

Top Legal & Policy Issues for Small & Medium Sized Farms

- **Food Safety Modernization Act**
 - Will I get inspected if I'm exempt?
 - FDA's new Proposed Traceability Rule
 - Help Farms Navigate these Rules!
- **COVID-19**
 - COVID-19 Relief Options
 - Small Meat Processing

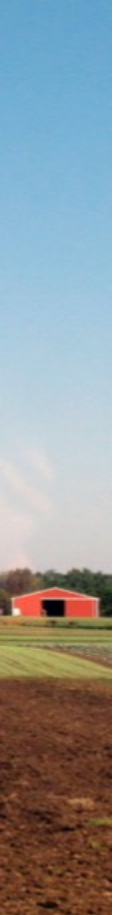
FSMA



Can a state official inspect my farm if I'm exempt/ qualified exempt?

- Farm and Ranch Freedom Alliance vs. Texas Department of Agriculture
 - Violation of 4th Amendment?
 - Violation of 14th Amendment?
 - TDA lacks authority to take these actions

- Future lawsuits?
 - Violation of the Administrative Procedures Act?



FDA's Proposed Traceability Rule

Food traceability list	Description
Cheeses, other than hard cheeses.	Includes all soft ripened or semi-soft cheeses, and fresh soft cheeses that are made with pasteurized or unpasteurized milk.
Shell eggs	Shell egg means the egg of the domesticated chicken.
Nut butter	Includes all types of tree nut and peanut butters; does not include soy or seed butters.
Cucumbers	Includes all varieties of cucumbers.
Herbs (fresh)	Includes all types of herbs, such as parsley, cilantro, basil.
Leafy greens, including fresh-cut leafy greens.	Includes all types of leafy greens, such as lettuce, (e.g., iceberg, leaf and Romaine lettuces), kale, chicory, watercress, chard, arugula, spinach, pak choi, sorrel, collards, and endive.
Melons	Includes all types of melons, such as cantaloupe, honeydew, and watermelon.
Peppers	Includes all varieties of peppers.
Sprouts	Includes all varieties of sprouts.
Tomatoes	Includes all varieties of tomatoes.
Tropical tree fruits	Includes all types of tropical tree fruit, such as mango, papaya, mamey, guava, lychee, jackfruit, and starfruit.
Fruits and Vegetables (fresh-cut).	Includes all types of fresh-cut fruits and vegetables.
Finfish, including smoked finfish.	Includes all finfish species, such as cod, haddock, Alaska pollack, tuna, mahi mahi, mackerel, grouper, barracuda, and salmon; except does not include siluriformes fish, such as catfish.
Crustaceans	Includes all crustacean species, such as shrimp, crab, lobster, and crayfish.
Mollusks, bivalves	Includes all species of bivalve mollusks, such as oysters, clams, and mussels; does not include scallop adductor muscle.
Ready-to-eat deli salads	Includes all types of ready-to-eat deli salads, such as egg salad, potato salad, pasta salad, and seafood salad; does not include meat salads.

FDA's Proposed Traceability Rule

❑ **Exemptions:**

- ❑ Farm products on the list sold directly to consumers
- ❑ Food Produced and Packaged on the Farm that includes applicable labeling
- ❑ Shell egg producers with less than 3,000 laying hens
- ❑ If you sell less than \$25,000 annually (3 year average)
- ❑ Nonprofits
- ❑ Processed Food
- ❑ Rarely Consumed Raw Produce
- ❑ Transporters of food
- ❑ Others

❑ **Maybe exempt:**

- ❑ Retail Food Establishments with less than 10 employees

❑ **Partial Exemptions:**

- ❑ Farm to School
- ❑ Farm sales directly to retail food establishments
- ❑ Commingled commodities from farms, that are not produce

FDA's Proposed Traceability Rule

- Issues and Concerns for farms:
 - “First receivers” must create lot codes for products they receive, even if it is from an exempt entity
 - Will this requirement result in exempt farms still be required by buyers to keep and provide these records?
 - For the Direct to Consumer sales exemption:
 - Are all employees “Agents in charge of the farm??”
 - Packaging Requirements
 - Records farms must keep include: Growing area coordinates
- Other questions from FDA:
 - Should this also apply to animal food?
- Comment Deadline: January 21, 2021

Food Safety Outreach Program

- **Who's eligible and why you should consider applying**
- Eligible Entities include:
 - State Cooperative Extension Service
 - Nonprofits
 - Organizations representing farmers or processors
 - Universities, Colleges, Community Colleges
 - Federal, State, Local, or Tribal Agencies



COVID-19



What COVID-19 Relief options are still available?

