AGRICULTURAL & FOOD LAW CONSORTIUM

Ag & Food Law Update:

Second Quarter 2017

The Agricultural & Food Law Consortium is a national, multi-institutional collaboration designed to enhance and expand the development and delivery of authoritative, timely, and objective agricultural and food law research and information.

This information is available to the nation's vast agricultural community of producers, attorneys, state and federal policymakers, Cooperative Extension Service professionals, and others at the local, state, regional, and national levels.

Agricultural law and food law includes law related to land-based food, fiber, and energy production systems, as well as seafood and marine-based aquaculture.

Members of the Consortium include:

The National Agricultural Law Center

Center for Agricultural and Shale Law at Penn State Law

National Sea Grant Law Center

Agricultural & Resource Law Program at The Ohio State University

In the second quarter of 2017, there were a number of significant legal developments in the agricultural sector. Many of these issues will continue to play out over the next year and will impact agriculture throughout the country. Notably, there were important developments involving the WOTUS Rule, dicamba registration, and checkoff programs.

In this light, the Agricultural and Food Law Consortium has compiled this review of some of these developments, with links for additional resources. Led by the National Agricultural Law Center (NALC), the Consortium is a four-university partnership designed to enhance and expand the development and delivery of authoritative, timely, and objective agricultural and food law research and information.

For daily updates of federal and state legislative, regulatory, and judicial developments, check out the Ag & Food Law Update published on the NALC website **here**. With suggestions for next quarter's update or other related questions, please contact **Mark Camarigg** (National Agricultural Law Center).

SUBJECTS:

I. ANIMAL WELFARE / BIOSECURITY:

Supreme Court Denies Review of California's Egg Sales Law

On May 30, 2017, the U.S. Supreme Court declined to review a Ninth Circuit ruling that six states lacked adequate standing to challenge California's egg sale law (Missouri ex rel. Hawley v. Becerra, No. 16-1015). In 2014, Missouri, Alabama, Kentucky, Nebraska, Oklahoma, and Iowa sued to block enforcement of AB 1437 alleging that the law would "require private egg producers within their jurisdictions to modify their operations and incur significant costs if they wished to continue selling eggs in California." The states asserted legal standing due to their "quasi-sovereign interests in protecting [their] citizens' economic health and constitutional rights." In November 2016, the U.S. Court of Appeals for the Ninth Circuit determined that the states lacked standing to bring the action because they "failed to allege interests distinct from those of the discrete, identifiable group of egg producers that they claimed would be affected by California's law."

Keep Antibiotics Effective Act

A new law in Maryland will prohibit the routine use of antibiotics on animals that are not sick, a procedure health experts believe helps spread drug resistant bacteria. The bill will also require the Department of Agriculture to collect publicly available data on use of antimicrobial drugs in the state. Maryland joins California as the second state confronting antibiotic use in farm animals. More information available here.

GAO Report Calls for Avian Influenza Evaluation Plan

On May 11, 2017, the U.S. Government Accountability Office (GAO) issued a report calling for the U.S. Department of Agriculture (USDA) to develop a plan for evaluating efforts to control outbreaks of avian influenza. According to GAO, "On the basis of GAO's analysis of federal efforts to respond to outbreaks and of stakeholders' views, GAO identified ongoing challenges and associated issues that federal agencies face in mitigating the potential harmful effects of avian influenza." GAO stated that while USDA "has taken actions to address lessons learned from its responses to the outbreaks" a plan is needed "to evaluate the effectiveness [of] its efforts."

USDA Releases Policy Memo on Confinement of Organic Poultry

On April 3, 2017, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service National Organic Program issued a policy memorandum regarding the confinement of organic poultry flocks due to low or highly pathogenic avian influenza. According to USDA, "[c]ertified organic poultry operations must establish and maintain preventative livestock health care practices, which may include temporary confinement." USDA stated that "[i]f it is determined that temporary confinement of birds is needed to protect the health, safety, and welfare of organic flocks, then producers and certifiers may work together to determine an appropriate method and duration of confinement of organic poultry flocks without a loss of organic certification."

