



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: ESA-FIFRA. The Environmental Protection Agency (EPA) has **announced updates** to portions of its new policy to meet Endangered Species Act (ESA) responsibilities when carrying out actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among those updates is a commitment to creating better species maps in order to better target mitigation measures required to protect species considered particularly vulnerable to pesticides, and a plan to simplify the point system introduced in the draft Herbicide Strategy to make it easier for pesticide users to implement required conservation measures. While particular conservation practices will still be assigned points, EPA will now use a tiered system to describe the effectiveness of the mitigation that may be needed. To learn more about EPA's new policy, click **here** to view NALC webinar "What's the Harm? Examining EPA's New Approach to ESA Compliance When Making FIFRA Decisions."

- Conference opportunity (June 6-7, 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 Protection Products" at NALC's **Eleventh Annual Mid-South & Environmental Law Conference**.

Ag Labor: H-2A. In late March, Colorado Senator Michael Bennet introduced **S. 4069**, titled the Affordable and Secure Food Act of 2024, which would reform the H-2A visa program for foreign agricultural workers and create a pathway to legal resident status for those workers. S. 4069 is the companion bill to **HR 4319**, otherwise known as the Farm Workforce Modernization Act of 2023, which also proposes H-2A reform and establishes a path to legal residency. Both bills would also create a new certified agricultural status that non-citizen farmworkers, as well as their spouses and dependents, could apply for. To learn more about these legislative proposals, click **here** to view NALC article "Federal Bills Propose Changes to the H-2A Program."

- Conference Opportunity (June 13-14, livestream available): Rosy Brummette, Policy Advisor to Senator Bennet will co-present with Fitz Elder, Republican Staff Director, U.S. Senate

Ag Labor: Minimum Wage. The Governor of Maine has vetoed a bill passed by the Maine State Legislature which would have raised the minimum wage for agricultural workers in the state. Under **LD 2273**, the minimum wage for agricultural employees would have been increased to \$14.15 an hour, the same minimum wage for the state's non-tipped employees, with additional increases every year to coincide with cost of living increases. Lawmakers must now consider whether to overturn the veto, which requires a two-thirds vote.

PFAS. EPA has **officially declared** two per- and polyfluoroalkyl substances (PFAS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). By designating the so-called "forever chemicals" as hazardous substances under CERCLA, EPA will be better able to investigate and begin cleaning up sites contaminated with PFAS. CERCLA also allows the government and private parties to sue for contributions to cleanup efforts from those considered responsible for the contamination. To learn more about PFAS, click **here** to view NALC webinar "Not Your Grandfather's Corn Maze - Regulatory and Legal Responses to Challenges Faced by Agriculture Due to PFAS Contamination."

Food Labeling. Vermont Senators Bernie Sanders and Peter Welch together with New Jersey Senator Cory Booker have introduced a new bill, known as the **Childhood Diabetes Reduction Act of 2024**, which would require additional warning labels on certain food products. Specifically, the bill would require additional labeling for foods and beverages that are sweetened with sugar, contain non-sugar sweeteners, are ultra-processed, or contain high levels of "nutrients of concern" such as added sugar, saturated fat, or sodium. Food and beverage products that fall into any of those categories would be required to bear a label stating that the product is associated with the development of type-2 diabetes and is not intended for children. The bill is broadly worded and would require labeling for products such as sodas, sports drinks, and products containing artificial coloring.

Biofuels: E15. Iowa Representative Zachary Nunn has introduced a proposal to allow year-round E15 gasoline to be subject to the same Reid vapor pressure limitations as E10 gasoline in the states of Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. Under **HR 8052**, the loosened limitations on E15 gasoline - gasoline blended with 15% ethanol - would apply from May 1, 2024 to September 15, 2024. The bill was introduced days before EPA issued an **emergency waiver** to allow sale of E15 at the same Reid vapor pressure limits as E10 from May 1, 2024 to May 20, 2024. The waiver clarifies that retailers may continue selling E15 gasoline after the May 20 cut off until supplies in their E15 storage tanks are depleted. For more information on year-round E15, click **here** to view NALC article "EPA Delays Rescinding Gasoline Volatility Waivers Until 2025".

