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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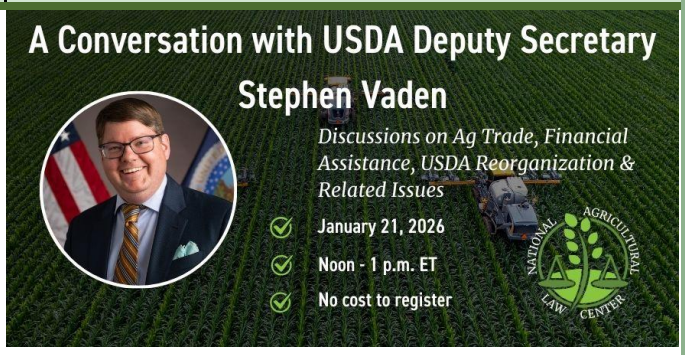


ESA Comment Period. On November 19, the United States Fish and Wildlife Service (FWS) together with the National Marine Fisheries Service (NMFS) (jointly, the Services) released four proposed rules to revise implementation of the Endangered Species Act (ESA). The proposed rules are largely identical to changes made in 2019 and 2020 which were later reversed in 2024. Specifically, the proposals would make changes to how the Services list and delist species, designate critical habitat, and conduct interagency consultation. The rules would also roll back FWS's blanket 4(d) rule, a long-standing regulation which allows FWS to automatically apply all ESA protections to species listed as threatened. A thirty-day public comment period for each proposed regulation will be open through December 22. Final rules are expected to be issued sometime next year and are likely to face legal challenges. To learn more about the proposed rules and find out where to submit comments for each one, click **here** to view NALC article "FWS & NMFS Propose New ESA Rules."

Ag "Bridge" Payments Announced. On December 8, the United States Department of Agriculture (USDA) **announced** that it would make $12 billion in one-time payments available to American farmers in response to economic pressure caused by rising input costs, export losses, and inflation. Of the $12 billion marked for the Farmer Bridge Assistance Program (FBA), $11 billion is expected to go to row crop producers of barley, chickpeas, corn, cotton, lentils, oats, peanuts, peas, rice, sorghum, soybeans, wheat, canola, crambe, flax, mustard, rapeseed, safflower, sesame, and sunflower. The remaining $1 billion will be reserved for other commodities such as sugar and specialty crops. USDA expects to set payment rates the week of December 22, with payments for qualifying producers released by February 28.

Tyson Foods' Settlement. Tyson Foods Inc. has reached a **settlement agreement** with the Environmental Working Group (EWG) over allegations that Tyson has participated in "greenwashing." Specifically, EWG filed a **lawsuit** in 2024 alleging that Tyson's promise to achieve net-zero greenhouse gas emissions by 2050 and sell "Climate-Smart" beef misled consumers because Tyson has not made any plans or "taken meaningful steps" to achieve these goals. According to the settlement agreement, Tyson is prohibited from making any new or repeating old claims regarding

"Climate Smart" beef or emissions standards until 2030 or 5 years after the execution of the agreement. Additionally, Tyson is prohibited from promoting, marketing or selling any beef product that is labeled as "climate smart" or "climate friendly," unless Tyson can satisfactorily demonstrate that the goals are "achievable and not merely illusory, and that Tyson has taken, is taking, or will take demonstrable steps adequate to reach its goal." For more information about truth-in-advertisement requirements for labeling claims, click **here** to view NALC article "The Legality of Food Labeling Claims: Claims Brought by Competitors and Consumers."

Allergen Labeling in NY. Governor Kathy Hochul of New York recently signed a **bill** into law requiring all New York food establishments to include allergen labels on prepackaged food. The allergen labels will notify consumers of the inclusion of major allergen ingredients including milk, eggs, fish, tree nuts, wheat, peanuts, sesame, soybeans, and crustacean shellfish. Food establishment" is defined as "any place food is prepared and intended for consumption" and "off-premises consumption" and includes places like delis, food trucks, and retail stores. While the Food and Drug Administration (FDA) regulates allergen disclosures on packaged foods and beverages, its regulation does not extend to food that is prepared, pre-packaged, and sold on the same premises.The new New York law will take effect one year from its enactment. To learn more about the federal allergen labeling standard, click **here** to read NALC article "Food Foundations: The Regulation of Food Allergen Labels."

