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Watch: NCLA Case Video Takes on USDA's Use of "Guidance" as Law Against America's Ranchers

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



Photo: A calf wears a Radio Frequency Identification Device

Washington, DC (February 18, 2021) – Government agencies are not supposed to be above the law. But a [video](#) released today by the New Civil Liberties Alliance featuring the case *R-CALF v. U.S. Department of Agriculture, et al.* shows how the U.S. Department of Agriculture (USDA) and its subagency, the Animal and Plant Health Inspection Service (APHIS), seem to operate. These agencies violated the Federal Advisory Committee Act (FACA) and the Administrative Procedure Act (APA) in their attempt to unlawfully require America's ranchers to implement "radio frequency identification" (RFID) eartags through a two-page "Factsheet" posted on the agency's website without any prior warning.

Not only did defendants violate FACA and the APA, they violated their own regulations as set forth in the 2013 Final Rule on animal identification and traceability. The 2013 Final Rule was designed to protect producers' right to use low-cost technologies related to animal identification and traceability that have been used for generations and are both flexible and adaptable. Defendants' unlawful RFID mandate is just the latest effort to try to prevent cattle producers from using those tried-and-true animal identification methods (*e.g.*, tattoos, backtags, metal eartags, brands, and group/lot ID numbers) that until now had been perfectly acceptable.

Defendants responded to NCLA's lawsuit by immediately withdrawing their RFID mandate, thereby conceding that it was not only improvidently issued, but that it could not be defended in court. They may well now find themselves having to admit that they also failed to follow FACA's procedural requirements when they developed their RFID mandate—mostly because they wrongly assumed that they should not have to.

While USDA and APHIS have withdrawn their “Factsheet” and their mandatory RFID requirement along with it, the fact remains they violated numerous laws and regulations when they attempted to force compliance with a mere “guidance” document in the first place.

NCLA represents the trade association 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—in their lawsuit against USDA/APHIS.

Excerpts from the video:

“NCLA is committed to stopping these federal agencies when they attempt to circumvent the law. We must remain vigilant in monitoring the USDA, APHIS, and state and tribal agencies as they seek to move forward with RFID requirements against our livestock producers. We really owe it to our American ranchers.”

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

“Our organization actively participated in the government proceeding that resulted in the 2013 final rule. The final rule was designed to protect the rights of independent livestock producers by allowing them to continue using the low-cost technologies in order to comply with the identification and traceability requirements. A shift like this in policy would be catastrophic to the U.S. livestock industry. And that’s why we reached out to the New Civil Liberties Alliance for help.”

— **Bill Bullard, CEO, R-CALF USA**

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.

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