



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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Hemp Lawsuits. Alaska is the latest state to face a lawsuit challenging the constitutionality of new state-level regulations that restrict the growth, production, or sale of hemp. In a lawsuit filed November 2, the plaintiffs claim that Alaska's **new regulations**, which prohibit the Alaska Department of Natural Resources from endorsing industrial hemp products that contain any delta-9 THC, violate the Commerce Clause of the United States Constitution. The complaint can be found **here**. Along with Alaska, three other states face similar lawsuits with plaintiffs making similar constitutional arguments to challenge state-level restrictions on hemp. For more information, click **here** for NALC article "Legal Challenges to State Hemp Laws and Regulations."

WOTUS Lawsuits. Plaintiffs in two lawsuits filed earlier this year to challenge EPA's March 2023 rule defining the Clean Water Act term "waters of the United States," or WOTUS, have filed amended complaints to challenge the updated WOTUS rule EPA issued in September following the Supreme Court's *Sackett v. EPA* decision from last May. The plaintiffs, including several states, argue that the updated WOTUS rule fails to comply with the Court's ruling in *Sackett*, and that EPA failed to provide a period of public comment. To view the amended complaint in *State of West Virginia v. EPA*, click **here**. To view the amended complaint in *State of Texas v. EPA*, click **here**. For more information on both lawsuits, click **here** to read NALC article "WOTUS Update: 2022 WOTUS Rule Faces Legal Challenges," or **here** to view NALC webinar "What's Up with WOTUS: Post-Sackett and Beyond."

FTC Warning Letters. The Federal Trade Commission sent warning letters to the American Beverage Association, the Canadian Sugar Institute, and 12 nutrition influencers for a failure to adequately disclose sponsored social media posts. The 12 nutrition influencers, who are registered dietitians with large followings on TikTok and Instagram, were warned by the FTC for sponsored posts endorsing the safety of aspartame and promoting the consumption of sugar without proper disclosure. To read more about the issue, click **here** for NALC article "FTC Warns Trade Associations and Nutrition Influencers of Lack of Disclosures in Sponsored Social Media Posts."

Animal Drugs: Carbadox. On November 7, the Food and Drug Administration (FDA) issued a Notice of Opportunity for Hearing on a proposal to withdraw approval of carbadox, a common animal drug used in swine. Carbadox is administered for both production and therapeutic purposes, but has been banned in the EU and Canada for carcinogenic concerns. The FDA's recent Notice and proposal to withdraw approval of the drug comes after the agency revoked the regulatory method used to monitor carcinogenic residue for carbadox after new information showed that the methods were not reliable. Pulling carbadox could impact the pork industry, potentially resulting in financial losses and raising concerns about increased antibiotic use with potential human health implications. The notice of proposal can be found [here](#). A comment period is open through December 7.

Food Additives. Illinois state lawmakers have proposed **SB 2637** which would amend the Illinois Food, Drug, and Cosmetic Act, to prohibit the manufacture, sale, delivery, distribution, holding, or offering for sale of food products containing brominated vegetable oil, potassium bromate, propylparaben, or red dye 3. The proposal is nearly identical to a **California law** passed earlier this year which also prohibits the manufacture and distribution of the same three food additives. However, unlike the California law, SB 2637 specifies that violations would incur civil penalties, with a maximum of \$5,000 for a first offense and \$10,000 for subsequent violations. If passed, the law would go into effect in January 2027.

Michigan: Solar Leasing. Michigan state lawmakers recently passed **SB 277** which allows the designation of solar facilities as a permitted use on farmland for the purpose of a developmental rights agreement. In making a solar facility a permitted use, the facility becomes exempt from certain special assessments, and the land where the facility is located remains in agricultural production for the duration of the development rights agreement. SB 277 outlines various criteria a solar facility would have to meet to qualify as a permitted use, including compliance with specified habitat standards standards, and maintenance of the land in such a way that it could be returned to agricultural use at the end of the deferment period.

Arizona: Animal Confinement. The Arizona Department of Agriculture is facing a lawsuit over a **rule** which went into effect earlier this year prohibiting the sale of eggs from caged chickens. Under the new rule, eggs sold in the state of Arizona must come from hens that are provided at least one square foot of floor space. Additionally, the rule provides that starting in January 2025, all egg-laying hens within the state shall be housed in a cage-free manner. The primary argument raised in the lawsuit is that the rule is not authorized by statute or input from the Arizona Legislature. Click [here](#) to read the complaint.

International Trade. A trade dispute panel has found that Canada's dairy import rules were "not inconsistent" with trade commitments under the United States-Mexico-Canada Agreement ("USMCA"). The panel was initiated by the US over concerns that Canada's revised import quotas prevented importers and retailers from gaining access to the Canadian dairy market in violation of the USMCA. This is the second time that the US has initiated a trade dispute panel over Canadian dairy tariffs. Panelists in the first dispute found that Canada's dairy tariffs violated the country's USMCA obligations. According to the panelists in the second dispute, Canada's revised import rules are USMCA compatible. To view the panel's report, click [here](#). For more resources on ag and international trade, click [here](#) to access NALC's International Trade Reading Room.

