



PennState Law

Center for Agricultural
and Shale Law

2024 Ag Law Year in Review

Pennsylvania Agricultural Law Symposium

September 19, 2024

1:00pm

Audry Thompson & Chloe Marie





2024 Legal Developments—Topics

- Animal Welfare
- Meat Labeling/Cultivated Meat
- Right to Farm
- Ag-Gag Statutes
- Foreign Land Ownership
- Food Safety—Cottage Food & Raw Milk
- Dairy /FMMO
- Nutrition Programs
- USDA "Socially Disadvantaged" Relief Enjoined
- Labor/H-2A Rule
- Waters of the United States
- Pesticides
- SCOTUS/Loper Bright
- Selected PA Statutes



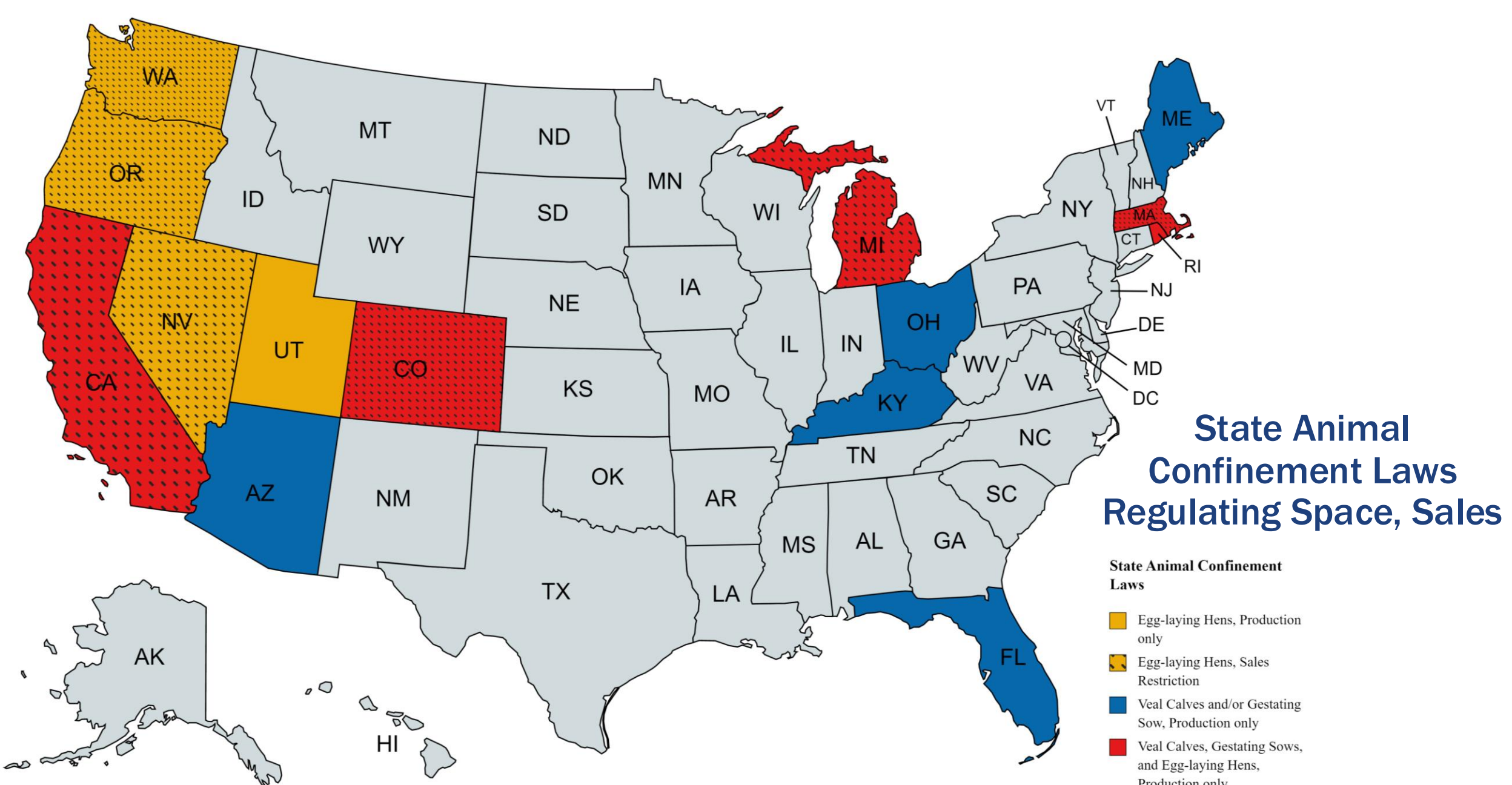
Animal Welfare—Animal Confinement





Animal Welfare—CA Proposition 12

- January 1, 2024: California's Proposition 12 fully effective
 - *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023)
 - Egg laying hens: cage-free
 - Veal calves: 43 sq. Ft.
 - Breeding pigs: 24 sq. Ft.
 - *Iowa Pork Producers v. Bonta*, No. 22-55336 (9th Cir. June 25, 2024)
 - Upheld Dist. Court dismissal



State Animal Confinement Laws Regulating Space, Sales



Animal Welfare—Additional State Action, Litigation

- Rhode Island
 - HB-7946A, June 24, 2024
 - Delayed implementation of confinement standards until 2030
- Massachusetts—Question 3
 - *Triumph Foods, LLC v. Campbell*, No. 1:23-cv-11671 (D. Mass)
 - Feb. 5, 2024: "slaughterhouse exemption" violated Commerce Clause
 - July 22, 2024: Q3 not preempted by FMIA



Animal Welfare—CA Proposition 12

- California's Animal Care Program in effect Jan. 1, 2024
 - Third-Party Certification required
- Seth Meyer, USDA Chief Economist (Sept. 16, KC Ag Outlook Forum):
 - "Proposition 12 . . . has caused a 19% increase in retail costs and a 21% increase in wholesale costs."

