



# The Feed

Recent Developments in Ag Law & Policy

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

Volume 3, Issue 8

April 24, 2025

**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:



The National Agricultural Law Center  
WEBINAR SERIES

## Navigating ADA Compliance for Agritourism Guests



Wednesday, May 21, 2025  
Noon ET  
No cost to register



Jackie Schweichler  
Penn State Center for  
Ag and Shale Law

**FIFRA Preemption.** Bayer, which purchased Monsanto Co. in 2018, **has petitioned** the United States Supreme Court to consider whether FIFRA preempts state level tort law claims of failure to warn. Three federal circuit courts of appeals have ruled on the issue in recent years. The Ninth and Eleventh Circuits held that FIFRA does not preempt failure to warn claims. More recently, the Third Circuit held that FIFRA preempts failure to warn claims. To learn more about failure to warn claims in pesticide litigation, click **here**. To learn more about the Circuit court decisions, click **here** and **here**.

**Pesticide Liability Limitation.** As previously reported here, at least nine states have considered pesticide liability limitation legislation. On April 7, the Georgia legislature enacted a pesticide liability limitation bill, SB 144. The bill was sent to the Governor's desk and awaits further action ahead of a May 14 deadline. On April 21, the North Dakota Legislature passed a similar bill, **HB 1318**, and sent the bill to the Governor. While no public announcement could be located, the North Dakota Governor apparently signed HB1318 into law on April 23. To learn more about these bills, click **here** to view NALC article "Update on State Pesticide Liability Limitation Bills." For more information on how EPA approves pesticide labels, click **here** to view recent NALC publication "Pesticide Registration Improvement Act Factsheet." To learn more about these proposals, click **here**.

**Tribal Water Rights.** In 2023, the Ute Indian Tribe of the Uintah and Ouray Reservation of Utah filed a lawsuit against a private farm operation alleging that the operation had improperly diverted water from the Uintah Indian Irrigation Project. In its **complaint**, the Ute Tribe sought to enjoin McKee Farms from diverting water from the Deep Creek Canal, and claimed that the defendant had trespassed onto tribal property. In response, McKee Farms has argued that the Ute Tribe's lawsuit is an attempt to bring nontribal members under tribal jurisdiction. Recently, the United States government has formally become involved, filing an **amicus brief** asserting that the operation diverted water in accordance with a water transfer agreement authorized by the federal government pursuant to 1941 act of Congress. The government claims that it has made more than 200 such water transfer agreements for landowners on the Uintah Indian Irrigation Project. The ultimate conclusion of this case could potentially impact those agreements.

- Conference opportunity (June 19-20): Ernest Conant, Counsel, Downey Brand LLP, Alyssa A. Moir, Partner, K&L Gates, and Emily E. Lewis, Partner, Culp & Kelly will present "Water Banking and Leasing in the West: Practical Pointers and Pitfalls" at the Third Annual Western Water, Ag & Environmental Law Conference. To register, click **here**.

**Anti-Dumping Penalty.** On April 14, the Department of Commerce ("Commerce") **announced** that it would begin implementing a 20.91% anti-dumping duty targeted at Mexican tomato imports. The move comes as part of Commerce's decision to withdraw from the **2019 Agreement Suspending Antidumping Investigation on Fresh Tomatoes from Mexico**. When Commerce entered the 2019 agreement to suspend anti-dumping duties, it replaced the duties with a managed trade arrangement between the United States and Mexico. At the time it entered into the 2019 Agreement, Commerce stated that the agreement would "eliminate completely the injurious effect of exports to the United States[.]" However, now Commerce finds that the 2019 Agreement "failed to protect U.S. tomato growers[.]" The 20.91% duty will take effect on July 14th. For a recent webinar on ag trade co-hosted by the NALC and Agri-Pulse, "The Road Ahead: Agriculture, Trade, and Policy in a Changing World", click **here**.

- Conference opportunity (June 5-6): Fitzhugh Elder IV, Republican Staff Director, U.S. Senate Committee on Agriculture, Nutrition, and Forestry and Clark Ogilvie, Special Counsel, Minority, House Committee on Agriculture, will present "Update from the Potomac: Farm Bill, Ag Trade, EPA, & Related Federal Issues" at the 12th Annual Mid-South Agricultural and Environmental Law Conference. To register, click **here**.

