



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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Heirs' Property. Representatives Jasmine Crockett (D-TX) and Alma Adams (D-NC) introduced the Heirs' Property Relending Program Progress Act of 2024 (HPRP Progress Act), which is designed to provide funding to help cover administrative costs associated with the Heirs' Property Relending Program. To read the bill text, click **here**. To learn more about heirs' property generally, click **here** to read NALC's Heirs' Property state compilation.

- Webinar opportunity (November 20): Jesse J. Richardson, Jr., West Virginia University College of Law and Jill Apter, Research Fellow, National Agricultural Law Center will present "State Approaches to Clearing Title to Heirs' Property." To register, click **here**.

Endangered Species Act. The **ESA Amendments Act of 2024** was recently introduced, a bill that would amend the Endangered Species Act in several ways. The proposal would define "habitat" and "environmental baseline", direct the U.S. Fish and Wildlife Service to develop a National Listing Work Plan that would prioritize efforts to "recover" listed species to the point where federal protection is no longer needed, and increase incentives offered to private landowners in exchange for wildlife conservation efforts carried out on their land. The bill is currently before the House Committee on Natural Resources. Should it become law, the ESA Amendments Act would represent the first time that Congress has made substantial changes to the ESA in decades. For additional resources on the ESA, visit the NALC Endangered Species Act Reading Room **here**.

NOAA Opinion. The National Oceanic and Atmospheric Administration (NOAA) has recently issued a new **Biological Opinion** (BiOp) concerning the effects of an offshore wind power project near Martha's Vineyard and Nantucket. In the BiOp, NOAA has determined that while the project may "adversely affect" marine life near the project, it will not "jeopardize" marine populations. The BiOp focuses on the number of sea turtles and whales that would be harmed by the wind power project. Due to its conclusion that the wind power project will not jeopardize marine populations, NOAA has issued an **"Incidental Take Authorization"** as part of the BiOp which creates an exemption for actions that would normally violate the ESA. To learn more about the ESA, click **here** to view NALC's "Endangered Species Act Manual: A Practical Guide to the ESA for Agricultural Producers".

G20 Agriculture Ministers Meeting. Deputy Secretary of Agriculture Xochitl Torres Small recently traveled to Brazil for a meeting of G20 Agriculture Ministers. The main focuses of this meeting were sustainability and determining methods in which farmers' improvements could be quantified. In the G20 Agriculture Ministers Declaration, the group cited impacts of climate change as being the culprits behind rising levels of global food insecurity. In this declaration, the G20 Ministers further reaffirmed the group's commitment to food security and nutrition. While in attendance, Deputy Secretary Small discussed the issues of sustainable aviation fuel and the discrepancy in ethanol tariffs between the United States and Brazil.

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

H-2A Litigation. The National Council of Agricultural Employers (NCAE), alongside other plaintiffs, recently filed **suit** against the Department of Labor challenging its decision to acquiesce to an **injunction** issued by a federal judge. The August 26 injunction enjoined 17 states from applying the **"Farmworker Protection Rule"** because it was deemed unconstitutional under the National Labor Relations Act. To comply with the injunction, the Department of Labor created two different application processes for H-2A workers. One application applies to employers in states affected by the injunction, with the other application covering those unaffected states. The NCAE alleges that this dual-application process creates an obtuse regulatory scheme and creates confusion among employers affected by the final ruling. To read more about the Farmwork Protection Rule, click **here** to read NALC article "Department of Labor Finalizes New H-2A Regulations."

Food As Medicine. Representative Barbara Lee (D-CA) introduced a bill that would implement a new grant program and expand upon existing federal support for research programs designed to promote

nutrition in health care programs. This proposed bill would establish a program under the United States Department of Agriculture that intends to bridge the gap between producers and local healthcare systems. Further, this proposed bill urges the HHS to create guidance on “food as medicine” solutions. For the full text of the bill, click [here](#).

Chevron Deference. Senator Mike Rounds (R-SD) is [asking the Government Accountability Office](#) to conduct a study to determine which regulatory disputes in the agriculture industry have been settled via the doctrine of *Chevron* deference. The *Chevron* doctrine originally arose from a 1984 U.S. Supreme Court case in which the Court held that when considering a challenge to an agency regulation that interprets statutory language, courts should defer to the agency’s “reasonable” interpretation when the statutory language is ambiguous. The Supreme Court recently overturned *Chevron* in *Loper Bright v. Raimondo*. Senator Rounds believes that *Chevron* deference “disproportionately impacted rural states” as sectors such as agriculture, mining, and energy development have become increasingly subject to agency regulation. Senator Rounds has requested a study into the impact of *Chevron* deference to help lawmakers better navigate a post-*Chevron* world. To learn more about the cases, click [here](#) to read NALC article “Supreme Court Overturns Long-Standing “Chevron” Doctrine.”

Roundup. A court in Philadelphia recently held that a Pennsylvania man’s cancer did not stem from his use of Roundup, marking another win in litigation for the Bayer company. This is the 14th win for Bayer in their last twenty Roundup-related cases. An attorney for the plaintiff remarked that while the verdict was not their desired outcome, the jury “did send a message to Monsanto that Roundup is defective.” Further, Bayer expects to use a recent favorable decision from the Third Circuit in future litigation concerning Roundup. To learn more about pesticide injury litigation involving Roundup, click [here](#) to view NALC article series “Plaintiffs & Pesticides.” For more information on the recent decision from the Third Circuit, click [here](#) to view NALC article “Third Circuit Rules Failure to Warn Claims Preempted by FIFRA.”

