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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DEBT Project. In partnership with the National Association of State Departments of Agriculture, the National Agricultural Law Center recently **announced** the launch of a new project that tracks bankruptcy trends across the agricultural sector. The "Data on Economic and Bankruptcy Trends in Agriculture" or "DEBT" project, provides a more comprehensive view of agricultural bankruptcy filings by identifying ag filings under both Chapter 11 and Chapter 12. Historically, agricultural bankruptcy tracking has been done by tracking only Chapter 12 filings- the bankruptcy chapter specifically designed for family farmers and fishermen. In the period between January 2021 and June of this year, 1200 Chapter 12 cases were filed. However, some agricultural businesses do not qualify for Chapter 12, and instead might file under Chapter 11. By cross referencing bankruptcy filings with FSA data, the project was able to identify an additional 201 Chapter 11 cases filed by agricultural entities. In other words, bankruptcies affecting ag businesses were at least 16% higher than anyone had previously realized. To view the data and learn more about the project, click **here**.

Colorado River. On August 21, the Bureau of Reclamation (Reclamation) **announced that it has finalized plans** for operating key infrastructure along the Colorado River for 2027-2028. The announcement comes shortly after Reclamation released a final report outlining how the agency plans to operate Lakes Powell and Mead after current guidelines expire at the end of this year. The plan establishes a 10-year decision framework setting out limits and principles that Reclamation will rely on to draft two-year operational guidelines. Reclamation has noted that this approach is intended to allow the agency to better respond to changing hydrologic conditions as recordsetting drought continues to decrease overall water supplies in the Colorado River System. Under the final 2027-2028 guidelines, Arizona, California and Nevada - the three states that make up the Lower Basin of the Colorado River - will be required to reduce their collective water use by 1.25 million acre-feet per year. Arizona will face reductions of 760,000 acre-feet, California will see cuts of 440,000 acre-feet while Nevada will see a reduction of 50,000 acre-feet each year over the period. Days after the announcement, **Nevada filed a lawsuit** to challenge Reclamation's plan, claiming that the cuts violate the complex legal framework that governs water apportionment on the river. To learn more about Reclamation's 10-year decision framework, click **here** to view NALC article "Reclamation Releases Final EIS for Colorado River."

USDA Appeals SNAP Food-Restriction Ruling. The Trump administration has asked the Court of Appeals for the D.C. Circuit **to review** a federal judge's decision vacating USDA's approval of five state waivers excluding certain foods from SNAP purchases. In a June 2026 decision, the district court found that USDA exceeded its authority by granting these waivers based on **7 USC § 2026(b)**, a section designed for pilot projects that increase program efficiency, not participant nutrition. The ruling applies to Colorado, Iowa, Nebraska, Tennessee and West Virginia – the five states where SNAP participants brought the case – while the other 18 approved state programs remain active. Filing the appeal does not reinstate the five programs, which remain blocked unless the ruling is stayed or reversed. Next, the appellate court will set a schedule for when opening briefs are due. For more information on the June decision, click **here** to read NALC article "Court Rules SNAP Waivers Violate APA."

Updates to AFIDA. On August 10, the comment period closed on USDA's proposed rule to significantly revise the regulations implementing the Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA"). The proposed revisions are extensive, including new definitions that would significantly expand the scope of persons and property interests subject to AFIDA reporting. This includes new definitions for "agricultural land", "foreign adversary", and "foreign adversary controlled entity" to create heightened reporting requirements for certain foreign persons, regardless of the size or duration of their interests. It also adds definitions for "beneficial owner" and "shell corporation". A recently published NALC article, "AFIDA Updates Explained: Background and Proposed Definitions (Part 2)," discusses the proposed rules's addition of new definitions to the AFIDA regulatory framework. To view the article, click **here**. To view the July 15 NALC webinar, "Foreign Ownership of Ag Land: Federal & State Legislative and Litigation Update", click **here**.

