



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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NALC WEBINAR SERIES:
Small Entities Must File: Navigating the Corporate Transparency Act's New Reporting Requirements
March 20, 2024, Noon EDT

Presenter:
Kristine Tidgren
Center for Agricultural Law & Taxation at Iowa State University



Klamath Basin. Farmers and tribal nations within the Klamath River Basin have entered into an agreement on restoring and improving drought resilience, water quality, and fish habitat in the region. For years, farmers and tribes in the Klamath Basin have been in conflict over water use in the region, particularly during times of drought. Tribes have argued that allocating too much water to farmers negatively impacts struggling salmon populations and tribal interests, while farmers have claimed that they were being denied necessary access to water for irrigation. The agreement includes committed funding from the federal government, and requirements for continued negotiations between the parties. To view the agreement, click **here**.

Ag Trespass. The Kentucky State Senate passed **Senate Bill 16**, a proposal that would prohibit audio and visual recording at animal feeding operations and food manufacturing plants without owner consent. The proposal would also prohibit distribution of any such recording. Under SB 16, the first offense would be treated as a class B misdemeanor, punishable by jail time and fines. All subsequent offenses would be treated as Class A misdemeanors. The bill passed the Senate with 30 yes votes and six no votes and now proceeds to the Kentucky House of Representatives.

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 Kentucky (**SB 284**), Louisiana (**HB 238**), Mississippi (**HB 1284**; **SB 2519**), and Pennsylvania (**HB 1995**). Also, the South Dakota state legislature recently enacted **HB 1231**, which seeks to amend the state's current foreign ownership law to include stricter restrictions on foreign investments from certain countries, such as China, Iran, North Korea, and Russia. Currently, this bill is awaiting South Dakota Governor Kristi Noem's approval. To view states' laws restricting foreign ownership of private agricultural land, click **here**.

Corporate Transparency Act. According to the **USDA's 2022 Census of Agriculture**, there are roughly 1.9 million farms and ranches operating in the United States. Each of those farms and ranches is likely operating as a business entity. Under the Corporate Transparency Act (CTA), which

went into effect on January 1, those operations will have until the end of the year to file their first beneficial ownership information report or face steep fines. Most small businesses, including single member LLCs, that were in existence prior to the first of the year have until the end of 2024 to file reports under the CTA. New businesses have an even tighter deadline, that will grow tighter still in 2025. 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](#).

Pesticides: ESA-FIFRA. On February 7, the Environmental Protection Agency (EPA) announced that the latest steps it is taking to incorporate stakeholder feedback into the agency's development of a new policy to help it better meet its Endangered Species Act (ESA) responsibilities when taking action under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, EPA announced that it would hold off on implementing the Vulnerable Species Pilot Program - a program that would protect species considered highly vulnerable to pesticide application through targeted mitigation measures - until it could develop more refined maps of where species included in the program are located. Additionally, EPA announced that it had entered into a Memorandum of Understanding with USDA to allow voluntary conservation activities that farmers carry out pursuant to one of USDA's many conservation programs to count towards fulfilling pesticide label requirements that will be introduced under the new policy. To learn more, click [here](#) to view a recording of NALC webinar "What's the Harm? Examining the EPA's New Approach to ESA Compliance When Making FIFRA Decisions."

Pesticides: Dicamba. On February 6, a federal court in Arizona issued a ruling to vacate EPA's registration of over-the-top use of dicamba. The ruling affected three dicamba-based herbicide products - XtendiMax, Engenia, and Tavium. Without a registration in place, dicamba may not be applied over-the-top of crops. Following the court's ruling, EPA issued an order to formally cancel the registration, while still allowing use of existing stocks of the three dicamba products during the 2024 growing season. The outlook for reregistration is currently unclear. For more information, click [here](#) to view NALC article "The Deal With Dicamba: Court Vacates Over-the-Top Registration."

PFAS. Five Texas farmers have filed a lawsuit against Synagro Technologies, Inc., claiming that the biosolids-based fertilizer manufactured by the company contained high levels of PFAS that poisoned the farmers, killed their livestock, polluted their water, and devalued their property. In their complaint, the plaintiffs claim that Synagro unlawfully sold the fertilizer even though the company knew or should have known that the product was dangerous and would cause harm to consumers. This lawsuit could be the first of many similar lawsuits filed against Synagro and similar companies. Click [here](#) to read the complaint. To learn more about PFAS regulation and agriculture, click [here](#) to view a recording of NALC webinar "Not Your Grandfather's Corn Maze - Regulatory and Legal Response to Challenges Faced by Agriculture Due to PFAS Contamination."

