



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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Pesticides: Chlorpyrifos. The Environmental Protection Agency (EPA) **will restore use of the pesticide chlorpyrifos** on eleven food crops after a ruling from the Eighth Circuit Court of Appeals vacating EPA's final rule revoking all food tolerances for chlorpyrifos which had rendered the pesticide unavailable for food uses. Specifically, EPA plans to allow use of chlorpyrifos on alfalfa, apple, asparagus, tart cherries, citrus, cotton, peaches, soybeans, strawberries, sugar beets, and wheat. All other food uses for chlorpyrifos will remain unavailable as EPA plans to issue a final rule revoking food tolerances for all other crops. EPA initially revoked all food tolerances for chlorpyrifos in 2021 after a ruling from the Ninth Circuit Court of Appeals. To learn more about the Eighth Circuit's decision, click **here** to read NALC article "Eighth Circuit Ruling Revives Food Uses for Chlorpyrifos."

Pesticides: Neonicotinoids. New York State Governor Kathy Hochul signed the "**Birds and Bees Protection Act**," prohibiting the use of neonicotinoid-treated corn, soybean and wheat seeds, and use of neonicotinoid pesticides for outdoor ornamental plants and turfs. The ban is set to go into effect in 2027. While Governor Hochul signed the legislation in late December, it passed the New York legislature in early June. New York is the first state to pass a ban on neonicotinoid-treated seeds.

"Ag-Gag." The Eighth Circuit Court of Appeals has reinstated two Iowa statutes that prohibit undercover access to agricultural operations and engaging in either video or audio recording on trespassed property. Both laws had previously been struck down by a federal district court which had concluded that the statutes violated the First Amendment of the U.S. Constitution. However, the Eighth Circuit disagreed, concluding that because the Iowa statutes do not impose "viewpoint-based" restrictions on speech, the laws do not violate the First Amendment and are constitutional. To read the Eighth Circuit's decision, click **here**.

Discharge Limits. EPA is proposing revisions to wastewater discharge limits for some meat and poultry processing plants. Under the preferred plan laid out in EPA's proposal, direct discharge limits for nitrogen would be tightened, and the first phosphorus standard for processing plants would be

established. The preferred plan also includes pretreatment standards for oil, grease, suspended solids, and biochemical oxygen demand for facilities discharging into sewers. EPA expects the proposal to affect about 850 of the nation's 5,055 meat and poultry processing plants. The agency will hold hearings on the proposed rule on Jan. 24 and Jan. 31. To view the proposal, click [here](#). For more information from EPA, click [here](#).

Nitrogen Fertilizer. Environmental groups in California have filed a lawsuit against the California State Water Resources Control Board seeking to enforce nitrogen fertilizer restrictions proposed by the Central Coast Water Quality Control Board. The Central Coast Water Board, which regulates groundwater on California's Central Coast, **attempted in 2021 to establish limitations** on the amount of nitrogen fertilizer that farmers could apply to their fields. The limitations, which would have gone into effect at the end of 2023, were overturned by the California State Water Board which noted that such limitations were unprecedented in the state. The recently filed lawsuit from environmental groups looks to reestablish and enforce nitrogen fertilizer limits. Click [here](#) to view the plaintiffs' complaint.

Chattahoochee River Basin. The governors of Alabama and Georgia announced a tentative agreement with the U.S. Army Corps of Engineers to end a 2017 lawsuit over water management in the Chattahoochee River Basin. In 2017, Alabama filed a lawsuit against the Corps, claiming its operation of dams and reservoirs in the basin favored Georgia during droughts. The proposed agreement, which must still go through environmental review and public comment, outlines a "first-of-its-kind" proposal that would require the Corps to operate its dams and reservoirs to achieve minimum water-flow objectives in key areas. The lawsuit is paused until May 13, 2024 to allow for review and evaluation of the proposed settlement. To view the proposal, click [here](#).

