



# 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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**Farm Bill.** The House and Senate Agriculture Committees are making key moves on the Farm Bill. Senate Chair Debbie Stabenow (D-Mich.) has introduced the **Rural Prosperity and Food Security Act**, containing elements from over 100 bipartisan bills. Meanwhile, House Chairman Glenn Thompson (R-Pa.) has released a **summary of his bill**, highlighting changes to Price Loss Coverage and Agriculture Risk Coverage, expansion of base acres, and a response to California's Proposition 12, which sets standards for pork and eggs. The bill also incorporates Inflation Reduction Act funds into conservation efforts. House Committee debate is scheduled for May 23.

- Conference opportunity (June 13-14, livestream available): **Fitz Elder**, Republican Staff Director, Committee on Agriculture, Nutrition, and Forestry at the United States Senate and **Rosy Brummette**, Policy Advisor, U.S. Senator Michael F. Bennet will present "Update from the Potomac: 2024 Farm Bill, Public Lands, & Related Federal Issues" at NALC's **Second Annual Western Agricultural & Environmental Law Conference**.

**NEPA Updates.** The Council on Environmental Quality (CEQ) has finalized a new rule to update regulations for implementing the procedural aspects of the National Environmental Policy Act (NEPA). While the "**Bipartisan Permitting Reform Implementation Rule**" restores certain provisions of the original 1978 NEPA regulations that were scrapped in 2020, the new rule also makes several significant changes that go beyond the 1978 rules. Under the new regulations, agencies will need to identify an "environmentally preferable alternative" when drafting an Environmental Impact Statement, and take climate change and environmental justice concerns into account. This rule will go into effect on July 1, 2024.

- Upcoming blog: NALC Staff Attorney Brigit Rollins will cover NEPA updates in her next NALC article, publishing on May 14. Find it in the **Ag & Food Law Update**.

**FSMA.** The FDA has announced its highly anticipated final rule to amend the agricultural water

provisions of the 2015 produce safety final rule which was established in accordance with the Food Safety Modernization Act to help farmers ensure that their agricultural water does not contaminate produce with harmful pathogens. The new rule establishes a regulatory framework of systems-based assessments and risk-tiered outcomes that farms subject to the 2015 produce safety rule are required to use to identify known and potential hazards and implement effective preventative measures. This rule was **initially proposed in 2021**, and is expected to go into effect July 5, 2024. To read the text of the rule, click [here](#).

**Pesticides: Dicamba.** On May 3, EPA announced that it had received an application from Bayer to register a new label for its dicamba-based herbicide XtendiMax after a federal court in Arizona vacated the previous label earlier this year. Under the proposed label, XtendiMax could be applied twice to soybeans prior to emergence or until June 12, whichever is earlier. This is in contrast to previous labels which allowed XtendiMax to be applied directly to soybeans after emergence. The proposed label would continue to allow post-emergence application to cotton. While Bayer has stated that the label is for the 2025 growing season, the label is subject to a 17-month long mandatory review which would end no sooner than September, 2025. A 30-day comment period is currently open on the proposed label. To learn more about how to submit a comment, click [here](#).

- Webinar opportunity (May 15): NALC Staff Attorney Brigit Rollins will present “The Deal with Dicamba: Overview of Recent Legal Developments.” To register, click [here](#).

**Pesticides: Failure-to-Warn.** The Missouri House has passed **HB 2763**, a bill that would shield pesticide manufacturers from lawsuits alleging they failed to warn about the health risks of their products if certain standards were met. The legislation states that either a pesticide label which has been approved by the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or a label that is consistent with the most recent human health assessment performed under FIFRA would be “sufficient to satisfy any requirement for a warning label regarding health or safety[.]” The bill now heads to the Missouri Senate for further consideration. For more information on failure to warn claims in pesticide lawsuits, click [here](#) to view NALC article “Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits.”

**Pesticides: Acephate.** EPA is proposing to ban most uses of the insecticide acephate after the agency’s updated human health draft risk assessment and drinking water assessment indicated that significant dietary risks were associated with the current uses of acephate. Acephate, sold under the name Orthene, is used on agricultural crops like cotton and soybeans, and for non-agricultural landscaping purposes. The proposal would cancel all uses of acephate except for tree injection. EPA has opened a 60-day public comment period for this proposal. Click [here](#) to view the decision and learn how to submit a comment.

- 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**.

**Genetically Altered Animals.** USDA and the Federal Food and Drug Administration (FDA) have issued a **Memorandum of Understanding** (MOU) reiterating that FDA will take the lead on regulating “intentional genomic alterations” in animals. The MOU clarifies the roles that FDA and USDA take in regulating genetically altered animals, and establishes additional policies to help facilitate communication between the two agencies. Along with the MOU, FDA has also issued **updated guidance** on for heritable intentional genomic alterations in animals to help the industry better understand current statutory and regulatory requirements. The updated guidance clarifies the approval process, and establishes a risk-based approach for products.

