

News from Washington: April 22-28

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### **Extreme Weather Stretching Federal Resources**

FEMA should focus its efforts on the “truly catastrophic events” and rely on state and local governments to manage lesser disasters, one of the agency’s top officials said Wednesday during a POLITICO Live event on disaster relief.

Daniel Kaniewski, FEMA’s deputy administrator for resilience, said about 80 percent of the major disasters the agency handles cost \$41 million or less. In many cases, local officials simply need federal funding rather than a physical FEMA presence.

But emergency funding doesn’t come easily these days. When Congress returns from a two-week recess on Monday, one of its most pressing priorities will be finding a path forward on disaster aid for states still recovering from hurricanes, wildfires, floods and other severe weather, which stalled in the Senate earlier this month.

Other officials at the event noted that wildfire season is beginning months earlier, and wider swaths of Western states are now at risk.

“It’s happening all throughout the spring, and what used to be a couple of times every three to four years is now an annual event of catastrophic, historic wildfires,” said Trevor Riggen, senior director of disaster operations at the American Red Cross.

### **Farm Groups Find Consensus (For Now) On Ag Labor Fix**

When Congress returns from its Easter recess next week, negotiations over farm labor legislation are expected to ramp up. Leaders of the effort are hoping for a bipartisan deal that satisfies both farm and labor factions.

Overhauling the ag guest-worker system stands out as a potential area for cooperation amid the heated national immigration debate. Agricultural lobbyists and Hill staffers say the industry is largely united on a pathway to citizenship for ag laborers and an H-2A expansion.

But sources close to the negotiations caution that unity could splinter as talks progress, especially as 2020 campaigning heats up and President Donald Trump continues to supercharge the immigration debate.

“Our hope is that there’s some sort of grand bargain and that our labor needs are addressed,” said Nick Giordano, vice president and counsel of the National Pork Producers Council. “We know the odds are long.”

Labor groups are less optimistic about the effort, and they generally oppose expanding H-2A to a year-round program. They’re likely to push for priorities like higher overtime pay, better housing conditions and stronger rules to protect workers from heat exhaustion.

If House lawmakers are able to strike a bipartisan deal after recess, it’ll likely take weeks to roll out compromise legislation. Rep. Zoe Lofgren (D-Calif.), who chairs the House Judiciary Committee’s immigration panel, said the committee wants to “get moving on this.” (Senators are effectively waiting for the House to go first.)

Lofgren has introduced legislation with Senate Judiciary ranking member Dianne Feinstein (D-Calif.) that lobbyists expect will be the baseline for negotiations. The measure would allow

farmworkers who have worked in the U.S. for at least 100 days over the last two years to apply for legal status under a so-called blue card.

### **Bayer Appeals First Roundup Verdict**

Bayer appealed the first verdict in the series of cases claiming that the company's products containing glyphosate are to blame for thousands of plaintiff's cancer diagnoses.

Last year, a California jury had ordered the company to pay \$289 million to DeWayne Johnson, a former groundskeeper who argued his cancer was caused by repeated use of Bayer's weedkiller Roundup. The company has requested that the appellate court either rule in its favor or order a new trial.

Attorneys representing Johnson have 35 days to respond to the appeal. Oral arguments in the appeal aren't expected to take place until the fall, at the earliest.

In an unusual development, Bayer [filed](#) along with the appeal a "motion for judicial notice," which is a procedural move to get particular information added to the legal record. Bayer has a problem with certain public communications after the verdict was made, which it says were an attempt to influence the judge's ruling on post-trial motions that included the company's request to strip the jury award amount.

After the jury's decision, Superior Court Judge Suzanne Ramos Bolanos, who oversaw the case, issued a tentative ruling stating the plaintiffs had failed to show enough compelling evidence of malice on Bayer's part to support awarding punitive damages.

That prompted five jurors to email or contact Bolanos, begging her to uphold their verdict. The San Francisco Chronicle [reported](#) on the jurors' correspondence with the judge, as well as an opinion piece arguing the verdict shouldn't be overturned.

The Periscope Group — a drug and personal injury lawsuit advocacy organization — also took out a full-page ad in The Chronicle that read, "Dear Judge Suzanne Ramos Bolanos, What Is a Life Worth?"

In her final decision, Bolanos did not vacate the punitive damages but reduced them from \$250 million to \$39 million.

### **House Dems' Slow-Go On USMCA**

House Democrats on Thursday sent another [letter](#) to U.S. Trade Representative Robert Lighthizer to reinforce their concerns over the U.S.-Mexico-Canada Agreement, indicating they're still in no rush to move along with the approval process.

