



The Feed

Recent Developments in Ag Law & Policy

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

Volume 2, Issue 3

February 15, 2024

Thank you to all our subscribers! Please forward **the subscription link** to your network. All previous issues of The Feed are available **here**. Send any questions, concerns, or suggestions to **NALC Director Harrison Pittman**.

Follow us on social:



Registration Now Open!

Mid-South Agricultural & Environmental Law Conference

June 6-7, 2024

University of Memphis Cecil C. Humphreys School of Law

Livestream option available.



Corporate Transparency Act. According to **business formation statistics** from the United States Census Bureau, there were close to half a million applications to form new businesses in January 2024. Under the Corporate Transparency Act (CTA), which went into effect on January 1, those new businesses will have just 90 days from creation to file their first beneficial ownership information report or face steep fines. New businesses are not the only entities impacted by the CTA. Most small businesses, including single member LLCs, have until the end of 2024 to file reports under the CTA. NALC will host an upcoming webinar to provide further information on which entities will be impacted by the CTA, when reports must be filed, and what information must be disclosed. To learn more, check out the link below.

- Webinar opportunity: *Small Entities Must File: Navigating the Corporate Transparency Act's New Reporting Requirements*. To register, click **here**.

Proposed Amendments to AFIDA. On January 25, 2024, Senator Mike Braun (R-IN) introduced the AFIDA Improvements Act of 2024 (**S. 3666**) which seeks to amend certain provisions of the Agricultural Foreign Investment Disclosure Act ("AFIDA")—the federal law that requires certain foreign investors to disclose their agricultural landholdings. Recently, the U.S. Government Accountability Office ("GAO") published a **report** detailing its findings from a review of foreign investments in U.S. farmland. In the report, GAO provides recommendations as to how USDA can improve the reliability of AFIDA data and enhance sharing this data with other federal authorities. As a result, Senator Braun, along with a bipartisan group of senators, proposed S. 3666 to address some of the recommendations contained in GAO's report, such as requiring each foreign person with at least 1% interest in farmland to disclose this interest to USDA.

Foreign Ownership of Ag Land. So far in 2024, state level proposals have been or are expected to be formally introduced in more than half of the states. In the past few days, new proposals have been filed in Arizona (**SB 1403**), California (**AB 2306**), Georgia (**SB 420; HB 1093**), Idaho (**H 496**),

Illinois (**SB 3394**; **SB 3543**), Iowa (**HSB 663**; **SF 2204**; **SSB 3113**; **HF 2483**), Kansas (**SB 446**; **HB 2638**; **HB 2766**), Maryland (**HB 616**; **HB 885**), Mississippi (**HB 636**), South Dakota (**HB 1231**), Tennessee (**HB 2437**; **HB 2553**; **HB 2583**; **HB 2879**; **SB 2639**; **SB 2927**), Utah (**HB 516**), West Virginia (**HB 4003**; **HB 4974**; **HB 5169**; **HB 5353**), and Wyoming (**HB 168**; **HB 183**; **SB 102**; **SJ 2**). To view states' laws restricting foreign ownership of private agricultural land, click [here](#).

Challenging Florida's Foreign Ownership Law. On February 1, the U.S. Court of Appeals for the Eleventh Circuit granted a partial injunction filed by two individuals challenging Florida's foreign ownership law. According to the court, the plaintiffs have shown a substantial likelihood that federal regulations of foreign investments in real property preempt Florida's restriction. To read the court's order, click [here](#).

Pesticides: Dicamba. On February 6, a federal court in Arizona issued a decision to vacate EPA's 2020 registration decision allowing over-the-top use of three dicamba-based pesticide products, XtendiMax, Engenia, and Tavium. This is the second time a court has overturned over-the-top use of dicamba, after the Ninth Circuit vacated the then-current dicamba registration in 2020. While the Ninth Circuit ruled on substantive grounds, finding that EPA had violated the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") when it approved dicamba for over-the-top use in 2018, the Arizona court ruled on purely procedural grounds, faulting EPA for failing to provide required public notice and comment opportunities when it re-approved over-the-top use in 2020. Following the ruling, EPA has issued an order allowing existing stocks of dicamba to be used directly onto crops during the 2024 growing season, provided the products were "labeled, packaged, and released for shipment" prior to February 6. For more information, click [here](#) to view NALC article "The Deal With Dicamba: Court Vacates Over-the-Top Registration."

Pesticides: Glyphosate. A Philadelphia jury has ordered Bayer to pay \$2.25 billion to a plaintiff who alleged that use of the pesticide Roundup caused him to develop non-Hodgkin's lymphoma. This is the second time a jury has issued a multi-billion dollar award to a plaintiff alleging that using Roundup caused them to develop cancer, after a California jury awarded over \$2 billion to a couple in 2019. Like plaintiffs in most pesticide injury lawsuits, the Philadelphia plaintiff claimed that Bayer had failed to warn him that using its product could result in cancer. Bayer disputes the verdict, citing scientific evidence and regulatory assessments, and plans to appeal, aiming to overturn the verdict and reduce the punitive damages.

