

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 9, 2004, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Allie Devine, Vice President and General Counsel, Kansas Livestock Association
Lynn Johnson, Kansas Trial Lawyers Association
Dale Blasi, Professor and Extension Beef Specialist, Kansas State University

Others attending:

See attached list.

Discussion and action on HB 2530 - Removal of officers of cooperative agricultural marketing association by board of directors.

Gordon Self explained proposed amendments to HB 2530 discussed at the hearing on the bill. The first amendment would restore the language "from their number" on line 15. The second amendment would strike the word "majority" on line 29. Rather than define a majority as a majority of the board of directors present or a majority of the entire board, this language will allow each entity to define a majority in their individual bylaws. The third amendment would add clarifying language on line 31: "Nothing in this subsection shall be construed as removing from the board of directors any such officer removed from such office pursuant to the provisions of this subsection." Representative Powell, seconded by Representative Gatewood, moved to adopt these amendments to HB 2530. The motion carried.

Representative Compton moved to recommend HB 2530, as amended, favorable for passage. The motion was seconded by Representative Schwartz. The motion passed.

Allie Devine, Vice President and General Counsel, Kansas Livestock Association, reported that at their 2003 convention, their members expressed concern about the legal implications of a mandatory animal identification system. She said that **HB 2594** was an effort to clarify what duty of care a producer must follow. She stated that it is unclear from their legal research exactly what duty of care a producer of livestock owes to consumers of meat products. Case law from other jurisdictions indicates that, because a live animal is not a "fixed product" in that it may still change, it is not a product. However, when processed, that animal becomes a product.

Since the producer's role is limited to supplying the animal, the Kansas Livestock Association is advocating that the producer's duty of care to the consumer through the preparation of livestock and subsequent meat products be that of "ordinary care" or that of customary and ordinary due diligence in the production of that animal. They further advocate that if the livestock and subsequent meat products have been inspected and passed under state or federal laws, that such approval provides a presumption that the producer has met the standard of ordinary care. She acknowledged that the current language in **HB 2594** is confusing and said they are working with other interested parties to develop appropriate language. (Attachment 1)

Lynn Johnson, representing the Kansas Trial Lawyers Association, provided information on product liability law. He stated that a live animal is not a product, that there are no Kansas cases where a Kansas producer of livestock has ever been held liable for personal injury or death under any legal theory whether it be negligence, breach of implied warranty, or strict liability. The Kansas livestock producer is essentially the producer of a raw product. He explained that a producer of a raw product in manufacturing is not held liable for the ultimate product, unless there is a defect in that raw product when it is sold to the processor. He questioned the need for legislative protection of the livestock producer at this point in time as most of the meat food

CONTINUATION SHEET

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE at 3:30 p.m. on February 9, 2004, in Room 423-S of the Capitol.

product liability cases arise during processing. He acknowledged that the issue of mad cow disease raises the point that the disease may be in existence at the time of sale to the processor. This is where the Kansas Trial Lawyers Association may disagree there should be any type of immunity. He stated that if it is "ordinary care" that is being proposed, that is fine because that is what the law of negligence is now.

The Kansas Trial Lawyers Association will be working with the Kansas Livestock Association to draft legislation, but will oppose any bill that will provide total immunity for producers. He stated that any bill that is passed is only going to affect Kansas livestock producers. If a consumer eats something that causes him to become deathly ill and it turns out that meat product came from Wyoming or Montana, this bill could provide immunity to that producer in Wyoming or Montana to the detriment of the Kansas meat consumer. This bill will not affect Kansas livestock producers that sell their livestock or meat products in Nebraska, Colorado, or where ever. The laws in those states would have effect. The Kansas Trial Lawyers Association is concerned that Kansas meat consumers would get the short end of the stick, and Kansas livestock producers would not really be helped all that much. He noted that other states do not have any such laws.

Chairman Johnson appointed a subcommittee to work on **HB 2593** - establishing an animal identification program. Members on the subcommittee will be Representative Johnson, Representative Feuerborn, Representative Kassebaum, Representative Miller, and Representative Schwartz. Their first meeting is scheduled on adjournment of the House Agriculture Committee on Wednesday, February 11.