CDFA, Animal Care Program <https://www.cdfa.ca.gov/AHFSS/AnimalCare/>

Certifying Agents <https://www.cdfa.ca.gov/AHFSS/AnimalCare/AccreditedCertifyingAgents.html>

Prop 12 Causes Some Food Prices in CA, Brownfield <https://www.brownfieldagnews.com/news/prop-12-causes-some-food-price-increases-in-ca/>



Animal Welfare—Farm Bill?

"Farm, Food, and National Security Act of 2024"

- Sec. 12007: "Ensuring the Free Movement of Livestock-derived Products in Interstate Commerce"
 - "[N]o State . . . may enact or enforce . . . as a condition for sale or consumption, any condition or standard of production on products derived from covered livestock not physically raised in such State . . . in addition to, or different from, the conditions or standards of production in the State in which the production occurs."



Meat Labeling/Cultivated Meat





Cultivated Meat—Prohibitions

- Florida
 - May 1, 2024—[SB 1084](#)
 - Violation: second-degree misdemeanor, punishable by a fine up to \$500 or imprisonment up to 60 days
 - Challenge: UPSIDE FOODS INC v. SIMPSON, No. 4:24-cv-00316 (N.D. Fla.) filed Aug. 12, 2024
- Alabama
 - May 7, 2024—[SB 23](#)
 - Violation: Class C misdemeanor punishable by a fine up to \$500 or imprisonment up to 90 days
 - Allows state-sponsored research



Cultivated Meat—Introduced Legislation

Failed to Pass a Single Chamber:

- Kentucky: [HB 597](#) (Feb. 20, 2024)
- New York: [AB A10431](#) (May 24, 2024)
- Tennessee: [HB 2860](#) & [SB 2870](#) (Feb. 1, 2024)
- Texas: [HB 158](#) (Oct. 16s, 2023)

See also Stone, Emily. "Cell Cultured Meat." Southern Ag Today 4(37.5). September 13, 2024.

