



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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The National Agricultural Law Center
WEBINAR SERIES

Monarch Butterfly:
Exploring the Proposed ESA Listing

Wed., February 19, 2025
Noon ET
No cost to register

Brigit Rollins
National Ag Law Center

Monarch Butterfly. A 60-day comment period on the U.S. Fish and Wildlife Service's recent proposal to list the monarch butterfly as a threatened species under the Endangered Species Act may be extended past its original March 12 cutoff date after various commenters requested an extension. Agencies may extend on-going comment periods at their discretion. Such extensions typically last between 30 and 90 days. With just under a month left in the current comment period, FWS has already received over 30,000 comments on the proposed listing. To submit a comment, click **here**. To learn more about the proposed listing from NALC, click **here**.

- Webinar opportunity (February 19): Brigit Rollins, staff attorney, National Agricultural Law Center will present "Monarch Butterfly: Exploring the Proposed ESA Listing." To register, click **here**.

Corporate Transparency Act. Legal challenges to the Corporate Transparency Act (CTA), a corporate reporting law passed by Congress in 2021 and originally set to go into effect in January 2025, continue to work their way through the court system. On January 23, the United States Supreme Court issued a ruling in *Texas Top Cop Shop, Inc. v. Garland*, to lift a nationwide injunction on the CTA put in place by the Fifth Circuit Court of Appeals in late December. If *Texas Top Cop Shop* was the only case challenging the CTA, then the Supreme Court's ruling would mean that the reporting requirements were in effect. However, another case challenging the CTA filed in a federal district court in Texas also sought a nationwide injunction. On January 7, the court in *Smith v. U.S. Dep't of the Treasury* issued a separate injunction that has paused the CTA's reporting requirements nationwide. The Supreme Court's decision in *Texas Top Cop Shop* only applies to that case. The injunction in the *Smith* decision remains in effect following the Supreme Court's ruling. While it is not clear what the outcome of either case will be, at present, the CTA remains enjoined throughout the country and business entities are not required to file the beneficial ownership report required by the statute. More information about the recent rulings and CTA requirements in general is available in **this article**, published by NALC partner Southern Ag Today.

Along with litigation, the CTA could be subject to legislative updates. **H.R. 736** was introduced to Congress on January 24. The bill would extend the deadline for at least some entities to come into compliance with the CTA's reporting requirements from January 1, 2025 to January 1, 2026. H.R. 736 unanimously passed the House of Representatives and now awaits consideration in the Senate.

State Foreign Ownership Legislation. The trend of states proposed legislation to prohibit or restrict foreign investments in private agricultural land is continuing into the 2025 legislative session. Currently, the majority of states are considering measures to either enact a foreign ownership law or amend provisions of already existing foreign ownership laws. The NALC has been tracking these laws since they began appearing in state legislatures in 2021. A recent NALC article "Soil for Sale? State Legislative Efforts to Restrict Foreign Investments - Part Three," available **here**, examines recent proposals introduced by lawmakers in Iowa, Maryland, and Missouri.

Pesticide Liability Bills. As the legislative session gets underway, several states have begun introducing bills that seek to limit the legal liability of pesticide manufacturers. While a handful of states introduced pesticide liability bills in 2024, the trend has been picking up steam in 2025. Currently, lawmakers in at least **Florida, Iowa, Mississippi, Missouri, Oklahoma, Tennessee** and **Wyoming** have introduced bills to limit the liability for pesticide manufacturers facing claims that they have failed to warn consumers about the health risks of using pesticide products. Specifically, these bills would provide that federal registration of a pesticide product under the Federal Insecticide, Fungicide, and Rodenticide Act would satisfy any state law requirement that the product include a warning label for certain health risks, including cancer-related concerns. The bills come after nearly a decade of pesticide manufacturers finding themselves subject to lawsuits filed by plaintiffs in state courts claiming that the manufacturers failed to warn consumers about cancer and other health risks. For more information, click **here** to read NALC article "States Introduce Pesticide Liability Limitations Bills in 2025 Legislative Session."

