

News from Washington: August 6-12

***Unless stated otherwise, stories are sourced from [Politico](#).***

### **EPA Ordered to Ban Chlorpyrifos**

In a major win for environmentalists, the U.S. Court of Appeals for the 9th Circuit on Thursday told the EPA to effectively ban the pesticide chlorpyrifos and pull registrations within 60 days. The appellate court nullified a decision by the Trump administration's EPA to overturn a proposed ban on the pesticide, which has been found to pose a health hazard to humans, and criticized the agency for dragging its feet in implementing restrictions.

The decision is poised to have far-reaching effects on the agriculture industry: Chlorpyrifos is one of the most commonly used pesticides, though farmers have been applying it less in recent years due to concerns about health risks. Environmentalists and health advocates have long been fighting the Trump EPA's refusal to ban the pesticide.

EPA took issue with the research the court relied on to reach its 2-1 decision. Agency spokesman Michael Abboud said the data from the Columbia Center for Children's Environmental Health "remains inaccessible and has hindered the agency's ongoing process to fully evaluate the pesticide using the best available, transparent science."

EPA said it's reviewing the decision, but it has the opportunity to delay its impact, at least for the time being. The agency has the option to request a rehearing by the same panel of judges or by all of the 9th Circuit judges. It could also seek a Supreme Court review of the case, and request a stay of the 60-day period to pull registrations, pending that appeal.

### **How Farms Will Fare Under New Tax Deduction**

Regulations [proposed](#) by the Treasury Department and IRS on Wednesday detail a new 20 percent deduction for so-called pass-through entities, which was created by the tax law enacted earlier this year, H.R. 1 (115). It comes with some favorable terms for the many farms and ranches structured as pass-throughs — such as partnerships, limited liability companies or sole proprietorships — according to several tax consultants and accountants.

Businesses made up of more than one entity can be aggregated to claim the new deduction as long as they have common ownership, and rental income will qualify. Many producers place their agricultural land in a separate entity from the farm itself for several reasons, such as liability protection and succession planning. A senior Treasury official said allowing aggregation is meant to keep single businesses from reorganizing and to ensure pass-throughs are subject to an effective tax rate nearly as low as corporations, which had their rate cut to 21 percent.

However, it appears that cash rent or crop-share landlords will not qualify for the new deduction, known as Section 199A, said Veronica Nigh, an economist at the American Farm Bureau Federation. "We do have a lot of absentee landowners out there. They hold on to family farmland, even though they're not living there, and rent it to someone else," she said. "In that case, the income wouldn't rise to the level of trades or business. That's the threshold."

Dairy farmers who sell cows may not be able to count that source of income toward the new deduction, said Dario Arezzo, a senior tax consultant at Farm Credit East. This may be because cows are treated as an asset subject to capital gains taxation, which tends to be a more favorable rate. "That's why I think [Treasury and IRS] excluded those assets from the new deduction. They are already getting a favorable tax rate," he said.

## **Another Round of Tariff Threats From China**

China's announcement August 3 that it is prepared to slap another \$60 billion worth of American products with tariffs has sparked a fresh round of anxiety among export-reliant sectors. Ag producers were already hard-hit from the first two rounds of Chinese retaliatory tariffs but this new round leaves very little in American exports to the nation unscathed.

If it carries through on the latest retaliation, China will be imposing tariffs of between 5 and 25 percent on nearly all of the \$130 billion in goods in imports from the United States. China's Ministry of Finance said Friday the new tariffs would target more than 5,200 types of goods that the U.S. sends. Those include: U.S. energy exports like biodiesel and liquefied natural gas, and many more agricultural goods like lamb and honey.

According to an informal translation, the latest target list from Beijing includes quite a broad variety of food and agriculture products: hops, maple syrup, whey protein, frozen corn, margarine and shortening, peanuts, ginseng, and "packaged foods for infants and young children" — a roster that will affect producers from Vermont to California and everywhere in between. It also includes agricultural equipment the U.S. may export like milking machines and parts.

A number of U.S. hides, skins and leather products would also face tariffs of either 5 or 25 percent from China. The industry had not previously been targeted for retaliatory tariffs by China or any other trading partner, according to the U.S. Hide, Skin and Leather Association.

"The Chinese market is not just important for the U.S. hide, skin and leather industry — it is essential to its survival, particularly as formidable competitors finalize free trade agreements that could place the U.S. industry at a competitive disadvantage," said Stephen Sothmann, president of the industry group.