- ❑ Coronavirus Food Assistance Program Direct Payments (CFAP)
- ❑ Economic Injury Disaster Loans (EIDL): Deadline December 31, 2020
<https://covid19relief.sba.gov/#/>
- ❑ CFAP 2.0: Deadline December 11, 2020
<https://sustainableagriculture.net/blog/cfap2-signup/>



- Are you eligible?
 - This round of payments is for losses from April 1, 2020- August 31, 2020
 - Need to be an eligible entity
 - Need to have eligible commodities
 - Adjusted Gross Income must be less than \$900,000 from previous tax years average (2016, 2017, 2018), unless 75% of AGI is from farming
 - Comply with highly erodible land and wetland conservation regulations
- Apply online or at FSA office
- Payment limits
- Payments based on 1. if a 5% price decline this year for that commodity
2. per acre flat rate payments 3. payments based on producer's historic revenue

Historic Revenue Payments

2019 Sales	CFAP Payment Percentage
Up to \$49,999	10.6%
\$50,000 – \$99,999	9.9%
\$100,000 – \$499,999	9.7%
\$500,000 – \$999,999	9.0%
All sales over \$1 million	8.8%

Demand in the Small Processing Sector

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Small meat processors get little aid as demand grows

The pandemic gave small meat processors a new window of business as big meatpackers had to shut down or scale back operations amid outbreaks.

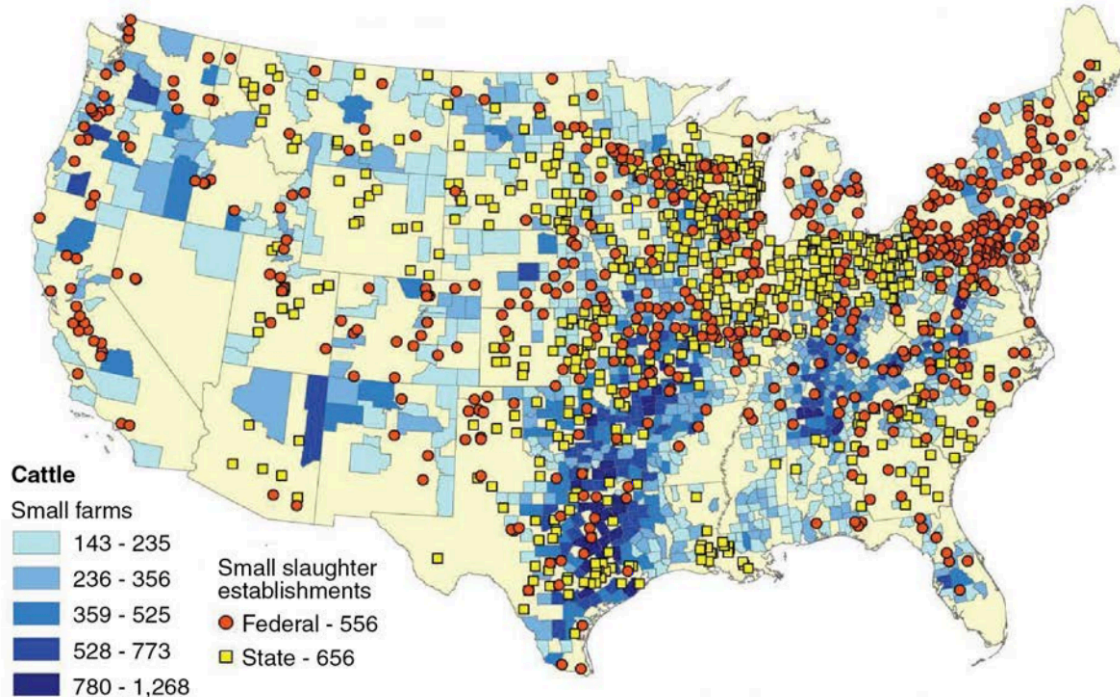


Butchers at Old Fashion Country Butcher in Santa Paula, Calif., process meat May 21 as they work to meet increased demand due to coronavirus related shortages. | Brent Stirton/Getty Images

How long will the demand last?

