



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: Agrivoltaics. As of August 2024, members of Congress have released three separate proposals for the upcoming farm bill. The House Agriculture Committee released the **Farm, Food, and National Security Act of 2024**, which was advanced through committee with bipartisan support, but has not yet been introduced on the House floor. Additionally, both the **Senate Agriculture Majority** and **Minority** have released frameworks outlining policy priorities for their proposals; however, neither has released a proposal with full bill text, nor has either proposal been introduced in a committee hearing. Included in the House bill and the Senate Majority are provisions addressing agrivoltaics. The House bill seeks to limit the Secretary of Agriculture from utilizing U.S. Department of Agriculture dollars to convert private forestland or prime farmland into ground-mounted solar installations. Conversely, the Senate Majority proposal would require USDA to coordinate with the U.S. Department of Energy to issue guidance on best practices for agrivoltaics. It is unlikely that any of the three proposals will pass both chambers before the existing authorization expires on September 30; however, discussions continue to mount about extending the current authorization of the 2018 Farm Bill. To learn more about agrivoltaics and other themes present in the farm bill proposals, click **here** to read NALC's "Farm Bill 2024" article series.

- 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**.

California: Emissions Reporting. The Newsom administration **proposes** delaying **SB 253**, which mandates large companies report Scope 3 greenhouse gas emissions within their supply chains, until 2028. Initially the Newsom administration excluded funding for SB 253 from its January budget proposal, but later included limited funding for it in a revised budget proposal. The delay also allows companies to report emissions for subsidiaries. However, the California Chamber of Commerce's lawsuit against the law could further delay its implementation. Lawmakers have until the end of the legislative session to respond. To learn more about SB 253 and other similar emissions reporting laws, click **here** to view NALC article "The SEC Finalizes Rule on Required Climate-Related Disclosures."

Labor. A state judge in California has **issued a preliminary injunction** to halt an effort by the United Farm Workers union to negotiate a labor contract for nursery workers at Wonderful Co., a large agricultural business in California. The injunction was issued as part of a lawsuit filed earlier this year to challenge **a law** enacted by California in 2022 that allows workers to form a union through mail-in voting rather than requiring the decision be made at a physical polling place. In its decision, the court determined that Wonderful Co. was likely to prevail in its legal challenge of the new law, which Wonderful Co. argues is unconstitutional.

Carbon Credits. In its 2024 legislative session, Pennsylvania passed the **Carbon Capture and Sequestration Act**, which provides a framework for state agencies to implement a carbon capture and sequestration (CCS) regulatory structure in the state. The law also establishes the Carbon Dioxide Storage Facility Fund, clarifies that pore space is tied to surface estate unless severed through a separate conveyance, and creates co-tenancy requirements for how parcels can be unitized for CCS projects. In addition, the law creates liability protections for operators, requires commercially valuable minerals are isolated from carbon dioxide plume, establishes a certificate of completion process to transfer title of the stored carbon dioxide to the state, and requires operators to maintain seismic monitoring systems. The law took effect immediately.

- Conference Opportunity (September 19): Rusty Rumley, NALC Senior Staff Attorney, presents, "Carbon Credits and Contracts" at NALC partner **The Center for Agricultural and Shale Law at Penn State Law's** 2024 Pennsylvania Agricultural Law Symposium. Click **here** to register.

Pesticides: Insecticide Strategy. The Environmental Protection Agency (EPA) has released its highly anticipated draft Insecticide Strategy, the next step in the agency's on-going efforts to reduce pesticide exposure to hundreds of federally listed endangered species. Like the draft Herbicide Strategy issued last year, the draft Insecticide Strategy suggests adding additional mitigation measures to pesticide labels to reduce both spray drift and runoff. According to the draft, those

mitigations would be added to existing pesticide labels as they came up for registration review. In response to criticism EPA received on the draft Herbicide Strategy that the agency had overestimated the range of some listed species, the draft Insecticide Strategy affirmed that EPA would focus on refining species maps to better tailor areas where additional mitigations would be required. A comment period on the draft Insecticide Strategy will be open through September 23. To view the proposal and learn how to submit a comment, click [here](#). For more information on last year's draft Herbicide Strategy, click [here](#) to read NALC article "EPA Draft Herbicide Strategy Open for Comment." For more on the draft Insecticide Strategy, check out an upcoming NALC article which will be available [here](#), on August 13.

Food Safety: Salmonella. The USDA's Food Safety and Inspection Service is proposing new regulations declaring specific poultry products with certain levels and serotypes of *Salmonella* as adulterated. Under the proposed rule, *Salmonella* will be an adulterant when any type of *Salmonella* is present at or above 10 colony forming units /per milliliter or gram, or a specific serotype of *Salmonella* is present at any detectable level in raw chicken carcasses, chicken parts, comminuted chicken, and comminuted turkey products. Additionally, the rule revises the regulations that govern poultry slaughter establishment's procedures to help reduce contamination during the slaughter and dressing process. To read the proposed rule, click [here](#).

- Upcoming blog: NALC Staff Attorney Emily Stone will cover the Salmonella rule in her next NALC article, publishing on August 15. Find it in the [Ag & Food Law Update](#).