<https://southernagtoday.org/2024/09/12/cell-cultured-meat/>

"Cell-Cultured Meat Updates: state bans, labeling requirements, and regulatory clarifications," Nat'l Agric. Law Ctr. (Jun. 6, 2024)

<https://nationalaglawcenter.org/cell-cultured-meat-updates-state-bans-labeling-requirements-and-regulatory-clarifications/>



Cultivated Meat—Introduced Legislation

Passed through 1 Chamber:

- Arizona: [HB 2121](#) (Jan. 16, 2024)

Pending:

- Michigan: [HB 5787](#) (June 6, 2024) & [HB 5879](#) (June 27, 2024)
- Pennsylvania: [HB 2441](#) (June 21, 2024)



Cultivated Meat—Availability

- Not available for sale
- Upside Foods
 - June 2023: Approved for production by USDA/FDA
- Meatly
 - July 10, 2024: Approved to sell pet food in UK
- Gourmey
 - July 26, 2024: Announced filed applications in U.S., Singapore, UK & EU



Meat Labeling

- Iowa [SF 2391](#) (May 15, 2024)
 - “manufactured-protein food products” are misbranded if labeled with an “identifying meat term” unless the label also contains sufficient qualifying language such as “cell-cultured,” “insect-based,” “plant-based,” or “egg-free.”



Right to Farm





Right to Farm

- West Virginia: [SB 171](#) (Feb. 23, 2024)
 - prohibits county commissions from enacting any law “that contravenes or is stricter than any state law . . . relating to agricultural operations”
 - exempts “dwellings on agricultural lands or operations” from county commissions’ authority to regulate repair



Right to Farm

In the Matter of Cheryl Lewis, et al., C-20-CV-22-000143.

Maryland Court of Appeals, May 30, 2024:

- MD's Right to Farm law protects producers if land "used continuously for some type of agricultural operation for one year"
- "[A]gricultural land may change the modality of its operations without losing liability protection."



Ag-Gag Statutes





Ag-Gag—Iowa

Animal Legal Defense Fund v. Reynolds (8th Cir.) Jan. 8, 2024

- No. [22-1830](#): Iowa's "Agricultural Production Facility Trespass" law (Iowa Code [§ 717A.3B](#))
 - "Intent" not "viewpoint-based speech restriction"
- No. [22-3464](#): "electronic surveillance" provision of Iowa trespassing law (Iowa Code [§ 727.8A](#))
 - Law does not "substantially burden" speech



Ag-Gag—Kentucky

- Kentucky [SB 16](#), "Relating to Agricultural Key Infrastructure Assets"
 - Veto override—Passed April 12, 2024
 - Establishes certain agricultural/food facilities as "key infrastructure assets"
 - Prohibits operation of unmanned aircraft, recording



Ag-Gag—North Carolina

- North Carolina Property Protection Act ([N.C. Gen. Stat. § 99A-2](#)), Enacted 2015
- *People for the Ethical Treatment of Animals v. Stein*,
 - No. [1:16-cv-00025](#) (M.D.N.C.), affirmed, No. [20-1776](#) (4th Cir. 2023), cert. denied, No. [22-1150](#) (2023)
 - May 17, 2024: M.D. N.C. approved \$884,987 in attorneys' fees for Plaintiffs



Foreign Land Ownership





Foreign Land Ownership Laws

- Missouri: [E.O. 24-01](#) (Jan. 2, 2024)
- South Dakota: [HB 1231](#) (Mar. 4, 2024)
- Idaho: [HB 496](#) (Mar. 11, 2024)
- Indiana: [HB 1183](#) (Mar. 15, 2024)
- Utah: [HB 516](#) (Mar. 21, 2024)
- Iowa: [SF 2204](#) (Apr. 9, 2024)



A Survey of Foreign Land Ownership in the Mid-Atlantic Region





Foreign Land Ownership—Pennsylvania

- **Definition of agricultural land:** land that can be used for crop, timber, livestock, poultry, dairy products, and horticulture production [68 Pa. Stat. Ann. § 47]
- **Foreign ownership allowed** [68 Pa. Stat. Ann. § 41]
- **Restrictions for non-residents & foreign governments:** [68 Pa. Stat. Ann. § 41, 43, 47]
 - **Acreage limit:** cannot purchase more than 100 acres
 - **Exceptions:** inheritance, collateral, legal proceedings (such as debt collection or foreclosure)
 - Exclude treat—protected land
 - Resident aliens who become U.S. citizens have the same rights as U.S. citizens
- **Forfeiture:** land acquired or held unlawfully is subject to government seizure [68 Pa. Stat. Ann. § 46]



Foreign Land Ownership—Pennsylvania

Recent legislative activity—HB 1995 (introduced in February 2024)

- would prohibit certain foreign nationals from countries of concern (China, Russia, etc.) from acquiring agricultural land in Pennsylvania; target individuals from countries that do not allow U.S. citizens to purchase farmland.



