

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

RANCHERS CATTLEMEN ACTION	)	
LEGAL FUND UNITED	)	
STOCKGROWERS OF AMERICA;	)	
TRACY and DONNA HUNT, d/b/a THE MW	)	
CATTLE COMPANY, LLC; and KENNY and	)	
ROXY FOX,	)	No. 19-CV-205-F
	)	
Petitioners/Plaintiffs,	)	
	)	
vs.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE; ANIMAL AND PLANT	)	
HEALTH INSPECTION SERVICE;	)	
SONNY PERDUE, in his official	)	
capacity as the Secretary of Agriculture;	)	
and KEVIN SHEA, in his official	)	
capacity as Administrator of the Animal	)	
and Plant Health Inspection Service,	)	
	)	
Respondents/Defendants.	)	

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(PROPOSED) ORDER GRANTING  
 PETITIONERS’ RULE 60(b) MOTION RELATED TO FEDERAL ADVISORY  
 COMMITTEE ACT CLAIM

(PROPOSED) ORDER GRANTING  
SUPPLEMENTAL RULE 60 MOTION SEEKING  
 RELIEF FROM ORDER DISMISSING CASE FOR LACK OF JURISDICTION

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THIS MATTER comes before the Court on Petitioners’ Rule 60(b) Motion Related to Federal Advisory Committee Act Claim, and Petitioners’ Supplemental Rule 60 Motion Seeking Relief from Order Dismissing Case for Lack of Jurisdiction.

THIS COURT, having found good cause for both, rules and orders as follows:

IT IS HEREBY ORDERED AND CLARIFIED that Petitioners may pursue Count IV of their Petition for Review, and conduct discovery pursuant to the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Court's Order Dismissing Case for Lack of Jurisdiction is hereby reversed and this matter is reinstated to the Court's docket. Respondents shall lodge the administrative record pursuant to the requirements of U.S.D.C.L.R. 83.6.

IT IS FURTHER ORDERED that Petitioners may proceed with this lawsuit challenging the Respondents' efforts to require livestock producers to adopt radio frequency identification ("RFID") eartags.

IT IS FURTHER ORDERED that Respondents shall immediately contact the NEBRASKA CATTLEMAN magazine to determine what steps can be taken to correct the misinformation set forth in the "informational page" published in February and scheduled for publishing in March 2020. Such steps must at a minimum include publication of a retraction that is comparable in size and prominence as the "informational page," with the language being agreed to by the Petitioners.

IT IS FURTHER ORDERED that within thirty (30) days of this Order and until such time as this case is resolved, Respondents shall undertake and comply with the following:

1. Respondents shall issue a statement, following USDA's design and brand standards and style guide, that is prominently displayed on the agency website, inclusive of the following timeline and information (with links to the referenced documents):
  - a. January 9, 2013: USDA/APHIS published a Final Rule entitled "Traceability of Livestock Moving Interstate," 78 Fed. Reg. 2040; 9 C.F.R. Part 86. This Final Rule establishes minimum national identification and documentation requirements for the traceability of livestock moving interstate. "Official Identification Devices and Methods" include an "official eartag" (e.g., the

NUES/brite metal clip tags and the Orange Brucellosis metal clip tags), properly registered brands accompanied by an official brand inspection certificate (issued by an official brand inspection authority), tattoos and other identification methods acceptable to breed associations (accompanied by a breed registration certificate), “group/lot” identification numbers (as an alternative to the use of a premises identification number (“PIN”), backtags, *or* other forms of identification as agreed to by the shipping and receiving States. The 2013 Final Rule prohibits States and Tribes from adopting RFID-only requirements.

- b. April 2019: USDA/APHIS posted the “2019 RFID Factsheet” to their website.
- c. October 4, 2019: NCLA filed a Petition for Review/Complaint in the United States District Court for the District of Wyoming on behalf of Petitioners/Plaintiffs, challenging legality of 2019 RFID Factsheet.
- d. October 9, 2019: President issued two Executive Orders addressed to agency use of “guidance”: (i) Executive Order 13891 entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents”; and (2) Executive Order 13892 entitled “Promoting the Rule of Law Through Transparency and Fairness in Civil Administration Enforcement and Adjudication.”
- e. October 25, 2019: USDA/APHIS withdrew 2019 RFID Factsheet and removed it from agency website.
- f. January 15, 2020: USDA/APHIS filed their Motion to Dismiss with the Court.

- g. February 2020: USDA/APHIS published “informational pages” in at least one industry magazine regarding RFID implementation. SUCH “INFORMATION” IS FULLY RETRACTED.
  - h. The 2013 Final Rule remains in full force and effect.
  - i. USDA/APHIS shall communicate to state and tribal partners responsible for implementing the 2013 Final Rule that the 2019 Factsheet has been withdrawn and no similar guidance will be reissued.
  - j. Official metal eartags will continue to be manufactured and provided free of charge to livestock producers.
  - k. USDA/APHIS acknowledge that they cannot amend or withdraw the 2013 Final Rule without following all requirements of the Administrative Procedure Act, including notice-and-comment mandates.
2. Respondents shall publish in the Federal Register their withdrawal of the 2019 RFID Factsheet and withdrawal of any “informational page(s)” published in industry magazines.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020

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Nancy D. Freudenthal  
United States District Court Judge