



**PennState Law**

Center for Agricultural  
and Shale Law



# 3<sup>rd</sup> Annual Pennsylvania Farm Show Agricultural Law Symposium

January 10<sup>th</sup>

1:00-2:00pm (EST)

2:15-3:15pm (EST)

January 12<sup>th</sup>

1:00-2:00pm (EST)

2:15-3:15pm (EST)



# 3<sup>rd</sup> Annual Pennsylvania Farm Show Agricultural Law Symposium

Tuesday, January 10, 2023 (1:00–3:15pm)

- 1:00–2:00pm **Agricultural Law: The Year 2022 in Review**
  - A review of the major federal and state legal developments across all three branches of government affecting agriculture in 2022.
- 2:15–3:15pm **U.S. Supreme Court Deep Dive: Searching for Clarity in WOTUS and the Dormant Commerce Clause**
  - Sackett v. EPA seeks to define the Clean Water Act’s phrase “waters of the United States” and National Pork Producers Council v. Ross questions whether the dormant Commerce Clause prohibits California’s in-state pork sales restrictions, which largely affect out-of-state producers. Oral argument was presented for both cases in October, although the Court may not issue an opinion until the end of its term. We’ll review the precedent case law, history, and arguments of each case as we wait for the final verdicts.



# 3<sup>rd</sup> Annual Pennsylvania Farm Show Agricultural Law Symposium

Thursday, January 12, 2023 (1:00–3:15pm)

- 1:00-2:00pm     **Agricultural Antitrust: Protein Sector Spotlight**
  - The Poultry, Pork, and Beef sectors are each entangled in federal multi-district class action litigation and facing Department of Justice investigations and enforcement for alleged price-fixing and conspiracy. Learn the details in this session.
  
- 2:15-3:15pm     **Agriculture & the Environment: 2022 in Pesticides & the Chesapeake Bay**
  - First, we'll review EPA's continuing glyphosate and dicamba registration federal litigation. Then, we'll provide a complete update on Pennsylvania's compliance status in the countdown to Chesapeake Bay's 2025 restoration goals deadline, including potential ramifications for non-compliance from EPA.



# Logistics

- This webinar is being recorded
  - A link to the recording will be available on our YouTube channel:
  - [Center for Agricultural and Shale Law YouTube channel](#)
  - Materials will be available here:
  - <https://aglaw.psu.edu/event/3rd-annual-pennsylvania-farm-show-agricultural-law-symposium/>
- Questions? Please use Q&A during sessions.
  - Email: [jks251@psu.edu](mailto:jks251@psu.edu)



# Attn: Pennsylvania Attorneys

- Attorneys fill out this form:
  - <https://forms.office.com/r/TizCmb1GWB>
  - One code word will be provided during each hour.
  - These codes must be entered onto the form in order to receive CLE credits.
  - Submit form once at the end of the Symposium

# Thanks to Our Partners

The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.





**PennState Law**

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and Shale Law

# Agricultural Law: The Year 2022 in Review

3<sup>rd</sup> Annual Pennsylvania Farm Show Agricultural Law Symposium  
January 10, 2023

Ross H. Pifer,

Penn State Center for Agricultural and Shale Law





# Stay Tuned . . .

- California Proposition 12
- Waters of the United States
- Antitrust
- Glyphosate / Dicamba
- Chesapeake Bay



# Agricultural Law Developments in 2022

- Ag Gag Statutes
- Cage-Free Egg Laws
- Meat Labeling
- Biotechnology
- Ag Labor
- Agritourism
- Solar
- Right to Repair
- USMCA
- Climate / Agriculture
- Organic



# Ag Gag Statutes: Iowa

- Iowa's "2<sup>nd</sup>" statute – Iowa Code §717A.3B
  - Enacted in March 2019
  - Preliminarily enjoined in December 2019
  - Criminalized the use of deceit to gain access to an agricultural production facility with the intent to cause physical or economic harm
- March 14 and 28, 2022 – summary judgment granted, and statute permanently enjoined by US District Court for Southern District of Iowa
  - Unconstitutionally discriminated against trespasser based on viewpoint of agriculture due to intent element
- April 20, 2022 – Notice of Appeal to US Court of Appeals for 8<sup>th</sup> Circuit



# Ag Gag Statutes: Iowa

- Iowa's "4<sup>th</sup>" statute – Iowa Code §727.8A
  - Enacted in April 2021
  - Criminalized the use of a camera or "electronic surveillance device" while committing trespass in an agricultural production facility
- September 26, 2022 – US District Court for Southern District of Iowa granted summary judgment
  - Unconstitutionally burdens freedom of speech without sufficient justification
- November 22, 2022 – Appeal filed with US Court of Appeals for 8<sup>th</sup> Circuit



