



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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NALC WEBINAR SERIES
Right to Repair and Agriculture
September 18, 2024, Noon EDT
Presenter:
Ross Pifer
Penn State Center for
Agricultural & Shale Law

Foreign Ownership. The House of Representatives has passed the **Protecting America's Agricultural Land from Foreign Harm Act of 2024**. This legislation seeks to prevent certain foreign ownership of land in the United States. If enacted, the bill would ban entities "owned by, controlled by, or subject to the jurisdiction of" the governments of Iran, North Korea, China, or Russia from purchasing or leasing agricultural land. Under the terms of the bill, current landowners affiliated with the aforementioned countries would not be required to divest land, but would face bans to participation in USDA programs. To see the latest foreign ownership numbers, click **here** to visit the Agriculture Foreign Investment Disclosure Act annual reports webpage. To learn more about foreign ownership of agricultural land generally, click **here** to view more NALC resources.

Carbon Pipeline. The South Dakota Supreme Court determined that Summit Carbon Solutions, a CO2 pipeline developer, has failed to prove it is a "common carrier," a ruling that gives affected landowners more power to determine whether the company may conduct surveys upon their land. This decision has substantial consequences because the "common carrier" status gives companies such as Summit the power of eminent domain, which would allow it to force the sale of private property for a public use. Summit hopes to provide more information in the future that would prove its status as a "common carrier." To read the decision, click **here**.

Agricultural Labor. A federal judge in Georgia has determined that a final rule issued by the Department of Labor, known as the "**Farmworker Protection Rule**", is unconstitutional under the National Labor Relations Act. The rule sought to prevent employers from "retaliating" against visa-holders who sought to organize or join labor organizations. The presiding judge reasoned that the rule in question "exceeded the general authority constitutionally afforded to agencies." The judge also declined to issue a nationwide injunction on the rule, instead choosing to prevent its application in 17 states. The states in question are Florida, Georgia, South Carolina, Louisiana, Arkansas, Kansas, Idaho, Indiana, Iowa, , Missouri, Montana, Nebraska, North Dakota, Oklahoma, Tennessee, Texas, and Virginia. To read the preliminary injunction, click **here**. To learn more about the final rule, click **here** to read NALC article "Department of Labor Finalizes New H-2A Regulations."

Microplastics. A judge in the Northern District of Illinois has dismissed a class action lawsuit against BlueTriton's Ice Mountain bottled water. The lawsuit alleged that BlueTriton's claim to be "100% Natural Spring Water" was deceitful because the bottled water contained microplastics. However, the court found that the plaintiff's claim was preempted by the Food, Drug, and Cosmetic Act (FDCA) and the authority it grants the FDA to define specific food labeling terms. Specifically, the court noted that the FDA's definition of "spring water" contains no mention of microplastics. The court held that this, coupled with the fact that a "reasonable consumer" would not truly expect the water to contain no microplastics, was sufficient to dismiss the claim. For a full text of the order granting the motion to dismiss, click **here**. To learn more about Food Labeling generally, click **here** to view NALC's Food Safety reading room.

Right-to-Farm. The Supreme Court of Kansas recently held **in a unanimous opinion**, that the operations of a local hog farmer were not "good agricultural practice" and thus could not be shielded by Kansas' right-to-farm laws. The hog farmer in question was using underground pipes buried under a county road to transport pig-waste from his facility. These pipes were the center of a nuisance and trespass complaint filed by neighbors of the hog farmer. The neighbors alleged that the pipes were causing "odors and fly infestations." The hog farmer had installed the pipelines in a public highway easement under the county road. However, the court held that such an easement was reserved for public purposes and not the farmer's own private pipelines. Therefore, the court ultimately held that this was not "good agricultural practice" and thus was precluded under Kansas' right-to-farm laws. To learn more about your state's right-to-farm law, click **here** to view NALC's compilation of state right-to-farm laws.

Cottage Foods. Governor Mike Dunleavy of Alaska recently signed **HB 251**, which codifies a set of laws governing the production, sale, and consumption of cottage foods in Alaska. Previously, cottage foods, called homemade foods in Alaska, had only been governed through a set of regulations. The enactment of HB 251 also provides that homemade foods can be sold directly to consumers online or by a third-party retailer. Additionally, Vermont's Department of Health recently published a **rule**

requiring cottage food producers who bring in less than \$10,000 in annual gross sales, or bakers who bring in less than \$6,500 in annual gross sales to bear a safety disclaimer on their products. The disclaimer must read, "Made in a home kitchen not inspected by the Vermont Department of Health." To learn more about state cottage food laws, click [here](#) to visit NALC's Cottage Food state law compilation.

