

**COMMENTS ON APHIS
PROPOSAL TO MAKE RFID TAGS OFFICIAL ID
FOR LIVESTOCK MOVING INTERSTATE
Document ID: APHIS-2020-0022-0001
Federal Register NUMBER 2020-14463
July 6, 2020**

Submitter: H. Jay Platt

Organization: Platt Cattle Company, LLC

Address: P. O. Box 426, St. Johns, AZ 85936

Summary: We urge the rejection of RFID tags as official ID for interstate movement of cattle as i) USDA has no statutory authority to mandate the use of such tags; ii) USDA has failed to consider the costs of the proposed tags are an unauthorized attempt to implement OIE codes and standards; iii) USDA has never demonstrated a need for traceability and RFID tags; iv) the proposed rule does not adequately identify the costs; v) enforcement provisions are unknown; vi) the potential liabilities created under the rule are unknown; vii) there is no producer support for traceability and RFID tags, and viii) brands should be an officially recognized ID method.

Background: Platt Cattle is a large, family-owned and operated cow/calf ranch operation owning and leasing ranches in Arizona and New Mexico. The operations are conducted by myself and two sons who are the 4th generation to be involved in our ranching business. All cattle are identified by means of a hot brand registered in both states wherein we operate. Our operation straddles the Arizona/New Mexico state line, much of which is unfenced.

Introduction: Noted economist Thomas Sowell, senior fellow at Stanford University's Hoover Institution, was asked in an interview whether he testified in congressional hearings. He answered that he did at one time; however, he no longer did so as such hearings were a mere formality—the committees already had their minds made up.

Such is the case with USDA/APHIS. The RFID/official ID mandate has its genesis in NAIS. Following its “listening sessions,” USDA acknowledged that “the vast majority of...participants and commenters were highly critical of the program and of USDA’s implementation efforts.” (Federal Register Vol. 76, No. 155, August 11, 2011, p. 50083.)

Premises registration—a key to the RFID tag mandate, was similarly resisted by producers. USDA spent over \$140 million in an effort to promote premises registration and in many states, participation was less than 10%.

Notwithstanding producer rejection of NAIS, Traceability, premises registration and RFID tags as official ID, USDA/NAIS continues to force the scheme onto producers.

Commenting on RFID tags as the official ID to move animals interstate, makes one feel that one is legitimizing an illegitimate process. USDA/APHIS has demonstrated no regard for producer input. It will go through the motions of affording “due process” to producers with a comment

period and proceed with its predetermined course of action notwithstanding what will again be producer opposition.

1. USDA is an administrative agency and the proposed RFID official ID mandate transcends statutory authority.

USDA cites the Animal Health Protection Act as authority for its RFID mandate. Nothing in the Act, however, provides support for such an assertion.

7 USC 8305, Interstate Movement, provides simply that USDA may prohibit or restrict interstate movement if “necessary **to prevent the introduction or dissemination** of any pest or disease of livestock.” (Emphasis added.) USDA has acknowledged that “[t]**raceability does not prevent disease.**” (Emphasis added, *Federal Register*, Vol. 76, No. 155, Thursday, August 11, 2011, p. 50082.) (Emphasis added.)

Had Congress intended that there be an official animal ID scheme as a condition of interstate movement of cattle, it could have so stated. It did not. USDA/APHIS is making law, not merely putting flesh on something Congress authorized but failed to provide specific details. There is clearly no authority for USDA to mandate the use of RFID tags as a condition to the movement of cattle interstate.

7 USC 8308(a), Animal Disease Prevention and Management, provides no authority for traceability, premises registration nor a mandated official RFID tag for interstate movement.

Paragraph (b) authorizes a National Animal Disease Preparedness and Response Program. The elements of the program are set forth in subparagraphs (b)(2)(A) thru (H). No mention is made of a traceability scheme, premises registration nor official RFID tags as a condition of moving livestock interstate.

What is authorized are things such as “enhancing animal pest and disease analysis and surveillance;” expanded outreach and education; and “targeting domestic inspection activities.” Absolutely nothing authorizes a mandated RFID tag as a condition of moving cattle interstate.

7 USC 8308(a), Detection, Control and Eradication of Diseases, likewise provides no authorization for USDA’s mandated RFID tags. Instead it authorizes “operations and measures to detect, control, or eradicate” livestock pests or diseases and then lists the types of authorized operations as “including the drawing of blood and diagnostic testing of animals, including animals at a slaughterhouse, stockyard or other point of concentration.”