Foreign Land Ownership—Other Mid-Atlantic States

States allowing foreign agricultural land ownership

- **Delaware** [Del. Code Ann. tit 25 §§ 305, 306, 308]
- **New Jersey**—no restrictions for “alien friends” [N.J. Stat. Ann. § 46:3-18]
- **West Virginia** [No explicit laws]



Foreign Land Ownership—Other Mid-Atlantic States

States prohibiting/restricting foreign agricultural land ownership

- **Virginia**

- prohibits “foreign adversaries” from acquiring/owning agricultural land [Va. Code Ann. §§ 55.1-507, 508];
- requires annual report on foreign land ownership [Va. Code Ann. § 55.1-509]



Foreign Land Ownership—Other Mid-Atlantic States

States with pending changes

- **Maryland**—no restrictions on foreign ownership, except for enemies of the U.S. [Md. Code Ann., Real Prop. § 14-101]
 - SB 392, HB 616 (introduced in January 2024) would restrict adversarial foreign governments
 - HB 885 (introduced in February 2024) would target Chinese nationals, businesses, & affiliates
- **New York**—no restrictions on foreign ownership [N.Y. Real Prop. Law § 10]
 - A 6444, S 6583 (reintroduced in January 2024) would restrict “foreign adversaries” from acquiring/transferring any interest in agricultural land within the state



Cottage Food Laws





Cottage Food Laws

- Virginia: [HB759](#) (Mar. 25, 2024)
 - Increases gross sales cap for pickles & acidified vegetable from \$3,000 to \$9,000
- Arizona: [HB 2042](#) (Mar. 29, 2024)
 - defines “cottage food products” as “non-hazardous food items prepared in a home kitchen for commercial purposes” and establishes “necessary measures for food preparation and sale”
- Illinois: [SB 2617](#) (Aug. 9, 2024)
 - allows counties without local health departments to contract with adjacent county departments to register cottage food operations



A Survey of Cottage Food Laws in the Mid-Atlantic Region





Cottage Food Regulations by State

Pennsylvania [Pa Code. Title 7 § 46.212]

- **Registration requirement:** food prepared in a private home must be registered with PDA to be sold in retail food facilities
- **Exemptions:** non-potentially hazardous foods can be sold by certain nonprofits without licensing or inspection.
- **Consumer notification:** consumers must be informed if food is made in private homes that are not licensed or inspected.



Cottage Food Regulations by State

Delaware [3 Del. Admin. Code 101-7.0; 16 Del. Admin. Code §§ 4458A]

- **Allowed sales:** cottage food establishments can sell homemade bakery items, jams, jellies, preserves, and candy.
- **Licensing requirement:** farms processing non-potentially hazardous food need an On-Farm Home Food Processing License.

Maryland [Md. Code, Health-Gen. § 21-301, 21-330.1; COMAR 10.15.03]

- **Licensing requirement:** a license is required for home-based producers if annual sales exceed \$50,000.



Cottage Food Regulations by State

New Jersey [N.J. Admin. Code § 8:24-11.1]

- **Permit requirement:** home-based food producers need a cottage food operator permit and must meet certain packaging and labeling standards

New York [1 CRR-NY-276.3, 276.4]

- **Exemption:** Home processors can sell home-processed foods without license if they meet certain labeling and packaging requirements



Cottage Food Regulations by State

Virginia [Va. Code Ann. § 3.2-5130]

- **Allowed foods:** non-perishable items (e.g., candies, jams, pickles, honey) can be sold without a permit under specific conditions.
- **Sales limits:** restrictions on quantities, such as honey (up to 250 gallons annually) and pickles (sales under \$9,000 annually)

West Virginia [W. Va. Code § 19-35-1 et seq.; W. Va. Code R. § 64-102-2.3]

- **Registration requirement:** farmers must register at their local health department to sell farm and home-made food products at markets, except for non-potentially hazardous foods.



A Survey of Raw Milk Laws in the Mid-Atlantic Region





Raw Milk Laws by State

States allowing raw milk sales

- **Pennsylvania** allows raw milk sales with a PDA permit [7 Pa. Code § 59a.402(a)]; raw milk producers can also sell standardized cheese from raw milk with a specific permit [7 Pa. Code § 59a.402(b)]
 - Proposed rule change [54 Pa.B. 3318] (introduced June 15, 2024) would allow raw milk producers to sell butter made from raw milk.
- **New York** allows raw milk sales with a permit from the NY Commissioner of Agriculture and Markets [2 VAC5-490-75]
- **West Virginia** allows raw milk sales with strict labeling requirements [W. Va. Code § 19-1-7]



Raw Milk Laws by State

States with pending changes

- **Delaware**—raw milk sale is currently prohibited for human consumption
 - SB 273 would allow direct sales with a permit
 - Passed by

States prohibiting raw milk sales for human consumption

- **Maryland** [Md. Code, Health-Gen. § 21-434]
- **New Jersey** [N.J. Rev. Stat. § 24:10-57.17]
- **Virginia** [2 VAC5-490-75]



Federal Milk Marketing Order (FMMO) Reform

See also America's dairy farms are disappearing, down 95% since the 1970s – milk price rules are one reason why, The Conversation <https://theconversation.com/americas-dairy-farms-are-disappearing-down-95-since-the-1970s-milk-price-rules-are-one-reason-why-237439>





FMMO Review & Proposed Changes

[Proposed Rule; Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders; 89 FR 57580 \(July 15, 2024\)](#) Proposed changes:

- **Milk composition percentages:** increase standard levels to 3.3% protein, 6% other solids, and 9.3% nonfat solids
- **Cheese pricing:** switch from averaging cheddar cheese prices in 40-lb blocks and 500-lb barrels to using only 40-lb blocks
- **Make allowances:** update allowances for processing costs and adjust butterfat recovery rate to 91%
- **Class I pricing:** revert to using the "higher of" Class III or Class IV prices for setting the base price for Class I skim milk; introduce a new adjustment for Extended Shelf Life (ESL) milk products
- **Location-based adjustments:** maintain base adjustment at \$1.60 but update regional values to better reflect current dairy industry conditions



Nutrition Programs





Nutrition Programs

- WIC Final Rule ([89 FR 28488](#)) (April 18, 2024)
 - Allows nut & seed butter as substitute for peanut butter
 - Reduces monthly juice allowance
 - Reduces maximum monthly milk allowances
 - Only unflavored milk
 - Allows plant-based milk alternatives
- Child Nutrition Programs Final Rule ([89 FR 31962](#)) (April 25, 2024)



Nutrition Programs

- Child Nutrition Programs Final Rule ([89 FR 31962](#)) (April 25, 2024)
 - Limits added sugars & sodium
 - Reduces amount of non-domestic food a school may purchase
 - Keeps milk options as fat-free and low-fat



Strickland, et al. v. USDA

'Socially Disadvantaged' Consideration Enjoined from USDA Emergency Relief Program

- On June 7, 2024, N.D. Tex., No. [2:24-cv-00060](#)
 - Complaint (March 29, 2024)—seeking declaratory and injunctive relief, and, in the alternative, for partial vacatur and remand of USDA ERP, ELRP, and CFAP programs.
 - Motion for preliminary injunction (April 5, 2024)—the use of race and gender for eligibility violates the Fifth Amendment and Administrative Procedure Act (APA)
 - Memorandum opinion and order (June 7, 2024)—found that USDA’s justification for targeted relief is too vague and unsupported by specific evidence of past discrimination; the relief approach is not “narrowly tailored,” being overly broad and excluding other potentially eligible groups.
 - Plaintiffs’ motion for summary judgment (August 28, 2024)—requested a summary judgment for a ruling in their favor.



