



The National Agricultural Law Center

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Fourth Quarter, 2022

Ag & Food Law Quarterly Report: Fourth Quarter 2022

October 1, 2022 – December 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](#).

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Animal Welfare

Humane Slaughter, Poultry. Plaintiffs requested USDA adopt humane handling regulations under the PPIA. USDA denied the requests, because the PPIA does not grant the Department authority to “prescribe requirements for the humane handling of live birds at slaughter.” In *Animal Welfare Inst. v. Vilsack*, No. 20-CV-6595 (W.D. N.Y. Oct. 31, 2022), the court found that USDA’s denial of the plaintiffs’ petitions was lawful under the arbitrary or capricious standard because there is no express statutory authority to mandate the humane treatment of animals. Therefore, the court ruled in favor of the agency. For more info on this case, click [here](#).

Biofuels

Bio-Fuels Blend. Companion bills were proposed in both the [House](#) and the [Senate](#) during the previous Congressional session, which would have allowed year-round sales of ethanol blends higher than 10%.

On December 30, 2022, EPA proposed a rule to set the Renewable Fuel Standard (“RFS”) Program standards from 2023 through 2025, as required under the Clean Air Act, as well as other regulatory changes to the implementation of the program. The proposed rule is available [here](#).

Carbon/Climate

Climate-Smart Agriculture. On December 21, 2022, the National Resources Conservation Service (“NRCS”) announced it is requesting public input for information concerning how the agency will implement funds received under the Inflation Reduction Act to fund the deployment of climate-smart practices on U.S. farms, ranches, and forestlands through four Farm Bill conservation programs. The request is available [here](#).

Clean Water Act

Calling Out CAFOs. A coalition of environmental interest groups have filed a lawsuit against EPA over its failure to respond to a 2017 petition asking the agency to draft stronger rules for regulating concentrated animal feeding operations (CAFOs) under the Clean Water Act. Specifically, the 2017 petition challenges a series of rules adopted by EPA in 2003 and 2008 that established the current regulatory framework for CAFOs under the CWA. An NALC article about the lawsuit and 2017 petition is available [here](#).

WOTUS Returns. On December 30, EPA released its long-awaited final rule to redefine the CWA term “waters of the United States,” commonly referred to as WOTUS. The term is critical to implementing the CWA because only those waters that fall under the WOTUS definition are protected by the CWA. This new final rule marks the third attempt by EPA to adopt a new WOTUS definition since 2015. Click [here](#) for an NALC article that provides an in-depth look at what’s in the new rule and what to expect going forward.

EPA Proposes CWA Revisions to Protect Tribal Resources. EPA has issued a proposed rule that would revise CWA water quality standards regulations to clarify and describe how those standards must protect tribal reserved water rights. Such water rights include any rights to aquatic and/or aquatic-dependent resources reserved or held by tribes. See [here](#) to read the proposed rule.

Disaster Relief/Crop Insurance

Revisions to Walnut Policy. In October 2022, the Federal Crop Insurance Corporation (“FCIC”) published a final rule amending its walnut crop insurance policy. According to FCIC, many producers of walnuts also grow other tree nut crops and having different insurance requirements for these similar



crops has generated some confusion for producers and AIPs. Under this rule, FCIC removed the minimum acreage insurability requirement to bring walnut policies in line with other tree nut insurance policies. To read the final rule, click [here](#).

Economic Stimulus

On October 18, 2022, USDA announced it had provided \$800 million in debt forgiveness to “distressed borrowers” as part of the \$3.1 billion assistance funding allocated to USDA under § 22006 of the Inflation Reduction Act. Additionally, the agency announced it would be providing up to \$500 million in payments for certain farm loan borrowers who are facing bankruptcy, foreclosure and cashflow challenges. Out of this \$500 million, USDA is providing approximately \$66 million in direct assistance to producers who used the Disaster Set-Aside Program in response to the coronavirus pandemic. USDA’s press release announcing this financial assistance is available [here](#). More information on IRA debt relief and financial assistance is available on USDA’s website [here](#).

Endangered Species Act

Checking in on the ESA. This year, the Endangered Species Act (ESA) once again underwent a series of changes as the courts weighed in on challenges to ESA regulations adopted during the Trump Administration. The back and forth caused by different court decisions has created some confusion about which rules are still in place and which are not. For a comprehensive overview of where the ESA is at the end of 2022, click [here](#).