**Endangered Species Act.** The Trump Administration proposed changing the regulatory definition of "harm" under the Endangered Species Act ("ESA"). Specifically, the United States Fish and Wildlife

Service and the National Marine Fisheries Service (collectively, “the Services”) issued a proposed rule to eliminate the regulatory definition of “harm” under the ESA. The statutory text of the ESA provides that it is illegal to “take” any member of a protected species. The ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.” For decades, the Services have defined “harm” through the ESA’s implementing regulations as including those acts which cause “significant habitat modification or degradation where it actually kills or injures wildlife[.]” Eliminating that definition would result in a less strict definition of “take” of a species. A comment period on the proposal is open through May 19. Should the proposal become finalized, lawsuits are likely to follow. Click [here](#) to view the proposed rule. To learn more about the ESA, click [here](#) to view NALC’s ESA Manual, and visit the NALC ESA Reading Room [here](#).

**Synthetic Dyes.** The FDA recently **announced** plans to phase out petroleum-based synthetic food dyes. In the announcement, the FDA stated its intention to establish a national standard and timeline for industry to transition from synthetic dyes to natural alternatives; initiate the process for revoking Citrus Red No. 2 and Orange B’ authorization; work with industry to eliminate Green No. 3, Red No. 40, Yellow No. 5, Yellow No. 6, Blue No. 1, and Blue No. 3 from the food supply by the end of 2025; authorize four new natural color additives; partner with the National Institute of Health to conduct research on food additive’s impact on children’s health; and request food companies remove Red No. 3 sooner than its regulatory deadline. This plan follows several state legislative proposals to ban certain food additives, and FDA’s revocation of authorization to Red No. 3 earlier this year. To learn more about that issue, click [here](#) to read NALC article “FDA bans Red Dye No. 3.”

**Inflation Reduction Act.** Following the Trump Administration’s decision to stop spending tied to the Inflation Reduction Act (“IRA”) and the Infrastructure Investment and Jobs Act, a federal judge has now ordered that funding be resumed. More specifically, the court directed both USDA and EPA “unfreeze” funding appropriated under both statutes. The IRA allocated approximately \$19.5 billion to various USDA conservation programs including the Environmental Quality Incentives Program, the Conservation Stewardship Program, the Agricultural Conservation Easement Program, and the Regional Conservation Partnership Program. In its April 15 decision, the court found that the agencies had likely exceeded their statutory authority by pausing funding without being expressly directed to do so by Congress. To view the court’s ruling, click [here](#).

**SNAP Program.** **Arkansas** and **Indiana** recently submitted SNAP waiver requests to the USDA. Specifically, the Arkansas waiver submission requested that SNAP allow the state to prohibit SNAP participants from using benefits to purchase soda and candy, and to permit participants to purchase rotisserie chicken with benefits. While Indiana’s waiver only mentions candy and soft drinks, the Governor’s Executive Order authorizing the waiver also states that the Indiana Secretary of Health and Family Services will recommend additional items to be removed from the SNAP eligible list. Additionally, lawmakers in other states have indicated interest in seeking similar waivers by introducing related legislation. Specifically, Idaho’s Governor recently signed a **bill** that would require the state to seek a similar waiver. To learn more about this issue, click [here](#) to read NALC article “Excluding ‘Junk’ Food from SNAP Benefits.”

**EU Food Labeling.** Last month, the European Union’s (EU) Parliament published a **written answer** to three parliamentary questions related to a recent EU Court of Justice **decision**. The Court’s ruling struck down a French decree that sought to prohibit food producers from using “meat” terms to label or promote plant-based proteins. Specifically, the Court determined that Member States may not prohibit the use of “customary” or “descriptive” names when there is no codified legal name for food. In their written answer, the EU Parliament affirmed the Court’s ruling and stated that current EU food labeling regulations are sufficient to protect consumers. The answer also clarified that the determination of whether a food’s customary or descriptive name is suitable should be on a case-by-case basis. To learn more about this recent Court of Justice ruling, click [here](#) to read NALC article “Foreign Food Labeling Updates: EU Court of Justice Decisions.”

**Agritourism.** A small farm in New Hampshire is looking to dismiss a lawsuit filed against it last October by neighbors who claim that the farm illegally operates a restaurant and event venue. According to the plaintiffs, the farm was never legally permitted to operate its agritourism operations. In response, Vernon Farms claims that the lawsuit is an attempt by the plaintiffs to appeal the farm’s 2022 site plan approval for which the deadline for appeal has passed. To view the initial complaint, click [here](#). To learn more about agritourism legal issues and resources, visit the NALC Agritourism Reading Room [here](#).

- Webinar opportunity (May 21): Jackie Schweichler, Penn State University, Center for Agricultural and Shale Law will present: “Navigating ADA Compliance for Agritourism Guests.” To register, click [here](#).

