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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Farm Bill in the Lame Duck. With both chambers of Congress coming back into session after their midterm recess, potential passage of a Farm Bill remains top of mind. The House passed its version, the **Farm, Food, and National Security Act of 2026**, in April of this year, while the Senate moved its version, the **Agricultural Act of 2026**, out of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry in September. To become law, the Senate bill must first be voted favorably by the entire chamber. If passed by the Senate, the chambers will then meet in conference committee to reconcile their versions before it can be sent to President Trump for signature. To learn more about the Farm Bill, click **here** to visit NALC's Farm Bill Resource page, or click **here** to read the CRS report, Farm Bill Primer: Overview and Status. For a comparison of the House and Senate Bills, click **here** to read CRS report.

Monsanto Win in Post-*Durnell* Trial. A **Missouri jury issued a verdict in favor of Monsanto** in the first Roundup liability trial since the U.S. Supreme Court issued its decision in *Monsanto Co. v. Durnell* this past June. As in previous Roundup liability trials, the three plaintiffs alleged that exposure to Roundup and its active ingredient glyphosate caused them to develop cancer. Unlike previous Roundup trials, the Missouri plaintiffs were unable to argue state law failure-to-warn claims because *Durnell* held that federal pesticide law preempts such arguments. Instead, the Missouri plaintiffs focused on allegations that Roundup was defectively designed and that Monsanto inadequately tested the pesticide's formulation and minimized research suggesting possible cancer risks. The trial centered on competing scientific assessments, including EPA's conclusion that glyphosate is not likely to cause cancer and the International Agency for Research on Cancer's classification of the chemical as a probable human carcinogen. To learn more about the Supreme Court's ruling in *Durnell*, click **here**.

Comments Requested on AFIDA Reporting Expansion. On October 29, 2026, USDA published a **notice of request for approval of a revision to the currently approved information collection request** under the Agricultural Foreign Investment Disclosure Act ("AFIDA"). The proposed electronic form used by foreign persons to report interests in U.S. agricultural land would collect additional identifying and ownership information, including tax identification numbers, contact information and a complete diagram tracing all ownership interests. Filers would also

map each holding through a geographic information system and provide more details about land use, leases, financing, and assessed value. The changes accompany a **proposed rule** that would expand reporting to additional ownership interests, foreign-held leases and easements and certain U.S. businesses with at least 10% foreign ownership. USDA estimates that approximately 5,438 respondents would file annually and that completing a new disclosure, including the required map, would take about one hour. Comments on the proposed collection are due December 28, and USDA will revise the form as necessary to reflect the final rule. For more information on foreign ownership of agricultural land, click **here**.

North Dakota Beef Commission Appointments. A North Dakota state judge has **invalidated** a law giving four named livestock organizations exclusive authority to nominate candidates for six of the nine seats on the state's Beef Commission. The court held that the system granted those organizations a special privilege unavailable to other groups, violating the state constitution. The ruling removes the exclusive nomination requirements and allows the governor to appoint commissioners directly while considering recommendations from any group or individual. It does not dissolve the North Dakota Beef Commission or invalidate the beef checkoff program. In the same ruling, the court upheld a requirement barring producers who received a state checkoff refund within the previous three years from serving on the commission, finding that the restriction applies equally to all producers. For more information on beef checkoff programs, click **here** to read NALC article "Legal Checkup on Checkoffs: Beef Checkoff Basics."

SNAP Eligibility Reforms. USDA **proposed** new rules related to eligibility for SNAP. Historically, USDA has permitted SNAP eligibility to be conferred to participants based on that participant's eligibility for another means-tested assistance program. This eligibility extension is called "broad-based categorical eligibility" (BBCE). In this case, under BBCE a household may qualify for SNAP because they are eligible for non-cash assistance through the program named Temporary Assistance for Needy Families (TANF). **TANF** is a Department of Health and Human Services initiative that provides grants to states in order to temporarily assist families when a parent or other relative cannot provide for the family's basic needs. State programs funded by TANF can provide cash and other non-cash assistance, such as childcare, work, or education and training activities. USDA's proposed reform focuses on the SNAP categorical eligibility extended to families that receive "non-cash or in-kind benefits or services" through TANF. Specifically, it would limit BBCE to only households that are recipients of TANF "assistance" as defined in **7 CFR § 260.31(a)**. Under this definition, assistance would be limited to "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs." In the proposed rule, USDA states that 17.6 percent of SNAP participants are eligible for SNAP because of the current BBCE rule. If finalized these rules would remove 3.2 million households from SNAP eligibility. Public comments are open until December 10, 2026, and can be made **here**.

