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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Packers and Stockyards Act. USDA has issued a proposed regulation under the Packers and Stockyards Act that would allow farmers and ranchers to more easily bring legal challenges against large food and agriculture companies for deceptive contracts, retaliation, and other unfair practices. Under the proposed rule, an individual farmer could sue a larger company for unfair conduct in the marketplace, such as deceptive contract terms, based on damages to the farmer's own operation. Under the current structure, a farmer would have to show that the allegedly unfair marketplace conduct had harmed the entire marketplace to successfully bring claims in court. To view the text of the Fair and Competitive Livestock and Poultry Markets Proposed Rule, click **here**. For more information from USDA, click **here**.

Farm Bill. As of June 2024, members of Congress have released three separate proposals for the upcoming farm bill. Most recently, Senate Agriculture Committee Republicans and Ranking Member John Boozman (R-AR) released the framework for **their proposal** which outlines similar policy priorities to the House farm bill, titled the **Farm, Food, and National Security Act of 2024**, which was released by House Committee on Agriculture Chair G.T. Thompson (R-PA) and made it out of committee in May. The **third proposal** was released by Senate Agriculture Committee Chair Debbie Stabenow (D-MI) and differs from the other two primarily over funding for nutrition and conservation programs. While it is unlikely that the House farm bill will pass both chambers before the existing authorization expires on September 30, it still provides insight to some of the provisions that lawmakers are considering. For example, the House farm bill proposal includes some provisions that would affect animal agriculture, including a limitation on "Prop 12" type state laws as well as a pilot program allowing qualified sales of meat products slaughtered as "custom exempt." For more information on that proposal, click **here**. To learn more about the farm bill, click **here** and **here** to view the first two articles in a new NALC series that will provide an in-depth comparison of each proposal.

Interstate Water. On June 21, the Supreme Court issued a decision in the long-running lawsuit ***Texas v. New Mexico*** which focuses on an agreement between the two states over use of the Rio Grande. Specifically, the ruling concerned whether the lawsuit should be settled after both Texas and New Mexico agreed to a consent decree that would resolve all claims in the case despite the federal government's disapproval. The federal government intervened in the case in 2018, claiming that the dispute impacted other water delivery agreements between the federal government, state irrigation districts, and Mexico. The government asked the Supreme Court to keep the case alive, arguing that the consent decree would prevent it from pursuing its claims. In a 5-4 decision, the Court sided with the federal government, ruling that because the proposed consent decree would dispose of the government's claims without its consent, the States' motion to settle the case is denied.

"Resource Drain" Standing. In a recent **Supreme Court decision**, anti-abortion doctors and medical associations challenged FDA actions regarding the abortion drug mifepristone. The Court ruled against the plaintiffs, finding they lacked standing to sue. Specifically, the Court rejected medical associations' argument that costs incurred from studying mifepristone and advocacy efforts constituted "resource drain" injury. This decision likely marks the end of using such "resource drain" theories to establish standing in lawsuits challenging regulatory or business actions, a strategy previously favored by organizations like animal rights groups.

- The Supreme Court is expected to release its final decisions of this term by the end of the month, including its highly anticipated ruling in *Loper Bright Enterprises v. Raimondo*, a case concerning the scope of federal agency authority. Stay informed and up-to-date by following us on social media via **Facebook**, **X**, or **LinkedIn**.

Prop 12. On June 25, the Ninth Circuit Court of Appeals **issued a decision** in *Iowa Pork Producers Ass'n v. Bonta*, No. 22-55336 (9th Cir. 2024), a lawsuit challenging the state of California's Proposition 12. The case was originally filed in district court where the plaintiffs sought to have Prop. 12 overturned, however the lower court refused to enjoin the law and dismissed the case. On appeal, the Ninth Circuit agreed with the district court and upheld its decision to dismiss the case. The court was unconvinced by the plaintiffs' arguments that Prop. 12 was unconstitutional, citing a Supreme Court decision from 2023 which rejected similar constitutional challenges. To learn more about the case before the Ninth Circuit, click **here** to read NALC article "Farm Animal Housing in 2024: Laws, Proposals and Challenges."

H-2A Lawsuits. A coalition of 17 states have filed a lawsuit against a recent **rule** issued by the Department of Labor permitting temporary farm workers on **H-2A** visas to unionize. The plaintiff states criticize the rule for allegedly rewriting the **National Labor Relations Act**, a power reserved for Congress. Additionally, the states argue that granting unionization rights exclusively to foreign H-2A workers discriminates against American farmworkers. They contend that the Department of Labor lacks the authority under the **Immigration Reform and Control Act** to provide H-2A workers with rights exceeding those of American workers. The **lawsuit** was filed in the Southern District Court of Georgia on June 10. To read more about the Department of Labor's rule, click **here** to read NALC article "Department of Labor Finalizes New H-2A Regulations."

Emission Standards. Farm groups, the oil industry, and independent truck drivers have jointly filed a **lawsuit** in the D.C. Circuit Court of Appeals against the Biden administration's **new emission standards** for heavy-duty vehicles. They argue that the Environmental Protection Agency (EPA) exceeded its authority and acted arbitrarily in adopting the standards. The lawsuit criticizes the regulations for favoring electric trucks, which they say have limited range and lengthy charging times, potentially endangering livestock during transport. The farm groups, a group of six auto dealers, and the American Petroleum Institute have also united to **challenge** EPA's **emission standards** for light-duty and medium-duty vehicles.