Clean Water Act. The Iowa Chapter of the Sierra Club has petitioned EPA to revoke the Iowa Department of Natural Resource's authority to implement and enforce the National Pollution Elimination System permit program of the Clean Water Act (CWA). Among other allegations, the group has asserted that the Iowa DNR has failed to properly regulate concentrated animal feeding operations and develop plans meant to restore impaired waters. The Iowa Chapter Sierra Club asserted in its petition that the current regulations were insufficient to prevent future discharges into Iowa's waters. To view the petition, click [here](#).

WOTUS. On July 29, the Sixth Circuit Court of Appeals issued a ruling to revive a lawsuit filed by the state of Kentucky challenging EPA's current definition of the CWA's "waters of the United States." In a three-page opinion, the Sixth Circuit found that a Kentucky district court judge had violated a federal procedural rule and improperly dismissed the litigation. While the Sixth Circuit revived Kentucky's challenge, it noted that the Supreme Court's decision in *Sackett v. EPA*, which was issued months after Kentucky originally filed suit, "alleviated the vast majority of plaintiffs' alleged harms." Therefore, the Sixth Circuit held that in order to continue the litigation, Kentucky would need to amend its complaint to address the *Sackett* decision. To view the Sixth Circuit's opinion, click [here](#). For more information on WOTUS from the NALC, click [here](#).

Boneless Chicken. The Ohio Supreme Court ruled that consumers can not expect boneless chicken wings to actually be free of bones. The plaintiff, Michael Berkheimer, sued an Ohio restaurant for negligence after a bone in his boneless wings tore his esophagus causing an infection, multiple surgeries, and weeks in the hospital. In a 4-3 decision, the Supreme Court held that the term "boneless" refers to a cooking style and that since bones are natural to chicken, consumers should be on guard for bones in a meal with chicken. To read the opinion, click [here](#).

Crop Insurance. The USDA's Risk Management Agency will be adding provisions to buy-up crop insurance, despite the farm bill's uncertain status on Capitol Hill. The Risk Management Agency will be increasing the premium subsidy rate for the Enhanced Coverage Option from 44% to 65%. With these proposed changes to the ECO, producers will be able to insure up to 95% of the area revenue or yield. ECO is also being made available for several specialty crops, including almonds, in 2025, and citrus in 2026. To learn more, click [here](#).

Right to Repair. At a recent roundtable discussion in Colorado, members of the Rocky Mountain Farmers Union spoke with Congressman Joe Neguse (D-CO), Senator John Hickenlooper (D-CO), and Federal Trade Commission (FTC) Chair Lina Khan on the challenges faced when attempting to repair farm equipment. At this discussion, members of the Farmers Union argued for the necessity of federal right-to-repair legislation by detailing the issues created from dealer consolidation. Congressman Neguse was a sponsor of the Agricultural Right to Repair Act, introduced to Congress in September 2023, and Chair Khan has been an outspoken advocate for Colorado's right-to-repair laws, testifying before the Colorado General Assembly's Committee on Business Affairs and Labor in support of right-to-repair expansion to digital electronic equipment. To learn more about right-to-repair in agriculture, click [here](#) to read 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](#).

Water Conservation. USDA has announced a new funding program which seeks to incentivize farmers to use less water and continue farming. Aimed at farmers in arid, Western states, the program looks to conserve up to 50,000 acre-feet of water across 250,000 acres of irrigated farmland. Each eligible district will receive up to \$15 million to help improve irrigation systems, try new crops, or to encourage a switch to less water-intensive water management systems. Producers who participate will work with USDA to develop water conservation plans appropriate for their own needs and circumstances. To learn more about the new program from USDA, click [here](#). While USDA's new program is not a part of the upcoming Farm Bill, all three Farm Bill proposals seek to address water concerns in the Conservation Title. To learn more about each proposed Conservation Title, click [here](#) to view NALC article "Farm Bill 2024: Themes in the Proposed Conservation Titles."

Pesticides: DCPA. On August 6, EPA announced an emergency suspension of all uses of the pesticide dimethyl tetrachloroterephthalate, known as DCPA. According to EPA, it has chosen to suspend all use of DCPA in order to protect unborn babies and pregnant mothers who risk serious health problems, including impaired brain development and motor skills as a result of DCPA exposure. While AMVAC Chemical Corporation, the sole manufacturer of DCPA, moved to cancel most uses of the pesticide late last year, EPA has determined that the product is so dangerous, there is no way it can be safely used. EPA will not allow the use of existing stocks of DCPA, which means once the emergency suspension goes into effect, distribution, sale, and use of the product will be a violation of federal law. To view the suspension order from EPA, click [here](#).

Food Advertising: GLP-1 Drugs. In June 2024, Nestle Health Science, a subsidiary of Nestle launched a GLP-1 nutrition support website in the U.S. called "**GLP-1 Nutrition.**" This website will promote Nestle's dietary supplement brands, includes a blog with tips, an expert insights tab, and a talk to a nutrition coach feature, and provides the opportunity for sharing success stories and being a "GLP-1 Nutrition Ambassador." Unlike the food labels on the packaging of Nestle's new GLP-1 focused food brand, **Vital Pursuit**, the advertising located on this website will be under the authority of the Federal Trade Commission (FTC). To learn more about the FTC's regulation of advertisements and endorsements, click [here](#) to read NALC article "Regulation of Food for GLP-1 Drug Users: Off-Label Advertisements."

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