

## District Court Grants Summary Judgment in Part to Plaintiffs, Vacating and Remanding Final SECURE Rule to USDA

Article By:

Lynn L. Bergeson

Carla N. Hutton

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On December 4, 2024, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) announced that it acknowledges the U.S. District Court for the Northern District of California's [December 2, 2024, ruling](#) prospectively vacating USDA's May 2020 final rule for organisms developed using genetic engineering. *National Family Farm Coalition, et al. v. Vilsack* (No. 3:21-cv-05695-JD). As reported in our May 18, 2020, [memorandum](#), the final Sustainable, Ecological, Consistent, Uniform, Responsible, Efficient (SECURE) rule amended the regulations regarding the movement (importation, interstate movement, and environmental release) of certain genetically engineered organisms in response to advances in genetic engineering and APHIS's understanding of the plant pest risk posed by genetically engineered organisms, thereby reducing the regulatory burden for developers of organisms that are unlikely to pose plant pest risks. Conservation and farm groups filed suit under the Administrative Procedure Act (APA), claiming that, in promulgating the final rule, USDA failed to heed procedural requirements under the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). Plaintiffs also alleged that the final rule failed to implement directives set forth in the 2008 Farm Bill and that the rule violated the Plant Protection Act (PPA). In addition, plaintiffs stated that portions of the final rule relating to the exemptions unconstitutionally delegated statutory authority to private parties without Congress's express authorization.

The court granted summary judgment to plaintiffs on the PPA-based APA claim that it was arbitrary and capricious for APHIS not to incorporate its noxious-weed authority in the final rule and to implement the conventional-breeding exemptions. The court granted summary judgment to USDA on plaintiffs' sub-delegation claim and 2008 Farm Bill-based APA claim. The court vacated the final rule and remanded it to APHIS for reconsideration consistent with the court's order. The court directed the parties to file by **January 13, 2025**, a joint statement addressing what effect, if any, the order will have on the rule identifying additional genetically engineered organisms qualified for exemption. The parties are also directed to propose jointly a status conference date for the remaining procedural challenges under the ESA and NEPA.

APHIS states in its December 4, 2024, press release that Regulatory Status Review (RSR) responses, Confirmation Request responses, and active permits that USDA issued prior to December

2, 2024, remain valid. APHIS “is determining next steps and will provide guidance to stakeholders in the coming days, including on the status” of its November 13, 2024, notice, “Movement of Organisms Modified or Produced Through Genetic Engineering; Notice of Additional Modifications Exempt Plans Can Contain” (89 Fed. Reg. 89569). More information on the notice is available in our December 3, 2024, [blog item](#).

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