

**AG ISSUES UPDATE**  
**Edited by Brad Hollabaugh**  
**June 2020**

**Welcome, Sara!**

For the past 25 ½ years, among many other activities regarding legislative affairs, I have submitted a legislative brief in the *PA Fruit News*. However, this will be my last update as I have tendered my resignation as chair of the Legislative Committee to the SHAP Board effective July 1, 2020.

However, I am very pleased and excited to introduce **Sara Hricko** (pronounced Ritz-ko) as the new chair of the SHAP Legislative Committee. Sara will continue to provide updates from the Ag Alliance each month and will keep our members informed of important legislative and regulatory issues. Below is a brief introduction to your new Legislative Chair:

Sara co-manages Green's Fruit Farm in Elysburg, PA with her husband Bobby, where they oversee 80 acres of apples and roughly 10 acres of peaches. Some of her primary responsibilities include managing their peach crop, leading their retail marketing efforts, running their pheromone trapping program, and testing out new methods for implementing precision agriculture on their farm.

Having completed a master's degree in plant pathology, she has enjoyed putting her skills of data collection and analysis to good use as she works with predictive models such as CougarBlight and the Pollen Tube Growth Model (PTGM). She has also been investigating the Fruitlet Growth Model for precision crop load management as they transition their orchards to more high-density systems.

In addition to her interests in orchard management and research, she is also captivated by what goes on off the farm with special regard to the fruit industry at the state, national, and international levels because the issues of today are so much larger than any one farm.

Sara notes, "For me, being able to investigate these important topics and then convey them to others is truly rewarding. Therefore, I am thoroughly delighted to be taking on the position of legislative chair for SHAP this year and I thank Brad Hollabaugh for all of his encouragement and support as I transition into this role."

**Behind the Scenes of the Apple Industry During COVID-19**

For the next month, USApple will be taking an in-depth look at how the industry has responded to the COVID-19 pandemic, from implementing employee safety measures at apple companies and orchards, to maintaining a safe and healthy food source in grocery stores and food banks. Each week a new blog piece will take you inside the operations of a different company, showcasing its best practices and the essential employees who have demonstrated unwavering commitment.

First up, USApple Board Member Brenda Briggs discusses how Rice Fruit Company has been handling business operations during the pandemic. (See her comments at <https://usapple.org/news-resources>). *Apple Bites* - 6.9.2020

**ICYMI: Paycheck Protection Program (PPP) Webinar**

USApple in conjunction with Moss Adams accounting firm hosted a webinar that provided insight into PPP loans for organizations that both DID and DID NOT receive funds. Join co-hosts Sara Bailey

and Brandon Flory by viewing the recording of last Wednesday's webinar [June 3]. The webinar can be accessed through the USApple members portal. *Apple Bites - 6.9.2020*

### **Coronavirus Guidance for Ag Employers**

A new document was released by the CDC recently concerning guidance for Ag Employers. It can be found at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html> and is titled: "Agriculture Workers and Employers, Interim Guidance from CDC and the U.S. Department of Labor." This guidance has been long-awaited. *Center for Agricultural and Shale Law, Brook Duer, Staff Attorney, 6/3/2020.*

### **Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010)**

The President signed the Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010) on Friday, June 5, 2020. The bill provides more time to utilize PPP funds as well as easing several usage restrictions. Key provisions of the bill are outlined below.

- Extended the forgiveness period from eight weeks to the shorter of twenty-four weeks or the end of the year. You now have the option to pick either 8 or 24 weeks as the measurement period.
- Lower the payroll spending requirement from 75% to 60%. Note: the lower percentage may be interpreted as "cliff" forgiveness meaning that if less 60% of the loan is utilized for payroll there would be no forgiveness achieved.
- Extend the June 30th safe harbor for re-hiring employees to December 31 and significantly loosens the restrictions if you can prove the inability to rehire.
- Lengthen the amount of time borrowers would have to repay any loan funds not forgiven from 2 year to 5 years
- No payments required until the earlier of loan forgiveness request is submitted to the lender or 10 months from date of receipt of funds.
- Allow businesses that receive loan forgiveness to also defer the employer portion of FICA taxes for the remainder of 2020 (instead of only through the date forgiveness determination was made as currently permitted)

### **USDA, FDA Partner to Address COVID-19 Outbreaks Among Food Workers**

The U.S. Department of Agriculture and Food and Drug Administration will partner to respond to outbreaks of COVID-19 among workers in the food supply chain. The agencies signed a memorandum of understanding outlining each agency's role in addressing outbreaks at food processing facilities or among harvesting crews, or actions by state or localities to close food resource facilities could reduce production capacity.