Dale Blasi, Professor and Extension Beef Specialist, Kansas State University, gave a power point presentation on beef identification issues and outlined the United States Animal Identification Plan that defines the standards and framework for implementing and maintaining a phased-in national animal identification system for the United States. The USAIP goal is a traceable system that can identify all animals and premises potentially exposed to an animal with a Foreign Animal Disease within 48 hours after discovery. The USAIP implementation plan (Version 4.1) requires premises identification by July, 2004; individual or group/lot identification by July, 2005, for interstate movement; and by July, 2006, for all cattle entering both interstate and intrastate commerce; and enhanced tracking (RFID technology) in slaughter plants by July, 2005, and in markets by July, 2006.

He discussed the work they are doing at Kansas State University in regard to electronic identification of cattle. He explained that electronic identification provides the linkage necessary for converting data into accessible and useable information with greater accuracy and timeliness. He distributed copies of *A Guide for Electronic Identification of Cattle*, available from Kansas State University Agricultural Experiment Station and Cooperative Extension Service, to provide an overview and describe the components necessary to implement an individualized animal identification system. (Attachment 2)

The meeting adjourned at 5:00 p.m. The next meeting is scheduled for February 11, 2004.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 9, 2004

NAME	REPRESENTING
TERRY HOLDREN	KS FARM BUREAU
Dale A Blasi	Ks State Univ.
Leslie Kaufman	Ks Co-op Council
Mike Beam	Ks. LIVSTK. ASSN.
Allie Weimer	KLA
Jodd Johnson	KLA
Jared Holste	Rep Johnson
Garett Schmidt	Rep. Powell
Nancy Ulrich	Livestock Comm'n
George Teagarden	KAHD
Doran Junek	Kansas Cattlemen's Assn.
Mark Kumpfle	KTLA
Lynn R. Johnson	"
Ed May	HEIN Low Fin
Tom TUNWELL	KS GRAIN/FEED ASSN
Eric Krug	K-FED
KEN RAHSES	KS DAIRY ASSN.
Wanda Kinney	KCC.
BRAD HARRELSON	KFB
Ray Hammarlund	KDOC

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 9, 2004

NAME	REPRESENTING
<i>Allen Hsu</i>	<i>Legislative Intern</i>
THOMAS A. BURLINGHAM	KDA
EVAN SUMNER	KDA



Since 1894

TESTIMONY

To: The House Agricultural Committee
Rep. Dan Johnson, Chairperson

From: Allie Devine, Vice President and General Counsel

Date: February 9, 2004

Subject: Explanation of HB 2594:

Good afternoon, Mr. Chairman and Members of the Committee;

My name is Allie Devine. I am here today representing the Kansas Livestock Association. As you know KLA is a not for profit trade association representing over 6,000 members who are livestock producers.

During our 2003 Convention, our members expressed concern about the legal implications of a mandatory animal identification system. Livestock producers want to fully understand what level of liability exposure they face. HB 2594 is an effort to clarify what duty of care a producer must follow.

In simplest legal terms, liability attaches where one party owes a duty to another party, and that duty is not met. In other words, if a product is placed into the market place, the party selling the product has standards to assure that the product is fit for the purpose it was intended. In the area of food, that means the product is wholesome.

Most case law involving food products revolves around a product that contains some foreign material. These cases are illustrative of what the parties must prove. For example, an injured consumer of a product containing a foreign object must show: the food consumed contained the foreign object; the food contained the foreign object at the time it left the defendant's control; the foreign object caused the injury; and, there was a clear connection between the defendant and the food.

There are also various theories of what liability and what level of proof must be presented. Suits may be brought under a variety of theories of negligence such as *negligence per se* for violations of state statutes prohibiting the selling of adulterated food, breach of warranty, or the doctrine of strict liability.

House Agriculture Committee
February 9, 2004

It is unclear to us from our legal research exactly what duty of care a producer of livestock owes to consumers of meat products. Livestock producers are producing a live animal. Case law from other jurisdictions indicates that, because a live animal is not a "fixed product" in that it may still change, it is not a product. However, that animal, when processed, becomes a product. In livestock transactions, the producers "control" over the animal and subsequent products ends at delivery of the product to the meat processing facility. A livestock producer has no further input into the development of products.

Since the producer's role is limited to supplying the animal, we are advocating that the producer's duty of care to the consumer through the preparation of livestock and subsequent meat products be that of "ordinary care" or that of customary and ordinary due diligence in the production of that animal. We are further advocating that if the livestock and subsequent meat products have been inspected and passed under state or federal laws, that such approval provides a presumption that the producer has met the standard of ordinary care.

