



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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Navigating ICE and DHS Enforcement in the Agricultural Workplace



- ✓ February 4, 2026
- ✓ Noon - 1 p.m. ET
- ✓ No cost to register

Misty Wilson Borkowski,
Hall Booth Smith, P.C.

High Court to Hear Roundup Case. The United States Supreme Court will officially weigh in on whether federal pesticide law preempts state products liability claims after over a decade of lower court litigation. Earlier this month, the Supreme Court announced that it would hear *Durnell v. Monsanto*, a case that focuses on whether Monsanto, the manufacturer of the commonly used herbicide Roundup, failed to warn consumers that its product may cause cancer. The lawsuit was originally filed in 2019 by a plaintiff who claimed that exposure to the weedkiller caused him to develop non-Hodgkin's lymphoma and that Monsanto, now owned by Bayer, violated its duty to warn consumers about the potential health risks of using its product. In response, Bayer argued that the plaintiff's claims arise under state law and are therefore preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which does not allow states to impose labeling requirements for pesticides which differ from the labeling requirements approved under federal law. Because the federally approved label for Roundup does not include a cancer warning, Bayer argues that the plaintiff's state law claims of failure to warn should be dismissed. The question of whether FIFRA preempts state law failure to warn claims has become central to pesticide liability litigation and has resulted in a circuit split with the Ninth and Eleventh Circuits ruling that such claims are not preempted while the Third Circuit holding the opposite. Whatever the outcome of this case, it will impact not only thousands of on-going pesticide liability lawsuits throughout the country, but will likely impact future litigation as well. For more information, click **here** to view NALC article "Supreme Court Agrees to Hear Pesticide Preemption Lawsuit."

WI: Cottage Foods. A pending Wisconsin bill, **S.B. 739** would create a regulatory system for cottage food producers that would require registration with the state's Department of Agriculture. Additionally, any cottage food producer that earns between \$10,000 and \$40,000 in revenue from their cottage food production will be subject to inspection by the state Department of Agriculture. However, any producer that makes over \$40,000 in revenue would be required to produce their products in a commercial kitchen and would no longer be considered a cottage food producer. This bill was the subject of a Wisconsin Senate committee public hearing held on January 20. In order to become law, it would have to pass through both Wisconsin's Senate and House of Representatives and be signed by the governor. To learn more about how other states handle cottage food production, click **here** to view NALC's Cottage Food state law compilation.

- **Webinar Opportunity (February 18):** Emily Stone, NALC Staff Attorney, will present "Community Supported Agriculture: A Field Guide for Producers and Consumers." To register, click **here**.

Challenge to Michigan's Cage-Free Egg Law. On January 22, the Trump Administration filed a **lawsuit** challenging a Michigan law that prohibits the sale of shell eggs that were not produced in a cage-free housing environment. The 2019 law, **Mich. Comp. Laws § 287**, set out housing requirements for egg-laying hens, specifically prohibiting battery or colony cage systems. At issue in the recent lawsuit is the provision that prohibits the sale of any shell egg in Michigan that is known or should be known to be produced from a hen that was not confined in a cage-free environment. The Administration claims that Michigan “has contributed to the historic rise in egg prices” because of its cage-free law, and that the egg quality standards imposed are preempted by the federal Egg Products Inspection Act. The lawsuit requests the Court hold the law invalid and stop Michigan from enforcing the sales ban on non-cage-free eggs. To learn more about state laws similar to Michigan's, click [here](#) to view NALC's Farm Animal Confinement Statutes state compilation. To learn more about a similar case filed against California last year, click [here](#) to read NALC article “Challenge to California's Hen Housing Laws.”