The steady drumbeat of news reports continues telling stories of how agriculture producers of all types are feeling the direct punch of the tariffs and counter-tariffs. The Wall Street Journal late last week profiled the plight of a kidney bean processor now that U.S. kidney beans are 25 percent more expensive in Europe after retaliatory tariffs were imposed there. That has one Wisconsin company struggling to store a major backlog of beans. Read the profile [here](#).

CNBC highlighted stress in the apple industry, which is facing a "triple threat" of tariffs from Mexico, China and India. With a drop in exports, analysts are predicting intensified competition between Washington and New York apple producers. More from CNBC [here](#).

## **Jury Awards Terminally Ill Man \$289 Million In Lawsuit Against Monsanto**

At 42, Dewayne Johnson developed a bad rash that was eventually diagnosed as non-Hodgkin's lymphoma.

Four years later Johnson — now near death, according to his doctors — has been awarded a staggering sum of \$289 million dollars in damages in a case against agricultural giant Monsanto.

The former school groundskeeper sued the company, arguing that an herbicide in the weed killer Roundup, likely caused the disease. His lawyers also contended Monsanto failed to warn consumers about the alleged risk from their product.

On Friday, a San Francisco jury agreed. They deliberated for three days before awarding Johnson \$250 million in punitive damages and \$39 million in compensatory damages.

"The jury found Monsanto acted with malice and oppression because they knew what they were doing was wrong and doing it with reckless disregard for human life," said Robert F. Kennedy Jr., one of Johnson's attorneys, according to the Associated Press.

"This should send a strong message to the boardroom of Monsanto," Kennedy added.

Johnson's is the first of hundreds of cancer-patient cases against Monsanto and could be a bellwether of what lies ahead for the company.

[Source: NPR](#)

### **U.S., Mexico Keep NAFTA Talks Going**

Mexican Economy Secretary Ildefonso Guajardo will meet again today with U.S. Trade Representative Robert Lighthizer as part of their continued push to resolve remaining issues between the U.S. and Mexico in the NAFTA renegotiation.

Guajardo on Thursday remained tight-lipped about the likelihood that talks could wrap up by the end of the month, but said Mexico's negotiators are "doing [their] best to do it as fast as possible." Top U.S. and Mexican officials have been aiming to finish this month in order to get a deal signed by Mexican President Enrique Peña Nieto before he leaves office on Dec. 1.

President-elect Andrés Manuel López Obrador and Peña Nieto's teams "are on the same page about wanting to wrap this up before AMLO takes office. No new administration wants to handle a major trade [deal] renegotiation in its first months," said a source close to the talks. Jesús Seade, López Obrador's pick to run the NAFTA talks for Mexico, has attended all of the meetings in recent weeks, and is openly optimistic that negotiations are headed in the right direction. "We're advancing very well. I don't have many fears," Seade said.

The Canadian negotiating team is expected to be in Washington next week, a source close to the talks said. But Guajardo said there are currently no dates for Ottawa officials to join him in Washington.

"We have to make sure that the U.S.-Mexico bilaterals are done," Guajardo said, adding that Canadian Foreign Minister Chrystia Freeland will "hopefully" join the discussions soon.

### **Trump Backers Push for COOL Revival In NAFTA**

R-CALF USA and other members of the Coalition for a Prosperous America, which is closely aligned with the Trump administration on trade, made a last-minute bid on Wednesday to persuade U.S. Trade Representative Robert Lighthizer to include a country-of-origin labeling requirement in a NAFTA 2.0 deal. The push came as a group of top Mexican officials arrived in Washington to resume NAFTA talks.

"If the president wants to extend his 'Buy American, Hire American' agenda to the nation's agricultural sector, then we need to revise our food labeling policies," CPA Chairman Dan DiMicco said in a [statement](#) Wednesday. "Americans undoubtedly want to buy safe, domestically farmed beef and pork. They should have the option to choose where their food is raised."

Canada and Mexico strongly oppose COOL and successfully challenged an earlier U.S. measure at the WTO. The idea remains popular with R-CALF and some other farm organizations that believe it boosts sales of U.S. meat products, but the National Cattlemen's Beef Association and other meat groups oppose it.

Opponents [say](#) COOL increased the cost of cattle and pork production by imposing an additional regulatory burden. They also say there is little proof that requiring meat packages to carry the label has much influence on consumer purchases.

### **USDA Blows Past GMO Labeling Deadline**

USDA was supposed to have finalized its GMO labeling guidelines on July 31, per statute, but that wasn't the case. (Getting ahead of the delay, USDA Secretary Sonny Perdue had already predicted the department wouldn't meet that deadline).

