

Thank you for joining us in Charlotte, North Carolina, for the 44th Annual AALA Agricultural Law Educational Symposium!

2023 AALA Annual Agricultural Law Educational Symposium Sessions

Thursday, November 9, 2023

8:00 am: Registration in Symphony Foyer

10:00 - 11:30 am: State Agency Attorneys Meeting (invitation only; not a public session)

Hosted by the National Association of State Departments of Agriculture

For more information, please contact Cort Jensen at cojensen@mt.gov

Room: Mecklenburg 1

1:00 - 4:00 pm: Farm Bureau LINC Meeting (invitation only; not a public session) Room: Mecklenburg 2

Thursday sessions will be at Johnson C. Smith University, 100 Beatties Ford Rd, Charlotte, NC 28216 (You will be responsible for your own transportation. Directions will be available at registration. There will not be a separate registration at the University.)

1:00 - 2:00 pm: Session #1: Urban Agriculture & Food Issues Speakers: *TBD*

2:00 - 3:00 pm: Session #2: Historically Black Colleges & Universities Contributions to Ag Law Speaker: *TBD*

3:00 - 3:15 pm: Networking Break

3:15 - 4:15 pm: Session #3: Legal Issues Involving Pipeline Projects Speakers: *TBD*

4:15 - 5:30 pm: Session #4: Tour of Greenhouses and Student Panel (NOT FOR CLE)

5:00 – 6:00 pm: New Member and Student Welcome – How to Get the Most From the Symposium *Room: Mecklenburg 1*

6:00 – 7:30 pm: Reception at Le Meridien Room: Symphony Foyer

	Program	m Key	
Policy Track	Private Practitioner Track	Food Law Track	In-House / Corporate Counsel Track
	Eth	ics	
Friday, November	10, 2023		
7:00 am: Registration in Sy	mphony Foyer		
7:00 – 8:00 am: Breakfast i	n Symphony Foyer		
All morning sessions will b	e in Symphony 4-7		
8:00 – 8:15 am: Introductio			
•	th Carolina Farm Bureau, Rale		
Steve Troxier, North Carolin	na Agriculture Commissioner,	Raleign, NC (Invitea)	
8:15 - 8:45 am: Session #5/	•		
Speakers: Susan Schneider,	. University of Arkansas Schoo	ol of Law, Fayetteville, AR	
8:45 - 9:15 am: Session #5	3: Ag Policy Update		
Speaker: David Grahn, USD	A, Washington, DC		
9:15 - 9:45 am: Session #50	C: Ag Finance Update		
Speaker: Jeff Peterson, Lati	hrop GPM, St. Cloud, MN		
9:45 - 10:15 am: Session #6	5: General Session		
Speaker: Chief Justice Paul	Newby, Supreme Court of No	rth Carolina, Raleigh, NC	
10:15 - 10:30 am: Network	ing Break		
10.30 - 11.30 am. Session	#7: Ethics - The Changing Lan	dscape of the (Un)Author	rized Practice of Law
	orest School of Law, Winston Salem		
The unauthorized practice of law	v is likely an area you given little the	ought It's time	
-	ision, and to our regulatory framew	-	volume, and source. Recent focus
has come from access to justice	advocates, many of whom assert th	nat nonlawyer individuals and to	echnologies can help meet the
	it comprising consumer protection. e!) are permitted to do today without		
into the future.	er, are permitted to do today withd	out running arour of the OPL reg	ulations. Anu, we li take a peek
Track: Ethics			
Room: Symphony 4-7			
Session 8			

Room: Mecklenburg 3

1:00 – 2:00 pm: Prop 12 / Sackett Panel

Speakers: Ray Starling, NC Chamber, Raleigh, NC Tim Bishop, Mayer Brown, Chicago, IL Damien Schiff, Pacific Legal Foundation, Sacramento, CA

Earlier this year, the Supreme Court of the United States issued two monumental opinions relating to agriculture. In May, the Court ruled in National Pork Producers Council v. Ross that California's Proposition 12 did not violate the U.S. Constitution's Commerce Clause. A couple of weeks later, it issued Sackett v. E.P.A., narrowing the federal government's authority to regulate wetlands. Given the significance of these cases to American agriculture, on November 10, 2023, the American Agricultural Law Association is hosting an exclusive conversation at its annual symposium in Charlotte, North Carolina, with two of the advocates who argued them before SCOTUS. Tim Bishop, a partner at Mayer Brown, represented National Pork Producers Council in the Proposition 12 case, and the Pacific Legal Foundation's Damien Schiff presented argument in Sackett. Joined by Ray Starling of the North Carolina Chamber, Tim and Damien will talk about their experiences advocating in the nation's Highest Court and share insight on what the cases mean for American agriculture.