The country's Senate remains on track to pass a major labor reform law as soon as today. Passage of the labor law is key to the USMCA ratification timeline as it checks off one of Mexico's commitments under the deal.

### **Ag Front and Center as Japan Talks Resume**

Negotiations have picked back up as U.S. Trade Representative Robert Lighthizer met with Japanese Economy Minister Toshiimitsu Motegi. Discussions are expected to continue Friday as Japan's Prime Minister Shinzo Abe arrives in Washington to meet President Donald Trump.

The White House hopes to secure concessions on agriculture similar to those in the Trans-Pacific Partnership, which Trump pulled out of in 2017.

Japan has agreed to work out a pact that grants market access to U.S. farm goods — but not beyond levels in previous trade deals.

### **Kushner To Give Trump Immigration Plan Next Week**

The senior adviser is planning to present a broader immigration plan next week that will include changes to the number of legal immigrants allowed in the country as well as security measures on the southern border.

Kristi Boswell, a senior adviser to Agriculture Secretary Sonny Perdue, is helping craft the plan — and she has a blueprint to work from. The agriculture industry has coalesced around a potential labor fix that would provide both a path to legalization for workers currently in the U.S. and also expand the H-2A visa program.

### **FDA Rolls Out More Recall Guidelines**

The FDA is advising companies to ensure employees are properly trained for food recalls and to have certain procedures in place beforehand, under draft guidance released Tuesday by the agency. It's the latest step in the FDA's piecemeal approach to beefing up its recall system, after the HHS Inspector General flagged serious problems in 2016.

In February, the FDA finalized guidance about how quickly companies should notify the public of food recalls. The agency has also in some cases started posting information about where recalled products were being sold.

The new guidelines — which are non-binding but will still influence industry practices — include details about how companies should prepare for a recall, like establishing a written plan or a designated team, and drafting boilerplate notices beforehand to accelerate the process.

### **Farm Bankruptcy Overhaul Gaining Steam**

A growing coalition of lawmakers is looking to overhaul Chapter 12 bankruptcy rules as farmers and ranchers continue to face economic challenges including trade tension and low income levels.

House Agriculture Chairman Collin Peterson (D-Minn.) is supporting a new bipartisan bill, H.R. 2336 (116), from freshman Rep. Antonio Delgado (D-N.Y.) that would raise the amount of farm debt covered under Chapter 12 bankruptcy to \$10 million — effectively making the option available to more farmers. Sen. Chuck Grassley (R-Iowa) is pushing similar legislation, S. 897 (116), with bipartisan backing in the Senate.

Farmers currently must have [less than \\$4.15 million in debt](#) to qualify for Chapter 12 bankruptcy, per the Congressional Research Service. The debt threshold, which was set in the 1980s, doesn't reflect the growth in average farm size or the rise in farmland values, according to proponents of the measure.

The American Farm Bureau Federation and the National Farmers Union — the largest general farm groups in the U.S. — are both on board with the proposal.

The House and Senate Judiciary panels have jurisdiction over both measures. Neither committee has scheduled a markup yet.

### **SCOTUS Leans Toward Allowing USDA to Keep SNAP Data Secret**

As the Supreme Court heard oral arguments Monday in a case that centers on whether USDA must disclose SNAP retail sales data, key justices hinted they may be heading toward a decision that could make it much harder for the public to access confidential business information via federal records requests.

At least three members of the court's conservative majority — Justices Neil Gorsuch, Brett Kavanaugh and Samuel Alito — sounded hostile to a longstanding interpretation of Freedom of Information Act exemption used to decide when information businesses give the government is too sensitive to release.

The exemption, as fleshed out in a 1974 D.C. Circuit ruling, has been deemed to apply in cases where the government could have trouble getting the information in the future or where companies show that release of the information could cause “substantial competitive harm,” per Gerstein, a veteran court-watcher.

One of the main points of discussion centered on whether that existing standard should stand. If the court were to rule that any “confidential” business information could be exempted, regardless of whether “substantial competitive harm” would result from public release, it would greatly expand the types of business information that could be kept out of the reach of FOIA requests.

“That would be a dramatic change of the way FOIA has been applied for 40 years,” Robert Loeb, a lawyer representing Gannett, which owns the Argus Leader newspaper of South Dakota, said during oral arguments. (He was referring to the possibility of protecting all information businesses give the government.)

Other lawyers in town following the case agreed the court seemed to be eyeing upending the longstanding precedent. “It appears likely that the Supreme Court will partially overrule the ‘competitive harm’ test,” said Stewart Fried, a lawyer at OFW Law who represents retailers on SNAP issues. (Fried submitted an amicus brief on behalf of the National Grocers Association in an earlier chapter of the litigation.)

