



# The Feed

Recent Developments in Ag Law & Policy

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

Volume 2, Issue 19

October 10, 2024

**Thank you** to all our subscribers! Please forward **the subscription link** to your network. All previous issues of The Feed are available **here**. Send any questions, concerns, or suggestions to **NALC Director Harrison Pittman**.

Follow us on social:



**Upcoming webinar opportunity (October 16):** **Dr. Tim Potter**, Equine/Animal Scientist and Rusty Rumley, Senior Staff Attorney, National Agricultural Law Center will present "Equine Activity & Agritourism Statutes: Strategies for Risk Management." To register, click **here**.

**Corporate Transparency Act.** The time is approaching for businesses to file their beneficial ownership information reports under the Corporate Transparency Act (CTA). The filing deadline for existing businesses is December 31, 2024. There are numerous legal challenges pending, but with less than 3 months to go, the most recent decision was in favor of the regulation. On September 20, a federal court in Oregon **declined to issue a preliminary injunction** after determining that the plaintiffs were unlikely to succeed in their argument that the CTA is unconstitutional. To learn more about the CTA and its requirements, click **here** for the NALC Corporate Transparency Act Factsheet.

**Poultry Industry.** A coalition of the country's largest poultry producers petitioned a federal judge for an interlocutory appeal, in anticipation of possible disciplinary action regarding their alleged pollution of Oklahoma's Illinois River. The case was initially filed in 2005 by the state of Oklahoma against various poultry producers including Tyson Foods, Simmons Foods, and others for allegedly polluting the Illinois River with improperly discarded fertilizer. In 2023, the judge presiding over the case issued an opinion in favor of Oklahoma. The poultry producers submitted a motion seeking to dismiss the case, arguing that evidence considered at trial had aged beyond relevance and should not have been considered. The court disagreed and declined to dismiss the case. It is that ruling which the poultry producers are currently appealing. To read the defendants' brief in support of the appeal, click **here**.

**Vulnerable Species Action Plan.** In late September, the Environmental Protection Agency (EPA) released the Vulnerable Species Action Plan (VSAP), the finalized version of the Vulnerable Species Pilot Program that the agency launched in 2023. Like the final Herbicide and draft Insecticide Strategies, the VSAP is part of EPA's new policy to address pesticide impacts to species listed under the Endangered Species Act (ESA). While the Strategies focus on developing mitigation measures that can be applied across entire groups of pesticides, the VSAP is more tailored and focuses on identifying mitigations that can be used to target certain species that are considered particularly vulnerable to pesticides. These mitigation measures are aimed primarily at reducing pesticide spray drift and runoff and will be incorporated into pesticide labels as additional restrictions or requirements to application. To learn more about the VSAP, click **here** to view NALC article "EPA Releases Vulnerable Species Action Plan."

**Toxic Free Food Act of 2024.** Representative Rosa DeLauro (D-CT) has proposed a new bill, titled the "Toxic Free Food Act of 2024". This bill would direct the Food and Drug Administration (FDA) to amend its regulations for food substances classified "Generally Recognized as Safe" (GRAS). Currently, GRAS classification allows a substance to be included in food without pre-market approval from FDA if the substance is recognized by qualified experts as safe. However, this bill would alter GRAS certification by requiring food manufacturers to submit substances for FDA review and approval before they can be added to food. This marks DeLauro's second attempt at codifying the bill, with the first attempt failing to reach a vote. To read the text of the bill, click **here**. To learn more about food additives and the GRAS process, click **here** to read NALC article "Update on Proposed Food Additive Bans."

**Food Safety: Listeria.** U.S. Senators and Representatives are pushing for the Department of Justice to contemplate bringing criminal charges against Boar's Head, following a massive listeria outbreak originating at one of its facilities in Virginia. This push comes in response to a series of inspections which found numerous health and safety violations at the company's plant in Virginia. In addition to the push for criminal charges, the lawmakers are asking for strengthened inspection protocols alongside further changes to food safety measures. The United States Department of Agriculture (USDA) spoke on the issue, asserting that an investigation would be conducted to determine the various causes of this listeria outbreak. For more information, click **here**. To learn more about food safety generally, click **here** to visit NALC's food safety reading room.

