



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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Chevron Deference. A group of Senate Democrats led by Sen. Elizabeth Warren, D-Mass., have introduced a new bill aimed at reversing the U.S. Supreme Court's recent ruling in *Loper Bright v. Raimondo* which overturned the long-standing doctrine of *Chevron* deference. The bill, titled **the Stop Corporate Capture Act**, would clarify that Congress "is dependent on providing discretion" to federal agencies to implement its statutes, and that the rules that agencies adopt to carry out those statutes "should generally not be held to be invalid on the basis that Congress has not addressed the agency's proposed course of action in specific terms." Under the *Chevron* doctrine, courts were required to defer to a federal agency's reasonable interpretation of statutes it was tasked with administering when the statutory language was ambiguous. Following the *Loper Bright* ruling, courts may no longer rely on such deference. This Supreme Court season has seen numerous decisions impacting the role and function of federal agencies. To learn more, click **here** to view NALC article "Supreme Court Overturns Long-Standing *Chevron* Doctrine" and **here** for NALC article "Supreme Court of the United States Rules SEC Administrative Proceedings Unconstitutional."

- Senior Staff Attorney Rusty Rumley spoke at the **Midwestern Legislative Conference** in Columbus, OH on July 23 about the potential impacts of the demise of *Chevron* deference for agriculture. NALC attorneys speak and present at events in order to provide agricultural and food law research and information to the public. If you are interested in having an attorney from the NALC speak to a group, either in person or virtually, please do not hesitate to contact us. Learn more about the NALC staff and find our contact information **here**.

Roundup. An Oregon appellate panel has **reversed and remanded** a trial court judgment exonerating Monsanto, now owned by Bayer, from the claims that its weedkiller Roundup caused the plaintiff to develop non-Hodgkin's lymphoma. According to the appellate court, the trial judge wrongly excluded testimony from the plaintiff's expert witness. By reversing the trial court's judgment, the appellate panel has effectively revived the case and given the plaintiff an opportunity for a retrial. This case is only one of thousands still pending throughout the United States against Bayer for alleged injury as the result of exposure to Roundup. While several of these cases have been resolved in favor of Bayer, many have also resulted in large wins for the plaintiffs. To learn more about pesticide injury lawsuits, click **here** to view NALC series "Plaintiffs & Pesticides."

Dicamba. Pesticide manufacturer, Syngenta, has **submitted an application** to the Environmental Protection Agency (EPA) to register its dicamba-based pesticide, Tavium, for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Tavium was one of three dicamba products that had been approved for use directly onto dicamba-resistant soybean and cotton seeds. However, in February 2024, a federal court vacated the registration for all three products after concluding that EPA had failed to comply with FIFRA procedures when approving the products. The application to register Tavium is the third application for over-the-top use of a dicamba pesticide that has been submitted to EPA following the February ruling. Bayer and BASF have already applied for reapproval of XtendiMax and Engenia. A comment period for Syngenta's application will be open through August 22. Click **here** to learn more. For more information on the February court decision, click **here** to view NALC article "The Deal With Dicamba: Court Vacates Over-the-Top Registration."

PFAS Class Action. Coca-Cola and its subsidiary Simply Orange Juice Co. have been challenged with a **proposed class action lawsuit** in the US District Court for the Southern District of New York. Plaintiff claims Simply Orange is deceiving customers by using terms like "pure," "healthy," and "all natural" when its juices contain man-made forever chemicals such as perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). Plaintiff alleges that the labels are false and misleading because they do not disclose the presence of the chemicals while purporting to be all natural. This is an amended complaint filed after plaintiff's initial complaint was **dismissed** for failing to rely on research adequately connected to his own purchases of Simply Orange products. To learn more about food labeling generally, click **here** to visit NALC Food Labeling reading room.

Hemp. The Florida Department of Agriculture imposed **sanctions** on two hemp companies for manufacturing and selling hemp-derived products it alleges are attractive to children. Following the enactment of a 2023 Florida law prohibiting the sale of hemp products that are "attractive to children," the Department of Agriculture conducted the largest ever inspection of businesses selling

hemp products. The sanctions impose a five-year ban on the sale of any food products in Florida for Just Brands, LLC and a two-year ban on the manufacture of hemp gummies in Florida for High Roller Private Label, LLC. Additionally, the US Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) sent **warning letters** to six companies selling copycat food products containing delta-8 THC, a substance that comes from Cannabis. The copycat products mimic the packaging of popular foods like **Chips Ahoy! cookies** or **Sour Patch Kids candy**. The companies have 15 days to address the violations, or face legal action. To learn more about hemp, click [here](#) to visit NALC Industrial Hemp reading room.

