

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.3.2001 pertaining to Brands)
and Earmarks)

TO: All Concerned Persons

1. On February 10, 2023, the Department of Livestock published MAR Notice No. 32-23-337 pertaining to the proposed amendment of the above-stated rule at page 147 of the 2023 Montana Administrative Register, Issue Number 3.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A commenter has no problem with the addition of the ear tattoo as a method of identification. However, the commenter wonders if the electronic ID that is mandatory for Canadian cattle is a better option for commercial livestock movement. The commenter suggests that tattoos are more difficult to achieve in older ears and time consuming to say the least, both to do apply and to read. The commenter works with a Canadian-owned feedlot in central Montana and recognizes that applying a tattoo to all those animals as they go north would be an improbable task should this rule be reciprocated by Canada. The commenter knows tags can be removed but who is going to read all these tattoos at the border crossings? The commenter would like the board to reconsider this proposal going forward. Is it the technology we need going forward in cross border trade? Please reconsider your position on this proposal.

RESPONSE #1: The department appreciates the comment. While the state of Montana could entirely waive the requirement for a CAN tattoo and hot iron CAN brand, those practices are mandated by federal rules, so the change in Montana rules would not alter what happens at the international border. However, such a change would set Montana up to lift import obstacles, if the federal government eliminated the CAN brand or tattoo requirement in the future.

We agree that in most cases the electronic ID that is already being placed on Canadian origin animals crossing the border is a more effective tracing tool than a country identifier. Those individual animals IDs are already being recorded on border-crossing paperwork.

COMMENT #2: The Montana Farmers Union (MFU) opposes the amendments proposed in ARM 32.3.2001(1)(b), regarding "Cattle originating from Canada." MFU opposes the addition of having cattle originating from Canada having the option to

use a "tattoo" as a permanent origin identification. MFU has concerns about the level of "permanence" of an ear tattoo in identifying cattle.

MFU supports the use of a permanent hot iron brand, to serve as the required brand type for cattle originating from Canada. MFU supports the rule as currently written in code, and asks that it remains the same for import of cattle originating from Canada into Montana. Knowing the origin of beef imports into the state is important for herd health security and food security. MFU knows that the current standards of brands are easy to view and permanent.

MFU says that this change would also create different standards for cattle originating from Canada and Mexico. MFU supports keeping the current standards, maintaining the current requirements for identification of cattle originating from Canada and Mexico.

RESPONSE #2: The department appreciates the comment. The basis for requiring a CAN brand on Canadian origin cattle is based on concerns with Bovine Spongiform Encephalopathy, otherwise known as BSE or Mad Cow disease. A hot iron brand served as an easily recognizable, indelible mark that could be linked to the country of import in case a Canadian origin animal was diagnosed with BSE after importation to the United States.

With Canada being recognized by the World Organization for Animal Health (OIE) as "negligible risk status" for BSE in May 2021, disease risk no longer warrants the exclusive use of a hot iron brand for permanently designating the country of birth. The department believes that methods other than a hot iron brand are available and effective at maintaining traceability of animals from Canada.

Differing entry requirements for imported cattle from Mexico and Canada are primarily based on different levels of risk of tuberculosis and brucellosis. Further, a significant portion of farm and ranch income is generated by international trade. An important part of international trade negotiations that provide access for U.S. agricultural commodities to foreign markets is removing non-tariff trade barriers when they are no longer needed to mitigate disease risk.

COMMENT #3: The Deputy Minister for Alberta Agriculture and Irrigation commented that they would be pleased to provide feedback about the proposed amendment of ARM 32.3.2001, which pertains to brands and earmarks, specifically those related to the export of cattle from Canada. The deputy minister said this rule was created in response to detection of BSE in Canada in 2003. The World Organization for Animal Health recognized Canada's BSE Negligible Risk Status in May 2021, and the decision to revisit this Montana requirement is appreciated.

Given the proposed amendment appears to convey alignment with the current requirements from the United States Department of Agriculture (USDA), the deputy minister suggests that either:

- the amendment be modified to only refer to whatever the USDA requirement is at the time; or
- remove the requirement completely.

Either of these approaches, the deputy minister says, would avoid unnecessary duplication of restrictions at the state level. In the event that the USDA reduces its requirements in recognition of Canada's Negligible Risk Status, Montana's position would immediately align with that of the USDA.

RESPONSE #3: The department thanks the deputy minister for the comment. As this comment states, the proposed rule would be duplicative with federal regulations. However, the state of Montana would retain authority to enforce markings of Canadian origin cattle while not placing additional burden on importers or Montana citizens. Should the United States federal government remove the requirements for a CAN hot iron brand or tattoo on cattle imported from Canada, the department may re-evaluate state requirements.

COMMENT #4: A commenter supported the change.

RESPONSE #4: The department thanks the commenter for the comment and agrees. The department has previously received feedback that hot iron branding may not be appropriate for extremely young animals, animals destined for temporary stay in the United States, animals moving directly to slaughter, long haired animals such as Scottish Highlanders, or for cosmetic or humane concerns. The department believes that Canada's recognition as negligible BSE risk by the World Organization for Animal Health justifies additional options to the hot iron brand for physical means of identification of cattle of Canadian origin. Providing the option for either the hot iron brand or tattoo maintains exporting country traceability with high confidence.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
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Certified to the Secretary of State April 4, 2023.