

**AG ISSUES UPDATE**  
**Edited by Brad Hollabaugh**  
**November 2018**

**Trump Administration Announces First Step in H-2A Regulatory Reform**

On November 9, the Department of Labor (DOL) issued a proposed rule to require H-2A employers to post job opportunities online rather than in print publications as currently mandated. This is in keeping with the commitment of the Trump Administration to streamline and modernize the program. USApple and a broad coalition of agricultural groups advocated for this and other regulatory reforms to the program. USApple will submit comments on the proposal before the December 10 deadline. *US Apple, Apple Bites - 11.15.18*

**Mid-Term Elections Bring Change to Capitol Hill**

The November 6 midterm elections saw a near record voter turnout and a return to divided government. The vast majority of "apple members" - Senators and Representatives with significant apple production in their state or district - won their races. This is good news as we have effective champions in Senators such as Debbie Stabenow (D-Mich.), Bob Casey (D-Pa.), Maria Cantwell (D-Wash.) and Kirsten Gillibrand (D-N.Y.) who all won re-election. In the House, returning members Dan Newhouse (R-Wash.), Cathy McMorris Rodgers (R-Wash.), John Katko (R-N.Y.), Elise Stefanik (R-N.Y.), Fred Upton (R-Mich.), Bill Huizenga (R-Mich.), Suzan Delbene (D-Wash.) and many others have been strong advocates on our key issues.

For the apple industry, the new Congress will bring a mix of the status quo, as well as some new opportunities and areas for caution. With Democrats in control of the House, it is extremely unlikely that enforcement-only immigration legislation such as mandatory E-Verify will be brought forward with reforms. However, the likely focus of the Judiciary Committee on oversight and investigation may diminish the chances for consideration of immigration and agriculture labor reform. Trade policy including the ratification of the United States-Mexico-Canada Agreement (USMCA) may also become an uphill battle. USApple stands ready to work with both new and returning Senators and Representatives on these important issues. *US Apple, Apple Bites - 11.15.18*

**FDA Issues Industry Guidance for Mandatory Recalls**

The FDA has published long awaited guidance on the mandatory recall authority given to the agency in the 2011 FSMA law. The guidance, "Questions and Answers Regarding Mandatory Food Recalls: Guidance for Industry and FDA Staff" is available for download.

According to the FDA announcement, the agency will give food and feed businesses the opportunity to initiate voluntary recalls before ordering mandatory recalls. The guidance document lists several examples of situations when the FDA would consider using its mandatory recall authority.

The announcement accompanying the guidance indicates that the FDA will publicize the recall with alerts and public notices to provide notification to affected consumers and retailers. The alerts and notices will include, at a minimum, "the name of the article of food subject to recall, a description of the risks associated with the food, and to the extent practical, information about similar articles of food that are not affected by the recall." *US Apple, Apple Bites - 11.15.18*

### **Study Estimates Tariff Impacts on Agriculture**

The Farm Foundation, on November 1, released the results of a study it commissioned at Purdue University that estimates the impact of retaliatory measures from Mexico and Canada in response to the U.S.' imposition of tariffs on steel and aluminum. USApple President & CEO Jim Bair was an invited guest at the announcement event.

The study estimated the retaliatory tariffs from those two countries could cause agricultural exports to decline by \$1.8 billion. Broader retaliation from China and other trading partners could cause a \$7.9 billion decline in agricultural exports, overwhelming the small positive gains from the recently-negotiated U.S.-Mexico-Canada agreement. Those gains, estimated at \$450 million, would occur mostly in the dairy and poultry sectors.

Should Congress not ratify President Trump's agreement with Mexico and Canada, he has threatened to withdraw the U.S. from NAFTA. In that case, tariffs would revert to pre-NAFTA Most Favored Nation levels granted to all WTO member countries. In that case, according to the study, U.S. ag exports would decline by more than \$9 billion, and lead to higher consumer prices for food. The full analysis is available at <https://farmfoundation.org/trade>.

### **Trade Update (Diane Kurrle, US Apple)**

USMCA: As you know, the USMCA (new NAFTA) is mostly status quo for the industry. That being said, we are very pleased that negotiations have been completed and that the new agreement retains chapter 19 dispute resolution, did not include seasonality provisions, and of course maintains duty free access to both countries. Now we just need to get the section 232 tariffs dropped. I was at a meeting last week with Chief Agriculture Negotiator Gregg Doud and he indicated that the tariffs with Mexico and Canada would be addressed "soon."

With negotiations now complete on USMCA, the U.S. International Trade Commission has launched an investigation into the agreement's potential economic impact on the U.S. economy as a whole as well as specific industries and consumers. The ITC is required to do this under the 2015 Trade Promotion Authority and must issue a report within 105 days of the signing.