Lesser Prairie Chicken Gets Listed. The Fish and Wildlife Service has announced it is listing the lesser prairie chicken under the ESA, which will grant the bird full ESA protection. Farmers and ranchers in Western states where the lesser prairie chicken is found have attempted to keep the bird from being listed. Click [here](#) to find FWS’s listing rule for the lesser prairie chicken.

Environmental Protection Agency

Top Environmental Law Topics 2022. Once again, the past year saw several important developments in environmental law issues that have had impacts to agriculture. Most of these issues are likely to carry on to 2023 and beyond. NALC has identified some of the top environmental law topics from 2022 that are likely to continue into 2023. Click [here](#) to learn more.

PFAS Sticking Around. In December, EPA issued a proposed rule to add per- and polyfluoroalkyl substances (PFAS) to the list of Lower Thresholds for Chemicals of Special Concern. Adding PFAS to the list of Chemicals of Special Concern would cause them to be subject to stricter reporting requirements than they are currently subject to. To read EPA’s proposed rule, click [here](#).

Food Safety & Labeling

What is Healthy? On September, 28, 2022, the FDA published a proposed rule to redefine what the “healthy” means as applied to food labels. The current definition of “health” was established in 1994 and much has changed over almost three decades. To read a recent NALC article on the topic, click [here](#).)

One Step Closer to Cell-Cultured Chicken. FDA issued a “No Questions” letter to UPSIDE Foods for their cultivated meat. Cell cultured meat is regulated jointly by FDA and FSIS under a [regulatory agreement](#) so FSIS will still need to give their okay before the product can be distributed for human consumption. To learn more about this click [here](#).



Where did that Food Come from? On November 21, 2022, the Food and Drug Administration (FDA) published a final rule that aims to more efficiently track foods that have a high probability of causing foodborne illnesses such as leafy greens, nut butters, salads and cut fruits and vegetables. Learn more [here](#).

Who Regulates the Labels on Booze? Two agencies, the Alcohol and Tobacco Tax and Trade Bureau & the Food and Drug Administration, are responsible for different parts of the regulation of alcoholic beverages. To read the recent NALC article on this subject click [here](#).

Land Ownership

Amending AFIDA. There were a few legislative proposals introduced in the previous Congressional session that sought to amend certain provisions of the Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978. AFIDA requires certain “foreign persons” who acquire or transfer an interest in agricultural land to disclose their interest in the land to USDA. For a discussion on the measures introduced in Congress, click [here](#). For background on AFIDA, click [here](#).

Keeping Track? On October 1, 2022, U.S. House Republicans sent a letter to the Governmental Accountability Office (“GAO”) requesting a study of foreign transactions and acquisitions in U.S. agricultural land and its “impact on national security, trade, and food security.” The group of policymakers also requested this study to evaluate USDA’s procedures for collecting Agricultural Foreign Investment Disclosure Act (“AFIDA”) data and whether these procedures ensure accurate disclosure of foreign ownership in U.S. farmland. The letter—including a complete list of issues House Republicans want GAO to address in a study—is available on the Republican’s House Committee on Agriculture website [here](#).

States Propose Foreign Ownership Laws. As states across the nation were preparing to enter into new legislative sessions, several states pre-filed legislation or proposed plans to introduce legislation that seek to restrict certain foreign acquisitions and investments in agricultural land. These states include Florida ([planned legislation](#)), Missouri ([SB 9](#), [SB 55](#), [SB 76](#), [SB 144](#), [SB 332](#), [SB 334](#), [HB 430](#), [HB 465](#), [HB 499](#)), North Dakota ([HB 1135](#)), South Carolina ([H 3566](#)), South Dakota ([planned legislation](#)), and Texas ([SB 147](#), [HB 1075](#)). Resources on foreign ownership and investments in U.S. agricultural land are available on NALC’s website [here](#).

There were several legislative proposals introduced in the 117th Congress that sought to control or restrict certain foreign investments in U.S. farmland. A NALC article explaining some of these proposals is available [here](#).

Nutrition

On November 17, 2022, USDA’s Nutrition Service announced it is proposing science-based revisions to the foods authorized for individuals participating in the Special Supplemental Nutrition Program for Women, Infants and Children (“WIC”). These changes to WIC are based on recommendations from the National Academies of Science, Engineering, and Medicine (“NASEM”) and the Dietary Guidelines for Americans, 2020-2025. The press release announcing these changes is on USDA’s website [here](#).

