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March 6, 2024

The Honorable Richard Revesz
Administrator
Office of Information and Regulatory Affairs

Re: 88 FR 3320 Use of Electronic Identification Eartags as Official Identification in Cattle and
Bison

Dear Administrator Revesz,

Pending review in the final stage before the Office of Information and Regulatory Affairs (OIRA) is a proposed rule issued by the Animal and Plant Health Inspection Service (“APHIS” or “Agency”) 88 FR 3320 titled *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison*. As Wyoming’s lone Congressional representative, I urge OIRA not to finalize this proposed rule based on both substantive and procedural grounds. In short, APHIS’s proposed rule to force our cattle and bison producers to use electronic identification (EID) eartags is both bad policy and violative of accepted regulatory practices and procedure.

I. Summary

Despite overwhelming opposition to such efforts, APHIS has been attempting to force cattle and bison producers to use EID eartags since at least 2011. Its current proposed rule to effectuate that agenda is a solution in search of a problem. The American cattle and bison industries produce the healthiest livestock, as well as the highest quality and safest meat in the world, and are already capable of quickly identifying, tracking, and responding to animal disease outbreaks, which is one of the reasons that such events are quite rare. Industry opposition to APHIS’s EID mandate has remained strong for numerous reasons, including the fact that such a rule is unnecessary, would be cost prohibitive for many of our producers, represents an unfunded federal mandate, raises several privacy and surveillance concerns for ranchers, threatens to further vertically integrate our food supply chain, and will have a substantial impact on tribal communities.

It is also apparent that APHIS’s proposed rule has not gone through the proper regulatory review as outlined in numerous executive orders. For example, it lacks the required federalism review, despite being designed to preempt state laws; and lacks a true and accurate economic analysis, despite representing a significant unfunded mandate on private industry, with many livestock producers being small, independent businesses.

II. Policy Concerns

Flawed Argument of Necessity

APHIS's rationale for its proposed rule is both flawed and contradictory. APHIS ignores the care and expertise with which our livestock producers raise their cattle and bison, with U.S. herds being better tended, managed, and healthier than those raised elsewhere. APHIS also ignores the fact that U.S. produced beef and bison is considered the highest quality in the world. Our livestock industry has already demonstrated that it is fully capable of taking care of our cattle and bison, while producing exceptionally high quality meat, all of which is happening without APHIS's intervention and imposition of mandates where none are needed.

As for the contradictions inherent in APHIS's proposed rule, the Agency states that the "ability to trace animals accurately and rapidly does not prevent disease epidemics" and that a proposed goal is to quickly respond to foreign animal diseases, even though "Foreign animal diseases such as FMD have been largely excluded from the United States."¹ In short, and according to APHIS itself, a mandatory EID rule does not work and is not necessary.

Individual livestock producers have and most likely will continue to adopt EID technology to the extent that it fits with their overall management and operational goals, but APHIS has no business in mandating that they do so. Whether to use EID eartags is and should continue to be a voluntary decision made by the ranchers.

Livestock producers are rightfully concerned about federal mandates crafted by Washington, D.C. bureaucrats who have little to no experience in their industry. APHIS's proposed rule suggests these concerns have merit. For example, it states that the current system is too difficult because "the animal must be physically restrained to allow the eartag number to be safely read and transcribed" or that it must "be cleaned before the number can accurately be read."² This does not reflect the reality of livestock management, which I should know as I grew up on a ranch in Wyoming, and we were easily able to read the dangle eartags on our cattle. To the extent that APHIS is referring to the metal "bangs tags," these are a form of identification that is very useful in the event of a disease traceback. As recently as last year metal bang tags detected and stopped a brucellosis outbreak in Wyoming, a success story for current traceability and the high quality of U.S. ranching.

Another contradiction in APHIS's rebuttal is apparent in its effort to downplay the cost of an EID mandate. According to APHIS, the new EID tags "are easily read visually and therefore could be used as they are currently using non-EID tags..."³ That is a rather strange point to make in light of APHIS's earlier claim (discussed above) that for the traditional eartags used now, "the animal must be physically restrained to allow the eartag number to be safely read and transcribed" or that it must "be cleaned before the number can accurately be read."⁴ Considering the disconnect between

¹ Animal and Plant Health Inspection Service, USDA. *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison*. 88 FR 3320. P. 3320

² *Ibid.* P. 3321

³ *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison*. P. 3322

⁴ *Ibid.* P. 3321

these two claims, APHIS is obviously saying whatever comes to mind to wave off opposition to its mandate, toggling back and forth from “you can’t read traditional eartags unless you put the livestock through the chute and clean their ears” to “EIDs are just as easy to read as traditional eartags so the cost is no big deal because ranchers can use the same techniques that they currently use.” APHIS simply cannot have it both ways. The fact that it seeks to do so confirms that it has failed to properly respond to and address the substantive comments that it received, failed to adequately address the objections that have been raised, and intends to ignore the actual cost of an EID mandate to ensure that it can be implemented.

