



The Feed

Recent Developments in Ag Law & Policy

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

Volume 2, Issue 23

December 12, 2024

Thank you to all our subscribers! Please forward **the subscription link** to your network. All previous issues of The Feed are available **here**. Send any questions, concerns, or suggestions to **NALC Director Harrison Pittman**.

Follow us on social:



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

Monarch Butterfly. On December 10, the U.S. Fish and Wildlife Service (FWS) released its highly-anticipated proposed decision to list the monarch butterfly as a threatened species under the Endangered Species Act (ESA). This proposal has been a decade in the making, as environmental groups first submitted a petition to list the monarch in 2014. While FWS determined in 2020 that listing the monarch was warranted but precluded by higher priorities, the agency has now concluded that threats to the monarch butterfly population require that the species be listed. Crucially, the proposed listing decision for the monarch butterfly includes a variety of exemptions for agriculture as monarch conservation efforts. Those exemptions include activities that maintain, enhance, remove or establish monarch habitat such as milkweed and nectar plants, conservation efforts carried out pursuant to an approved conservation plan, and vehicle strikes of monarchs. According to FWS, the exemptions are designed to encourage farmers and landowners to continue engaging in monarch conservation activities without concern that improving monarch habitat on private land will subject them to increased federal regulation. A comment period on the proposal is open through March 12. To view the proposal and learn how to submit a comment, click **here**.

Neonicotinoids. A federal judge in California has ruled that the Environmental Protection Agency (EPA) does not have to register neonicotinoid-treated seeds as independent pesticide products under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Instead, the court found that EPA had appropriately exempted treated seeds from registration under FIFRA's Treated Article Exemption. The lawsuit was initiated by environmental plaintiffs who submitted a petition to EPA in 2017 asking the agency to amend the Treated Article Exemption to clarify that it does not apply to treated seeds. When EPA denied the request, the plaintiffs filed suit, claiming that EPA was inappropriately interpreting the Treated Article Exemption. However, the court disagreed. Going forward, EPA will be able to continue exempting treated seeds from pesticide registration pursuant to the Treated Article Exemption. To learn more, click **here** to read NALC article "Federal Court Upholds Treated Seeds Exemption."

Corporate Transparency Act. A judge in the Eastern District of Texas has granted a nationwide preliminary injunction temporarily halting the reporting requirements of the Corporate Transparency Act (CTA), many of which were set to take effect on January 1, 2025. Under the CTA, businesses were required to disclose beneficial ownership information (BOI) with the Financial Crimes Enforcement Network (FinCEN). The CTA was passed to gather information about certain entities, their owners, management, and individuals to fight money laundering, tax fraud, and other financial crimes. To read the order, click **here**. FinCEN has filed a notice of appeal in challenge to the ruling. However, FinCEN has issued a statement noting that reporting companies are not currently required to file BOI and are not subject to liability if they fail to do so while the litigation is pending and the order is in effect. More information about the recent ruling and BOI requirements in general is available in **this article**, published by NALC partner Southern Ag Today.

H-2A. A federal judge has enjoined the application of a recent **Labor Department rule** which sought to provide updated guidelines regarding the treatment and pay of H-2A farmworkers. The rule in question prohibited retaliation against employees who sought to form or participate in unions. The judge found the rule was insufficiently explained and an overstep of the department's authority. This decision will allow more states to issue injunctions on enforcement of the rule. Previously, a federal judge in Georgia enjoined implementation of the provision in 17 states. The newly affected states are West Virginia, Alabama, Ohio, and Kentucky. In response, the Labor Department asserts that it will operate the enforcement program using methods tailored to whether the state was covered by an injunction. To read the decision, click **here**. To read more about the H-2A rule, click **here** to read NALC article "Department of Labor Finalizes New H-2A Regulations."

- 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**.

Rusty-Patched Bumblebee. FWS is proposing to designate nearly 1.7 million acres of land across 33 counties in 6 states as critical habitats for the rusty patched bumblebee. The rusty-patched

bumblebee has been listed as an endangered species under the ESA since 2016, but in 2020 FWS determined that designating critical habitat for the bumblebee was not prudent. Environmental groups successfully challenged this decision in court, prompting FWS to issue this proposal. A public comment period is open on the proposed designation through January 27, and FWS is seeking input on several aspects of the decision, including information related to the location and distribution of the bumblebee. To view the proposal and learn how to submit a comment, click [here](#).

