

AG ISSUES UPDATE
Edited by Brad Hollabaugh
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FDA Publishes Final Produce Safety Rule under FSMA

On November 13, 2015, the FDA posted a pre-publication version of the 801 page final produce food safety rule that will apply to growers - "*Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption.*" The rule will be published on November 27 and become effective 60 days later. Compliance to the rule is staggered over several years depending upon the specific provision and size of the operation.

USApple has been actively advocating on behalf of the apple industry during since FDA began developing the FSMA rule. In particular, we focused on the Agricultural Water provisions in the second round of comments to the FDA. As a result, the agency added additional flexibility to the Agricultural Water provision in the final rule. USApple staff and our Technical Food Safety Task Force will be reviewing the document and we will be providing additional information to USApple members.

The rules are the most significant changes to produce safety regulation in 70 years, and have the potential to significantly affect tree fruit production practices. Because of the scope of the final rule, it will take time to thoroughly examine and interpret. We anticipate that the FDA will soon announce a series of webinars for growers that will outline major provision of the final rule.

While we are still reviewing the details of the rule, a few of the more significant changes in the rule revision affecting tree fruit production include:

Compliance Provisions

- 1) Farms with less than \$25,000 in annual sales of produce over the previous 3 years are exempt from the rule.
- 2) Very small businesses (with more than \$25,000 but no more than \$250,000 in annual produce sales) will have four years after the rule's effective date to comply with most provisions.
- 3) Small businesses (with more than \$250,000 but no more than \$500,000 in produce sales in the previous 3 years) will have three years after the rule's effective date to comply with most provisions.
- 4) All other farms will have two years after the effective date to comply with most provisions.
- 5) The compliance dates for water quality standards, and related testing and record-keeping provisions in most cases will be an additional two years beyond the compliance dates for the rest of the final rule.

Agricultural Water

The compliance dates for water quality standards, and related testing and record-keeping provisions will in most cases be an additional two years beyond the compliance dates for the rest of the final rule. Growers must develop a baseline quality profile for each water source by testing each source multiple times over the two-year period to determine its baseline quality. The results of the baseline profile will determine whether the water is acceptable for use without further action, or whether additional steps may be necessary. We will provide more detailed information on these corrective actions in an upcoming communication.

Over the next several months, it is anticipated that the FDA will develop and publish guidance

documents that will provide more specific information for growers on what the Agency expects in terms of compliance with the new rule. (Mark Seetin, *USApple Member Alert*, 11/13/2015)

Federal Court Issues Temporary Injunction on WOTUS Enforcement

Farmers across the country scored a victory against the Environmental Protection Agency and the Army Corps of Engineers as a federal court ordered both agencies to temporarily stop enforcement of the controversial Waters of the United States rule. The temporary order by the Sixth Circuit Court will stay in effect until the court determines whether it has jurisdiction over the petitions in the case. In late August, a federal judge in North Dakota issued a temporary stay on the WOTUS rule, but that decision only impacted 13 states named in that lawsuit.

The decision by the Sixth Circuit Court recognizes the rule has significant flaws and is not abiding by current Supreme Court decisions regarding the Clean Water Act. The WOTUS rule significantly expands federal oversight of the nation's waterways to include small streams and rain-dependent ditches. Pennsylvania Farm Bureau praised the decision because it gives the court time to determine the legality of the rule before landowners are harmed by this aggressive federal overreach.

"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."

Farm Bureau has significant concerns over the way the EPA created the rule, a reservation shared by some officials within the Army Corps. A series of internal Army Corps memos released by the House Committee on Oversight and Government Reform shows the EPA ignored several legal, technical and scientific concerns outlined by the Army Corps as it drafted the "waters of the United States" rule. However, despite significant public opposition and legitimate legal concerns, the EPA continues to push forward with the implementation of the WOTUS rule.

"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," Ebert said. "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."

U.S. House Passes Transportation Bill

The U.S. House passed long-term transportation funding bill that includes language that will give states flexibility to provide exemptions to farm vehicles and drivers traveling intrastate without jeopardizing federal funding.

The Surface Transportation Reauthorization and Reform Act (STRR Act), was introduced by Rep. Bill Shuster, a Pennsylvania Republican who chairs the House Transportation and Infrastructure Committee. The bill, if approved by the Senate and signed by President Barack Obama, would provide a six-year blueprint for highway infrastructure development.

USApple signed on to agriculture/business coalition letters on two amendments. The first, offered by Representative Dan Newhouse (R-Wash.) is the "Port Performance Act," which aims at preventing future slowdowns at ports as was experienced last year on the West Coast. Identical provisions were included in the Senate's version of the highway bill.

The second amendment, offered by Reps. Reed Ribble (R-Wisc.) and others, would allow the states the option to raise the maximum truck vehicle weight from 80,000 to 90,000 pounds for trucks equipped with six axles.

Pennsylvania Farm Bureau worked closely with members of Congress to include provisions in the bill that will give states the ability to adopt their own agriculture exemptions. There was concern at the state level that Federal Motor Carrier Safety Administration could have withheld federal highway funds if Pennsylvania adopted standards different than federal requirements. The bill will give state and local governments the certainty to move ahead with large-scale projects, and also streamlines the project review and delivery process, Shuster said.

Little Light at End of Tunnel for Budget Talks

Pennsylvania's budget impasse is dragging on with little resolution in sight. Instead, school district officials and social service providers are continuing to scramble to secure funding to get them through until state lawmakers can come to a resolution. The Erie School District made the unusual request of seeking a \$47 million loan from the state Treasury to help them continuing operating through the stalemate—a move that was rejected by the administration.

