



# 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**  
**Looking Ahead:**  
**Impact of the 2024 Elections on Ag Law and Policy**  
**Jan. 15, 2025 | Noon ET**

**Hunt Shipman**  
Cornerstone Government Affairs

**UVA**  
DIVISION OF AGRICULTURE  
RESEARCH & EXTENSION  
University of Virginia

**FDA Guidance.** Over the past week, the FDA has published several guidance documents related to its regulation of human foods. First, FDA published a **draft guidance** for industry that addresses the labeling and naming of plant-based alternatives to animal-derived foods. To help consumers understand the differences between the plant-based alternatives and the animal-derived foods, this guidance offers recommendations for naming plant-based egg, seafood, poultry, meat and dairy products (other than milk) that do not have a common or usual name established by federal regulations. In addition, the FDA released a **draft guidance** for industry that establishes sanitation programs for low-moisture ready-to-eat human foods, such as peanut butter, and creates corrective actions that industry should take following a pathogen contamination event. Comments on both draft guidances can be made **here** and **here**, and must be submitted by May 7, 2025. The FDA also released two final guidance documents addressing food allergen labeling. On January 6, FDA released the fifth edition of its **Questions and Answers Regarding Food Allergen Labeling** guidance for industry, and a **guidance** for FDA staff and interested parties on evaluating the public health importance of food allergens other than the nine food allergens considered “major food allergens” by the Federal Food, Drug and Cosmetic Act. Last, FDA published a **guidance** that provides information to industry on the action levels for lead in processed food for babies and children under two years old. It is important to note that a FDA published guidance does not establish legally enforceable rules, but instead describes the administration’s current thinking on a topic. However, with the upcoming administration transition, the official FDA position on topics might change.

- Webinar opportunity (January 15): Hunt Shipman, Principal & Director, Cornerstone Government Affairs will present “Looking Ahead: Impact of the 2024 Elections on Ag Law and Policy.” To register, click **here**.

**Monarch Butterfly.** A public comment period on a recent proposal from the Fish and Wildlife Service (FWS) to list the monarch butterfly under the Endangered Species Act (ESA) is currently underway and will remain open through March 12. The proposal, which FWS released on December 12, would designate the monarch butterfly as a threatened species and designate roughly 4,400 acres of critical habitat along the central and southern coast of California. The proposal has been a decade in the making after environmental groups submitted a listing petition to FWS in 2014. The proposal contains various exceptions for agricultural activities and conservation efforts aimed at boosting monarch populations. FWS has requested comment on various aspects of the proposal, including whether the final listing decision should contain mitigation measures for pesticide application. To learn more about the proposed rule, click **here** for NALC article “FWS Proposes Listing the Monarch Butterfly as ‘Threatened’ Under the ESA.”

- Webinar opportunity (February 19): Brigit Rollins, Staff Attorney, National Agricultural Law Center will present “Proposed for Listing: Overview of Proposed Decision to List the Monarch Butterfly Under the ESA.” Click **here** to register.

**Food Safety.** The USDA’s Food Safety and Inspection Service (FSIS) has announced its intention to bolster and improve its existing oversight of regulated food processing procedures, following a recent string of listeria outbreaks in “ready-to-eat” meat and poultry products. The FSIS has split its planned improvements into three distinct categories: strengthening its scientific study of food-based pathogens; improved training for inspection protocols; and focusing on data review and current state inspection agreements. These changes will begin to take effect within the next 30 days. For more information, click **here**. To learn more about food safety generally, click **here** visit NALC’s Food Safety reading room.

**Clean Water Act.** The Environmental Protection Agency (EPA) has released a final rule making the first comprehensive revisions of the Clean Water Act’s (CWA) section 404 State and Tribal programs since the 1980s. Specifically, the new rule is intended to streamline and clarify the requirements states and tribes must meet in order to assume administration of the CWA’s section 404 permitting program. Section 404 of the CWA requires anyone discharging dredged or fill material into protected

waters to receive a federal permit. While the permitting program is generally administered by the U.S. Army Corps of Engineers, the CWA does allow states and tribes to assume authority of the program. Since the 1980s, only two states have met the requirements necessary to assume administration of the 404 program, with various other states citing unclear standards as a hurdle to program assumption. The new regulations intend to provide greater clarity. For the full text of the new regulations, click [here](#). For more information on recent state efforts to assume section 404 administration, click [here](#) to read NALC article "Federal Court Revokes Florida's CWA Section 404 Permitting Authority."

**Youth Climate Litigation.** The Supreme Court of Montana recently upheld a lower court's decision finding certain state law provisions unconstitutionally barred the consideration of greenhouse gas emissions. The lawsuit was initiated in 2020 by a youth plaintiffs who asserted that recent amendments to the Montana Environmental Policy Act which prohibited the consideration of greenhouse gas emissions violated their right to a "clean and healthful environment" guaranteed to them by the Montana Constitution. The justices of Montana's Supreme Court sided with the plaintiffs, finding that the state constitution grants citizens of Montana the right to a "stable climate system." While there have been various lawsuits filed in recent years seeking to affirm a federal or state constitutional right to a healthy climate, this ruling makes Montana the first state to recognize such a right. The decision is likely to be cited in future lawsuits by plaintiffs seeking a similar outcome. Click [here](#) to read the decision. For more information on similar lawsuits filed over the last several years, click [here](#) to read NALC article "The Public Domain: Basics of the Public Trust Doctrine."