It must also be noted that ranchers *have every incentive to use an effective means of identifying their livestock*. They want to know which cow, calf, steer, heifer, or bull belongs to them, just as much as they want to know which particular animal belongs to the neighbor. I have personally filed lawsuits against individuals who allowed their livestock to stray onto their neighbor’s rangeland. We have “brand inspectors,” whose sole responsibility is to confirm ownership and chain of custody. We use bills of sale, sale barns, and cattle buyers to ensure that the right owner is paid, and the correct buyer receives what he paid for. That APHIS has based its rule on the implication that ranchers are too simple to identify and manage their livestock is not only insulting but defied by the last 200 plus years of buying and selling, as well as the incredibly sophisticated and successful livestock market that has been developed.

APHIS also attempts to justify its heavy-handed EID mandate by claiming that “errors can occur while reading, transcribing, or entering the eartag number into a database.”⁵ APHIS thus underpins its proposed rule on the suggestion that typos will happen, as if ranchers are now incapable of managing the operations they have successfully run up to this point in time (often for generations) with *very limited* disease outbreaks in either our cattle or bison industries. APHIS, in other words, has created its own straw man (“the ranchers make mistakes”) without ever identifying the magnitude of this alleged problem and, more importantly, *connecting these alleged mistakes with disease outbreaks* in the cattle and bison industries. As significantly, APHIS has utterly failed to connect these alleged “mistakes” with a disease outbreak *for which traceability back to the ranch of origin was impossible because of a lack of EID eartag*.

APHIS then alleges that even if written down properly, “searching paper records for a visual eartag number can take days to weeks or longer.”⁶ While the Regulatory Impact Analysis cites a one year study comparing paper and electronic trace metrics, it does not provide enough data to quantify the time saved and fails to connect it with any actual disease outbreak or with a situation where a particular diseased animal was not timely traced back to its place of origin. This position also rests on the notion APHIS suggests throughout the entirety of the rule that ranchers and their operations are incapable of providing the high quality disease traceability they currently do without the mandate. APHIS’s fearmongering is thus just that – an effort to paint the most dire of circumstance possible, while sidestepping the fact that the situation it described has not actually occurred. The Agency’s time would be better spent on ensuring that it is not allowing for the importation of disease outbreaks (by limiting imports of livestock and meat from other countries) rather than attempting to financially break our domestic producers.

⁵ Ibid

⁶ Ibid

Finally, APHIS notes that it has changed its terminology for the mandated tags from being “radio-frequency identification” (“RFID” as used in the 2013 rule)⁷ to “electronic identification” in this new rule because “at some future time there may be other electronically readable technology.”⁸ APHIS is therefore mandating our livestock industry to invest in technology (eartags, readers/wands, software and hardware, computer equipment, corral and livestock handling upgrades, and expensive installations at sale barns and other centers where cattle and bison are sold at the speed of commerce) that will shortly be obsolete or that does not currently exist. Either choice is wildly inappropriate considering APHIS’s efforts to mandate compliance with an EID rule.

Mandates on the American Agriculture Community

The proposed rule amends existing Animal Disease Traceability (ADT) regulations to require eartags to “be both visually and electronically readable in order to be recognized for use as official eartags for interstate movement of cattle and bison.” In short, ranchers cannot move their livestock across state lines for any purpose without complying with the requirements under this proposed rule, which is a centralized mandate in its most simple terms. For those ranchers who have limited access to either feedlots or processing facilities, such as those in Wyoming and other high elevation more sparsely populated states, their livestock will most likely and inevitably cross state lines at some point during their life cycle. It is common, for example, for cow-calf operators in eastern Wyoming to ship their cattle to Nebraska, Kansas, or Texas for “finishing” and processing. Because our independent cattle producers in states such as Wyoming typically ship or sell their livestock across state lines, they will not have the option of opting out of the regulated activity.