FTC: Food Marketing. A group of 18 Congressional Members sent a **letter** to Federal Trade Commission (FTC) officials encouraging the agency to take action against the marketing of unhealthy food to children. Specifically, the letter recognized the increased marketing of unhealthy food and beverages on online platforms through influencer marketing, and asked the FTC to pay special

attention to ads targeted to children in different socioeconomic and demographic groups. Lawmakers called for the FTC to complete an update of the Review of Food Marketing to Children and Adolescents - Follow-Up Report which Congress instructed as a part of the June 2023 Consolidated Appropriations Act. The letter reiterated the importance of FTC taking action against unhealthy food and beverage endorsements directed at children, as it did last fall against influencers promoting aspartame and sugary products. To learn more about prior FTC action against health influencers, click **here** to read NALC article "FTC Warns Trade Association and Nutrition Influencers of Lack of Disclosures in Sponsored Social Media Posts."

Food Labeling. A **class action lawsuit** has been filed against Poppi, a beverage manufacturer, claiming the company's prebiotic soda is falsely marketed as "gut healthy." The lawsuit, filed in the District Court of the Northern District of California, alleges violations of several state laws due to misleading labels and slogans implying health benefits not substantiated by the product's actual prebiotic effects. The case reflects a broader trend of legal challenges against food and beverage companies over health-related claims, particularly as consumers increasingly seek healthier alternatives to traditional products like soda. To read more about FDA's regulation of health-related claims, click **here** to view NALC article "The Legality of Food Labeling Claims: FDA's Regulations."

Solar Cells. The Biden administration has recently introduced a variety of new duty rules on solar cell imports from Asia, including doubling tariffs on Chinese photovoltaic cells from 25% to 50% and ending a freeze on duties for solar imports from Cambodia, Malaysia, Thailand and Vietnam. At the same time, the administration has also launched a formal investigation into domestic solar manufacturers' claims that solar cells from those four countries are being unfairly subsidized and introduced to the U.S. market at significantly lower prices than domestically-produced products. For more information from the White House about these actions, click **here**.

- Webinar opportunity (August 21): **Peggy Kirk Hall**, Director, Agricultural and Resource Law Program at The Ohio State, and **Jesse Richardson**, Professor of Law, West Virginia University College of Law will present "Can Agriculture and Solar Co-Exist?" To register, click **here**.

NEPA. The Supreme Court has agreed to hear a lawsuit filed by seven Utah counties seeking clarity over what the plaintiffs describe as a circuit split over the required scope of a federal agency's environmental review under the National Environmental Policy Act (NEPA). According to the plaintiffs, most circuits have interpreted a 2004 Supreme Court decision regarding the scope of required review under NEPA as requiring an agency to limit its NEPA review to only those environmental impacts caused by actions that the agency has regulatory control over. However, the seven Utah counties claim that the D.C. Circuit ruled incorrectly when it interpreted the 2004 case as limiting the scope of NEPA review based on an agency's power to block a project that would be harmful to the environment. To view the plaintiffs' petition to the Court, click **here**.

Additionally, members of Congress have introduced a Congressional Review Act resolution to block recent NEPA regulations adopted by the Council on Environmental Quality earlier this year. Should the resolution pass, President Biden is expected to issue a veto. The Senate resolution can be found **here**. The House resolution can be found **here**. To view the challenged rules, click **here**.

HPAI. Michigan will offer dairy operations affected by Highly Pathogenic Avian Influenza (HPAI) grants of up to $28,000 to collaborate with federal and state agencies in investigating virus transmission. The initiative is aimed at increasing understanding of how the virus enters farms. Since March, the virus has affected 102 dairy herds across 12 states. Three farm workers have also been infected. The U.S. Department of Agriculture also announced aid for farmers who test their milk and cattle for the virus, and federal officials have reported 11 farms enrolled in the federal support program.

- Webinar opportunity (July 17): **Brook Duer**, Staff Attorney, Penn State Center for Agricultural and Shale Law will present "HPAI in Poultry and Cattle: How Can We Miss You If You Won't Go Away?" To register, click **here**.

Cal/OSHA. The California Occupational Safety and Health Standards Board has approved an **indoor heat illness prevention standard** after seven years of review. The **regulation**, passed unanimously, excludes corrections facilities, and creates requirements for indoor heat illness training, emergency response procedures, and the provision of water and access to cool-down areas. To read an update on state agriculture labor laws enacted in 2024, click **here** to view NALC article "State Labor Legislation: 2024 Update."

PFAS. Three lawsuits have been filed in the U.S. Court of Appeals for the D.C. Circuit against an EPA **rule** limiting the amount of six PFAS chemicals that can be present in drinking water. Often called "forever chemicals," Per-and polyfluoroalkyl substances (PFAS) are man-made chemicals that can last for many years in the environment. The rule requires water utilities to monitor their water and remove PFAS chemicals that exceed the EPA's set limits by 2029. The challengers are **water utilities** and **chemical companies** that will likely be responsible for paying to remove PFAS from tap water. To learn more about how PFAS impacts the ag industry, click **here** to view NALC webinar "Not Your Grandfather's Corn Maze - Regulatory and Legal Response to Challenges Faced by Agriculture Due to PFAS Contamination."

WOTUS: A federal judge in North Carolina **declined to block** the federal **government's current definition** of the Clean Water Act term "waters of the United States" after finding that the plaintiff who made the request was unlikely to win his case. The plaintiff, a landowner in North Carolina, filed suit to challenge the current WOTUS definition, arguing that it fails to comply with last year's Supreme Court decision *Sackett v. EPA* because the WOTUS rule fails to define adjacent wetlands as those wetlands that are "indistinguishable" from other covered waters. Although he asked the court to block the WOTUS rule while the litigation proceeded, the court declined to do so after finding that the rule's definition of adjacent wetlands as those wetlands that share a "continuous surface connection" with a covered water is likely to satisfy the standard established in *Sackett*. To learn more about the definition of WOTUS, click **here** to view NALC's article series "WOTUS Update."

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