In short, 7 USC 8308 authorizes certain types of overt actions by USDA. It does not authorize USDA to mandate the overt act on the part of cattle producers of placing an RFID tag on cattle prior to interstate movement and register their “premises” as part of USDA’s scheme.

2. The Notice Document is misleading and sets forth a false narrative.

USDA's official Notice Document, <https://www.regulations.gov/document?D=APHIS-2020-0022-0001>, while noting that the RFID tags will not "prevent disease epidemics," asserts that they will be an aid in traceback which will allow USDA to prevent "substantial damage to the U.S. cattle industry."

This is most curious. The entire burden of the RFID tags falls upon a single segment of the "U.S. cattle industry"-- cattle producers, the folks who actually own cattle. These are the people who have consistently opposed--and continue to oppose--USDA's official ID and premises registration.

There is a salient reason for that opposition: RFID tags and premises registration are not needed. USDA's notice cites two diseases to justify its scheme: TB and foot-and-mouth.

USDA's 2019 National Bovine Tuberculosis Eradication Program Update noted that "the incidence of new cases of TB in the US is low, and relatively stable, since 1990." It also stated that from 2001 - 2019, fed cattle slaughter surveillance showed 75% of positive cases to be of Mexican origin.

https://www.usaha.org/upload/Committee/CattleBison/Ahola_TB_Update_2019.pdf

2020 imports of Mexican feeder cattle are on track to exceed 1.3 million head--January through June numbers totaled 745,000 head, a 4% increase over the same period for 2019.

USDA's own information gives rise to two questions: i) why force a mandatory RFID official ID tag on producers when TB is not a problem and ii) why continue to import the primary source, that being Mexican cattle?

Were USDA serious about TB eradication, it would cease Mexican imports. Instead, its policy is one of managing the disease following importation from Mexico. USDA would place the entire cost and burden of its RFID ID scheme on American producers when we are not the problem.

The second disease in the Notice Document is foot-and-mouth disease. This country has not had a FMD case since 1929. The policy of border interdiction has served this nation well.

Now, USDA has regionalized countries in South America--which are not FMD free, thereby changing protocols that have prevented a FMD outbreak in this country for over 90 years--in order to facilitate South American imports.

Again, USDA has placed the entire cost and burden of its RFID scheme on American producers. It seeks to manage a FMD outbreak rather than prevent one. It burdens American producers in order to benefit foreign producers.

Then there is the matter of the relocation of the Plum Island facility to the heart of America, Manhattan, Kansas.

There will likely be an outbreak of FMD in this country but the source a facility “leak” as was the case in Surrey, England, or it will come across our border which USDA refuses to secure. Managing FMD will not be done, however, with RFID eartags.

The Canadian Veterinarian Journal, Vol. 50, January, 2009, contained a 60-page report on the containment of England’s 2001 FMD outbreak. England has long had an animal ID system; however, that system and “traceback” was not the key to FMD containment in 2001.

The 2001 FMD outbreak was handled by throwing up perimeters and then, with locals, working in from the perimeter. Similarly, states have existing plans for handling emergencies which would include a FMD outbreak. Such an outbreak would be handled as it was in England: a perimeter would be established with no movement inside the perimeter as the necessary epidemiology work would then be done from the perimeter inward.

Animal ID was not utilized to contain the 2001 FMD outbreak in the UK; was of no benefit in Korea during its outbreak, nor would it be of any meaningful benefit were this nation to suffer an outbreak. Further, it would not identify vehicles and individuals who have been in contact with contaminated herds; hence, the establishment of a perimeter with work then directed inward.

3. RFID tags will not resolve the issue of cohorts nor the closely related questions of liability.

A premises ID is central to the RFID tags, giving rise to the question of what presumptions are created by an official RFID tag? USDA states that traceability requires that it “trace to more than the birth premises, *i.e.*, to other premises where the animal has been after leaving the birth premises but before going to slaughter.” *Federal Register*, Vol. 76, No. 155, Thursday, August 11, 2011, 500982. This would seem to suggest that the birth premises become the starting point.

From there, traceability presents the issue of cohorts: “[o]ur ability to monitor, control, and eradicate livestock diseases is contingent upon our being able to trace livestock movements forward and backward.” *Id.*, p. 50093. If an animal turns up with a disease some time after leaving its birth location, does the ID create a presumption that the disease source is the birth location?