We had difficulty in capturing that role into statutory language. The current language of HB 2594 is confusing and has led some to believe that the term "absolute defense" provided total immunity from litigation. This is not our position and we have redrafted the bill. It is our intent to incorporate the current terms of the state or federal laws into any proposal to lessen confusion and to clearly state the producer's duty of care. We are prepared to work with interested parties to develop appropriate language and hope you will support the bill. Thank you for your interest in this legislation.

Beef Identification Issues

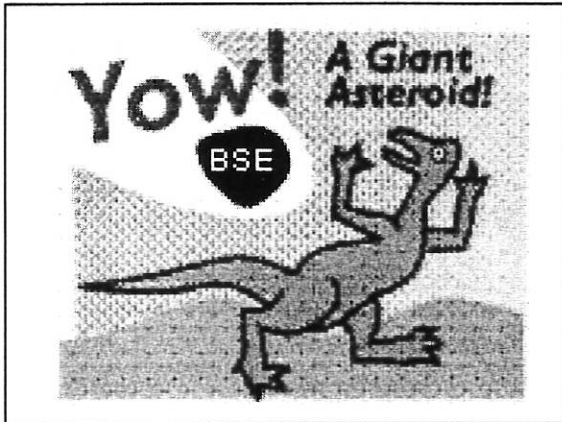


Dale A. Blasi
Professor & Beef Specialist

Kansas State University

The Kansas Beef Industry

- Commands a dominant role in the Kansas economy
- 4.81 billion dollars in cash receipts (2002).
- Annually finish over 5 million head.
- About 4 million stockers/feeders must be imported to meet deficit.
 - 2002 inshipments = 4.2 million head



Why the Need for an Individual Animal Identification System?

- Provide infrastructure and tool for rapid containment of emerging or intentionally placed diseases
- Maintain consumer confidence
- Further improve the economic efficiency of beef cattle production

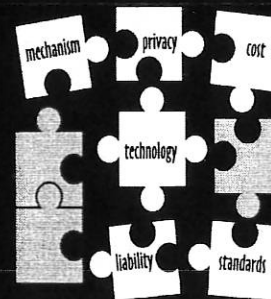
USAIP ≠ COOL

Animal Health

vs

Consumer Labeling

Animal ID Issues



Presentation Outline

- ◆ Proposed USAIP plan (version 4.1)
- ◆ Why electronic identification?
- ◆ Producer action
- ◆ Wrap up

What is the USAIP Plan?

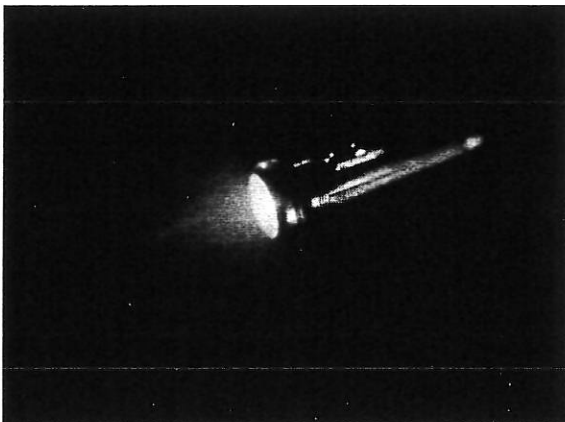
The United States Animal Identification Plan (USAIP) defines the standards and framework for implementing and maintaining a phased-in national animal identification system for the United States.

Genesis of USAIP

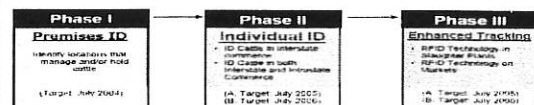
- ◆ Initially facilitated by National Institute for Animal Agriculture – www.animalagriculture.org
- ◆ Work plan for industry wide effort initiated March 2002 – Industry/state/federal Spring/2003
- ◆ Originally 30, now 70 + participating associations/organizations
- ◆ Several working groups formed
 - Steering committee
 - Communications
 - Governance
 - Information Technology
 - Standards
 - Transition

USAIP Goal

A traceback system that can identify all animals and premises potentially exposed to an animal with a Foreign Animal Disease (FAD) within 48 hours after discovery.