FDA Food Ingredient Updates. On August 19, 2026, the FDA published three notices in the *Federal Register* of new color additive petitions the agency is considering. A color additive petition is the mechanism by which the agency approves new color additives for the market. Specifically, the petitions being considered are **Gardenia Blue** (seeking approval for expanded use in other foods), **Safflower Extract**, and **Acetone Use in Carrot Oil Production** (seeking to allow acetone to be used as a solvent in the manufacture of carrot oil). The publication of these petitions is in line with the administration's focus on food ingredients and prioritization of naturally occurring color additives over synthetic. Also in line with FDA's emphasis on food ingredients is its recent proposed reforms to the "Generally Recognized As Safe"(GRAS) pathway. Substances that enter through the GRAS pathway are distinguished from both color additives and food additives, and historically, have been permitted to enter the food supply without specific FDA approval or notice. To learn more about the proposed reforms, click **here** to read NALC article "HHS Proposes Reforms to the 'Generally Recognized As Safe' Pathway."

- *Webinar Opportunity (November 18): Emily Stone, Staff Attorney at the National Agricultural Law Center, will present "What's In A Food? A 2026 Snapshot of Food Ingredient Changes at the State and Federal Levels." To register, click* ***here****.*

USDA Proposes Roadless Rule Repeal. USDA is **proposing** to rescind the 2001 Roadless Area Conservation Rule, which prohibits road construction, road reconstruction, and timber harvesting on 58.5 million acres of National Forest System lands. The proposed rescission would affect roughly 44 million acres, with certain state-specific rules in Idaho and Colorado remaining unaffected. The proposal claims that a repeal would reduce regulatory burdens and return land management decision making to local Forest Service officials. USDA asserts that "evolving national priorities" require a more active management approach. The added flexibility, according to the proposal, would help managers reduce wildfire risk and address insect and disease outbreaks. Comments are due by September 21, 2026. To submit comments, click **here**.

Farm Program Payment Limitations: Final Rule. USDA's Commodity Credit Corporation (CCC) has published a final rule implementing provisions of the One Big Beautiful Bill Act (OBBA) to revise current farm program payment limitations and payment eligibility regulations. The **final rule** allows pass-through limited liability companies (LLCs) and S corporations to calculate certain farm-program payment limits based on their total number of eligible owners instead of one payment limitation for the business entity. Payment limitations generally determine the maximum amount of farm program payments an individual or legal entity may receive for any crop year, and are attributed through four levels of entity ownership. Previously, the requirements regarding payment attribution to multiple people only applied to joint ventures and general partnerships. Each member must still satisfy USDA's payment-eligibility requirements which includes "actively engaged in farming." The final rule took effect on June 2 and current program participants organized as LLCs or corporations must update their farm operating plans with the Farm Service Agency. The determination of ownership interest for qualified pass-through entities during the 2026 program year must be made by September 15. To learn more about payment limitations and farm programs, click **here** to view the

NALC Farm Commodity Programs Reading Room. Check out the latest "Agricultural Law Explained" **video** where NALC Staff Attorney, Rusty Rumley, discusses important considerations for business entities participating in farm programs.

- *Webinar Opportunity (September 16): Grant Ballard, partner at Ark Ag Law, PLLC, and Kristine Tidgren, Director of Iowa State University's Center for Agricultural Law and Taxation, will present "2026 Update: USDA's Payment Limitations, Eligibility, & Ag Tax Considerations." To register, click* ***here****.*

EPA PFAS Designations Upheld. On August 18, 2026, the D.C. Circuit **unanimously** upheld EPA's 2024 rule designating PFOA and PFOS as hazardous substances under CERCLA. By designating these chemicals as hazardous substances, EPA is permitted in certain circumstances to compel responsible parties to clean up chemical releases and allow the federal government, states, and affected private parties to pursue recovery of qualifying cleanup costs. Seven industry groups asked the court to vacate the rule, challenging EPA's interpretation of the law, its cost-benefit analysis, and its decision to regulate the chemicals despite remaining uncertainties. The court rejected those arguments, finding that EPA acted within its statutory authority and adequately explained its decision. According to the court, EPA made a "reasoned decision" when designating PFOA and PFOS as hazardous substances. For more information on EPA's move to designate PFOA and PFOS as hazardous substances under CERCLA, click **here**.