Clean Water Act. The United States Environmental Protection Agency (EPA) has [issued a letter](#) to Vermont state officials, notifying the state that it is failing to comply with the Clean Water Act (CWA) and that EPA is directing the state officials to make substantial changes to Vermont’s current regulations. The EPA letter asserts that excess phosphorus levels created by discharges from concentrated animal feeding operations (CAFOs) within Vermont have created toxic algae blooms in Vermont’s Lake Champlain. Specifically, EPA believes that fertilizers, discharges from wastewater treatment plants, and leaking septic systems are responsible for the excess phosphorus. In its letter, EPA stated that the Vermont Agency of Natural Resources “must be responsible for CAFO permitting, monitoring, and enforcement” of the CWA on Vermont farms, including “conducting routine inspections, enforcing nutrient management planning requirements, and administering discharge permits.” For more NALC resources on the CWA, click [here](#).

Food Labeling: Date Labeling. In an effort to reduce food waste and prevent negative climate impacts, the California Legislature has passed a bill to ban “sell-by” date labels on food packaging. The proposed bill seeks to reduce consumer confusion by prohibiting the inclusion of “sell-by” date labels on food, which are typically used to tell grocers when to rotate stock. However, the bill allows food manufacturers, processors, or retailers responsible for the labeling of food items for human consumption to use dates with the labels “best if used by” to indicate freshness or “use by” to advise consumers when the food is likely to expire. Infant formula, eggs and pasteurized in-shell eggs are exempt from the bill. The bill has been sent to Governor Newsom. To read the text of the bill, click [here](#).

Federal Food-Related Bills. Senator Cory Booker (D-NJ) recently introduced a new bill, known as the [Safe School Meals Act](#), that seeks to promote less processed food in school meals. This bill would instruct the FDA to establish limits on heavy metals, ban certain pesticide residues, require reassessments of various food additives including food dyes, and ban the use of PFAS and other chemicals in packaging for foods used in school meals. Additionally, Senator Booker along with Senators Peter Welch (D-VT) and Bernie Sanders (I-VT) have introduced the [Livestock Owned by Communities to Advance Local \(LOCAL\) Foods Act](#). This bill would update the Federal Meat Inspection Act’s ‘Personal-Use Exemption’ by codifying USDA’s current guidance on [Personal-Use and Custom Exemptions](#). This bill would amend the Personal-Use and Custom Exemptions to allow producers to sell a live animal to a consumer, and permit the consumer to either hire someone to slaughter and process the meat or do it themselves. A recorded NALC webinar with more information about slaughter and processing in the United States is available [here](#).

Agritourism Accident. Agritourism generated \$1.26 billion in income in 2022, representing 1.5% of domestic agricultural operations among 28,617 farms, according to the most recent Census of Agriculture, released in February by USDA. However, the risks involved can also be significant. On September 18th, at least 25 people, including children, were injured when two hay wagons being pulled by a tractor rolled over during a field trip at an [apple orchard in Wisconsin](#). For more resources about laws affecting agritourism operations, click [here](#).

- Webinar Opportunity (October 16): NALC will present “Equine Activity & Agritourism Statutes: Strategies for Risk Management” featuring Dr. Tim Potter and NALC Senior Staff Attorney Rusty Rumley. To register, click [here](#).

Food Labeling: Allergens. The United States Food and Drug Administration (FDA) recently conducted a study to determine whether certain dark chocolate and chocolate-containing products labeled as “dairy-free” were accurately labeled. This study is in line with the FDA’s recent efforts to protect consumers with food-related allergies from being misled by food labeling. To conduct this study, the FDA collected retail chocolate and dark chocolate products that were labeled as “dairy-free” and did not list milk as an ingredient. In its study, the FDA collected 210 samples, 13 of which contained milk. Following its findings, the FDA conducted a case-by-case evaluation of the products that tested positive, with several of the producers agreeing to remove the “dairy-free” labeling from their products. For a table detailing all of the FDA’s findings, click [here](#). To learn more about food labeling generally, click [here](#) to visit NALC’s Food Labeling Reading Room.

Food Labeling Litigation. The Environmental Working Group (EWG) has filed a lawsuit against Tyson Foods, Inc. in Washington, D.C. Superior Court alleging that Tyson is making “false or

misleading” claims about climate change. EWG is suing under the District of Columbia Consumer Protection Procedures Act alleging that Tyson’s “climate-smart” beef and “net-zero greenhouse gas” claims mislead customers who are willing to pay more for climate friendly foods. The complaint argues that Tyson, which has promoted a commitment to achieving net-zero emissions by 2050 and marketed beef products as “climate-smart,” is capitalizing on unsubstantiated progress it has not made. To read the full complaint, click [here](#). To learn more about USDA’s regulation of environmental related raising claims, click [here](#) to read NALC article “Meat and Poultry Labels: Updated Guidelines and Opportunity for Comment.”

Pesticides: Treated Seeds. California Governor Gavin Newsom has signed **AB 1042**, which introduces new state requirements for the sale and use of seeds that have been coated with pesticides. Under the new requirements, starting January 1, 2026, it will be a violation of California law to sell or use seeds that have been treated with a pesticide that is not registered for use in the state of California. AB 1042 also requires that in 2025, county agricultural commissioners begin reporting to the public when treated seeds are used by growers in the county. In 2026, commissioners will be required to report not only when treated seeds are used, but how many pounds of treated seeds have been planted. This reporting program is the first of its kind in the United States, and comes at a time when interest in regulating treated seeds under federal pesticide law has been increasing. To learn more about efforts to regulate treated seeds, click [here](#) to read NALC article “EPA Faces Treated Seeds Lawsuit.”

NALC National Stakeholder Survey now available



 **Stakeholder Survey**

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 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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