The aim is to protect worker safety while also ensuring continuation of necessary food processing operations. In many cases, such operations could continue to operate while following guidance issued by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

### **Pennsylvania To Receive Federal Funding for Conservation Measures**

Pennsylvania will receive funding from the EPA as part of the "Most Effective Basin Funding Initiative," an increase in available funding for the Chesapeake Bay Program. Out of the \$6 million in total allocated to states within the Chesapeake Bay watershed, Pennsylvania will receive \$3.6 million to go towards implementation of on-farm conservation practices and best-management practices that will reduce nitrogen loads from farms to meet the goals of the state's Phase 3 Water Implementation Plan (WIP3).

The funds are intended to go towards “shovel-ready” projects that include cover crops, tillage management, horse pasture management, livestock exclusion measures like stream fencing and stream crossings, streamside and riparian forest and grass buffers, and implementation of nutrient management practices and soil and water conservation plans.

The funding is intended for the state and local entities, including counties, municipalities, townships and conservation districts to help farmers within the watershed implement management practices that will help reach the goals set forth in the WIP3, a road map of sorts for how the state will meet federally mandated goals to reduce nitrogen, phosphorus and sediment pollution in the bay by 2025.

### **EPA Proposes New Transparency Rule**

The U.S. Environmental Protection Agency has proposed a new rule that it says will increase the transparency of the agency’s actions and will improve the agency’s process around issuing and managing guidance documents. If finalized, the rule would establish a formal petition process that would allow the public to request the agency modify or withdraw guidance documents; allow public participation in the development of guidance documents; and ensure that guidance documents are accessible to the public even during development.

The proposed rule stemmed from an Executive Order issued by President Donald Trump in October 2019 intended to promote transparency and ensure that guidance documents only clarify existing rules, not impose new ones. A guidance document, according to the EPA website, is “an agency statement of general applicability and future effect, other than a regulatory action that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue.”

“Historically, EPA has issued many more guidance documents than most federal agencies,” said EPA Administrator Andrew Wheeler. He added that the proposed rule “is a major step toward increasing transparency in EPA processes and ensuring that EPA is not creating new regulatory obligations through guidance.” The proposed rule will be open for public comment 30 days after it publishes in the Federal Register.

### **State Adopts Short-Term Budget, Relief for Dairy**

Pennsylvania lawmakers passed a stop-gap state budget that continues current funding levels through November while they determine how to address budgetary challenges brought on by the COVID-19 pandemic.

The General Assembly approved and Gov. Tom Wolf signed a short-term funding plan in May, which continues level funding for state programs as well as state-related universities, including Penn State and its extension programs. In addition, the General Assembly appropriated federal COVID-19 relief dollars to state programs, including \$20 million to help the state’s dairy industry.

Lawmakers will be facing tough decisions when they return for a “lame-duck” session following the November general election. The pandemic hit just about every state revenue source—including income and sales taxes—resulting in what is currently estimated to be a nearly \$5 billion shortfall. In May, Pennsylvania Farm Bureau sent legislators suggestions on what to prioritize for agriculture, including:

- Maintaining at least level funding for Penn State Extension.
- Keeping adequate funding for the core services of the Pennsylvania Department of Agriculture, including food safety, animal health and market development.

- Supporting the Pennsylvania Agriculture Surplus System, which helps connect the charitable food system with excess farm products that would otherwise go to waste, at \$5 million.
- Continuing support for programs that help farmers diversify and engage in direct-to-consumer sales, such as the Very Small Meat Processing Grants and Dairy Development Grants.

### **Coalition Calls for Broadband Expansion**

A coalition of statewide agriculture, business and local government organizations recently called on the General Assembly to move quickly on legislation to improve broadband access in rural communities.