“We’re hopeful,” Loeb told POLITICO after oral arguments. He cautioned “it’s hard to read the tea leaves from the court.”

A decision in *Food Marketing Institute v. Argus Leader Media* is expected by the end of June.

### **Mexican Producers Promise to Maintain Tomato Supply**

Mexican farmers said they plan to continue “seamlessly” supplying U.S. markets with tomatoes, even if the Commerce Department goes ahead with plans to terminate a tomato agreement between the two countries on May 7.

As the deadline approaches, a law firm representing Mexican growers said talks continue, but Commerce has yet to counter an offer from earlier this month.

### **Global Ag Markets Feel Swine Fever Effect**

Chinese soybean imports could be lower than expected this year, as an outbreak of African swine fever continues roiling the country's pork industry. At least 1 million hogs have been

culled, and China's Agriculture Ministry says more than 80 percent of hog farmers aren't planning to restock their herds, Bloomberg [reports](#).

That could mean less demand for soybeans, which are used to make pig feed. An official at the China Vegetable Oil Industry Association projected China's soy imports could drop to 85 million tons, down from USDA's forecast of 88 million tons for the current marketing year ending in September.

If China's hog supplies drop by 10 percent, the country would need to import at least 2 million tons of pork to fill the gap, Chinese ag researcher Zhu Zengyong said, according to Bloomberg. The outbreak has boosted U.S. hog futures as traders bet on China buying more meat.

Chinese farmers and livestock analysts think African swine fever has infected more pigs, in more places, than Chinese officials have acknowledged, The New York Times [reports](#).

### **Foodborne Illness Cases on The Rise**

Incidences of foodborne illness from the parasite cyclospora jumped by nearly 400 percent in 2018 — or 332 cases in all — compared with the previous three years, in part because of large outbreaks associated with produce, according to the CDC's new [report](#). The increase is one piece of a broader trend: Infections from pathogens like campylobacter, salmonella and vibrio generally appear to be more frequent.

Better diagnostic methods allow the source of a person's illness to be identified within hours, no longer requiring the bacteria to be grown in a laboratory. These tests are being used by doctors more frequently. It's likely that infections are also truly increasing, the CDC said.

Pathogens from produce are the leading cause of infections, followed by meat and poultry. The report noted recent deadly outbreaks of E. coli linked to romaine lettuce. Hundreds were also sickened last year by cyclospora traced to McDonald's salads.

Infections from two of the most common pathogens — campylobacter and salmonella — remained high in 2018. Combined, they caused 66 deaths last year, out of more than 18,800 cases.

Regulatory actions by USDA, to control pathogens in meat and poultry, and FDA, to do the same for produce, don't seem to be reducing infections. Both agencies are taking steps to improve their approach, such as publicizing data on whether meat processing plants are meeting food safety standards and implementing a produce safety rule.

### **Reviewing the Dairy Labeling Public Comments**

The Plant Based Foods Association today is releasing a review of more than 7,000 public comments submitted to the FDA about the use of dairy terms for plant-based milk products.

The [review](#) found that 76 percent of commenters were in favor of continuing to allow dairy terms in labeling of plant-based products like almond milk, according to PBFA, which opposes new restrictions on labeling of such foods.

The analysis was commissioned by PBFA and conducted by Linkage Research and Consulting, which looked at the comments out of a total 11,900 publicly available submissions to FDA.

87 percent of commenters who specifically identified themselves as consumers said they're not confused by the differences between plant-based dairy alternatives and foods made from animal milk, according to the findings.

When FDA issued the request in September, then-Commissioner Scott Gottlieb [said](#) the agency "has concerns that the labeling of some plant-based products may lead consumers to believe that those products have the same key nutritional attributes as dairy products, even though these products can vary widely in their nutritional content."

House and Senate lawmakers have filed bipartisan bills, H.R. 1769 (116) and S. 792 (116), to block plant-based products from being labeled as milk, cheese and yogurt. But past efforts haven't gained much traction.

### **Farming Frenzy on America's Final Frontier**

Alaska may be better known for oil and fishing, but it's unique for another reason: At a time when the number of farms nationwide is declining, the state saw a 30 percent increase between 2012-17. That stat was revealed by USDA's latest Census of Agriculture.

The growth can partly be attributed to the relative youth of the state's agriculture industry. It's experiencing the same trajectory that regions like the Midwest and the South did decades ago. As Amy Pettit, executive director of the Alaska Farmland Trust, put it: "It's the wild, wild West up here, and if you have access to land you can grow whatever you want."