Foreign Ownership. A federal judge in Arkansas has issued a preliminary injunction preventing the enforcement of Act 636 and Act 174, finding that the laws are “probably unconstitutional.” The two Acts were part of Governor Sanders’s attempts to prohibit the foreign ownership of agricultural land in Arkansas. The suit to prevent enforcement of these Acts was initiated by an Arkansas company, Jones Eagle, LLC, and the injunction prevents enforcement only against the plaintiff. The state may currently continue enforcement against other persons subject to the Acts. To learn more about the issue, click [here](#) to read NALC article “Federal Judge Halts Enforcement of Arkansas’ Foreign Ownership Restrictions.”

Cell-Cultured Foods. The United States Department of Agriculture (USDA) recently denied a waiver request by the Iowa Department of Health and Human Services (Iowa HHS) that would have prevented Iowans from purchasing lab-grown meat and egg products using federal assistance program funds. The waiver request was sought by the Iowa HHS in compliance with **legislation** signed into law by Governor Kim Reynolds in May. Iowa HHS cites nutrition concerns and a desire to protect local agricultural producers as motivation for attempting to block the use of federal funds in purchasing the lab-grown products. USDA determined that Iowa had not presented enough information regarding the actual benefits of the project or how the results would be evaluated. For a copy of USDA’s decision, click [here](#). To learn more about the Iowa law enacted in May, click [here](#) to read NALC article “Cell-Cultured Meat Updates: state bans, labeling requirements, and regulatory clarifications.”

Wisconsin Cottage Food Litigation. A Wisconsin state appeals court has overturned a lower court ruling finding that the Wisconsin Department of Agriculture Trade and Consumer Protection’s (DATCP) rule requiring sellers of homemade foods to obtain a license and meet other food safety requirements was constitutional. A 2017 lower court opinion found that Wisconsin’s retail food establishment laws were a violation of homemade food seller’s equal protection and due process rights, and enjoined DATCP from enforcing them against sellers of “baked, not potentially hazardous, homemade foods.” However, last month, the state appeals court disagreed and found that there was a rational basis for the retail food establishment laws. This is significant because it will allow DATCP to enforce food safety and licensing requirements on sellers of baked, not potentially hazardous, homemade foods in Wisconsin. To read the decision, click [here](#). To learn more about so-called “cottage food” laws in each state, click [here](#) to view NALC’s Cottage Food State Law Compilation.

Pesticides: Chlorpyrifos. EPA has issued a **proposed rule** to revoke all food tolerances for chlorpyrifos except for those associated with its use on 11 specific food and feed crops. The proposal comes after two different court orders - one issued by the Ninth Circuit in 2021, the other issued by the Eighth Circuit in 2023 - directed EPA to review the food tolerances associated with chlorpyrifos. In its 2021 court decision, the Ninth Circuit directed EPA to either modify or revoke all food tolerances associated with chlorpyrifos after determining that EPA was required to review the food tolerances for any pesticide if the agency had evidence showing the current tolerances are unsafe. However, in 2023, the Eighth Circuit issued a decision finding that EPA had been too hasty in revoking all the chlorpyrifos food tolerances, citing evidence showing that 11 tolerances remained safe. EPA’s recent proposal would revoke all food tolerances for chlorpyrifos except for the 11 identified by the Eighth Circuit. A comment period on the proposed rule will be open through February 10. To learn more about the legal battle over chlorpyrifos, click [here](#) to view NALC article “Eighth Circuit Ruling Revives Food Uses for Chlorpyrifos.”