Yet, there's no clear timeline for when USDA will determine the standards that companies must abide by when disclosing the presence of GMOs in their food products. Some in the food space speculate that we may be waiting around until as long as next year for a final decision.

A USDA spokesman said the department continues to review the more than 40,000 comments submitted during the public feedback period, and will be working through the interagency process to develop a final rule to submit to OMB. One of the central issues USDA will have to take a position on is whether highly refined sugars and oils that may only contain traces of GMO DNA need to be labeled — an issue that has split the food industry.

### **NRCS Rolls Out Chesapeake Clean Up Strategy**

USDA unveiled Monday a comprehensive three-year [plan](#) to improve the water quality and health of the Chesapeake Bay watershed. The Chesapeake Bay is the largest estuary in the U.S., with more than 150 rivers and streams spanning D.C., Virginia, New York, Maryland, Delaware, Pennsylvania and West Virginia. But the waterways are contaminated with excessive levels of nitrogen and phosphorus, the result of a combination of factors such as a growing population, sewage treatment plants, agriculture, industrial plants and the atmosphere.

NRCS' goals to combat pollution are centered on a targeted rollout of programs authorized by the farm bill, such as the Environmental Quality Incentives Program and the Conservation Stewardship Program. They include helping producers implement conservation practices that improve water and soil quality as well as fish and wildlife habitat on hundreds of thousands of acres.

The strategy will rely on training more than 4,000 public and private conservation officials to deploy conservation practices. Public meetings will be held and committees convened to solicit feedback about the agency's work, as well.

The Chesapeake Bay Program Executive Council will hold its 2018 meeting today in Baltimore with several officials and dignitaries in attendance, including acting EPA Administrator Andrew Wheeler, Virginia Gov. Ralph Northam and Maryland Gov. Larry Hogan.

### **FDA to Look at Labeling Claims in Organics**

FDA Commissioner Scott Gottlieb this week tweeted a somewhat vague pledge to weigh in on labeling claims in the organic sector. It is an unusual issue for his agency to tackle, given that USDA oversees the National Organic Program. The Twitter thread appears to be in response to a critical Wall Street Journal [op-ed](#) from Henry Miller of the Hoover Institution, in which the

former FDA official argued — under the headline “The Organic Industry is Lying to You” — that the agency has been inexcusably lax in allowing the use of non-GMO and pesticide-free claims in the food industry.

“The Food and Drug Administration is supposed to police such deceptive practices, as it sometimes does with ridiculous zeal: Witness the FDA’s warning letter sent to a Massachusetts bakery for including ‘love’ in its ingredient list,” Miller wrote. “But when it comes to the \$47-billion-a-year organic industry, the FDA gives a complete pass to blatantly false and deceptive advertising claims.”

Miller pointed to Whole Foods’ website as an example, noting that the high-end grocer makes claims about organic foods not using “toxic or persistent pesticides,” while many pesticides are allowed in organic production. Another example: Allowing non-GMO labels on orange juice, canned tomatoes and other products that don’t have GMO counterparts. (Hello non-GMO salt!)

The commissioner took to Twitter to defend the agency’s approach, suggesting FDA plans to do more to help consumers make sense of food labels. “In coming weeks I’m going to put out more detailed information on what different terms mean on food packaging, to help consumers best use claims like organic, antibiotic free, etc,” Gottlieb wrote in a four-tweet [thread](#). He noted that USDA has jurisdiction over the term organic, but FDA oversees “general food labeling compliance and safety issues.” USDA and FDA have been in competition over which entity will take the lead in handling regulation of cell-cultured meat products.

### **Latest \$473M Verdict Against Smithfield Prompts Calls for Action**

A North Carolina federal jury on Friday returned the largest verdict against Smithfield yet in the series of nuisance lawsuits the company is facing — an astounding \$473.5 million. The verdict will be reduced to \$94 million per a state law capping damages.

Smithfield is battling lawsuits filed by hundreds of residents living near industrial hog farms that say the company failed to properly manage waste at its contract farms. The third verdict announced last week is the largest one yet, although the previous two run into several millions of dollars. Smithfield, and others who oppose the litigation, say it poses a threat to a core industry in the state, and could result in copycat lawsuits in other industries beyond pork.

In a [statement](#), the president of the National Pork Producers Council, Jim Heimerl, called on legislators to step up, saying such suits could “put more than 46,000 people out of work and cost the state — the nation’s second-largest pork producer — millions of dollars in economic activity.”