USDA. Secretary of Agriculture Tom Vilsack along with Deputy Secretary Xochitl Torres Small met with members of the National Farmers Union (NFU) on Tuesday during NFU's 2024 Fall Legislative Fly-In. During the meeting, Secretary Vilsack stressed the importance of mid-size farmers, describing them as the "core of rural communities." The Secretary stated that farmers are not "one monolithic group," and that he believes there should be more than one track of aid to farmers. The Secretary was not optimistic about a farm bill passing this year, and encouraged NFU members to instead turn their interest to appropriations funding.

- Webinar Opportunity (October 2): NALC will present "Growing Careers in Ag & Food Law" featuring USDA Deputy Secretary Xochitl Torres Small. To register, click [here](#).

Meat Labeling. FSIS released an updated guidance for the use and substantiation of animal-raising or environment-related claims on meat or poultry product labels. In its updated **Guideline on Substantiating Animal-Raising or Environment-Related Labeling Claims**, FSIS is urging producers to employ third party reviewers to ensure claims are truthful and not misleading. While compliance with the guideline is not mandatory, FSIS has the authority to test samples of products that it believes may not be meeting the standards advertised on its labels. To learn more about third party certifications generally, click [here](#) to read NALC article "Food Labeling: What are Third-Party Certifications."

Pesticides: Herbicide Strategy. EPA has published its long-awaited **final Herbicide Strategy**. The document is part of a new policy initiated by EPA in 2022 to better protect species listed as threatened or endangered under the ESA from pesticide exposure. The draft Herbicide Strategy, which was issued last year, proposed adding new application restrictions to herbicide labels to reduce pesticide spray drift and runoff exposure to listed species. The final Herbicide Strategy also focuses on limiting exposure via spray drift and run off, and further clarifies how pesticide applicators can satisfy the new requirements. While finalizing the Herbicide Strategy means that EPA will start to incorporate the new restrictions into herbicide labels, the change will not happen all at once. As EPA registers new herbicide products and conducts registration review for existing products, the agency will consult the Herbicide Strategy and incorporate new requirements as needed. To learn more about the new policy, click [here](#) to read NALC article "EPA Publishes Highly-Anticipated Final Herbicide Strategy."

Pesticides: Registration Cancellation. Herbicide producer AMVAC has decided to **voluntarily withdraw** EPA registration for products containing DCPA, also known as dacthal. This move comes in response to the EPA's decision to suspend sales of AMVAC products after the agency found a connection between the DCPA and negative impacts on unborn children. The suspension was the first of its kind in nearly four decades, but EPA believes it was necessary to protect public health and safety. Specifically, EPA determined that pregnant mothers who were exposed to DCPA suffered negative impacts to their fetal thyroid hormone levels, which would lead to birth defects in unborn children. To learn more about the process for canceling pesticide registrations, click [here](#) to view NALC article "Pathways to Pesticide Cancellation Under FIFRA."

Agritourism. With fall approaching, many farms are preparing their pumpkin patches and corn mazes for upcoming autumn agritourism activities. Agritourism, the commercial enterprise that links agriculture production and tourism by inviting visitors onto the farm for educational or entertainment purposes, can be a unique way to generate income for the farm business. However, by inviting visitors on the farm, a farm owner can also invite potential legal complications. To learn more about the legal issues that might arise from agritourism, click [here](#) to visit NALC's Agritourism reading room and [here](#) to visit NALC's Agritourism state law compilations. A number of legal issues can also arise when animals are involved in an agritourism operation, click [here](#) to learn more about the limited liability that exists for equine activities through NALC's Equine Activity Statutes state law compilation.

- Webinar opportunity (October 16): Dr. Tim Potter, Equine/Animal Scientist and Rusty Rumley, NALC Senior Staff Attorney will present "Equine Activity & Agritourism Statutes: Strategies For Risk Management." To register, click [here](#).

Food Safety. During its inspection of a Boar's Head facility in Jarratt, Virginia, the Food Safety and Inspection Service (FSIS) found numerous health and safety violations. This specific Boar's Head facility has been linked to a major **Listeria outbreak** which resulted in 9 deaths. Inspectors for the FSIS found 69 different violations including mold, rusted equipment, and insects. As of July 30th, operations at the Jarratt facility have been suspended and Boar's Head has recalled a large volume of their products originating from the facility. The CDC has advised consumers that may have purchased such products to disinfect surfaces the products have contacted. To learn more about FSIS regulation of meat packing facilities, click [here](#) to visit NALC's Food Safety reading room.

Food Additives. California becomes the first state in the nation to prohibit foods containing certain additives from being sold in its state schools. Hb 2316, titled the **California School Food Safety Act**, prohibits the sale of foods or beverages containing certain food additives, like Red Dye No. 40 and Green Dye No. 3, at schools with grades kindergarten through 12th. This law would ban the sale of popular snacks like Flamin' Hot Cheetos and Twinkies. California Governor Gavin Newsom has until September 30 to sign the bill into law. To learn more about the bill, click [here](#) to read NALC article "State Food Laws Enacted in 2024."