Dietary Guidelines Challenged. The Physicians Committee for Responsible Medicine has **filed suit** against HHS and USDA seeking withdrawal of the 2025–2030 Dietary Guidelines for Americans (DGA). The complaint alleges that the agencies violated the Federal Advisory Committee Act and Administrative Procedure Act by improperly relying on the conclusions of a nine-member review panel. Further, the organization alleges that eight of the nine reviewers had financial relationships with food-industry interests and that the panel was not fairly balanced. It asks the court to require disclosure of the panel's records, prevent the agencies from relying on its work and order publication of replacement guidelines through a FACA-compliant process. For more information on the DGAs, click **here** to read NALC article "HHS and USDA release 'The Dietary Guidelines for Americans, 2025 – 2030.'"

School Meals. On August 24, 2026, USDA and HHS announced "Harvest to Hallways," a new initiative to increase investment in child nutrition programs. As part of the agencies' "Make America Healthy Again" movement, these efforts aim to connect American farmers with local schools, invest in school kitchen infrastructure, and increase healthy, nutrient-dense meals in American schools. Specifically, the initiative will offer $70 million in school infrastructure grants, $30 million for school lunch research, and $25 million in new Farm-to-School grants. More information on Harvest to Hallways can be accessed **here**. Additionally, at the press conference announcing the initiative, the agencies' commented that their school meals rule, which will align school meal standards with the 2025-2030 DGAs, is under review at the White House Office of Management and Budget (OMB). OMB conducts a cost-benefit analysis of the rule, and its review is one of the final stages of the rulemaking process.

Illinois River Cleanup Order Paused. On August 17, the U.S. Court of Appeals for the Tenth Circuit sent a decades-long Oklahoma poultry pollution case back to the district court to consider whether a settlement between the state and poultry companies is sufficient to end the case and vacate a prior judgment. The judgments at issue **held the poultry companies responsible for water pollution caused by application of poultry litter**, **limited the use of that litter in the Illinois River watershed and directed the companies to pay cleanup expenses**. Since the initial rulings, all parties in the underlying case reached a **settlement agreement** under which the defendants agreed to pay $44 million for restoration of the river and take actions to reduce the amount of nutrients entering the watershed. While sending it back for further consideration in light of the new agreement, the Tenth Circuit order did not vacate the district court's judgment or approve the settlement. The district court has not yet set any future actions on its calendar in furtherance of the order.

California Paraquat Phaseout. All manufacturers of the pesticide paraquat have voluntarily canceled their California product registrations, beginning a phaseout of the herbicide in the state. The Department of Pesticide Regulation (DPR) began reevaluating paraquat in November 2024 under **AB 1963**, which required the agency to determine by January 1, 2029, whether to retain, cancel, suspend or further restrict the products' registrations. Preliminary assessments identified potential associations between paraquat exposure and thyroid effects and birth defects, as well as risks to wildlife, and DPR directed manufacturers to submit additional scientific data by June 5, 2026. Instead of providing the required data, manufacturers began canceling their registrations in April, with the final registrant doing so on August 6. Licensed dealers may continue possessing and selling remaining stocks for up to two years after each cancellation takes effect, while licensed applicators may use them in accordance with existing label directions and state and federal requirements.

IRS Centralizes Conservation Easement Cases. The Internal Revenue Service (IRS) **announced** the creation of the Office of Conservation Easements to coordinate technical expertise, enforcement policy and case resolution across the agency and its Office of Chief Counsel. A conservation easement is a voluntary agreement between a landowner and a third party like a government agency or a land trust to permanently limit the uses of the land to promote preservation or conservation objectives. Because the landowner has forfeited their development rights to the land, they are permitted to donate or sell their rights at a discount and may claim a charitable tax deduction. As part of the transition, the IRS will end the uniform settlement initiative started in May and will no longer send standardized, unsolicited offers, stating that fixed terms and deadlines do not account for differences among easement cases. Deadlines attached to previously issued offers are withdrawn. However, prior elections remain valid and taxpayers with pending eligible cases may still request settlements on the same terms. To learn more, click **here** to read NALC article, "Legal Issues with Land Trusts: Tax Benefits and the IRS Crackdown."