For example, we sell calves at Torrington Livestock Auction in Wyoming. Suppose some of our calves are purchased by farmer-feeder who winters the calves on stalks and feedstuffs where they are commingled with calves from other sources.

After wintering the calves, the farmer-feeder sells them to a grass operator who commingles the calves with several thousand calves from many additional sources.

At the end of his grazing season, the grass operator sells the now yearlings to a feeder who sorts the calves and commingles them with calves from still more sources as they are placed on feed.

When finished, the yearlings go to slaughter and suppose one of our calves tests positive for TB. As the birth premises, do we become the first location USDA traces to? Will we be required to test our entire cow herd for TB to rebut the presumption that as the birth premises, we are the source of the TB? Who bears the cost of the labor and feed during the testing period and the re-testing of false positives?

Following testing and a clean bill of health, what of the damage to our operation's reputation in the livestock community, having been descended upon by USDA in a TB investigation? Then what of all the thousands of cohorts for the calf and scores of birth premises for those cohorts—will USDA trace each of them and require testing?

If Nebraska is any example, the answer is yes to the foregoing questions. In Nebraska, USDA tested some 18,000 head of cattle, the result of a TB bearing Mexican roping steer.

We experienced a shutdown in New Mexico a number of years ago due to a TB outbreak in an eastern New Mexico dairy where heifers had been commingled with Mexican corriente roping steers. Just over the border, 15 miles from the outbreak, Texas was not required to test. Some 335 miles away in western New Mexico, we were totally shutdown. We are not a high risk herd yet, we were required to test.

USDA, in its own 2006 TB report noted that **“APHIS was under utilizing...high risk herds” as a tool to “target testing to questionable areas.”** (Audit Report, Animal and Plant Health Inspection Service's Control Over the Bovine Tuberculosis Program, U.S. Department of Agriculture, Report No. 50601-0009-Ch, September, 2006, p. 22, emphasis added.)

USDA complains that without traceability and an official RFID tag, it can take up to 150 days to do a TB investigation. With the problems associated with cohorts and APHIS' refusal to target high risk herds, traceability would not shorten the investigative period. The exercise of a little common sense would. The potential liabilities and costs associated with traceability are an unknown which USDA has never addressed.

4. USDA has no idea as to the costs associated with its mandatory RFID tags.

USDA blithely dismisses costs of RFID tags. First, it asserts its information provides no reason to conclude “any significant economic effect on a substantial number of small entities;” however, the next sentence admits that it lacks “the data necessary” to support the conclusion it has just made! *Federal Register*, Vol. 76, No. 155, Thursday, August 11, 2011, p. 50096.

USDA ignores the costs to distribute RFID tags, collect and maintain information on the persons to whom tags were distributed; and collect, maintain, manage, store and retrieve the data on identified cattle as they are moved.

Those costs will include additional personnel, and all required devices to store, maintain, and retrieve the data. All such data must be stored for a five-year period and all associated costs, whether incurred by a veterinarian, livestock facility, or a state, will ultimately be passed on to the producer.

Secondly, USDA ignores the cost of “official” tags bearing the required emblem and the cost of replacing existing tag systems with the “official” tags; the cost of equipment to read tags; the cost to configure corrals and handling facilities to be able to read and collect the ID information; and costs associated with technology problems when tags are not read.

USDA has no conception of how we operate, our corral facilities, heat, cold, dust, dry weather and wet weather, all of which will affect the ability to scan tags and upload data. Reliable internet services in most rural areas is lacking.

Then there are the issues of lost, broken and faded tags coupled with the potential for theft, removal and replacement of tags.

As noted at the outset, we ranch in two states and use a hot brand which is recorded in both states. The hot brand is never lost, does not fade, requires no equipment to scan and upload and is a good theft deterrent. It is easy to apply, requires no special equipment, is inexpensive and requires no corral configuration.

If USDA ignores producer comments and makes RFID tags an official ID, the hot brand should nevertheless be permitted as an official ID. When cattle go from a brand jurisdiction to a non-brand jurisdiction, the purchaser should be responsible for ear tagging the cattle in a manner acceptable to the non-brand jurisdiction.

USDA is statutorily charged with the economic well-being of rural America. Instead, it adds to our cost of doing business while having us compete globally.

To use C.S. Lewis, USDA would castrate and bid the gelding be fruitful.