Room: Symphony 4-7

Session 8A

2:05 – 3:05 pm: Session #9: Concurrent Breakouts

Gene Editing and Agriculture: The Importance of Flexible and Adaptable Regulatory Frameworks

Speakers: Karen Carr, ArentFox Schiff, LLP, Washington, DC Timothy Gruenisen, Cortevea Agriscience, Johnston, IA Don Jenkins, Pairwise, Durham, NC

This panel of outside and in-house counsel will provide perspectives of what we've seen from US and international regulators on application of gene editing to agriculture; some approaches appear to be overly narrow and prescriptive that will make it difficult for regulatory systems to keep up with technology advances. Panelists will describe provide regulatory history, examples of current frameworks and approaches, share examples of new directions on science, offer thoughts on ways to make policy less prescriptive and more "future-proof."

Track: Policy Room: Symphony 1

Session 9A

Beyond the Boilerplate: Drafting and Negotiating Producer and Grower Services Agreement

Speakers: Joel McKie, Hall Booth Smith PC, TBA

This session will explore some of the reasons producers and product distributors alike often desire someone other than the person growing a crop or livestock to have the risk of loss, including the Fair Labor Standards Act agricultural overtime exemption. Since such custom service agreements are often outside the scope of laws intended to ensure prompt payment to sellers of produce and livestock such as PACA and the PSA, this program will explore payment terms, applicability of fair practice regulations, and other key contractual provisions important in drafting and negotiating grower and producer services agreement.

Track: Private Practitioner

Room: Symphony 2

Session 9B

FDA Final Rule on Food Traceability: A Heavy Burden on Industry

Speakers: Natalie Rainer, K&L Gates, San Francisco, CA

FDA released its final rule on traceability of certain high-risk foods (including many fresh produce items, such as leafy greens) in November 2022. The final rule is intended to facilitate the rapid recall of affected foods back to the farm level. The rule places a high administrative burden on entities along the supply chain, including farmers and distributors. FDA estimates that the cost of compliance will be in the range of \$700 million to \$24.6 billion over the next 20 years.

This presentation will provide an overview of how the rule works and what obligations apply to different entities along the supply chain, starting at the farm level.

Track: Food Room: Symphony 3 Session 9C

Understanding and Avoiding Antitrust Issues with Food and Ag Companies and Associations

Speakers: John Dillard, OFW Law, Washington, D.C. Lance Lange, Faegre Drinker, Des Moines, IA

Agriculture has often been the focus of antitrust laws and enforcement. The Biden Administration has made addressing concentration and antitrust in the food and agriculture industries a White House priority. This session will provide an update from a seasoned litigator on federal policy changes as well as recent price-fixing litigation involving food and agricultural industries. The session will also address the antitrust considerations unique to agricultural trade associations with practical pointers on representing farm groups.

Track: In-House Room: Mecklenburg 1

Session 9D

3:05 - 3:15pm: Networking Break – Ice Cream Social Sponsored by Brick Gentry (with special thanks to Julie Vyskocil and Eldon McAfee)

3:15 – 4:15 pm: Session #10: Concurrent Breakouts

CAFO Permitting After Maui-- What Happens Now?

Speaker: Lawson Fite, Marte Law LLP, Portland, OR Mary-Thomas Hart, National Cattlemen's Beef Association, Washington, DC Blakely Hildebrand, Southern Environmental Law Center, Chapel Hill, NC

The Supreme Court's Maui decision reoriented federal jurisdiction over groundwater, but at the same time created some confusion about who regulates potential CAFO impacts to groundwater. This panel will discuss potential enforcement and litigation under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act, from the perspective of private practice, industry, regulators, and NGOs.

Track: Policy

Room: Symphony 1

Session 10A

Long-Term Care Implications for Farming Operations

Speakers: Robert Moore, Ohio State University, Delaware, OH Evin Bachelor, Wright & Moore Law Co. LPA, Delaware, OH Amy Swanson, Lawler & Swanson, PLC, Parkersburg, IA

Long-term care costs can exceed \$100,000/year. Many farm operations do not have adequate income to absorb these substantial long-term care costs. When savings run out, farm assets may need to be sold which jeopardizes the farming operation for the current owners and future generations. This session will discuss long-term care issues for farm operations and address strategies that can be used to help mitigate the risk of long-term care costs.

