

**AG ISSUES UPDATE**  
**Edited by Brad Hollabaugh**  
**October, 2015**

**EPA Announces Final Rule on Worker Protection Standards (WPS)**

The Environmental Protection Agency (EPA) announced on September 30 that the final rule revising Worker Protection Standards (WPS) will be published in the Federal Register within the next 60 days. The rule is the first revision to Agricultural Worker Protection Standards in more than 20 years.

USApple has been active on the issue, providing comments to the agency jointly with a broadly based coalition of association and agricultural organizations that include the Pesticide Policy Coalition (PPC) and the Minor Crop Farmer Alliance (MCFA) since the rule revision process was announced last year.

The rule proposals are the first significant changes in the WPS since 1992, and have the potential to significantly affect tree fruit production practices as well as broader agricultural production practices. While it is impossible to list all the changes contained in the rule, significant changes in the rule revision affecting agricultural employers include, among other points:

- Increased frequency of mandatory training (from once every five years to annually) to inform farm workers about the protections they are afforded under the law.
- First time-ever minimum age requirement: Children under 18 will be prohibited from handling pesticides, with an exemption for family farms. EPA has included an exemption for farm owners' immediate families.
- No "grace period" for worker training before workers handle pesticides or enter treated orchards. The current rule allows a five-day grace period during which workers can handle pesticides providing that training occurs within the grace period.
- Expanded mandatory posting of no-entry signs for the most hazardous pesticides.
- Make available to farm workers or their advocates (including medical personnel) information specific to the pesticide application, including the pesticide label and Safety Data Sheets.
- Record keeping requirement - records must be retained and made available for a period of two years.

The EPA has prepared a five page side by side comparison chart that lists the new provisions along with the current rule provisions. Go to <http://www2.epa.gov/pesticide-worker-safety/revisions-worker-protection-standard> for more details.

**Senate Delays Child Nutrition Markup**

The Senate Agriculture Committee delayed the markup of the Child Nutrition Reauthorization Act, which had been scheduled for last Thursday. A new date has not been set and bill text has not been released. USApple continues to contact key offices regarding our strong support for maintaining the expanded fruit and vegetable serving requirements from the 2010 bill as well as maintaining the integrity of the fresh fruit and vegetable program.

USApple joined United Fresh Produce and more than forty other national and state organizations in sending a letter to the House and Senate Agriculture Committees with strong messages of support for both. "Since 2012, many significant improvements have resulted in healthier school meals,

including that every meal has at least one-half cup of a fruit or vegetable. This means that 32 million American children now have school meals with more fresh fruit and vegetables and research indicates they have increased their fruit and vegetable consumption by 23 percent and 16 percent respectively. " (*Apple Bites* - 9.22.15, US Apple Association)

### **Dispute over Meat Labeling Hits Apple Industry**

Last spring the World Trade Organization (WTO) sided with Canada and Mexico in a case brought against the U.S. regarding Country of Origin Labeling (COOL) for meat and poultry. The two countries maintain that the law gives the U.S. an unfair advantage by reducing the value and number of cattle and hogs shipped to the U.S. market.

As a result, Canada and Mexico are now poised to impose retaliatory tariffs on U.S. goods destined for export to the two countries. Apples are on Canada's list and expected to be on Mexico's list when it is released. This could have a significant impact on the bottom line of the apple industry, as Canada and Mexico are our two largest export markets.

USApple is active in a broad business and agriculture coalition working to resolve the issue before the tariffs are imposed. The House passed a strict repeal of the COOL law in June. However, in the Senate, where a 60 vote super majority is needed, things are moving more slowly. Senators who represent small beef and pork producers or who are close to consumer groups do not support the repeal, while those whose constituents are caught in the cross hairs are calling for action.

Initially it was thought the tariffs could hit as soon as this month but the WTO has yet to assign a dollar value to the "harm" done to Canada and Mexico. The United States Trade Representative (USTR) has offered just more than \$90 million while Canada and Mexico are calling for just over \$3 billion. Once the WTO makes a determination, the two countries will then assign percentage amounts to U.S. goods and commodities. The WTO is expected to issue a decision on November 27. The tariffs could then be imposed as early as mid-December.

USApple is working on our own and within the coalition to urge the Senate to act before the tariffs are imposed. During the 3<sup>rd</sup> week of September, Diane Kurrle and Jim Bair met with trade staff for the Canadian embassy to discuss the issue. Kurrle participated in a strategy meeting of the COOL coalition. It is important to note that this issue only impacts COOL for meat and poultry and will in no way impact the COOL requirements for produce or seafood. (*Apple Bites* - 9.22.15, US Apple Association)

### **Federal Court Orders EPA To Stop National Enforcement of WOTUS**

Pennsylvania Farm Bureau (PFB) praised a federal court order that stops the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) from enforcing the highly controversial Waters of the United States (WOTUS) rule across the nation. The Sixth Circuit Court decision recognizes that the rule has serious flaws and provides a temporary stay until the court determines whether it has jurisdiction over the petitions in the case.

