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NCLA Praises WY Legislature, Gov. for New Law Protecting Ranchers' Animal ID Technology Choices

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

Washington, DC (April 14, 2021) – Influenced by a lawsuit brought by the New Civil Liberties Alliance on behalf of America’s livestock producers against the U.S. Department of Agriculture (USDA) and its subagency, the Animal and Plant Health Inspection Service (APHIS), the Wyoming Legislature recently passed [HB0229](#), allowing cattle and bison producers in the state to use a variety of identification methods for their livestock.

In July 2020, USDA sent shockwaves through the livestock industry when it published a notice in the Federal Register proposing to define an “official eartag” under the [2013 Final Rule](#) governing animal identification and traceability as being limited to radio frequency identification (RFID) eartags. The move prohibited the use of low-cost and popular traditional eartags. USDA’s recent activity followed its decision in April 2019 to issue a two-page [factsheet](#) or “guidance document” mandating livestock producers to begin using RFID eartags in 2023. NCLA successfully challenged the legality of USDA’s factsheet, thereby forcing the agency to withdraw it in October 2019. Under HB0229, livestock producers in Wyoming can continue using any form of identification referenced in the 2013 Final Rule, including brands, tattoos, metal or plastic eartags, back tags, and group identification numbers.

NCLA, a nonpartisan, nonprofit civil rights group, 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 *R-CALF USA, et al. v. U.S. Department of Agriculture, et al.* The [lawsuit](#) currently pending before the U.S. District Court for the District of Wyoming argues that USDA and APHIS failed to comply with the Federal Advisory Committee Act’s (FACA) statutory requirements in establishing and using two advisory committees to gather information necessary to implement the RFID eartag mandate. If NCLA’s FACA lawsuit succeeds, USDA will not be able to use any of the recommendations or information obtained from the unlawful advisory committees in proposing a new RFID rule.

The passage of HB0229 is the second victory for livestock producers resulting from NCLA’s aggressive legal challenges against administrative agencies that “legislate by guidance,” thereby avoiding the strictures of the Administrative Procedure Act (APA) while imposing ever increasing mandates and requirements on the regulated public. USDA and APHIS announced last month that they will go through a full rule-making process pursuant to APA to make any changes to the 2013 Final Rule governing animal identification and traceability. These agencies have again been forced to abandon their attempt to replace the 2013 Final Rule with guidance, which has been at the root of NCLA’s legal objection.

NCLA released the following statements:

“We are pleased that the Wyoming legislators understand the importance of protecting our livestock producers’ right to choose which form of identification best works for their operations. USDA and APHIS have been relentless in their efforts to force our producers to convert to a costly and complicated RFID eartag program. The passage of HB0229 is now one more roadblock to those efforts. We hope other states will follow suit.”

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

“We applaud the State of Wyoming for protecting the private property rights of Wyoming ranchers. The law provides that ranchers everywhere can choose to identify their property—their livestock—in the manner that best suits their operations. USDA tried unlawfully to take that choice away. The State of Wyoming has now ensured it won’t happen again.”

— **Bill Bullard, CEO, R-CALF USA**

For more information visit the case page [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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