Labor





Labor—Independent Contractor Rule

- Jan. 10, 2024 ([89 FR 1638](#))
- Replaces 2021 Rule "core factors"
- Reinstates six-factor "totality of circumstances" economic reality test:
 1. opportunity for profit or loss
 2. financial stake & nature of worker resources a worker
 3. permanence of the work relationship
 4. employer control
 5. whether the work is essential to the employer's business
 6. worker's skill and initiative



Challenge—Independent Contractor Rule

Coalition for Workforce Innovation v. Walsh, No. [1:21-cv-00130](#) (E.D. Tex) filed Mar. 26, 2021

- Jan. 7, 2021: "Core Factor" rule published ([86 FR 1168](#))
- Jan. 20, 2021: Biden takes office
- Mar. 4, 2021: New admin. delays CF rule ([86 FR 12535](#))
 - **Mar. 26, 2021: *Coalition* case filed challenging delay**
- May 6, 2021: New admin. withdraws CF ([86 FR 24303](#))
 - **May 13, 2021: *Coalition* Plaintiffs amend complaint to include rule withdrawal**



Challenge—Independent Contractor Rule

Coalition for Workforce Innovation v. Walsh, No. [1:21-cv-00130](#) (E.D. Tex) filed Mar. 26, 2021

- Mar. 14, 2022: E.D. Tex vacates delay & withdrawal, 2021 "Core Factor" rule effective
- Jan. 10, 2024: 6-Factor rule published
- Feb. 19, 2024: 5th Circuit vacates E.D. Tex action, allows plaintiffs to amend complaint
- Mar. 5, 2024: Plaintiffs amended complaint
 - Rule issued arbitrarily & capriciously, violation APA & RFA



Labor—H-2A Rule "Improving Protections for Workers in Temporary Agricultural Employment in the United States"

- April 29, 2024 ([89 FR 33898](#))
- Strengthens collective bargaining protections for H-2A workers:
 - Prohibits H-2A employers from discriminating against a worker because that worker has “engaged in activities related to self-organization” or “refused to attend an employer-sponsored meeting . . . if the primary purpose of the meeting is to communicate the employer’s opinion concerning any [protected] activity.”



Challenge—H-2A Rule

State of Kansas v. DOL, No. [2:24-cv-00076](#) (S.D. Ga) filed June 10, 2024

- Filed by 17 states (& producer assoc).: KS, GA, SC, AR, FL, ID, IN, IA, LA, MO, MN, NE, ND, OK, TN, TX, VA
- **Aug. 26, 2024: Rule enjoined in the 17 states**
 - Rule violates NLRA



Challenge—H-2A Rule

- Sept. 10, 2024: DOL announces revised transition schedule for H-2A rule, separate processing of H-2A employee requests
- 2 more suits filed against rule in last week:
 - *North Carolina Farm Bureau Federation, Inc. et al v. United States Department of Labor et al*, Docket No. 5:24-cv-00527 (E.D.N.C. Sep 13, 2024)
 - *Barton et al v. United States Department of Labor et al*, Docket No. 5:24-cv-00249 (E.D. Ky. Sep 16, 2024)
 - NCAE Assoc. Standing: plaintiffs in other 33 states



Waters of the United States (WOTUS)





Revised Definition of WOTUS

- Revised Definition of “Waters of the United States;” Final Rule, 88 FR 3004 (January 18, 2023)
 - For more information about the content of the Final Rule, please refer to our *Ag Law in the Spotlight – “Waters of the United States,” An Overview of the New Rule*
 - For more information about the WOTUS regulatory actions, please refer to our [Waters of the United States issue tracker](#)
- Revised Definition of “Waters of the United States;” Conforming; Final Rule, 88 FR 61964 (September 8, 2023)
 - The revised rule amended the WOTUS definition to conform with the Supreme Court decision in *Sackett v. EPA*.
 - Key changes—please refer to the [U.S. EPA Factsheet for the Final Rule: Amendments to the Revised Definition of “Waters of the United States” \(August 2023\)](#)



Current Challenges to the WOTUS Definition

- ***West Virginia, et al. v. EPA, et al.*, USDC North Dakota, No. 3:23-cv-32**
 - Initial complaint (February 16, 2023)—seeking vacatur of the revised WOTUS definition.
 - Amended complaint (November 13, 2023)—seeking vacatur of the revised WOTUS definition as amended in September 2023.
 - Plaintiff states’ motion for summary judgment (February 2024)—argued that the EPA and the Corps “misapplied” the *Sackett* precedent in the amended regulations.
 - Federal defendants’ cross-motion for summary judgment (April 2024)—argued that the plaintiffs lack standing because they present different claims, allege distinct injuries, and seek different relief, and that the case is not ripe for review because the issues have not yet occurred.



