



# The Feed

*Recent Developments in Ag Law & Policy*

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

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for our 2024 conferences!**

## 2024 NALC Conferences

Mid-South  
Agricultural & Environmental Law Conference  
June 6-7

Western  
Agricultural & Environmental Law Conference  
June 20-21



**Foreign Ownership of Ag Land: Proposals.** Since January 2023, more than half of states have proposed one or more bills to restrict foreign ownership. In the past few days, a new proposal has been filed in Ohio (**HB 212**). For prior bills, see Volume 1, Issue 1 (Jan. 11) **here**; Volume 1, Issue 2 (Jan. 25) **here**; Volume 1, Issue 3 (Feb. 8) **here**; Volume 1, Issue 4 (Feb. 24) **here**; Volume 1, Issue 5 (March 9) **here**; and Vol. 1, Issue 6 (March 22) **here**; Volume 1, Issue 7 (April 14) **here**; Volume 1, Issue 8 (April 28) **here**; Volume 1, Issue 9 (May 12) **here**; Volume 1, Issue 10 (May 25) **here**. To view states' laws restricting foreign ownership of private agricultural land, click **here**.

**Foreign Ownership of Ag Land: State Laws.** Recently, Alabama enacted **HB 379** which seeks to restrict certain foreign investments in agricultural and forest property located within the state. Oklahoma also enacted a law (**SB 212**) which amends portions of the state's foreign ownership law to

specifically restrict foreign investments in real property through a business entity or trust. Last week, the Louisiana state legislature passed **HB 125** and **HB 537** which seeks to restrict certain foreign investments in agricultural land and real property located within the state, but these measures are not yet fully enacted. Additionally, Florida's new foreign ownership law (**Ch. No. 2023-33**) is facing legal challenge by a group of Chinese citizens living in Florida and a real estate brokerage firm. Two NALC articles discussing this lawsuit are available [here](#) and [here](#).

**Foreign Ownership of Ag Land: Federal Legislation.** Last week, Representative Beth Van Duyne (TX-24) introduced in Congress the Protecting American Farmland Act (**H.R. 3996**). This measure, which is being considered under the Build It in America Act (**H.R. 3938**) and is part of a tax package known as the "American Families and Jobs Act," contains a provision that would impose an excise tax of up to 60% on purchases of U.S. agricultural land by "countries of concern," which includes countries such as China, Russia, Iran, and North Korea.

**Prop 12.** Governors from eleven states have called on Congress to reintroduce the **Exposing Agricultural Trade Suppression Act**, a bill that, if it became law, would prevent state and local governments from interfering with the production and distribution of agricultural products in interstate commerce. The request comes as a response to the SCOTUS ruling on a California law known as Prop 12 which bans the sale of any meat or pork products from animals raised in confined spaces that do not meet certain size criteria. The bill was last introduced to Congress in 2021. To learn more about the SCOTUS Prop 12 decision, click [here](#) to read NALC article "What's Cooking with Prop 12?: SCOTUS Decision."

For those keeping up with Prop 12, the California Department of Food and Agriculture Animal Care Program is hosting a Prop 12 Implementation Webinar Series to review Prop 12 requirements for distributors and pork producers. The final webinar in the series will be held on June 27. All webinars in the series are recorded and available to view after the live recording. Find the series [here](#).

**Pesticides: Enlist.** Three environmental and agricultural worker groups have filed a lawsuit against the Environmental Protection Agency ("EPA") over its 2022 decision to review the registrations for the herbicides Enlist One and Enlist Duo for the next seven years. According to the plaintiffs, EPA violated both the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), and the Endangered Species Act by failing to ensure that use of the herbicides would not cause damage to the environment or to endangered species. Both Enlist One and Duo contain 2,4-D, and Enlist Duo also contains glyphosate. They have both been used to combat glyphosate-resistant weeds in corn, soybean, and cotton production. To read the complaint, click [here](#). This is not the first time EPA's decision to register Enlist herbicides has been challenged. To learn more, click [here](#) for NALC article "Court Concludes: Enlist Duo Registration Upheld."

**Pesticides: Neonicotinoids.** The State of New York is set to become the first state in the country to ban the sale of neonicotinoid-coated seeds following the legislature's passage of **S01856A**, otherwise known as the Birds and Bees Protection Act. Specifically, the bill would prevent the sale of corn, soybean, or wheat seeds that are coated with neonicotinoids after January 1, 2027. The bill would also ban the use of neonicotinoids on ornamental plants and turf after July 1, 2025. A similar bill passed the state legislature in California in 2022, but was vetoed by Governor Gavin Newsom. The New York bill is currently on its way to Governor Kathy Hochul, who is expected to sign it into law.

Neonicotinoid-coated seeds are also the topic of a recent lawsuit filed by the Center for Food Safety ("CFS") in a California federal court. In its complaint, CFS challenges EPA's denial of a 2017 petition

submitted by CFS urging EPA to “close the regulatory loophole” which allows neonicotinoid-coated seeds to be used and sold without going through the FIFRA registration process. To read the complaint, click [here](#).

