



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 18

September 28, 2023

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Foreign Ownership. On September 27, NALC director, Harrison Pittman, testified before the Senate Agriculture Committee on foreign ownership of agricultural land. Pittman answered questions about the Agricultural Foreign Investment Disclosure Act ("AFIDA"), a federal law that requires foreign investors to file forms with the Farm Service Agency in any county where agricultural land is purchased providing information on the number of acres purchased, the buyer's country of origin, and the intended use of the land. Also at the hearing was Gloria Montañó Greene, the deputy undersecretary of USDA's Farm Production and Conservation program area, who testified about the challenges related to carrying out AFIDA across the over 3,000 counties, 50 states, and 500 tribal nations within the U.S. To view a recording of the hearing, click **here**.

Also on September 27, NALC staff attorney, Micah Brown, testified before the Mississippi state legislature on state approaches to foreign ownership of agricultural land. Earlier this month, Micah also testified on the topic of foreign ownership before the Nebraska state legislature. Over the last few years, numerous states have considered making changes to their laws on foreign ownership, with increased interest in introducing new restrictions. To view a recording of the MS hearing, click **here**. To access a compilation of NALC resources on the issue, click **here**.

Adding Ag to CFIUS. Last week, the House Financial Services Committee unanimously passed the Safeguarding American Farms from Foreign Influence Act (**H.R. 5409**), which seeks to require USDA to notify the Committee on Foreign Investment in the U.S. (CFIUS) of certain foreign investments in U.S. agricultural land USDA believes may pose a threat to national security. After notification, CFIUS would then determine whether a further review and/or investigation into the foreign investment is necessary. For more information on foreign investments in U.S. agriculture, read NALC's "Foreign Ownership of Agricultural Land: FAQs & Resource Library" available **here**.

CWA: Section 401. The Environmental Protection Agency ("EPA") has **released its final rule** to revise and replace a 2020 regulation altering section 401 of the Clean Water Act ("CWA"). Section

401 of the CWA provides that EPA may not issue a permit to discharge pollutants into protected waters without certification from the state where the discharge would occur. Under section 401, states may certify a permit as-is, certify a permit with additional conditions that the permittee must adhere to, or decline to certify in which case the permit is not issued. Regulations adopted in 2020 limited the ability of states to decline to certify proposed permits and to mandate conditions. EPA's new rule rolls back the 2020 regulation and returns the section 401 regulations to where they were prior to the change. For more information on section 401, click [here](#) to read NALC article "Court Vacates CWA Section 401 Certification Rule."

CWA: NPDES Violations. An environmental group has filed a lawsuit against a fruit and vegetable processing facility located in Washington state, claiming that the facility has violated its National Pollutant Discharge Elimination System ("NPDES") permit. According to the plaintiffs, the processing facility has repeatedly discharged stormwater containing levels of copper, zinc, and nitrates in excess of what is allowed under its CWA NPDES permits. The plaintiffs have asked the court to order the facility to stop violating its permit conditions, and to remediate any environmental harms that occurred as a result of the violations. Click [here](#) to read the full complaint.

Prop 12. As part of a **USDA agribusiness trade mission to Chile**, representatives from food, ag and regulatory sectors are discussing the impacts of California's Prop. 12, a state law that requires all pork sold within the state to have been raised in housing that meets certain standards, internationally as well as at home. Pork producers in both the U.S. and Chile, which exports roughly half of its pork, are in the process of shifting to Prop. 12-compliant practices in order to maintain access to the California market. Because Chilean producers have no way of knowing which half of their products will be sent abroad, their facilities need to be completely Prop.-12 compliant. For more information on Prop. 12, click [here](#) to read NALC article "What's Cooking with Prop. 12?: SCOTUS Decision"

Meatpacking. Senator Josh Hawley (R-Mo.), has introduced legislation to amend the Packers and Stockyards Act of 1921 to increase the ability of federal authorities to "break up" meatpacking and poultry monopolies. Specifically, the **Strengthening Antitrust Enforcement for Meatpacking Act** would establish thresholds for market concentration, which would allow federal authorities to either prohibit or undo acquisitions that would concentrate meatpacking beyond the established thresholds. Click [here](#) for more NALC resources on Packers and Stockyards.