# Ag Gag Statutes: Kansas

- 1990 – enactment of 1<sup>st</sup> Ag Gag statute in United States
  - Kan. Stat. §47-1825 – Kansas Farm Animal and Field Crop and Research Facilities Protection Act
  - Criminalized unlawful entry of animal facility with intent to damage the property, including entry to take pictures using camera, video camera, or other electronic device
- Jan 2020 – ruled unconstitutional by US District Court for District of Kansas
- Aug 2021 – judgment affirmed by US Court of Appeals for 10<sup>th</sup> Circuit
- April 25, 2022 – petition for certiorari denied by US Supreme Court



# Ag Gag Statutes: Texas

- Jun 2017 – enactment of HB 1643
  - Criminalized operation of an unmanned aircraft above a concentrated animal feeding operation (CAFO) for the purpose of taking pictures
- Mar 28, 2022 – ruled unconstitutional and enforcement enjoined by US District Court for Western District of Texas
  - Law had listed exclusions including students, professors, insurance company executives, and real estate brokers
  - Photographers Association filed suit
  - Court determined statute infringed on free speech rights of journalists



# Ag Gag Statutes: Additional Resources

- [Ag Gag Statutes Issue Tracker](#)
  - Contains statutes, court opinions, and other court filings for various state laws
  - Located at [aglaw.psu.edu](http://aglaw.psu.edu)
  - [Research by Topic >> Agricultural Law Issue Trackers >> Ag Gag Statutes](#)



# Animal Welfare: Cage-Free Egg Laws – Arizona

- On April 5, 2022, the State of Arizona, Governor’s Regulatory Review Council, [approved](#) an **Arizona Department of Agriculture regulation amending [R3-2-901-909](#)**
- From October 1, 2022, until December 31, 2024, all egg-laying hens in the state and all eggs sold in the state must come from laying hens raised according to the United Egg Producer (UEP) Animal Husbandry Guidelines and must be housed in a cage with at least one square foot of usable floor space per laying hen
- From January 1, 2025, forward, all laying hens in the state must be housed in a cage-free manner, and all eggs sold in the state must come from hens housed in a cage-free manner.





# Animal Welfare: Cage-Free Egg Laws – Other States

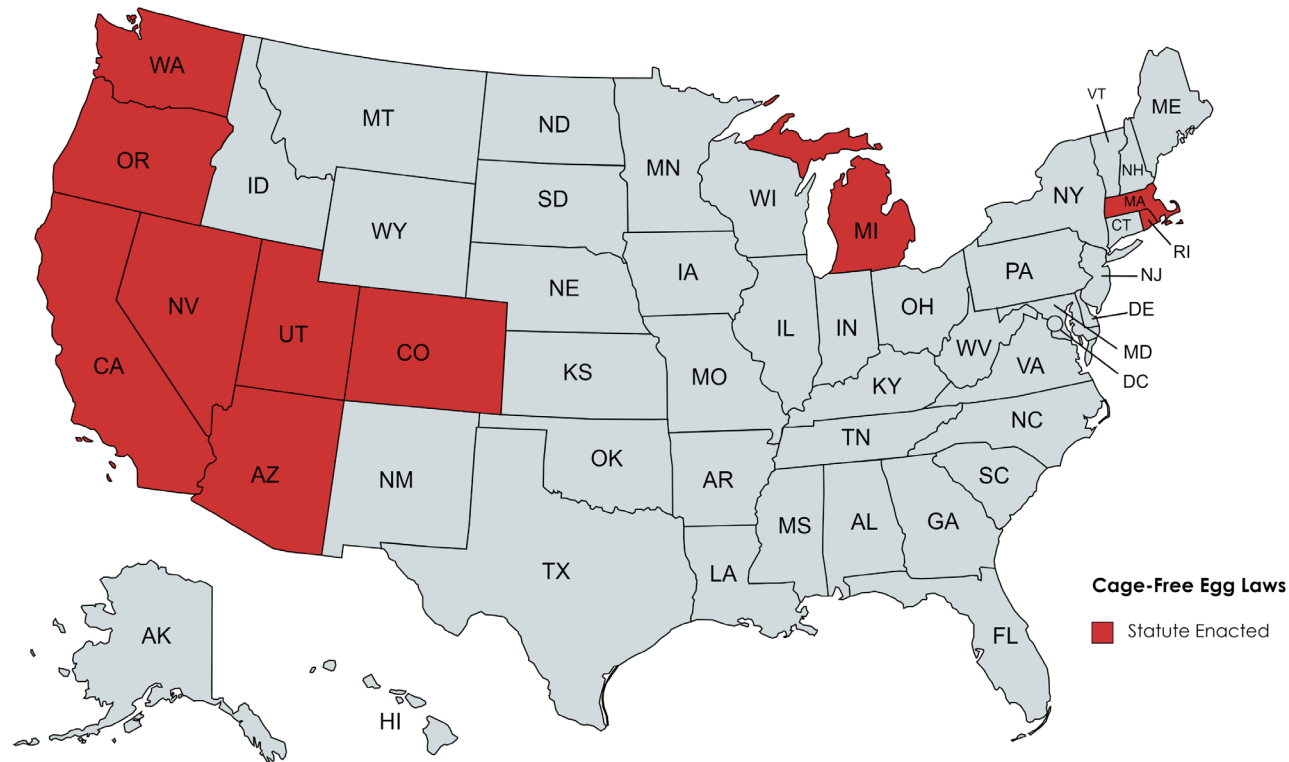
- California (see Proposition 12)
  - 2021 – all eggs sold in state must be cage-free
- Colorado: [HB20-13463](#)
  - By 2025 – all eggs sold in state must be cage-free
- Massachusetts: [2016 ballot initiative](#), Question 3
  - By 2022 – all eggs sold in state must be cage-free
- Michigan: [SB 174](#)
  - 2024 – all eggs sold in state must be cage-free
- Nevada: [AB399](#)
  - By 2024 – all egg production must be cage-free