II. AQUACULTURE:

Maine Transfers Land-Based Aquaculture Regulation to the Department of Agriculture, Conservation and Forestry

In May, the Maine Legislature enacted legislation transfering the regulation of land-based aquaculture operations to the Department of Agriculture, Conservation, and Forestry. The Department of Marine Resources previously administered licensing of land-based aquaculture. This change affects the licensing of aquaculture operations involving marine and freshwater organisms that are located in facilities not within the coastal waters. Text of the bill available here.

Maryland Addresses Conflicts Between Aquaculture and Submerged Aquatic Vegetation

In an effort to address increasing conflicts between aquaculture promotion and the protection of submerged aquatic vegetation, the State of Maryland has recently passed a law requiring the Department of Natural Resources (DNR) to review the conflicts, develop solutions, and report the findings and recommendations to the Governor and General Assembly. The legislation also requires the DNR to establish standards and a process for when aquatic vegetation encroaches onto a leased area and whether the encroachment should restrict the aquaculture activity. Text of bill available here.

III. CHECKOFF PROGRAMS:

Opportunities for Fairness in Farming Act of 2017 (S. 741)

A new bill would prohibit checkoff programs from taking "anti-competitive actions" and contracting with organizations lobbying on agricultural policy. Checkoff programs, operating under the USDA, would also be required to publish budgets and submit to audits by the Government Accountability Office. Additional information is available here.

Federal Judge Bars Involuntary Collection of Montana Beef Checkoff Assessment

On June 22, 2017, the United States District Court for the District of Montana affirmed a ruling that the U.S. Department of Agriculture's beef checkoff program violates the First Amendment rights of the state's cattle ranchers. The District Court granted a preliminary injunction prohibiting the private Montana Beef Council from retaining beef checkoff funds without the payers' consent. A copy of the Memorandum and Order is available here. The ruling is a noteworthy development for the states' checkoff programs, specifically including states' beef councils and states' soybean boards. For additional context and resources regarding the *R-CALF* ruling and related checkoff issues, visit the National Agricultural Law Center website here.

IV. ENERGY:

Maryland Enacts Statewide Ban on Shale Gas Development

On April 4, 2017, Maryland Governor Larry Hogan signed into law House Bill No. 1325 prohibiting the hydraulic fracturing of a well for the exploration or production of oil or natural gas in the state. Thus, Maryland is now the third state in the United States, joining New York and Vermont, to effectively ban shale oil and gas development.

EPA Delays Methane Emission Standards by Two Years

On June 13, 2017, the United States Environmental Protection Agency (EPA) issued a press release proposing a two-year delay of the New Source Performance Standards set by the EPA in 2016. The proposal comes a week after the EPA issued a 90-day delay. Specifically, the two-year stay affects "fugitive emissions, pneumatic pump and professional engineer certification requirements in the rule while the agency reconsiders issues associated with these requirements." The Bureau of Land Management (BLM) is also following suit in delaying the implementation of requirements, according to a media report.

Judge Says Dakota Access Pipeline Needs New Environmental Impact Assessment

On June 14, 2017, the United States District Court for the District of Columbia ruled that the United States Army Corps of Engineers "did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial." The court noted, "To remedy those violations, the Corps will have to reconsider those sections of its environmental analysis upon remand by the Court." However, the court also noted that whether the pipeline must cease to operate presently is a separate question to be determined.

V. ENVIRONMENTAL:

EPA & U.S. Army Corps of Engineers Move to Rescind 2015 "Waters of the U.S."

The Environmental Protection Agency, Department of Army, and Army Corps of Engineers are proposing a rule to rescind the Clean Water Rule and re-codify the regulatory text that existed prior to 2015 defining "waters of the United States" or WOTUS. This action would, when finalized, provide certainty in the interim, pending a second rulemaking in which the agencies will engage in a substantive re-evaluation of the definition of "waters of the United States." The proposed rule would be implemented in accordance with Supreme Court decisions, agency guidance, and longstanding practice. The EPA press release is available here.