States Challenge Corporate Transparency Act Exemptions. A coalition of 20 states and the District of Columbia **sued** the Treasury Department and its Financial Crimes Enforcement Network over rules that exempt domestically created entities from the Corporate Transparency Act's beneficial-ownership reporting requirements. Congress enacted the law in 2021 to require covered domestic and foreign companies to report identifying information about individuals who own or control them. FinCEN originally estimated that approximately 32.6 million existing entities would have to report; however, its August 2026 rule reduced the requirement primarily to certain foreign entities, leaving about 28,000 existing companies subject to reporting. The states allege that FinCEN exceeded its statutory authority and violated the Administrative Procedure Act by exempting more than 99.9% of the entities originally covered. They argue that the resulting database would no longer provide information needed for state tax administration, consumer protection and other law-enforcement activities. The lawsuit asks the court to vacate the exemption rules and prevent FinCEN from deleting beneficial-ownership records it previously collected. For more information on the Corporate Transparency Act, click **here** to view an NALC factsheet.

'Wide-Open Spaces' Needed to Expand Grazing Opportunities. U.S. Secretary of the Interior, Doug Burgum, has signed an **order** establishing a department-wide Rangeland Health Initiative to identify additional federal lands for livestock grazing and reduce delays in grazing permit renewals. Within 30 days of the order's publication, the Bureau of Land Management ("BLM"), Fish and Wildlife Service, and Bureau of Reclamation must identify lands that could be made available for grazing. Additionally, BLM has 60 days from the date the order was published to submit a plan for eliminating its permit-renewal backlog. Further, the order directs agencies to create a public map of grazing opportunities, review cases of suspended grazing use for possible reinstatement, and renew permits for full 10-year terms. However, the order does not authorize grazing on the newly identified lands, as that would require additional agency action. The directive is intended to implement **Executive Order 14425**, issued in Sept., which expresses support for American ranchers. For more information on BLM's grazing program, click **here** to read NALC article "BLM Proposes Overhaul of Grazing Program Regulations."

Federal Bills targeting Food Ingredients. Outgoing Rep. Nancy Mace (R-S.C.) has introduced two bills that would prohibit certain ingredients from FDA-regulated products. Specifically, **H.R. 10936** would require HHS to deem all synthetic color additives unsafe for use in food, drugs, medical devices and cosmetics. Specifically, this legislation would include color additives and color lakes subject to certification by the FDA. For example, Red No. 40, Yellow No. 5, and Blue No. 1 would be among the prohibited additives. Additionally, Rep. Mace also introduced **H.R. 10913** which would classify foods containing butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), or tert-butylhydroquinone (TBHQ) as adulterated. Because adulterated foods may not be sold in interstate commerce, this bill would ban food products containing those substances from being sold. Both prohibitions would begin two years after enactment. To become law, these proposals would have to pass both chambers of Congress by the end of the year, and then be signed by the president. For more information on FDA's ongoing work to phase out synthetic dyes, click **here** to read NALC article "FDA Announces Plan to 'Phase Out' Synthetic Dyes."

- *Webinar Opportunity (November 18): Emily Stone, NALC Staff Attorney, 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: SNAP Waivers. USDA's Food and Nutrition Administration has **approved** food-purchase restrictions for SNAP participants in Montana, North Dakota, South Carolina and Virginia following a public comment process. All four projects took effect November 1. **Montana** will exclude high-sugar beverages, energy drinks, candy and prepared desserts; **North Dakota** and **South Carolina** will restrict specified sweetened beverages and candy; and **Virginia** will exclude sweetened beverages. USDA had initially approved the projects; however, **following a June ruling that vacated** similar waivers in five other states for the agency's failure to follow required notice and comment procedures, USDA published notices related to these four in the Federal Register. Although most commenters opposed the restrictions, the agency allowed all four projects to proceed without modification. For more information on the June ruling, click **here**.