Swampbuster. An agricultural company in Iowa has filed suit against USDA over its wetlands conservation law commonly known as Swampbuster. In the complaint, the plaintiff claims that Swampbuster violates the Commerce Clause of the U.S. Constitution, and constitutes a federal taking without just compensation. The arguments are similar to those made in a case filed in 2021, *Foster v. Vilsack*, which were ultimately rejected by a federal district court. To read the complaint, click **here**. To learn more about *Foster v. Vilsack*, click **here** to view NALC article "Recently Filed Lawsuit Claims that Swampbuster is Unconstitutional."

Klamath Basin. The federal Bureau of Reclamation (Reclamation) has **announced its initial water supply allocation** for farmers in the Klamath Basin. Despite an average snowpack, the initial allocation is 230,000 acre-feet, slightly less than what was allocated last year and only two-thirds of what farmers in the region say they need. According to Reclamation, one of the challenges this year is ongoing restoration of the Klamath River that's happening simultaneously with the removal of four hydroelectric dams. Reclamation claims that the amount of water it can release at once must be limited to avoid interfering with the restoration work.

- Conference opportunity (June 13-14, livestream available): **Paul Simmons**, Special Counsel, Somach Simmons & Dunn will present "The Klamath River Basin & the Endangered Species Act: Implications for

Rodenticide Ban. The California State Legislature is currently considering **AB 2552**, a recently proposed bill that would expand the state’s restrictions on use of rodenticides. In 2020, the Legislature **passed a ban** on second-generation anticoagulant rodenticides which broadly exempted agricultural operations. Under the new bill, two-first generation anticoagulants - chlorophacinone and warfarin - would be banned outright. Agriculture would be exempted from the bill’s requirements.

- Webinar opportunity on access to pesticides (May 15): “The Deal with Dicamba: Overview of Recent Legal Developments.” To register, click [here](#).
- NALC Staff Attorney Brigit Rollins will present “The Future of Pesticides in Western States: The Latest Legal Developments & Trends” as part of the June 13-14 **Second Annual Western Agricultural & Environmental Law Conference**.

CWA: Wetlands Permitting. A federal judge has officially terminated Florida’s right to administer the Clean Water Act’s (CWA) wetlands permitting program and handed the reins back over to the U.S. Army Corps of Engineers (the Corps), the federal agency typically responsible for administering that portion of the CWA. The move comes after the same judge issued a decision in February, concluding that EPA’s decision to allow the state of Florida to administer the wetlands permitting program within its borders violated the ESA. According to the court, when EPA transferred permitting authority to Florida, it failed to consider the impact that action would have on listed species. While states can seek to take on CWA wetlands permitting authority, so far only Michigan and New Jersey have successfully done so. To learn more about the court’s decision, click [here](#) to view NALC article “Federal Court Revokes Florida’s CWA Section 404 Permitting Authority.”

Water Quality. A coalition of environmental groups have **submitted a petition** to EPA asking for the agency to “exercise its energy authority” under the federal Safe Drinking Water Act to force the state of Iowa to adopt stricter rules for livestock facilities operating in the northeastern section of the state. Last year, EPA required the state of Minnesota to develop solutions to reduce nitrate concentrations in drinking water supplies within the state’s southeastern karst region. The petitioners hope to replicate that intervention in Iowa.

Conservation Leases. The federal Bureau of Land Management (BLM) has finalized its new rule to allow conservation leases on public lands. The Conservation and Landscape Health Rule, establishes a new leasing program that will allow lessees to conduct restoration and mitigation on “degraded” land. Additionally, the rule mandates BLM to manage land for landscape health, and clarifies the designation and management of Areas of Critical Environmental Concern. To view the text of the new rule, click [here](#). To learn more about this rule, click [here](#) to read NALC article “BLM Looks to Expand Conservation.”

Foreign Ownership. So far in 2024, at least six states have signed foreign ownership measures into law, including Idaho (HB 496), Indiana (HB 1183), South Dakota (HB 1231), Utah (HB 516). Earlier this month, Iowa Governor Kim Reynolds signed **SF2204** into law. The Georgia legislature enacted SB 420, which has been sent to Governor Kemp. On April 15, **Senate Bill 2519** was approved by Mississippi Governor Tate Reeves. To view states’ laws restricting foreign ownership of private agricultural land, click [here](#).

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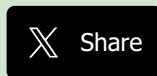
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