



The National Agricultural Law Center

nationalaglawcenter.org
nataglaw@uark.edu
@nataglaw

First Quarter, 2022

Ag & Food Law Quarterly Report: First Quarter 2022

January 1, 2022 – March 31, 2022

USDA National Agricultural Library
UNITED STATES DEPARTMENT OF AGRICULTURE

This material is based upon
work supported by the
National Agricultural
Library, Agricultural
Research Service, USDA

The National Agricultural Law Center provides the Ag & Food Law Quarterly Report as part of its mission to serve as the nation's leading source of agricultural and food law research and information. The Quarterly Report is a comprehensive but not exhaustive summary of notable federal and state level regulatory, legislative, and judicial agricultural and food law legal quarterly developments. Links to additional resources for each development are provided, as appropriate. For daily updates, both archived and upcoming, please visit the National Agricultural Law Center (NALC) Ag & Food Law Update, available on the NALC website [here](#).

Subjects:

[Ag-gag](#)

[Agricultural Land](#)

[Agritourism](#)

[Animal Welfare](#)

[Antitrust](#)

[Biotechnology/Genetic Engineering](#)

[Clean Water Act](#)

[Crop Insurance/Disaster Relief](#)

[Endangered Species Act](#)

[Finance, Credit & Tax](#)

[Food Safety & Labeling](#)

[International Trade](#)

[Labor](#)

[Pesticides](#)

[Racial Equality](#)

[Right to Farm](#)

The information contained in this document is provided for educational purposes only. It is not legal advice and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.



Ag-Gag

Third time's the charm? In *Animal Legal Def. Fund v. Reynolds*, No. 419CV00124SMRHCA, 2022 WL 777231 (S.D. Iowa Mar. 14, 2022), the court considered whether the second version of an Iowa law criminalizing the use of deception to gain access or employment in an agricultural production facility violated the First Amendment. The court found that the law discriminated based on viewpoint and failed to meet the strict scrutiny test. The court granted plaintiffs' motion for summary judgment and found Iowa Code § 717.3B unconstitutional in violation of the First Amendment. Link to previous NALC ag-gag webinar [here](#). Link to decision [here](#).

Agricultural Land

Nice Doing Business with You? Recently, the Indiana General Assembly enacted SB 388 which restricts foreign business entities, after June 30, 2022, from acquiring by grant, purchase, devise, descent, or otherwise any agricultural land within the state for purposes of crop farming or timber production. Info [here](#). Indiana now joins approximately thirteen other states that specifically forbid or limit nonresident aliens and other foreign investors from acquiring or owning an interest in agricultural land within their state. For a compilation of state laws regulating foreign investments of agricultural land, click [here](#). To view a NALC webinar discussing laws limiting foreign ownership of agricultural land, click [here](#).

Agritourism

Indiana enacts SB 343 which specifies that “agritourism activity” includes camping, canoeing, kayaking, tubing on a river, and winter sports activities, including activities that take place on a facility or on grounds used for or in connection with winter sports activities. This legislation provides that failure to post a warning sign or provide a warning notice does not create a cause of action against an agritourism provider, and allows the use of an electronic signature to sign a contract or release in connection with engaging in an agritourism activity. Info [here](#). To learn more about your state's agritourism statute click [here](#).

Animal Welfare

On March 28, 2022, SCOTUS announced it will hear a case regarding whether Prop 12 is constitutional under the dormant commerce clause. To read a recent NALC blog post explaining this litigation, click [here](#).

Farm Animal Confinement. Massachusetts Senate Bill 2603, as passed, regulates hen welfare and establishes uniform cage-free standards for animals within the state. The statutory text is available [here](#). To read about farm animal confinement statutes in other states, a NALC compilation is available [here](#).

Antitrust

JBS Reaches Settlement. JBS has agreed to settle claims that it conspired to drive up beef prices by limiting supply. The settlement will provide \$52.5 million to a class of “direct purchasers,” represented primarily by grocery stores. Attorneys for the plaintiffs have referred to the agreement as the “icebreaker” settlement, in the hopes that it will lead other meat packers to settle similar lawsuits (more info from Agri-Pulse [here](#)).



