



**FOR IMMEDIATE RELEASE**

**Media Inquiries:** Judy Pino, 202-869-5218

**NCLA Brief Accuses USDA and APHIS of Establishing Unlawful Federal Advisory Committees on RFID**

*R-CALF USA, et al. v. U.S. Department of Agriculture, et al.*

**Washington, DC (February 9, 2021)** – The U.S. Department of Agriculture (USDA) and the Animal and Plant Health Inspection Service (APHIS) have violated the Federal Advisory Committee Act (FACA) and the Administrative Procedure Act (APA). In their attempt to unlawfully mandate “radio frequency identification” (RFID) eartags on livestock destined for market, USDA and APHIS set up two advisory committees to assist their RFID efforts, the “Cattle Traceability Working Group” (CTWG) and the “Producer Traceability Council” (PTC).

An [opening brief](#) filed by the New Civil Liberties Alliance in the U.S. District Court for the District of Wyoming argues that USDA and its subagency, APHIS, failed to comply with FACA’s statutory requirements in establishing and using the two advisory committees to gather information necessary to implement RFID eartags. NCLA represents the Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) and four ranchers: Tracy and Donna Hunt from Wyoming, and Kenny and Roxy Fox from South Dakota, who filed a lawsuit against these agency defendants challenging their illegal April 2019 “guidance” as violating the 2013 Traceability and Identification Rule by attempting to force cattle producers to use RFID eartags in lieu of all other forms of approved identification under the earlier rule.

NCLA’s brief criticizes the Defendants’ decision to establish and utilize “advisory committees” without complying with FACA’s procedural requirements, as well as their decision to exclude from participation anyone who opposed the RFID requirements. Defendants’ mandate, issued in violation of the 2013 Final Rule, was designed to prohibit cattle producers from using any animal identification options that up to now had been perfectly acceptable, including tattoos, backtags, permanent metal eartags, brands, and group/lot identification numbers.

Defendants have taken the position that they neither “established” nor “utilized” the CTWG and PTC advisory committees within the meaning of FACA. However, their Administrative Record and documents obtained through a FOIA request prove otherwise. Defendants have conceded that they did not follow FACA’s procedural requirements—mostly because they wrongly assumed that they should not have to. Again, however, their own documents demonstrate that FACA applies in this case: (1) the agency urged the formation of CTWG; (2) numerous APHIS employees actively participated in CTWG’s and PTC’s meetings and calls; (3) CTWG’s fixed membership included APHIS officials; (4) CTWG and PTC—and their various subgroups—met regularly and made a series of recommendations to APHIS regarding the implementation of the RFID technology.

NCLA is asking the court to recognize the CTWG and PTC as federal advisory committees set up by USDA. To penalize USDA for not following FACA’s public meeting and balanced membership requirements, NCLA is further asking the court to prohibit Defendants from using any of the work product or recommendations made by either CTWG or PTC.

**NCLA released the following statement:**

“USDA and APHIS are required to comply with the law, including FACA. In 2019 they sought to unilaterally nullify the 2013 Final Rule on animal identification and traceability by issuing a “Factsheet” that blatantly disregarded the APA’s rulemaking requirements. We now know that the “Factsheet” resulted from the efforts of two unlawfully created advisory committees. To make sure that Defendants are not rewarded for their misbehavior, they must not be allowed to rely on work product and recommendations made by the CTWG and PTC.”

— **Harriet Hageman, Senior Litigation Counsel, NCLA**

**For more information about this case visit [here](#).**

**ABOUT NCLA**

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

###