“No one single piece of legislation will close the digital divide,” the coalition wrote. “Instead, there is a need for multiple legislative initiatives, including using both public and private investment, and a regulatory framework that streamlines buildout so that all Pennsylvanians can have access to broadband.”

Inadequate broadband access, particularly in rural communities, has long been a concern in the Keystone State. But the major shifts in daily life brought on by the COVID-19 pandemic have underscored the challenges that result from disparities in broadband accessibility.

“Many businesses went to telecommuting, a greater number of consumers began ordering necessities online and students went from in-classroom instruction to learning virtually through web-based platforms,” the coalition wrote. “The disruption of everyday life as a result of COVID-19 is tolerable and manageable with robust, strong, internet connectivity, but it is difficult—and in some cases impossible—in some regions of Pennsylvania.”

Members of the coalition include Pennsylvania Farm Bureau, National Federation of Independent Business, Pennsylvania School Boards Association, County Commissioners Association of Pennsylvania, Pennsylvania State Grange, and the Pennsylvania Chamber of Commerce and Industry.

The state House Consumer Affairs Committee voted in late May to advance two broadband-related bills. The measures now head to the full chamber for consideration. House Bill 2348, introduced by Reps. Martin Causer and George Dunbar, would create a Universal High-Speed Broadband Funding Program, with funding being repurposed from an existing tax credit. This funding, coupled with other potential revenue sources, such as federal dollars, would be used to encourage the deployment of broadband service in underserved communities.

House Bill 2438, introduced by Rep. Clint Owlett, would make it easier for rural electrical cooperatives to run fiber optic lines and other broadband communications infrastructure across existing rights-of-way. There are provisions in the bill that would require the cooperative to seek new agreements if the installation of broadband service would require new poles or other in-the-ground infrastructure.

### **Governor Vetoes Bill Including Garden Centers Measure**

Gov. Tom Wolf has vetoed a bill that included a measure to reopen independent garden centers, as well as some other types of businesses, statewide. For garden centers, the issue is largely moot now that all Pennsylvania counties have been scheduled to shift into the less-restrictive “yellow phase” of the governor’s reopening plan, which allows garden centers to open with certain

restrictions, by June 5. But for garden centers that had to remain closed until early June due to the state's response to the COVID-19 pandemic, the damage was already done as they had missed out on the busiest part of their season.

The measure to reopen garden centers with certain safety precautions in place won bipartisan support in the state House. In the Senate, the measure was amended into a broader bill addressing business reopenings. That legislation, House Bill 2388, cleared the Senate with a 31-17 vote and the House with a 123-79 vote but was ultimately vetoed by the governor.

### **Bill Clarifying Sales Tax Exemption for Multipurpose Agricultural Vehicles Advances**

A bill that would clarify when off-road vehicles used in farming are exempt from sales tax has cleared its first hurdle in the General Assembly. The Senate Finance Committee voted in May to advance Senate Bill 1041, sending it to the full chamber for consideration.

Pennsylvania law exempts farmers from paying sales tax on ATVs or other multipurpose agriculture vehicles, if they are being used primarily for farming purposes. However, the state Department of Revenue has a narrow definition of what constitutes a farming activity. For example, repair of fencing is not considered a farming activity, because it is not directly part of the raising of crops or animals; however, as any farmer knows, care of fences is critical for managing animals.

The bill would broaden the definition of a farming activity to include common farm-related tasks. The aim is to ensure that farmers can claim the sales tax exemption for off-road vehicles they use as part of their farming operations.

### **Game Commission Considers CWD Response Plan**

The Pennsylvania Game Commission is considering a revised plan to control the spread of Chronic Wasting Disease in Pennsylvania. The proposal calls for expanded testing and surveillance, increased hunter opportunities in CWD-infected areas, targeted removals (sharpshooters), a state-wide ban on all deer attractants and a state-wide feeding ban of wild deer. The plan also calls for the PGC to collaborate with the PDA to strengthen their oversight of deer farms.

Pennsylvania Farm Bureau supports most of what is outlined in the plan but has submitted comments to the PGC in opposition to the proposed feeding ban. Currently, a feeding ban is in place within the designated Disease Management Areas where CWD is prevalent. The new proposal, if adopted, would expand that ban to the entire state. The plan is lacking in detail as to the specific measures a statewide feeding ban would include.