WILD Act (S. 826) Passes U.S. Senate

On June 8, 2017, the Wildlife Innovation and Longevity Act (WILD Act) passed the U.S. Senate as Senate Bill 826. The bipartisan piece of legislation focuses on wildlife conservation, the prevention of wildlife poaching and trafficking, the management of invasive species, and the protection of endangered species through the design and implementation of innovative solutions. Details here.

Court Strikes Down EPA-Created Exemptions to EPCRA and CERCLA Reporting Requirements

On April 11, 2017, the U.S. Court of Appeals, District of Columbia Circuit, vacated a U.S. Environmental Protection Agency (EPA) final rule that had provided a complete agricultural exemption for reporting air emissions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as well as a partial agricultural exemption for reporting air emissions under the Emergency Planning and Community Right-to-Know Act (EPCRA) (*Waterkeeper Alliance v. EPA*, 2017 WL 1323525). CERCLA and EPCRA "require parties to notify authorities when large quantities of hazardous materials (such as ammonia or hydrogen sulfide) are released into the environment." Under the EPA final rule, promulgated on December 18, 2008, all agricultural operations were provided an exemption from CERCLA reporting requirements. Furthermore, while the EPA final rule required certain concentrated animal feeding operations to report air emissions under EPCRA, the regulation exempted all other agricultural operations from EPCRA reporting requirements. Barring a successful appeal to the U.S. Supreme Court, the court's ruling will require all agricultural operations to comply with CERCLA and EPCRA reporting requirements for air releases from animal waste above the defined statutory threshold.

CERCLA Dairy Farm Case Survives Summary Judgment

On September 20, 2011, the California Regional Water Quality Board (RWQB) issued an investigative order alleging that the Citizens Development Corporation (CDC) released pollutants into San Marcos Lake. In response, the CDC sued the County of San Diego, the City of San Marcos, the City of Escondido, Vallecitos Water District, and Hollandia Dairy, claiming that each of the parties was responsible for the Lake and surrounding waters' contamination. The Complaint requested private recovery and declaratory relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Complaint also alleged California state law claims. The other defendants made cross-claims against Hollandia Dairy for contribution and indemnity under CERCLA and state law, as well as declaratory relief. Hollandia Dairy filed a motion for judgment on the pleadings, claiming that that the CERCLA claims were invalid because they did not plead the release of any actionable "hazardous substances," failed to show causation under CERCLA, and the state law claims were barred by the statute of limitations. The Court denied the motion to dismiss and the case is on-going. More information available here.

VI. FOOD AND DRUG ADMINISTRATION:

FDA Extends Compliance Date for Nutrition Facts Label Final Rules

On June 13, 2017, the U.S. Food and Drug Administration (FDA) announced its intention to extend the compliance date for the Nutrition Facts Label final rules. The FDA will provide details of the extension through a *Federal Register* Notice at a later time. In May 2016, the FDA finalized the Nutrition Facts and Supplement Facts Label and Serving Size final rules and set the compliance date for July 26, 2018, with an additional year to comply for manufacturers with annual food sales of less than $10 million.

FDA Extends Compliance Date to 2018 for Menu Labeling Requirements

On May 4, 2017, the U.S. Food & Drug Administration (FDA) published notice in the *Federal Register* that the compliance date for federal menu labeling requirements has been extended from May 5, 2017 to May 7, 2018 (82 FR 20825). The menu labeling requirements were established under an interim final rule published by FDA on December 1, 2017 (79 FR 71155). The regulations require "restaurants and similar retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items to provide calorie and other nutrition information for standard menu items, including food on display and self-service food." FDA stated that the reason for the extension is to permit "further consideration of what opportunities there may be to reduce costs and enhance the flexibility of these requirements beyond those reflected in the interim final rule."