While negotiations continue, the public debate over the budget shows a Democratic Governor and Republican-controlled General Assembly that is deeply divided over fundamental issues such as education spending and natural gas taxation. Recently, 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 hopes the administration will move forward on budget negotiations.

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."

Farmers Need Help With Wildlife Damage

Dave DeLeon took a season off last year from growing sweet corn, hoping it would deter critters from feasting in his fields. It had the opposite effect. DeLeon planted successive acres of sweet corn at his Susquehanna County farm, only to see the most widespread bear damage he's ever experienced. Every field has damage caused by bruins, who can mow down a field like a combine.

"We don't know what we are going to do next year," DeLeon said. "I can't put up with any more damage."

Farmers across the state combat wildlife damage each year, from bears eating sweet corn to deer feasting on soybeans and other field crops. And while the Pennsylvania Game Commission has programs in place to assist landowners, farmers say there is more that can be done to help them confront wildlife damage.

Pennsylvania Farm Bureau recently testified before the Pennsylvania Board of Game Commissioners saying that farmers would like to see adjustments to current state programs to assist landowners. At the same time, PFB is concerned that two years of reduced doe tag allocations will result in a growing deer population—which will translate into more crop damage. The Game Commission is also continuing to eliminate concurrent seasons in most wildlife management units. That means the majority of hunters in the state can only hunt bucks during the first week of the rifle deer season, even if they have a doe tag for that WMU. However, the state's Deer Management Assistance Program (DMAP) is available for use during the split season.

“There has been little to no help to improve the tools farmers have to combat the damage to farms that these changes are causing,” Jeff Grove, PFB's director of local government affairs, said during testimony before the board. There is a cost to agriculture each time changes are made that increase deer populations, especially when there are no improvements made to programs farmers may use to protect themselves from the resulting damages.”

PFB made several suggestions to the Game Commission of ways to streamline programs that farmers can use to combat wildlife damage, including changes to the Agricultural Deer Control “Red Tag” program. The program is designed to help farmers who are suffering crop damage to allow hunters to take doe outside of the normal hunting season.

However, in order to qualify, farmers have to participate in a public access program for two years before being allowed to use Red Tag. Pennsylvania Farm Bureau suggested that farmers be allowed to forgo participation in the public access program. Hunters using the Red Tag program would eliminate the need for farmers to cull deer for crop damage, and also save time for the Game Commission, whose employees must pick up deer that are harvested for crop damage, Grove said. Streamlining the program would also help farmers better combat wildlife damage that often results in thousands of dollars in lost revenue, Grove said.

Fair Dealer Bill Introduced

A state representative has introduced a bill to protect farm equipment dealers from onerous demands by equipment manufacturers in dealership agreements, including preventing manufacturers from restricting the types or models of equipment a dealer can sell. Rep. Will Tallman, an Adams County Republican, introduced the bill, which addresses concerns farmers have had for a number of years that the extensive restrictions in sales of equipment lines and other requirements imposed by manufacturers are driving many dealers out of business.

House Bill 1553 will provide many of the same provisions already afforded under state law to automobile dealers. Equipment dealers say agreements from manufacturers are discouraging and in some case preventing them from offering the range of equipment needed to service their customers and keep them financially viable. The prospect of fewer dealers driven out from manufacturer restrictions will make it even more difficult for Pennsylvania farmers to obtain the type of equipment they need. Pennsylvania Farm Bureau is working with lawmakers to achieve passage of the bill.

Pennsylvania Farm Bureau Testifies in Support of Local Tax Bill

Pennsylvania Farm Bureau is encouraging lawmakers in the Pennsylvania House of Representatives to support legislation that would make the filing of local income taxes more consistent with state and federal laws. PFB recently sent a letter to the House Finance Committee supporting Senate Bill 356, introduced by Sen. Mike Folmer and adopted by the Senate, which would allow farmers to use the more simplified methods for reporting and payment of income taxes already provided through state and federal laws.

According to PA Farm Bureau, state and federal laws allow farmers to make one report and payment of estimated taxes, which is deferred until after the completion of the tax year. Farmers are not provided with similar options at the local level. Local tax laws also do not provide a “safe harbor” provision for the payment of estimated taxes. Senate Bill 356 would address both issues, along with making reporting and payment deadlines the same as state and federal. Pennsylvania Farm Bureau encouraged committee members to adopt the legislation.

Task Force Releases Lyme Disease Report

The Pennsylvania Task Force on Lyme disease recently released its first comprehensive report on the impacts of Lyme disease in the state, and recommendations for combating the problem. The report gives the Pennsylvania Department of Health and the Pennsylvania General Assembly a series of suggestions on how to address Lyme disease through prevention, education and surveillance.

Members of the task force, which included physicians and officials from state agencies, said more research is needed to map out a long-term solution to the issue. However, Pennsylvania needs to work with physicians and also individual school districts to spread the message of how to prevent tick bites—which is how Lyme disease is spread. The task force also suggests dedicated funding to education and other strategies in order to reduce the number of Lyme disease cases in the state.

The task force recommended the state develop protocols and funding for schools in high-risk areas that would reduce tick exposure on school grounds, such as deer management and modifying landscaping. They also suggested developing a public awareness campaign aimed at educating the public on how to avoid tick bites.

“Lyme disease is extremely prevalent in Pennsylvania, and this report provides a blueprint for how to better protect the residents of the commonwealth from this growing public health threat,” Secretary of Health Karen Murphy said. “The task force has developed an important tool to help lower Lyme disease rates across the state.”

More information can be found at: www.health.pa.gov.