

Fact Sheet

America's ranchers care deeply about protecting the U.S. cattle herd from the introduction and spread of foreign animal diseases and pests.

America's ranchers have worked with their State, Tribal and Federal government for over a century to control and eradicate disease introduction and spread, not only in their own livestock herds, but in wildlife populations as well.

The United States' ability to eradicate and control diseases is the envy of the world, as many other countries continue to be plagued with pernicious animal diseases, some of which can be transferable to humans.

The reason for the United States' exemplary reputation for disease eradication and control is that America's ranchers have adopted a wide range of permanent animal identification methods that aid in identifying and tracking disease suspects.

This wide-range of animal identification methods, most of which are implemented voluntarily by America's ranchers, include hot-iron brands, freeze brands, tattoos, ear notches, dewlap notches, dewlap tags, plastic eartags, metal eartags, electronic eartags, backtags, descriptive bills of sales, traceable animal health certificates, and auction yard records.

Using these various animal identification methods, State, Tribal, and Federal animal health officials have successfully controlled or eradicated many of these diseases in the United States, including foot-and-mouth disease (FMD), brucellosis, bovine TB, mad cow disease or BSE, and Mexican fever tick, to name just a few.

To augment the United States' already exemplary capacity to trace-back animal disease suspects, the Federal government in 2013 began requiring adult cattle transported across State lines or Tribal boundaries to have some sort of official animal identification.

America's ranchers worked with the Federal government to ensure that all or most of the animal identification methods currently in use would be designated as "official" forms of identification. The Federal government agreed, and America's ranchers are now complying with this Federal mandate.

But, in April 2019, the Federal government reneged on its promise to allow America's ranchers to continue using the variety of identification methods they are lawfully using to comply with the Federal government's interstate identification requirements.

The Federal government, through the U.S. Department of Agriculture (USDA) and the Animal and Plant Health Inspection Service (APHIS), declared that beginning January 1, 2023, all adult cattle crossing State lines or Tribal boundaries must be identified with the most onerous, burdensome, expensive, disruptive, and complicated method of animal identification and traceability currently available. That method is radio frequency identification (RFID) that requires costly RFID eartags, RFID eartag application tools, electronic wands by which to read RFID eartags, a myriad of other computer hardware and software with which to record and monitor animal movements, particular and expensive cattle-handling equipment not currently in

use on many ranches, and the requirement that America's ranchers register with the government their headquarters and other premises where their livestock are raised.

The USDA's and APHIS' action is a blatant example of unlawful abuse of power and unlawful government overreach.

These Federal agencies do not have the legal or statutory authority to do what they have done here. The 2013 regulations were developed over a matter of years and went through what is known as "notice-and-comment rulemaking." This process ensures that the public – and most importantly the regulated industry – have an opportunity to participate, attend meetings, submit comments, and otherwise have input into the decision-making process. The agencies failed to do this.

The agencies refused to follow the notice-and-comment process for the 2019 mandate – they just issued a two-page "Factsheet" ordering eartag manufacturers to phase out the production of anything other than an RFID eartag, and declared that all other forms of animal identification would no longer be recognized.

The agencies, in other words, are trying to substitute what amounts to a press release for a properly adopted rule. They know they can't do this, and have conceded as much on several occasions. They have admitted that they can't impose animal traceability without formal rules. They have acknowledged that forcing producers to use an RFID eartag is most likely a "taking" of private property. They recognize that America's ranchers are opposed to jumping through hoops and filling out reams of paperwork to register their property with the government.

Before issuing mandates that will impose significant compliance costs on citizens, these agencies are required by law to conduct an economic cost/benefit analysis to determine if the costs justify an agency's proposal. These agencies failed to do this.

Before issuing regulations that impose new requirements on U.S. citizens these agencies are required by law to notify Congress of its proposal. These agencies failed to do this.

When relying on non-governmental groups to formulate new rules these agencies are required by law to include diverse interests on such committees and provide the public with notice as to when such groups were meeting and what they discussed. These agencies failed to do this.

Instead, acting to benefit the special interests of certain industry segments within the U.S. livestock industry, these agencies developed and implemented the RFID-only mandate based on the input of only those individuals and groups who are proponents of the use of such eartags, including eartag manufacturing companies that stand to financially benefit from this mandate.

These agencies are also imposing a significant financial disadvantage on independent ranchers in States that do not have packing plants (those States in which all cattle must eventually cross State or Tribal boundaries to reach the market), because all adult cattle originating in those States eventually would be required to be RFID identified. Those ranchers in States with one or more packing plants are not burdened with the costs associated with the RFID mandate because their cattle may never need to cross State lines.

Importantly, the 2013 regulation expressly prohibits States and Tribes from mandating RFID eartags as the sole means of animal identification. These agencies have therefore violated their own regulations by mandating that States and Tribes now accept RFID eartags as the sole means of official animal identification.

These agencies have unlawfully undermined their own laws, have unlawfully undone the key provisions in the 2013 regulation that provided for the use of a variety of effective, and reasonably-cost identification methods, and have unlawfully burdened America's cattle ranchers. They have undertaken to substantially disrupt and destabilize the identification programs used by thousands of ranchers across the country, all without explaining why RFID-only eartags are needed for America to continue to carry out its ability to effectively prevent the introduction and spread of foreign animal diseases.