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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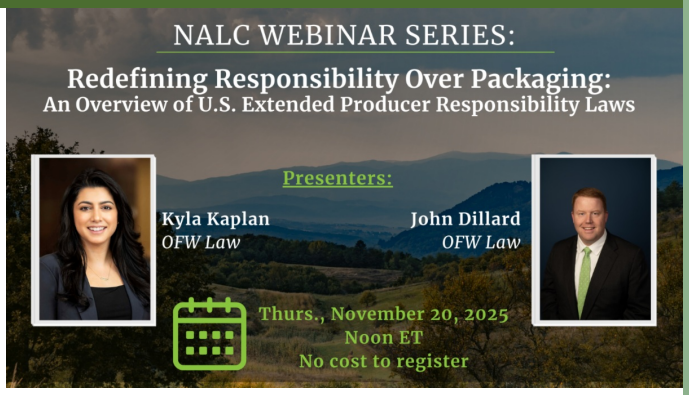


New WOTUS Rule Proposed. The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) have announced a new proposed rule to redefine the definition of "waters of the United States," or WOTUS, under the Clean Water Act (CWA). The definition is crucial for CWA implementation because it determines which waters fall under the jurisdiction of various CWA permitting programs. The goal of the new proposal is to bring the definition of WOTUS more in line with the United States Supreme Court 2023 decision *Sackett v. EPA* which held that WOTUS should include waters which are "relatively permanent" and those wetlands which share a "continuous surface connection" to such waters. To that end, the proposed rule includes definitions for both "relatively permanent" and "continuous surface connection." Along with those new definitions, the proposed rule includes a definition of "tributary" which would extend WOTUS status only to those tributaries of navigable waters which are "relatively permanent" and have a "bed and band." Additionally, the proposal would exclude "interstate waters" from the WOTUS definition, meaning that simply being a water that crosses state boundaries would not be enough for a water to be recognized as a WOTUS. Once the rule is published in the Federal Register, it will be available for a period of public comment before a final rule is issued. To view the pre-publication version of the proposed rule, click **here**. For more information on how the definition of WOTUS has changed over the years, click **here** to view NALC's WOTUS Timeline. For further analysis of the recent changes to WOTUS, including further information on the *Sackett* decision, click **here** to see NALC's on-going series, "WOTUS Update."

NRDC Challenges Tolerances for Neonics. In late October, the Natural Resources Defense Council (NRDC) **asked** the D.C. Court of Appeals to order EPA to formally respond to a **petition** that the group had sent to the agency in 2020. In that petition, NRDC requested that EPA revoke all food tolerances for the class of pesticides known as neonicotinoids. A pesticide product may not be used on food crops until it has a set tolerance which describes the amount of pesticide residue that can legally remain in or on product when introduced to the stream of commerce. EPA is responsible for setting pesticide tolerances, at limits that are "safe" for human consumption, under the Federal Food, Drug

and Cosmetic Act ("FFDCA"). In its 2020 petition, NRDC urged EPA to revisit the current tolerances for neonicotinoids, citing studies which suggest that the current limits could be unsafe for infants and children. Should EPA modify or revoke the current tolerances for neonicotinoids, it would likely reduce the amount of uses available for neonicotinoids. To learn more about why some cases are filed directly in a federal court of appeals, click **here** to read NALC article "Procedures: Filing." To learn more about NRDC's lawsuit and legal issues around pesticide tolerances, click **here** to view NALC article "Environmental Group Seeks EPA Response on Petition to Revoke Tolerances for Neonics."

Meatpacking Investigation. The Trump Administration has accused U.S. meatpacking companies of illegally manipulating beef prices and has launched an investigation through the Department of Justice. Specifically, the investigation will investigate if companies have violated antitrust laws through actions such as potential collusion, price fixing, and price manipulation. The administration's **press release** alleges the "Big Four" meat packers, JBS (Brazil), Cargill, Tyson Foods, and National Beef, have a "monopoly power" that dominates 85% of the U.S. beef processing market and "crush[s] competition and hammer[s] cattle producers."

H5N1 Outbreak Information Sought. On October 30, California Rural Legal Assistance (CRLA), alongside the First Amendment Coalition filed **a lawsuit** against the California Department of Food and Agriculture (CDFA) for refusing to disclose the locations of California dairies quarantined due to outbreaks of H5N1 (avian influenza). In their complaint, the group of plaintiffs assert that this refusal has "stymied public health and epidemiological research efforts" which in turn creates "a stark and unjustifiable information asymmetry." The plaintiffs assert that this refusal is in violation of the California Public Records Act, which they believe entitles the organizations to the information sought. To learn more about the federal response to outbreaks like H5N1, click **here** to view previously recorded webinar, "HPAI in Poultry and Cattle: How Can We Miss You If You Won't Go Away?"