Biotechnology/Genetic Engineering

First there was AquAdvantage Salmon, then there was GalSafe Pigs, and now there's PRLR-SLICK Cattle. On March 7, 2022, The Center for Veterinary Medicine announced it approved genome-edited beef cattle for market. The particular edited gene leads to slick-coated animals that are well suited for warmer environments. To read more on this, click [here](#). To learn more about legal issues concerning biotechnology, click [here](#).

Clean Water Act

Supreme Court Wades into Wetlands. In January, the United States Supreme Court announced that it would hear arguments in the long-running case *Sackett v. EPA*. The lawsuit began in 2008, after EPA notified the Sacketts that a wetland located on their property fell under CWA jurisdiction as a “water of the United States.” The Sacketts disagreed with EPA’s conclusion, and filed suit arguing that the wetland on their property was not subject to the CWA because it did not share a continuous surface water connection with any navigable body of water. The question of whether the Sacketts wetland is a water of the United States is now before the Supreme Court. The Court’s decision to hear the case comes while EPA is undertaking a rulemaking effort to once again redefine the term “waters of the United States.” A ruling from the Supreme Court could impact EPA’s final definition. To learn more about *Sackett v. EPA* and how it could affect EPA’s rulemaking, click [here](#).

Crop Insurance/Disaster Assistance

Covering Cover Crops. USDA began a new round of cover crop payments this year, providing crop insurance premium subsidies worth \$5 an acre to any farmer who plants cover crops under the Pandemic Cover Crop Program (“PCCP”). This is the second year in a row USDA has offered these payments. Click [here](#) for more information. To read NALC resources on crop insurance, click [here](#).

Updated Regs for Hog Producer Relief Program. The Farm Service Agency (“FSA”) publish a notification to clarify hog eligibility, documentation requirements, and payment factoring under the Spot Market Hog Pandemic Program (“SMHPP”). [Info here](#). FSA is [accepting applications](#) for SMHPP assistance through April 29, 2022. For updates on the program, click [here](#). To learn more about SMHPP, view a NALC blog article discussing the program [here](#).

Endangered Species Act

Final Rules. FWS issued final rules regarding the [Rice’s whale](#), the [peppered chub](#), the [Panama City crayfish](#).

Proposals. FWS issued proposals regarding the [Sonoran desert tortoise](#), the [Texas population of the ocelot](#), the [prostrate milkweed](#), the [foothill yellow-legged frog](#), the [ivory-billed woodpecker](#), and the [northern long-eared bat](#).

Reclassified. FWS has formally reclassified the Morro [shoulderband snail](#), the [Stephen’s kangaroo rat](#), and the [plant beach layia](#).

Critical Habitat. FWS is proposing to designate critical habitat for the [Tiehm’s buckwheat](#), and [two species of crayfish](#).

Gray Wolves Relisted. In February, a federal judge reversed the Trump administration’s decision to remove the gray wolf from list of endangered species, restoring its protections under the Endangered Species Act. The gray wolf was delisted in October 2020, and the court’s decision to reverse that action has garnered mixed reactions. Click [here](#) to learn more.



Delisted. FWS published a final rule formally removing a coral, *Siderastrea glynni*, from the Federal List of Threatened and Endangered Species. [Info here.](#)

Announcements. FWS announced that it is removing the San Benito evening-primrose from the Federal List of Endangered and Threatened Plants on the basis of recovery. [Info here.](#)

FWS has revised the taxonomy of four species of mussels under the Endangered Species Act. [Info here.](#)

Finance, Credit & Tax

On March 9, 2022, the Farm Service Agency (“FSA”) published a final rule to implement certain provisions authorized by the 2018 Farm Bill. For example, this final rule revises provisions on FLP loan limits, allows additional flexibility for loan applicants to meet the required farming experience, provides higher guarantee rates for lenders to provide credit to beginning and socially disadvantaged farmers, and provides equitable relief to certain borrowers. The final rule can be found [here](#). For NALC resources on agricultural lending, click [here](#) and [here](#).