"The rule is scientifically and legally flawed and clearly goes well beyond the authority granted to the agencies through the Clean Water Act. We are pleased that the court will have an opportunity to evaluate and understand the rule's impact on farmers, businesses, local communities and other landowners," said PFB President Rick Ebert. "Under the broad definitions included in the pervasive WOTUS rule, virtually all of Pennsylvania's land mass can be claimed by EPA officials as a 'regulated water,' subjecting landowners and communities to extreme and needless federal permitting requirements and land use restrictions."

In August, a federal court in North Dakota issued a temporary injunction against EPA and the Corps from enforcing WOTUS, but the decision only affected the 13 states specifically named in the lawsuit. In that case, the judge ruled that the states would likely be harmed if the courts didn't act and that the states would likely succeed when their underlying lawsuit against the rule is decided.

"Despite overwhelming evidence that WOTUS lacks legal and scientific credibility, which have been documented by the Army Corps of Engineers, EPA continues to aggressively push for the implementation of the rule. It's time for EPA to ditch the rule and begin a new conversation with farmers and other stakeholders, who are also interested in improving water quality," concluded Ebert.

### **Congressional Committee Passes Bonus Depreciation**

Members of the House Ways and Means Committee have approved legislation that would permanently extend 50 percent bonus depreciation. H.R. 2510 is now headed to the full House for consideration. Bonus depreciation, which expired at the end of last year, allows farmers to deduct half of the cost of new equipment purchases, rather than having to depreciate it over five or seven years. Farmers use this as a tax and income planning tool, since their income can fluctuate widely from year to year.

"The ability to take the deduction immediately allows the farmer to have extra cash in his pocket to make purchases when it makes sense and to plan them out," said Pat Wolff, a tax policy specialist with the American Farm Bureau Federation.

The Senate Finance Committee has already approved a two-year extension of a number of tax provisions, including bonus depreciation. However, both chambers of Congress appear to be far apart on how long those tax provisions should stay.

"So both the House and the Senate agree that this is a good provision but they are miles apart on how long the provision should stay on the books," Wolff said. "Farmers everywhere need to call their member of Congress and tell them that it's impossible to run a business when you don't know what the tax rules are and that Congress needs to give farmers and ranchers certainty now by passing the bonus depreciation bill now, instead of at the end of the year."

### **Obama Nominates Dr. Robert Califf for FDA Commissioner**

President Barack Obama has nominated Dr. Robert Califf as the new commissioner of the U.S. Food and Drug Administration (FDA). The position was vacated in March 2015 when Dr. Margaret Hamburg stepped down after serving nearly six years as commissioner.

Dr. Califf currently serves as Deputy Commissioner for Medical Products and Tobacco at the Food and Drug Administration (FDA), a position he has held since March 2015. Prior to coming to FDA, he served in various capacities at Duke University School of Medicine and the Duke University Medical Center between 1982 and 2015.

### **Vilsack Names Karla Thieman as USDA Chief of Staff**

Agriculture Secretary Tom Vilsack announced the appointment of Karla Thieman as chief of staff for the U.S. Department of Agriculture (USDA). The position was recently vacated by Brian Baenig, who moved to the Biotechnology Industry Organization as vice president of its Food and Agriculture Section.

Thieman joined USDA in April 2014, serving as a senior policy advisor to Vilsack. Most recently she was working as chief of staff to Deputy Agriculture Secretary Krysta Harden. Prior to joining USDA, Thieman worked for the Senate Agriculture Committee for more than five years.

### **NRCS Finalizes State Offsite Methods to Determine Wetlands**

The Natural Resources Conservation Service (NRCS) has finalized a plan to use in-office methods to determine the existence of wetlands such as soil maps and aerial photography rather than an NRCS employee visiting the farm to conduct field observations and secure soil samples. Farmers are concerned about the offsite method resulting in inaccuracies on wetland locations which could alter farm management plans and impact eligibility for crop insurance and other USDA programs.

Many producers would prefer on-site visits from NRCS which would yield the most accurate data. The NRCS is experiencing a backlog of wetland determination requests and is using the State Offsite Methods as a way to determine the existence of wetlands and reduce the time needed to issue a confirmation to the producer. The State Offsite Methods are only applicable in four Midwestern states at this time but could be expanded to other parts of the country.

### **Budget Drama Continues in Harrisburg**

As of the middle of October, the state budget appeared no closer to completion than it was at the end of June. Lawmakers have been locked in a stalemate with Gov. Tom Wolf over issues like education spending and taxation. A state budget was due June 30.

Now those same issues are preventing forward momentum on a new state spending plan. The General Assembly recently passed a stopgap budget to get some money flowing to school districts and social service providers left with their own budget shortfall due to the budget impasse. Senate Republicans said school districts and social service providers should not be left in the middle of the ongoing negotiations.