Large-scale cultivated meat. The U.S. Department of Agriculture (USDA) recently issued the first-ever inspection grant to a *large-scale* cell-cultured chicken factory in North Carolina. The facility, owned by Israeli company Believer Meats, is 200,000 square-feet and located in Wilson County, North Carolina. Because the USDA has also approved Believer Meats product labeling, the company may market its product to American consumers. Although a number of other US states have sought to ban the production and sale of cell-cultured meats, North Carolina currently does not. To learn more about specific state laws pertaining to alternative protein products, click **here** to visit NALC's Alternative Proteins Laws State Compilation.

Potential GRAS Changes. On November 6, U.S. Senator Roger Marshall (R-KS) **introduced** the "Better Food Disclosure Act of 2025" to amend oversight of federal "Generally Recognized As Safe (GRAS)" ingredients. GRAS is a federal regulatory process that allows certain ingredients that meet specific standards to be included in foods without first being approved for safety by the FDA or going through a traditional notice and comment period. **S. 3122** would amend the Federal Food, Drug, and Cosmetic Act to require that food manufacturers file a notice with the FDA proposing the inclusion of certain food substances on the GRAS list. The bill requires the agency to add the food substance to the list or make a preliminary determination to exclude the food substance, no later than 180 days after receiving notice. Additionally, the Act requires the FDA to promulgate regulations establishing procedures to create a publicly accessible list of GRAS food substances. To learn more about GRAS, click **here** to read Congressional Research Service Report, "Federal Regulation of Substances Generally Recognized As Safe (GRAS) and the Use of Carbon Monoxide in Packaging for Meat and Fish."

DIRECT Act. On November 4, a group of U.S. Senators reintroduced the "Direct Interstate Retail Exemption for Certain Transactions (DIRECT) Act of 2025." **The DIRECT Act** would amend the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to allow retailers, processors, and butchers to sell any state-inspected meat in normal retail quantities online and to ship the product directly to consumers. The FMIA and PPIA typically requires food products under the jurisdiction of USDA to have been inspected by an official USDA-inspector before it can enter commerce. However, there is an exemption which allows certain products inspected through state-run meat and poultry inspection programs to enter intrastate commerce without being inspected by

the USDA. The DIRECT Act would expand that exemption to allow those products to be sold via the internet to consumers across state lines. For an overview of current slaughter and processing laws in the United States, click **here**. To learn more about the nuances of other types of USDA inspections, click **here** to read the latest article in NALC's Food Foundations series, "Food Foundations: Regulation of Eggs."

California Emissions Reporting. The Ninth Circuit recently **granted in part** a **motion** enjoining one of two California emissions reporting laws. The laws - the **Climate Corporate Data Accountability Act** and **recent amendments** made to the Health and Safety Code - worked in conjunction to require large businesses doing business in California to publicly disclose greenhouse gas emissions. Specifically, the Ninth Circuit ruling enjoins the provision of the law which requires any corporation with an annual revenue of at least $500 million doing business in California to comply with emissions reporting requirements. Before the ruling, the Chamber of Commerce had filed an **Emergency Application** with the Supreme Court to prevent enforcement of the two laws but has since **withdrawn** the application. To learn more about the reporting laws, click **here** to read NALC article "SEC Rule and California Laws on Climate-Related Disclosures Face Legal Challenges."

CWA Case to Proceed. A federal judge in Michigan **ruled** that a Native American tribe and two environmental organizations may proceed with their citizen suit against a fruit processor, Burnette Foods, Inc., for alleged violations of the CWA and the Michigan Environmental Protection Act. The lawsuit was originally initiated in 2023, with allegations that the defendant dumped polluted wastewater from facilities onto irrigation fields, leading to the contamination of Elk Lake and adjacent wetlands. While Burnette Foods attempted to get the case dismissed by arguing that the plaintiffs lacked standing to bring their claims, the recent decision from the court disagreed. According to the judge, the Grand Traverse Band of Ottawa and Chippewa Indians have standing specifically based on the 1836 Treaty of Washington, in which the tribe possessed off-reservation fishing rights in Elk Lake. For that reason, the court denied Burnette Foods' motion to dismiss the case and has allowed the suit to proceed.