Right to Repair. John Deere has inserted language into 556 of its product manuals recognizing an equipment owner's right to select a mechanic of their choosing to repair their equipment's emissions control device. Last fall, following a warning from the EPA, John Deere recalled and combed through 2,406 equipment manuals for post-2011 powered equipment and noted that 23% lacked repair-related language in line with federal emissions guidelines. John Deere has long been reluctant to grant outside repair operators access to the software embedded in its machines which is often required to facilitate repair of equipment systems like the emissions control device. However, according to a letter Deere sent to customers in May, all manuals have been updated to include repair

language required by the federal emissions guidelines. This is significant because it allows equipment owners to use mechanics of their choice for repairs on their John Deere equipment.

- 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](#).

Corporate Transparency Act. A California Ranch group has **joined a lawsuit** brought against the United States Department of the Treasury and the Financial Crimes Enforcement Network, alleging the Corporate Transparency Act (CTA) is unconstitutional. Specifically, the group is alleging that the CTA is overreaching and imposes burdensome hurdles upon business owners. The group believes that the reporting requirements, and its associated penalties for noncompliance, punish small business owners and do not accomplish its intended goal. For more information on the CTA, click [here](#) to read NALC article "Who Owns the Business? Corporate Transparency Act and Foreign Entity Disclosure."

Lab-grown Meat. The Nebraska Department of Agriculture has announced three new initiatives concerning lab-grown meat. First, Nebraska Governor Jim Pillen signed an **executive order** which prohibits Nebraska state agencies from procuring lab-grown meat, and requires parties awarded contracts through the Nebraska State Procurement Act to attest that they have not discriminated against "natural-meat producers in favor of laboratory or cultivated-meat producers." Second, Gov. Pillen instructed the Nebraska Department of Agriculture to implement labeling rules that would make it easier on consumers to distinguish between natural and lab-grown meat. Last, Gov. Pillen announced his intention to work with senators to draft legislation that would outright ban lab-grown meat in Nebraska. Additionally, a **bill** proposing to ban the sale of lab-grown meat was introduced in the Michigan House of Representatives. The bill is currently being considered by Michigan's House Agriculture Committee. To learn about similar actions from other states, click [here](#) to read NALC article "Cell-Cultured Meat Updates: state bans, labeling requirements, and regulatory clarifications."

Water Rights. The United States District Court for the District of Idaho recently heard a case between the United States and Idaho concerning the water rights of the federal government in Idaho. The federal government has challenged multiple Idaho statutes, arguing that the statutes unconstitutionally interfere with the government's water rights. Specifically, the federal government claims that the state laws target federally-owned water rights directly by prohibiting changes to the location and purpose of the water rights, requiring livestock ownership for use, and modifying the appurtenancy of rights for permits issued to the federal government. In its decision, the federal district court concluded that some of the state laws challenged were valid, but found that others were unconstitutional. Click [here](#) to view the court's decision.

Slaughter Houses. One of the largest lamb-processing plants in the U.S. faces a potential shutdown, pending voter response to an upcoming Colorado **referendum**. The referendum will ask voters to decide if it should be unlawful to "construct, maintain, or use" a slaughter house within the Denver city and county limits. If voters vote in favor of the proposed referendum, a Superior Farms' plant located in Denver, Colorado which accounts for 15-20% of all lamb processing operations in the United States, will be forced to shut down. The referendum additionally requires the city to prioritize workforce training and employment assistance programs for the 160 plant workers who would likely lose their jobs if the plant shuts down. If passed, the ban would take effect on January 1st of 2026.

Agricultural Careers. The American Agricultural Law Association (AALA), the premier association for agricultural law and policy professionals, recently elected its 2024 Board of Directors. Ashley Ellixson was elected president elect, and Chelsea Good and Kale Van Bruggen were elected as Directors. Congratulations on your election! The NALC is proud to work with AALA for the purpose of encouraging the next generation of leaders in agricultural law and policy. Click [here](#) to watch NALC and AALA's webinar "Growing Careers: Planning for Success in Starting and Maintaining an Agricultural Law Student Association."

NALC National Stakeholder Survey now available



The graphic features the NALC logo on the left, which includes a scale of justice and a plant. To the right of the logo, the text "Stakeholder Survey" is written in white on a dark green background. Below this, a woman in a red plaid shirt is looking at a tablet. The text "Help shape the future by sharing your thoughts! Take our quick survey and let your voice be heard." is written in white on a dark green background. At the bottom, the text "Your input makes a difference!" is written in white on a dark green background.

Help shape the future by sharing your thoughts! Take our quick survey and let your voice be heard.

Your input makes a difference!

The NALC National Stakeholder Survey is now open! The anonymous survey takes only a few minutes to complete, and results will be used to develop and prioritize future research, information, and outreach activities conducted by the NALC and its partners. We want to hear from you!

[Take the Survey](#)

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