Funding for 2022 Fiscal Year. In March, Congress passed a \$1.5 trillion federal omnibus spending bill for the fiscal year ending September 30, 2022. Of the \$234.2 billion appropriated to agriculture under the legislation, \$346 million is designated as earmark funding. [Info here.](#)

Food Safety & Labeling

Bioengineered Foods Now Require Disclosure. January 1, 2022, marked the mandatory compliance date for the Bioengineered (BE) Food Disclosure Standard (Standard). Many BE foods entering commerce on and after this date must include a disclosure on the label informing consumers that the food is BE or contains BE ingredients. To learn more about the Bioengineered Food Disclosure Standard, click [here](#) and [here](#).

Cooperative Interstate Shipment in Montana. On March 21, 2022 the Food Safety and Inspection Service announced it finalized a Cooperative Interstate Shipment Agreement with the State of Montana. This agreement allows certain state-inspected meat and poultry processors to ship their products across state lines. [Info here.](#)

Litigating labels. In the first quarter of 2022, there were developments in many cases turning on whether a food product label was misleading. Some of these cases include:

Scholder, v. Sioux Honey Ass’n Coop., No. CV 16-5369 (GRB), 2022 WL 125742 (E.D.N.Y. Jan. 13, 2022), in which the court considered whether honey labeled “Pure” and “100% Pure” was misleading when the honey contained glyphosate. The court found that a reasonable consumer could be misled into believing a product labeled “Pure” or “100% Pure” contained no contaminants. The court held that the plaintiff plausibly alleged that the defendant engaged in consumer-oriented activity that was materially misleading.

Mogull v. Pete And Gerry’s Organics, LLC, No. 21 CV 3521 (VB), 2022 WL 602971 (S.D.N.Y. Feb. 28, 2022), in which the plaintiff claimed that the defendant’s “free-range” eggs were not actually free-range. The court found that a reasonable consumer could interpret the product description as factual and denied defendant’s motion to dismiss.

Gibson v. Bartlett Dairy, Inc. & Farmland Fresh Dairies, Llc, No. 20-CV-2848NGGSJB, 2022 WL 784746 (E.D.N.Y. Mar. 15, 2022), in which the plaintiff alleged that defendants’ “No Antibiotics” labeled dairy products actually contained antibiotics. The court denied defendant’s motion to dismiss pursuant to New York General Business Law, but granted the motion to dismiss pursuant to plaintiff’s non-New York claim.



Thornton v. Tyson Foods, Inc., No. 20-2124, 2022 WL 727628 (10th Cir. Mar. 11, 2022), in which plaintiffs claimed that defendant’s use of “Products of the U.S.A.” labels on beef products was misleading. The court affirmed the district court’s order dismissing plaintiffs’ complaints. The court found that plaintiffs wanted to impose labeling requirements that were different than or in addition to the federal requirements. The court also found that plaintiffs’ deceptive-labeling claims were preempted by federal law.

International Trade

Port Expansion. USDA is looking to boost ag export capacity at the Port of Oakland in an effort to expedite the process of getting agricultural commodities onto ships. Read more about it [here](#).

Basics of International Trade: Tariffs. This article was the first in a series that the National Agricultural Law Center published discussing different areas of international trade. This article focused on one of the basics of international trade: tariffs. To learn more about tariffs, click [here](#).

Reaching Agreements. The United States and Japan reached a deal to lessen the threat of beef trade interruptions and hopefully prevent increases on tariffs for beef from the United States. To read more about the new deal, click [here](#). To learn more about international trade and tariffs, click [here](#).

Labor

State Overtime & Minimum Wage Changes. Several states have adopted new laws that created overtime requirements for agricultural workers. Under the federal Fair Labor Standards Act (“FLSA”) agricultural workers are exempt from overtime requirements. Oregon is the most recent state to approve overtime for agricultural workers. To read more about federal and state overtime and minimum wage requirements, click [here](#).

SCOTUS stays OSHA's vaccine/test mandate for businesses. The Supreme Court stayed OSHA’s vaccine mandate finding that OSHA acted outside of its authority to issue it. To read more on OSHA’s vaccine-or-test mandate, click [here](#).