Current Challenges to the WOTUS Definition

- ***Commonwealth of Kentucky, et al. v. U.S. EPA, et al.*, USDC E.D. Kentucky, No. 3:23-cv-7; Sixth Circuit, No. 23-5343**
 - Complaint (February 2, 2023)—seeking vacatur of the revised WOTUS definition.
 - Order (March 31, 2023)—the federal district court denied the plaintiffs’ request for a preliminary injunction, citing a lack of standing and ripeness due to no imminent injury; dismissed the case without prejudice for lack of jurisdiction.
 - Opinion (July 29, 2024)—the Sixth Circuit Court vacated the district court’s ruling and remanded the case for further proceedings.
 - *“During the pendency of this appeal, the Agencies amended the Rule at issue in this case. **The amendment, borne out of the Supreme Court’s decision in Sackett v. EPA, 598 U.S. 651 (2023), alleviated the vast majority of Plaintiffs’ alleged harms and put the viability of this suit into question.** On remand, Plaintiffs must file notice of their intent to file a new suit, amend their present complaint, or dispense with this litigation altogether.”*



Current Legal Challenges to the WOTUS Definition

- ***State of Texas, et al. v. U.S. EPA, et al.*, USDC S.D. Texas, No. 3:23-cv-17**
 - Complaint (January 18, 2023)—seeking vacatur of the revised WOTUS definition.
 - Second amended complaint (November 13, 2023)—seeking declaratory judgment and remand of the amended WOTUS definition.
 - Plaintiff states' motion for summary judgment (February 2, 2024)—argued that the amended definition failed to comply with the *Sackett* ruling.
 - Federal defendants' cross-motion for summary judgment (April 2, 2024)—argued that the plaintiffs have not shown concrete harm, making the lawsuit unripe.



Chlorpyrifos & Dicamba: A Tale of Bans, Reinstatements, and Vacaturs





Chlorpyrifos

- Final Rule; Chlorpyrifos; Reinstatement of Tolerances, 89 FR 7625 (February 5, 2024)
 - The EPA reinstated previously revoked chlorpyrifos tolerances for certain commodities in response to the Eighth Circuit Court’s decision in *RRVSG, et al. v. Michael Regan, et al.*, No. 22-1422.
 - Eighth Circuit Court’s Opinion (November 2, 2023)—found that the EPA improperly revoked all tolerances for the pesticide chlorpyrifos by failing to consider all available options.
 - Final Rule; Chlorpyrifos; Tolerance Revocations, 86 FR 48315 (August 30, 2021)—the EPA put a ban on all chlorpyrifos tolerances for use on food crops, effective February 8, 2022.



Dicamba

- On February 6, 2024, the U.S. District Court for the District of Arizona vacated the five year- registrations granted in October 2020 for three dicamba products (XtendiMax, Engenia, and Tavium) for over-the-top (OTT) use on dicamba-tolerant soybean and cotton in *Center for Biological Diversity, et al. v. U.S. EPA, et al.*, No. 4:20-cv-555.
- On February 14, 2024, the EPA issued an existing stocks order for the three dicamba products that had been previously registered.
 - As of February 6, 2024, manufacturers are prohibited from selling or distributing these dicamba products, except for proper disposal or export.
 - Distributors, retailers, and commercial applicators who already possessed existing stocks on that date were permitted to use, sell, or distribute them until their specific end dates, following original product labels, with a phased-out use between June 12 and July 30, 2024, depending on the state and crop.



Glyphosate—Circuit Split on FIFRA Preemption

***David Schaffner, Jr. v. Monsanto Corp*, No. [22-3075](#) (3rd Cir.)**

- Aug. 15, 2024: FIFRA preempts state-law duty to include cancer warning on label
 - State law requirements "different" from FIFRA

***John Carson v. Monsanto Company*, No. [21-10994](#) (11th Cir.)**

- Feb. 5, 2024: state law duty to warn not preempted by FIFRA
 - No evidence to suggest that EPA would not approve changing the label