Annual AFIDA Data. Recently, USDA published its annual Agricultural Foreign Investment Disclosure Act (“AFIDA”) report, which provides data on foreign interests in U.S. agricultural land through December 31, 2024. According to this report, foreign individuals and entities have reported holding an interest in almost 46 million U.S. agricultural acres, which accounts for 3.6% of all privately held agricultural land throughout the country. The data reveals that foreign landholdings in U.S. agricultural acreage have increased nearly 1.35 million acres—a 3% increase—from the previous year's report. The states with the largest increase in foreign landholdings during 2024 include New Mexico (235,026 acres), Texas (231,346 acres), and Oklahoma (196,868 acres). Of those states, Oklahoma was the only state with a foreign ownership law—which restricts certain foreign investments in land located within their state—during the reported period; however, the Texas state legislature has since enacted a foreign ownership law (**TX Prop. Code § 5.251 et seq.**) during the 2025 legislative session. The states with the largest decrease in foreign landholdings include North Carolina (-181,066 acres), Arkansas (-64,331 acres), Colorado (-28,242 acres), and Utah (-26,544 acres), with Arkansas and Utah being the only two of these states to have a foreign ownership law. Further, the data indicates that Chinese landholdings in U.S. agricultural and non-agricultural land have decreased 29,336 acres from the previous year's report. USDA's most recent AFIDA report, as well as reports from previous years, is available [here](#). For more NALC resources on AFIDA and foreign investments in U.S. agriculture, click [here](#).

AFIDA Reporting Portal. USDA recently launched a new online portal for foreign investors required to report their agricultural land investments under AFIDA. This new electronic filing portal is part of the National Farm Security Action Plan announced by the Trump administration in July 2025, a plan that seeks to modernize the filing process and enable USDA to provide timely reported data to the public, rather than the current annual report format. The new electronic filing portal gathers the same information found on the current AFIDA disclosure form (FSA-153), but investors subject to AFIDA may still file using the hard copy form. In addition to the new electronic filing system, USDA also launched the online **AFIDA Compliance and Foreign Influence Reporting Portal**, allowing the general public to anonymously report possible failed or false disclosures by a foreign investor required to submit transaction data under AFIDA. A press release from USDA discussing the new portals is available [here](#).

Whole Milk in Schools. On January 14, President Trump signed into law the Whole Milk for Healthy Kids Act of 2025 (P.L. No. 119-69), allowing schools to serve whole milk. This **bill**, passed at the end of last year, amends the National School Lunch Act to allow participating schools to serve whole milk along with flavored, unflavored, organic, non-organic, reduced-fat, low-fat, fat-free, and lactose-free milk options. Additionally, schools are permitted to offer nondairy options for lactose-intolerant students, and may offer milk alternatives such as soy, almond, or goat milk. This bill reverses the mandate under the Healthy, Hunger-Free Kids Act of 2010, which stated that schools participating in the national lunch program may only serve low-fat (1%) or fat-free (skim) milk, and prohibited the serving of whole and reduced-fat (2%) milk. The signing of the Whole Milk for Healthy Kids Act highlights the administration's continued focus on promoting the consumption of whole foods, as evidenced in the newly released **Dietary Guidelines for Americans, 2025-2030**. To learn more about the new DGAs, click [here](#) to read NALC article “HHS and USDA release ‘The Dietary Guidelines for Americans, 2025-2030.’” To learn more about the law, click [here](#) to read Congressional Research Service report, “The Whole Milk for Healthy Kids Act of 2025.”

Alt. Proteins: Virginia. A Virginia bill that creates labeling requirements for “manufactured-protein food products” has passed Virginia's Senate. If enacted, **SB 186** would prohibit food products such as cultivated proteins, fungus-based proteins, insect-based proteins, and plant-based proteins from being represented itself as a meat or poultry product without a proper “qualifying term.” This bill would have to pass Virginia's House of Representatives and be signed by its governor before becoming law. To learn more about similar state laws, click [here](#) to view NALC's Alternative Protein Laws state compilation.