In other glyphosate-related news, an Eleventh Circuit panel has issued a revised decision in *Carson v. Monsanto, Co.*, concluding that the plaintiff's state law failure-to-warn claims were not preempted by FIFRA. This particular question of whether failure-to-warn claims are preempted by FIFRA has been at the heart of on-going pesticide injury lawsuits throughout the country, with judges in the Ninth Circuit issuing rulings in recent years finding that the claims are not preempted. While the trial court in *Carson v. Monsanto, Co.* had initially found that the claims were preempted and therefore could not be brought, the Eleventh Circuit has concluded that the claims run parallel to FIFRA's prohibition on "misbranding" and are sending the case back to the lower court for further consideration. To view the court's decision, click [here](#). To learn more about preemption in pesticide injury cases, click [here](#) to view NALC article "Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits."

Pesticides: Chlorpyrifos. On February 5, EPA officially updated its tolerance regulations for chlorpyrifos to restore use of the pesticide on eleven food crops including alfalfa, soybeans, and sugar beets. EPA withdrew all food tolerances for chlorpyrifos in 2021 following a Ninth Circuit decision directing the agency to revoke the tolerances. Without a food tolerance in place, a pesticide may not legally be used on food crops. In 2023, the Eighth Circuit issued a decision concluding that EPA had been too hasty in revoking all food tolerances for chlorpyrifos, and directed the agency to consider whether some of them could be restored. Following that decision, EPA has determined that chlorpyrifos continues to be safe to use on those eleven crops. To view the final restoration decision, click [here](#). Similarly, the Food and Drug Administration has **revoked its industry guidance** for chlorpyrifos that was issued after all food tolerances for the pesticide were revoked. To learn more about the legal issues involving chlorpyrifos, click [here](#) to view NALC article "Eighth Circuit Ruling Revives Food Uses for Chlorpyrifos."

Pesticides: Paraquat. The Environmental Protection Agency (EPA) has upheld its conclusion that there is insufficient evidence linking paraquat exposure to Parkinson's disease in humans. The review of paraquat's health impacts was prompted by a lawsuit filed by farmworkers and environmental groups to challenge EPA's 2021 interim registration decision. The lawsuit was put on hold to allow EPA time to review the data. In its recently published document, EPA highlighted weaknesses in the available data on the health impacts of paraquat, including limitations in animal studies and the relevance of the exposure pathways. The document is available for public comment through April 1. To learn more, click [here](#).

Pesticides: ESA-FIFRA Policy. EPA and USDA have entered into a Memorandum of Understanding (MOU) to allow pesticide users who voluntarily follow Natural Resource Conservation Service (NRCS) conservation practices to count those efforts towards meeting pesticide labeling requirements. This agreement is part of EPA's new ESA-FIFRA policy that the agency is developing to better meet its ESA responsibilities when taking agency action under FIFRA. Among other things, EPA's new approach will result in increased use requirements on pesticide labeling. In documents related to the policy, EPA had stated that it intended to allow pesticide users who were participating in voluntary NRCS conservation programs to count their conservation practices towards pesticide labeling requirements. The MOU between EPA and USDA formalizes those statements. To view the MOU, click [here](#).

- Webinar opportunity: *What's the Harm? Examining the EPA's New Approach to ESA Compliance When Making FIFRA Decisions.* To register, click [here](#).

Alternative Meat Labeling. The recently introduced **FAIR Labels Act** is a bipartisan initiative that would require all plant-based meat alternatives sold in the U.S. to include the word "imitation" or similar language on packaging labels. The bill would also require labels of products produced from tissue samples and grown via culturing processes to prominently display phrases like "cell-cultured" or "lab-grown." Overall, the goal of the bill is to provide transparency for consumers. For more information, click [here](#) to view NALC article "FAIR Labels Act of 2024."

FWS Makes Listing Decision. The Fish and Wildlife Service has concluded that listing "may be warranted" for seven U.S. species under the Endangered Species Act. Among them are the pygmy rabbit which can be found across the Great Basin region of the Western United States, and the Southern Plains bumble bee which can be found east of the Rocky Mountains. Factors such as fire, cheatgrass, climate change, agricultural practices, and pesticide use are cited as threats to these species' habitats. The FWS will conduct a 12-month review for the pygmy rabbit and a full review for the Southern Plains bumble bee before deciding on potential listing. Other species considered for listing include the Southwest firefly, yellow-spotted woodland salamander, Hickory Nut Gorge green salamander, Railroad Valley toad, and the white-margined penstemon found in the Mojave Desert. Further information can be found [here](#).

