

AG ISSUES UPDATE
Edited by Brad Hollabaugh
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Update on Agricultural Guestworker Act

House Judiciary Committee Chairman Bob Goodlatte (R-VA) is in the final stages of drafting the Agricultural Guestworker Act. This proposal would replace the antiquated H-2A program with a streamlined H-2C program built for the 21st century. It would make critical improvements to the program, including eliminating the elevated wage rate, eliminating the transportation and housing requirements and moving the administration of the program to the Department of Agriculture.

USApple and our partners in the Agriculture Workforce Coalition (AWC) have been working for months with Goodlatte's staff offering suggestions and feedback as they crafted the draft bill.

On Monday, October 2, we received what was thought to be a final version of the bill with the expectation that the Judiciary Committee would mark it up Wednesday (October 4). In anticipation of those actions, USApple and the other Steering Committee members of the AWC drafted and issued a statement in support of the effort and urging the Judiciary Committee members to approve the bill.

However, the decision was made Tuesday evening, October 3, to postpone the introduction and markup of the bill. While this is clearly disappointing as we want to get this process moving, the good news for agriculture is that the markup of Representative Lamar Smith's (R-TX) Legal Workforce Act was also postponed.

Smith's bill would mandate E-Verify for all new hires. USApple has a longstanding policy opposing E-Verify unless it is coupled with meaningful reforms. In 2015 there was an effort in the House to pass E-Verify alone. In response, USApple and the AWC worked with Representative Dan Newhouse (R-WA) and others who wrote the House Republican leadership to say "no mandatory E-Verify without agricultural labor reform," and more than 50 Republicans signed that letter. The message was clearly received and we have been told that E-Verify will not be allowed to move forward by itself.

USApple will continue to work with Judiciary Committee staff and other key offices to advocate for agricultural labor reforms. Stay tuned for further updates on the timing for introduction of the bill and next steps. *Staff Contact: Diane Kurrle (Apple Bites, USAPPLE, Oct. 5, 2017)*

USApple Highlights FSMA Agricultural Water Rule Problems to FDA

USApple Food Safety Committee Chairman Lee Showalter and Mark Seetin participated in a discussion session on October 3 with senior FDA officials at a produce food safety forum coordinated by The Pew Charitable Trusts at the request of the agency. The purpose of the forum was to gather input and ideas on recent developments and activities related to the

Produce Safety Rule's microbial quality standard and testing requirements for agricultural water.

Showalter and Seetin joined a group of two dozen representatives of FDA, EPA, academia and other produce groups. Dr. Samir Assar, Director of the Division of Produce Safety at FDA and five staff members responsible for implementation of the ag water rule comprised the FDA contingent.

Showalter described the challenges and problems faced by apple growers explaining the diverse production systems from the Eastern U.S. to Western regions in terms of water used for irrigation, crop protections chemical application, and cooling. He explained that growers have multiple water sources that would require considerable time and expense to comply with the rule as proposed, and he cited research that calls into question the value of the current microbial water test based on generic E. coli as an indicator of potential problems with produce.

Recently, the FDA announced a postponement of the compliance deadline for the agricultural water rule, extending it by two years from the current deadline. The new compliance deadline for the largest growers is 2022, and is 2026 for the smallest producers.

The results of the meeting are to be used to frame a larger discussion in an FDA sponsored national "Ag Water Summit" being planned for the first quarter of 2018. *Staff Contact:* Mark Seetin (*Apple Bites*, USAPPLE, Oct. 5, 2017)

FSMA: Food Safety and Modernization Act Produce Safety Rule Becomes Final

On September 17, 2017, the U.S. Food and Drug Administration (FDA) announced that the FDA Food Safety and Modernization Act Produce Safety rule is now final. Initially proposed in 2013, the final rule incorporates revisions outlined in the 2014 supplemental proposal as well as other appropriate changes.

According to the FDA, key areas affected by the final rule include: (1) agricultural water; (2) biological soil amendments; (3) sprouts; (4) domesticated and wild animals; (5) worker training, health, and hygiene; and (6) equipment, tools, and buildings. Regarding the implementation of the final rule, FDA Commissioner Scott Gottlieb stated that the agency is aware of the need to educate both the produce industry and state regulators on the new requirements.