FDA Updates. On January 21, 2026, the FDA published a **Request for Information** (RFI) related to labeling and cross-contamination prevention for gluten in packaged foods. Specifically, this RFI is seeking information on how to better protect citizens with celiac disease from gluten-containing grains, such as rye and barley, which are not currently included in the “big nine” allergens that already require disclosure. Public comments are open until March 23, 2026, and can be made [here](#). Additionally, the FDA recently released a list of its **“Human Foods Program 2026 Priority Deliverables.”** This list outlines the goals FDA will prioritize in 2026 to “deliv[er] on the Secretary’s MAHA agenda.” Notable inclusions on the list of deliverables are a proposed “Generally Recognized As Safe” rule, guidelines for caffeine labeling, implementing the final “Healthy” rule, the creation of an added sugar reduction strategy, guidelines for the marketing of certain foods to children, and the publication of an updated Food Code. To learn more about the movement of MAHA over the previous year, click [here](#).

H-2A Statistics. According to **data recently published** by the American Farm Bureau Federation (AFBF), the H-2A program saw record numbers in 2025. For the first time in program history, over 400,000 temporary workers were requested by American producers. Of those requests, 398,528 positions were certified as eligible under the H-2A program. According to the AFBF, these numbers are indicative of domestic labor shortages. Under the H-2A program, whenever a domestic worker applies for a position, that position is no longer eligible for foreign workers. In 2025, AFBF reports that only 182 of the over 400,000 listed positions were applied to by domestic workers. The report asserts that low unemployment numbers and a steady decrease of the U.S. participation rate are likely to blame for these statistics.

- *Webinar Opportunity (February 4, 2026): Misty Wilson Borkowski, Partner, Hall Booth Smith, P.C., will present “Navigating ICE and DHS Enforcement in the Agricultural Workplace.” To register click, [here](#).*
- *Webinar Opportunity (March 18, 2026): Audry Thompson, Staff Attorney, Penn State Center for Agricultural and Shale Law, will present “Homing in on H-2A: An Overview of the Temporary Agricultural Program.” To register, click [here](#).*

Ohio Overhaul of Livestock Gestational Crates. After a fifteen-year phase-out, gestational crates are no longer permitted in the state of Ohio. The phase-out was **introduced in 2010** through an agreement facilitated by then-Ohio Governor Ted Strickland between the Ohio Farm Bureau and the Humane Society addressing issues including exotic animal ownership, dog breeding regulation, and veal crates, as well as a **fifteen-year phase-out** for all gestational crate and stall usage for breeding sows. The phase-out ended at the end of 2025, meaning gestational crates are now banned in the state of Ohio. Existing uses of gestational crates at the first of the year were permitted for a short window of time to “maximize embryonic welfare” and allow for pregnancy confirmation.

SCOTUS Denies Iowa Pipeline Appeal. The United States Supreme Court has **declined** to hear an **appeal** by Iowa counties challenging an Eighth Circuit decision over county ordinances related to a carbon sequestration pipeline. Specifically, the counties asked the Court to review whether federal law preempted county zoning ordinances establishing safety standards for carbon sequestration pipelines. Summit Carbon Solutions, an Iowa-based company seeking to build a pipeline across the state, challenged the ordinances, claiming that federal pipeline safety standards preempted those adopted by the counties. In its decision, the Eighth Circuit held that the county ordinances were preempted by the federal Pipeline Safety Act (PSA). On appealing the case to the Supreme Court, the counties argued that the Eighth Circuit wrongly interpreted the PSA’s preemption provision. According to the counties, the PSA preempts state and local standards regarding certain technical matters such as design and installation of pipelines but limits federal authority over the location of pipelines. Importantly, courts have so far been split on how to apply the PSA’s preemption provision with the Fourth and Fifth Circuits focusing on the “effect” of a state or local law to determine preemption while the Eighth Circuit focuses on the “primary motivation” behind the local rule. By declining to hear the case, the Supreme Court allows the Eighth Circuit’s decision preempting the Iowa county ordinances to stand. To learn more about preemption and the circumstances under which it tends to arise, click [here](#) to view NALC article “Procedures: Federal Preemption.”



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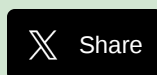
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