# Animal Welfare: Cage-Free Egg Laws – Other States

- Oregon: [SB 1019](#)
  - 2024 – all eggs sold in state must be cage-free
- Rhode Island: [HB 7456](#)
  - Specifies confinement standards; only applies to in-state hens – effective 2023
- Utah: [SB 147](#)
  - By 2025 – all egg production must be cage-free
- Washington: [HB 2049](#)
  - 2023 – all eggs sold in state must be cage-free

# Animal Welfare: Cage-Free Egg Laws





# Meat Labeling – Kansas

## Fake Meat Labeling Bill – SB 261

- Enacted May 5, 2022; Effective July 1, 2022
  - Alternative meat products are considered to be misbranded if there is not a disclaimer that the product does not contain meat in a prominent and conspicuous font size in close proximity to the meat term.
  - Disclaimers can include vegetarian, vegan, meatless, meat-free, plant-based, or other term approved by the Kansas Secretary of Agriculture.



# Meat Labeling – Louisiana

## Truth in Labeling of Food Products Act – 2019 Act No. 273

- Cannot represent a food product as meat, beef, pork, poultry, or rice when product is not derived from such.
- Cannot use term that is the same or deceptively similar to a term that has been historically used to reference a specific agricultural product.
- *Turtle Island Foods v. Strain*
  - Mar 28, 2022 – US District Court for Middle District of Louisiana ruled that the statute was unconstitutional and enjoined its enforcement.
  - The court found the law did not directly advance the state’s interest in avoiding consumer confusion – thus unconstitutionally restricted commercial speech in violation of the First Amendment.



# Meat Labeling – Arkansas

To Require Truth in Labeling of Agricultural Products that are Edible by Humans – Act 501

- Enacted Feb 7, 2019; Signed into law on Mar 18, 2019
  - Prohibited the labeling of cell-cultured, plant-based, or insect-based food products as meat
- July 22, 2019 – Turtle Island Foods d/b/a Tofurky Company filed suit alleging First Amendment and commercial speech violations
  - Dec 11, 2019 – Preliminary injunction granted by US District Court for Eastern District of Arkansas
  - Sep 30, 2022 – Judgment entered in favor of Turtle Island Foods



# Meat Labeling: Additional Resources

- Meat Labeling Laws Issue Tracker
  - Contains statutes, court opinions, and other court filings for various state laws
  - Located at [aglaw.psu.edu](http://aglaw.psu.edu)
  - [Research by Topic >> Agricultural Law Issue Trackers >> Meat Labeling Laws](#)



# Biotechnology – American Chestnut

- On November 10, 2022, the U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) published a notice in the Federal Register ([87 FR 67861](#)) announcing that the agency has completed a [draft plant pest risk assessment \(PPRA\)](#) and [draft environmental impact statement \(EIS\)](#) in consideration of approval of a [petition to deregulate](#) the blight-tolerant Darling 58 American Chestnut (Darling 58).
- The Darling 58 was developed by the State University of New York (SUNY)’s College of Environmental Science and Forestry ([APHIS-2020-0030](#)) and has been genetically engineered to expel a substance derived from wheat to defend against fungal pathogens that cause chestnut blight. Historically, chestnut blight has destroyed virtually all American chestnut trees in the United States.
- APHIS sought public comment in [August 2021](#) on deregulation of the Darling 58 before preparing the draft PPRA and EIS. According to the draft PPRA and EIS, the Darling 58 is unlikely to pose a plant pest risk or harm current commercially propagated chestnut varieties.
- The Federal Register notice had a comment period that closed December 27, 2022.





