

 New Civil Liberties Alliance

November 4, 2024

**VIA EMAIL**

The Honorable Thomas Vilsack  
Secretary  
United States Department of Agriculture  
1401 Constitution Ave NW  
Washington, DC 20230  
agsec@usda.gov

Dr. Michael Watson  
Administrator  
United States Department of Agriculture  
Animal and Plant Health Inspection Service  
4700 River Rd.  
Riverdale, MD 20737

Re: *Request to Postpone or Amend the Effective Date of the Amendment to  
9 C.F.R. § 86.4(a)(1)(i) published May 9, 2024 (89 Fed. Reg. 39,540–566)*

Dear Secretary Vilsack and Administrator Watson,

On October 30, 2024, the Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America (“R-CALF USA”), South Dakota Stockgrowers Association (“SDSGA”), Farm and Ranch Freedom Alliance (“FARFA”), along with several of their members, Kenny and Roxie Fox, Rick and Theresa Fox, and Tracy and Donna Hunt, d/b/a The MW Cattle Company, LLC filed a challenge to your agencies’ final rule, *see* 89 Fed. Reg. 39,540–566 (May 9, 2024) (“EID Final Rule”), mandating that official eartags for certain cattle and bison moving across state lines must be visually and electronically readable. *See* R-CALF USA v. USDA, Civil Action No. 5:24-cv-5085 (filed Oct. 30, 2024).<sup>1</sup>

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<sup>1</sup> Available at <https://nclalegal.org/filing/complaint-for-declaratory-and-injunctive-relief-15/>.

The EID Final Rule requires that “beginning November 5, 2024, all official eartags sold for or applied to cattle and bison must be readable both visually and electronically (EID).” It is expected to impact at least 11 million head of cattle per year.

The Administrative Procedure Act (“APA”) permits agencies to “postpone the effective date of action taken by it, pending judicial review” when “justice so requires.” 5 U.S.C. § 705. In the past year, several agencies have exercised this authority while litigation was pending over their rules, including the Federal Trade Commission delaying its “Combating Auto Retail Scams Trade Regulation Rule,” 89 Fed. Reg. 13,267 (Feb. 22, 2024), the Securities and Exchange Commission delaying its Climate Disclosure Rule, 89 Fed. Reg. 25,804 (April 12, 2024), and the National Labor Relations Board delaying its Joint Employer Final Rule. 88 Fed. Reg. 81,344 (Nov. 22, 2023). The parties identified above respectfully request that the United States Department of Agriculture (“USDA”) and the Animal and Plant Health Inspection Service (“APHIS”) postpone the effective date of the EID Final Rule while judicial proceedings move forward.

In the alternative, 5 U.S.C. § 553(e), and 7 C.F.R. § 1.28 permit interested parties, like the organizations and individuals identified above, to petition agencies to amend their regulations. They respectfully request that if the USDA and APHIS do not postpone the effective date of the EID Final Rule that this request be construed as a petition to amend the EID Final Rule and delay the effective date of the rule for 180 days, until May 4, 2025.

On October 30, 2024, the Petitioners timely filed suit challenging the statutory validity of the EID Final Rule. While the EID Final Rule continues to recognize metal tags applied before the implementation date as official identification for the life of the animal, after November 5, 2024 only visually readable EID eartags will be available for sale as official identification. As the agency was made aware during the comment period, there are significant concerns regarding the availability of such tags. While the agency indicated that manufacturers had assured APHIS staff “that manufacturing and shipping capacity is adequate for the projected number of cattle requiring official identification for interstate movement[,] 89 Fed. Reg. at 39,546, that has not proven to be the case on the ground. As noted in Petitioners’ Complaint, some retailers are indicating that the estimated shipping time for compliant eartags is between 6-15 weeks.” *See* R-CALF USA, ECF No. 1 at 23.

Given the inability to access compliant tags and the significant concerns raised in the pending case—including the USDA’s ability to even enforce the EID Final Rule—Petitioners respectfully request that the EID Final Rule’s effective date be postponed or amended.

Respectfully,



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