CVP Contract Conversions Upheld. The Ninth Circuit held that the Bureau of Reclamation was not acting in violation of the National Environmental Policy Act or Endangered Species Act when it converted dozens of Central Valley Project water-service contracts without first conducting contract-specific environmental reviews or protected-species consultations. The conversions, authorized by the **Water Infrastructure Improvements for the Nation Act**, allow contractors to prepay federal construction costs and replace fixed-term water-service contracts with repayment contracts that may continue indefinitely. The court held that the law requires Reclamation to approve a conversion upon request and permits the agency to modify only payment-related terms, leaving it no discretion to alter water-delivery rights based on environmental concerns. The ruling does not affect environmental reviews and biological opinions governing the operation of the Central Valley Project or water delivered under the converted contracts. To view the court's decision, click **here**.

Federal Grazing Plan Challenged. The Center for Biological Diversity (CBD) has filed a lawsuit in an Oregon federal court challenging an initiative to expand livestock grazing on public lands across the Western United States. First issued in **October 2025 as a policy plan** and formalized through a **March 2026 agreement** between the agencies, the Grazing Action Plan attempts to increase the overall US cattle numbers by allowing grazing on currently vacant federal grazing allotments. In its lawsuit, CBD alleges that the agencies violated the Endangered Species Act by adopting and beginning to implement the initiative without consulting federal wildlife agencies about potential effects on protected species and critical habitat. The lawsuit seeks to stop the initiative from moving forward until the agencies complete the required consultation. If CBD is successful in its lawsuit, it may cause a delay in finalizing and implementing that proposal. To learn more about the lawsuit, click **here** to view NALC article "Lawsuit Challenges Joint USDA-DOI Grazing Action Plan." To learn more about other proposed changes to BLM grazing regulations, click **here** to view NALC article "BLM Proposes Overhaul of Grazing Program Regulations."

State Hemp Regulation. Beginning on July 31, 2026, the sale and possession of many synthetically derived hemp THC products will be banned in Texas. This includes products such as Delta-8 THC, Delta-10 THC, THCP, and THCA flower. Violators of this new prohibition face potential jail time and fines of up to $10,000. Products containing delta-9 THC and .03% or less THC by dry weight are exempt from the ban, which is in line with the federal definition of hemp contained in the 2018 Farm bill. Meanwhile, Ohio has **petitioned** the Sixth Circuit to reverse an **order** blocking enforcement of **Senate Bill 56**, a state law which reclassified hemp products containing more than 0.3% total THC as marijuana. Under that law, the sale of such products is limited to Ohio-licensed marijuana businesses. According to the hemp companies who filed the suit, this reclassification impermissibly favored Ohio's state-sanctioned marijuna industry over out–of-state companies. Ohio argues that its law does not block new market entrants, instead focusing only on a product's THC content and "not a product's geography." To view the NALC's Industrial Hemp Reading Room, click **here**.

NC State Developing Flood Prediction Tool. NC State University, alongside the N.C. Plant Sciences Initiative and East Carolina University, have **announced** development of a web-based app intended to help predict storm and flooding events. The app relies on real-time monitoring of water depth, soil moisture, and salinity to provide notice to farmers of imminent flooding. The announcement did not include information on who owned the data collected.

- *Webinar Opportunity (October 21): D. Reed Freeman, Partner, ArentFox Schiff Privacy Practice Group leader and Karen Ellis Carr, Partner, ArentFox Schiff FDA Practice Leader and Agriculture & Ag Tech Industry Group Leader will present "Agricultural Data Rights: A New State Law Landscape." To register, click **here**.*

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