**Food Labeling: GLP-1.** Conagra Brands recently announced that it will begin labeling certain products as "GLP-1 friendly" beginning in January 2025. This will be reflected by a new "On Track" badge that can be found on numerous Conagra products. This badge will indicate that the product is a good source of fiber and protein, while remaining low in calories. Conagra hopes that this labeling will better help consumers identify products that will work well in conjecture with their GLP-1 medication, promote weight loss, or simply serve as a healthier alternative to other products. The badge will begin appearing on Conagra's "Healthy Choice Cafe Steamers" and "Simply Steamers." To learn more about the regulation of food marketed toward GLP-1 drug users, click [here](#) to read NALC article "Regulation of Food for GLP-1 Drug Users: Labeling Claims."

**Wildlife Refuge.** FWS has withdrawn a proposed rule that would have limited the cultivation of crops on land within the National Wildlife Refuge System. This decision was made in response to over 50,000 public comments made on the proposed rule, which expressed a variety of concerns regarding the scope and application of the rule. The FWS stated that following this public comment period, "any final rule would require revisions that go beyond the logical outgrowth of the original proposal." Farmers, ranchers, and environmental groups all participated in the comment period, citing various reasons for the need to rework the proposed rule. It is unclear when and if a revised version of the proposed rule will be posted. To view the withdrawal notice, click [here](#). To view the originally proposed rule, click [here](#).

**Cottage Food.** Oklahoma has amended their existing cottage food law in an attempt to protect the privacy of at-home producers. The new change was enacted on November 1st and will no longer require at-home producers to put their personal contact information on their food labels. In lieu of personal contact information, producers can acquire a number from the Oklahoma Department of Agriculture, Food and Forestry to place on their goods similar to other states like Arkansas. To learn about other states' cottage food laws, click [here](#) to view NALC's Cottage Food state compilation.

**Food Labeling: Final "Healthy" Rule.** The United States Food and Drug Administration (FDA) recently published a final rule updating the voluntary labeling claim "healthy." The final rule updates requirements for use of the "healthy" label to more accurately reflect the most up-to-date nutrition and dietary data available. In order to satisfy the new requirements, a product must contain a specified amount of food from one of the food groups suggested by the Dietary Guidelines for Americans and meet specific limits for sugars, fats, and sodium. The final rule is set to go into effect February 25, 2025 with an anticipated compliance deadline for food manufacturers three years later. To read the final rule, click [here](#).

- Upcoming blog: NALC Staff Attorney Emily Stone will cover the Healthy rule in her next NALC article, publishing on January 14. Find it in the [Ag & Food Law Update](#).

**USMCA: GE Corn.** The United States has prevailed in its dispute with Mexico under the United States-Mexico-Canada Agreement (USMCA) challenging Mexico's ban of genetically engineered (GE) corn. After first announcing its intention in 2020, Mexico issued a decree in 2023 banning the use of GE corn in dough and tortillas and instructing its government agencies to eliminate the use of GE corn in other human foods and animal feed. Shortly after, the U.S. established a dispute panel under the USMCA and brought seven legal claims to challenge the 2023 decree as a violation of the trade agreement. The U.S. has prevailed on all seven claims, with the panel finding that the Mexican decree is not based on science and undermines the market access Mexico agreed to provide in the USMCA. To read the dispute panel's final report, click [here](#). To learn more about the dispute, click [here](#) to read NALC article "U.S.-Mexico Trade Dispute Over Genetically Modified Corn."

**Corporate Transparency Act.** Ahead of an imminent filing deadline, a series of court decisions instated, lifted, and then reinstated a nationwide injunction for the Corporate Transparency Act (CTA). The CTA is a corporate reporting law passed by Congress in 2021 in an effort to prevent money laundering. The law requires most businesses in the United States to disclose details on their beneficial owners to the federal government, and imposes steep penalties on those who fail to report. On December 3, 2024, a federal district court issued a nationwide injunction to prevent implementation of the CTA, putting a key January 1st 2025 deadline on hold. However, on December 23, a panel of judges on the Fifth Circuit Court of Appeals overturned that injunction, finding that the reporting law was likely constitutional. Days later, on December 26, a different panel of Fifth Circuit judges reversed the previous ruling and reinstated the nationwide injunction. Following the December court decisions, the litigation over the CTA will be heard by the entire Fifth Circuit on March 25. However, the U.S. Supreme Court may also consider the issue, as the Department of Justice has asked the Court to review the nationwide injunction. More information about the recent rulings and CTA requirements in general is available in [this article](#), published by NALC partner Southern Ag

Today.

