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**As USDA Advisory Committees Violate FACA, Court Should Prohibit Use of Future Recommendations**

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

**Washington, DC (April 23, 2021)** – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [reply brief](#) in the U.S. District Court for the District of Wyoming, aiming to protect livestock producers’ rights to use traditional low-cost methods related to animal identification and traceability. NCLA’s brief argues that the U.S. Department of Agriculture (USDA) and its subagency, the Animal and Plant Health Inspection Service (APHIS), failed to comply with the statutory requirements of the Federal Advisory Committee Act (FACA).

This case stems from USDA’s actions in setting up two advisory committees to assist in the development of the unlawful USDA mandate requiring “radio frequency identification” (RFID) eartags on livestock. NCLA is asking the Court to recognize the “Cattle Traceability Working Group” (CTWG) and “Producer Traceability Council” (PTC) as federal advisory committees “established” by USDA.

CTWG was formed in 2017 as a result of a months-long lobbying effort by USDA. Documents obtained by NCLA show that during this period, USDA determined that its goal of transitioning to a mandatory RFID regime would be advanced by creating an industry-led task force to provide “technical advice” and support. CTWG morphed into a second USDA advisory committee, PTC, in the spring of 2019. The transformation served as a way to exclude those like NCLA client Kenny Fox who opposed mandatory RFID requirements.

In December 2020, NCLA filed a [motion for completion of the record or for consideration of extra-record evidence](#), attaching nine incriminating documents proving that USDA both “established” and “utilized” CTWG and PTC. NCLA has since filed two additional motions for completion of the record related to documents produced by APHIS in response to a 2020 FOIA request. The policy advice and recommendations submitted to USDA by CTWG and PTC remain in USDA’s possession today, and USDA continues to move forward with its efforts to require all cattle producers to adopt RFID technology. FACA, however, prohibits federal agencies from using work product and recommendations from advisory committees that operated in violation of FACA procedural requirements. This includes CTWG and PTC, which violated FACA safeguards by ignoring public notice requirements and blocking participation by anyone opposed to RFID mandates.

NCLA has already been successful in forcing USDA to withdraw its [two-page factsheet](#) directing livestock producers to use RFID eartags. The controversy, however, remains alive because USDA is moving ahead with plans to mandate RFID for cattle by 2023. A March 2021 news release by USDA stated, “[USDA] believe[s] that RFID tags will provide the cattle industry with the best protection against the rapid spread of animal diseases.” So long as USDA continues to pursue mandatory RFID in violation of the 2013 Final Rule, a live controversy continues to exist because the threat remains that USDA will seek to make use of RFID-related work product and recommendations from advisory committees set up and operated in violation of FACA.

NCLA requests that the Court enter judgment in favor of R-CALF USA and the four plaintiff ranchers on their claims that CTWG and the PTC are federal advisory committees covered by FACA, and that USDA failed to comply with procedures required by FACA for those committees. The Court should also enjoin USDA from using the work product and recommendations solicited from those committees with respect to the implementation of RFID technology for livestock moving interstate.

**NCLA released the following statements:**

“There is no question that USDA/APHIS violated FACA when they established and utilized two separate advisory committees to provide a veneer of buy-in from the livestock industry for their efforts to force RFID technology on our cattle producers. Their violation of FACA warrants the Court’s prohibiting them from using the work product of those sham committees to support their ongoing efforts to mandate RFID eartags in violation of USDA’s 2013 Final Rule.”

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

“USDA and APHIS created these committees to try to convince our independent livestock producers that “everyone was on board” with a one-size-fits-all RFID mandate out of Washington, DC. We have exposed their behind-the-scenes shenanigans, and we hope that the Court will not only recognize what these agencies have done, but prohibit them from relying on this tainted committee work to further an agenda that cattle producers flat out oppose.”

— **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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