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August 31, 2006

TO: Vermont Agency of Agriculture

FR: Amy Shollenberger, Director  
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RE: Premises Registration Rulemaking

Please accept the comments below on the Premises Registration Rulemaking.

First and foremost, we would like to request that this rulemaking be stopped completely and that the Vermont Premises Registration Program plan be ended. We are opposed to any government run program that seeks to identify all premises with livestock or all animals individually. We request that the Agency of Agriculture instead pursue an aggressive strategy to work with Vermont's family farmers to share information about contagious animal disease and the appropriate response if a farmer suspects an animal has a disease, as well as to create a secure and self-reliant local food system in the state of Vermont.

The Agency has been clear that this program is a response program, not a prevention program. The information sessions indicated that this program will not stop contagious animal disease from entering the state. Rural Vermont requests that the Agency focus its financial, staff and time resources on prevention programs rather than reactive programs.

In addition, the Economic Impact Statement submitted with the rule appears to be incomplete. The statement indicates that there will be no significant economic impact to the state, but even a cursory reading of this draft rule shows that this system will be costly and staff resource intensive. In addition, the fact that dozens of people have indicated they would give up their animals or stop processing meat will surely have an impact on the local food economy.

In addition to these general comments and request, we have the following specific comments on the draft rule:

Sec. I (definitions), (11) – “Confidential Information” – as the Agency has noted, both in the information sessions held in August and in various press articles, the Agency cannot guarantee that information will be secure from Freedom of Information Act requests. Therefore, the Agency should stop the development of this program.

(20) – “Keep Livestock” – this definition is so broad that it burdens many Vermonters with the responsibility of ensuring that a premises are registered. Your draft rule states, “‘Keep Livestock’ means to own, feed, house, confine or care for livestock, or to exercise legal or physical control over livestock.” This definition technically could include a friend or neighbor who helps out during lambing season or feeds animals while the owner is away for the weekend. It could include workers on a farm or at a horse boarding facility. It could include someone who rents land to a farmer or horse owner for pasture. It could include a summer intern. It may or may not be the land owner or the animal owner. According to the rule, anyone who keeps livestock according to this definition “at a location in this state needs to register that premises with the Vermont Agency of Agriculture, Food and Markets (VAAFMM) premises registration system....” (Sec. II, (1)) There are no provisions for notification of animal- or land-owners, regardless of who registers the premises. In addition, there are fines of up to \$1000 for people who are required to register and who refuse to register. These people may be workers who have been told they could lose their jobs if they register the premises. This is an unacceptable situation and we request that the whole system be stopped.

Further, it seems that anytime a person will be “keeping livestock” at a location in the state, they will need to ensure that location is registered. Thus, anyone who brings an animal to the statehouse lawn for Dairy Day or another event would have to ensure that the statehouse lawn is registered. This may be a technical point, but the way the draft rule is written it is difficult to see how this would not be true. Is it true?

## Sec. II – Livestock Premises; Registration Required

Subsection (2) in this section discusses “Who Must Register.” The process for dealing with a situation where two or more people try to register a premises seems overly-bureaucratic, time consuming, and unwieldy. The fact that a land- or animal-owner will not be automatically notified if their premises is registered seems to indicate that there could be multiple incidents of more than one person trying to register a single location, thus over-burdening the system. It also means that a land owner who does not want the premises registered may not even know that the location is registered because someone else has the responsibility to ensure that it is registered. It is also unacceptable that the only way a land- or animal-owner can find out if his location is registered is to try and register themselves.

In Subsection (3)iii, there is a typographical error. The reference to 6 VSA 3902 is incorrect. There is no such section. I believe it should be 20 VSA 3901/3902.

In Subsection (3)viii, the draft rule states that “A rendering establishment, animal food processing establishment or grease processing establishment...shall include, in a registration, any transfer station or other locations at which the operator collects livestock carcasses for transfer to a rendering or processing location.” This section could have significant economic and food security impacts on local communities. Putting the burden on these operations to list farms or homesteads where they are picking up carcasses is unacceptable, as the farmers or homesteaders may be choosing to be in noncompliance (many have stated publicly that this is their plan). An operator who is serving these farms and homesteads as customers faces the choice of losing

customers or being out of compliance himself. Neither choice is a palatable one, and some operators have said they would simply close down rather than make the choice.

Subsection (5) – Information Required – Again, in this section, it is clear that the “registrant” – i.e., the person who is filling out the registration form – may or may not be the land- or animal-owner. This person is thus providing an address that may or may not be his, as well as contact information for “at least one individual who has knowledge of livestock and livestock carcass movements to and from every location included in the premises.” There is no requirement for this person (with the knowledge of animal movements) to approve having their contact information listed, and the person may not even know that they may be expected to provide information about livestock movements to the Agency at some point. Also, there is no clear requirement for record-keeping, so at best the Agency will be relying on this person’s memory in the event of a disease outbreak. Rural Vermont does not support a requirement for this level of record-keeping.

Subsection (7)c – This section states, “A registration certificate covers the primary location and all secondary locations identified in the approved registration application, regardless of whether the certificate includes descriptions of all of those locations.” This statement is confusing. Please answer the following questions: Why wouldn’t a registration certificate list all locations that it includes? How would a person who has registered and listed several locations prove that the locations are registered if he is challenged by the Agency? Where will these records be kept? How can a person change secondary locations, e.g., if he is renting land and his situation changes?

