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NCLA Sues to Stop USDA’s Illegal, Unnecessary Rule Mandating Electronic Eartags for Cattle and Bison

Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America, et al. v. U.S. Department of Agriculture, Secretary Thomas Vilsack, Animal and Plant Health Inspection Service, Administrator Michael Watson

Washington, DC (October 31, 2024) – The New Civil Liberties Alliance has filed a [Complaint](#) against the U.S. Department of Agriculture (USDA) and its Animal and Plant Health Inspection Service’s (APHIS) unlawful new rule requiring electronically readable (EID) eartags for certain cattle and bison transported across state lines, rather than long-used visual tags. Representing ranchers, farmers, and livestock producers who move cattle across state lines, NCLA urges the U.S. District Court for the District of South Dakota to halt this illegal attempt to eliminate an already-in-place efficient means of cattle identification.

In 2013, APHIS promulgated a final rule regulating traceability for interstate livestock movements, a regulation that permitted several forms of “official identification” for certain cattle and bison moving across state lines, including both visual-only and electronically readable eartags and providing producers with flexibility to choose among options. Over the past decade, the agency advanced and abandoned less formal measures for mandating radio frequency identification (RFID) eartags. In May 2024, however, APHIS issued its new rule to end the use of visual-only eartags as a form of official identification for certain cattle and bison moving between states, requiring visually readable EID eartags in their place. This illegal move was also unnecessary, as the existing Animal Disease Traceability framework is already proven effective.

The Animal Health Protection Act does not give USDA and APHIS the power to mandate EID eartags. Courts certainly do not have to defer to the agencies’ interpretation of the Act after NCLA’s recent Supreme Court victory in [Relentless Inc. v. Department of Commerce](#), which overturned *Chevron* deference. The new rule is also arbitrary and capricious under the Administrative Procedure Act, since the agencies fail to reasonably explain how the EID Final Rule “is *necessary* to prevent the introduction or dissemination of any pest or disease of livestock.” APHIS violated the Regulatory Flexibility Act as well, failing to calculate the new rule’s true cost to producers—and consumers.

APHIS’s rule imposes punishing new financial and practical burdens, particularly on smaller and independent cattle producers. NCLA represents ranchers Rick and Theresa Fox and Kenny and Roxie Fox of South Dakota and Tracy and Donna Hunt of Wyoming, as well as R-CALF USA, South Dakota Stockgrowers Association, and the Farm and Ranch Freedom Alliance in an effort to stop these injustices.

NCLA released the following statements:

“USDA and APHIS are pursuing their objectives without any regard to the statutory limitations placed on them by Congress. Sadly, in this instance, America’s ranchers have been left holding the bag and footing the bill for this unlawful rule.”

— **Kara Rollins, Litigation Counsel, NCLA**

“These agencies have identified no reason the current tagging system is inadequate. They cannot issue a rule just because they want it.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

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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