APHIS’ reckless actions threatened the health and welfare of U.S. livestock and U.S. livestock producers. As a result of APHIS’ foregoing actions, the United States was particularly vulnerable to the importation into the United States of products that are known to carry the FMD virus and the importation of such products could have resulted in widespread outbreaks of FMD in the U.S. livestock herd. These foregoing examples demonstrate unequivocally that APHIS lacks both the ability and capacity to accurately assess the risk of such FADs as FMD in foreign countries and there are no provisions in the Draft Framework that would improve APHIS’ limitations.

**C. APHIS’ Dismal Performance in Preventing the Introduction and Widespread Dissemination of Newly Emerging Diseases in the Hog Industry Demonstrates the Agency Is Not Equipped to Address Current FAD Threats, Let Alone any Increased Threat Resulting from any Further Relaxation of U.S. Import Controls.**

APHIS’ limitations regarding its ability and capacity to effectively identify FAD outbreaks and to subsequently predict their severity and direction/rapidity of spread in time to implement effective controls was revealed upon the initial diagnoses of porcine epidemic diarrhea virus (PEDv) and porcine deltacoronavirus (PDCoV) in the United States. The uncontrolled outbreaks of these diseases, which have now affected over 30 states, continues to wreak havoc on U.S. hog producers and is causing a shortage of pork that is reportedly driving consumer prices upward. This incident calls into question the agency’s capacity to fulfill its statutory mandate under the AHPA to prevent the introduction into and dissemination within the United States of FADs even without trying to diffuse the accountability of the agency with a new, convoluted bureaucracy consisting of foreign contemporaries as envisioned in the Draft Framework. The PEDv was reportedly first confirmed in the United States in May 2013, but USDA waited over a year (until June 5, 2014) before even requiring the reporting of PEDv outbreaks.<sup>6</sup> The Pork Network reported that after 14 months, the PEDv outbreak has killed an estimated 8 million pigs.<sup>7</sup> This unfolding crisis provides empirical evidence that APHIS needs to improve its disease prevention, identification and control capabilities within the United State. The Draft Framework will not accomplish this necessary task and would, instead, increase the risk of introducing FADs into the United States.

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<sup>4</sup> See U.S. Bans Japan Beef Imports Over FMD Concerns, USAgNet, May 21, 2010 (Reporting that Bloomberg news received an e-mailed statement from USDA regarding the imposition of a U.S. ban on Japanese beef imports), available at <http://www.wisconsinagconnection.com/story-national.php?Id=1027&yr=2010>

<sup>5</sup> See Japan Sees ‘High Risk’ of Foot-And-Mouth Expansion (Update 1), Bloomberg, June 9, 2010, available at <http://www.businessweek.com/news/2010-06-09/japan-sees-high-risk-of-foot-and-mouth-expansion-update1-.html>.

<sup>6</sup> See USDA Federal Order Requires PEDv Reporting, Hutchinson Leader, Sarah Schieck, University of Minnesota Extension, July 12, 2014, available at [http://www.hutchinsonleader.com/news/general\\_news/usda-federal-order-requires-pedv-reporting/article\\_d912a683-aa5f-52e6-bac5-6a032653128f.html](http://www.hutchinsonleader.com/news/general_news/usda-federal-order-requires-pedv-reporting/article_d912a683-aa5f-52e6-bac5-6a032653128f.html).

<sup>7</sup> See PEDv Outbreak Kills 14,286 Pigs Daily, Angela Bowman, Pork Network, July 9, 2014, available at <http://www.porknetwork.com/pork-news/PEDv-outbreak-kills-14286-pigs-daily-266481421.html>.

July 14, 2014

Page 6

**D. Conclusion**

For the foregoing reasons APHIS should immediately abandon its misguided United States-Canada Foreign Animal Disease Zoning Arrangement. Instead, APHIS should redirect its limited resources internally to improve its disease prevention, identification, and control capacity here in the United States. APHIS should also direct its limited resources to bolster its vigilance over imported products and animals that may harbor foreign animal diseases that APHIS is presently ill-equipped to handle should they arrive on U.S. soil.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is written in a cursive, somewhat stylized font with a large initial "B".

Bill Bullard