CWA: Equivalent Discharge. An Maryland state appellate court issued a ruling in late December

finding that spray irrigation was not the functional equivalent of a direct surface water discharge for the purposes of the Clean Water Act ("CWA"). Under the CWA, the direct discharge of a pollutant into protected surface water is prohibited unless the person making the discharge has received a permit. Typically, discharges into groundwater are not regulated under the CWA unless such a discharge would be the "functional equivalent" of a direct surface water discharge. In a decision issued in 2020, the United States Supreme Court provided a series of factors that courts could use to determine whether a discharge into groundwater qualified as a direct surface water discharge. Since then, a handful of courts have applied those factors, with varying results. In *Matter of Chesapeake Bay Foundation, Inc.*, the appellate court of Maryland considered whether discharges of treated wastewater in the form of spray irrigation was the functional equivalent of a direct discharge. The court concluded that the irrigation activity would not be equivalent to direct surface discharges because there was no evidence suggested that the nutrients in the treated wastewater would reach protected surface waters. To read the court's decision, click [here](#). For more information on the Supreme Court's decision in *Cty. of Maui v. Hawaii Wildlife Fund*, click [here](#).

- Conference opportunity (June 19-20, livestream available): Theresa "Tess" Dunham, Partner, Khan, Soares & Conway, LLP will present "WOTUS & Water Quality in the West in a Post-Sackett World" at the NALC's **Third Annual Western Water, Ag and Environmental Law Conference**.

Equine Activity. The USDA's Animal and Plant Health Inspection Service (APHIS) has **temporarily postponed** the implementation of the **Horse Protection Act's Final Rule** from February 1, 2025 to April 2, 2025. The Horse Protection Act, passed by Congress in 1970, makes it illegal for horses that have undergone the process of "soring" to participate in horse shows, exhibitions, sales, or auctions. The updated rule expands the HPA's reach by defining a show as any "public display of any horse, in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides." Under the HPA, horse owners are held responsible if unlawful activities occur, and the management of horse shows, exhibitions, sales and auctions are required to ensure that sore horses do not participate in their events. In light of the rule's postponement, APHIS will publish guidance for the upcoming horse show season. To learn more about animal welfare requirements on the state-level, click [here](#) to view NALC Animal Cruelty Statute state compilation.

Alternative Proteins. South Dakota's governor has signed a **bill** into law that creates labeling requirements for cell-cultured meat. This law will classify any cell-cultured protein product that does not clearly state in a prominent and conspicuous manner the words "cell-cultured" or "lab-grown" as misbranded. South Dakota is just one of 13 states that proposed legislation relating to the labeling or banning of alternative proteins in the 2025 legislative session. **Idaho, Indiana, Mississippi, Missouri, Nebraska, Oregon, South Carolina, and Utah** have introduced legislation similar to South Dakota's that enacts labeling requirements on food products. On the other hand, **Colorado, Illinois, Oklahoma, and Wyoming** have proposed bills that would ban the sale, manufacture, or distribution of cell-cultured meat. Specifically, Oklahoma has two proposed bills that would ban cell-cultured meat, **SB22** and **SB96**. While SB22 follows the typical format of most bills on this issue, SB96 distinguishes itself as being the first to prohibit research on cell-cultured meat by any "entity of the state." To learn more about similar state alternative protein laws passed in 2024, click [here](#) to read NALC article "Cell-Cultured Meat Updates: state bans, labeling requirements, and regulatory clarifications."

Additionally, on the international front, France's Conseil d'Etat **annulled** two decrees that addressed the labeling of alternative proteins. This decision by the French court follows a 2024 **opinion** from the European Union's Court of Justice that ruled France and other members of the EU may not prohibit producers from labeling plant-based protein alternatives with "terms traditionally associated with animal products." To learn more about the French decrees, click [here](#) to read NALC article "France takes up plant protein labeling and cell cultured meat."

NEPA. On February 3, a federal court in North Dakota ruled that the Council on Environmental Quality (CEQ) lacks authority to issue regulations under the National Environmental Policy Act (NEPA). This is the second time in recent months that a court has reached that conclusion, after the D.C. Circuit Court of Appeals issued a similar ruling last November. NEPA was passed by Congress and signed into law by the President in 1970. Along with directing federal agencies to consider the environmental impacts of their actions, NEPA created the CEQ for the purpose of advising the President on environmental matters and helping the agencies comply with NEPA requirements. CEQ issued its first set of NEPA regulations in 1978 after being instructed to do so by an Executive Order. CEQ's authority to issue regulations has remained unquestioned for decades. However, the recent rulings from the D.C. Circuit and the federal district from North Dakota both conclude that CEQ was never granted rulemaking authority because nothing within the text of NEPA specifically states that CEQ can issue regulations. It is currently unclear what this ruling means for the future of NEPA implementation. To read the district court's decision, click [here](#). To learn more about D.C. Circuit's late 2024 decision on CEQ's rulemaking authority under NEPA, click [here](#).