The verdict came the same morning as dozens of national and local ag leaders convened at the North Carolina state fair in Raleigh to discuss how they see the litigation as a troublesome sign for agriculture.

“We need to communicate to the American people and the people of North Carolina it is going to affect every single one of them if we don’t figure out a way to stop them in their tracks here and prevent them from spreading like a cancer across the country,” said Sen. Thom Tillis (R-N.C.), who spoke at the roundtable along with officials including House Ag Chairman Mike Conaway and USDA Under Secretary Bill Northey. “We need to send a message to the trial lawyers: We’re bigger than you are if we come together.”

### **Arizona CAFO Could Be Key to Preventing Next E. Coli Lettuce Outbreak**

The FDA is still trying to figure out what caused the deadly E. coli O157:H7 romaine lettuce outbreak that dragged on for months this spring and summer — and what the agency finds could have big implications for the produce industry and how it coexists with animal agriculture.

Officials determined months ago that the greens likely came from Yuma, Ariz., a produce hub located right at the intersection of the Arizona, California and Mexico borders, but investigators haven't been able to pinpoint the problem. In June, CDC said its lab testing found the outbreak strain of E. coli O157:H7 in canal water samples taken from the region, without revealing specifics.

These days, FDA investigators are on the ground in Southwestern Arizona looking into a theory: The idea that a large concentrated animal feeding operation situated near produce fields might be the source of the contamination.

“FDA continues to consider that contaminated water coming into contact with produce, either through direct irrigation or other means, is a viable explanation for the pattern of contamination,” the agency explained in a statement this week. “But other hypotheses were discussed as well. FDA notes that the canal is close to a Concentrated Animal Feeding Operation, a facility with a large number of cattle on the premises. The CAFO can hold in excess of 100,000 head of cattle at any one time, and the FDA traceback information showed a clustering of romaine lettuce farms nearby.”

The FDA didn't name the operation, but locals — and everyone in the leafy greens industry — is aware of exactly which feedlot officials are referring to. It's the McElhaneey Feedyard in Wellton, Ariz., a town of some 2,800 people a little more than 30 miles east of Yuma. The operation, formerly owned by JBS, is now part of Five Rivers Cattle, LLC, which bills itself as the largest cattle feeder in the world — it just happens to also be located in prime leafy greens country.

While FDA continues the investigation, the leafy greens industry is racing to make changes as it prepares for its growing season, for which planting in the Yuma area is expected to begin in a matter of weeks. Changes are already in the works: The industry recently decided to triple its standard for the distance allowed between CAFOs and growing fields — to 1,200 feet from 400 feet.

### **Food and Water Watch Reports Poultry Plant Problems**

The consumer advocacy group Food and Water Watch said Tuesday that a higher number of defective poultry carcasses are being presented to food safety inspectors because processing plant employees aren't being properly trained under an updated inspection system. The situation is also causing federal inspectors to shut down processing lines more frequently in order to prevent unwholesome poultry, which company sorters failed to remove, from reaching consumers.

Food and Water Watch contends the problems are arising at plants operating under the New Poultry Inspection System, based on anecdotal accounts by USDA Food Safety Inspection Service workers. The agency in August 2014 finalized the new system, which shifted some food safety activities historically conducted by federal inspectors to plant employees, including sorting and removing unacceptable carcasses with fecal contamination, sores or blisters. The agency does not require these workers to undergo new training, and instead published a voluntary guidance document for private companies to use.

When implementing the New Poultry Inspection System, FSIS [said](#) it would prevent an estimated 5,000 foodborne illnesses each year because of stricter controls on pathogens like salmonella and campylobacter and allowing federal inspectors to spend more time on food safety strategies like microbial testing and plant sanitation, rather than routine quality assurance tasks. Consumer groups like Food and Water Watch and some lawmakers in Congress disagreed, arguing there will be higher rates of contamination with fewer inspectors on the line.

A FSIS spokesperson, in a statement to POLITICO, said its inspectors continue to conduct 100 percent carcass-by-carcass inspection and verify that process control is maintained. “If an establishment is unable to maintain process control, FSIS personnel have full authority to slow line speeds or stop the line. When FSIS inspectors stop the production line, it means that the system is working and our personnel are doing their jobs,” the spokesperson said.

Food and Water Watch also said in its letter to the agency that in order to reduce stoppages, some FSIS in-plant supervisors are being pressured by plant managers. The agency spokesperson said that any allegations of intimidation will be reviewed and addressed as appropriate.