Pesticides

Court Nixes Dicamba Case. In a decision issued in October, a court in the Eastern District of Missouri dismissed a lawsuit brought by a crop grower and herbicide applicator who alleged that they had suffered harm as the result of dicamba drift that occurred in 2016 and 2017. The plaintiffs claimed that the defendant, Monsanto Co., was responsible for the damage. Ultimately, the court dismissed the suit, concluding that many of the plaintiffs’ claims were precluded by a contract that one of them had signed when purchasing dicamba products from Monsanto. To learn more about this case, click [here](#).



Ag Seeks Congressional Intervention. A coalition of agricultural organizations have asked Congress to intervene and remind states that federal law limits their ability to regulate pesticide products within their borders. The request comes as a series of recent lawsuits have asked courts across the country to consider whether certain state law claims raised by plaintiffs in pesticide injury lawsuits should be preempted by federal pesticide law. To learn more about the issue of preemption in pesticide injury lawsuits, click [here](#). Read a copy of the letter submitted to Congress [here](#).

Sulfoxaflor, Take Two. The Ninth Circuit Court of Appeals has ordered EPA to revisit its registration decision for the pesticide sulfoxaflor, finding that EPA failed to comply with notice and comment requirements under the Federal Insecticide, Fungicide, and Rodenticide Act. The court also determined that EPA did not fulfill its ESA requirements when registering sulfoxaflor for use. This is the second time that the Ninth Circuit has weighed in on EPA's sulfoxaflor registration. In 2015, the court issued a decision vacating EPA's approval of sulfoxaflor on the grounds that EPA did not have sufficient scientific evidence to approve the pesticide. This time, the court has left the sulfoxaflor registration in place while EPA conducts its review. To read the Ninth Circuit's decision, click [here](#).

Production Contracts

In October 2022, the Agricultural Marketing Service ("AMS") published a proposed rule concerning revisions to the regulations under the Packers and Stockyards Act, 1921 ("PSA"). The proposed changes to the regulations seek to promote inclusive competition and market integrity in the livestock, meats, poultry, and live poultry markets. The proposed rule is available on the Federal Register [here](#). On November 11, 2022, AMS announced it is providing an additional 45 days for submission of comments and information from the public concerning the proposed changes to the PSA, which is available [here](#). For a discussion the proposed rule, check out NALC's *Proposed Regulation: Competition and Market Integrity* article [here](#).

Cattle Contracts Library. The Consolidated Appropriations Act of 2022 directed USDA's Agricultural Marketing Service to create a Cattle Contracts Library Pilot Program to increase market transparency for cattle producers. The final rule to do so is available [here](#).

Public Lands

Data-sharing for public land usage. In October 2022, USFS and the Public Lands Council announced a MOU to help ranchers and federal forest officials "cooperate to collect and analyze data on rangeland health, ultimately ensuring better management of national forests and grasslands." The data collected through the MOU gives USFS information concerning rangeland health. To read the MOU, click [here](#).

Racial Equality

In October 2022, NALC published an article titled *Resources for Underserved Communities: Highlight of New Publications* which discusses environmental justice as it relates to BIPOC, low income, and other marginalized communities, and to provide readers with NALC resources relevant to BIPOC communities. To read the article, click [here](#).

Miscellaneous

On December 29, 2022, President Biden signed into law a \$1.7 trillion spending package known as the Consolidated Appropriations Act of 2023 ("CAA"). Of the \$1.7 trillion in the spending package, \$25.5 billion was allocated to the agricultural sector. Some of the agricultural funding under the CAA includes \$4 billion for rural development programs, \$237 million for marketing programs, \$3.45 billion in agricultural research, \$1.174 billion to the Animal and Plant Health Inspection Service, \$1.034 billion for conservation programs, and \$1.92 billion for farm programs. Of this \$1.92 billion for farm programs, Congress has



directed USDA to use \$61 million of the \$1.92 billion for farm programs to resolve heirs' property issues. Additionally, the spending bill amends the Agricultural Foreign Investment Disclosure Act ("AFIDA") to require USDA to report to Congress on the impact foreign investments in farmland have on family farms, rural communities, and domestic food supply. To view the spending bill, click [here](#).

Solar Leasing Considerations. With additional funds from the Inflation Reduction Act, even more interest is being drawn to solar leasing. Before signing a lease committing themselves and their land to a solar opportunity, there are numerous things that a landowner should consider. Learn more [here](#).

Hours of Service. The Department of Transportation has rejected the application for a waiver of the hours of service limitations for truckers hauling live animals. The request would have exempted these truckers from federal mandates limiting the hours a driver can be on the job. Learn more [here](#).

In December 2022, Rep. Glenn Thompson, R-Pa., has been elected by the House Republican Steering Committee as the next chairman of the House Agriculture Committee. Learn more [here](#).

