



# The Feed

*Recent Developments in Ag Law & Policy*

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

Volume 1, Issue 5

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**H2A Minimum Pay Change.** DOL released a **new rule** on calculating H2A minimum pay rates. The new rule amends the way that the DOL calculates the hourly Adverse Effect Wage Rates by adding in the data from DOL's Bureau of Labor Statistics. This is expected to increase the pay rates to some H2A workers under the new methodology. To learn more about ag labor in general click **here** to view the NALC's resources.

- Webinar opportunity: **Brandon Davis**, Partner, Phelps Dunbar, will present a webinar covering the H2A minimum pay change, and other related ag labor issues. Webinar and registration information will soon be available **here**.

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**United States Meat.** FSIS released a proposed rule on March 6th for the use of the voluntary “Product of the USA” labeling claim. In order for meat, poultry and egg products to use this voluntary label the food item would need to be derived from animals that are “born, raised, slaughtered and/or processed in the United States.” To read the draft copy of the proposed rule click [here](#). To learn more about the history and background for this issue, click [here](#) for “Petition for Policy Change in FSISs ‘Product of U.S.A.’ Label” (2018).

**Checkoff Proposal:** The Opportunities for Fairness in Farming Act has been introduced, led by Senator Cory Booker and Senator Mike Lee. Text of the version submitted in the 117th Congress is available [here](#). A press release is available [here](#). For background and resources on federal and state checkoff programs, visit the NALC Checkoff Programs Reading Room [here](#).

**USDA FSIS: Meat, Poultry, Egg Product Labeling.** USDA FSIS issued a **final rule** to, among other times, “expand the circumstances under which it will generically approve the labels of meat, poultry, and egg products.” The comment period closed Feb. 17 and the rule is set to become effective March 20. On July 12, from 12-1 EDT, NALC will host a webinar on this topic, presented by **John G. Dillard**, Principal, USDA Practice Head, Olsson Frank Weeda Terman Matz PC. Registration will be posted soon [here](#), and announced via the NALC [LinkedIn](#), [Facebook](#), and [Twitter](#) accounts.

**Slaughterhouses: EPA Proposed Rules via Consent Decree.** EPA is taking public comment on whether to enter into a proposed consent decree to settle a lawsuit filed by environmental interest groups last December alleging that EPA had failed to revise the effluent limitations guidelines and adopt pretreatment standards for slaughterhouses under the Clean Water Act. The proposed consent decree would require EPA to pass a final rule adopting such standards and guidelines by Aug. 2025. The comment period is open through March 31, 2023. For more information on how to submit a comment, click [here](#).

**A Cheese by Any Other Name.** The 4th Circuit recently decided **InterProfession Du Gruyere vs. U.S. Dairy Export Council**, which considered whether a geographic indication was essential to the use of the label “gruyère.” French and Swiss cheese makers wanted the term gruyère restricted to only cheeses produced in that region of Europe. The 4th Circuit held that it was not restricted by geographical area since FDA already has a standard of identity for **gruyère cheese** which defines the product by how it is produced and not where it is produced. Click [here](#) for the recording of the NALC webinar, “An Overview of Geographical Indications and Their Impacts on American Agriculture,” presented by Chloe J. Marie, Research Specialist at Penn State Law Center for Agricultural & Shale Law.

**DAIRY PRIDE Act.** As covered in **Volume 1, Issue 4** of The Feed, FDA recently issued proposed guidance allowing nutritional labeling of plant-based milk alternatives. In the wake of that announcement, the “Defending Against Imitations and Replacements of Yogurt, milk, and cheese to Promote Regular Intake of Dairy Everyday Act (DAIRY PRIDE Act) of 2023 was introduced by a bipartisan combination of Senators. A **press release** about the proposal states that it “would require non-dairy products made from nuts, seeds, plants, and algae to no longer be mislabeled with dairy terms such as milk, yogurt or cheese.”

**WOTUS: Congress Wades In.** On Friday, March 10, the House of Representatives is scheduled to vote on a resolution of disapproval for the new “waters of the United States” rule recently issued by

EPA. The resolution of disapproval has been issued pursuant to the Congressional Review Act which allows Congress to disapprove of agency regulations. To date, only two agency regulations have been overturned via the CRA since the statute was passed in 1996. To learn more about this and other legal challenges to the new WOTUS rule, read NALC article, **WOTUS Update: 2022 WOTUS Rule Faces Legal Challenges**.