CWA Section 404. A federal judge has revoked Florida's authority to issue permits under Section 404 of the Clean Water Act (CWA), finding that the EPA failed to fully comply with the Endangered Species Act (ESA) when authorizing Florida to administer the 404 program. According to the judge, the Biological Opinion issued by the U.S. Fish and Wildlife Service (FWS) as part of the mandatory ESA consultation carried out between EPA and FWS prior to EPA approving Florida to take over administering the 404 program failed to include necessary species-specific analysis. Additionally, the court found that the Incidental Take Statement issued as part of the Biological Opinion failed to specify what level of take was allowed, in direct violation of ESA requirements. Following the court's decision, responsibility for issuing CWA Section 404 permits will revert to the U.S. Army Corps of Engineers. To learn more about the lawsuit, click [here](#) to read NALC article "Federal Court Revokes Florida's CWA Section 404 Permitting Authority."

International Trade. Trade experts are set to conduct a three-day hearing in late June to address a dispute between the United States and Mexico over Mexico's biotech corn policies. Specifically, the

dispute centers on Mexico's ban on imports of genetically modified corn for human consumption. The United States has criticized the ban for failing to comport with scientific understanding, while Mexico claims that the policy safeguards human health and native white corn used in tortillas. The U.S. Trade Representative initiated the panel in August following requests from farm state lawmakers and the U.S. corn industry. A final ruling is expected before the end of the year. To learn more about this dispute, click [here](#) to read NALC article "U.S.-Mexico Trade Dispute Over Genetically Modified Corn."

Gene-Editing. The Food and Drug Administration FDA has issued new recommendations for biotech companies and plant breeders regarding the introduction of gene-edited crop traits to the market. The guidance outlines two processes: a streamlined approach for crops with no food safety concerns, involving a voluntary premarket meeting with the FDA, and a standard premarket consultation process for other crops, aligning with existing practices for new biotech traits. While participation is voluntary, the FDA emphasizes that these programs can help ensure compliance with legal obligations and provide awareness of genome-edited plant products potentially entering the market. The FDA's 22-page guidance can be found [here](#).

Swampbuster. A federal judge has ruled that USDA's Natural Resource Conservation Service (NRCS) unlawfully modified its wetlands preservation program known as Swampbuster when it adopted a new rule in 2020 regarding the definition of certified wetlands. Under the 2020 rule agricultural wetlands that were designated between 1990 and 1996 would be considered "certified" under Swampbuster if the maps created at the time were legible. According to the court, NRCS failed to provide a reasoned explanation for why it adopted the policy change, something an agency is required to do whenever it adopts a new regulation. The court vacated the rule and sent it back to NRC for further consideration. Click [here](#) to view the court's opinion. To learn more about the 2020 rule change, click [here](#) to view NALC article "Conservation Clarified: USDA Issues New Rules for Conservation Provisions."

Colorado River. An Arizona federal court ruled that the Bureau of Reclamation (Reclamation) inadequately considered the implications of allowing a farm on the Colorado River to sell water to a town over a hundred miles away. The court's decision came in response to a lawsuit filed by Mohave County, La Paz County, Yuma County, and the city of Yuma. The court agreed with the plaintiffs that the National Environmental Policy Act (NEPA) required a rigorous environmental impact statement before approving the water transfer. Additionally, the court expressed concerns about setting precedents for future transfers. The ruling directs Reclamation to carry out a full NEPA review. To read the court's decision, click [here](#).

Ag Labor. U.S. Senator Alex Padilla has introduced a bill to the California Senate that would expand paid sick leave for agricultural employees. Under **SB-1105**, agricultural employees who work outside and are already entitled to paid sick days could see their sick leave expanded to allow them to avoid "smoke, heat, or flooding conditions created by a local or state emergency." Over the past several years, the state of California has declared numerous local or state emergencies as the result of extreme heat, wildfire, and flood events. This bill is part of a growing trend by states to grant agricultural workers protection from smoke and heat. To learn more, click [here](#) to read NALC article "Recent Federal and State Heat Safety Proposals."

In similar news, the state of Wisconsin has updated its regulations for the state's Migrant and Seasonal Farm Worker program for the first time since 2007. Under the new rules, migrant farm workers will have additional heat, health, and safety protections heading into this year's growing season. To view the updated regulations, click [here](#).

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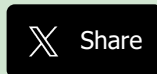
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