An official date for when the plan is presented to the Board of Commissioners for final approval has not yet been set. Details of the proposed plan are available at [www.pgc.gov](http://www.pgc.gov). In 2019, 204 wild deer in Pennsylvania tested positive for CWD from 15,688 tested samples, an increase from 123 confirmed cases in 2018. So far in 2020, seven deer have tested positive from 1,440 samples. CWD affects cervids and is always fatal.

## PA Farm Bureau Updates on Covid-19

### Important Updates on COVID-19

Throughout May, the COVID-19 pandemic continued to have far-reaching implications for many aspects of agriculture and daily life in Pennsylvania. However, parts of Pennsylvania have started to reopen. (Be sure to visit [pfb.com/coronavirus](https://pfb.com/coronavirus) for the most up-to-date information.)

### Farm employees

- The Occupational Safety and Health Administration (OSHA) began enforcing new rules on employer COVID-19 reporting May 26. Employers are responsible for recording cases of COVID-19. Employers with fewer than 10 employees are exempt from this requirement except in cases where work-related cases of COVID-19 result in a fatality or an employee's in-patient hospitalization, amputation, or loss of an eye.
- In determining whether a case of COVID-19 is work-related, employers are not expected to conduct a full medical investigation but may ask the employee how he or she believes that he or she contracted COVID-19 and consider evidence that suggests the case is likely work-related, such as whether there are cases among other employees, whether the employee became sick soon after close exposure to a customer or coworker who was sick and whether the employee's job requires him or her to be in close contact with the public in an area where there is community spread. The case is likely not work-related if the employee is the only worker to contract COVID-19 and does not come in contact with the public at work; and/or if the employee has had close contact outside of work with someone who has COVID-19. Visit <https://bit.ly/36D0pk0> to see OSHA's complete guidance.
- U.S. Citizenship and Immigration Services has announced temporary flexibility for verifying employment eligibility using form I-9 if the prospective employee is not able to renew a List B document. When the employee provides an acceptable, expired List B document that has not been extended, the employer should record the document information in Section 2 under List B; enter "COVID-19" in the additional information field; and, within 90 days after DHS's termination of the temporary policy, require the employee to present a valid unexpired document to replace the expired document presented when they were initially hired.

### Transportation

- Some PennDOT service centers have started reopening on a limited basis in yellow phase counties. Visit [www.penndot.gov/pages/coronavirus.aspx](http://www.penndot.gov/pages/coronavirus.aspx) for more information on which centers are open.
- Pennsylvania driver licenses, photo ID cards, learner's permits, vehicle registrations of all classes (including apportioned vehicle registrations and biennial farm exemption certificates), safety and emissions inspection stickers and disability parking placards that have an expiration date between March 16 and May 31, will be valid until June 30. Visit <https://bit.ly/2zvhwIh> to learn more.

### Penn State Extension

Penn State Extension has added to its offering of COVID-19 resources for agriculture. Recent additions include:

- The Farm Market Finder App to help connect consumers with farmers offering direct sales. Learn more at [extension.psu.edu/farm-market-finder-app](http://extension.psu.edu/farm-market-finder-app).
- An interactive map of broadband availability in Pennsylvania to help inform efforts to expand access to high-speed internet. Learn more at [extension.psu.edu/pennsylvania-broadband-map-app](http://extension.psu.edu/pennsylvania-broadband-map-app).

- Webinar series that aim to help H-2A employers navigate unique concerns related to COVID-19 and for dairy producers to make long-term decisions and plans. Learn more at [extension.psu.edu/coronavirus#events](https://extension.psu.edu/coronavirus#events).

### **COVID-19 Aid Program for Farmers Opens**

Farmers can now apply for the U.S. Department of Agriculture's Coronavirus Food Assistance Program, which aims to help agricultural producers weather the price and market challenges they have faced amid the global COVID-19 pandemic. The pandemic has sent agricultural commodity prices into a tailspin and caused disruptions throughout the food supply chain. The crisis unfolded just as the agriculture economy was showing signs of improvement after years of price and market volatility.