Track: Private Practitioner

Room: Symphony 2

Session 10B

Practical Implications of USDA's Proposed "Strengthening Organic Enforcement" Rule by the Nation's Leading Organic Labeling Practitioners

Speakers: Ashley Vulin, Davis Wright Tremaine LLP, Portland, OR Chip English, Davis Wright Tremaine LLP, Washington, DC

Chip English and Ashley Vulin of Davis Wright Tremaine LLP's F+B Industry Group walk through the USDA's proposed Strengthening Organic Enforcement rule and discuss practical implications.

The Strengthening Organic Enforcement rule is the biggest update to the organic regulations since the original act in 1990, providing a significant increase in oversight and enforcement authority to reinforce the trust of consumers, farmers, and those transitioning to organic production.

Track: Food Room: Symphony 3 Session 10C

Regulatory, Rules and Requirements Revisited: Part II of a Discussion on Requirements Applicable to Foreign and Domestic Purchasers of U.S. Agricultural Property

Speakers: Kari Larson, K&L Gates, Seattle, WA Marisa Bocci, K&L Gates, Seattle, WA

This program will expand on the 2022 discussion of AFIDA and corporate farming regulatory requirements applicable to foreign owners and lessees of farmland in the United States and discuss the legislative landscape applicable to agricultural transactions including the Corporate Transparency Act, HSR Act, FinCen, CFIUS and other regulatory schemes.

Track: In-House Room: Mecklenburg 1

Session 10D

4:15 - 4:30 pm: Networking Break

4:30 – 5:30 pm: Session # 11: Concurrent Breakouts

Meeting the Needs of the Growing Agritourism Industry

Speaker: Peggy Kirk-Hall, Ohio State University Agricultural & Resource Law Program, Columbus, OH Jess Richardson, West Virginia University College of Law, Morgantown, NC

Farm revenues from agritourism tripled between 2002 and 2017 in the U.S., and indications are that the next Census of Agriculture will see even more significant increases in agritourism revenues. How are we addressing the legal and policy needs of this growing sector of agriculture? We'll present an overview of the current state of agritourism, then will discuss legal issues for agritourism operations and litigation trends, followed by an interactive discussion on meeting the legal and policy needs for continued growth of the agritourism industry.

Track: Policy

Room: Symphony 1

Session 11A

If Chapter 12 cannot be used, there is always there is always Chapter 11 Small Business Reorganization Act -Bankruptcy Options for Distressed Farms

Speakers: Bud Stephen Tayman, Maryland State Bar Association Agriculture Law Section, Germantown, MD TBA

This program will discuss qualifications for both Chapter 12 and Chapter 11 Small Business Reorganization Act bankruptcy options. Not all farms will qualify for Chapter 12 relief. If so, the Chapter 11 Small Business Reorganization Act presents a viable alternative for debt relief. Chapter 12 offers the best relief available by the bankruptcy code. The Small Business Reorganization Act offers the second best relief available and was modeled in part after Chapter 12. This program will explore both options to enable practitioners to understand the debt relief options available for their farm clients.

Track: Private Practitioner Room: Symphony 2

Session 11B

When Carbon Markets Make the Food Label: The Impact of Environmental Claims Being Added to Food

Products

Speakers: Kitt Tovar, Jennie Zwagerman, Alli Condra,

Climate Neutral, Reduced Emissions, Low Carbon Footprint, Fights Climate Change, and more! What do all of these labels mean from a regulatory perspective? This panel will discuss how to navigate food labeling laws as these new food labels are starting to show up on grocery store shelves across the country. *Track: Food*

Room: Symphony 3

Session 11C

Welcome to the ICE Age: H-2A Pointers and Pitfalls

Speaker: J. Larry Stine, Wimberly, Lawson, Steckel Schneider & Stine PC, Atlanta, GA Misty Wilson Borkowski, Hall Booth Smith, P.C., Little Rock, AR

The H-2A program that allows US employers to legally hire non-immigrant foreign agricultural workers offers a great opportunity to meet seasonal labor needs that locals can't fill but, as they say, it's complicated. This program will cover the basic requirements of the H-2A visa program but will focus on common missteps and how to avoid them -- and what to do when inspectors from the Wage & Hour Division of OSHA come to call.

Farming employers all over the US apply for H-2A Visa for agriculture workers to come into the U.S. to work. The Regulations governing what is required for H-2A Compliance can be onerous. Farmers often do not keep track of daily hours, hours offered, nature of work - all violations of H-2A Regulations. Record keeping violations and failure to pay AEWR are huge problems for most farmers. This training is intended to give farmers the tools needed to get in compliance and avoid a costly learning experience from a DOL Audit.