Prop. 12. California's Proposition 12 went into full effect on January 1. The new law which bans the sale of pork from gestation crate-raised sows will now be enforced after overcoming legal challenges, including a review by the Supreme Court. Over 1,250 producers and distributors in the state are registered to sell compliant products. In Massachusetts, a similar law known as **Question 3** faces opposition from pork processors, differing in that it prohibits transshipment of non-cage-free pork. The state is actively opposing efforts to halt the implementation of Question 3. To learn more about Question 3, click [here](#) to read NALC article "Farm Animal Confinement: Legal Challenges to Mass. Question 3." To learn more about Prop. 12, click [here](#) to read NALC article "What's Cooking with Prop 12? SCOTUS Decision."

CWA Permits. EPA has issued draft guidance on how to comply with a U.S. Supreme Court decision regarding Clean Water Act (CWA) permits for groundwater pollution. The decision, known as *County of Maui v. Hawaii Wildlife Fund*, was issued in 2020 and introduced a seven-part test for regulators to determine when a CWA permit may be required for discharges of pollutants into groundwater. Such discharges are generally not regulated under the CWA, but the Supreme Court concluded that a discharge into groundwater may require a permit if the discharge is the "functional equivalent" of adding pollutants directly into regulated waters. The draft guidance put forward by EPA outlines an overall approach that highlights the factors that regulators should consider when determining whether an action is a "functional equivalent discharge." A comment period for the draft closed on December 27. Click [here](#) to view the draft. To learn more about the *County of Maui* decision, click [here](#) to read NALC article "Supreme Court Issues Opinion in 'County of Maui.'"

Animal Slaughter. A New York federal court has issued an order upholding a 2019 USDA regulation related to pig slaughter at swine slaughter establishments. The lawsuit was filed by a coalition of animal welfare groups, including Farm Sanctuary and Animal Legal Defense Fund, who argued that the 2019 **Modernization of Swine Slaughter Inspection rule** allowed pigs to be slaughtered at "unlimited speeds with very little federal oversight" in violation of both the Federal Meat Inspection Act and the Humane Methods of Slaughter Act. Ultimately, the court found that the rule complied with both statutes, noting that it maintained the necessary degree of federal oversight required by law. Click [here](#) to view the court's decision.

Food Labeling. Senator Richard Blumenthal (D-CT) introduced a bill known as the **TRUTH in**

Labeling Act to “facilitate consumer selection of healthy product options.” The bill would direct the Secretary of Health and Human Services to develop a standardized symbol system for the principal display panel on foods intended for human consumption. The symbol system would include the calorie information related to the serving size and other nutrients such as sugars, sodium, or saturated fat. A **companion bill** was introduced in the House of Representatives by Representative Janice Schakowsky (D-IL).

New Business Disclosure Regime. On January 1, 2024, the **Corporate Transparency Act** (“CTA”) went into effect. Many entities, particularly small businesses, operating within the U.S. are now required to disclose information about their ownership structure to the United States Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). While the CTA applies to certain domestic businesses, certain foreign entities that are registered to do business in the U.S. are also subject to the law’s reporting requirements. To learn more about foreign business reporting requirements under the CTA, click [here](#) for the NALC article, “Who Owns the Business? Corporate Transparency Act and Foreign Entity Disclosures.” For a further discussion on the CTA, visit Iowa State University’s Center for Agricultural Law and Taxation [here](#).

Foreign Ownership of Ag Land. In 2023, 36 states proposed legislation seeking to restrict certain foreign investments in land located within the boundaries of their state, 12 of which enacted such a law. So far in 2024, state level proposals have been or are expected to be formally introduced in at least 21 states, including Arizona, California, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Oregon, South Carolina, Texas, Washington, Wisconsin. NALC resources concerning foreign ownership are available [here](#). For a complete list of legislative proposals which seek to restrict certain foreign investments, email Staff Attorney Micah Brown [here](#).

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