Public Lands. Twelve agricultural, mining, and energy groups are suing the Bureau of Land Management (BLM) in the US District Court for the District of Wyoming over a final **rule** that puts land protection and restoration on the same level as grazing, energy development, and other land uses. Under the Federal Land Policy and Management Act, the BLM is authorized to balance the multiple uses of public lands for productive purposes. The finalized rule creates two new categories of leases for land use - mitigation leases and restoration leases. Plaintiffs argue it is improper for BLM to create a new use for federal lands without Congressional approval, and claim the rule is "arbitrary and capricious," lacking clear guidance on land set-asides for mitigation or restoration. Click [here](#) to view the plaintiff's complaint. For more information about the rule, click [here](#) to read NALC article "BLM Looks to Expand Conservation."

Right-to-Farm. Pennsylvania mushroom farmer, Rogelio Vivero, is fighting for the right to produce mushroom compost for himself and his relatives on his property. Vivero's township issued him a notice of violation claiming the compost operation was prohibited because it was commercial rather than agricultural. After losing the challenge at the township's zoning hearing board, Vivero **appealed** the case to the county Common Pleas Court and **sought reprieve** under the **ACRE Law** from the Pennsylvania Attorney General's office. The ACRE Law allows farmers to ask the Attorney General to review local ordinances they believe violate state law by limiting normal agricultural operations. The agency is still reviewing the case, and the litigation is ongoing. To learn more about right-to-farm laws across the country, click [here](#) to view NALC's Right-to-Farm state law compilation.

Solar. The Solar Energy Manufacturers for America Coalition (SEMA) is **asking** the Biden administration to tighten the rules governing tax credits for solar project developers using American-made components. The 2022 Inflation Reduction Act established a 10% tax credit for solar panels where 40% of the cost of a project's manufactured products are made in the US. However, SEMA claims the projects can work around the 40% requirement by buying foreign-made panels and spending 40% of the cost purchasing US-made steel for mounting the panels.

- 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? Exploring the Promise and Challenge of Agrivoltaics" To register, click [here](#).

Marketing Order. The US Department of Agriculture (USDA) finalizes its termination of a marketing order for cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington and Long Island, New York. Marketing orders are a tool USDA implements to maintain consistent market conditions for agricultural commodities. Specifically, this cranberry marketing order, which had been in place since 1962, created recordkeeping requirements, established research activities, and authorized cranberry producers to establish volume control. Click [here](#) to read the final rule. To learn more about marketing orders generally, click [here](#) to visit NALC Marketing Orders reading room.

Water Rights. Leaders of the Navajo Nation, Hopi, and Southern San Juan Paiute tribes have signed the historic **Northeast Arizona Indian Water Rights Settlement Agreement** to bring clean drinking water to their communities. This agreement, pending approval by Congress, will provide infrastructure for reliable water access to tens of thousands of Navajo people for the first time. The settlement, introduced by a bipartisan group of Arizona lawmakers, allows water diversion from Utah and New Mexico to Navajo communities in Arizona.

Scenic Rivers Bill. Ohio's Wild, Scenic, and Recreational Rivers Program will see changes under **Senate Bill 156**, which recently passed the Ohio General Assembly and is expected to be signed by Governor DeWine. The bill, which received strong bipartisan support, addresses landowner concerns and revises program administration. It transfers authority to the Division of Natural Areas and Preserves (DNAP) within the Ohio Department of Natural Resources (ODNR), clarifies that watercourse designations do not affect private property rights, and expands designations to include river headwaters. The DNAP will also manage publicly owned land along designated rivers, establish rules and fees for land use, and accept donations for the program. To learn more, click [here](#) to read "Scenic Rivers Bill goes to Governor's desk" from NALC partner The Ohio State University Extension's Agricultural & Resource Law Program.

