



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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Corporate Transparency Act. A federal court in Alabama ruled that the Corporate Transparency Act (CTA) is unconstitutional, finding that the statute violates the First, Fourth and Fifth Amendments of the US Constitution, and holding it unenforceable against the plaintiffs in the case. The CTA is a novel anti-fraud law passed by Congress in 2021 that introduces new reporting requirements for most businesses in the US. While the recent ruling was regarded as a victory by some, the federal government has already filed an appeal of the ruling, and will continue to enforce the CTA against all business entities that were not party to the lawsuit. To read the court's decision, click **here**.

- Webinar opportunity (March 20): "Corporate Transparency Act: New Reporting Requirements and Litigation Updates" To register, click **here**.

Foreign Ownership of Ag Land. So far in 2024, four states have enacted foreign ownership measures, including Idaho (**HB 496**), Indiana (**HB 1183**), and South Dakota (**HB 1231**), and Utah (**HB 516**). Idaho Governor Brad Little and South Dakota Governor Kristi Noem signed the foreign ownership measures enacted by their states' legislature. The foreign ownership measures enacted in Indiana and Utah are currently awaiting approval from their states' governors. To view states' laws restricting foreign ownership of private agricultural land, click **here**.

- Conference opportunity (May 14, online only): Harrison Pittman, Director, National Agricultural Law Center and **Ben Maddox**, VP of Business Development, AcreTrader will present "Practical Update on Foreign Ownership and Other Ag Land Transaction Issues" as part of NALC's Online "Early Bird" Agenda for the **Eleventh Annual Mid-South Agricultural and Environmental Law Conference**.

USDA's Membership to CFIUS. On March 9, President Biden signed a spending bill (**H.R. 4366**) for fiscal year 2024 that contains a provision that adds USDA as a member of the Committee on Foreign Investment in the U.S. (CFIUS) for issues involving "agricultural land, biotechnology and industry." The legislation requires USDA to notify CFIUS of any agricultural land transactions reported under

AFIDA that may pose a risk to national security. Also, it appropriates \$2 million to USDA to improve its foreign farmland ownership tracking and reporting process. For NALC resources on foreign ownership of land, click [here](#).

Minimum Wage. The Oklahoma Supreme Court has ruled that an initiative petition asking voters to raise the state's minimum wage can go forward. According to the March 4 decision, proponents of the initiative can begin gathering the 92,262 signatures required to put **State Question 832** on the November ballot. Should the initiative pass, it would increase Oklahoma's minimum wage from the current rate of \$7.25 an hour to \$15 an hour by 2029, with future increases tied to the U.S. Department of Labor's Consumer Price index. While the paperwork to begin gathering signatures for the initiative was filed last year, the Oklahoma Farm Bureau together with the State Chamber of Oklahoma asked the state's Supreme Court to review the initiative, arguing that SQ 832 was unconstitutional. Following the Court's ruling, the Oklahoma Secretary of State must set a collection window which will allow 90 days for signature collection on SQ 832. To read the Court's ruling, click [here](#).

Pesticides: Glyphosate. In the past few weeks, juries have delivered mixed outcomes in lawsuits filed by plaintiffs who alleged that exposure to the glyphosate in Bayer's Roundup herbicide caused them to develop cancer. In Delaware, a state jury failed to reach a verdict after a weeks-long trial where the jurors heard conflicting evidence on whether glyphosate is carcinogenic. Meanwhile, in Philadelphia, a jury found that Bayer was not liable for causing the plaintiff's non-Hodgkin's lymphoma. This marked the fourth trial in Philadelphia's Roundup mass tort, with previous juries awarding over \$2.5 billion in damages against Bayer. While the outcomes of these two cases are favorable for the company, numerous other lawsuits remain ongoing. For more NALC resources about the legal issues commonly raised in pesticide injury cases, click [here](#).

- Conference opportunity (June 13-14, in person and livestream available): Brigit Rollins, Staff Attorney, National Agricultural Law Center will present "The Future of Pesticides in Western States: The Latest Legal Developments & Trends" at NALC's **Second Annual Western Agricultural and Environmental Law Conference**.