# Biotechnology – Purple Tomatoes

- On September 7, 2022, the U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) [announced](#) its [decision](#) that genetically modified purple tomatoes are unlikely to pose an increased plant pest risk compared to other tomatoes.
- Genetically modified purple tomatoes contain increased levels of anthocyanins, which are antioxidants that assist in anti-inflammation.
- This decision means the purple tomatoes developed by [Norfolk Plant Sciences](#) are not subject to regulation under [7 CFR 340](#). Plants that are unlikely to pose an increased plant pest risk may be safely grown and bred in the United States.





# Biotechnology – GE Salmon

- On November 17, 2022, the U.S. Food and Drug Administration (FDA) published in the Federal Register notices announcing the availability of ([87 FR 69032](#)) and public meeting on ([87 FR 69030](#)) the agency’s [Draft Amended Environmental Assessment](#) for [AquAdvantage Salmon](#) production, limited to the Bay Fortune and Rollo Bay Facilities on Prince Edward Island, Canada. FDA stated that the new draft amended EA “include[s] an exhaustive analysis of the likelihood and severity of harms that could occur in the highly unlikely event that [AquAdvantage Salmon] . . . were to escape confinement, migrate from Canada to the U.S., and be present in the U.S. aquatic environment.”
- FDA had previously [approved](#)—and issued an [Environmental Assessment \(EA\)](#) and [Finding of No Significant Impact](#) for—the genetically altered salmon in November 2015, but it was ordered to redo its analysis in November 2020 to account for the salmon’s potential escape from captivity.
- FDA held a [virtual public meeting on December 15, 2022](#) from 1:00–5:00pm ET to receive public feedback on the draft amended EA. The comment period closes on January 17, 2023.



# Biotechnology – GE Salmon

- On May 10, 2021, genetically engineered (GE) salmon producer AquaBounty [announced](#) that it had received purchase orders for all five metric tons of its first harvest of GE Atlantic salmon, due at the end of May, from the company's Albany, Indiana facility.
- AquaBounty is currently the only company producing U.S. Food and Drug Administration (FDA)-approved GE Atlantic salmon.
- For the history of FDA approval and related litigation regarding AquaBounty's GE salmon, see the Center's website's Agricultural Law Issue Tracker titled [Genetically Modified Salmon](#).



# Coordinated Framework for Regulation of Biotechnology

- On December 20, 2022, the Office of Science and Technology Policy (OSTP)—on behalf of the U.S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA)—published in the Federal Register a notice ([87 FR 77900](#)) seeking information to “identify any regulatory ambiguities, gaps, or uncertainties in the [Coordinated Framework for the Regulation of Biotechnology](#).”
- The request for information is consistent with the directive to the three agencies in [Section 8\(a\)](#) of the September 2022 Executive Order, “Executive Order on Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy.” The agencies’ notice requests “relevant data and information, including case studies . . . particularly with regard to new and emerging biotechnology products.”
- The OSTP, FDA, EPA, and USDA will hold a [virtual listening session on Thursday, January 12, 2023 at 1:00 pm](#) EDT and parties may submit comments through the Regulations.gov docket [APHIS-2022-0076](#) until February 3, 2022.



# Biotechnology – Executive Order

- On September 12, 2022, President Joe Biden issued an [executive order](#) (EO) titled, “Executive Order on Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy” ([E.O. 14081 of Sep 12, 2022](#)) ([87 FR 56849](#), September 15, 2022).
- The EO outlines eleven key policies for creating a comprehensive government agenda to strengthen the American [bioeconomy](#) through investment and innovation in [biotechnology](#), [biomanufacturing](#), and management of [biological data](#)—two of which specifically apply to agriculture: 1) “boost sustainable biomass production and create climate-smart incentives for American agricultural producers and forest landowners,” and 2) “expand market opportunities for bioenergy and biobased products and services.”
- The EO calls for the Agriculture Secretary, within 180 days of the EO, to submit a [report](#) detailing how biotechnology and biomanufacturing may be used to mitigate plant and animal diseases, develop alternate food supplies, and improve or increase land conservation, food quality, and crop yields—including opportunities for private sector collaboration.



# Bioengineered Food Disclosure

- On September 13, 2022, the U.S. District Court for the Northern District of California entered an [order](#) granting summary judgment in favor of the plaintiffs in a case challenging the bioengineered food disclosure regulations promulgated by the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS). *Natural Grocers v. Perdue [Vilsack]*, No. [3:20-cv-05151-JD](#).
- In the authorizing statute, Congress provided three product labeling options: (1) the printed text "Bioengineered food" or "Contains a bioengineered food ingredient," (2) a symbol containing the word "BIOENGINEERED," or (3) an electronic or digital link, such as a QR code, with "additional and comparable options" as determined necessary by USDA for consumer information access.



# Bioengineered Food Disclosure

- A study commissioned by AMS showed that the third “digital/electronic” option did not provide “sufficient access” to the bioengineered disclosure. AMS then created a fourth compliance option: text message instructions directing consumers to “Text [command word] to [number] for bioengineered food information.”
- The court found that AMS’s addition of the text messaging option violated the Administrative Procedure Act by effectively amending the controlling statute, stating that the “separate text message disclosure option did nothing to fix the problem of inaccessible electronic disclosures. It merely provided a fourth disclosure option that regulated entities can select instead . . . .”
- The court remanded the regulation to AMS for reevaluation without vacatur of the optional text message disclosure regulation.





# Agricultural Labor – New York

- On September 30, 2022, the Commissioner of the New York State Department of Labor issued an [order](#) adopting the [findings and analysis](#) of the 2022 Farm Laborers Wage Board. Also [announced](#) by the Commissioner, the order reduces the overtime threshold for farm laborers from 60 hours to 40 hours per week, phased in over ten years with four-hour reductions every other year.
- Agricultural employers will be required to pay overtime wages for hours worked over the threshold. According to the Commissioner's order, the first reduction will begin on January 1, 2024, with a threshold of 56 hours and continue as follows: January 1, 2026—52 hours; January 1, 2028—48 hours; January 1, 2030—44 hours; and January 1, 2032—40 hours.





# Agricultural Labor – California

- On January 1, 2022, several provisions of California’s [AB 1066](#) became effective, granting [overtime pay](#) entitlements to agricultural workers.
- Under [860\(d\)\(1\)](#), agricultural employers with twenty-six or more employees must pay one and a half times an employee’s regular salary for hours worked in excess of eight hours per day or forty hours per week.
- Under [862\(a\)](#), employers must pay double the employee’s regular pay for hours worked in excess of twelve hours per day. These provisions will extend to employers with twenty-five or fewer employees on January 1, 2025. Under [860\(a\)\(2\)](#), employers with twenty-five or fewer employees must now pay overtime for hours worked in excess of nine and a half hours per day or fifty-five hours per week.



# Agricultural Labor – California

- On September 28, 2022, California Governor Gavin Newsom signed into law [AB 2183](#), which strengthens union activity protections for agricultural workers. The law allows for mail-in voting in agricultural labor elections and adds procedures for organizing through petitioning and submission of authorization cards, among other provisions.
- The law imposes 1) a \$10,000 per-violation penalty for an agricultural employer who engages in an “unfair labor practice,” including suppressing union voting or activity, 2) a \$25,000 penalty for wrongful termination of, or “other serious economic harm” to, an employee participating in union activity, and 3) personal liability on the “director or officer of an employer,” if deemed appropriate through an investigation by the California Agricultural Labor Relations Board.



# Agricultural Labor – Maine

- On January 7, 2022, Maine Governor Janet Mills vetoed bill L.D. 151 (H-679), titled “An Act To Protect Farm Workers by Allowing Them To Organize for the Purpose of Collective Bargaining.”
- The bill would have granted agricultural employees collective bargaining rights, required agricultural employers to bargain, and created procedures for contract mediation, complaint filing, hearings, and labor board enforcement. The law would have applied to all Maine farms with more than five employees.
- Governor Mills stated that the bill at issue “would subject [Maine] farmers to a complicated new set of laws that would require them to hire lawyers just to understand.” Further, Governor Mills stated that Maine’s agricultural sector, which is comprised largely of “small, family-oriented operations,” is different from other states where agriculture is controlled by “factory farms and large corporate interests,” and that legislation to protect Maine’s agricultural workers “should be tailored to the unique circumstances of [the state’s] agricultural sector,” which, Governor Mills wrote, “this bill is not.”



## New H-2A “Final Rule” Published in October 2022, Effective Nov. 14, 2022

On October 6, 2022, the U.S. Department of Labor (DOL) [announced](#) a [final set of revised regulations](#) amending the regulations for the H-2A non-immigrant agricultural worker [program](#). They were published in the Federal Register (FR) on **October 12, 2022**. (Total of 172 pages in the FR.)

The revised regulations were initiated by the last Presidential administration with a [proposed set on July 29, 2019](#), and an attempt was made to finalize them on January 15, 2021.

A footnote in the final regulations explains, “On January 20, 2021, however, the [DOL] withdrew this document from the Office of the Federal Register, prior to the document being made available for public inspection, for the purpose of reviewing issues of law, fact, and policy raised by the rule. Therefore, the unpublished draft rule (hereinafter referenced as “the January 2021 draft final rule”) never took effect.”

*For background on this process, see*

- [DOL Issues Final H-2A Rule](#), ALWR—Jan. 15, 2021
- [Department of Labor Proposes Changes to H-2A Program](#), ALWR Aug. 1, 2019
- [DOL Proposes Changes to H-2A Program](#), ALWR—July 18, 2019



# US DOL's big picture items in new regulations:

“The new rule includes the following important elements:

- **Improves safety and health protections** for workers housed in rental or public accommodations.
- **Streamlines and updates bond requirements for labor contractors** to better hold them accountable and clarifies joint-employer status for employers and associations.
- **Clarifies the housing certification process** to allow state and local authorities to conduct housing inspections.
- **Establishes explicit authority to debar attorneys and agents** for their misconduct, independent of an employer's violations.
- **Makes electronic filing mandatory** for most applications to improve employers' processing efficiency.
- Modernizes the methodology and **procedures for determining the prevailing wage** to allow state workforce agencies to produce more prevailing wage findings.