**New Trade Negotiations Announced:** The Administration announced plans to begin negotiating trade agreements with the United Kingdom, the European Union and Japan. Under TPA, discussions will start no sooner than 90 days from yesterday or approximately January 17. Jim Bair and Dianne Kurrle attended a trade meeting at the Farm Bureau and heard directly from Administration officials including, Kelly Ann Shaw, Special Assistant to the President and Senior Director for International Trade and Tim Pataki, Special Assistant to the President, White House Office of Public Liaison. They believe there are potential benefits to be realized for the apple industry with Japan specifically and this will be a topic for Government Affairs in February if not sooner.

### **FDA Releases Draft Guidance on FSMA Produce Rule (US Apple)**

The FDA has just released the long awaited draft guidance on the Produce Safety Rule, sometimes referred to as the "Grower Rule" because the standards apply to the "Growing, Harvesting, Packing, and Holding of Produce for Human Consumption."

Most important to apple growers, the draft guidance provides a broad range of recommendations on how to meet the requirements for most subparts of the rule. In addition, it outlines how to determine whether produce or farms may be eligible for exemptions from certain requirements, or from the rule in its entirety.

In the announcement accompanying the publication of the guidance, the Agency notes, "Specific regulatory or statutory requirements are cited, and in some cases, specified using the word must (meaning mandatory). The use of the word should indicates that something is recommended, but not required. The use of the word including means options that are not limited to the described items.

The public comment period in the announcement is 180 days. It should be noted that guidance documents represent the Agency's best current thinking on an issue - thus they may be acted upon by the agency even if in draft form. USApple's Food Safety Committee will be reviewing the 9- chapter, 152-page document to develop comments on the draft proposal.

### **Farm Bill**

The Farm Bill expired on October 1, 2018 without replacement. The conference committee was not able to reach an accord in time to get it passed. Currently, Congress has elected not to pass an extension on the old bill for fear that it might delay the creation of a new farm bill even longer.

The chairs and ranking members of the House and Senate agriculture committees have said they will push hard to finish a new farm bill this year. But the bill's fate is likely to depend on how much energy there is to pass legislation as Congress prepares for the Democrats to take control of the House.

### **SSA MisMatch Letters**

It appears that the SSA will start to mail mismatch letters to employers in 2019. Typically, these letters are sent to employers who have reported contributions to accounts which do not match the name of the employee making the contribution. In most cases, employers assume the responsibility to respond to these letters with either corrections or confirmations of the information provided for their workers.

Also, if there is a problem, employees may be required to visit the local SSA office to verify their identity and confirm that their information is correct. Further, if an employee cannot identify themselves to the satisfaction of the SSA, employers may be required to terminate employment of those employees. That scenario creates some obvious liability issues for an employer, so it can become an ugly mess. If employees are lost, replacing them can be difficult. If employees are wrongfully terminated, then law suits may follow. This is the classic "lose-lose" scenario.

Of course, the E-Verify system was created to solve these problems. But many employers are not using E-Verify in their hiring practices. The degree to which enforcement will occur for employers who have mismatched SS numbers is not known at this time. But should enforcement be scaled up, even more disruption to the agricultural workforce in the U.S. is inevitable.

### **Farm Bureau Asks Court to Block WOTUS Nationwide**

Farm Bureau is asking a federal district court in Georgia to expand nationwide its order blocking the controversial Waters of the U.S. rule from going into effect as the Environmental Protection Agency works to repeal and rewrite the regulation.

Rulings by that court—and two others in North Dakota and Texas—have blocked WOTUS from taking effect in certain states. But in 22 states, including Pennsylvania, the rule is technically in effect, although it's uncertain whether the rule will be enforced in those states.

EPA had sought to delay the effective date of the regulation as it worked through the process of repealing and replacing it. However, the delay was struck down by federal district court in South Carolina, which ruled that the agency did not follow proper procedures.

The 2015 WOTUS rule would potentially subject an estimated 98 percent of Pennsylvania land to federal water regulations. Farm Bureau believes the rule attempts to regulate land areas well beyond what is allowed by federal law and has advocated for replacing it with one that protects water quality without trampling on landowners' rights.

### **FDA Releases Pesticide Monitoring Report - Apples Score 99.4 Percent (US Apple)**

The Food and Drug Administration (FDA) is responsible under the Federal Food, Drug, and Cosmetic Act for enforcing tolerances established by the Environmental Protection Agency (EPA) for amounts of pesticide residues that may legally remain on food. As part of that responsibility the Agency tests a broad range of domestic and imported food commodities for roughly 700 pesticide residues.

In the just-released Pesticide Monitoring Report, the FDA found that more than 99% of domestic and 90% of import human foods were compliant with federal standards. Further, no pesticide chemical residues were found in 52.9% of the domestic and 50.7% of the import samples that we analyzed. Of the 153 samples in the "Apple fruit/juice" category, 99.4% either had no residue detected or residues that were below the EPA tolerance.

Results reported in the FDA report, though somewhat less detailed than the USDA's Pesticide Data Program (PDP) annual report, are consistent with the latest PDP report issued earlier this year reporting that 531 apple samples were tested. Of the apple samples testing positive for a pesticide, 100% of those samples were well within the pesticide tolerances established by EPA. For more information on USDA's PDP report see USApple's Pesticide Data Program Backgrounder.