Alaska has the nation's highest percentage of beginning farmers, with 46 percent of its producers having fewer than 10 years experience. Many are selling at farmers markets, which have surged since 2006. At that time, there were 13 in the state, while today there are more than 50.

Fruits and vegetables in the state boast high sugar content thanks to the "high-latitude agriculture." Crops are exposed to constant sunlight during peak season and, as a result, develop carbohydrates that are converted to sugars at higher rates. This makes the produce sweeter when harvested.

### **Biden on Ag**

Now that the former vice president has formally jumped into the 2020 ring, it's worth a refresher on his food and ag policy record. During his many years in the Senate repping Delaware, Biden was a reliable vote for farm bills. In 2008, he voted for [an amendment](#) that would have limited the subsidies a married couple could receive, while also requiring that individuals be actively involved in a farming operation to receive subsidies (it didn't pass).

Bad blood with ethanol? Biofuel producers in Iowa haven't been the biggest fans of Biden, stemming from years-old reports that he aided Pennsylvania oil refiners in a dispute over the Renewable Fuel Standard. The backstory from POLITICO is [here](#).

In 2015, ahead of a House vote on whether to repeal the estate tax, Biden [questioned](#) whether anyone had actually lost their farms because of the tax.

In 2008, Biden signed on to a [bipartisan letter](#) urging USDA to more fully implement country-of-origin labeling.

In 2007, Biden made some comments about his feelings on farm subsidies. “We must level the field on farm subsidies,” he said. “Subsidies should do what they were designed to do — provide assistance in times of trouble, not just help the big get bigger at the expense of the little guy.”

### **Tracking Poultry’s Salmonella Progress**

New USDA data shows more chicken processors met federal salmonella standards in 2018, while ground turkey plants took a step backward.

Significant portions of the poultry industry are still not meeting the Food Safety and Inspection Service’s performance standards, which effectively set a cap on the percentage of samples per plant that test positive for salmonella. (The limit is 13.5 percent for ground turkey processors and 25 percent for ground chicken plants, for example.)

The [FSIS data](#) shows more than 46 percent of ground turkey plants did not meet this standard last year, including 68 percent of larger plants (up from 47 percent in 2017).

Nearly 66 percent of whole chicken plants reached USDA’s highest level of compliance, or Category 1, a significant improvement over 2017.

### **Ag Agencies Look To Unionize As Site Decision Nears**

ERS employees next month are widely expected to vote in favor of forming a union — just days before USDA is aiming to announce where it intends to relocate the agency and the National Institute of Food and Agriculture.

If ERS workers vote to unionize, employees would form a collective bargaining unit and launch contract discussions with USDA. The move would give employees legal standing to engage with the department on the proposed relocation, said Peter Winch, an organizer for the American Federation of Government Employees.

“Morale has been destroyed at this agency,” Winch said. “Forming a union and being able to stand up for themselves and advocate is already improving morale.”

NIFA employees are also considering unionizing, and a vote is expected before the end of May. Agriculture Secretary Sonny Perdue told a Senate Appropriations panel earlier this month that the department will name the final site selection by mid-May.

A cost-benefit analysis of the proposed move will accompany the site announcement. “If I can’t bring a deal to you that makes sense, then I wouldn’t expect you all to approve it,” Perdue told appropriators.

### **Healthier School Lunches Trending Up**

The nutritional quality of National School Lunch Program meals increased by 41 percent after the federal government changed school nutrition standards in 2010, according to new [research](#) backed by USDA. The study also found “no significant association” between healthier meals and higher costs.

Mathematica Policy Research and Abt Associates used a “healthy eating index” to study the nutritional value of meals at more than 1,200 schools during the 2014-15 year compared with 2009-10 — before and after the new school meal standards had been phased in. Lunches

provided under NSLP were found to be healthier than a sample of lunches outside the the federal program.

Similarly, meals under USDA's School Breakfast Program became 44 percent healthier in 2014-15, according to the study. The concentration of refined grains, empty calories and sodium decreased for school breakfast and lunch meals.

The study comes as lawmakers like Senate Agriculture Chairman Pat Roberts (R-Kan.) are gearing up to try to reauthorize child nutrition programs. Roberts has said the Senate is likely to take the lead on reauthorization — and he acknowledged that rolling out legislation before the August recess would be a “very good goal.”

The Trump administration has moved to ease some of the school nutrition standards championed by former first lady Michelle Obama, including salt restrictions and whole-grain requirements. The Food & Environment Reporting Network has more on the nutrition study [here](#).