Room: Mecklenburg 1 Session 11D

6:00 - 7:30 pm: AALA Uptown Reception – K&L Gates, 300 S Tryon St Suite 1000, Charlotte, NC 28202

Saturday, November 11, 2023

7:15 am: Registration in Symphony Foyer

7:15 – 8:15 am: Breakfast in Symphony Foyer

Sessions 12 and 13 will be in Symphony 4-7

7:45 – 8:15 am: Session 12A: Land Use and Resource Law Update

Speaker: Jesse Richardson, West Virginia University College of Law, Morgantown, WV

8:15 - 8:45 am: Session 12B: Tax Law Update

Speaker: Kristine Tidgren, Center for Agricultural Law & Taxation, Iowa State University, Ames, IA

8:45 - 9:15 am: Session 12C: Environmental Law Update

Speaker: Anthony Schutz, Nebraska College of Law, Lincoln, NE

9:15 - 9:30 am: Networking Break

9:30 – 10:30 am: Session #13: Ethics: "Telelaw" – The [Next] Frontier

Speakers: Garrett Couts, Brady & Hamilton, Lubbock, TX

Let's talk about our two favorite topics – ethics and technology [insert copious amounts of sarcasm here]! I know "change is hard," but it can be good also. Technology is everywhere these days – our watches, our phones, our cars, our homes, and our law practices. With the growth of technology, our ethics obligations have grown as well. In this session, we'll discuss various tech. advances affecting the practice or law – including e-signatures, documents, notaries, and recordings; cloud computing; and transmission of private/sensitive information – and the ethics obligations that have arisen along the way." *Track: Ethics*

Room: Symphony 4-7

Session 8

10:30 - 11:00 am: Business Meeting and Presidents Address

11:00 am – 12:00 pm: Session #14: Concurrent Breakouts

Credit Civil Rights Developments at USDA

Speakers: Stephen Carpenter, Farmers Legal Action Group, Savi Horne, Land Loss Prevention Project, Dania Davy, Federation of Southern Cooperatives,

The panel reviews recent developments concerning civil rights issues at USDA. It will (1) briefly describe the legacy of discrimination and the several discrimination cases; (2) summarize the American Rescue Plan Act (ARPA) provisions affecting farm debt and subsequent litigation; (3) summarize the Inflation Reduction Act (IRA) actions that provide for debt payments and for a discrimination payment program and the implementation of these programs; (4) USDA efforts to address problems caused by heirs property and; (5) other newer developments.

Track: Policy

Room: Symphony 1

Session 14A

Farming the Sun: What Landowners Look for in Contracts and Impacts on Farmland

Speakers: Shannon Ferrell, Oklahoma State University, Stillwater, OK Elizabeth Thilmany, University of Maryland, College Park, MD Paul Goeringer, University of Maryland, College Park, MD

As states increase their renewable energy portfolios with solar, what are landowners looking for in utility-scale solar agreements? Collaborative multi-state work has been done to understand these issues better. This session will discuss findings from the focus groups conducted in New York, Maryland, and Oklahoma looking at the needs of landowners with solar contracts. At the same time, the session will feature a case study of solar's impact on farmland in Maryland. Finally, we would highlight tools and resources available to attorneys looking to negotiate their first solar lease or experienced attorneys in the field.

Track: Private Practitioner Room: Symphony 2

Session 14B

In-House and Outside Counsel Perspectives on USDA's Proposed "Product of USA" Label Claim Rule

Speaker: Kim Bousquet, Davis Wright Tremaine, Saint Louis, MO Alli Condra, Davis Wright Tremaine, Portland, OR Blake Jackson, Tyson Foods, Springdale, AR

Kim Bousquet and Alli Condra of Davis Wright Tremaine LLP's F+B team and Blake Jackson, Corporate Counsel at Tyson, present inhouse and outside counsel perspectives on USDA's March 2023, proposed rule defining when "Product of USA" and "Made in the USA" label claims can be made on meat, poultry and egg products.

The proposed rule allows the voluntary "Product of USA" or "Made in the USA" label claim to be used on meat, poultry, and egg products only when they are derived from animals born, raised, slaughtered and processed in the United States. *Track: Food*

Room: Symphony 3

Session 14C

On the Move, the Age of Autonomous Agricultural Equipment

Speakers: Nicole Tupman, Raven Industries, Sioux Falls, SD Casey Watkins, Ballard Spahr LLP, Mount Laurel, NJ **Moderator:** Mike Traxinger, Agtegra Cooperatives, Aberdeen, SD

This session will discuss the legal issues for manufacturers, retailers and agricultural producers as autonomous agriculture equipment is being tested and rolled out in the market place for retailers, and farmers and ranchers to utilize in their operations. Topics to be discussed will include autonomous agricultural equipment standards, risks, liabilities, insurance, contract terms, and more. We anticipate this will be an opportunity to all learn about the latest agricultural technology advancement and key issues attorneys will need to discuss with their clients.