USAIP Implementation Plan (Version 4.1)



Premises Identification

- Definition still vague and unresolved
 - "Definable physical location that represents a unique and describable geographic entity"
- Seven – alpha-numeric characters
 - Example = A123R70
- Stocker/backgrounder vs cow/calf
 - Epidemiologic link and/or likelihood of disease transmission between premises
 - Flexibility

Summary of Major Milestones				
Activity	2003	2004	2005	2006
System: National Premises System		Partial Operation	Fully Operational National Premises System	
System: National ID DB		Partial Operation	Fully Operational Natl ID DB	
Implementation of Animal Identification Numbers - AIN Tags		AIN Tags Available	AIN used with all new ID Devices	
Compulsory ID Livestock in Interstate commerce			Comp ID In interstate	
Compulsory ID Livestock in commerce				Idaho Comm
	2003	2004	2005	2006

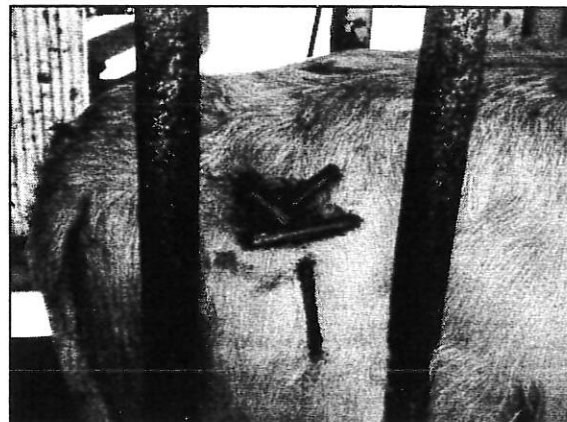
USAIP – Version 4.1 – 12.23.03

USAIP Timeline

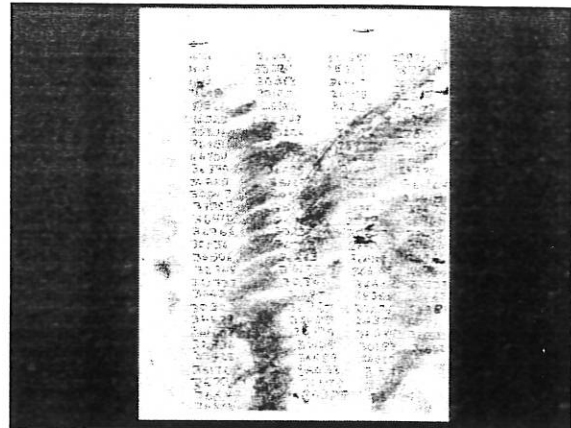
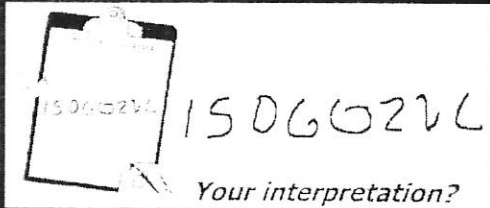
- December – March 31st
 - Working group meetings are conducted
- Reports to Steering Committee from Species working group – Early April
- Distribute USAIP – Early May
- NIAA ID Symposium – May 18th – 20th

Bovine Working Group

- Alabama Cattlemens
- Michigan Dept Ag
- Intertribal Ag Council
- R-Calf
- Beefmaster
- NCBA
- Iowa Cattlemen's
- Texas/SW CattleRaisers
- National Meat Assn
- Packerland Packing
- Oklahoma Farmers Union
- MFA
- Texas Animal Health Comm
- American Hereford Assn
- American Meat Institute
- United Packers
- MFA Inc
- Allflex
- United Producers
- King Livestock
- Tyson
- Kentucky Cattlemen's
- North Dakota Stockerman's Assn.
- Excel
- Idaho Cattlemen s Assn
- American Angus Assn
- Wisconsin Cattlemen s
- Livestock Marketing Assn.
- American Farm Bureau
- Am. Assn Bovine Practitioners



Ever seen characters like this?



Problem



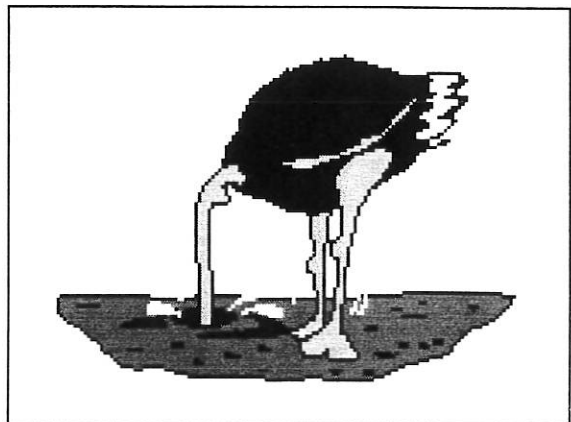
- Front end to the computer is a HUMAN

Why is Visual ID not Sufficient by Itself?