Figure 6

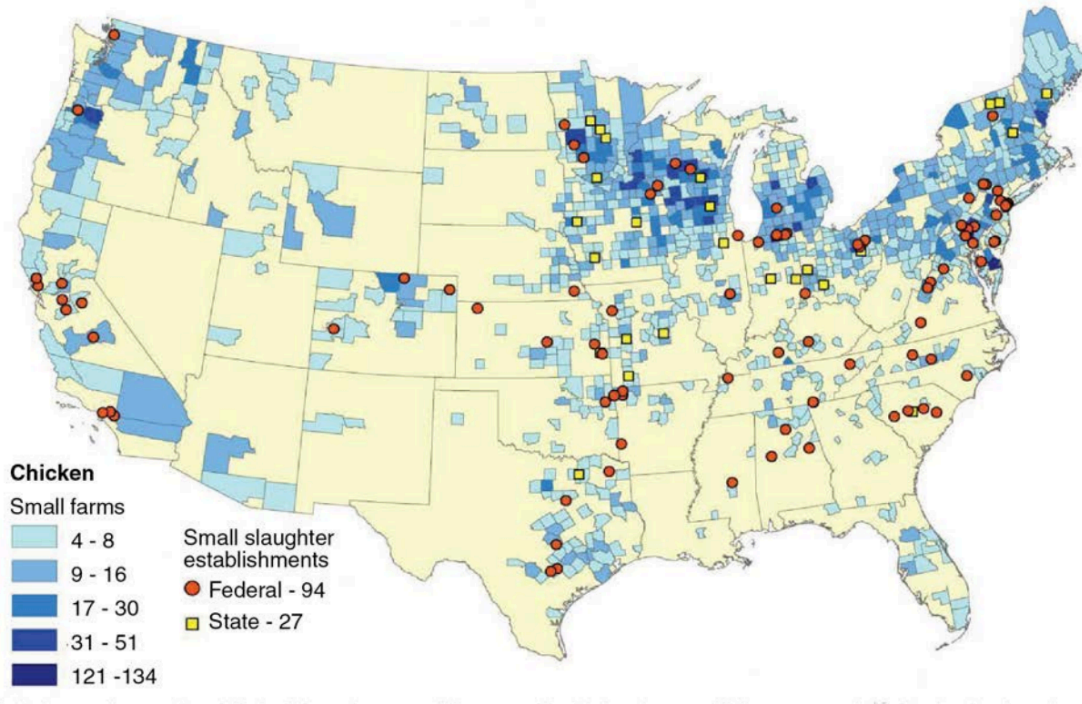
Counties with no small cattle slaughter facilities and 143 or more small cattle farms¹



How long will the demand last?

Figure 8

Counties with no small chicken slaughter facilities and 4 or more small chicken farms¹



Bills to Support the Meat and Poultry Sector

- **Strengthening Local Processing Act ([H.R. 8431](#))**

- ▣ **Take Action:** *Take action by contacting your [Member of Congress](#) and asking them to sponsor [H.R. 8431](#), the Strengthening Local Processing Act*

- ▣ *Find your Member of Congress's phone number here:
<https://www.govtrack.us/>*

- **Food Supply Chain Protection Act ([S.4453](#))**

- **Small Packer Overtime and Holiday Fee Relief for COVID-19 Act of 2020 ([S.3797](#) and [H.R.6977](#))**

Other Legislation/ Actions to Consider

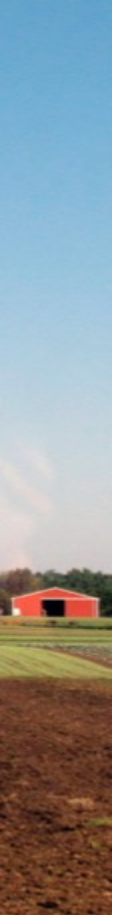
- *House Heroes Act*
- *Senate Heals Act*
- *More bills likely*
- *State Departments of Agriculture COVID-19*
 - *CARES Act Grants for small plants, farms, food businesses*

About NSAC



- NSAC: a grassroots alliance of nearly 130 member organizations from around the country working together to improve federal food & farm policy for 30 years!
- Find out more at www.sustainableagriculture.net

Questions?





