



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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Foreign Ownership. The end of the federal legislative session is fast approaching, and much like the previous session, the 118th Congress has proposed several measures concerning foreign acquisition of agricultural land in the United States. Some of those proposals sought to amend certain provisions of the Agricultural Foreign Investment Act, a statute passed in the 1970s that created a federal reporting system which monitors certain foreign acquisitions of agricultural land. Other proposals, like the Protecting American Agriculture from Foreign Adversaries Act which passed the House in September, look to grant USDA more oversight authority on foreign investments in U.S. agriculture. To learn more about these proposals, click **here** to view NALC article "Focusing on Foreign Investments: Congressional Considerations on Evaluating Foreign Acquisitions in U.S. Agriculture."

Colorado River. The Biden Administration has partnered with users of the southwestern area of the Colorado River to support conservation efforts in the river's largest reservoir. The Department of the Interior's Bureau of Reclamation, in conjunction with stakeholders from Southern California, signed two short-term agreements known as "Bucket 1." These agreements seek to conserve more than 717,000 acre-feet of water by 2026. Federal officials also signed the first of three longer-term "Bucket 2" agreements with the Gila River Indian Community in Arizona which is expected to conserve an additional 73,000 acre-feet of water over the next decade. The Interior Department is continuing negotiations with various western groups to promote further conservation plans that could conserve more than 1 million acre-feet of Colorado River water. For more information about these agreements from the Interior Department, click **here**.

California: Illegal Water Diversions. Governor Gavin Newsom of California recently signed a new bill, **AB 460**, into law. The purpose of the bill is to raise fines on illegal water diversions, however it has had a long and contentious history and the final version signed by Governor Newsom is vastly different from previous iterations. Under the final version of AB 460, the California State Water Resources Control Board will be required to adjust the amount of civil and administrative penalties imposed by the Board each year to accommodate for inflation. Additionally, AB 460 will increase penalties for illegal water diversions to \$10,000 each day the violation occurs, and to 2,500 for each acre-foot of water diverted.

Hemp Products. The Sacramento County Board of Supervisors have taken action to **prohibit** the sale of intoxicating hemp products, to ameliorate perceived health risks to children. Pending final approval, the new rule would fine retailers that sell hemp products containing THC levels above 0.3%. This regulation follows California's recent **ban** on hemp products and representatives from Sacramento County believe the local ordinance will allow inspectors to further monitor and regulate the sale of hemp products. The enforcement of this ban will involve numerous state agencies and, if passed, will take effect on November 21st. To learn more about Hemp generally, click **here** to view NALC Industrial Hemp reading room.

Cell-cultured Meat. A U.S. District Judge has rejected a request for a **preliminary injunction**, holding that UPSIDE Foods had failed to present sufficient evidence that Florida's ban on lab-grown meat could be preempted by federal poultry laws. The ban in question, **FL SB1084 (24R)**, outlaws the manufacture, distribution, and sale of lab-grown meat in the State of Florida. UPSIDE Foods alleges that Florida's ban on cell-cultured meat is unconstitutional because it violates both the Supremacy Clause and Commerce Clause of the U.S. Constitution. While the denial of a preliminary injunction is not a ruling on the merits, it will permit Florida to enforce the law while the litigation is ongoing. According to the company, UPSIDE Foods expects to appeal the decision to the 11th Circuit Court of Appeals. To learn more about the Florida law and other cell-cultured meat related issues, click **here** to read NALC article "Cell-Cultured Meat Updates: state bans, labeling requirements, and regulatory clarifications."

Food Labeling: Allergens. Bimbo Bakeries USA, an international producer of food products, is pushing back on a recent Food and Drug Administration **warning** that cautioned them to stop labeling its products as containing sesame when they do not. Despite the FDA's protests, Bimbo claims that it will not be changing its labeling. It asserts that its labeling is designed to promote "nationally uniform labels" to stop the accidental consumption of allergens. Bimbo maintains that its current method of labeling is the "most protective approach." The FDA has yet to respond to Bimbo's decision to not

need the warning letter, but further action on the part of the agency is likely. For more information on the labeling of food allergens, click [here](#) to view NALC article "Food Labeling: The Regulation of Food Allergen Labels."

Salmonella. The United States Department of Agriculture's Food Safety and Inspection Service (FSIS) has decided to further extend the public comment period on its proposed **Salmonella Framework for Raw Poultry Products**. The new deadline for submitting comments regarding the proposed rule will be January 17th, 2025. The proposed rule seeks to prevent producers from selling poultry products that have been contaminated with certain strains of salmonella, but critics of the rule argue it is more complicated than it need be. Various producer and consumer groups have urged the FSIS to grant this extension, believing this extended comment period will allow more feedback and produce the best possible rule. To make a comment on the rule, click [here](#). To learn more about the proposed rule, click [here](#) to read NALC article "FSIS Proposed Salmonella Framework for Raw Poultry Products."

Worker Safety. The Department of Labor (DOL) is expanding the scope of its federal inspections to cut down on injuries across workers in the meat and poultry industry. The DOL's Occupational Safety and Health Administration (OSHA) will be examining a wide variety of risks in its new guidance, from musculoskeletal disorders to slippery surfaces. The broadened scope of inspections under the new guidance comes in response to statistics showing that meat processing workers are twice as likely to experience serious injuries than those in the private sector and six times more likely to be subjected to job-specific illnesses on average. This new framework will not extend to the roughly two dozen states with their own workplace guidelines, despite the DOL urging otherwise. For a full text of the rule, click [here](#). To learn more about Labor related issues, click [here](#) to visit the NALC Labor reading room.