The changes in the final rule will also **support the enforcement capabilities** of the department's [Wage and Hour Division](#) to address H-2A program fraud and abuse that undermines workers' rights and hurts law-abiding employers.”



# Agritourism – Pennsylvania

- On March 5, 2022, the Pennsylvania Department of Agriculture’s (PDA) Bureau of Ride and Measurement Standards published an order ([52 Pa.B. 1362](#)) in the Pennsylvania Bulletin allowing hayride operators to register a hayride attraction under [7 Pa. Code § 139.4](#) without submitting written verification from a registered engineer as generally required under [7 Pa. Code § 139.4\(d\)\(7\)\(ii\)](#).
- The order establishes “a variance from the requirement that an owner or lessee of “hayride attractions” comply with specific provisions of the [Amusement Ride Inspection Act](#) (4 P.S. §§ 401—418) and [its attendant regulations](#) (7 Pa. Code Chapter 139).”



# Agritourism – Pennsylvania

- According to the order, PDA has had difficulties regulating hayride attractions under the existing registration and approval processes “because the wagon/trailer and the tow vehicle of a hayride are not designed or built with the specific intent to be used as an amusement ride.”
- PDA further noted that “[t]he nature of th[e] type of ride—farm equipment being used as a hayride—creates an undue hardship on owners and operators” in producing the required engineering analysis. PDA concluded that the requirement of written verification under seal of a professional engineer that the ride adheres to applicable design, load and safety requirements, regulations, and the American Society for Testing and Materials (ASTM) International F24 Committee Standards was “not appropriate or applicable to owners and operators that use farm equipment, e.g., a wagon/trailer and tow vehicle, for both agriculture purposes and as a hayride attraction.”
- The order states that hayride owners “shall comply with all other requirements under 7 Pa. Code § 139.4.”





# Solar Development – Pennsylvania

- On December 29, 2022, the Pennsylvania Department of Agriculture announced the department’s publication of guidance titled, “Farmland Considerations for Siting Grid-Scale Solar Panels.”
- Topics in the guidance include site selection, panel maintenance, and best practices for integrating solar panels with agricultural production. Additionally, the guidance addresses the impact of solar panel installations on a “farm’s enrollment in preferential tax programs, preserved farm status, local zoning, environmental permits, and conservation plans.”
- The new guidance supplements solar siting guidance documents or policy statements previously issued by Pennsylvania’s Department of Conservation and Natural Resource, titled “Conservation Considerations for Siting, Planning, and Maintaining Grid-Scale Solar Systems in Pennsylvania,” and Department of Environmental Protection, titled “Grid-Scale Solar Siting Policy Statement.”





# What is Right to Repair?

- Limit restrictions on the repair or maintenance of property
  - Allow owner to repair
  - Allow owner to choose who will repair
- Provide an affirmative duty upon manufacturer to provide materials to enable repair of property by its owner
  - Publish repair manuals
  - Sell parts, diagnostic software, and tools to enable repair



# Where is Right to Repair sought?

- Automobiles
- Computers
- Smartphones
- Consumer electronics
- Farm equipment



# Right to Repair in Agriculture

- American Farm Bureau Federation
  - Jan. 21, 2020 National Convention
    - Delegates expressed support for Right to Repair
    - Preferred method of implementation is agreement with equipment manufacturers.
    - Legislation could be supported if agreement isn't reached.



# Right to Repair in Agriculture

- Industry Initiatives
  - Association of Equipment Manufacturers (AEM) and Equipment Dealers Association (EDA) develop R2R Solutions – [www.R2RSolutions.org](http://www.R2RSolutions.org)
  - AEM and EDA developed Statement of Principles in 2018.
    - Will provide access to resources to end users, through authorized dealers, by Jan. 1, 2021



# Right to Repair in Agriculture

- Jan 8, 2023 – MOU between American Farm Bureau Federation and Deere & Co.
  - “Manufacturer shall ensure that any Farmer, including any staff or independent technician assisting a Farmer at a Farmer's request, and any Independent Repair Facility that provides assistance to Farmers, has electronic access on Fair and Reasonable terms to Manufacturer's Tools, Specialty Tools, Software and Documentation”
  - “AFBF agrees to encourage state Farm Bureau organizations to recognize the commitments made in this MOU and refrain from introducing, promoting, or supporting federal or state "Right to Repair" legislation that imposes obligations beyond the commitments in this MOU.”