State Agrivoltaics Legislation. There are many states with proposed legislation in their 2025 session on studying, defining, incentivizing and controlling the dual use of farm land for both agriculture and solar development. This practice, called agrivoltaics, typically involves growing crops or raising livestock on land that simultaneously utilizes solar panels for energy production. As it is becoming more popular, states are proposing legislation related to the issue. For example, **Oregon, Oklahoma, and Washington** are proposing legislation that would establish studies on agrivoltaics. While **Colorado, New York, and Hawaii** are proposing legislation that would create tax credits or grants for producers who implement agrivoltaics into their operations. Other states, like **Washington and Illinois**, have proposed legislation to define agrivoltaics, and last, **Virginia and Oregon**, have introduced bills related to the local regulation and control of operations that use agrivoltaics. To learn more about solar leases, click [here](#) to read NALC's solar smarts series.

- Conference opportunity (June 6, livestream available): Seth Hampton, Member, Rose Law Firm; and Will Veve, DESRI, will present "Solar Leases & Developments in the Mid-South: Pointers and Pitfalls" at NALC's **Twelfth Annual Mid-South Agricultural and Environmental Law Conference**.

Country of Origin Labeling. A bipartisan group of Senators has reintroduced the **American Beef Labeling Act**. This bill would reinstate mandatory country-of-origin labeling (MCOOL) for beef. The 2008 Farm Bill included a provision that required retailers of meat products derived from beef, pork, and lamb to include a label with information on the meat's country of origin. However, this requirement was challenged by trading partners claiming a violation of World Trade Organization (WTO) trade agreements. In 2015, the WTO agreed that MCOOL created unfair trade barriers and the US was forced to rollback MCOOL regulations. If passed, this legislation would require the Office of the U.S. Trade Representative to create a plan for MCOOL reinstatement that aligns with WTO regulations. To learn more about country-of-origin labeling, click [here](#) to visit NALC Country of Origin reading room.

Food Additives. Illinois lawmakers have introduced **SB93**, the Food Safety Act, to ban the use of certain food additives in Illinois. Specifically, the legislation would prohibit the use of brominated vegetable oil, red dye No. 3, potassium bromate, and propylparaben. Since **California** became the first state to ban these additives in 2023, multiple states, like Illinois, have attempted to pass similar legislation. Additionally, since 2023, the U.S. Food and Drug Administration (FDA) has banned both brominated vegetable oil and red dye No. 3. The Illinois bill has advanced through committee, but will have to pass both houses of legislature and be signed by the governor before it becomes law. Last year, a similar bill made it through the Illinois Senate, but failed to advance through the House. To read more about similar legislation proposed in 2024, click [here](#) to read NALC article "Update on Proposed Food Additive Bans." To learn more about the FDA's ban of Red Dye No. 3 and other 2025 proposed state bans, click [here](#) to read NALC article "FDA bans Red Dye No. 3."

Pesticides: Chlorpyrifos. The Environmental Protection Agency (EPA) has extended the deadline to make comments on its proposal to revoke most food tolerances for the pesticide chlorpyrifos. A pesticide may not be used on food crops unless EPA has set out a food tolerance indicating how much pesticide residue can remain on the crop when it enters the food market. In 2021, the Ninth Circuit ordered EPA to revoke all food tolerances for chlorpyrifos, citing a study showing that current food tolerances for the pesticides posed risks to children. However, in 2023, the Eighth Circuit directed EPA to reinstate at least some of the food tolerances. Last December, EPA published a proposed rule to revoke all but eleven food tolerances for chlorpyrifos. The comment period on that proposal was set to conclude on February 10, but has been extended for an additional 30 days. To view the proposal and submit a comment, click [here](#). For more NALC resources on the litigation over chlorpyrifos, click [here](#).

NALC National Stakeholder Survey



The graphic features the NALC logo on the left, which includes a scale of justice and a plant. To the right, the text reads "Stakeholder Survey" in a large, bold font. Below this, it says "Help shape the future of ag law research and information." The background of the graphic shows a woman in a red plaid shirt looking at a tablet in a field.

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*



The graphic features the NALC logo in the top left corner. The main text reads "JOIN OUR TEAM!" in a large, bold, white font. Below this, a green rounded rectangle contains the text "Staff Attorney, Ag Finance & Credit" in a white, bold font. The background is a photograph of a green field with rows of crops. A QR code is located in the bottom right corner.

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