In contrast, and as just one example of the unfair economic burden imposed by APHIS’s EID mandate, those producers who live in states that have an abundance of feedlots and processing facilities will most likely never be required to ship their livestock into interstate commerce, thereby allowing them to avoid APHIS’s EID mandate altogether. Such states are home to some of the largest cattle producers in the nation. This fact alone makes clear that APHIS’s EID mandate is not about disease identification and traceability, as it easily exempts some of the very largest cattle producers should they choose to operate intrastate only, and that such rule would never and could never have the desired outcome.

APHIS in fact admits that its “disease traceability” mandate exempts the vast majority of livestock in the country, thereby confirming that such mandate would be entirely ineffective if the goal is to ensure the quick traceability of a diseased animal. According to APHIS, “We would also note that animals that would not be impacted by the transition to EID constitute about 89 percent of the national herd of approximately 100 million cattle and bison. Animals not impacted would include animals that do not cross State lines or those already tagged with official EID, as well as animals exempted under the rule such as beef cattle and bison under the age of 18 months and animals going to slaughter or through an APHIS—approved marked and then to slaughter.”⁹ I do not believe that there could be a clearer admission that the rule is not necessary than to confirm that

⁷ Animal and Plant Health Inspection Service, USDA. *Traceability for Livestock Moving Interstate*. 9 CFR 86.

⁸ *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison*. P. P. 3323

⁹ *Ibid* P. 3323

the majority livestock would be exempt – including those animals that reside in confined animal feeding operations (feedlots) versus those on the open range.

APHIS's EID mandate is based on a false premise and fails to solve the problem for which it has ostensibly been proposed. OIRA should demand APHIS establish the foundation and purpose for the EID rule – and prove that it will actually enhance disease identification and traceability -- before it is allowed to be implemented.

Unaddressed Privacy and Surveillance Concerns

Government mandated tagging and tracking of cattle and bison raises several privacy and surveillance concerns, none of which have been addressed by APHIS. The proposal requires ranchers to maintain records for five years without any serious discussion, guarantees, or proposals for data security, or describing how such data could be used. Livestock producers are also rightfully concerned with whether these records could be subject to Freedom of Information Act requests, especially from anti-animal and anti-ranching groups who could obtain rancher and herd location information or target particular producers.

Having frozen out our cattle and bison producers from being involved with the development of a policy surrounding whether mandatory electronic identification is appropriate, and excluding those producers who have consistently pushed back and objected to APHIS's efforts, APHIS has now proposed a rule that is not ready for primetime, ignores the Agency's own 2013 findings and conclusions, and leaves huge holes where thoughtful policy should be. APHIS should be prohibited from pursuing any mandatory EID unless and until it can actually address these legitimate and important questions regarding privacy and protection of our livestock industry.

Threat of Further Vertical Integration of the Food Supply Chain

Our cattle and bison producers are the last of a vanishing breed in terms of independent operations producing high-quality food for the American consumer. While our pork and poultry industries have largely been vertically integrated, our independent ranchers have continued to produce the very best product at the very best price, while ensuring that our family farms and ranches continue to flourish, ensuring effective management of our range, water resources, and vegetation, while also providing an abundance of habitat, food resources, and protection for our wildlife.

There are now four companies who own over 80% of U.S beef processing in this country, and we do not want that number to be further reduced, but we also do not want additional consolidation of our independent ranchers who must sell out because of the dramatic costs associated with APHIS's mandatory EID.¹⁰ Our four beef processing companies and large retailers are already and aggressively purchasing ranching operations in an attempt to control the supply chain; seeking to control the entire life cycle from hoof to grocery shelves. These large conglomerates make up most of the operations who are currently implementing the use of EID tags, a business decision based on available capital, the size of their herds, and other factors. Small and independent cattlemen have largely made a different business decision based on their capital, herd sizes, concerns about the need for an EID mandate, and a refusal to overhandle their livestock to ensure that they are

¹⁰ Scott McFetridge, Unhappy with prices, ranchers look to build own meat plants, AP NEWS (Oct. 16, 2021).

chipped as mandated by the federal government. None of these smaller or independent producers should be locked out of interstate markets due to its refusal to comply with this mandate, especially when APHIS has not and cannot establish that its refusal has caused or will cause a disease outbreak or that such refusal will make it impossible to trace a diseased animal to its place of origin.

