

## AG ISSUES UPDATE

Edited by Sara Hricko

September 2020

### USDA Announces Revenue-Based CFAP 2 - Apple Growers Included

This morning USDA announced details of the second round of support for farmers under the Coronavirus Food Assistance Program (CFAP). USApple has been working along with other ag groups to advocate for a CFAP 2 to help compensate for COVID-related losses not covered in the initial program. So far under CFAP 1, apple growers have received \$47.87 million, tenth most among the hundreds of commodities in the USDA program.

CFAP 2 payment details:

	Percent Payment for Sales
2019 Sales Range	Falling in the Range
\$0 to \$49,999	10.6%
\$50,000 to \$99,999	9.9%
\$100,000 to \$499,999	9.7%
\$500,000 to \$999,999	9.0%
Sales > \$1 million	8.8%

Sign-up will begin next week and run through December 11, 2020.

CFAP 1 payments have no impact on a grower's ability to receive a CFAP 2 payment. The total CFAP 2 payment that a person or legal entity may receive, directly or indirectly through attribution of payments, is \$250,000. As this is a separate program, this payment limitation is separate from the CFAP 1 payment limit. This limitation applies to the total amount of CFAP 2 payments made with respect to all eligible commodities. See details regarding corporations, LLC's and partnerships at

<https://www.farmers.gov/cfap> and click on "Payment Limitations"

The sign-up will simply involve self-certification by the producer and require them to determine their gross sales. To the extent that a farm's overall gross sales are comprised of commodities in multiple buckets, the overall payment will be impacted by the rules for whatever other commodity they are also producing along with specialty crops.

Growers who have successfully received CFAP 1 relief will find applying for CFAP 2 funds easier and funds transmitted faster since their profile will already be in the USDA system.

The additional COVID-related costs to packers will not be included for compensation, as the CARES Act passed by Congress specifically stated its purpose was to help farmers. It's possible that another program in the future may include funding to provide some relief for those costs.

We are advocating for future packages to include packers. We are also making the strong case to key congressional offices that growers and packers need help to offset the considerable cost burden associated with PPE, social distancing and testing costs.

President & CEO Jim Bair & Senior VP Diane Kurrle will participate in a briefing this afternoon with senior Trump Administration officials who will discuss this next iteration of CFAP relief. We will share more details with you as they become available. -*Apple Bites 9.18.2020*

## **Farm Bureau updates September 2020**

### **Help Tell USDA How to Improve Farmer Experience**

The U.S. Department of Agriculture wants to know how its agencies can better serve farmers.

The department will conduct an annual survey of farmers to understand what the Farm Service Agency, Natural Resources Conservation Service, and Risk Management Agency are doing well and where they can improve.

The survey includes 20 questions and takes approximately 10 minutes to complete. Responses are confidential, and individual responses will be aggregated.

Learn more and take the survey at [www.farmers.gov/survey](http://www.farmers.gov/survey).

### **Funding Available for Organic Certifications**

The U.S. Department of Agriculture has funding available to help organic producers pay for the cost of their organic certifications.

Organic Certification Cost Share Program reimburses participants for up to 50 percent of the certified organic operation's eligible expenses, up to a maximum of \$500 per scope. If additional funding is appropriated by Congress, the maximum may increase to \$750 for up to 75 percent of eligible costs. Applications are due Oct. 31 for reimbursements of eligible costs incurred between Oct. 1, 2019, and Sept. 30, 2020.

Learn more at [www.fsa.usda.gov/programs-and-services/occsfp/index](http://www.fsa.usda.gov/programs-and-services/occsfp/index) or contact your Farm Service Agency county office.

### **Trump Issues Executive Order on Rural Health**

A new directive from President Donald Trump aims to expand rural communities' access to telemedicine during the COVID-19 pandemic.

The executive order aims to expand the availability of certain telehealth services and allow more practitioners to provide telehealth services.

The order directs the U.S. Departments of Agriculture and Health and Human Services to develop and implement a plan to improve rural health options by expanding access to communications infrastructure in rural communities. It also directs HHS to develop a new payment model and regulatory flexibility to help ensure that rural healthcare providers are able to provide the necessary level and quality of care.

## **PASS Program Receives \$10 Million Boost**

A state program that connects the charitable food system with surplus products from Pennsylvania farms will be able to ramp up its efforts more than seven-fold thanks to an infusion of federal stimulus cash.

The state Department of Agriculture recently announced that \$10 million of Pennsylvania's share of federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding will be used to bolster the Pennsylvania Agricultural Surplus System. The PASS program, which Farm Bureau supports and routinely advocates for, helps cover the costs associated with getting surplus farm products to the state's food banks, and ultimately families in need.

The additional funding—\$5 million for dairy purchases and \$5 million to purchase a variety of other products like fruit, vegetables, meat, and eggs—is a major ramp-up from the program's typical funding of \$1.5 million a year. The state is partnering with Feeding Pennsylvania to administer the program.

## **Philadelphia Selected for New Urban Agriculture FSA Committee**

Philadelphia is among the first cities nationally that will have its own Farm Service Agency committee focusing on urban agriculture.

U.S. Department of Agriculture announced recently the creation of new FSA county committees that will focus exclusively on urban agriculture. Philadelphia was among the first five cities selected for the program.