As a result, Commissioner Gottlieb announced the FDA's intention to assist compliance efforts through: (1) extending agricultural water compliance dates; (2) engaging stakeholders regarding agricultural water standards; (3) recognizing other methods that are appropriate for use in agricultural water testing; (4) delaying inspections to assess compliance with non-water requirements for produce other than sprouts; and (5) working in partnership with farmers and the states to provide training opportunities for both producers and regulators. (*The Agricultural Law Brief*, 10/04/2017)

Trump Agriculture Team

President Trump's nominations of Stephen Censky as USDA Deputy Secretary and Ted McKinney as USDA Undersecretary for Trade and Foreign Agricultural Affairs were confirmed by the Senate this week and will begin work immediately. Censky has been the CEO of American Soybean Association in St. Louis and McKinney has been the Director of the Indiana Department of Agriculture.

Both are well known by USApple President and CEO Jim Bair. Jim worked with Censky as White House appointees at USDA during the Reagan Administration, and he worked with McKinney on pesticide issues that impact agriculture. (*Apple Bites*, USAPPLE, Oct. 5, 2017)

GMO Labeling: USDA Releases Study Regarding Disclosure of Bioengineered Food

On September 6, 2017, the U.S. Department of Agriculture's Agricultural Marketing Service released a study entitled: Study of Electronic or Digital Disclosure: A Third-Party Evaluation of Challenges Impacting Access to Bioengineered Food Disclosure.

Completed in compliance with the National Bioengineered Food Disclosure Standard, the purpose of the study is to identify potential challenges faced through the electronic or digital disclosure of bioengineered food. According to the study, consumers face potential technical difficulties when accessing electronic or digital bioengineering disclosures because consumers:

- (1) Do not automatically associate digital links with additional food information,
- (2) May lack equipment capable of scanning digital links,
- (3) May be confused due to hundreds of scanning apps being available in the market,
- and
- (4) May be unable to connect to broadband.

The study further asserted that many consumers do not understand how to download or use scanning apps and may be confused by current bioengineering disclosure language. To overcome these potential consumer challenges, the study recommended that the government and interested parties provide the following: (1) education regarding electronic or digital disclosure links and bioengineered foods, (2) offline disclosure options for those who lack smartphones or broadband access, and (3) scanner apps that are more user-friendly.

Farmers Urge EPA to Ditch the Rule

Pennsylvania farmers made it clear to federal regulators that they want to see the controversial Waters of the U.S. (WOTUS) repealed once and for all. More than 600 grassroots Pennsylvania Farm Bureau members contacted the U.S. Environmental Protection Agency during a public comment period on the agency's plan to rescind the controversial regulation. EPA must now review the comments before proceeding with next steps.

WOTUS gives EPA and the U.S. Army Corps of Engineers broad authority to regulate many land areas as "water" and would affect an estimated 98 percent of Pennsylvania land. The rule was issued in 2015 by former President Barack Obama's administration but never

went into effect because of injunctions issued by federal courts that questioned the rule's legality.

PFB and the American Farm Bureau Federation also submitted official comments to EPA, calling for the repeal of WOTUS. "Farmers support clean water and work hard to protect our natural resources," PFB Director of Regulatory Affairs Grant Gulibon wrote in PFB's comments to EPA. "However, the 2015 rule has more to do with land than water. It is a 'land grab' that creates a huge regulatory burden for farmers and others who depend on their ability to work the land; increases costs for farmers and others; and produces confusion and uncertainty."

USDA Gearing Up for Census of Agriculture

The U.S. Department of Agriculture is getting ready to send out the 2017 Census of Agriculture at the end of the year. Conducted every five years, the questionnaire collects comprehensive data about agriculture in every county in the nation. Those figures help highlight agriculture's importance to the local and national economies.

The data is used by farmers and agribusinesses for planning and by legislators and policy makers for developing agriculture policy, such as the farm bill, and designing programs that help farmers and other residents of rural areas.

USDA will mail the surveys to farms in December and responses are due back — either via mail or online — in February. Responding to the Census is required by law. For more information, visit: www.agcensus.usda.gov.

Bill to Ease Regulations on High Tunnels Clears Committee

A proposal to exempt certain high tunnel structures used to extend the growing season of locally grown produce from stormwater management planning has cleared its first hurdle in the state Legislature. More and more farmers are using high tunnels to extend the growing season to meet increasing consumer demand for fresh, local fruits and vegetables.

