

December 6, 2011

BY ELECTRONIC MAIL

Secretary Tom Vilsack  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250

**Re: Traceability for Livestock Moving Interstate<sup>1</sup>**

Dear Secretary Vilsack,

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration submits these comments to the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) on the proposed rule entitled Traceability for Livestock Moving Interstate. Advocacy believes that APHIS should publish an Initial Regulatory Flexibility Analysis for the rule.

**The Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup>

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<sup>1</sup> *Traceability for Livestock Moving Interstate*, 76 Fed. Reg. 50082, (August 11, 2011).

<sup>2</sup> 5 U.S.C. § 601 et seq.

<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

<sup>4</sup> Small Business Jobs Act of 2010 (PL 111-240) § 1601.

<sup>5</sup> Id.

## **Background**

APHIS is proposing to establish national official identification and documentation requirements for the traceability of livestock moving interstate. Under the proposed rule, livestock, such as cattle and poultry, that are moved in interstate transit are required to be officially identified with a tag and accompanied by an interstate certificate of veterinary inspection or other documentation.

### **APHIS Has Not Accounted For the Costs to the Poultry Industry, and May Have Underestimated the Costs to the Cattle Industry**

Advocacy is concerned that APHIS has concluded that this rule will not have a significant economic effect on a significant number of small businesses. Advocacy notes that APHIS states that the majority of the costs of this rule will fall on the cattle industry and does not discuss the potential costs to the poultry industry in the Regulatory Flexibility section of the rule. Advocacy believes that a substantial number of small businesses in the poultry industry will suffer significant economic impacts from this rule.

Advocacy has heard from small businesses in the poultry industry who have stated that this rule will have a significant economic effect and may lead to many small poultry business closures. Small poultry operations have very thin profit margins that cannot absorb the cost increases from the tagging and record keeping requirements of this rule. One small poultry operation who spoke to Advocacy estimated that their profit margin is less than one dollar per bird and that even in the high dollar specialty poultry market profit margins are approximately one dollar per bird. In addition, under this rule, hatcheries that ship interstate will have to tag and keep records of the birds they ship. This is likely to lead to significant economic costs as hatcheries may ship thousands of birds interstate per year. Advocacy notes that APHIS has received several hundred comments on this rule several of which challenge the contention that small businesses in the poultry industry will not sustain significant economic impacts. Advocacy suggests that APHIS conduct more outreach to the industry and publish an IRFA discussing the impact this rule will have on small poultry businesses.

Small businesses in the cattle industry have also indicated that APHIS's estimates as to the cost of this rule on the cattle industry are incorrect. The industry is concerned that APHIS does not fully understand the process ranchers must go through in order to tag cattle. The industry anticipates that the amount of time and labor needed to corral, funnel, and tag cattle that are not already being tagged will be significantly increased. Moreover, some small cattle operators outsource tagging to sale barns. Many of these ranchers are concerned that sale barns will not be able to tag cattle in a timely fashion if there is a significant increase in the amount of cattle required to be tagged, increasing costs to the ranchers. Advocacy suggests that APHIS conduct more outreach to the cattle community and publish an IRFA for this rule that includes estimates of the time, labor and equipment costs that small cattle operations will incur from having to tag all cattle.

## **Conclusion**

Small businesses have stated that the requirements proposed would have a significant economic effect on a substantial number of small businesses in the regulated industries and will likely lead to many small business closures. Advocacy encourages APHIS to reach out to small businesses in the industry to obtain more accurate information and publish an IRFA discussing the costs of this rule to small businesses in each of the industries that will be affected. Please contact me or Assistant Chief Counsel Kia Dennis at 202-205-6936 should you have any questions.

Best regards,

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Winslow L. Sargeant, Ph.D.  
Chief Counsel for Advocacy

//s//

Kia Dennis  
Assistant Chief Counsel for Advocacy

Cc: The Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs