



NEW YORK  
CITY BAR

COMMITTEE ON ANIMAL LAW

---

CHRISTINE L. MOTT

CHAIR

Phone: (917) 364-5093

[christine.mott.esq@gmail.com](mailto:christine.mott.esq@gmail.com)

LORI A. BARRETT

SECRETARY

Phone: (347) 770-2473

[barrettlori@hotmail.com](mailto:barrettlori@hotmail.com)

February 9, 2015

Docket No. APHIS-2014-0018  
Regulatory Analysis and Development, PPD  
APHIS  
Station 3A-03.8  
4700 River Road, Unit 118  
Riverdale, Maryland 20737-1238

**Re: Docket No. APHIS-2014-0018, Proposed Rule on Livestock Marketing Facilities**

The Committee on Animal Law of the New York City Bar Association (the “Committee”) submits this comment on the above-referenced rule proposed by the United States Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service (“APHIS”), which would eliminate APHIS’s requirement that an accredited veterinarian, State representative, or APHIS representative be on the premises of a livestock marketing facility at all times on sale days.<sup>1</sup>

The New York City Bar Association is an independent non-governmental organization of more than 24,000 lawyers, law professors and government officials, predominantly from New York City but also from throughout the United States and fifty other countries. The Committee is the first committee of its kind in the country and has a history of supporting federal, state, and

---

<sup>1</sup> See 80 Fed. Reg. 6-13 (Jan. 2, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-01-02/pdf/2014-30752.pdf>. (All internet citations herein last visited February 3, 2015.)

local anti-cruelty legislation, as well as commenting on proposed administrative rules affecting animal welfare and public health, including rules proposed by APHIS.<sup>2</sup>

We limit our comment to the portion of the proposed rule that would eliminate APHIS's requirement that an accredited veterinarian, State representative, or APHIS representative be on the premises of a livestock marketing facility at all times on sale days to perform duties in accordance with State and Federal regulations (the "Proposed Changes").<sup>3</sup> As discussed below, the Committee opposes the Proposed Changes because they (i) put animal and human health at risk and (ii) increase the likelihood of animal abuse. Accordingly, we urge APHIS to reject the Proposed Changes.

### *The Committee Opposes the Proposed Changes*

#### I. The Proposed Changes Put Animal and Human Health at Risk.

Protecting public health and safety, including by preventing and responding to potential disease threats, lies at the heart of APHIS's stated mission.<sup>4</sup> By reducing independent and expert oversight of disease threats at livestock marketing facilities though, the Proposed Changes undermine this mission, putting the health of animals and humans at risk.

In particular, the Proposed Changes significantly reduce APHIS's disease-control standards by doing away with the requirement that an accredited veterinarian, State representative, or APHIS representative be on the premises of a livestock marketing facility at all times on sale days.<sup>5</sup> As APHIS acknowledges, these authorities serve a key oversight role in "inspect[ing] livestock for clinical evidence of contagious, infectious, communicable, or parasitic diseases."<sup>6</sup> Under the Proposed Changes, however, on-site inspections are required just twice a year, and accredited veterinarians must be "available [only] when needed" to inspect animals.<sup>7</sup> Effectively then, the Proposed Changes transfer disease-oversight duties from APHIS to individuals at livestock marketing facilities. This transfer raises serious animal and human health concerns, for several reasons.

---

<sup>2</sup> See, e.g., Letter from the Committee to the USDA on promulgating standards for captive bears under the Animal Welfare Act Regulations (Jan. 22, 2014), <http://www2.nycbar.org/pdf/report/uploads/20072647-CommentonAWAStandardsforCaptiveBears.pdf>; Letter from the Committee to the USDA on proposed amendments to the Animal Welfare Act regarding the handling of big cats, bears, and nonhuman primates (Oct. 3, 2013), <http://www2.nycbar.org/pdf/report/uploads/20072574-AWAWildlifeComment.pdf>.

<sup>3</sup> That the Committee is not at this time commenting on other proposed changes to the current rule does not mean that the Committee supports, or is indifferent to, those proposed changes.

<sup>4</sup> USDA, APHIS, About APHIS (Sept. 2, 2014), at <http://www.aphis.usda.gov/wps/portal/banner/aboutaphis>.

<sup>5</sup> 80 Fed. Reg. at 6. A "livestock marketing facility" is defined as "[a] stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled and that has been approved [by APHIS]." 9 C.F.R. § 86.1.

<sup>6</sup> USDA, Animal Disease Traceability, General Standards (Draft), at 19, [http://www.aphis.usda.gov/traceability/downloads/ADT\\_standards.pdf](http://www.aphis.usda.gov/traceability/downloads/ADT_standards.pdf).

<sup>7</sup> See USDA, Animal Disease Traceability, General Standards (Draft) (Jan. 2, 2015), at 18-19; 80 Fed. Reg. at 7.

*The Proposed Changes create conflicts of interest that may reduce animal disease reporting.*

First, by creating a self-reporting scheme in which the primary responsibility for monitoring and reporting animal diseases falls to livestock buyers and sellers or the owners, employees or other individuals affiliated with livestock marketing facilities, the Proposed Changes eliminate the independent nature of the current supervision process. While veterinarians and State and APHIS representatives have no direct financial interest in the animals that they inspect, a facility's employees do, as do buyers and sellers at the facility. This interest may often conflict with the interest of APHIS—and the American public—in disease-free animals. A seller, for instance, may sell cattle that she suspects are diseased if she believes that the buyer and facility employees will not notice the illness, or if the buyer has agreed to pay a lower price because of the illness. Experts in the field of animal agriculture have cautioned against such “passive disease surveillance” as that envisioned under the Proposed Changes, as it “usually leads to significant underreporting of diseases.”<sup>8</sup> Similarly, APHIS itself recently amended horse-soring<sup>9</sup> regulations under the Horse Protection Act—overhauling a penalty scheme that had been in place for over 30 years—because it recognized that “allowing the industry’s self-regulation has not been adequate to ensure that these animals are not being abused.”<sup>10</sup>

The twice-a-year inspection specified by the Proposed Changes does not provide a sufficient “stick” for individuals to self-report and therefore fails to mitigate these conflicts of interest. Indeed, the Proposed Changes do not note what these inspections would involve and whether they would be announced. And in any event, two inspections a year is simply no replacement for on-site presence on every sale day, especially when many facilities hold animal auctions every week.<sup>11</sup>

*The Proposed Changes allow oversight by laypersons, which may reduce animal disease reporting.*

In addition to the conflicts of interest inherent to this self-reporting scheme, individuals at livestock marketing facilities may lack the expertise to properly detect and report animal diseases. Indeed, when APHIS proposed the current version of the rule, it justified the requirement of having an accredited veterinarian on-site on all sale days specifically because of

---

<sup>8</sup> United Nations Food and Agriculture Organization (“FAO”) FAO, Manual on the Preparation of National Animal Disease Emergency Preparedness Plans, at Chapter 4 (1999), available at <http://www.fao.org/docrep/004/X2096E/X2096E05.htm>.

<sup>9</sup> Soring is a practice that involves the intentional infliction of pain to a horse’s legs or hooves in order to force the horse to perform an artificial, exaggerated gait that is valued in certain show horse competitions and exhibitions. See Horse Protection Act, 15 U.S.C. § 1821(3).

<sup>10</sup> See 77 Fed. Reg. 33607-33619, at 33609 (June 7, 2012), <http://www.gpo.gov/fdsys/pkg/FR-2012-06-07/pdf/2012-13759.pdf>.

<sup>11</sup> See, e.g., Montana Department of Livestock, *Brand Offices & Sale Days*, at <http://liv.mt.gov/be/sales.mcp> (showing over a dozen facilities with weekly auctions); Missoula Livestock Exchange, <http://missoulalivestock.com/> (noting “Cattle Sales Every Thursday”); Torrington Livestock Markets, *Auction Calendar*, [http://www.torringtonlivestock.com/auction\\_calendar.asp](http://www.torringtonlivestock.com/auction_calendar.asp) (showing several auctions each month).

the impropriety of having “lay people without the training or scientific background [] make such a determination.”<sup>12</sup>

*Animal diseases continue to present a serious risk to human health and warrant increased – not decreased – oversight.*

As justification for the Proposed Changes, APHIS states that the current rule—adopted in 1997—is “antiquated.”<sup>13</sup> In particular, APHIS states that when the current rule was adopted “diseases of livestock were more prevalent in the United States” than they are today.<sup>14</sup> Putting aside that APHIS studies since 1997 have shown that rates for certain animal diseases are actually on the rise,<sup>15</sup> the conclusion posited in the Proposed Changes is premature as APHIS acknowledges that current and accurate data for animal disease prevalence are not yet available.<sup>16</sup>

Furthermore, the justification APHIS offers in the Proposed Changes confuses a lower level of risk with an acceptable level of risk: while some diseases may be less prevalent now than they were in 1997, this does not mean that such diseases are no longer a serious concern. On the contrary, even without current and accurate disease data, APHIS has recently acknowledged that “animal disease remains a reality in the U.S.”<sup>17</sup> APHIS’s most recent report on animal diseases, for instance, shows that several animal diseases continue to threaten public health.<sup>18</sup> Indeed in June 2014 the United States’ fourth death from variant Creutzfeldt-Jakob Disease (the human form of bovine spongiform encephalopathy, or “Mad Cow Disease”) was confirmed,<sup>19</sup> just months after APHIS eased BSE-related regulations on importing beef products.<sup>20</sup>

---

<sup>12</sup> 62 Fed. Reg. 27930-27937, at 27931 (May 22, 1997), <http://www.gpo.gov/fdsys/pkg/FR-1997-05-22/pdf/97-13499.pdf> (emphasis added).

<sup>13</sup> 80 Fed. Reg. at 6.

<sup>14</sup> *Id.*

<sup>15</sup> In a study from 2009, the National Animal Health Monitoring System (“NAHMS”)—a unit within APHIS—found that “[t]he percentage of cows with reproductive disease increased from 7.3 percent in 2002 to 10.0 percent in 2007” and that “[t]he percentage of operations that had cows with diarrhea or other digestive problem increased from 43.1 percent in 2002 to 56.6 percent in 2007.” See NAHMS, Dairy 2007, at 54-58 (July 2009), available at [http://www.aphis.usda.gov/animal\\_health/nahms/dairy/downloads/dairy07/Dairy07\\_dr\\_PartV\\_rev.pdf](http://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairy07/Dairy07_dr_PartV_rev.pdf). A 2008 report by the Pew Commission on Industrial Farm Animal Production similarly notes an increased prevalence of certain diseases afflicting farm animals. See, e.g., Pew Commission on Industrial Farm Animal Production, *Putting Meat on The Table: Industrial Farm Animal Production in America* 21, available at <http://www.ncifap.org/images/PCIFAPFin.pdf>. The report further notes that “[m]onitoring is a basic component of strategies to protect the public from harmful effects of contamination or disease.” *Id.* at 11.

<sup>16</sup> For example in a 2014 Dairy Study announcement, NAHMS acknowledged that the process of obtaining “current and scientifically valid estimates of . . . disease prevalence” in the dairy industry has only recently begun). See NAHMS, Dairy 2014 Study, at 2 (Aug. 2013), [http://www.aphis.usda.gov/animal\\_health/nahms/dairy/downloads/dairy14/Dairy14\\_is\\_DairyLaunch.pdf](http://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairy14/Dairy14_is_DairyLaunch.pdf).

<sup>17</sup> USDA, APHIS, Animal Disease Risk, Mar. 27, 2013, at [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalhealth?1dmy&urile=wcm%3Apath%3A/aphis\\_content\\_library/sa\\_our\\_focus/sa\\_animal\\_health/sa\\_traceability/ct\\_eva](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalhealth?1dmy&urile=wcm%3Apath%3A/aphis_content_library/sa_our_focus/sa_animal_health/sa_traceability/ct_eva).

<sup>18</sup> See USDA, United States of America’s Status of OIE Reportable Diseases: 2012, [http://www.aphis.usda.gov/vs/nahss/docs/us\\_status\\_of\\_oie\\_diseases\\_2012.pdf](http://www.aphis.usda.gov/vs/nahss/docs/us_status_of_oie_diseases_2012.pdf).

<sup>19</sup> Jacque Wilson, *Mad Cow Disease-related Death Confirmed in Texas*, CNN.com (June 5, 2014), at <http://www.cnn.com/2014/06/05/health/mad-cow-disease-texas/>. See also *Livestock Disease Found in 2nd Montana*

Moreover, even if livestock diseases are in fact less prevalent today, APHIS fails to consider that this lower prevalence may be a result of the very standards that it now proposes to weaken. This omission is curious since APHIS elsewhere attributes successful disease prevention to its own “aggressive approach.”<sup>21</sup> Accordingly, a lower disease prevalence is only further evidence that current regulations should be kept in place: doing otherwise would be the equivalent of repealing seatbelt laws because the risk of fatal driving injuries has fallen since those laws were passed.

Finally, lower disease rates should not warrant relaxed standards, given that diseases can spread quickly. APHIS itself notes as much in various informational resources.<sup>22</sup> Livestock auction facilities in particular are high-risk areas for disease transmission. As APHIS states in its 2011 overview of dairy cow operations, for instance, “[h]eifer-raising operations can obtain dairy heifers from different sources, including . . . *auction markets/sale barns*, or dealers.”<sup>23</sup> And, “[a]s the number of sources increases, so does the potential for introducing and transmitting disease”—including TB, brucellosis, salmonellosis, BVD, and hairy heel warts—“if contact among cattle from different sources is allowed.”<sup>24</sup> The FAO too notes that “[l]ivestock markets and other congregations of animals are a very important potential source for the rapid spread of epidemic diseases. They should be a major focus for disease surveillance and should be carefully controlled during disease outbreaks.”<sup>25</sup>

*Economic benefits to businesses should not outweigh public health risks.*

APHIS’s other rationale for the Proposed Changes—that some small entities will experience a “cost savings”<sup>26</sup>—is an insufficient basis for relaxing standards for *all* livestock marketing facilities as the cost savings should not justify the harm of jeopardizing human and animal safety. Protecting public health demands that large and small businesses alike comply with basic disease-prevention standards.

## II. The Proposed Changes Increase the Likelihood of Animal Abuse and Neglect.

In addition to increasing the risk of animal disease, the Proposed Changes increase the risk of animal cruelty. Public attention to the inhumane treatment of farmed animals has grown

---

*Cow*, THE WASHINGTON TIMES, Dec. 15, 2014, <http://www.washingtontimes.com/news/2014/dec/15/livestock-disease-found-in-2nd-montana-cow/>.

<sup>20</sup> See 78 Fed. Reg. 72859-72860 (Dec. 4, 2013), <http://www.gpo.gov/fdsys/pkg/FR-2013-12-04/pdf/2013-28338.pdf>.

<sup>21</sup> USDA, APHIS, About APHIS (noting that APHIS’s “aggressive approach has enabled APHIS to successfully prevent and respond to potential pest and disease threats to U.S. agriculture”).

<sup>22</sup> See, e.g., APHIS, *Facts About Brucellosis*, at 1, [http://www.aphis.usda.gov/animal\\_health/animal\\_diseases/brucellosis/downloads/bruc-facts.pdf](http://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/bruc-facts.pdf) (noting that brucellosis “can spread rapidly and be transmitted to humans”); APHIS Veterinary Services, Factsheet: Foot-and-Mouth Disease (July 2013), at [http://www.aphis.usda.gov/publications/animal\\_health/2013/fs\\_fmd\\_general.pdf](http://www.aphis.usda.gov/publications/animal_health/2013/fs_fmd_general.pdf) (noting that foot-and-mouth disease “can spread quickly”).

<sup>23</sup> USDA, APHIS, Dairy Heifer Raiser, 2011: An Overview of Operations That Specialize in Raising Dairy Heifers, at 17 (Oct. 2012), [http://www.aphis.usda.gov/animal\\_health/nahms/dairy/downloads/dairyheifer11/HeiferRaiser.pdf](http://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairyheifer11/HeiferRaiser.pdf) (emphasis added).

<sup>24</sup> *Id.*

<sup>25</sup> FAO, Manual on the Preparation of National Animal Disease Emergency Preparedness Plans, at Chapter 4.

<sup>26</sup> See 80 Fed. Reg. at 9.

as documented inhumane conditions in livestock markets have revealed egregious instances of the inhumane treatment of farmed animals, particularly downed farmed animals, who are frequently subjected to violent physical abuses<sup>27</sup> in an attempt to make them stand or walk and are commonly left unattended for days without food, water, protection from the elements, or veterinary care.<sup>28</sup>

While federal law does not regulate the treatment of farm animals at livestock markets,<sup>29</sup> abuse and neglect of farm animals may still violate state anti-cruelty laws.<sup>30</sup> Indeed, in some states, veterinarians are under a legal duty in to ensure that animals in need of medical care receive it; for example, in New York State veterinarians are prohibited from “abandoning or neglecting an animal patient under and in need of immediate care, without making reasonable arrangements for the continuation of such care.”<sup>31</sup>

In order to provide for the humane treatment of animals at livestock markets, the presence of an accredited veterinarian or State or APHIS representative on all sale days is essential. Removing the limited protections farmed animals may have by virtue of the presence of such personnel at livestock markets will only facilitate the abuse and neglect of animals.

\* \* \*

For the above reasons, the Committee opposes the Proposed Changes and urges APHIS reject them.

---

<sup>27</sup> In December 2014, for example, four livestock auction workers were convicted of animal abuse following an undercover investigation in which they were shown punching, kicking, beating and dragging animals at a Mississippi livestock market. See *Livestock Auction Workers Convicted of Animal Cruelty Following Undercover Investigation by Mercy For Animals*, PRNewswire.com (Dec. 17, 2014), at <http://www.prnewswire.com/news-releases/livestock-auction-workers-convicted-of-animal-cruelty-following-undercover-investigation-by-mercy-for-animals-300011496.html> (“animals being beaten with rods; hot shotted; gratuitously beating animals who are already moving down an alleyway; picking them up and dragging by the tail”). In July 2014, the owner of a livestock auction in California was convicted of animal cruelty for allowing downed animals to be beaten and dragged. *Livestock Auction Owner Convicted of Animal Cruelty Following MFA Investigation*, Mercy for Animals, July 28, 2014, <http://www.mfablog.org/livestock-auction-owner-convicted-of-animal-cruelty-following-mfa-investigation>; see also *Livestock house video draws animal cruelty charges*, Associated Press, May 30, 2012, <http://www.foxnews.com/us/2012/05/30/ap-exclusive-video-draws-animal-cruelty-charges/> (video showing workers “kicking and stomping on pigs to get them to move through a narrow chute, hitting emus with a baton and slinging baby goats by the neck and hind legs. In one shot, two workers drag a sick sheep that can’t walk by its ears and heave it into the back of a van.”).

<sup>28</sup> *Id.*

<sup>29</sup> We note that no federal law addresses the treatment of farm animals prior to transport and slaughter. The Animal Welfare Act expressly excludes farm animals from its protections (7 U.S.C. § 2132(g) (2006) (definition of “animal” excludes “farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber”); The Twenty-Eight Hour Law (49 U.S.C § 80502) solely addresses the treatment of farm animals being transported across state lines; The Humane Methods of Slaughter Act (7 U.S.C. § 1901 *et seq.*) only regulates the handling of animals at the time of slaughter.

<sup>30</sup> See, e.g., Jeff Daley, *Mississippi Livestock Auction Workers Face Abuse Charges*, WDAM.com (Jun. 24, 2014), at <http://www.wdam.com/story/25857988/mississippi-livestock-auction-workers-face-abuse-charges> (mentioning charges under Mississippi’s anti-cruelty law).

<sup>31</sup> 8 NYCRR § 29.6; see also Cal. Code Regs. tit. 16, § 302 (requiring the delivery of veterinary care by California licensees to be provided in a humane manner).

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Mott".

Christine Mott  
Chair, Committee on Animal Law