**California: Food Dyes.** On January 3, 2025, California Governor Gavin Newsom issued an **executive order** directing specific state agencies to investigate the adverse health effects of “ultra-processed foods” and synthetic food dyes. The executive order includes directives such as requiring the California Department of Social Services to provide recommendations to help reduce the purchase of soda and candy, and requiring the California Department of Food and Agriculture to explore the development of standards to ensure that California’s universal school food programs have fresh ingredients. This executive order follows California’s passage of a **2024 bill** banning six food dyes from school lunches and a **2023 bill** banning the manufacture, sale, and distribution of foods with certain food additives. To learn more about California and other proposed food additive bans, click **here** to read NALC article “Update on Proposed Food Additive Bans.”

**Pesticides: Paraquat.** The California Department of Pesticide Regulation (DPR) has issued a preliminary review of the pesticide paraquat, finding that the pesticide may have negative effects on public health and wildlife. Specifically, the preliminary review suggests that paraquat may be causing harm to birds and could be linked to thyroid issues and birth defects in humans. The review comes months after California passed **AB 1963** which required DPR to reevaluate paraquat by 2029. DPR has opened a public comment period on the review, and will accept comments through February 13, 2025. For more information from DPR, **here**. Paraquat has become controversial in recent years following lawsuits filed by plaintiffs who claim that exposure to the pesticide has caused them to develop Parkinson’s disease. Meanwhile, EPA is currently in the process of reviewing paraquat’s federally registered label to determine if it continues to meet federal standards. To learn more, click **here** to read NALC article “Paraquat Receives Interim Registration Decision, Faces Legal Challenges.”

**Central Valley Project.** The Federal Bureau of Reclamation (Reclamation) and the state of California have approved a new long-term operation plan for the Central Valley Project and State Water Project. The plan is meant to provide what Reclamation describes as “more predictable actions” for endangered fish species and more reliable responses to multi-year droughts. Additionally, the plan includes a new operations framework for the Shasta Reservoir, and will incorporate a pending update of the Bay-Delta Water Quality Plan. While federal and state officials have described the plan as balanced, critics of the plan claim that it restricts water allocations for agricultural and other uses in favor of wildlife and endangered species concerns. To view the operating plan, click **here**.

- Webinar opportunity (February 12): Emily E. Lewis, Director and Shareholder, Co-Chair of Natural Resources and Water Law Practice Group, Clyde Snow & Sessions will present “Western Water Law in Action: A Primer on Basic Concepts of the Prior Appropriation Doctrine and How Utah is Modifying Water Law to Meet Modern Demands.” To register, click **here**.

**Food Labeling: Alternative Meats.** A bill addressing the labeling of alternative meats has been introduced in the Missouri House of Representatives. **HB 211** would require all plant-based, fungus-based, and lab-grown meats or meat products to bear labels identifying the food as such. The bill does not clarify what the alternative meat label must state, but it does explain that meat products made of meat harvested from livestock or poultry will not require specific labeling. The legislation was prefiled, and will have to be passed through both the Missouri House of Representatives and Missouri Senate and be signed by the governor before it is enacted.

**Drones Overhead.** The Department of Commerce has released a **notice of proposed rulemaking** on potentially restricting or prohibiting the importation of unmanned aerial vehicles (UAVs) or their components from countries such as China and Russia due to security concerns. Many components and UAVs are imported from China so this could have a significant impact on the availability of UAVs. UAVs have also been in the news due to the sightings over New Jersey in the past month. To learn more about what you can do about trespassing UAVs read this **recent article** by NALC. To read more about your state’s laws on UAVs click **here**.

**Community Supported Agriculture.** With the start of a new year, many producers are reevaluating their yearly farm plan and considering new ways to add value to their operation. One option for adding value is Community Supported Agriculture (CSA). CSA is a farm structure where consumers sponsor a producer’s upcoming growing season by purchasing a membership in the farm, and in return, receive a share of the season’s harvest. For the consumer, a CSA is an effective way to connect with a local food supplier by financially supporting their operation. For the producer, CSAs are beneficial because they reduce the burden of risk associated with farming. For more information on CSAs and their legal concerns, click **here** to read NALC article series “Community Supported Agriculture: A Field Guide for Producers and Consumers.”

**Annual AFIDA Data.** Recently, USDA published its annual Agricultural Foreign Investment Disclosure Act (“AFIDA”) report, which provides data on foreign interests in U.S. agricultural land through December 31, 2023. According to this report, foreign individuals and entities have reported holding an interest in almost 45 million U.S. agricultural acres, nearly a 3.5% increase from the previous year’s report. The states with the largest increase in foreign landholdings during 2023 include New Mexico (358,149 acres), Texas (219,608 acres), and Arkansas (178,421). Of those states, Arkansas is the only state with a **foreign ownership law**. The state with the largest decrease in foreign landholdings is Alabama (-154,564 acres), which **enacted** a foreign ownership law in 2023. USDA’s most recent AFIDA report is available **here**. For more from NALC on AFIDA and foreign investments in U.S. agriculture, click **here**.

## NALC National Stakeholder Survey

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



**Stakeholder Survey**

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