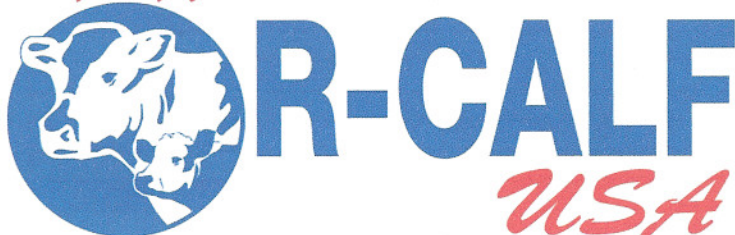


Fighting for the U.S. Cattle Producer!



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March 17, 2009

The Honorable Thomas J. Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Dear Secretary Vilsack:

We appreciate your response to our letter inquiring as to citations for authority under which the U.S. Department of Agriculture (USDA) is proceeding with its mandatory National Animal Identification System (NAIS). Your letter raises two important issues.

First, your February 23 response states:

Independent of and prior to NAIS, Animal and Plant Health Inspection Service and State animal health officials routinely assigned premises identification numbers in the normal course of their animal health program activities for decades. (Emphasis added.)

The letter then uses brucellosis and tuberculosis (TB) programs as examples of instances where "premises information" has been used to support eradication efforts. Mr. Secretary, we believe that USDA has misrepresented to you and to Congress what has transpired relative to animal health programs and "premises" identification numbers.

Illustrative are five of our members who operate in the following states: Oregon, Wyoming, South Dakota, Missouri, Arizona and New Mexico (one member operates in both the latter two states). Several of the operations are very large. All have participated in the brucellosis eradication program by administering "calf-hood" vaccinations to heifers for over a decade, and in some instances for over two decades. One member also has tested hundreds of animals for TB following USDA downgrades of New Mexico's TB status.

With one exception, all report that in their years of participation in the brucellosis program, no USDA Animal and Plant Health Inspection Service (APHIS) or "state animal health officials" have ever been on their ranches. The exception was a late brucellosis vaccination of a heifer resulting in a false positive test, thereby requiring a retest by an APHIS official. Similarly, the member doing the TB testing reported two false responses to tests administered by a local veterinarian, necessitating retests by an APHIS official under existing protocols.

All five members report that the brucellosis vaccinations were administered by a local veterinarian who, while required to account for the metal ear tags placed in each animal's ear and also for the vaccine that is administered, was under no requirement to provide a premises identification number. In fact, in not a single instance did any of the local veterinarians assign a premises identification number. Instead, the local veterinarian used the name and mailing address of the livestock owner and the nearest town as the location.

Similarly, the member doing the TB testing reported that the local veterinarian both administered and read the test; and, in his paperwork, reported only the nearest town as the identifying location. No identifying premises number was assigned in either New Mexico or Arizona by the local veterinarian.

The brucellosis ear tag consists of i) an initial two numbers which identify the state where the vaccination was administered, followed by ii) a combination of letters and numbers identifying the administering veterinarian, and iii) a series of numbers identifying the animal receiving the vaccination. In short, there is no identifying premises number on either the metal tag or on the paperwork submitted by the local veterinarian.

Whether APHIS or the applicable state veterinarian subsequently assigned a premises identification number is immaterial. Where no APHIS or state official was on the "premises" at the time the vaccination was administered, any subsequently assigned number would bear no correlation to any physical "premises" or location. Any assigned number would merely be an owner identification number, very much like a brand registration number, which would not identify any physical location for livestock but rather only the mailing address of the animals' owner.

Ultimately, all that is needed in any disease control or eradication effort is the identification and contact address of the livestock owner which, in brand states, the state department of agriculture already has. Cattle are not kept at the particular corral or "premises" where the brucellosis vaccinations were administered, but are instead subsequently moved to various pastures. Indeed, there is no single "premises" as many operators run on extensive areas with many pastures. It is not uncommon in the Southwest, for example, to run only one cow to 100 acres. In such areas, pastures are measured not in acres but in sections (a section being 640 acres or one square mile) and cattle are rotated through various pastures. The owner, not a "premises identification," is the real key to identifying the exact location of animals.

Thus, USDA has represented that premises registration is a mere extension of a practice that has existed for decades. Nothing could be further from the truth: it is a radical departure from procedures that have been followed for decades. Local veterinarians working in connection with livestock producers historically have been the first responders on control and eradication efforts for livestock diseases, not a fictitious premises identification number.

Relative to our request for a citation of the authority whereby USDA now seeks to mandate NAIS, you reference the Animal Health Protection Act of 2002 and its "broad authority to

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regulate...." In our reading of the Act, we are unable to see any provision which – under any fair reading – would authorize the mandating of i) registration of "premises," ii) individual identification of animals, and iii) reporting of movements thereof. Would you kindly point us to the specific provisions of the Act which you believe authorize NAIS?

As to "broad authority" under the Act, how can an assertion of the same be squared with the notion of limited, express, and enumerated powers embodied in Article I, Section 8, of the U.S. Constitution? The broader question is – assuming there are specific provisions of the Act which might ostensibly authorize NAIS – under what specific provision of Article I, Section 8 of the U.S. Constitution is Congress authorized to impose the requirements embodied by NAIS upon livestock producers?

Sincerely,

A handwritten signature in cursive script that reads "R. M. Thornsberry DVM". The signature is written in dark ink and is positioned below the word "Sincerely,".

R.M. (Max) Thornsberry, D.V.M.
R-CALF USA President of the Board