In *MISTIE BEAN PLAINTIFF v. WAYNE FARMS LLC DEFENDANT*, No. 4:20-CV-798-LPR, 2022 WL 848345 (E.D. Ark. Mar. 21, 2022), the plaintiff argued that the defendant, a poultry production and processing company, failed to pay them their overtime wages and violated the Fair Labor Standards Act (FLSA) and the Arkansas Minimum Wage Act (AMWA). Plaintiff argued that defendant did not maintain accurate time punches and they performed other work off the clock. The court found that the evidence presented by the plaintiff was not enough to establish a reasonable inference that the plaintiff worked uncompensated overtime. The court concluded that there were no genuine disputed material facts as to the accuracy of the time punches or failure to compensate plaintiff for time worked off the clock. The court granted the defendants motion for summary judgment.

Child Labor. The FLSA sets the federal standards for child labor laws which protect children from dangerous work environments and ensure that the work does not interfere with their education. To read more about federal and state child labor laws, click [here](#).

Pesticides

Chlorpyrifos Changes Finalized. On February 28, the revocation of all food tolerances for chlorpyrifos officially went into effect. Without a valid food tolerance, chlorpyrifos cannot be applied to food crops. Prior to the revocation becoming final, a [coalition of farm groups filed a lawsuit](#) challenging the decision. The farm groups are asked the court to continue allowing food uses of chlorpyrifos consistent with a safety finding that EPA made in 2020. In response to the lawsuit and other requests to stay the final rule revoking food



tolerances for chlorpyrifos, [EPA published an order](#) in the Federal Register formally denying all requests that the revocation be delayed.

Red Fish, Blue Fish, EPA Registers Enlist. EPA issued seven-year FIFRA registrations for the herbicides Enlist One and Enlist Duo. Both products are registered for use on corn, soybean, and cotton in 34 states (more info from Agri-Pulse [here](#)). To explore the registration docket, click [here](#).

Approaching the ESA. At the start of the year, EPA announced that effective immediately, it had changed its policy regarding Endangered Species Act (“ESA”) consultations for newly registered pesticide active ingredients. Prior to enacting its new policy, EPA claims that it “did not consistently assess” the possible impacts new pesticide active ingredients would have on species listed under the ESA. Failing to do so resulted in insufficient protections for threatened and endangered species, as well as “resource-intensive litigation” against EPA that caused uncertainty over registered pesticide ingredients. EPA intends the new policy to both protect listed species, and bring stability to the process of registering pesticides. For more information on EPA’s new policy, click [here](#).

Racial Equality

Resources for Underserved Communities. In the first quarter of 2022, NALC published the fourth and fifth installments in its series of periodic highlights of new and existing NALC resources that are relevant for BIPOC (Black, Indigenous, People of Color) and other underserved communities. To read the resource highlight focusing on agricultural workers, click [here](#). To read the resource highlight focusing on food insecurity and food access, click [here](#).

Notice announcing the availability of funds for fiscal year 2022 and soliciting applications from community-based and non-profit organizations, institutions of higher education, and Tribal entities to compete for financial assistance through the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program. [Info here](#).

An Intervention. On March 22, 2022, the U.S. Court of Appeals for the Fifth Circuit reversed a district court ruling denying a group of Black farmer advocates the right to intervene in *Miller v. Vilsack*, a lawsuit that is blocking the USDA’s debt relief program for socially disadvantaged farmers and ranchers. This reversal by the Fifth Circuit allows the Federation of Southern Cooperatives/Land Assistance Fund (“Federation”) to represent its members as a defendant in an effort to uphold the program. The Fifth Circuit’s decision can be found [here](#). To read NALC blog posts on the *Miller* case and the Federation’s motion to intervene, click [here](#) and [here](#).

Right to Farm

H 606 would revise the Idaho’s right to farm law to include the ingress and egress of agricultural aircraft to agricultural lands or treatment areas as an “agricultural operation” under the law. Info [here](#). To read Idaho’s current right to farm statute click [here](#).

Georgia and Vermont Right to Farm Bills. Both states have pending legislation to amend and strengthen their right to farm statutes. The primary purpose of the Georgia bill is to remove the “Changed conditions” language from the current statute while the Vermont bill would remove the rebuttable presumption created by complying with the statute and instead create an affirmative defense. To read more about these bills click [here](#). To read other state’s right to farm statutes click [here](#).