***Hardeman v. Monsanto*, No. [19-16636](#) (9th Cir.)**

- May 2021: No preemption



Loper Bright = Courts > Agencies





Loper Bright Enterprises v. Raimondo

- On June 28, 2024, the U.S. Supreme Court [overruled](#) the *Chevron* doctrine in *Loper Bright Enterprises v. Raimondo*, No. 22-451.
- **The *Chevron* doctrine**
 - Established in [Chevron U.S.A. Inc. v. Natural Resources Defense Council](#), 467 U.S. 837 (1984)
 - *Chevron* requires a court to defer to agency interpretations for ambiguous laws; two-step process to follow when evaluating an agency’s interpretation of a statute.
- **The *Loper Bright* decision**
 - *“The Framers [of the Constitution] anticipated that courts would often confront statutory ambiguities and **expected that courts would resolve them by exercising independent legal judgment.** Chevron gravely erred in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency’s own power—perhaps the occasion on which abdication in favor of the agency is least appropriate.”*



Loper Bright Aftermath

Foster v. USDA, No. 23-133 (U.S.); *Foster v. USDA*, No. 22-2729 (8th Cir.)

- July 2, 2024: SCOUTUS vacated & remanded to 8th Cir.
 - 8th Cir. had deferred to USDA's reasonable interpretation of Swampbuster Act's review provision & upheld agency review regulation



SCOTUS Cases to Watch

- *City and County of San Francisco v. Environmental Protection Agency*, No. 23-753, appealed from 9th Cir.
- *Royal Canin U.S.A. v. Wullschleger*, No. 23-677, appealed from 8th Cir.
- *E.M.D. Sales, Inc. v. Carrera*, No. 23-217, appealed from 4th Cir.



SCOTUS Cases to Watch

City and County of San Francisco v. Environmental Protection Agency, No. 23-753, appealed from 9th Cir.

- "Does the Clean Water Act allow the Environmental Protection Agency (or an authorized state) to impose generic prohibitions in National Pollutant Discharge Elimination System permits that subject permit-holders to enforcement for violating water quality standards without identifying specific limits to which their discharges must conform?"



SCOTUS Cases to Watch

Royal Canin U.S.A. v. Wullschleger, No. 23-677, appealed from 8th Cir.

- "Can a plaintiff whose state-court lawsuit has been removed by the defendants to federal court seek to have the case sent back to state court by amending the complaint to omit all references to federal law?"



SCOTUS Cases to Watch

E.M.D. Sales, Inc. v. Carrera, No. 23-217, appealed from 4th Cir.

- "Is the burden of proof that employers must satisfy to demonstrate the applicability of a Fair Labor Standards Act exemption a mere preponderance of the evidence or clear and convincing evidence?"



The Pennsylvania Carbon Sequestration Act





Key Provisions

- On July 17, 2024, Pennsylvania Governor Josh Shapiro signed SB 831 into law, now officially known as the Carbon Sequestration Act, effective immediately. The legislation provides a legal and regulatory framework for carbon sequestration projects in the state.
- **Pore space definition and ownership**
 - Defines “pore space” as subsurface areas—natural or man-made—for carbon storage
 - Pore space ownership generally transfers with surface property unless excluded
 - Pore space is not included with mineral rights unless explicitly stated
- **Priority of rights**
 - Mineral rights take precedence over pore space rights in cases of overlap
- **Transfer of pore space rights**
 - Transfer agreements must specify surface rights and pore space location
 - Surface area description only imply inclusion of all subsurface space unless stated otherwise



Key Provisions

- **Restrictions**
 - The government cannot lease or sell pore space beneath public land without involving the public
 - Pore space beneath the following cannot be used for underground storage unless explicitly authorized by the government: (1) government-owned land, (2) land with conservation easements, (3) land owned by certain charities, and (4) land acquired for open space preservation
- **Requirements for Carbon Sequestration Facility Operations**
 - Operators need majority approval (60-75%) from pore space owners to use pore space
 - Unreachable owners are assumed to consent
 - Operators must comply with specific regulations, including obtaining a Class IV permit
 - Operators must monitor seismic activity near the storage facility
 - Operators must pay a fee per ton of CO₂ injected, which support the Carbon Dioxide Storage Facility Fund. This fund is used for managing carbon storage projects and includes a restricted account dedicated to the long-term monitoring and management of closed storage facilities.



Thank You!

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