Pesticides, More Pesticides, Right-to-Farm, and NEPA

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INTRODUCTION



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Introduction

- Although COVID-19 has been on our minds a lot this year.
- We have had other legal developments unrelated to COVID-19

Road Map For Today

- Dicamba update
 - 9th Circuit Decision
 - EPA allowing new registration
 - Class action update
- 2,4-D update
- Right-to-Farm update
- NEPA Update

DICAMBA UPDATE



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Dicamba registration

- In early June, we saw the 9th Cir vacate the federal registration for 3 dicamba-based herbicides (DBH)
- This is based on court finding that EPA understated risks associated with these DBHs.

Dicamba registration

- EPA moved to vacate the registration of the three DBHs
- Vacatur allowed for usage of existing stocks through end of July but stop sales of existing stocks.



Dicamba registration

Biggest question I got
after this was:

“But Paul what about
the 2021 growing
season? Will we have
DBHs?”



Dicamba registration

In late Oct., EPA issued new registrations for the DBHs that will run through 2025

Dicamba registration

- New requirements on DBHs:
 - Requiring a pH-buffering agent that has been approved by EPA to be tank-mixed with dicamba products prior to all applications to help control volatility
 - A downwind buffer of 240 feet, and 310 feet in areas where species listed under the Endangered Species Act are located
 - National cutoff dates of dicamba applications on soybeans after June 30, and on cotton after July 30
 - An overall simplification of the label and use directions to make it easier on growers

Dicamba registration



- This new registration is now being challenged in the 9th Circuit as well
- You will have to wait for 2021 to see how that plays out

DICAMBA DRIFT SETTLEMENT



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Dicamba Drift Settlement

- Early in 2020 had jury verdict in first dicamba drift lawsuit for \$15 million in damages and \$250 million in punitive
- Bayer has announced settlement of \$400 million settlement of class action lawsuit based on dicamba drift

Dicamba Drift Settlement

- At this time, not much is known on the settlement
- We know it will probably cover yield damage from 2015 to 2020
- Will probably get more details in 2021



2,4-D REGISTRATION



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2,4-D Registration

Enlist Duo registration also challenged in 9th Circuit

This time, 9th Circuit did not cancel the registration, but remanded to EPA

2,4-D Registration



The issue with the registration was EPA did not consider the impacts of 2,4-D usage on target areas and the impact on milkweed

EPA is still reviewing this

RIGHT-TO-FARM



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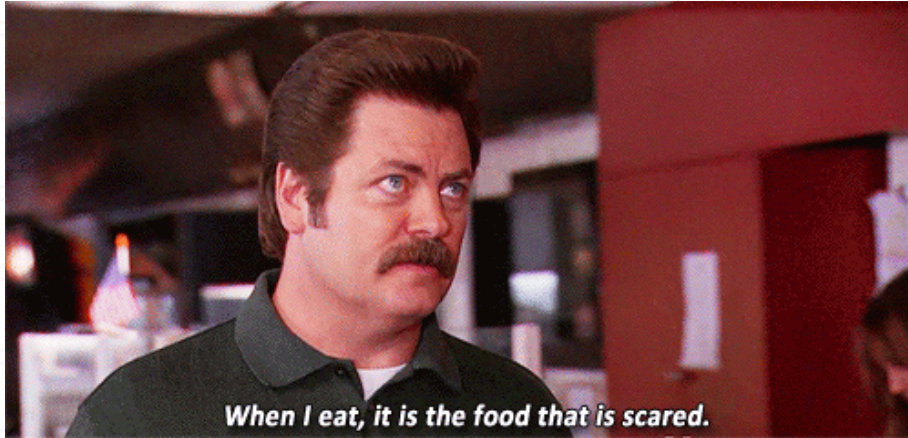


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Right-to-Farm

Indiana right-to-farm law decision had the plaintiffs request the US Supreme Court to grant cert on a takings law claim

Right-to-Farm



US Supreme Court
denied cert

Would not be shocked if
we do not see future
claims based around
this.