Illinois: Farm Mutual Insurance. The Illinois Governor has signed into law **SB 765**, which alters the minimum coverage requirements for farm mutual insurance companies. The new law requires these companies to maintain adequate catastrophic reinsurance instead of requiring unlimited catastrophic reinsurance. The change is meant to help manage costs effectively and prevent disruptions in the farm mutual community, allowing broader access to reinsurance products and risk capital. SB 765 is aimed at ensuring that policyholders, particularly farmers, have access to coverage and enables the marketplace to set appropriate pricing.

Environmental Justice. The Environmental Protection Agency ("EPA") has announced a sixty-day public comment period on the draft version of the Agency's revised *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*. The document was first published in 2016, but has been

updated to reflect new agency guidance, terminology, and scientific understanding. EPA relies on the guidance document to lay out analytic expectations and technical approaches that agency analysts can use to evaluate environmental justice concerns for EPA's regulatory actions. The comment period will be open through January 15. Click [here](#) to view the document and learn how to submit a comment. To learn more about EPA's approach to environmental justice, click [here](#) to read NALC article "EPA Releases New Environmental Justice Guidance Document."

Pesticide Labeling. On November 15, EPA announced that it was opening a public comment period of a white paper describing the benefits of creating, approving, and distributing digital pesticide labels. According to EPA, the current process for submitting, reviewing, and approving pesticide labels is time-consuming for regulators and pesticide registrants. Additionally, pesticide labels have become more complex, and geography-based use restrictions have become more common. EPA is exploring the use of digital pesticide labels to help combat these issues. The comment period will be open through March 14. Click [here](#) to view the white paper and find more information on how to submit a comment.

Pesticides: Glyphosate. The European Commission has reauthorized the use of glyphosate for ten additional years, but has added new restrictions to use of the herbicide including a ban on pre-harvest applications. The Commission opted to reauthorize glyphosate based on an assessment from the European Food Safety Authority which did not find any critical areas of concern that would prevent renewal of the herbicide after reviewing impacts on human health and the environment. Without the Commission's action, glyphosate approval in the European Union would have expired December 15. For more information about the Commission's decision, click [here](#).

CWA: Pesticide Permit. EPA is requesting public comment on its proposed Clean Water Act ("CWA") general discharge permit for pesticides. The draft 2026 permit covers point source discharges from the application of pesticides to waters protected by the CWA and will replace the current pesticide general discharge permit which expires October 31, 2026. The draft permit has largely the same conditions as the current permit, but does make some changes to monitoring requirements. The comment period will be open through January 12. Click [here](#) to view the draft permit and learn how to submit a comment.

Line Speeds. The USDA's Food Safety and Inspection Service ("FSIS") has decided to extend a trial project testing higher line speeds in six pork processing plants for an additional 90 days. The trials were launched in November 2021 after a **federal court blocked** the higher line speeds from being a part of USDA's New Swine Slaughter Inspection System. Data from the trials will be used by FSIS to inform any future rulemaking the agency may take regarding line speeds at pork facilities. For more information from FSIS about the trial project, click [here](#).

BT Sugarcane. USDA's Agricultural Marketing Service ("AMS") has officially added BT sugarcane to USDA's list of bioengineered foods. BT sugarcane refers to sugarcane that has been genetically engineered to resist BT insecticides which are used to control microbial pests. By adding it to the list of bioengineered foods, AMS is requiring certain regulated entities to disclose when a food product contains BT sugarcane. Click [here](#) to read the final rule. For more resources on bioengineered food, click [here](#) to access NALC's Biotechnology Reading Room.

Flooding in the U.S. According to the **National Oceanic and Atmospheric Administration**, during the first eight months of 2023, there were 25 billion-dollar weather and climate disaster events including two separate flood events. In total, these two flood events resulted in \$6.8 billion in damages. During the summer, portions of the northeastern United States, Kentucky, and Illinois saw record breaking rainfall, causing significant flooding in these areas, while historic snowmelt and rainfall last spring saw flooding in California's central valley region. Flooding can cause significant damage to farms, which may not be covered by typical farm insurance policies. The National Flood Insurance Program was established specifically to provide protection for farmers and landowners located in flood plains. To learn more about the program, click [here](#) for the NALC article, "Flood Insurance for Agricultural Producers."

Foreign Ownership of Land. Recently, the state of Florida launched the [Secure Florida Portal](#), which is an online portal for certain foreign investors required to report their landholdings located within the state. This year, the Florida state legislature enacted a law which restricts certain foreign investments in land and requires certain foreign investors and landholders to report their interests in Florida real property. Foreign persons subject to the reporting requirements of the law—which includes certain investors from countries such as China, Iran, North Korea, and Russia—are directed to use the new online portal to report their landholdings by December 31, 2023, or risk a penalty up to \$1,000 each day the registration is late. To read NALC articles discussing foreign ownership, click [here](#). For more resources on foreign ownership of U.S. land, click [here](#).

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