**Alternative Meat.** Several states have taken legislative action. Colorado recently enacted **HB1203**, which imposes labeling requirements on lab-grown meat sold in the state. The Montana legislature advanced **HB401**, a proposal to ban the sale of lab-grown meat in Montana. Montana’s Governor has until April 29 to sign or veto the bill, but can become law without signature. Similarly, Nebraska’s proposed ban on lab-grown meat, **LB246**, is working its way through Nebraska’s unicameral legislature. Texas is continuing consideration of **SB261**, which seeks to amend existing law to include a definition of “cell-cultured meat” while also prohibiting “any food, drug, device, or cosmetic that is adulterated or misbranded.” In Oklahoma, **HB1126**, which would tighten regulations on food labeling requirements and impose legal consequences on those who violate its , passed the state’s Senate Agriculture and Wildlife Committee. Oklahoma is also considering similar bans on lab-grown meat, **SB96** and **HB2829**. For a more detailed update on state alternative meat proposals, click [here](#) to read an article from NALC partner Southern Ag Today “A Steak by Any Other Name: How States Are Shaping the Future of Cultivated Meat.”

**Salmonella.** The USDA’s Food Safety and Inspection Service (FSIS) recently **announced** that it will delay the effective date of its verification sampling program for certain breaded chicken products. This verification sampling program was designed to test certain breaded and stuffed chicken products for salmonella. The program was announced on May 1, 2024 when the FSIS published a **final determination** that stated *Salmonella* would be considered an adulterant in aforementioned chicken products when present at certain defined levels. The new testing process was set to begin on May 1 of

this year, but FSIS has now delayed implementation until November 3. The final determination on *Salmonella* in Not Ready-To-Eat Breaded Stuffed Chicken Products was the first time *Salmonella* was declared an adulterant; however, later last year, an additional final rule related to *Salmonella* in raw poultry was published. To read more about both final rules, click [here](#) to read NALC article "FSIS Proposed *Salmonella* Framework for Raw Poultry Products."

**Checkoffs.** Illinois wheat producers passed a [referendum](#) to establish a wheat checkoff program in the state of Illinois. The program will be voluntary and will have a 1.5 cent per bushel assessment rate. The Illinois Department of Agriculture and the Illinois Wheat Checkoff Committee will conduct an election to select the nine members of the Illinois Wheat Development Board. The program will go into effect January 1, 2026. To learn more about checkoff programs generally, click [here](#) to view NALC's Checkoff Programs Reading Room.

- Webinar Opportunity (June 18): Ross Pifer, Penn State University, Center for Agricultural and Shade Law will present "An Overview of State Grain Dealer Statutes in the United States." To register, click [here](#).

**Meat Inspection.** A bill that would expedite and simplify the sale of meat and poultry products in interstate commerce has been reintroduced in the U.S. Senate. The bill, which is known as "The New Markets for State Inspected Meat and Poultry Act," would amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to permit state-inspected meat and poultry products to be sold across state lines. Under existing law, meat and poultry products inspected in-state can only be sold in-state. If passed, the legislation would allow products that have undergone in-state inspection to be sold across state lines. For a full text of the bill, click [here](#).

**Foreign Ownership.** North Carolina is one of nearly three dozen states to propose legislation this session related to restricting foreign investments in land. Specifically, [HB133](#), seeks to restrict certain investments by adversarial foreign governments. This would prohibit government or government-controlled business entities, like China, Iran, North Korea, or Iran, from acquiring or holding any interest in agricultural land and land within a 75-mile radius of a military installation. North Carolina is also considering similar foreign ownership-related bills [SB504](#), [SB338](#), and [SB394](#). To learn more about the North Carolina proposals, click [here](#) to read NALC article "Soil for Sale? State Legislative Efforts to Restrict Foreign Investments - Part Seven." To learn more about foreign ownership laws generally, visit NALC resources [Foreign Ownership FAQs](#) and [Ownership of Ag Land](#) state compilation.

**Hemp.** The USDA National Agricultural Statistics Service recently released its 2025 National Hemp Report. The report states that industrial hemp production in the United States has increased with 45,294 acres of total planted area and 32,694 acres of total harvested acres. An increase of 64% and 55% from 2023, respectively. The total value of U.S. hemp production totaled \$444 million. To view the National Hemp Report, click [here](#). To learn more about hemp laws generally, click [here](#) to read NALC publication "Industrial Hemp Laws: State-by-State."

## NALC National Stakeholder Survey Closing Soon



The NALC National Stakeholder Survey will close on April 30. There is still time to participate! 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:



National Agricultural Library  
U.S. DEPARTMENT OF AGRICULTURE

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**

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

[Unsubscribe](#) | [Constant Contact Data Notice](#)



Try email marketing for free today!