Pesticides: Streptomycin. EPA will allow the use of existing stocks of the streptomycin-based pesticide AGRI-SEED 50 WP on citrus grown in Florida through the end of August. The directive follows a **Ninth Circuit Court of Appeals ruling** that invalidated the EPA's 2021 amendment of the streptomycin label to allow use of the pesticide on citrus trees. While there are multiple streptomycin-based pesticide products on the market, only AGRI-SEED 50 WP was available for use on citrus. All other streptomycin-based products will be unaffected by this order. Anyone within the state of Florida has until August 31 to use existing stocks of AGRI-SEED 50 WP. Everyone outside the state of Florida has until May 31 to use up existing stocks. Click [here](#) to read the order.

CWA Citizen Suit. A homeowner association and the Lac Courte Oreilles Band of the Lake Superior Chippewa filed a Clean Water Act (CWA) citizen suit against two cranberry farms in northwest Wisconsin for allegedly discharging excess phosphorus into Lac Courte Oreilles. While discharges from cranberry bogs are usually exempted from the CWA's permitting requirements under the statute's irrigated return flow exemption, the plaintiffs claim that the exemption does not apply in this instance because the discharged water was not used for irrigation. The plaintiffs are seeking civil penalties of \$66,712 per violation. To view the complaint, click [here](#). For more NALC resources on the CWA, click [here](#).

Office of Agriculture and Rural Affairs. On March 1, **EPA announced** the formation of a new Office of Agriculture and Rural Affairs (OARA) to help provide more engagement opportunities for agricultural and rural stakeholders. Rod Snyder, the EPA's Senior Agriculture Advisor since 2021, will lead the office. According to **OARA's new website**, the office will work to create "science-based solutions that protect the environment while ensuring a vibrant and productive agricultural system."

- Conference opportunity (June 7, in person and livestream available): **Rod Snyder**, Senior Advisor for Agriculture to the EPA Administrator and Brigit Rollins, Staff Attorney, National Agricultural Law Center will present "Tomorrow's Harvest: An Overview of the Regulatory and Litigation Landscape for Crop

CAFO Regulation. Environmental groups have filed a lawsuit against EPA, asking the Ninth Circuit direct the agency to reconsider the plaintiffs' petition for stronger CWA regulations for concentrated animal feeding operations (CAFOs). EPA rejected the petition last August, stating it is currently in the process of evaluating the CAFO program. The plaintiffs have challenged EPA's denial, asserting that the agency's refusal to revise the CAFO regulations, particularly the agricultural stormwater exemption, is arbitrary and contrary to its CWA obligations. Click [here](#) to view the plaintiffs' complaint.

Wastewater Discharges. The Environmental Protection Agency (EPA) declined to extend the comment period for its proposal to regulate wastewater discharges from meat and poultry slaughterhouses and processing facilities. Despite requests for a 90-day extension from the American Farm Bureau Federation and other groups, EPA is holding to a 60-day comment period, citing a consent decree that requires the agency to issue a final rule by August, 2025. The comment period on the proposed rule will close on March 25, 2024. To view the rule and learn how to submit a comment, click [here](#).

Colorado River. March 11 marked a key deadline by which Colorado River Basin states were to submit a proposed consensus plan for long-term water conservation in the Colorado River Basin. Instead, the Upper Basin states - Colorado, New Mexico, Utah, and Wyoming - and the Lower Basin States - Arizona, California, and Nevada - submitted competing plans. A main point of contention between the two plans is how the Basin states should handle water shortages. The Upper Basin proposes that reductions to their users' water allotments be voluntary, while the Lower Basin proposes that water cuts be shared across all seven basin states. The current operating plan for the Colorado River is set to expire in 2026. If the Basin states fail to reach a consensus, the federal Bureau of Reclamation has suggested that it will develop a post-2026 operating plan on its own. The Lower Basin proposal can be found [here](#). The Upper Basin proposal can be found [here](#).

- Conference opportunity(June 13-14, livestream available): **Merissa Moeller**, Associate, Stoel Rives LLP will present "Going with the Flow: Instream Water Rights & the Future of Irrigated Ag" at NALC's **Second Annual Western Agricultural and Environmental Law Conference** .