### **Trade Mitigation Program - USDA Issues Two Fresh Apple Purchase Solicitations (US Apple)**

Late last week, USDA's Agricultural Marketing Service (AMS) issued two solicitations for the procurement of apples for the Trade Mitigation Food Purchase and Distribution Program, with the intention to purchase up to \$93.4 million of apples. The purchases for the Trade Mitigation purchase are over and above the regular commodity purchases conducted by USDA AMS for schools, low income and elderly feeding programs. For the full fiscal year 2017, regular commodity purchases by USDA amounted to \$82 million.

### **Push to Downsize General Assembly Dead for Now**

A proposal to reduce the size of the General Assembly is dead for now. Legislators wrapped up their 2017-2018 session without approving a measure that would cut the number of state House seats to 151 from 203. With a new legislative session beginning in January, all unfinished progress on legislation will reset and advocates for the bill will need to start back at square one.

Pennsylvania Farm Bureau has been a leading opponent of reducing the number of seats in the General Assembly and believes doing so would weaken rural Pennsylvanians' representation in state government. With fewer seats, districts would likely be concentrated in suburban and urban areas, diluting the voice of rural Pennsylvania.

Changing the number of seats in the General Assembly would require amending the state Constitution. For that to happen, legislators must approve identical resolutions in back-to-back sessions. Voters can then ultimately approve or deny the change via ballot referendum. The General

Assembly had approved a measure during the 2015-2016 session reducing the size of the House. But because no action was completed this session, that process will reset.

### **10 Years of Research Show Neonicotinoids Represent tiniest fraction of Bee Health Issues**

In the October 12 edition of The Genetic Literacy Project, executive director Jon Entine examines 10 years of field research reports on the effect of neonicotinoid pesticides on honey bee losses and health issues in general. In the article, the 'Gold standard' assessing neonicotinoids: Field bee hive studies find pesticides not major source of health issues, "Entine takes a collective look at more than 18 field studies completed and published in the last 10 years that have been focused on honey bees, bumble bees and, in one case, a solitary bee species (red mason bees) foraging in neonic-treated crops.

According to Entine's analysis, "while the media continues to produce stories suggesting a pesticide-fueled bee-apocalypse is unfolding, the world's top entomologists and regulators are going in a different direction-they believe that while bee health issues are real, the challenge from pesticides in general and neonicotinoids in particular-the boogymen of anti-pesticide activists-represent only the tiniest fraction of the cause. . . Field study after field study has indicated that there is little to no observable adverse effect on honey bees at the hive level from field-realistic exposures to properly-applied pesticides."

The Genetic Literacy Project (GLP) is an organization dedicated to promoting public awareness and discussion of genetics, biotechnology, evolution and science literacy. It was founded by science journalist Jon Entine, who serves as its executive director. The staff produces articles focusing on human genetics as well as on food and farming issues, including genetic engineering, the use and impact of crop protection chemicals and pollinator health. (*US Apple*)

### **Game Commission Urges Hunters to Help Protect Bald Eagles**

Pennsylvania Game Commission is urging hunters to help protect bald eagles from lead poisoning by burying the remains of harvested game animals or using non-lead ammunition. Lead poisoning in bald eagles is on the rise, according to the commission, and is often fatal.

"Lead poisoning is a debilitating disease in bald eagles," said PGC Wildlife Veterinarian Justin Brown. "You have this powerful bird and you find it in the field—limp and weak. You can pick it up and it doesn't even know you are there."

Hunters can help prevent lead poisoning in bald eagles and other raptors by limiting the birds' access to remains of game animals harvested with lead ammunition. According to the PGC, lead fragments can be found as far as 18 inches from a bullet's impact point and up to 30 to 40 percent of the lead can remain after the bullet has passed through.

Carcasses and gut piles should be buried or covered with branches so that eagles cannot find them. The PGC also encourages hunters to switch to a non-lead ammunition to eliminate lead from their harvests.

### **Help Tell Agriculture's Story During Ag Literacy Week**

Pennsylvania farmers have an exciting opportunity to help students understand where their food comes from and learn about the role that agriculture plays in their everyday lives. The Pennsylvania Friends of Agriculture Foundation is looking for volunteer readers to participate in the Third Annual Pennsylvania Ag Literacy Week, which will be held March 18-22, 2019. The deadline to sign up as a volunteer reader is coming up Dec. 15!

Last year, we visited more than 1,200 classrooms and we're hoping to reach even more students this year. During Ag Literacy Week, we will need hundreds of volunteers to visit classrooms across the state to read a book, lead students in a hands-on activity, and share their personal connection to agriculture.

Please become a volunteer reader today! All you need to do is: Contact your local school to request to read to a kindergarten through second-grade classroom; collect information such as the school, teacher's name and email, grade and number of students; and register online and make a \$10 donation to provide this year's book, "Right This Very Minute," to the classroom.

Learn more or register at [www.pfb.com/agliteracy](http://www.pfb.com/agliteracy).