FWS has also issued a final decision to list a subspecies of silverspot butterfly from Colorado, New Mexico, and Utah as threatened under the ESA. While the listing decision cited habitat fragmentation due to livestock grazing as one of the reasons for designating the butterfly as threatened, FWS clarified that livestock grazing would still be permitted in the butterfly's habitat provided it is carried out in a manner that is compatible with conservation of the species. Click [here](#) to view the decision.

Oregon Dairies. A group of four dairy farmers in Oregon is suing the Oregon Department of Agriculture over a reinterpretation of certain permitting regulations that would require raw milk dairies to register as Confined Animal Feeding Operations (CAFOs) by April 1 or face fines. The plaintiff farmers argue that the reinterpretation is "arbitrary and irrational" because it would trigger CAFO permitting requirements any time an animal is milked in a covered space or on a prepared surface, regardless of whether the animal is confined at any other time. The plaintiffs claim that the reinterpretation violates their right to equal protection and due process under the U.S. Constitution. To view the plaintiffs' complaint, click [here](#).

H-2A Challenge Dismissed. A federal court has dismissed a challenge by agricultural employers

against the Labor Department's **2022 H-2A rule**, finding that the rule was properly issued. The National Council of Agricultural Employers (NCAE) argued that the previous H-2A rule, which was released just over a week before the Biden Administration took office, had been unlawfully withdrawn and the 2022 rule was therefore unlawfully issued. However, in its ruling the court found that the rule never became official because it was never published in the Federal Register or made available for public inspection. Because the previous H-2A rule had never become official, the court determined that the 2022 rule had been properly filed. The court's decision is available [here](#). NCAE has also challenged the Labor Department's **Adverse Effect Wage Rate**. For more information on that lawsuit, click [here](#) to view NALC article "Challenges to the 2023 U.S. Department of Labor H-2A AEWR Methodology Rule."

Hearing on Effluent Limitations. EPA plans to host an additional public hearing to collect input on its proposed initiative to reduce pollution levels from meat and poultry processing facilities. The hearing, scheduled for March 20, will take place virtually. Moreover, the agency is contemplating an extension of the comment period for the proposal. Information regarding the previous and future hearings can be found [here](#). To learn more about the proposal, click [here](#) to view NALC article "EPA Proposes Effluent Limitations for Meat and Poultry Processors."

Conservation Programs. The USDA's Natural Resources Conservation Service is updating eight conservation practice standards, focusing on highly erodible land and wetlands. The revisions include clarifications for wetland restoration to cover abiotic characteristics and adjustments to grazing management standards to address climate change considerations. Additionally, the filter strip standard highlights the importance of positioning strips downhill from contaminant sources. The changes are open for public comment for 30 days. More information and the form for public comments can be found [here](#).

Massachusetts Question 3. A U.S. District judge in Massachusetts ruled that a portion of the state's law banning the sale of pork from confined pigs is unconstitutional, but the rest of the law remains intact. The **Prevention of Farm Animal Cruelty Act** was approved by voters in 2016 and prohibits the sale of pork, eggs, and veal products produced from animals raised in specified living conditions. The disputed portion of the law allowed the sale of pork from federally inspected slaughterhouses in Massachusetts that otherwise did not meet the law's standards, as long as buyers took possession of the pork on-site. The judge ruled that this provision was discriminatory against out-of-state pork processors and violated the Commerce Clause of the U.S. Constitution. The rest of the law was allowed to stand, potentially opening the door for future litigation. Click [here](#) to view the court's decision.

Snake River Dispute. A court case regarding salmon declines in the Columbia and Snake rivers has been paused for at least five years to allow the federal government, four Northwestern tribes, environmental groups, and states of Washington and Oregon to test a \$1 billion agreement aimed at resolving the dispute without breaching four dams on the Snake River. The proposed agreement involves funding fish restoration efforts, tribal clean energy projects, updating federal hydropower operations, and exploring alternatives to the services provided by the dams. The agreement includes commitments from the Biden administration, such as operational adjustments to the dams and funding studies for alternative systems. However, the administration emphasized that dam breaching would require congressional authorization. To view the agreement, click [here](#). For more information from the Biden administration, click [here](#).

Thank You to Supporters of *The Feed*

DOWNEYBRAND



AMERICAN FARM
BUREAU FEDERATION®

NASDA
FOUNDATION



Share This Issue of The Feed:



National Agricultural Library
U.S. DEPARTMENT OF AGRICULTURE

This material is based upon work supported by the National
Agricultural Library, Agricultural Research Service,
U.S. Department of Agriculture

The National Agricultural Law Center | NationalAgLawCenter.org

National Agricultural Law Center | University of Arkansas, 2549 N. Hatch Ave., Fayetteville, AR
72704

[Unsubscribe nataglaw@uark.edu](mailto:unsubscribe_nataglaw@uark.edu)

[Constant Contact Data Notice](#)

Sent by nataglaw@uarkedu.ccsend.com powered by



Try email marketing for free today!