**Food Labeling: Class-action Lawsuit.** A judge in the U.S. District Court for the Southern District of

California has certified a class action lawsuit against the Nestle company, which alleges that the company is misleading consumers with its “sustainably sourced” chocolate labeling. The lawsuit argues that this label is misleading because the chocolate is produced with unsustainable production practices like child labor and deforestation. The class contains consumers who purchased at least one of nine different Nestle products, between 2017 and 2024. To read the order, click [here](#). To learn more about food labeling generally, click [here](#) to visit NALC’s food labeling reading room.

**Colorado: Groundwater.** A Colorado ranch owner recently filed a petition with the Supreme Court of Colorado to determine whether groundwater underneath the ranch was considered “nontributary.” This determination would be key to the ranch owner’s ability to use the underlying groundwater because Colorado apportions water rights through the system of prior appropriation, otherwise known as first in time, first in right. In Colorado, prior appropriation only applies to groundwater if the groundwater is found to be “tributary.” Nontributary groundwater is not subject to prior appropriation which means that the overlying landowner may use the water without going through Colorado’s prior appropriation system. Ultimately, the Colorado Supreme Court agreed with a ruling from the Colorado water court and found that the groundwater below the rancher’s property was nontributary and therefore not subject to Colorado’s system of prior appropriation. Click [here](#) to read the ruling.

**California: Paraquat.** California Governor Gavin Newsom recently signed into law **AB 1963**, a bill from the most recent legislative session that is intended to limit the usage of a herbicide known as paraquat. Although the bill began as an outright ban on the pesticide, the version of AB 1963 that was signed into law does not go nearly as far. Instead, it directs the California Department of Pesticide Regulation to conduct a complete evaluation of paraquat by 2029 and make a determination to either retain, cancel, or suspend the registration of paraquat in the state. The bill comes at a time when California is seeking to dramatically reduce pesticide use. For more information on that effort, click [here](#) to read NALC article “California Takes Steps to Reduce Pesticide Use in State.”

**Question 3.** Iowa’s Attorney General, alongside attorneys general from 21 other states, recently voiced their opposition to a district court ruling that upheld Massachusetts’ “Question 3” rule. This rule places stringent requirements on hog-farming operations and any producer who does not meet said requirements will be prohibited from selling their product in Massachusetts. The states opposing this new rule believe that it will create insurmountable hurdles for pork producers across the nation. Further, they cite numerous constitutional violations that they believe the new rule implicates. To read the amicus brief filed by Iowa, click [here](#). To learn more on Question 3, click [here](#) to read NALC article “Farm Animal Confinement: Legal Challenges to Mass. Question 3.”

**Food Allergens.** HP Hood, LLC, the producer of “Lactaid” products recently announced that it would be voluntarily recalling several of its products. This news comes after the discovery that 5 different “Lactaid” products contained trace amounts of almonds, despite no indication on the product labeling. The failure to properly declare the presence of allergens constitutes a direct violation of the FDA’s allergen labeling requirements. For information on the affected products and the regions in which they were sold, click [here](#). To learn more about the regulation of allergen labeling, click [here](#) to read NALC article “Food Labeling: The Regulation of Food Allergen Labels.”

**Pesticides: Application Exclusion Zone.** Earlier this month EPA issued a final rule to revise a pesticide regulation first introduced in 2015. The application exclusion zone (AEZ) requirements of the Agricultural Worker Protection Standard create buffer areas where people are not allowed to be present during pesticide applications. The newest iteration of the AEZ rule requires a 100-foot buffer around the area of application when using “ground-based applications consisting of fine droplets,” and a 25-foot buffer around applications “with medium or larger droplets when sprayed from a height greater than 12 inches from the soil surface or planting medium.” The new rule provides an exemption for family members, which will allow family-owned farming operations more flexibility in applying pesticides. For the full text of the rule, click [here](#).