VII. CROP INSURANCE:

Court Considers Actual Production History (APH) Yield Exclusion Under FCIA

In *Adkins v. Vilsack*, plaintiffs, a group of wheat farmers, sought review of an adverse decision of the Risk Management Agency (RMA) and affirmed by USDA National Appeals Division (NAD). At issue was whether RMA properly applied the Actual Production History (APH) Yield Exclusion as interpreted under the Federal Crop Insurance Act (FCIA). NAD ruled the APH Yield Exclusion was not immediately available to plaintiffs upon the passage of the Farm Bill on February 7, 2014, but was subject to RMA's discretion. Court concluded that "the fact that Congress chose to include specific application/implementation language for other crops and yet stay silent as to winter wheat indicates a direct intention to allow the governing and existing statutory law to be applicable as to the implementation of the APH Yield Exclusion for the 2015 winter wheat crop." Case reversed and remanded and the opinion is available here.

Court Considers "Failed Acreage" Under Supplemental Revenue Assistance Payments Program (SURE)

A recent District Court decision in the District of Colorado, *Hixson v. USDA*, reversed and remanded a National Appeals Division Director's decision which denied Hixson's request for equitable relief. Hixson applied for payment under the Supplemental Revenue Assistance Payments Program (SURE) – a federal crop insurance program operated by the USDA as directed by the Food, Conservation, and Energy Act of 2008. As a requirement to be eligible for disaster assistance payments under SURE, applicants must report "failed acreage" in a timely manner. Hixson's claim was denied, eventually leading to an appeal.

The court found that the NAD Director's decision not to provide equitable relief must be set aside because this decision was based on a misrepresentation of the law. Though Hixson did not meet the SURE program's requirements for reporting, it did not fail to receive benefits "because of the calculation of eligible acreage" as the Director reported; therefore, the Director was not legally precluded from excusing this failure and the decision to deny benefits was vacated and remanded for further proceedings. A copy of the opinion is available here.

USDA Expands Pilot Margin Protection Crop Insurance Program

The USDA's Margin Protection plan is offered through the federal crop insurance program and provides margin protection for corn, wheat, rice, and soybeans. Beginning in 2018 it will be available in 11 more states (Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin) and has updates designed to better clarify input costs. The expansion also includes a harvest price option, which potentially could provide farmers greater protection. The last day to purchase a margin protection policy for corn, soybeans, and spring wheat is September 30. Information on the program is available here.

VIII. INTERNATIONAL TRADE:

Trump Notifies Congress he will Renegotiate NAFTA

The Trump administration provided Congress official notice in May it will renegotiate NAFTA. The *New York Times* reported that Robert Lighthizer, the newly confirmed United States trade representative, said the administration "aimed to support economic growth and better-paying jobs through unspecified improvements to Nafta that would modernize the 23-year-old agreement."

Final Guidelines Set for U.S. Beef Exports to China

On June 12, 2017, the USDA's Agricultural Marketing Service (AMS) published guidelines for the final agreement between the U.S. and China concerning the exportation of U.S. Beef to China, which can be found here. These exportation guidelines cover the origins of beef and beef products, cattle traceability, cattle age, what products were eligible for shipment, and the traceability of processed beef and beef products. Products which proscribe to all the specified requirements will receive an FSIS Export Certificate.

Ranchers Sue to Require Country-Of-Origin Labeling

A coalition representing farmers filed suit against the Department of Agriculture on June 19 in the U.S. District Court for the Eastern District of Washington, alleging that country-of-origin labeling (COOL) regulations are harming U.S. farmers and misleading consumers by unlawfully allowing imported meats to be labeled as if they were domestically sourced. The Ranchers-Cattlemen Action Legal Fund (R-CALF) and the Cattle Producers of Washington (CPow) challenged the March 2016 decision of the United States Department of Agriculture (USDA) to revoke certain regulations requiring beef and pork products to be labeled with their country of origin. The farmers claimed that this decision "reinstated regulations that reclassify imported beef and pork as domestic goods, enabling that meat to be passed off as a United States product." More information here.