- Does not identify animals as unique individuals that correlate back to a single herd
- Does not indicate herd of origin
- Does not meet the international requirements as a valid form of identification
- Does not facilitate the recall or collection of information in an accurate and timely manner

Why Electronic ID? (eID)

- Provides the linkage necessary for converting data into accessible and useable information with greater accuracy and timeliness



What Should Producers Do NOW?

•READ the USAIP plan

<http://www.usaip.info>

•Stay Informed

RFID Economics

Microsoft Excel 2003 - RFID Economics

File Edit View Insert Format Tools Data Window Help

Sheet1

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

A B C D E F G H I J K L M N O P

Estimated Costs for a Radio Frequency Identification (RFID) System

Average herd size (cows or heifers) 1000

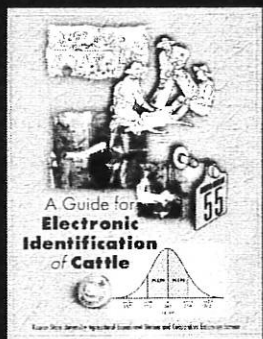
Herder rate % 10.0%

RFID Components

Component	Quantity	Unit Cost	Subtotal	Annual Savings	Net Cost
RFID tags	1000	\$0.20	\$200.00	\$100.00	\$100.00
RFID reader	1	\$1000.00	\$1000.00	\$500.00	\$500.00
Data acquisition software	1	\$100.00	\$100.00	\$50.00	\$50.00
Software installation and storage	1	\$100.00	\$100.00	\$50.00	\$50.00
Other					
Hardware					
Software					
Installation					
Training					
Other					
Total			\$1400.00	\$700.00	\$700.00

RFID components / RFID costs /

www.beefstockerusa.org



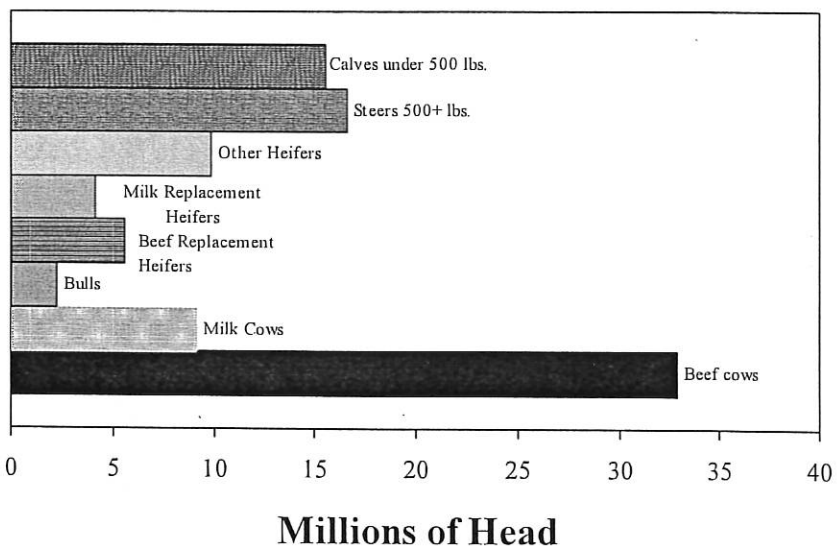
Dale A. Blasi
 Professor & Extension Beef Specialist
 Kansas State University
 dablasi@cornet.ksu.edu

2002 U.S. Calf Crop (1,000 Head)



Cattle Inventory, January 2003

The total cattle inventory for January 1, 2003 was 96,106,000, representing the smallest inventory of cattle since 1991. Beef cows accounted for 34% of the total inventory.