**Clean Water Act.** The Ninth Circuit Court of Appeals recently dismissed a lawsuit brought by environmental groups seeking to force EPA to develop stricter Clean Water Act (CWA) regulations for concentrated animal feeding operations (CAFOs). The lawsuit stemmed out of a petition that environmental groups had filed with EPA in 2017 asking the agency to initiate a rulemaking to strengthen CWA requirements for CAFOs. EPA issued a denial of the petition in 2023, concluding that while CAFOs can be significant sources of pollution to waters of the United States, the agency did not believe that regulatory initiatives were appropriate at that time. The environmental groups subsequently filed suit, arguing that EPA had improperly denied the petition. In a **six-page opinion**, the Ninth Circuit dismissed the challenge and held that EPA was justified in denying the petition, as it simply stated it needed to gather more information before taking regulatory action. To learn more about the 2017 petition, click [here](#) to view NALC article “Enviro Groups Ask EPA to Revisit CWA CAFO Rules.”

**Alternative Protein Labeling.** In a landmark decision, the Court of Justice of the European Union has **ruled** that France and other members of the EU may not prohibit producers from labeling plant-based protein alternatives with “terms traditionally associated with animal products.” This decision strikes down France’s February 2024 **decree** that banned the use of terms like sausage and steak on food products derived from plant proteins. Though the French decree was exclusive to French made products, the court emphasized the importance of consistency in labeling across producers in the various Member-States of the EU. In the United States, Ohio legislators have introduced **HB 661**, which would deem an alternative protein “misbranded” if its packaging included “identifying meat terms” like beef or wing without the inclusion of a “qualifying meat term” like plant-based or cell-cultured. To learn more about the February 2024 French decree, click [here](#) to read NALC article “France takes up plant protein labeling and cell-cultured meat.”

**Heirs’ Property.** Southern University Law Center, an NALC partner, is launching The Heirs’ Property Certificate Program in January 2025. This virtual program is designed for attorneys, tax professionals, policymakers, or anyone interested in enhancing their knowledge of heirs’ property issues. Specifically, the program will cover areas such as agricultural law, heirs’ property, estate planning, trust development, and loan application processes. The program launches January 6, 2025 and will conclude February 28, 2025. Participants are able to complete the program asynchronously during the designated time frame, and will receive a certificate upon completion. To register for the program, click [here](#). To learn more about Heirs’ Property generally, click [here](#) to visit NALC’s Heirs’ Property State Survey.

- **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](#).

**Ag Labor.** A coalition of farm groups led by the International Fresh Produce Association and the American Farm Bureau Federation have filed a lawsuit against the Department of Labor to challenge **an H-2A rule** that the Department finalized in April of this year. The rule prevents employers from retaliating against any H-2A visa-holder who has participated in labor-organizing activities. In **their complaint**, the farm groups allege that the rule unlawfully grants temporary agricultural workers bargaining rights and violates the First Amendment rights of farm employers. This is not the only legal challenge the new H-2A has faced. A group of 17 states filed a lawsuit seeking to overturn the rule after it was first finalized. In August, the judge overseeing that case found that the rule was unconstitutional and enjoined its implementation in those 17 states. That decision is available [here](#). For more NALC resources on agricultural labor, click [here](#).

## NALC National Stakeholder Survey now available



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](#)

## Thank You to Founding Supporters of *The Feed*



**DOWNEY BRAND**

**JOIN OUR TEAM!**

**Staff Attorney,  
Ag Finance & Credit**

Share This Issue of The Feed:



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

**The National Agricultural Law Center | [NationalAgLawCenter.org](http://NationalAgLawCenter.org)**

National Agricultural Law Center | University of Arkansas 2549 N. Hatch Ave. | Fayetteville, AR 72704 US

[Unsubscribe](#) | [Constant Contact Data Notice](#)



Try email marketing for free today!