NEPA UPDATE



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Food and Water Watch Decision

- Maryland has seen poultry farm's loan guarantee challenged by environmental groups recently.
- Federal court ruled in that case that USDA did a proper review
- This might be last decision involving this issue with loan guarantees

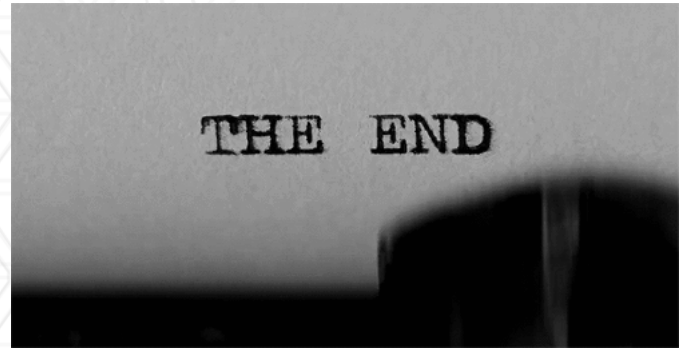
Food and Water Watch Decision



- FSA did proper review of:
 - Water quality
 - Air quality
 - Impact of migratory birds
 - Properly looked at the cumulative impact

Food and Water Watch Decision

This could potentially be the last decision like this involving a loan guarantee and NEPA review



NEPA Changes

- Council on Environmental Quality (CEQ) announced first major NEPA update since 1978
- Changes remove USDA loan guarantees from federal actions falling under NEPA
- Why the change?



NEPA changes

- CEQ highlights that federal action is limited to providing guarantee to private lender
- No federal funds spent, unless borrower defaults and in that case, USDA pays lender not borrower
- USDA has no decision-making authority in the farm in the end



NEPA Changes



Changes went into effect in
September 2020



Changes do a number of other
things, but we are focused in
mainly on the ag changes



Groups are already
challenging the changes.



WRAP UP



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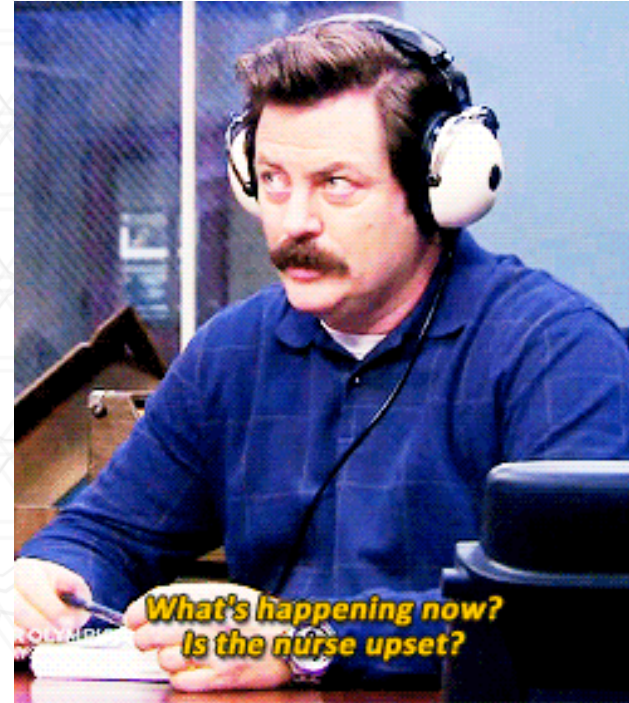
Md. Risk Management Blog



- Department of Ag and Resource Econ's blog updated periodically with timely legal, crop insurance, farm policy, and water conservation information.
- www.agrisk.umd.edu
- Signup for updates on the site to get new posts emailed to you, or
- Text 999066 to 1-781-262-3877 to signup

Podcast

- New episodes 2x per month covering risk management education issues
- www.marylandagpodcast.org
- Find also on iTunes, Google Play, and TuneIn



Any Questions??

Thank you!



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