"Zero Sugar" Lawsuits. A new proposed class action lawsuit has been **filed** against Starbucks for alleging its products are "sugar free" when they contain lactose – a disaccharide. Specifically, the plaintiffs are challenging eight products like "Sugar-Free Vanilla Protein Latte" and "Sugar-Free Caramel Protein Matcha" for claiming they are sugar free and yet allegedly contain around 13 and 21 grams of sugar in the form of lactose. The complaint relies on the recent Seventh Circuit decision ***Franco v. Chobani, LLC***, which determined that allulose was a "sugar" that counted toward "sugar free" labeling classifications. *Franco* was notable because it was contrary to guidance previously published by FDA that effectively allowed allulose to be present in a product that bore a "no sugar" label. There has been no such guidance for lactose. This is a proposed class action, and the class has not yet been certified. For more information on the *Franco* case, click **here** to read NALC article "Seventh Circuit Reinstates Chobani 'Zero Sugar' Case."

Precision Ag Data & Crop Insurance Fraud. A federal grand jury has indicted North Dakota farmers Daniel and Derek Flaten on charges of conspiring to make false statements to the Federal Crop Insurance Corporation. Prosecutors allege the farmers concealed or shifted production between farming operations so that one operation appeared to have suffered lower yields and qualified for crop insurance payments. The indictment cites data recorded by precision farming equipment that allegedly showed substantially higher corn yields than the figures reported to insurers. Prosecutors claim the farmers improperly received approximately $619,000 in indemnity payments, while the federal government paid another $104,000 in subsidies associated with the policies. Each farmer also faces two individual charges of making false statements involving crop insurance claims. Both men have been arrested and released on bond, and the allegations have not been proven in court. For more information on agricultural data rights generally, click **here** for previously recorded NALC webinar "Agricultural Data Rights: A New State Law Landscape." To learn more about crop insurance, click **here** to visit NALC's crop insurance reading room.

DOJ opinion on FDA. The Justice Department's Office of Legal Counsel has **concluded** that FDA may revise its regulations to permit broader disclosure of supply-chain information during foodborne illness outbreaks and recalls. FDA currently treats information identifying businesses within a supply chain as confidential commercial information and generally may release it only under limited circumstances, such as when necessary to carry out an enforcement action. The opinion concludes that FDA could issue regulations authorizing disclosure when the commissioner determines that an imminent danger to health or gross deception of consumers exists. The opinion does not itself change what FDA may disclose, so the agency would need to amend its regulations before exercising the broader authority.

Alternative Proteins: Texas. Earlier this month, the Fifth Circuit heard oral arguments on a case related to Texas' ban on cultivated meat. In 2025, Texas enacted **legislation** that would temporarily ban the sale of "cell-cultured proteins" from September 1, 2025 to September 1, 2027. Shortly after its enactment, this law was challenged by two California based cultivated protein companies, Upside Foods, Inc. and Wild Type, Inc. (d/b/a Wildtype). In January 2026, the case was heard at the District Court in the Western District of Texas where the court **dismissed** the challengers' claims of preemption, but allowed their Dormant Commerce Clause claims to continue. Further, the court also denied the challengers a preliminary injunction – meaning that Texas was permitted to enforce the law while litigation is ongoing. Not long after this ruling, the challengers appealed the decision on the preliminary injunction to the Fifth Circuit. On November 4, 2026, oral arguments related to that appeal were heard. It is unclear at this time how the Fifth Circuit will rule. This is the second time that a cultivated protein ban has been heard before a federal appeals court. Earlier this year, the Eleventh Circuit upheld a similar preliminary injection related to Florida's cultivated protein ban. To learn more on how the Eleventh Circuit ruled, click **here** to read NALC article "Eleventh Circuit takes up Florida's Ban on Cell-Cultured Meat." To learn more about the district court's ruling on the Texas ban, click **here**. For more information on cultivated protein laws generally, click **here** to view NALC's Alternative Protein Laws State Compilation. To listen to a recording of the oral arguments before the Fifth Circuit, click **here**.