# USMCA

## U.S. Initiates Formal USMCA Trade Dispute with Canada Over Tariff-Rate Quotas

On May 25, 2021, the Office of the U.S. Trade Representative [requested the initiation of a dispute settlement panel](#) under the terms of the United States-Mexico-Canada Agreement (USMCA) to challenge Canada's allocation of dairy tariff-rate quotas (TRQs), i.e. the ability to apply for reduced-tariff Canadian import of enumerated U.S. dairy products, to only processors and not retailers, an action which the United States alleges is in violation of the USMCA. Canadian processors would be direct competitors of U.S. dairy product manufacturers and unlikely to be interested in utilizing the TRQs set aside in the USMCA to import U.S dairy products. The trade dispute, the subject of a December 9, 2020, request for consultation made to Canada, will now be decided by formal USMCA dispute resolution procedures.



OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT



# USMCA

## Dispute Panel Finds Canada's Dairy TRQ Allocation to be in Violation of USMCA Agreement

Article 3.A.2.11(b): "A party administering an allocated TRQ shall ensure that ... (b) unless otherwise agreed by the parties, it does not allocate any portion of the quota to a producer group, condition access to an allocation on the purchase of domestic production, or limit access to an allocation to processors."

### [Final Panel Report](#) (Dec. 20, 2021)

*"... the Panel finds that Canada's practice of reserving TRQ pools exclusively for the use of processors is inconsistent with Canada's commitment in Article 3.A.2.11(b) of the Treat not to "limit access to an allocation to processors"*

### [Office of the U.S. Trade Representative, Press Release](#) (Jan. 4, 2022)

*"... the United States has prevailed in the first dispute settlement panel proceeding ever brought under the United States-Mexico-Canada Agreement (USMCA). A USMCA panel agreed with the United States that Canada is breaching its USMCA commitments by reserving most of the in-quota quantity in its dairy tariff-rate quotas (TRQs) for the exclusive use of Canadian processors"*



## Canadian Government’s Proposal for New Allocation and Administration Changes for Dairy TRQs

- [Public Consultations: CUSMA Dairy Tariff Rate Quotas \(TRQs\) Panel Report Implementation – Proposed Allocation and Administration Policy Changes](#)

### Allocation Policy Changes

CUSMA TRQ	Current Policy	Proposed Policy
<b>Milk</b>	<p>85% is allocated to processors on a market share basis, for milk in bulk (not for retail sale) to be processed into dairy products used as ingredients for further food processing.</p> <p>15% is allocated to distributors on an equal share basis.</p>	<p>85% is allocated to processors and distributors on a market share basis (using one market share calculation for all applicants) for milk in bulk (not for retail sale) to be processed into dairy products used as ingredients for further food processing.</p> <p>15% is allocated to processors and distributors on a market share basis (using one market share calculation for all applicants) for any milk (no end-use requirement).</p> <p>Applicants may apply for both pools.</p>





## Canadian Proposal Generates Harsh Response from U.S. Dairy Community

- [National Milk Producers Federation and U.S. Dairy Export Council](#), Press Release (Mar. 3, 2022)
  - *“All that American dairy farmers want is fair and good-faith implementation of USMCA’s dairy provisions. That doesn’t seem like a high bar, yet it appears to be insurmountable for Canada based on yesterday’s proposed dairy TRQ scheme changes ... We urge the administration to demand that Canada go back to the drawing board until it can genuinely deliver on providing the U.S. dairy industry the full benefit of USMCA.”*
- [International Dairy Foods Association](#), Press Release (Mar. 4, 2022)
  - *“The plan makes true access to the Canadian market unattainable through a series of gimmicks. It comes as no surprise that Canada is unwilling to reform their trade-distorting practices on dairy.”*
- [Edge Dairy Farmer Cooperative](#), Press Release (Mar. 4, 2022)
  - *“Excluding retailers from the new proposal will continue to keep out an important and growing segment of U.S. dairy. We urge the U.S. government to continue to work with Canada in seeking meaningful reforms that bring our important trading partner into compliance with its USMCA obligations”*



# Statement by Minister Ng on dairy tariff rate quota policies under CUSMA

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From: [Global Affairs Canada](#)

## Statement

May 16, 2022 - Ottawa, Ontario - Global Affairs Canada

The Honourable Mary Ng, Minister of International Trade, Export Promotion, Small Business and Economic Development, today issued the following statement regarding the publication of Canada's new dairy tariff rate quota (TRQ) policies under the Canada-United States-Mexico Agreement (CUSMA):

"Following public consultations from March 2 to April 19, Canada has published new CUSMA dairy TRQ allocation and administration policies. The CUMSA dispute settlement panel's report ruled in favour of Canada in a majority of the claims. The new policies address the sole finding of a CUSMA dispute panel that Canada's practice of reserving TRQ pools exclusively for the use of dairy processors is inconsistent with the Agreement. The new policies end the use of processor-specific TRQ pools.