The CFAP program calls for \$16 billion in direct payments to producers based on actual losses. Farmers will receive 80 percent of the payment upfront and then the remaining 20 percent if funding remains at the end of the application period.

To be eligible, farmers must:

- Have produced a commodity that suffered at least a five percent price drop or had losses due to market supply chain disruptions due to COVID-19 and face additional significant market costs.
- Have an average adjusted gross income of less than \$900,000 for tax years 2016, 2017, and 2018 unless 75 percent of their adjusted gross income comes from farming, ranching, or forestry.
- Meet conservation compliance provisions (the "Highly Erodible Land and Wetland Conservation" regulations).
- Not have a controlled substance violation.

CFAP payments are limited to \$250,000 per person; however, special payment limitation rules will apply to corporate entities which may receive up to \$750,000 based upon the number of shareholders (up to three) who contribute at least 400 hours of active person management or personal active labor.

Farmers can apply by contacting their Farm Service Agency county office. FSA offices are open by phone appointment only so be sure to call ahead. Find your county service center at [offices.usda.gov](https://offices.usda.gov) or call **202.720.2791**. Learn more about the program at [farmers.gov/cfap](https://farmers.gov/cfap).

The following is an overview of how payments will be calculated for specific commodities.

### **Specialty Crops:**

- Specialty crops producers are eligible for payments if they fall into at least one of three categories:
  - Had crops that suffered a five percent-or-greater price decline between mid-January and mid-April because of the COVID-19 pandemic.
  - Had produce shipped but subsequently spoiled due to loss of marketing channel.
  - Had shipments that did not leave the farm or mature crops that remained unharvested.
- The following commodities are eligible in at least one of those categories: almonds, apples, artichokes, asparagus, avocados, beans, blueberries, broccoli, cabbage, cantaloupe, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, garlic, grapefruit, kiwifruit, lemons, lettuce (iceberg and romaine), mushrooms, onions (dry and green), oranges, papaya,

peaches, pears, pecans, peppers, potatoes, raspberries, rhubarb, spinach, squash, strawberries, sweet potatoes, tangerines, taro, tomatoes, walnuts and watermelons.

- Payment details and additional information are available at **farmers.gov/cfap/specialty**.

### **Resources Available for Farms, Businesses**

Assistance and resources are available for farms and businesses that have been financially affected by steps to control the spread of COVID-19.

- Visit **www.pfb.com/coronavirus** and select Help/Resources for the latest information on federal loan programs available.
- Penn State University has created a new online network to connect producers, suppliers, processors, and workers throughout the food supply chain to minimize bottlenecks. The Pennsylvania Agriculture Resilience Network allows users to post offers to help, make connections throughout the supply chain to help farmers find a market for their products and match farmers with agricultural workers. Visit **parn.psu.edu** to learn more.
- Food processors and retailers can obtain free personal protective equipment for employees through the Pennsylvania Emergency Management Agency. Equipment comes in boxes of 500. Request protective equipment at [https://forms.office.com/Pages/ResponsePage.aspx?id=OSiOOSgB1U2bbEf8Wpob3ped6g6V4uxBkHM0bKx\\_a79UODIzWUFCMVFNUIY3T1OxSDZIOTg2SiBBWi4u](https://forms.office.com/Pages/ResponsePage.aspx?id=OSiOOSgB1U2bbEf8Wpob3ped6g6V4uxBkHM0bKx_a79UODIzWUFCMVFNUIY3T1OxSDZIOTg2SiBBWi4u).
- Learn more about state financial resources for affected businesses at **dced.pa.gov/funding-programs**.
- The state Office of Unemployment Compensation has important resources available for affected employers. Learn more at **https://bit.ly/2UMmg20**.
- DCED has created a directory for businesses and organizations in need to personal protective equipment to connect with manufacturers and suppliers. Learn more at **https://bit.ly/2x4mF8W**.
- Penn State Extension has created a one-stop shop for COVID-19 resources on its website **extension.psu.edu/coronavirus**.

*NOTE: This information is accurate as of the end of May. As the situation has been changing rapidly, we encourage you to visit **www.pfb.com/coronavirus** for the most up-to-date information.*