Track: In-House

Room: Mecklenburg 1

Session 14D

12:00 - 1:30pm: Awards Luncheon and Trivia Winners in Symphony 4-7 Sponsored by National Cattlemen's Beef Association and Mayer Brown

1:30 – 2:30 pm: Session #15: Concurrent Breakouts

Next Farm Bill: Thoughts From the Hill

Speakers: Justin Benavidez, House Ag Committee, Bart Fisher, Ag and Food Policy Center TAMU, Caleb Crosswhite, House Ag Committee,

This group would bring in the expertise from the Hill to discuss possible changes for the next Farm Bill and what practitioners need to be aware of in the ongoing debates. At the same time, practitioners will be able to ask questions of ongoing concern they are seeing representing clients on issues related to farm policy.

Track: Policy

Room: Symphony 1

Session 15A

Buying Distressed Farm and Food Assets

Speaker: Margaret Westbrrok, K&L Gates, Brandy Sargent, K&L Gates, Skye Root, Root Ag Advisory

Bankruptcy, receivership, and foreclosure sales are an increasingly common avenue for acquisition of food and agriculture assets. However, the price, process, and protections available for purchasers differ greatly from non-distressed sales. This session will focus on the key concepts applicable to purchasing assets in distressed proceedings.

Track: Private Practitioner

Room: Symphony 2

Session 15B
Precision Fermentation in Agriculture: The Legal Issues
Speakers: Drew Kershen, University of Oklahoma, College of Law, Norman, OK
TBA
TBA Track: Food
Room: Symphony 3
Session 15C
Total Technical Diligence: Advanced Topics in Deal Due Diligence: Pre-ip, Ip, and Pitfalls All Around
Speakers: Jerry Duff, AgriThority, LLC, Kansas City, MO
Richard Kottmeyer, FTI Consulting, McLean, VA
Christopher Austin, Michael Best & Friedrich LLP, Milwaukee, WI
The scope of due diligence in corporate transactions is rapidly changing, especially in cases where technology and IP are important. In
this presentation, we will explore advancements in the analysis and application of scientific data, market knowledge, and
development skills for accelerating technologies into agriculture. We will also examine leading-edge tools and processes for IP
strategic analysis that are becoming critical to the full picture of such transactions. Presented by those with deep experience in the food and agricultural value chain, our three-member presentation team illuminates what is becoming the gold standard of legal and
technical due diligence.
Track: In-House
Room: Mecklenburg 1
Session 15D
2:30 - 2:45 pm: Networking Break
2:45 – 3:45 pm: Session #16: Concurrent Breakouts
Never a Dull Moment: A Right-to-Farm & Trespass Law Update
Speakers: Tiffany Dowell Lashmet, Texas A&M Department of Agricultural Economics, Amarillo, TX
Paul Goeringer, University of Maryland, College Park, MD
Austin Vincent, Kansas Department of Agriculture, Manhattan, KS
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Online sales channels are an increasingly common source of income for agricultural and value-added producers. According to the USDA, in 2020, approximately \$312M of direct-to-consumer agricultural sales were made through online markets. This session will discuss the various Federal laws and regulations that impact agricultural and value-added business' actions related to legally marketing using social media and email, contracting with web-service vendors with customer privacy in mind, and accounting for food safety needs for delivering goods to consumers.

Track: Food Law

Room: Symphony 3

Session 16C

Top 2023 Ag Finance Decisions

Speakers: Michal Fielding, Husch Blackwell LLP, Kansas City, MO TBA

Finance is the backbone of the ag world. This program will address the most prominent and noteworthy 2023 ag finance decisions from around the country. Less noteworthy but still important cases will be addressed in the written supplemental materials. *Track: In-House*

Room: Mecklenburg 1 Session 16D

3:45 - 4:45 pm: Board Listening Session *Room: LaSalle AB*

AALA will submit sessions deemed eligible for continuing legal education (CLE) credits to symposium registrants' states. CLE credits are granted based on individual attendance records and state CLE rules. **Note that approvals will vary** because each state has different CLE requirements and rules. For example, not every state calculates CLE credits based on the clock hour. Not every state will grant CLE credits for each session submitted by AALA. In all events, AALA is committed to providing top-quality, relevant CLE that will be approved for most states. We look forward to seeing you next year in Memphis, Tennessee, November 7–9, 2024!