## Statement from U.S. Trade Representative Katherine Tai

May 16, 2022

WASHINGTON – United States Trade Representative Katherine Tai released the following statement in response to the Canadian government’s publication of new dairy tariff-rate quota (TRQ) policies:

“The United States is deeply disappointed by Canada’s announcement today regarding its dairy tariff-rate quotas. Our top priority remains ensuring that U.S. workers, producers, farmers, and exporters benefit from the market access they were promised under the United States – Mexico – Canada Agreement – and I communicated this directly to Canada before it published today’s notices. To date, we have not seen the promises by Canada in the USMCA fully realized. We will evaluate all options, and work with stakeholders and members of Congress, as we determine our next steps in the coming days.”



**OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE**  
EXECUTIVE OFFICE OF THE PRESIDENT



# Canada Dairy Tariff Rate Quota

- On Dec 20, 2022, US Trade Representative requested new dispute settlement consultations on Canada's TRQ allocation. US challenge now includes use of market-share approach to establish allocations.
- On November 7, 2022, New Zealand's Ministry of Foreign Affairs and Trade [submitted formal notification to Canada](#) requesting the establishment of a panel to hear New Zealand's challenge to Canada's practice of reserving its dairy tariff rate quotas (TRQs) for Canadian dairy processors, which New Zealand claims violates the [Comprehensive and Progressive Agreement for TransPacific Partnership \(CPTPP\)](#).



# New Zealand – GHG Emissions

- On October 11, 2022, New Zealand’s Ministry for the Environment [announced](#) the opening of the consultation period for the government’s proposed [agricultural emissions pricing scheme](#). The proposed “farm-level, split-gas” assessment would require farmers to report and pay a tax on their farm’s emissions beginning in 2025, determined by their farm size, number of livestock, and nitrogen fertilizer use. According to the proposal, revenues from the emissions tax would fund emissions-reduction and carbon sequestration incentive payments. The consultation period closed on November 18, 2022.





# Netherlands – Government Nitrogen Policy





# USDA Climate-Smart Agriculture

- On February 7, 2022, U.S. Department of Agriculture (USDA) Secretary Tom Vilsack announced the agency's new Partnerships for Climate-Smart Commodities program, which will provide up to \$1 billion to support pilot projects that create market opportunities for U.S. "climate-smart commodities," which must be "produced using agricultural (farming, ranching or forestry) practices that reduce greenhouse gas emissions or sequester carbon." Such practices include—but are not limited to—cover crops; low-till/no-till; nutrient and manure management; wetland and grassland management; reforestation and sustainable forest management; carbon sequestration planting; on-site carbon storage management; prescribed grazing and climate-smart pasture practices; soil quality maintenance; and soil amendments such as biochar.
- Projects should 1) incentivize producers and landowners to implement climate-smart practices, 2) measure, quantify, and verify the carbon and emissions benefits of the implemented practices, and 3) cultivate markets and promote the climate-smart commodities.



# USDA Climate-Smart Agriculture

- On September 14, 2022, the U.S. Department of Agriculture (USDA) [announced](#) \$2.8 billion for [70 selected projects](#), ranging from \$5 million to \$100 million, from the first wave of funding under the [Partnerships for Climate-Smart Commodities](#) program.
- Although USDA initially allotted \$1 billion for the program, the agency states that the strength of the first-round proposals—more than 450 projects submitted by more than 350 entities from every state as well as tribal lands, D.C., and Puerto Rico—led the agency to increase the funding.





# USDA Organic

- On August 22, 2022, the U.S. Department of Agriculture (USDA) announced \$300 million for a new [Organic Transition Initiative](#) to provide mentoring, direct assistance, and supply chain support for farmers transitioning to organic production. As a prerequisite to organic certification, lands generating organic-certified crops must be free from prohibited inputs, such as synthetic pesticides, for 36 months, during which time “farmers face challenging technical, cultural, and market shifts,” said USDA Secretary Tom Vilsack.



# USDA Organic

- On April 5, 2022, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) published a final rule in the Federal Register amending the Origin of Livestock requirements for organic dairy ([87 FR 19740](#)).
- As [announced](#) by AMS, the National Organic Program (NOP) final rule creates a one-time exception for transitioning dairy cattle to the otherwise-applicable general rule that dairy cattle must be under continuous organic management from the last third of gestation onward. The exception allows a one-time option for the transitioning producer to manage cattle organically for a single twelve-month period, after which all exceptions are exhausted for that producer. All transitioning animals must end their transition period at the same time and an operation may not transition additional nonorganic animals once it has completed the twelve-month organic transition.
- The final rule became effective on June 6, 2022, and certified organic dairy operations must be in compliance with the rule by April 5, 2023.



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