Right to Repair. The U.S. Federal Trade Commission (FTC) is conducting an investigation into John Deere's equipment repair policies. This investigation focuses on practices by Deere to restrict customers' "right to repair" the hardware and software on machines they have purchased. Though the investigation began in September 2021, it was only recently brought into the public eye following an FTC **civil investigative demand** to a Minnesota-based data analysis company. The investigation is determining whether Deere violated section 5 of the Federal Trade Act. The FTC is not alone in its concerns, as several farmers have already brought suit alleging the restrictions on their "right to repair" potentially violate antitrust laws. For more information on the right to repair issue, click [here](#) to view NALC webinar "Right to Repair and Agriculture."

Klamath Basin. The Klamath Irrigation District of Oregon has requested that the Ninth Circuit certify two legal questions to the Oregon Supreme Court regarding Oregon water use laws and federal authority. Specifically, the irrigation district is seeking guidance on whether the federal Bureau of Reclamation (Reclamation) can divert water from the Upper Klamath Lake, and whether it can decide how private water rights in the Klamath Basin are used. The questions are part of an on-going lawsuit between Reclamation and the irrigation district concerning a 2021 order issued by the Oregon Water Resources Department which prevented Reclamation from releasing water in the Upper Klamath Lake for any reason other than irrigation. Reclamation claims the order is preempted by the U.S. Constitution's Supremacy Clause. Resolving the questions of Oregon law is seen as essential for establishing a precedent for water rights across the state.

Date Labeling. California Governor Gavin Newsom recently signed **AB660** into law. The first-of-its-kind law standardizes date labels on food for human consumption in the state of California. Specifically, it prohibits the use of phrases other than "best if used by" to indicate freshness or "use by" to advise consumers when the food is likely to expire. The enacted law will notably ban the date label "sell by," a phrase typically used by retailers to indicate when to rotate stock. The law goes into effect on July 1, 2026. To learn more about the California law and the regulation of date labels generally, click [here](#) for NALC article "Date Labels and the New California Law."

WOTUS Update. A federal judge in the Southern District of Florida has recommended that an on-going Clean Water Act (CWA) case be resolved in favor of the defendant landowner in one of the first court opinions to interpret and apply the 2023 Supreme Court decision *Sackett v. EPA*. According to the judge's Report and Recommendation, a legal action initiated by the federal government against a landowner accused of polluting wetlands on his property without a CWA permit. Last year, the Supreme Court held in *Sackett* that a wetland only fell under CWA jurisdiction if it shared a continuous surface connection with a water body that itself falls under CWA jurisdiction. While the Report and Recommendation is not the final decision in the case, it sheds light on how courts may apply *Sackett* going forward. For more information, click [here](#) to read NALC article "WOTUS Update: Judge Recommends Resolving CWA Dispute in Favor of Landowner Following *Sackett* Decision."

Biofuels. The Supreme Court has agreed to resolve a jurisdictional dispute involving small refinery exemption decisions made by the Environmental Protection Agency (EPA) under the Clean Air Act (CAA). Specifically, the Court has granted a petition filed by EPA as part of an on-going lawsuit involving the agency's denial of over 100 applications from small refineries seeking exemptions from blending requirements in the Renewable Fuel Standard. EPA argues that such lawsuits can only be heard in the D.C. Circuit Court of Appeals according to the text of the CAA. The refineries disagree, claiming that they can file their challenges in any of the other eleven appellate circuits in the United States. The D.C. Circuit is regarded as being more likely to resolve CAA disputes in favor of EPA. If the Supreme Court allows the small refinery disputes to be heard in other courts, it is possible that at least some of EPA's denials of exemption could be overturned. To view EPA's petition to the Supreme Court, click [here](#).

Pesticides: Roundup. A judge in Massachusetts has dismissed portions of a lawsuit filed by a plaintiff who claimed that use of Roundup caused her to develop non-Hodgkin's lymphoma after determining that the failure-to-warn claims included in the complaint were preempted by federal law. The question of whether state law failure-to-warn claims are preempted by provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has become central to Roundup injury lawsuits. To date, appellate courts in the Ninth, Eleventh, and Third Circuits, have weighed in, with the Ninth and Eleventh Circuits finding that failure-to-warn claims are not preempted, and the Third Circuit concluding that the claims are preempted and should not be heard. Massachusetts is located in the First Circuit, making this recent decision the first time a court in that jurisdiction has ruled that FIFRA preempted failure-to-warn claims. To read the court's ruling, click [here](#). To learn more about

preemption in pesticide injury lawsuits, click [here](#) to read NALC article "Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits."

Pesticides: DCPA. EPA has issued an **order to officially cancel** the herbicide dacthal, also known as DCPA, because of its impacts to neonatal development. According to EPA, unborn infants whose mothers are exposed to DCPA can experience changes to fetal thyroid hormone levels which can result in impaired brain development, impaired motor skills, and decreased birth weight. The cancel order does not allow for the use of any existing stocks of DCPA other than returning any existing stock so the manufacturer, AMVCA, or otherwise disposing of them in compliance with the FIFRA. To learn more about pesticide cancellation, click [here](#) to view NALC article "Pathways to Pesticide Cancellation Under FIFRA."

Upcoming Webinar: Heirs' Property. NALC recently published an **Heirs' Property state law compilation**. This resource explains the statutory options available to resolve heirs' property title issues in each U.S. state and territory. An upcoming NALC webinar will cover the results of the survey and highlight some of the best practices currently used by states. Jill Apter, a research fellow at the NALC, and Professor Jesse J. Richardson, Jr., of the Western Virginia University College of Law will be speaking at the event. The webinar will take place on November 20, at 12pm eastern time. For more information and to sign up, 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](#)

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