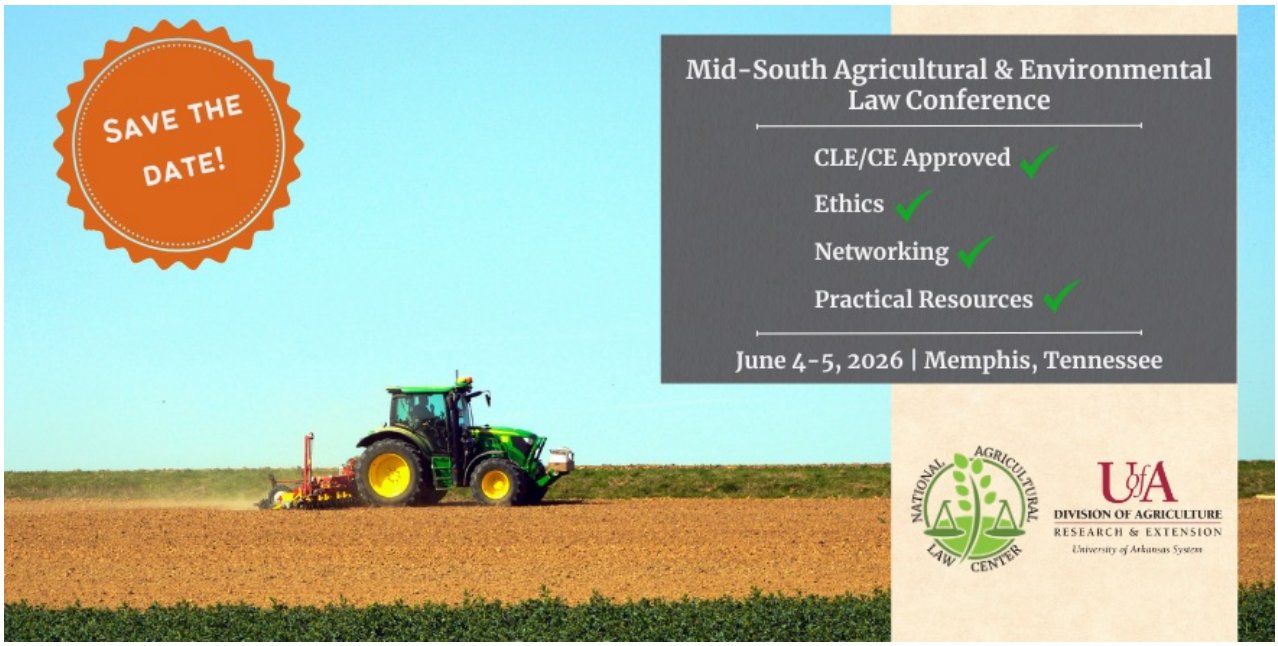
Hemp Changes. On November 12, the "Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act" was signed into public law, ending the government shutdown. **Public Law No: 119-37**. Additionally, the act includes a full-year appropriations act for agriculture, funding USDA through the end of 2026. Notably, it includes a provision closing the so-called "hemp loophole" created by the **Agriculture Improvement Act of 2018**. The 2018 Farm Bill amended the Agricultural Marketing Act of 1946 to include hemp production, defining hemp as "the plant Cannabis sativa L. and any part of that plant…with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis." This language unintentionally created the "hemp loophole" that resulted in the production and sale of federally unregulated intoxicating THC products such as delta-8 and delta-10. In recent years, states have responded to the loophole in a variety of ways, some regulating the sale of certain products while others ban the sale outright. To read more about these state efforts and the lawsuits challenging them, click **here**.

The new appropriations Act redefines hemp in various ways that will close the hemp loophole, thus limiting the potential uses of the crop and significantly affecting the viability of the industry. The law did so by limiting "hemp" crops based on total THC content, not only delta-9. Further, it excluded intermediate and final hemp-derived cannabinoid products containing synthesized THC and cannabinoids from the definition. Industrial hemp is included in the definition of hemp and further defined to mean hemp grown for the use of the stalk, seed, edible leaves, or supporting research. The majority of hemp operations focus on cannabinoid production so the modified definition will certainly impact the hemp industry in the United States. This hemp provision was purposefully delayed for 365 days in the appropriations language and becomes effective on November 12, 2026.

EPR Laws. In October, the National Association of Wholesaler-Distributors (NAW) filed a legal challenge against Oregon's extended producer responsibility law. The **Plastic Pollution and Recycling Modernization Act** requires that producers of product packaging, food serviceware, and paper products join and pay fees to a producer responsibility organization. NAW is alleging that the

Oregon law is unconstitutional because it violates the nondelegation doctrine, the federal dormant commerce clause, the federal unconstitutional conditions doctrine, and federal and state due process. To read the full complaint, click **here**.

- Webinar Opportunity (November 20): Kayla Kaplan, Associate Attorney, Olsson Frank Weeda Terman Matz PC Law and John Dillard, Principal, Olsson Frank Weeda Terman Matz PC Law will present "Redefining Responsibility Over Packaging: An Overview of U.S. Extended Producer Responsibility Laws." To register, click **here**.



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