WOTUS Open for Public Comment. The most recent proposed rule to define the Clean Water Act (CWA) term "waters of the United States," or WOTUS, is now open for public comment. The rule was published in the Federal Register on November 20 and the comment period is set to run through January 5. Importantly, the Environmental Protection Agency (EPA) has requested comment on various aspects of the proposal, including the definition of "relatively permanent" waters, whether a wetland must have a year-round surface water connection with a navigable water to be considered a WOTUS, and whether WOTUS should be limited to only traditionally navigable waters and those wetlands that share a surface connection with such waters. To view the text of the proposal and learn how to submit a comment, click **here**. For more information on the proposed rule, click**here** to view NALC article "WOTUS Update: EPA & Corps Propose New Definition."

State Meat Inspections. On November 25, the U.S. Dep't of Agriculture (USDA) **approved** Nevada's meat and poultry inspection (MPI) program which will permit the state to conduct inspections of meat and poultry products in intrastate commerce. States may operate their own meat and poultry inspection program under a cooperative agreement with USDA's Food Safety and Inspection Service (FSIS) if the state program meets standards "at least equal to" the federal standards under the Federal Meat Inspection Act, Poultry Products Inspection Act, and Humane Methods of Slaughter Act of 1978. Nevada joins 29 other states currently operating state meat and poultry inspection programs in agreement with FSIS. For an overview of current slaughter and processing laws in the United States, click **here**.

Court Upholds Florida Foreign Ownership Law. Recently, the U.S. Court of Appeals for the Eleventh Circuit **issued a decision** in *Shen v. Simpson*, a case challenging Florida's **foreign ownership law**. This lawsuit originated in May 2023, when a group of Chinese citizens filed a lawsuit against the state of Florida for restricting certain foreign investors from acquiring real property located in the state. In a 2-1 ruling, the Eleventh Circuit found that the *Shen* plaintiffs lack standing because the law restricts investors domiciled in China, and the plaintiffs- despite being Chinese citizens- were not domiciled in China because they lived in Florida for years and intended to stay indefinitely. The court also upheld the law's registration and affidavit requirements, concluding the plaintiffs were unlikely to succeed on their constitutional and federal preemption claims. For a recent article discussing the ruling, click **here**. For NALC articles discussing this case, click **here**. For more resources and information, see NALC's Foreign Ownership of Agricultural Land: FAQs & Resource Library available **here**.

SNAP Guidance. On November 26, twenty-one attorneys general and the District of Columbia **sued** USDA over **agency guidance** directing states to limit SNAP eligibility for immigrants in compliance with the One Big Beautiful Bill Act (OBBA). The OBBA, which made numerous changes to SNAP, limits

program eligibility for several categories of non-citizens that had previously been eligible, including humanitarian statuses like refugees and asylees. The attorneys general argue USDA's guidance "goes beyond [OBBA], arbitrarily excluding from SNAP many lawful permanent residents." They allege USDA violated the Administrative Procedure Act and seek injunctive relief from the court. To learn more about OBBA's changes to SNAP, click **here** to read NALC article "One Big Beautiful Bill Act: Nutrition Title."

"McSCUSE ME Act". On November 20, U.S. Senator Joni Ernst (R-Iowa) introduced the "McStopping Chains from Using SNAP EBT to Make Entrees Act of 2025" or "McSCUSE ME Act of 2025." **S.3240** amends the Food and Nutrition Act of 2008 to reform the Restaurant Meals Program (RMP) that allows SNAP participants to purchase prepared meals from restaurants. The bill would prohibit food establishments "primarily engaged in the sale of quick-service or fast-food items" from participating in the program. The bill also redefines "eligible meals" to include those from a prepared food section, hot bar, or deli counter that contains at least one protein and one fruit or vegetable. Senator Ernst **alleges** that at least $524 million in SNAP benefits has been spent at fast-food restaurants in nine states in the past two years, thus providing the impetus for RMP reform. The bill has been referred to the Senate Committee on Agriculture, Nutrition, and Forestry.

Food Industry Legal Challenges. San Francisco's city attorney **filed** a lawsuit against major food manufacturers alleging the companies violated California's unfair competition law and public nuisance law by depriving consumers of informed choice and creating addictive and harmful food products including ultra-processed foods (UPF). The complaint names numerous food companies including Kraft Heinz, Mondelez, Cocoa-Cola, Pepsico, General Mills, Nestle, Mars, ConAgra, among others. The complaint alleges the food manufacturers "designed, manufactured, marketed, and sold these foods knowing they were dangerous for human consumption." The complaint requests the court enjoin the companies from "deceptive marketing" and order them to "ameliorate the effects of their prior false marketing." To read the complaint, click **here**. Additionally, several food industry trade groups, including the American Beverage Association and the Consumer Brands Association, have sued the state of Texas over its "**Make Texas Healthy Again Act**." Specifically, the trade groups are alleging that Section 9 of the Act, which requires foods with certain ingredients bear warning labels, is a violation of the Commerce Clause, is preempted by federal law, and runs afoul of the free speech protections of the First Amendment. To read the complaint, click **here**. To learn more about other MAHA efforts, including defining UPFs and the Texas law, click **here**.