The four packers dominate the meat industry. They, along with the eartag manufacturing companies, have been clear, vocal, and aggressive about their support for an EID mandate. The packers seek to use agency capture to impose as many barriers as possible against our independent producers to further vertical integration. The eartag manufacturers, who were instrumental in APHIS's push for an EID mandate, want to make money, and forcing a captive audience to buy their product surely enhances the bottom line. The fact that APHIS has worked so closely with these two industry groups – to the exclusion of any independent producer who voiced opposition to an EID mandate – exposes these rulemaking efforts for what they are: a corporate industry-led effort to minimize competition, to undermine independent producers, and to force the use of a product as the admission fee of staying in the livestock industry. APHIS's proposed rulemaking is nothing more than industry groups using their power to force a bad policy change on the American public, and a further vertical integration of our food supply. It should be blocked until such time as APHIS can legitimately and comprehensively address all of the issues set forth above.

Harm to Tribal Buffalo Heritage and Economic Development

The InterTribal Buffalo Council (Council) supported my amendment to block APHIS's proposed rulemaking during the House of Representative's consideration of H.R.4368 - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act. The Council opposes APHIS's one-size-fits-all and heavy-handed mandate for the simple and fundamental reason that it does not work for tribal buffalo management. Tribes treat buffalo as wildlife, not livestock. Tribes often move buffalo back and forth across state lines in transport to other reservations to strengthen and improve the overall health of each individual herd or when receiving surplus buffalo from the National Parks Service. These animals are not eartagged and the tribes who are participating in raising and moving bison would have to shoulder the cost burden of an EID mandate. The Tribes' management techniques for their bison herds also means they do not have bison roundups or the equipment (such as expensive hydraulic chutes) necessary to implement a mandatory EID program.

III. Regulatory Process Concerns

I am concerned that APHIS either did not meet or only partially met regulatory standards and processes agencies are required to comply with in the rulemaking process.

Federalism Review

In order to "guarantee the division of governmental responsibilities between the national government and the States," Executive Order (EO) 13132 outlines principles and criteria agencies must adhere to during the rulemaking process.¹¹ While acknowledging some level of state, local,

¹¹ Executive Order 13132. Federalism. August 4, 1999. *Federal Register* Vol. 64, No. 153. P. 43255

and tribal coordination, APHIS fails to meet this standard as the proposed rule does not include a federalism review and provides little detail on the breadth of its consultation.

Notably, the EO states that “One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.”¹² The EO’s *Federalism Policymaking Criteria* states that federal action is warranted “in light of the presence of a problem of national significance.”¹³ Most notably, the EO *Consultation* requirements put in place restrictions on rules with significant cost burdens that preempt state law unless the agency “provides to the Director of the Office of Management and Budget a federalism summary impact statement...”¹⁴

On all accounts APHIS fails to meet this standard. A federal mandate is fundamentally a one-size-fits-all solution that inhibits policy at the state and local level which accomplishes traceability through brands, tattoos, and other livestock identification. APHIS fails to demonstrate a problem of national significance, unable to point to devastating disease outbreaks causing economic and health harms, and even acknowledging that foreign diseases have largely been eradicated while EID traceability does not prevent the outbreak of disease. Finally, APHIS states that the rule will preempt state and local laws and regulations, yet seemingly fails to provide a federalism summary impact statement.

At a minimum, APHIS should be required to undertake the appropriate federalism analysis before there is any consideration of whether the rule can be finalized and approved.

Cost Analysis

APHIS has at different times proposed varying cost estimates for animal disease traceability and EID implementation. These estimates vary wildly with little transparency as to how they were calculated, or leave out some of the critical components necessary for undertaking a total cost determination. Even though required to do such analyses, APHIS has either failed to meet this standard entirely, or not been transparent about how it calculated its costs, which means the regulated livestock industry is unable to fully predict the regulatory burden APHIS is trying to impose.

Although APHIS did not electronically provide a full economic analysis, it did provide a summarized cost estimate of \$26.1 million annually, a calculation based solely on the costs associated with the EID eartags themselves (at \$30.45 per tag per animal). There are numerous problems with this approach.

First, APHIS inadvertently admits that its cost estimate is not complete, actually justifying the new terminology of “EID” because “at some future time there may be other electronically readable technology.”¹⁵ The cost of future tags and their recurring costs cannot be calculated, which shows that such estimate is incomplete and inadequate.

¹² Ibid P. 43256

¹³ Ibid

¹⁴ Ibid. P. 43258

¹⁵ Ibid P. 3323

Second, the Agency explained in its 2017 Animal Disease Traceability Report that “APHIS views the inclusion of feeder cattle in the traceability regulations as an essential component of an effective traceability system in the long term.”¹⁶ This 2017 policy statement follows APHIS’s comments in the 2013 rule that feeder cattle will be included through a future, separate rulemaking.¹⁷ APHIS, in other words, sees the current rulemaking as just the beginning of an incremental approach to require EID for all livestock, regardless of age and situation. This alone shows that APHIS has wildly underestimated its EID mandate.