**Regulating Biotech.** Along with the MOU and updated guidance on genomic alterations in animals, FDA and USDA have also released a report titled **The Coordinated Framework for the Regulation of Biotechnology**. The document was issued in response to **Executive Order 14081**, which directed agencies to work towards growing biotechnology innovation in the U.S. In the new report, FDA and USDA have outlined a plan to reform the regulation of biotechnology, highlighting five areas where

the agencies will focus their efforts. Those areas include modified plants, modified animals, modified microorganisms, human drugs and medical devices, and cross-cutting issues. Importantly, the report notes that FDA and USDA will be working to “clarify and provide guidance” on the regulation of cell-cultured meat.

**Water Rights: Montana.** The Supreme Court of Montana issued a decision in a lawsuit focused on whether the State of Montana holds an ownership interest in a water right developed on private land but put to beneficial use on State-owned school trust land. The water right at issue was first established in 1960 when a well was drilled and groundwater was used to irrigate four parcels - three that are privately owned and one that is leased from the State. In 2019, the State of Montana asserted an ownership right to the water used to irrigate the State-owned parcel, citing previous Montana Supreme Court decisions which had concluded that the State is the owner of water rights developed on school trust lands. In the current case, the Montana Supreme Court once again asserted that the State had an ownership interest in water rights used to develop school trust land, but noted that the State did not have the power to transfer the water right without first securing its fair market value. To read the decision, click [here](#).

- Webinar opportunity (June 19): David Cameron, Partner, Hanson Bridgett LLP will present “Groundwater Recharge: Legal and Strategic Considerations of Project Development.” To register, click [here](#).

**Raw Milk.** A state judge in Pennsylvania has issued an order clarifying that an Amish farmer who does business within the Commonwealth can sell his raw milk outside of Pennsylvania after concluding that state law on the issue was ambiguous. The same judge earlier this year declared that the farmer could not sell his raw milk within Pennsylvania, but has clarified that out-of-state sales could still be permitted. The order is part of an on-going litigation initiated by the state against the farmer for allegedly selling raw milk without a valid permit. To learn more, click [here](#) to view NALC article “Amos Miller and the Regulation of Raw Milk.”

**Nutrition Programs.** USDA has released a final rule to update school meal nutrition standards. Notably, the new rule will introduce new limits on added sugars, decrease sodium, and support healthier food options in K-12 schools. The changes will be phased in from Fall 2025 to Fall 2027. Additionally, the rule will provide grants to help support schools in meeting these updated standards and to encourage innovation in the school meals market. USDA states that it developed these new standards based on public feedback and scientific recommendations. To view the text of the rule, click [here](#).

**Food Safety.** USDA's Food Safety and Inspection Service (FSIS) has announced a final determination to declare *Salmonella* an adulterant in raw breaded stuffed chicken products. Any such products containing *Salmonella* at 1 Colony Forming Unit per gram or higher will be considered adulterated and sales of the product will be prohibited. This final rule, including all new FSIS sampling and verification procedures, will become effective 12 months after its publication. For more information on the rule, click [here](#).

**Cell-Cultured Meat.** The State of Florida has adopted what it describes as a “first of its kind” bill to ban the sale of cell-cultured meat within its borders. Under **SB 1084**, it will be a misdemeanor for anyone to “manufacture for sale, sell, hold or offer for sale, or distribute” meat cultivated from animal cells in the state of Florida. While SB 1084 represents the first time a state has banned the sale and distribution of cell-cultured meat, other states may be close behind. The State of Alabama has already followed by passing **SB 23** to ban the manufacture and sale of cell-cultured meat. The bill was signed by the Governor of Alabama on May 8 and will go into effect on October 1, 2024.

**Bovine Liability.** The Alabama State Legislature has passed **SB 164** which limits liability for bovine owners. Specifically, SB 164 states that a bovine owner shall not be liable for “any injury, loss, damage, or death of a person” as the result of a “bovine activity.” The bill clarifies that “bovine activity” includes actions like grazing or feeding. Exceptions to this immunity include failure to post required warning signs, willful disregard for safety, or failure to disclose known dangers. Once signed

by the Governor, SB 164 will go into effect on January 1, 2025.

**Foreign Ownership.** Chairman Thompson's House Farm Bill summary proposes reforming "certain reporting requirements under the Agriculture and Foreign Investment Disclosure Act (AFIDA) to ensure accuracy and transparency of data on farmland owned by foreign persons or entities." Chairwoman Stabenow's summary of the Rural Prosperity and Food Security Act indicates that it will propose USDA program eligibility restrictions on "billionaire and foreign investors."

- "Early Bird" bonus online CLE/CE (register by May 13): Harrison Pittman, Director, National Agricultural Law Center, **Ben Maddox**, VP of Business Development, AcreTrader, and **Elise Alexander**, VP & General Counsel, AcreTrader will present "Ag Land Transactions: Navigating Title, Transparency Requirements, Foreign Ownership, & Related Issues" as part of NALC's Online "Early Bird" May 14 Agenda for the **Eleventh Annual Mid-South Agricultural and Environmental Law Conference** (June 6-7).

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# Agricultural & Environmental Law Conferences

## Mid-South

**June 6-7**  
**Memphis, Tennessee**

## Western

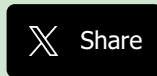
**June 13-14**  
**Reno, Nevada**



**Livestream option available for both conferences.**



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