

Congress of the United States
House of Representatives
Washington, DC 20515-5000

January 27, 2025

The Honorable Brooke Rollins
Secretary-Designate
U.S. Department of Agriculture

Dear Secretary-Designate Rollins,

Congratulations on your nomination to serve as Secretary of the U.S. Department of Agriculture (USDA). Your reputation precedes you and, as Wyoming's lone Congressional representative, I am excited to work together to promote the American farmer and rancher and to Make America Healthy Again (MAHA). As you get to work, I write to you regarding a critical issue—terminating the USDA's unlawful electronic identification (EID) eartag mandate for cattle and bison.

On November 5, 2024, the Animal and Plant Health Inspection Service's (APHIS) final rule *Use of Electronic Identification Eartags as Official Identification in Cattle and Bison* went into effect.¹ As you know, it amends the 2013 Animal Disease Traceability (ADT) rule to mandate EID eartags for cattle and bison moving interstate. This is a dramatic shift from the 2013 standards which allowed, on a voluntary basis, RFID eartags, but imposed no such mandate on American ranchers.

This rule not only violates the law and core principles of American governance, but it also violates the MAHA agenda. Small and independent ranchers across America are opposed to this rule, yet this mandate was finalized by the previous administration's USDA at the urging of lobbyists for corporate agriculture and eartag manufacturers. In reality, the USDA does not have the authority to implement or enforce such a rule, and it is an unfunded mandate that raises serious privacy concerns and threatens further vertical integration of the food supply chain.

In its 2013 ADT rulemaking, the USDA estimated that the cost of a nationwide RFID system would be between \$1 and \$2 billion. In contrast and in defiance of all logic, USDA estimated that the current rulemaking would cost just \$26.1 million. This slight-of-hand was achieved by considering only the cost of the eartags themselves, ignoring all related costs that our producers and the industry would have to incur, including for wands, software, hardware, retrofitting of infrastructure, handling of livestock, etc. USDA also limited the scope of this rule to apply to only 11% of the cattle and bison industries, despite the fact that USDA itself has repeatedly stated that it would require at least 70% participation in a traceback system for it to be effective. The rule thus fails to do the very thing that it is ostensibly designed to do—disease traceability.

¹ APHIS. Use of Electronic Identification Eartags as Official Identification in Cattle and Bison. Final Rule. 89 FR 39540

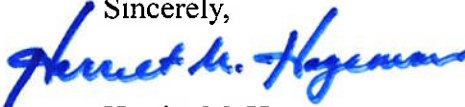
Further, despite USDA receiving numerous questions during the rulemaking process about whether the data collected through this system would be susceptible to Freedom of Information Act disclosure, the agency has never definitively ruled on whether outside groups could gain access to rancher and herd information. Ranchers who are either unable to afford this mandate or do not want to comply because of its numerous concerns are effectively locked out of their markets which, again, forces additional vertical integration of the food supply chain. As just one example, in 2007, the State of Michigan implemented mandatory electronic ID for cattle. Between 2007 and 2022, Michigan lost 4,445, or 32%, of its farms that have fewer than 500 head of cattle. Nationally, while the number of small farms decreased in that time period, it was lower by a full 7%.

Since the rule was implemented, producers across the country have faced eartag shortages because manufacturers are unable to meet this government-created demand, even though USDA assured everyone no such problem would occur. So why is this unlawful policy already failing? Because USDA refused to follow the proper regulatory process, exceeded its authority as granted by Congress, ignored its obligation to assess the rule's impact on federalism, failed to fully adhere to the Regulatory Flexibility Act, substantially underestimated the costs on our producers, and otherwise dismissed concerns raised in the comments submitted.

Because of all these issues, this rule is under an active legal challenge, and countless producers are unable to comply because of eartag shortages. As you work through nomination, I urge you to consider the following actions once you are confirmed:

1. Consistent with the President's *Regulatory Freeze Pending Review* Executive Order, review USDA's December 16, 2024 decision to not exercise Secretarial discretion under the Administrative Procedure Act (APA) at 5 U.S.C. 705 (Relief pending review) to postpone the effective date of this rule based on the pending legal challenge, a request for which was made before the rule came into effect. USDA should also address its failure to rule on the petition for rulemaking to suspend enforcement of the rule.
2. Immediately take steps to terminate this rule, either through a repeal in accordance with the APA or by settling the active lawsuit.
3. Issue guidance to manufacturers and the regulated industry to clarify that non-EID eartags can still be lawfully produced and that USDA will not take enforcement action against any American due to the government-created tag shortages.

Repealing this rule is of the utmost importance to countless producers across the country. The damage done through this rulemaking is already extensive, but this unnecessary suffering can end under your leadership, and I encourage you to take swift action. Congratulations again on your nomination, and I look forward to working with you for American agriculture.

Sincerely,


Harriet M. Hageman
Member of Congress