This last question in fact leads to another – how can anyone change information at any time other than the two year renewal time? This is a fatal flaw in the system. Land situations change often. Some people who will be required to register may only have animals for part of one year, if they are raising turkeys for Thanksgiving, for instance. What will these people do if the Agency comes to their property and insists that they produce their animals, if in fact, those animals are not there anymore? Rural Vermont wants to be clear that we do not recommend requiring reporting every time animals are moved. We just want to show that the system as proposed cannot possibly accomplish the goal that the Agency has stated, of knowing where all the animals are in the state. The Secretary of Agriculture himself has pointed out numerous times that livestock moves with great frequency. This fact, coupled with a dozens of people indicating on the record that they will not comply with the program, shows that the program cannot work. In addition, as many people pointed out in the hearings, the vast numbers of wild turkeys, geese, ducks, deer, etc, in the state make the program seem like a futile attempt at controlling the spread of the diseases as described in the information sessions. Further, the plan to “depopulate” livestock that may be from closed herds or closed flocks and may have been bred for many generations locally could remove any possibility of having animals who are naturally resistant to whatever diseases is apparently threatening them.

Subsection (9) – Enforcement

This section indicates a maximum \$1000 fine for noncompliance with this rule, if it is finalized. However, because “violation” is not defined, it is unclear whether 6 VSA 15(c) applies, which states that the real maximum fine is \$25,000. Regardless, a \$1000 fine for someone who owns

one chicken or a single goat seems excessive. The Agency has stated that they do not wish to fine anyone, and that the maximum fine would not be their first strategy. However, without the definition of violation, and without a clear indication that this is indeed the Agency's intent, it remains the fact that a person who "keeps" a single chicken could be fined \$1000 for noncompliance (or possibly \$25,000).

During two of the information sessions in August, Assistant Attorney General Michael Duane stated, in response to questioning that it was his opinion (not official) that if a person paid the \$1000 fine once in a lifetime, that person could no longer be enforced upon for noncompliance with the system. A further question, "So, a person could opt out of the Premises Registration system for \$1000," yielded an answer of "yes." Is this true? If so, how could the system possibly work, given that so many people have indicated that they will not comply? If not, what is the answer? Also, if the answer is indeed yes, is this also true for fairs, livestock dealers and transporters, animal processing facilities, etc.? If not, why not?

### Sec. III – Confidential Information

Subsection (3) – Authorized Disclosure – Given the Agency's decision to put the rulemaking on hold because of concerns over confidentiality, this section seems to provide some pretty serious loopholes in the requirement to hold the information confidential. First, subsection (3)a states that the Agency can share the information with "A person to whom the registrant authorizes disclosure." As stated above, the "registrant" is simply the person who fills out the form registering the premises. This person may or may not be the land- or animal-owner. However, this person has the authority to authorize disclosure of the information. This seems at best unfair.

Subsection (3)b states clearly that the Agency can disclose information to APHIS. In the information session presentations it was clarified that this meant that the information collected by the Vermont Agency of Agriculture would be sent to the USDA's National Animal Identification System (NAIS) database. Even without the confidentiality issues raised, this process is unacceptable, as it automatically puts Vermonters into the NAIS system without their permission. The NAIS program is not mandatory, and thus it is unacceptable for a Vermonter to be registered without their express permission.

Subsection (3)c indicates that the Agency can disclose information to a contract agent. The draft rule does not clarify what duties the contract agents will be performing. Contract Agents are not directly accountable to the people of Vermont, and thus should not be allowed to have "confidential" information.

Subsection (3)d is perhaps the most egregious loophole. This paragraph states that the Agency can disclose "confidential" information "...to the public, if the agency believes that the release is necessary to prevent or control disease, to enforce laws under its jurisdiction, or to protect public health, safety or welfare." [emphasis added] This is a very low bar for public release of supposedly confidential information. The Agency cannot be held accountable in any way for a release that hurts a specific farm, the agricultural industry, or a sector of this industry because they can simply say that they believed it was necessary. There is no burden of proof for the Agency and no recourse for the farmer or homesteader whose information has been released.

#### Sec. IV – Contract Agent

Subsection (1) – General – as stated above, this section does not clarify what activities the contract agent is limited to. In fact, the subsection gives the Agency broad discretion with the phrase “perform other functions.” This could mean that a contract agent could be hired to “depopulate” farms in a “kill zone.”

#### Sec. V – Receiving Livestock from Unregistered Locations

Besides being very confusing, this section seems completely unnecessary. If the Agency intends to refrain from prohibiting the acceptance of animals from unregistered locations until the stipulations outlined in subsection (2) occur, then the Agency should simply remain silent on this point until these events occur. The way this section is written seems to indicate an intent on the part of the Agency to create a culture of mistrust, surveillance and self-policing. This situation is exactly the opposite of what is needed to combat contagious animal diseases. Instead of creating a system of data collection, surveillance and self-policing, the agency should work to build a strong local food system, which would lead to stronger communities, where community members know where livestock are kept because the farms and homesteads are part of the community fabric. This program will further erode Vermont’s culture of interdependence and neighborliness. Please end this program and do not move forward with any system of Premises Registration or Animal Identification.