IX. INVASIVE SPECIES:

Court Sides with Reptile Keepers against FWS Ban on Giant Snake Trade

The Lacey Act bans "any shipment" of injurious species "between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States." In 2012, the

U.S. Fish and Wildlife Service (FWS) interpreted the shipment clause to ban transport of injurious species, not only between the listed jurisdictions, but also between the 49 continental states. The United States Association of Reptile Keepers (ARK) challenged the rule, arguing that the statute's language of "between" mandates that only shipments between the listed jurisdictions are barred, such as between Hawaii and the continental United States. The district court concluded that the shipment clause does not bar shipments between the 49 continental states. The district court granted a preliminary injunction and FWS appealed. The U.S. Court of Appeals for the District of Columbia Circuit held that the government lacked authority to prohibit shipments of injurious species between the continental United States. The court read the shipment clause to have clear meaning and reasoned that if Congress intended to bar shipments within the continental United States, then Congress could have barred shipments between any state, similar to other legislation. Therefore, the district court's judgment was affirmed. Additional information here.

X. PESTICIDES:

Court Finds Spraying of Dicamba by Third-Party Farmers an Intervening Cause

In *Bader Farms, Inc. v. Monsanto Co.*, plaintiffs argued that the illegal use of dicamba was foreseeable because of warning labels placed on the seed products. Monsanto included warning labels on its GE seed bags, providing notice to farmers that the spraying of dicamba on these crops would be in violation of state and federal law. The Court determined, however, that because of these warnings, it was not foreseeable to Monsanto that the farmers would resort to the unlawful use of dicamba, as the purpose of these warnings were to inform farmers that this use would be unlawful. The full opinion is available here.

Arkansas Farmers File Class Action Against Makers of Dicamba Herbicides

A group of Arkansas farmers allege that Monsanto's and BASF's "negligent control, development and distribution of the dicamba crop system . . . proximately caused significant and material injury and damage to Plaintiffs' crops in 2016." The lawsuit states that farmers across Arkansas and other states who did not plant dicamba-resistant seeds had no way of protecting themselves and have been victimized by Monsanto's and BASF's conduct. A copy of the complaint is available here**.**

Arkansas Plant Board Votes to Ban Dicamba

The Arkansas Plant Board passed a resolution to ban the herbicide dicamba believed to have caused major crop damage throughout the state. Per media reports, Board members added a motion that would "expedite the board's rule-making process for a new state law to levy fines of up to $25,000 for serious violations of state bans regarding the spraying of dicamba." A spokesperson for Monsanto stated, "The recommendation made by the Plant Board to ban the use in Arkansas of the only remaining dicamba product previously approved for in-crop use with dicamba-tolerant crops blatantly ignores the interests of Arkansas farmers." Missouri enacted a similar ban on the herbicide on July 7, 2017.

Court Decides EPA Erred in Approving Pesticides Impacting Endangered Species

On May 8, 2017, the U.S. District Court for the Northern District of California granted partial summary judgment for plaintiffs in *Ellis v. Housenger*, a suit challenging the U.S. Environmental Protection Agency's (EPA) approval of the registration and use of 73 pesticides containing the ingredients clothianidin and thiamethoxam. Plaintiffs alleged the EPA's decision to allow use of the pesticides violated the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Endangered Species Act (ESA) because the chemicals knowingly harm animals, including threatened and endangered species. A copy of the opinion is available here. (In a California case filed in January 2017, *Nat'l Family Farm Coal. v. EPA*, environmental groups are challenging an EPA decision to allow the sale of Monsanto's XtendiMax product, a combination of the herbicides dicamba and glyphosate. A copy of that lawsuit is available here).

XI. WATER LAW

Environmental Groups Seeking to Protect the Shenandoah River Sue the EPA

After several years of trying to convince Virginia's Department of Environmental Quality to designate the Shenandoah River as impaired, four local citizen groups filed a suit in the U.S. District Court for the District of Columbia against the U.S. EPA and its administrator Scott Pruitt. The complaint seeks Declaratory and Injunctive Relief, claiming that the EPA violated its duty under the Clean Water Act when it approved Virginia's decision not to label the river as impaired on the state's list of quality-impaired rivers and streams. The river suffers from severe algae blooms caused by agricultural runoff in the Shenandoah Valley and has been linked to major fish die-offs, severe decline of underwater aquatic plants, and odorous and unsightly conditions that prevent visitors from swimming, boating and fishing in the river. Additional information here.