However, Gov. Wolf vetoed the stopgap budget, wanting to instead iron out issues such as pension reform and liquor privatization. He blamed Republicans for failing to negotiate in good faith. "A stop gap budget is an embrace of the status quo that has failed Pennsylvania's middle class for far too long," Gov. Wolf said. "It doesn't fix our deficit, fund our schools, make oil and gas companies pay their fair share, or provide property tax relief."

According to published reports, Gov. Wolf made offers to Republican leaders in the General Assembly to lease the state liquor system to a private entity. He has also offered to move new state and school district employees to a hybrid retirement system. Under his plan, once new employees begin making more than \$75,000 a year, a portion of their earnings will become invested in a 401(k)-style retirement plan, instead of on the state pension.

And in return, Gov. Wolf is looking for increased funding for school districts and a severance tax for natural gas extraction. Pennsylvania Farm Bureau is working with lawmakers to secure adequate funding for critical agriculture needs, such as Penn State Cooperative Extension, and advocate for our key issues such as pension reform and property tax elimination.

On October 7, House lawmakers rejected a tax proposal from Gov. Tom Wolf that would have raised the state's personal income tax rate and also enacted a severance tax on natural gas extraction. The measure failed on a *mostly* party line vote, with every Republican member of the House voting against the taxes.

State Rep. David Reed, the House Majority Leader, said he the administration will move forward on budget negotiations. "We hope the governor and his administration will look at this vote in a realistic manner so we can move forward on negotiating a budget that makes sense for the taxpayers of Pennsylvania," Reed said. "It is time to come back to the table and honestly negotiate a reasonable and responsible spending plan to fund our schools and core functions of government."

Gov. Wolf proposed raising the personal income tax to 3.57 percent from the current 3.07 percent, and a 3.5 percent severance tax on natural gas. Gov. Wolf said his proposal would expand property tax relief to seniors, and also put the state on a more sound fiscal footing. "If we do not fix our deficit, our credit rating will be downgraded to junk status and we will be forced to cut more funding from education," Gov. Wolf said.

"More education cuts will lead to the layoffs of more educators, further increases to class sizes and skyrocketing property taxes. We must get Pennsylvania's financial house in order and invest in our future." The state's new spending plan, which was due June 30, is now more than 100 days late. Some schools and social services providers are starting to see serious consequences from the lack of new state funding.

### **AG Departments Looking to Help Veterans**

The Pennsylvania Department of Agriculture and the U.S. Department of Agriculture are organizing separate initiatives to showcase and assist military veterans in agriculture. Pennsylvania has unveiled a new marketing program to highlight produce and products raised by military veterans while the USDA has partnered with military officials to offer agriculture and career counseling for active duty personnel that are transitioning into civilian life.

PDA recently announced the Homegrown by Heroes Program through PA Preferred that will allow eligible farmers to market their products with a special label saying those products were raised by a military veteran. Homegrown by Heroes is available to farmers and value-added producers who participate in the PA Preferred program and have served in the military, national guard or reserve. To learn more about Pa Preferred visit: [www.papreferred.com](http://www.papreferred.com).

In related news, the USDA and Department of Defense have announced a partnership to train 200,000 transitioning military service members each year, offering career training and counseling for agriculture jobs.

"Our transitioning service members leave the military with a variety of essential skills - including leadership and discipline - that could be directly applied to a career in agriculture," said Susan S. Kelly, Director of the Department of Defense's Transition to Veterans Program Office. "For those members who are considering farming or ranching as a post-service career, I encourage them to learn more about the opportunities, preferences, and incentives offered by the USDA."

Roughly 200,000 military members go through a transition assistance program each year as they ready for civilian life. This partnership will make sure that military veterans know about incentives for veterans available through the USDA including farm loans and rural housing opportunities. The USDA has made funding available for veterans to start farm businesses. The agency has awarded \$438 million in farm loans to veterans since 2009.

### **Spotted Lanternfly Update Meeting**

Pennsylvanians interested in learning more about the spotted lanternfly, an invasive species found in the state last fall, are invited to a free public meeting from 6-8 p.m., October 22 at the Brandywine Heights Middle School in Topton, Berks County.

Representatives from Penn State Extension, the Pennsylvania Department of Agriculture, Penn State's College of Agricultural Sciences' Department of Entomology, and the Department of Biology at Kutztown University will provide information regarding the spotted lanternfly eradication efforts to date as well as answer any questions regarding the related quarantine order.

The spotted lanternfly, is an invasive insect that was first discovered in Berks County in September 2014. The insect has the potential to destroy high-value crops, including grapes, tree fruits and hardwood lumber. In an effort to keep it from spreading, the Pennsylvania Department of Agriculture has quarantined eight Berks County townships. Spotted lanternflies have been found in wooded areas and residential landscapes, especially where there are tree-of-heaven trees.

Intentional movement of any of the life stages of the spotted lanternfly is prohibited. The quarantine order, which has been supported by the affected communities, means that any item that could hold any life stage of this insect may not be moved outside the quarantined area without inspection and compliance. That includes firewood, vehicles, outdoor household items and any items stored outside during the fall, as well as building materials and plants or plant parts.

*Source: Penn State Cooperative Extension*