Ag Labor: Fee Restrictions. The U.S. Department of Homeland Security ("DHA") has issued a proposed rule to strengthen prohibitions on charging fees to H-2A and H-2B workers. Specifically, the proposed rule would clarify that prospective seasonal farmworkers cannot be charged fees that are "related to" H-2 employment, including visa application fees and recruitment costs. The proposal was published in the Federal Register on September 20, and is open for a 60-day public comment period. Click [here](#) to read the proposal.

Ag Labor: Employer Funding. Agricultural employers can now begin to apply for grants under the recently launched Farm Labor Stabilization and Protection Pilot Program from USDA. The program has made \$65 million available to help agricultural employers with financial challenges in hiring agricultural workers. Grant recipients will receive offers of between \$25,000 to \$2 million to help offset the costs of bringing workers to the United States and improving work conditions. Grant applications will be accepted through November 28. For more information on the program, click [here](#).

International Trade. The U.S. Court of International Trade has overturned a finding from the U.S. International Trade Commission ("ITC") that Russian and Moroccan fertilizer imports hurt the domestic industry. The ITC had based its conclusion on evidence indicating that imported fertilizer had driven down the price of domestic fertilizer during the years 2017 - 2020. However, the court ruled that the evidence relied on by the ITC was not strong enough to support its conclusion. The court has sent the matter back to the ITC with orders for a new hearing. To read the full decision, click [here](#).

ESA: Eastern Hellbender. A federal court in New York ruled that the U.S. Fish and Wildlife Service ("FWS") improperly determined that the eastern hellbender, an aquatic salamander found in fifteen states, is not-warranted for listing under the Endangered Species Act ("ESA"). In the lawsuit, the

plaintiffs argued that FWS improperly declined to list the eastern hellbender because the determination was based on conservation efforts that have not been implemented, and have not been shown to be effective. The court ruled in favor of the plaintiffs, concluding that reliance on unproven conservation efforts rendered FWS's decision unlawful. The full decision is available [here](#).

Public Lands. A coalition of environmental groups have filed a lawsuit in federal court, claiming that the U.S. Bureau of Land Management ("BLM") has failed in its duty to analyze the environmental impacts of livestock grazing on public land by creating a "loophole" to avoid conducting National Environmental Policy Act ("NEPA") review on grazing permits. Under NEPA, federal agencies are required to analyze the environmental impacts of their actions, including activities like issuing a permit. The environmental plaintiffs argue that BLM has been failing for decades to conduct NEPA analysis for the majority of the grazing permits it issues, including permits allowing grazing in areas where endangered species are present. The plaintiffs have asked the court to establish a timeline for BLM to carry out the required NEPA review. The full complaint is available [here](#). To learn more about leasing public lands, click [here](#).

Climate Corps. The White House has announced the creation of the American Climate Corps, a program that will recruit 20,000 people to take on activities related to renewable energy, conservation, and wildland fire work throughout the United States. According to the White House, the American Climate Corps will function as a workforce training and service initiative that will coordinate recruitment across multiple federal agencies. Participants in the program will work to conserve land and water resources, implement clean energy technology, and advance environmental justice goals. More information on the program is available [here](#).

Crop Insurance. Rep. Earl Blumenauer, D-Ore, has introduced new legislation that proposes to cap crop insurance premium subsidies at \$125,000 per recipient, and cut premium subsidies entirely for farmers that earn more than \$250,000 per year. Additionally, the legislation would require subsidy recipients to actually work on farms, while also eliminating payments to investors who are not engaged in farming activity. To read the bill, click [here](#). More resources on crop insurance are available [here](#).

Colorado River. Officials from the Upper Colorado River Basin States - Colorado, New Mexico, Utah, and Wyoming - have agreed to extend the System Conservation Pilot Program which explores solutions for conserving water in the Colorado River system. One of the primary solutions implemented by the pilot program over the last few years is a voluntary compensation program that pays farmers and ranchers \$150 for every acre-foot of water conserved. The decision to extend the pilot program comes as all seven Colorado River Basin States begin negotiations to determine operation guidelines for the Colorado River system as the existing guidelines are set to expire in 2026. Click [here](#) to learn more about the System Conservation Pilot Program for 2023.

FIFRA Violations. The federal government has filed a lawsuit against the online retail platform eBay for selling unregistered, misbranded and restricted-use pesticides in violation of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Among the pesticides that eBay is accused of illegally selling are products subject to a stop-sale order issued in 2020, and an unregistered product called Miraculous Insecticide Chalk which is known to cause serious harm to those exposed. Click [here](#) to read the complaint.

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