Mississippi v. Tennessee, Case Update

Although the U.S. Supreme Court has developed a common law framework for resolving disputes over interstate water resources, the Court has never resolved a dispute over groundwater resources. *Mississippi v. Tennessee*, a case over the use of groundwater by the City of Memphis near the MS-TN border, is the first case of its kind. In suits between states, the Court serves as a trial court and appoints a Special Master to run a trial-like process. After considering each state's initial filings in the case, the Special Master issued a Memorandum of Decision in August 2016 that ordered an initial hearing on whether the aquifer was an interstate resource. In the Memorandum, the Special Master noted that he did not think that Mississippi had made its case in its initial pleadings. In a May 2017 Order, the Special Master set August 31, 2017 as the deadline for discovery, and the parties need to submit a plan for the hearing by September 29, 2017. The docket sheet for the Special Master can be found here.

ANNOUNCEMENT: The Agricultural and Food Law Consortium will present a free webinar on Wednesday, July 19, at 12 noon (ET): *The Basics of Water Law and Its Relationship to Agriculture*. Details and sign-in information are available here.

XII. MISCELLANEOUS:

President Issues Executive Order on Agriculture

On April 25, 2017, President Donald J. Trump released an Executive Order (Order) entitled: Promoting Agriculture and Rural Prosperity in America. According to the Order, "[a] reliable, safe, and affordable food, fiber, and forestry supply is critical to America's national security, stability, and prosperity." As a result, the Order stated that "[i]t is in the national interest to promote American agriculture and protect the rural communities where food, fiber, forestry, and many of our renewable fuels are cultivated." Additionally, the Order asserted that it is "in the national interest to ensure that regulatory burdens do not unnecessarily encumber agricultural production, harm rural communities, constrain economic growth, hamper job creation, or increase the cost of food for Americans and our customers around the world."

State Lawmakers Address Agritourism and Liability

The Montana Legislature recently passed HB 342, adding agritourism to the list of Montana recreational activities "in which participants assume the liability for the inherent risk of those activities." Similar legislation was passed in May in Washington, providing increased liability protection for farm-based agritourism businesses. The Agricultural & Food Law Consortium addressed these issues last month with a webinar entitled: "Agritourism, Zoonotic Diseases and Legal Liability." A recording of the webinar is available here.

North Carolina Legislature Overrides Governor's Veto of Right to Farm Legislation

On May 11, 2017, the North Carolina Senate overrode Governor Roy Cooper's veto of legislation limiting monetary damages in certain nuisance lawsuits against agricultural and forestry operations (HB 467). The state lawmakers voted 30 to 18 to override the veto which satisfied North Carolina's three-fifths override requirement. Under the new law, for suits involving a permanent nuisance, damages are to be measured by the reduced fair market value of a property caused by the nuisance. Such damages may not exceed the property's fair market value. For suits involving a temporary nuisance, damages are to be measured by the reduced fair rental value of the property caused by the nuisance.

Organic Livestock and Poultry Practices Rule Delayed

On May 10, 2017, U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) announced a delay in the effective date for the Organic Livestock and Poultry Practices Final Rule published on January 19, 2017 (82 FR 7042). According to USDA AMS, "[t]he final rule amends the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions." The announced delay moves the rule's effective date from May 19, 2017, to November 14, 2017.

USDA Requests Comment on Proposed California Federal Milk Marketing Order

On April 21, 2017, the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) published notice in the Federal Register of a request for public comment regarding the Proposed California Federal Milk Marketing Order; producer ballots (82 FR 18721). According to USDA AMS, the "document invites comments on the proposed ballots to be used in conducting a referendum to determine whether the issuance of a Federal Milk Marketing Order (FMMO) regulating the handling of milk in California is favored by producers and cooperative associations." Comments were due June 20, 2017.