(Anti)Competition. Last week, President Trump signed an executive order related to "security risks from price fixing and anti-competitive behavior in the food supply chain." Specifically, the executive order directs both the Attorney General and the Chairman of the Federal Trade Commission to establish a Food Supply Chain Security Task Force within both agencies. The task forces will be asked to determine whether anti-competitive behavior exists in food supply chains and evaluate the impact of foreign-owned food industries on the cost of food in the US. To read the executive order, click **here**.

H-2A Litigation. On November 21, the group United Farm Workers (UFW) **filed suit** against the Department of Labor (DOL) to prevent enforcement of a recent H-2A wage interim final rule. The **rule**, published in October, amended the methodology used to calculate the hourly Adverse Effect Wage Rates (AEWRs) for H-2A workers. In its complaint, UFW alleges that the rule will adversely affect the wages of U.S. workers performing the same jobs as foreign H-2A workers. The UFW asserts that by lowering the minimum wage for foreign workers, the DOL's interim rule will likewise lower wages for U.S. workers. Further, the complaint alleges the DOL violated the Administrative Procedures Act by foregoing its typical notice and comment period requirement without good cause. The UFW is seeking both preliminary and permanent injunctions to prevent the DOL from enforcing the rule. To learn more about the case that led to the interim final rule, click **here** to read NALC article "2023 AEWR Rule Vacated." To register for an upcoming February 2026 webinar, "Guarding the Gates: Ag Employer Readiness for ICE and DHS Actions," click **here**.

North Dakota Carbon Capture. On December 2, a state district court in North Dakota **ruled** that a North Dakota **state law** concerning the underground storage of carbon dioxide is unconstitutional.

Under the law, once a carbon capture project is completed, title to the storage facility and the carbon dioxide within, is transferred "without payment of any compensation" to the state. According to the court, this would mean that a private landowner's pore space property could be taken by the state without compensation. This, in the court's opinion, amounts to an unconstitutional taking of private property. Finding the law to be unconstitutional, the court granted a motion for summary judgment in favor of the Plaintiffs. For another state's perspective on the issue, click **here** to view NALC partner Ohio State Extension's article "Carbon Capture and Storage legislation and prospect of pore space leasing moved forward in Ohio."

Texas Farmers Appeal PFAS Ruling. A group of Texas farmers are **appealing** a federal court decision finding that EPA does not have a duty to regulate per- and polyfluoroalkyl substances (PFAS) present in biosolids. The farmers initiated their lawsuit in 2024, arguing that EPA had violated the CWA by failing to regulate PFAS in sewage sludge, commonly applied to agricultural fields as a fertilizer. In its decision, the court ruled that the text of the CWA requires EPA to review its regulations pertaining to sewage sludge every two years, but does not require the agency to adopt new regulations on that same schedule. For that reason, the court held that EPA had not violated the CWA. To read the plaintiff's complaint, click **here**. For more information on the lower court's decision, click **here** to view NALC article "Court Dismisses PFAS Case Brought by Farmers Against EPA."