Packers and Stockyards. The USDA's Agricultural Marketing Service (AMS) has issued a final rule to amend its regulations under the Packers and Stockyards Act. According to AMS, the new rule is meant to help safeguard small farmers and ranchers from unfair treatment by large meatpackers and food processors. Specifically, the rule will prohibit "actions that inhibit market access" to historically underserved farmers, and will seek to prevent unfair contracts between farmers and meat processing companies. The final rule will go into effect on May 6 and can be read [here](#). For more NALC resources on the Packers and Stockyards Act, click [here](#).

PACA: USDA recently **imposed sanctions** on three produce businesses for failing to meet over \$1 million in contractual obligations and failing to pay reparation awards issued under the Perishable Agricultural Commodities Act ("PACA"). These sanctions include restrictions for both the businesses and individuals involved. For more NALC resources on PACA, click [here](#).

- Webinar opportunity (April 17): "Demystifying PACA: Navigating Compliance and Best Practices in the Produce Industry" To register, click [here](#).

Climate Reporting. The Securities and Exchange Commission (SEC) has issued its final rule requiring large corporations to disclose their carbon footprint, but excluded the controversial mandate to track Scope 3 emissions which refers to greenhouse gas emissions in supply chains. Instead, the final rule will require most businesses to track Scope 1 and Scope 2 emissions which include emissions produced by companies and associated with energy consumption. Critics of reporting requirements for Scope 3 had cited concerns over the burdensome costs of tracking emissions that originate throughout the supply chain. The 886-page rule can be read [here](#).

ESA: Critical Habitat. In keeping with a court agreement from October 2022, the U.S. Fish and

Wildlife Service has designated approximately 1.1 million acres in southern and central Florida as critical habitat for the endangered Florida bonneted bat. The critical habitat includes areas across thirteen different counties, and overlaps with the ranges of other protected species. Any action that is authorized, funded, or carried out by a federal agency within the critical habitat area will require the agency to ensure that the action does not destroy or otherwise adversely modify the bat's habitat. To view the designation rule, click [here](#).

Carbon Pipelines. The South Dakota Legislature has passed three bills to protect landowners and regulate carbon pipelines in the state. **Senate Bill 201** requires carbon pipelines to pay an additional fee of \$1 per foot of pipe, with benefits shared among county governments and landowners. **House Bill 1185** offers more landowner protections, while **House Bill 1186** defines requirements for granting carbon pipeline easements. Governor Kristi Noem will sign the bills into law and all three will go into effect in July.

Food Additives. New York state legislators have introduced two different bills aimed at prohibiting certain food additives in food and drink products sold in the state. **A6424A** and its companion bill **S6055B** would ban a variety of additives including brominated vegetable oil, potassium bromate, Red Dye 3, and titanium dioxide. California passed a similar bill last year. Meanwhile, **A9295** and its companion bill **S08615** would require companies to notify the state of New York when they add chemicals to food or drink products that the company has self-determined as "safe" without notifying the federal Food and Drug Administration.

Food Labeling. USDA has issued a final rule to clarify what food products may include the voluntary "Product of the USA" or "Made in the USDA" label claims. Under the new rule, only those meat, poultry and egg products derived entirely from animals born, raised, and slaughtered in the US can include those claims on their product labels. The rule is expected to go into effect on January 1, 2026. To view a copy of the rule, click [here](#).

Organic Standards. AMS has proposed new standards for organic mushrooms and organic pet food in an effort to resolve inconsistent certification and enforcement practices under current regulations. The agency described the current rules as "imperfect," noting that mushrooms are currently evaluated under crop production standards even though mushrooms have different nutrient and sunlight requirements than plants. Similarly, AMS noted that pet food is currently assessed under livestock feed standards, which bar ingredients commonly used in pet food such as liver and poultry meal. The proposed rule is open for public comment until May 10th and can be found [here](#).

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Agricultural & Environmental Law Conferences

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June 6-7, 2024

University of Memphis

Cecil C. Humphreys School of Law

Western

June 13-14, 2024

University of Nevada, Reno



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