Source: USDA

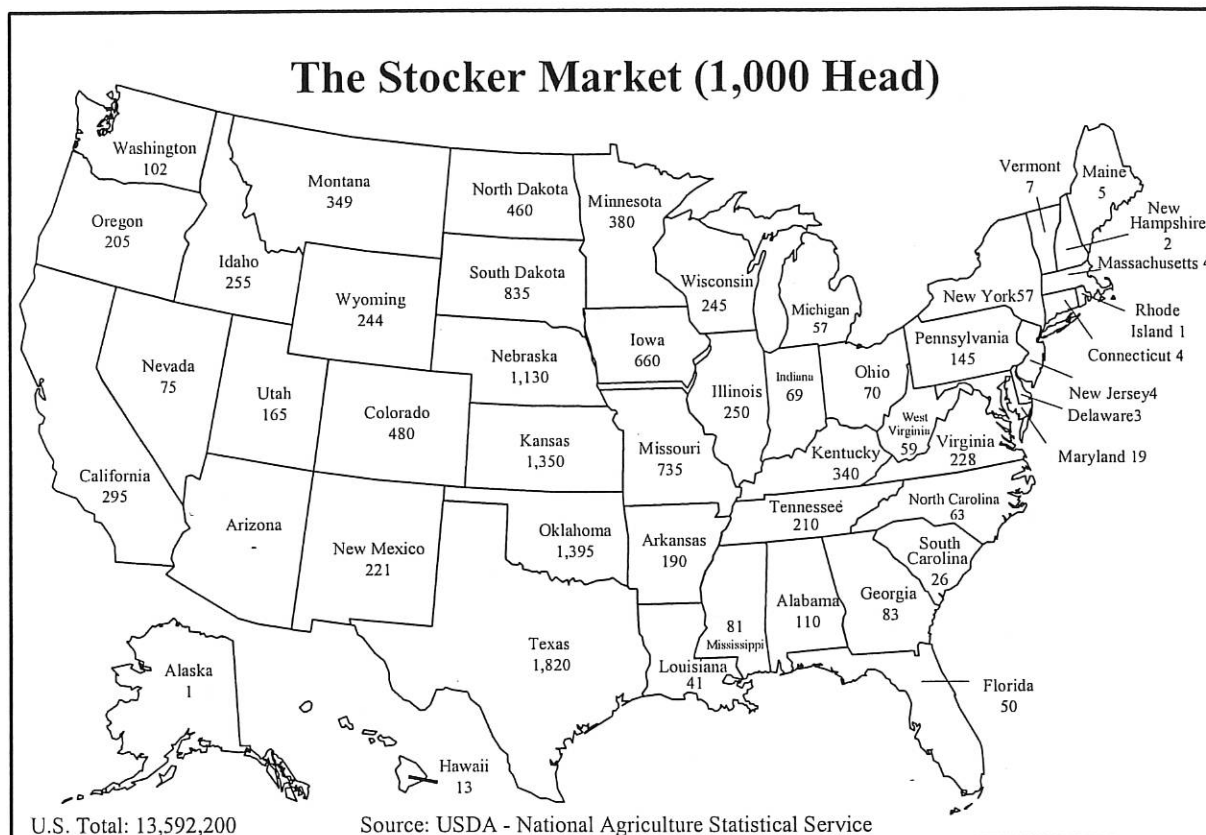
Location of U.S. Beef Cows (1,000 Head)



Top 10 Beef Cow States (1,000 Head)

Texas	5,489
Missouri	2,116
Oklahoma	2,042
Nebraska	1,934
South Dakota	1,686
Kansas	1,525
Montana	1,402
Kentucky	1,120
Tennessee	1,106
Iowa	992

Source: USDA - National Agriculture Statistical Service



Defining the Stocker Market

Simply defined, stockers are cattle being grown on high roughage diets. The aim is to utilize cheap feedstuffs while the animal develops frame and size before going to the feedlot for finishing on a high grain ration. Stocker programs include a wide geographical range--the wheat fields of Oklahoma, the Flint Hills grass of Kansas, lush grazing of southern Florida, as well as the cornstalks of Iowa. For several reasons, there are no true, accurate numbers on stocker programs in the U.S.