House Bill 1486, sponsored by Rep. David Zimmerman of Lancaster County, passed the House Environmental Resources and Energy Committee and can now be considered by the full chamber. The bill would prevent municipalities from requiring that farmers submit stormwater management plans on high tunnel structures that meet common sense guidelines clearly identified in the legislation.

Understanding the Referendum on Property Taxes

In November, voters across Pennsylvania will have a chance to weigh in on whether to change the state Constitution to alter a program that offers property tax reductions for homes and farms.

The proposal—which will appear as a ballot question in the upcoming Nov. 7 election—would increase the maximum level of property tax relief a school district or other taxing body (such as a county or municipality) may allow through the homestead/farmstead exemption.

That program allows districts to exempt a portion of the assessed value of eligible properties from taxation as long as that revenue is made up through other means. For farm properties, eligibility for that relief is limited. Farmland does not qualify at all for the exemption. And only farm buildings located on properties where the landowner lives are eligible.

The proposed Constitutional amendment would increase the maximum amount of a property's assessed value that districts may exempt from taxes. Now, that exemption is capped at 50 percent of the median assessed value of residential properties in the district. With the change, the cap would essentially be eliminated. Taxing districts would be allowed to exempt to up 100 percent of the assessed value of each property eligible for relief.

So, what would the proposal's adoption mean for taxpayers? Not much unless further action is taken to generate the revenue needed to pay for tax relief.

Districts won't be able to allow a greater homestead/farmstead exemption if they don't have another funding source to pay for it. State law prohibits districts from simply increasing the property tax millage rate and using the funds to provide relief for homeowners while businesses pay more.

Currently, most homestead/farmstead relief is funded through the state's share of casino slot revenue, which is distributed to school districts to provide the exemptions. But for most districts, that funding is well below even the maximum amount of relief allowed now. So, unless state lawmakers approve an additional source of state funding for the exemptions—such as higher sales or income taxes—landowners would not likely see any additional property tax relief from voters approving the referendum.

Even under the best of circumstances, the change would not provide meaningful property tax relief to farmers because there would still be limits on what types of agricultural property are eligible for relief.

Protect Your Credit, Watch Out for Scams After Equifax Breach

With news that 143 million Americans' personal information was recently exposed in a data breach at Equifax, it's important that you take steps to protect yourself against identity theft that could have devastating consequences for your family, farm or business.

Hackers obtained Social Security numbers, birth dates, addresses, driver's license numbers, credit card numbers and other data through the attack on Equifax, one of three companies that gathers and reports information about consumers' credit.

To protect against identity theft, check your credit reports, bank accounts and credit card statements regularly and consider placing a freeze or fraud alert on your credit. Equifax is offering all consumers a year of free credit monitoring. For more information, visit www.equifaxsecurity2017.com.

The Federal Trade Commission has information online to help consumers navigate options for freezing or placing fraud alerts on their credit and taking other measures to protect themselves. To learn more, visit <http://bit.ly/2fffjGH>.

Some scammers are taking advantage of the data breach by trying to collect personal information by calling consumers and posing as representatives from Equifax. It's important to remember that Equifax will not call you unsolicited and you should never give out personal information over the phone unless you've initiated the call to a number you know is correct. Do not trust caller ID because scammers can make it appear they are calling from a company when they are not.

Input Sought on State Pollinator Plan

Penn State researchers and the Pennsylvania Department of Agriculture are seeking input from farmers and other people interested in the health of pollinators as they finalize the state's proposed Pollinator Protection Plan.

The document, developed in response to a directive from the U.S. Environmental Protection Agency, lays out strategies for protecting bees and other insects that pollinate nearly 75 percent of the commonwealth's food crops.

"The Pennsylvania Pollinator Protection Plan is a living document that will change over time as researchers and interested citizens share personal experience and best practices when it comes to protecting and expanding pollinator populations," Pennsylvania Agriculture Secretary Russell Redding said.

Pollinator populations have steadily declined in recent years. At the same time, pollinators play a critical role in the production of fruit and vegetable crops.

"Many of our favorite foods depend on bees, flies and others to transfer pollen between plants. They are critical to the success of our food supply," said Dr. Christina M. Grozinger, director of Penn State's Center for Pollinator Research. "If you enjoy strawberries, raspberries, cherries, plums, peaches or pears, you can thank these pollinators."

To view the plan and offer comments, visit ento.psu.edu/pollinators. Comments will be accepted through Dec. 15, after which they will be incorporated into the final plan.