EPA Ends Animal Feeding Operation Air Agreement. EPA **has announced** that it will terminate a **2005 agreement** intended to develop methods for estimating air emissions from livestock and poultry operations. Under the voluntary agreement, participating operations funded a national emissions study in exchange for protection from certain enforcement actions while EPA developed the methodologies. The resulting estimates would have helped operations determine whether they needed permits, pollution controls or other measures to comply with the Clean Air Act (CAA). EPA now says data collected between 2005 and 2007 are too old and limited to reflect current barn designs, herd sizes and manure-management practices, so the agency will not finalize the methodologies. Approximately 2,600 animal feeding operations representing nearly 14,000 facilities participated in the agreement. EPA plans to notify those operations that it is working to end all obligations under the agreement, including EPA's commitment to exempt participating farms from civil liability for certain potential CAA violations while the study was on-going. The decision does not exempt farms from otherwise applicable CAA requirements. To learn more about the CAA and how it impacts agriculture, click **here**.

PFAS Proposed for Prop 65. On October 30, the California Office of Environmental Health Hazard Assessment announced plans to list three PFAS chemicals as reproductive toxicants under the state's Proposition 65. California's decision to list the three chemicals - **PFBA**, **PFDA**, and **PFHxA** - is based on **human health assessments** conducted by the federal EPA which the state of California considers authoritative. All three of the PFAS chemicals are found across a variety of consumer goods including food products and food packaging. Should the chemicals be listed under Prop. 65, it could trigger warning requirements unless manufacturers can demonstrate that the normal use of their products will result in an average daily intake that is less than the established safety threshold for each PFAS chemical. California already lists another trio of PFAS - PFOA, PFOS, and PFNA - under Prop. 65 as either reproductive toxicants or carcinogens. Public comments on the current proposals are due by November 30, 2026. For more information on how to submit a comment, click **here**.

DC and Denver ban Foie Gras. This month, DC and Denver residents passed ballot initiatives that would ban both the sale of foie gras and the feeding process that achieves it from their cities. Foie gras is a luxury food product made from the enlarged liver of a duck or goose that has been force-fed. DC ballot initiative No. 86, named "**Prohibiting Force-Feeding of Birds Act of 2026**," and Denver's **Ordinance 311** prohibit the process of force-feeding "a bird for the purpose of enlarging the bird's liver beyond normal size," and ban products that are the result of force feeding from being sold, distributed, or offered for sale in their cities. Violators of both cities' laws will be subject to civil penalties between $1,000 and $5,000. Similar laws have been enacted in the state of California, and cities like New York City, New York; Portland, Oregon; and Pittsburg, Pennsylvania – though some of those laws are still tied up in litigation. Both laws will take effect on July 1, 2027.

Animal Food: FDA Concludes Evaluation. Earlier this year, the FDA's Center for Veterinary Medicine (CVM) **concluded** a two-year evaluation of its animal food ingredient approval process. Specifically, this evaluation assessed both the Food Additive Petition and Generally Recognized As Safe (GRAS) Notification review programs. Initially, launched in August 2024, this evaluation followed FDA's announcement that it was expiring its longheld partnership for food ingredient review with the Association of American Feed Control Officials. With the expiration of this partnership, FDA announced the establishment of a third, interim animal food ingredient review program, Animal Food Ingredient Consultation. As a result of the evaluation, FDA **announced** several "target process improvements,"

and published a formal Program Policy and Procedures Manual detailing its evaluation timeline for the GRAS Notice process. For more information on the evaluation and its conclusions, click **here** to read NALC article "FDA Concludes the Evaluation of its Animal Food Ingredient Processes." For more information on the regulation of animal food, click **here** for NALC factsheet, "The Regulation of Commercial Feed." To learn more about state feed laws, click **here** to view NALC's compilation of state commercial feed statutes.

DOL v. Sun Valley Orchards. On November 10, 2026, the U.S. Supreme Court heard oral arguments in a case concerning whether the Department of Labor ("DOL") has the constitutional authority to levy and enforce monetary penalties on H2-A employers who violate program regulations. In 2019, an administrative law judge ordered Sun Valley Orchards to pay $212,000 in fines and $370,00 in back wages for numerous H-2A violations. These violations were disputed by Sun Valley Orchards, but upheld by DOL administrative review board and a federal district court judge. However, the 3rd Circuit Court of Appeals **reversed** the order, holding that the DOL is not permitted to use their administrative adjudication authority to resolve the dispute, which prompted the DOL to **petition** the Supreme Court for review. The DOL argued that the agency has constitutional authority to levy fines and carry out other enforcement proceedings on employers in the H2-A program, while Sun Valley Orchards argued that type of enforcement involves private rights, meaning the case should be decided before a federal court, like in a breach of contract. To follow this case, click **here** to view the Supreme Court docket.

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