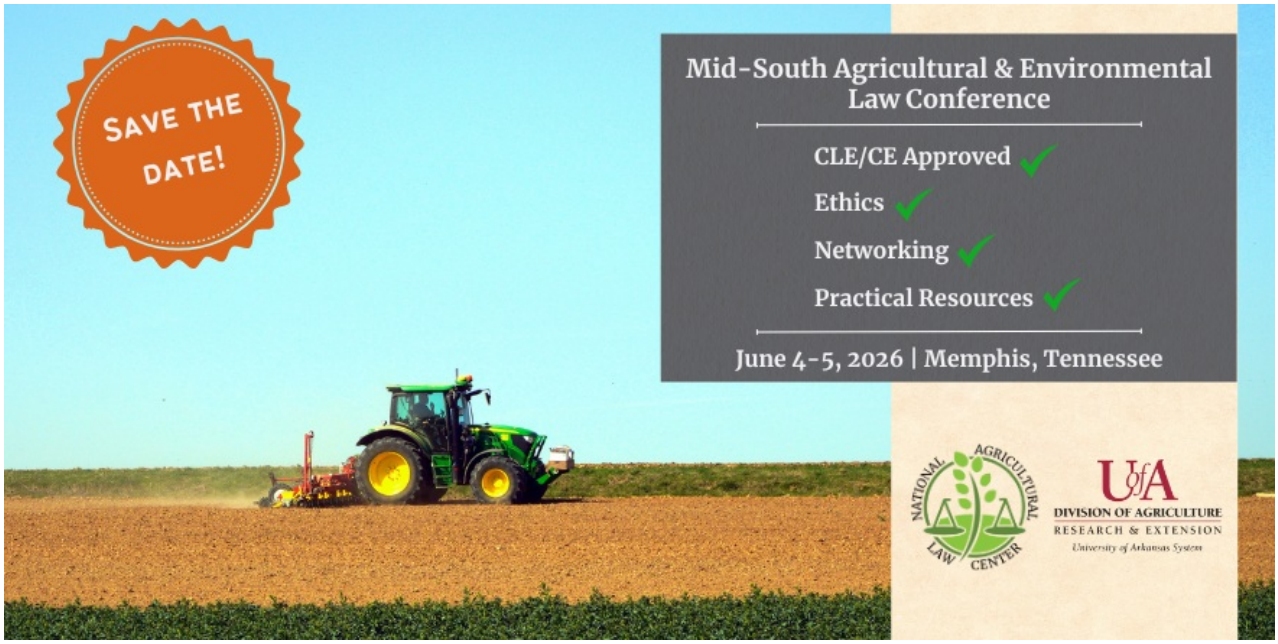
Crop Insurance. On November 28, the Federal Crop Insurance Corporation (FCIC) published a **final rule** in the Federal Register amending federal insurance policies. Under these changes, farmers will no longer be able to elect "buy-up" coverage for prevented planting provided by the Risk Management Agency. Traditionally, "buy-up" coverage would allow producers to pay a higher premium in exchange for an increased indemnity payment. This in turn allowed for increased coverage to producers unable to plant due to weather impacts. In the final rule, the FCIC claimed this provision was being removed because it was "mainly benefitting farmers in the Dakotas seeking to plant in the Prairie Pothole Region." The FCIC further stated that the rule was "no longer needed because Congress has a history of addressing wide-spread flooding through ad-hoc disaster assistance."

Hansen-Mueller Update. According to recent **reporting**, more than 50 agricultural producers and businesses have filed claims in the ongoing Hansen-Mueller bankruptcy proceedings. The grain dealer, which has locations across the U.S., **filed** for bankruptcy in the U.S. Bankruptcy Court for the District of Nebraska on November 17. Hansen-Mueller's claimants include farmers, grain elevators, service providers, and trucking companies from nearly 40 states. A creditors meeting will take place on December 22. To learn more about state grain indemnity funds, which may provide assistance in situations like this, click **here** to read NALC article "Considerations for Seeking Grain Indemnity Funds."

Montana: Exempt Well Law Challenged. The state of Montana's Department of Natural Resources and Conservation (DNRC) was recently sued by a coalition of agricultural and environmental groups alleging the state law provision commonly known as the **Exempt Well Law** is unconstitutional. The law permits groundwater wells to be drilled and water utilized prior to the DNRC awarding the owner a groundwater development certificate. Plaintiffs allege the law violates the Montana Constitutional protections afforded to senior water rights holders and the prior appropriation doctrine, and abuses groundwater resources without limit or regulation. Additionally, they claim state constitutional violations including equal protection, substantive and procedural due process, as well as citizen rights to know and participate in governance. The plaintiffs ask for a permanent injunction against enforcement of the law and an order requiring the DNRC to administer water rights in conformance with the prior appropriation doctrine. To read the complaint, click **here**.

Pesticide Preemption. The U.S. Solicitor General has filed an **amicus brief** with the Supreme Court lending its support to pesticide manufacturer Bayer in a lawsuit considering whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts pesticide lawsuits filed in state court. The brief asks the Court to resolve the recent circuit split between the Ninth, Eleventh, and Third Circuits as to whether FIFRA's language barring states from altering federally approved pesticide labels preempts state law failure to warn claims filed by plaintiffs in pesticide injury lawsuits. The

Ninth and Eleventh Circuits have both ruled that the claims are not preempted, while the Third Circuit has ruled that the claims are preempted and therefore cannot be heard. It is the ruling from the Third Circuit that is currently on appeal to the Supreme Court. Although the Court has not yet agreed to hear the case, it asked the Solicitor General to weigh in earlier this year. Whatever the outcome, the Supreme Court's decision will impact thousands of lawsuits throughout the country. To learn more about preemption in pesticide injury lawsuits, click **here** to view NALC article "Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits."



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