**NEPA Amendments.** The Fiscal Responsibility Act of 2023, which was signed by President Biden on June 3 and suspends the public debt limit until 2025, included the most significant amendments to the National Environmental Policy Act (“NEPA”) since the statute was enacted in 1970. The amendments effectively codify many of the NEPA regulations adopted by the Council on Environmental Quality during the Trump administration. Changes include setting time limits for when agencies must complete the NEPA process, page limits for NEPA documents, and clarifying that agencies should only consider the “reasonably foreseeable” environmental impacts of their actions when undergoing NEPA review. To view the text of NEPA as amended by the Fiscal Responsibility Act, click [here](#).

**Water Rights.** Three bills intended to alter aspects of California’s water rights system are currently moving through the California state legislature. Supporters of the bills claim that the current rules are outdated and unable to address climate change. Those opposing the bills claim that they would reverse the progress California has already made in addressing climate change and settling disputes over water rights. **AB460** would increase the enforcement authority for the State Water Resources Control Board by enabling it to order immediate halt to water diversions and impose fines of up to \$10,000 a day. **AB1337** would allow the water board to curtail pre-1914 water rights without a declared drought emergency. **SB389** would allow for the investigation of water right claims from upstream diverters. All three bills have passed initial floor votes and await further review.

**Alternative Protein Labeling.** Texas Gov. Greg Abbott has signed a bill into law that will impose specific labeling requirements for alt-meat products beginning on Sept. 1. The goal of **SB 664** is to prevent consumers from being misled into thinking they are purchasing a meat product when in actuality they are purchasing a plant-based or alt-meat product. The bill defines meat as “any edible portion of a livestock carcass that does not contain lab-grown, cell-cultured, insect or plant-based food products.” Labels will have to specify if the product is “analogue; meatless; plant-based; made from plants, or a similar qualifying term.”

**Food Labeling.** In an attempt to eliminate food waste and consumer confusion, the Committee on Energy and Commerce and the Committee on Agriculture are currently considering the proposed Food Date Labeling Act. The bipartisan, bicameral bill aims to clarify and standardize food date labels. Excluding baby formula, date labels on food are not federally regulated. With support from both sides, the bill addresses these issues and offers a practical solution implementing guidance from federal agencies on food labeling. To read the FDLA of 2023, click [here](#).

The USDA has also announced activities that the agency will take to prevent consumer confusion over misleading food labels. Specifically, USDA’s Food Safety and Inspection Service (“FSIS”) will be revisiting its process for verifying animal-raising claims included on the labels of meat and poultry products. In particular, FSIS will be conducting a sampling project to determine whether it should require label claims that a product is “raised without antibiotics” to be verified with laboratory testing results. To learn more, click [here](#) to view USDA’s announcement.

**"Ag-Gag" at the High Court.** The State of North Carolina together with the North Carolina Farm Bureau Federation have filed a petition with SCOTUS asking that the Court reinstate North Carolina's 2015 “ag-gag” law. Known as the Property Protection Act, the law was previously found to violate the U.S. Constitutional right to free speech because it prevented undercover investigations into farming

practices, which the Fourth Circuit referred to as “newsgathering activities.” North Carolina’s petition comes only a year after the Supreme Court declined to hear an appeal on a similar issue raised by the State of Kansas. To read the petition filed by North Carolina, click [here](#). To learn more about the constitutional issues related to ag-gag laws, click [here](#) to read NALC article “Procedures: The First Amendment and Agriculture.”

**Public Lands.** A federal judge heard arguments on June 1 in an environmental interest group’s challenge to the Bureau of Land Management’s (“BLM”) 2020 livestock grazing plan for the Sonoran Desert National Monument. According to the environmental plaintiffs, the BLM failed to properly consider the effects of cattle grazing on the land and relied on faulty assumptions. The lawsuit is similar to one filed by the same plaintiffs over BLM’s 2012 decision to allow grazing in the same national monument. In that case, the judge sided with the plaintiffs and found that BLM had failed to properly consider the effect of grazing on the environment and ordered the bureau to amend its grazing plan. For more information on the 2020 plan and environmental assessment, please click [here](#).

**Ghost cattle scheme.** On June 5, a federal district court judge issued a \$1 million fine against a Washington state producer for violating the Commodity Exchange Act by selling over 200,000 non-existent cattle to Tyson Fresh Meats. The judge’s order also permanently prohibits the producer from trading on entities that are subject to CFTC regulation. The producer is currently serving an 11-year sentence in federal prison on wire fraud charges related to his “ghost cattle” scheme. To read the court order, click [here](#).

**Cattle Branding.** The Supreme Court of Nebraska recently reversed a lower court’s judgment and ruled that, under the state statute governing cattle brand inspection, cattle that are moved from their point of origin to backgrounding lots as calves and then to registered feedlots do not avoid brand inspection. To avoid inspection, there must be documented proof that there was no other movement between the point of origin and registered feedlot. The previously instated injunction in favor of the livestock company in this case was vacated and the case was dismissed. To read the text of the Nebraska Supreme Court’s opinion, click [here](#).

**Federal Milk Marketing Order.** The USDA has scheduled a pre-hearing information session with dairy industry members for Friday, June 16, to further discuss the National Milk Producers Federation’s petition to amend the federal milk marketing order and overhaul the way milk is priced. Comments and questions will also be heard in conjunction regarding a separate request from the International Dairy Foods Association and Wisconsin Cheese Makers Association.

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And, don't forget to go ahead and save the date for next year's Mid-South conference- June 6-7, 2024 in Memphis, Tennessee. We're looking forward to it!

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