Checkoffs. A federal judge in Washington, D.C. has ruled the USDA’s Office of Inspector General (OIG) properly exempted records about its audit of the Beef Checkoff Program from disclosure under the Freedom of Information Act (FOIA). In a decade-long litigation, the Organization for Competitive Markets sought to compel USDA to release all information regarding its 2013 audit of the Beef Checkoff Program. USDA released roughly 23,000 documents through the FOIA process, but exempted certain records regarding the financials of industry group the National Cattlemen’s Beef Association and withheld information regarding the OIG’s deliberative process in conducting the audit. In this decision, the judge held the USDA has met the burden of showing that “the redacted information is generally treated as private by the owner of the records.” To read the decision, click [here](#). To learn more about checkoff programs generally, click [here](#) to visit NALC’s Checkoff Programs reading room.

Solar. Oregon has approved a 10,000 acre solar farm - the largest in the state. The farm, called Sunstone Solar, will include nearly 4 million solar panels and will be capable of producing up to 1,200 megawatts of power. Though Oregon restricts solar developments on prime farmland by only allowing up to 12 acres of solar farms in areas with the best soil, solar developers may apply for an exception to build a larger solar farm. Here, Sunstone Solar will qualify for the exception because the site is near existing transmission infrastructure, has limited water available, and the project will have a local net economic benefit. Additionally, the developer will contribute \$1,179 per acre to a new agricultural mitigation fund focused on dryland winter wheat farming. To learn more about solar lease payment structures, click [here](#) to read NALC article “Solar Smarts for Landowners: Payment Structures.”

Genetic Engineering. A federal judge in California has vacated USDA’s SECURE rule after finding that the Department failed to address concerns raised in various scientific papers. Adopted in 2020, the SECURE rule exempted genetically engineered plants from regulation. The rule was considered controversial, with some supporting it for streamlining access to plant seeds that had been genetically engineered to withstand certain pesticides, and others raising concerns about environmental impacts. Click [here](#) to read the court’s decision.

Pesticides: Atrazine. EPA has released an updated mitigation proposal for the herbicide atrazine which has increased the levels of atrazine that the agency considers safe for aquatic plants. The updated proposal also incorporates aspects of EPA’s recently finalized Herbicide Strategy. Specifically, EPA is proposing additional mitigation measures for atrazine that are designed to reduce runoff and erosion. Applicators would be directed to review an online menu of mitigation options that they can

choose from when applying atrazine to achieve the necessary runoff reductions. The goal of the menu is to give farmers more choices when applying pesticides. EPA will accept comments on the proposal through February 3. Click [here](#) for more information.

Date Labels. The USDA and FDA announced a joint Request for Information (RFI) on food date labeling. Food date labeling includes terms like 'Sell By,' 'Best By,' and 'Use By,' and because of consumer confusion about the meaning of the labels, is often attributed to consumer food waste. Currently, both USDA and FDA recommend that food industry members voluntarily apply the label "Best if Used By," to indicate the date a food's quality might decline but it is still safe to consume. However, current federal regulations do not prohibit industry from using other date labeling phrases. The RFI is seeking information on industry practices and preferences, research on consumer perceptions of date labeling, and the impact date labeling may have on food waste and grocery costs. Comments can be made [here](#) until February 3, 2025. California has recently passed a law relevant to these types of labels sold within its state boundaries. To read more about it, click [here](#) to read "Date Labels and the New California Law."

Direct Beef Sales. Texas A&M AgriLife Extension is hosting a new [online course](#) highlighting the legal and economics of direct-to-consumer beef sales. Titled "Where's the Beef?," the course is taught by Tiffany Lashmet, JD, a National Agricultural Law Center partner and agricultural law specialist with the Department of Agricultural Economics at Texas A&M. The course covers risk management, labeling, insurance, inspections, and other animal science topics such as quality and yield grades. To read the companion "Where's the Beef? Handbook," click [here](#). To learn more about recent legislative proposals that might impact meat processing, click [here](#) to read NALC article "Recent Federal Proposals affecting Meat & Poultry Processing."

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 hear from you!

[Take the Survey](#)

Thank You to Founding Supporters of *The Feed*



DOWNEY BRAND

JOIN OUR TEAM!

**Staff Attorney,
Ag Finance & Credit**

Share This Issue of The Feed:



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

The National Agricultural Law Center | NationalAgLawCenter.org



Try email marketing for free today!