Third, the 2013 rule allowing other forms of animal identification for disease traceability was estimated to cost \$30.5 million annually.¹⁸ That cost estimate relates to an effort from eleven years ago to develop an identification and traceability program that was cost-effective, easily implemented, and involved using traditional techniques that were already well imbedded in the industry (branding, tattoos, backtags, eartags). During that rulemaking, APHIS acknowledged that the estimated cost of a comprehensive EID program was between \$1.2 and \$ 1.9 billion dollars, a number testified to before the U.S. International Trade Commission and a number that APHIS did not dispute.¹⁹ It is unclear how APHIS has been able to calculate a wildly lower cost of implementation and compliance despite the fact that the Agency is proposing to replace legacy livestock identification systems (long identified as effective) with new, costly, and evolving technology, the use of which has never been tested on the current proposed scale.²⁰ It is also unclear as to how APHIS could ignore the much higher 2013 estimates as compared to the current proposal, when the inflation rate was previously 1.5%, 3.1% in 2024, and over 4% when the proposed rule was first released.

Fourth, APHIS has refused to take into consideration the total cost of its EID mandate, ignoring the costs of readers/scanners or other recurring costs, like software and hardware and annual subscription expenses. APHIS also ignores the livestock handling costs, and the expenses that will be borne by the related industries, such as sale barns and feed lots. APHIS seeks to justify its decision to ignore these costs by stating in the proposed rule that the new tags “are easily read visually and therefore could be used as they are currently using non-EID tags...”²¹ and in the Regulatory Impact Analysis “that neither cattle nor bison operators are directly involved in the disease tracing process.”²² Neither of these arguments make any sense. If it is acceptable to visually read the tags, then this negates the entire rule, because the only way to realize the alleged benefits of electronic records is to purchase the additional equipment needed to use this technology. Our livestock producers already use brands, eartags, and tattoos, all of which are readily visual when handling, moving, transporting and selling livestock. The purpose of EID is so that such “visual” aids are not necessary to identify and trace a particular animal.

The assertion that cattle and bison operators are not involved in the traceability process would also be incorrect if the stated purpose of the rule is as APHIS claims. If the intention is to trace animal

¹⁶ Animal and Plant Health Inspection Service. USDA. *Animal Disease Traceability Assessment Report*. April 2017. P. 5 and 23

¹⁷ *Traceability for Livestock Moving Interstate*. P. 2047

¹⁸ *Ibid*. P. 2058

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison*. P. 3322

²² *Animal Disease Traceability Assessment Report P. 15*

disease through the life cycle of say a cow (“Bessie”), and the other livestock that Bessie was exposed to, then Bessie would have to be scanned at the operator level or we would not know where she came from, just as operators currently record their herd information through the traditional paper and electronic records process. “Traceability” does not work, in other words, unless you can trace where that animal has been. Our cattle and bison producers would therefore be *required* to purchase such equipment or the benefits of EID are entirely lost.

APHIS provides no evidence or justification in keeping the livestock producers out of the traceability timeline – without the producers recording the electronic information the location of origin is lost. This effort to claim that the producers would not need to purchase all of the related equipment is likely because under the *Alternatives to the Rule* section of APHIS’s Regulatory Impact Analysis, the Agency highlights that mandating both the tags and the readers “could cost wholesale beef, feeder cattle, and slaughter cattle operations approximately 566 million dollars in the short run.”²³ To repeat: \$566 million dollars vs \$ 26.1 million dollars if the full cost is included.

From \$30.5 million to \$1.9 billion to \$26.1 million to \$556 million, APHIS has been anything but consistent and transparent about the cost this mandate will impose on the industry. To achieve a national electronic disease traceability system, the tags, readers, and computers are all needed. Otherwise, you simply have more expensive traditional eartags. Not factoring in the full electronic system, and also admitting the inability to predict future technology and future rulemaking expanding the scope of the rule, it makes it nearly impossible for industry to determine the impact of this proposed rule.