GIPSA Rule Enforcement is Delayed Six Months

On April 12, 2017, the Grain Inspection, Packers and Stockyards Administration (GIPSA) published notice in the Federal Register that the agency "is delaying the effective date of the rule published on December 20, 2016, for an additional six months to October 19, 2017" (82 FR 17531). According to GIPSA, the "rule addresses the scope of sections 202(a) and (b) of the Packers and Stockyards Act, 1921" (81 FR 92566). GIPSA stated that the delay in the rule's effective date is "in response to a comment received from a national general farm organization that requested an extension of time and to allow time for further consideration by USDA."

Farm Groups and EPA Reach Privacy Settlement Regarding Agricultural Data

On March 28, 2017, the American Farm Bureau Federation (AFBF) issued a press release announcing that a federal judge has approved a settlement regarding litigation brought by AFBF and the National Pork Producers Council against the U.S. Environmental Protection Agency (EPA). According to AFBF, the litigation was initiated "after EPA released a vast compilation of spreadsheets containing personal information about farmers and ranchers in 29 states who raise livestock and poultry, in some cases including the names of farmers, ranchers and sometimes other family members, home addresses, email addresses, GPS coordinates and telephone numbers." On September 9, 2016, the United States Court of Appeals for the Eighth Circuit ruled that EPA's release of this personal information, which pertained to owners of concentrated feeding operations, was a violation of the Freedom of Information Act (FOIA) (*American Farm Bureau Federation v. U.S. Environmental Protection Agency*, Case No. 15-1234).

The WTO Authorizes Mexican Retaliatory Tariffs

On May 22, 2017, the World Trade Organization's (WTO) Dispute Settlement Body authorized Mexico to issue $163 million of retaliatory tariffs on U.S. exports in a decades long dispute over the U.S. "dolphin-safe" tuna labeling program. The WTO found that the U.S. labeling program unfairly restricts Mexico's access to U.S. markets by discriminating against tuna caught by the Mexican fishing industry. Mexico had requested permission to impose $472 million in tariffs, but the WTO approved only $163 million. The U.S. has argued that the 2017 changes to the tuna labeling program satisfied compliance with WTO rules. The WTO is expected to rule on the compliance issue by mid-July, and a favorable U.S. ruling would require the termination of any retaliation. Additional info here.

Bumblebee Tuna Will Plead Guilty to Price Fixing Charges

Bumble Bee Foods has agreed to plead guilty to federal charges of price fixing. The U.S. Department of Justice (DOJ) had alleged that Bumblebee Tuna, Chicken of the Sea, and StarKist agreed to fix the prices of shelf stable

tuna fish, from 2011-2013. In addition to pleading guilty, Bumble Bee has also agreed to pay a $25 million criminal fine. Two of Bumble Bee senior vice presidents, Ken Worsham and Walter Scott Cameron, have also pled guilty to fixing prices. The DOJ's Antitrust Division's investigation remains ongoing, but Walmart and several other retailers have filed civil suits against the tuna giants, alleging that the price fixing has been a long lasting conspiracy that hurt consumers. More information available here.

Additional items of interest:

Amazon buys Whole Foods for $13.7B

California adds Glyphosate to list of chemicals known to cause cancer

Oregon, California seek salmon disaster declaration

Syngenta Ordered to Pay $217.7M to Kansas Farmers

Settlement reached in $1.9B "pink slime" lawsuit

Sonny Perdue adds to USDA leadership team

House Committee on Agriculture explores impacts of tax reform efforts on farmers.

Dicamba Drift Reports Rise East of Mississippi River

Court upholds 2011 $680M settlement agreement between Native American farmers and USDA

USDA halts imports of fresh beef from Brazil

Cotton and dairy issues stir farm bill debate

House Appropriations Committee releases fiscal year 2018 Agriculture Appropriations bill

Agricultural & Food Law Consortium publishes articles on exempt wells and water rights

Agricultural & Food Law Consortium publishes article on the FSMA Animal Food Rule