Right-to-Repair. Minnesota's right-to-repair law, called the **Digital Fair Repair Act**, went into effect on July 1, 2024. With its enactment, Minnesota joins California, Colorado, Maine, Massachusetts, and New York as the sixth state to enact a law protecting an equipment owner's right to repair their equipment as they see fit. Minnesota's law does not apply to agricultural equipment - meaning Colorado remains the only state to have enacted a law permitting farmers to repair farm equipment themselves. To learn more about how the right-to-repair issue affects agriculture, click [here](#) to view NALC article "Update on Right-to-Repair."

- Webinar opportunity (September 18): **Ross Pifer**, Director, Penn State Center for Agricultural and Shale Law will present "Right to Repair and Agriculture." To register, click [here](#).

Question 3. A federal court **has ruled** that the Federal Meat Inspection Act (FMIA) does not preempt the Massachusetts Prevention of Farm Animal Cruelty Act, also known as Question 3, which voters passed as a ballot initiative in 2016. Question 3, much like California's Prop. 12, bans the sale of pork meat that fails to meet sow housing requirements, regardless of where the pork is produced. In its ruling, the court concluded that the FMIA does not preempt Question 3 because the purpose of the FMIA is to protect the health of the consumer, and Question 3 is focused on animal confinement conditions, not consumer health. To learn more about Question 3 and related legal challenges, click [here](#) to view NALC article "Farm Animal Confinement: Legal Challenges to Mass. Question 3."

Food Labeling: GLP-1 Drugs. Nestle **announced** it will launch a new food brand, called Vital Pursuit, aimed at consumers who are using GLP-1 Drugs. Glucagon-like peptide 1 (GLP-1) drugs, like Ozempic or Wegovy, are used for weight management by mimicking the hormone GLP-1 to stimulate the feeling of fullness in users. Vital Pursuit will include pre-made, frozen meals that contain essential nutrients, like protein and fiber, necessary for maintaining GLP-1 drug users' health. To learn more about the regulatory framework for labeling these products, click [here](#) to read NALC article "Regulation of Food for GLP-1 Drug Users: Labeling Claims."

Rio Grande. In late June, the U.S. Supreme Court issued a decision in the long-running lawsuit between the states of Texas and New Mexico over apportionment of water in the Rio Grande River. Both states are parties to the 1938 Rio Grande Compact which divides the Rio Grande's waters between Texas, New Mexico, and Colorado. In 2013, Texas filed suit against New Mexico, claiming that increased groundwater pumping within the state had depleted water supplies meant for Texas. The federal government had intervened in the case to defend its own interests in making deliveries of Rio Grande water to both Texas and Mexico, which also receives a share. As litigation proceeded, Texas and New Mexico reached an agreement that would have resolved all issues in the case and brought the lawsuit to an end. However, in a recent ruling, the Supreme Court declined to adopt the agreement, finding that it would resolve the claims raised by the federal government against its will. For more information, click [here](#) to read NALC article "SCOTUS Rejects Consent Decree Over Rio Grande."

Farm Bill. Over 500 national, state, and local organizations sent a **letter** to the leaders of the House and Senate, and the Agriculture committees of both chambers. The letter urges congressional leaders to pass a farm bill this year, warning that pushing its passage to the 119th congress would further delay updates to policies, provisions, initiatives, and critical funding that supports their interests. There is one week of session left before the summer recess and three weeks in September before Congress is scheduled to break until after the November elections. The House Agriculture committee has advanced a farm bill, but a floor vote has yet to be scheduled. Both the Senate Agriculture Committee Majority and Minority have released framework proposals, but neither has released a bill draft. To learn more about themes present in the three proposals, click [here](#) to read NALC's Farm Bill series.

Rural Legal Deserts. Arizona will now allow law school graduates who fall short of passing Arizona's bar exam to become licensed attorneys after completing a two year apprenticeship under an experienced lawyer in a rural area, or in a government or nonprofit law setting. The **Arizona Lawyer Apprenticeship Program** aims to bolster the number of lawyers practicing in the state's "legal deserts," by offering this option to law graduates who have just missed Arizona's passing score of 270 and made between 260 and 269 on the Uniform Bar Exam. A "legal desert" refers to an area where residents lack access to attorneys - a phenomenon which severely impacts many rural communities. In 2020, it was **reported** that 1,300 counties in the United States had less than one attorney per 1,000 residents, while some counties had no attorneys.

- Conference Opportunity (August 5-6): NALC partner **The Ohio State University Extension's Agricultural & Resource Law Program** presents, "Cultivating Connections: A Conference for Farm Transition Planners." Click [here](#) to register.

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