Finally, considering these dramatically different estimates, and in light of the fact that APHIS studied an alternative that would maintain the status quo, showing that “cattle and bison producers’ costs would be approximately \$23 million dollars per year lower than in the proposed rule,” this proposal does not make sense.²⁴ APHIS has not adequately explained why we need to move away from the status quo, especially when the proposal is as poorly thought out as what we are seeing here, appears to be entirely unnecessary considering that 89% of the livestock industry would be exempt, and that is opposed by the vast majority of the industry.

Unfunded Mandate

Even if we are to accept the \$26.1 million cost estimate, the proposed rule is still an unfunded mandate. APHIS is proposing no means by which to alleviate the cost burden on ranchers. The entire burden of this proposed rule, including the burden APHIS has chosen to ignore, such as the additional technology needed to implement the EID mandate, will be borne by ranchers themselves and other entities within the food supply chain.

Released this week in the House of Representatives is the *Consolidated Appropriations Act, 2024*. The Joint Explanatory Statement for Division B, Agriculture, Rural Development, Food and Drug Administration, and related agencies provides no less than \$15 million for EID tags and related

²³ Animal and Plant Health Inspection Service. USDA. *Regulatory Impact Analysis & Initial Regulatory Flexibility Analysis*. APHIS-2021-0020. RIN 79-AE64. *Animal Disease Traceability; Electronic Identification*. November 9, 2022. P. 22

²⁴ *Ibid*. P. 22

infrastructure should the proposed rule be finalized.²⁵ This funding line is to ensure APHIS continues to provide tags and related infrastructure required under the Animal Disease Traceability rule, suggesting APHIS does not have a funding mechanism in place should it finalize this rule. Even if this \$15 million passes into law, there will still be an \$11 million unfunded mandate (using the \$26.1 figure), and an even higher one if you calculate the actual costs of the proposed rule.

It should be noted that this money Congress is proposing to appropriate is for “electronic identification (EID) tags and related infrastructure needed for stakeholders to comply with the proposed rule.”²⁶ Congress is acknowledging that both the tags and the infrastructure is needed to comply with this rule, but APHIS continues to deny that the support infrastructure is included in this rule and has therefore exempted it from the cost estimate.

Change of Policy without Adequate Justification

APHIS’s 2013 final rule *Traceability for Livestock Moving Interstate*, which established minimum national identification and documentation requirements, accepted brands, accompanied with an official brand inspection certificate, tattoos, and breed registry certificates.²⁷ Since this rule was finalized, APHIS has continually attempted to advance mandatory EID eartags for cattle and bison, including through a 2019 guidance document.²⁸ However, APHIS has failed to adequately justify why this policy change is needed, especially in the absence of major, destructive disease in the bison and cattle herds. The absence of such a national significant concern, which would have been appropriately outlined in a federalism analysis, and which remains absent from this rulemaking, confirms there is no urgent need for this federal mandate.

At this point, APHIS has largely chosen to ignore the policy underlying the 2013 rulemaking (affordability and industry acceptability being two primary considerations), thereby running afoul of requirements that an agency provide a reasoned explanation as to why it has changed course in terms of imposing a new and contrary rule on the regulated community.²⁹

Regulatory Flexibility Act

APHIS determined the rulemaking to be significant for the purposes of Executive Order 12866 and the Regulatory Flexibility Act. Using the Small Business Administration’s guidelines, APHIS analyzes “that the majority of cattle operations in the United States are considered small” and “that smaller operations pay higher unit costs for official identification than larger operations.”³⁰ APHIS argues against a serious small business impact, stating that most cattle remain in intrastate movement, citing data from general auction markets in 2008. Such a dismissal based on data from

²⁵ Division B Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2024 Congressional Directives. P. 11

²⁶ Division B Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2024 Congressional Directives. P. 11

²⁷ Ibid. P. 2048

²⁸ Animal and Plant Health Inspection Service. USDA. *Factsheet: Advancing Animal Disease Traceability: A Plan to Achieve Electronic Identification in Cattle and Bison*. April 2019

²⁹ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citing *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967, 981-982 (2005)).

³⁰ *Animal Disease Traceability Assessment Report* P. 24

nearly a decade ago does not meet the standard APHIS should have met and would severely underestimate the impact of this proposal on states like Wyoming whose livestock producers fall within the 11% that will be impacted even though it is home to small and independent operations.

IV. Conclusion

For all of the reasons stated above, OIRA must reject APHIS's *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison* and prohibit the Agency from implementing it against our cattle and bison producers. I am happy to provide any additional information that you may need, appreciate your interest in this important matter, and look forward to hearing from you.

Sincerely,



Harriet M. Hageman
Member of Congress