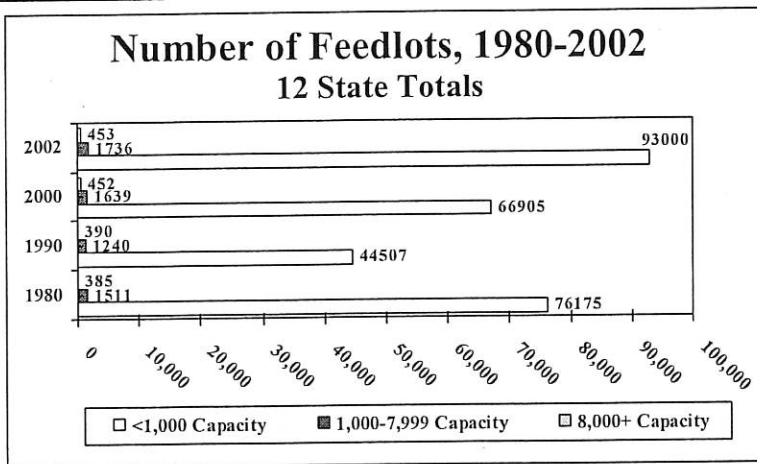
- ∞ USDA's most accurate cattle counts are a snapshot of the industry taken on January 1 of each year. In a normal year, Oklahoma wheat fields would be carrying a heavy load of stockers that day, while the Flint Hills would be nearly empty. Neither of those areas provide the long grazing season in most Southeastern states.
- ∞ Changing weather patterns have a huge impact. An early frost and "soft" corn in the Midwest brings a frantic up-tick in the number of heavy calves or light yearlings for silage programs. A dry year in wheat country means those pastures cannot be grazed.
- ∞ In many areas, there is a gradual change in rations as cattle are moved from grass pastures to a supplementary grain diet for finishing.
- ∞ Changing market conditions also impacts stocker programs. High fed cattle prices may encourage the movement of "normal" stockers directly into the feedlot--bypassing the traditional grazing programs.

For all of these reasons, it is nearly impossible to tie down a count of either stocker operators or the cattle they own. The closest "hard" number is included in the USDA January report. The data titled "Cattle available for placement outside of feedlots" are the numbers shown in the map above. Undoubtedly, these numbers underestimate the total stocker market. Any departure from these numbers is pure speculation.

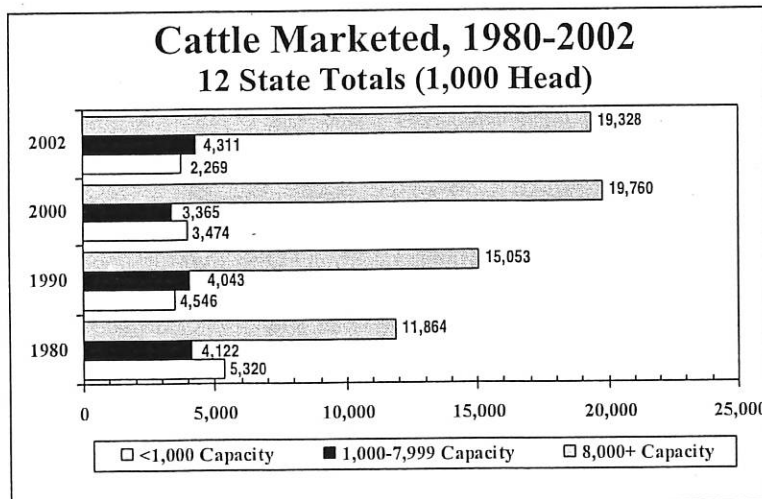
Large Feedlots Dominate Finishing Business

Number of Feedlots and 2002 Marketings by Size

Capacity	1,000-3,999 head		4,000-15,999 head		16,000+ head		12 State Total	
	Number of Lots	Cattle Marketed (1,000)	Number of Lots	Cattle Marketed (1,000)	Number of Lots	Cattle Marketed (1,000)	Number of Lots	Cattle Marketed (1,000)
State								
Arizona	x	x	2	7	5	334	7	341
California	3	6	9	22	11	643	23	671
Colorado	79	115	53	440	26	1,915	158	2,470
Idaho	23	44	27	684	5	503	55	1,231
Iowa	313	527	27	185	x	x	340	712
Kansas	80	160	81	975	64	4,360	225	5,495
Nebraska	501	880	198	1,990	41	1,740	740	4,610
New Mexico	3	4	6	33	4	144	13	181
Oklahoma	3	7	13	96	9	667	25	770
South Dakota	109	210	25	151	2	61	136	422
Texas	11	25	41	475	84	5,480	136	5,980
Washington	10	27	2	12	7	469	19	508
Other States	264	280	52	295	4	62	320	637
Total U.S.	1,392	2,260	535	4,883	262	17,496	2,189	24,639



The number of smaller lots make up almost 98% of the U.S. total, but only market 14% of the total cattle marketed in the United States.



The larger feedlots continue to grow much faster than the moderate-sized lots.

Source: USDA