- Webinar opportunity: Register **here** for upcoming NALC webinar, "What's Up With WOTUS: An Overview of 'Waters of the United States' and Why It Matters to Agriculture."

**Foreign Ownership of Agricultural Land.** In 2023, the majority of states have proposed one or more bills to restrict foreign ownership of land within their state. In the past few days, new proposals have been filed in Arkansas (**SB 340**; **SB 383**), Florida (**SB 264**; **HB 1355**), Iowa (**HF 542**), Kansas (**SB 283**), New York (**A 5301**), South Carolina (**S 576**), Texas (**HB 2788**; **HB 4006**), and Washington (**SB 5754**). For prior bills, see Volume 1, Issue 1 (Jan. 11) **here**; Volume 1, Issue 2 (Jan. 25) **here**; and Volume 1, Issue 3 (Feb. 8) **here**; Volume 1, Issue 4 (Feb. 24) **here**. Click **here** for NALC publication "Foreign Investment in Agricultural Land: FAQs & Resource Library."

- Conference opportunity: **Marisa Bocci**, Partner, K&L Gates, will present "Navigating Foreign Ownership Laws in the Wild, Wild West: Latest Trends and Developments," as part of the NALC's inaugural **Western Agricultural & Environmental Law Conference**.

**GM Corn & Mexico.** The United States Trade Representative **announced** that it is requesting technical consultations with Mexico in reaction to Mexico's continued plans to restrict imports of genetically modified corn. For continued updates on this issue, be sure to follow the NALC on **LinkedIn**, **Facebook**, and **Twitter** accounts.

**Cattle Price Discovery and Transparency Act.** Companion legislation addressing cattle market issues was released in the House (**HR 1287**, bill text on Rep. Randy Feenstra's website **here**) and the Senate (**S 228**). These bills would establish minimum levels of fed cattle that may be purchased through specified pricing mechanisms within a specifically designated region of the country. Similar legislation was also introduced in the 117th Congress. Additionally, the proposals would create a permanent library of publicly available cattle marketing contracts. While last year's Congressional appropriations act created a Cattle Contracts Library Pilot Program, available **here**, it is currently a temporary program which will run through Sept. 30, 2023.

**CFTC & Carbon Markets.** On March 8, CFTC testified before the Senate Agriculture Committee that the developing carbon marketplace is potentially susceptible to fraud. CFTC Chairman Rostin Behnam's testimony before the Senate Ag Committee is available **here**. This is in the wake of the broader issue of carbon markets and the federal government's role in regulating these developing markets. For NALC resources on carbon markets, click **here**.

**Seed & Ag Inputs: USDA Competition Report.** In March, USDA Agricultural Marketing Service issued its **report**, "More and Better Choices for Farmers: Promoting Fair Competition and Innovation in Seeds and Other Agricultural Inputs." The report was issued in furtherance of the Executive Order Number 14036, "Promoting Competition in America's Economy." See more background **here**.

**Cottage Food, Expanded.** On Feb. 27, Wyoming enacted a law (**FS 102**) that allows producers and their "designated agents" to sell dairy products pursuant to the Wyoming Food Freedom Act. The previous version of the law prohibited a third party designated agent from making raw milk sales, for example. To learn more about cottage food laws across the country, access a NALC compilation **here**.



**USDA Equity Commission: Update.** The USDA Equity Commission has released their **interim report** on recommendations to USDA to reduce barriers faced by socially disadvantaged and young and beginning farmers and ranchers. This report contains 32 recommendations ranging from resolving heirs property to modernizing FSA's approach to recalculating base acres. To learn more about heirs property and the Uniform Partition of Heirs Property Act in general from Senior Staff Attorney Rusty Rumley with the NALC click [here](#) and to learn more about USDA farm programs click [here](#) to find all federal farm bills, conference reports, and many other resources on farm bills.

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Agenda, registration, and continuing education information available **[here](#)**.

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