FSA county committees give farmers an opportunity to help shape delivery of federal farm programs. FSA will begin accepting nominations for the new urban and suburban county committee members **Sept. 8**.

Urban farmers who participate or cooperate in an FSA program in the county selected may either be nominated or may nominate themselves or others as a candidate. Organizations, including those representing beginning, women, and minority producers, also may nominate candidates.

To be considered, a producer must sign an FSA-669A nomination form. The form and other information about FSA county committee elections are available at [fsa.usda.gov/elections](https://fsa.usda.gov/elections) or [farmers.gov/urban](https://farmers.gov/urban). All nomination forms for the urban and suburban county committees must be postmarked or received in the local FSA office by **Oct. 2**.

Election ballots will be mailed to eligible voters beginning **Oct. 23**.

## **Grants Available for Farm Conservation Projects**

Funding is available through the Pennsylvania Department of Environmental Protection's Small Business Advantage Grant program to help farmers purchase energy efficient or pollution prevention equipment, or adopt waste reduction processes.

The program provides 50 percent matching grants, up to a maximum of \$7,000.

In addition to projects that decrease energy usage, the grants can be used on best management practices that improve water quality. Examples of eligible projects include, but are not limited to: riparian buffer plantings, streamside exclusionary fencing, barnyard runoff controls, energy efficient lighting, high efficiency heating and cooling equipment, geothermal heat pumps, energy efficient refrigeration, process equipment upgrades, waste recycling systems, solvent recovery systems, and agricultural solar pumps.

Learn more at <https://bit.ly/30K7Jci>.

## **Reimbursements Available for Conservation Planning in Chesapeake Bay Watershed**

The Pennsylvania Department of Environmental Protection will again reimburse farmers in the Chesapeake Bay Watershed for costs associated with developing conservation plans.

The Agricultural Plan Reimbursement Program has \$900,000 available to reimburse producers for the cost of hiring technical experts to develop Nutrient and Manure Management and Agricultural Erosion and Sediment Control plans. Plans developed after Jan. 1, 2019 are eligible.

More than one plan may be submitted for reimbursement, for up to a maximum of \$6,000. Plans must be submitted by May 31 to be eligible for reimbursement.

More information about the program is available at <http://bit.ly/2Nranxh>.

For additional questions, farmers in Bradford, Cameron, Carbon, Centre, Clearfield, Clinton, Columbia, Elk, Jefferson, Lackawanna, Luzerne, Lycoming, McKean, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Tioga, Wayne, and Wyoming Counties should contact Josh Glace of Larson Design Group at [jglace@larsondesigngroup.com](mailto:jglace@larsondesigngroup.com) or **570.374.5700**, extension 4011.

Farmers in Adams, Bedford, Berks, Blair, Cambria, Chester, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Indiana, Juniata, Lancaster, Lebanon, Mifflin, Perry, Somerset, and York Counties should contact Jedd Moncavage of TeamAg at [jeddm@teamaginc.com](mailto:jeddm@teamaginc.com) or **717.721.6795**.

## **Reminder: Apply Now for REAP Credits**

Applications are now open for one of Pennsylvania's signature conservation programs, which offers tax credits to agricultural producers who implement on-farm conservation practices.

The Resource Enhancement and Protection Program (better known as REAP) is funded at \$10 million dollars this year. Farmers can apply for REAP tax credits to cover 50 to 75 percent of the costs of implementing conservation practices or purchasing related equipment. In high-priority areas, such as the Chesapeake Bay Watershed, credits covering up to 90 percent of costs are available for certain targeted practices, such as 50-foot, forested riparian buffers and measures to exclude livestock from streams.

Common REAP projects include no-till planting and precision ag equipment, waste storage facilities, conservation plans, Nutrient Management Plans, cover crops, riparian buffers and barnyards runoff controls. Credits can be used in conjunction with other funding sources and applications are accepted on a first-come, first-served basis.

Learn more about the program and how to apply at <https://bit.ly/30hYrEc>.

## **Conservation Grants Available to Farmers in Lancaster, York Counties**

The Pennsylvania Department of Agriculture has opened up applications to farmers in Lancaster and York counties for up to \$250,000 in Conservation Excellence Grants.

The \$2.5 million program, created by 2019 PA Farm Bill, funds on-farm measures that reduce erosion and run-off, including fencing to keep livestock out of streams, streambank restoration, cover crops, riparian buffers, manure storage, and comprehensive nutrient management plans. Funding will support technical assistance and the installation of these and other high-impact BMPs.

Funds will be administered by the Lancaster and York County Conservation Districts. Lancaster and York County farms have been prioritized in order to help Pennsylvania meet its federally mandated goals to reduce nitrogen, phosphorous and sediment runoff into the Chesapeake Bay by 2025.

Applications will be evaluated on a first-come, first-served basis, according to their potential to meet program criteria. Grant funding may be combined with other public grants, tax credits such as the Resource Enhancement and Protection Program, and private funding.

Applications are also available online at <https://bit.ly/2CLJyAD> and from both counties' conservation district offices. Farmers with questions about applying may contact Program Administrator Eric Cromer at **223.666.2556** or [ecromer@pa.gov](mailto:ecromer@pa.gov).

## **Free Technical Assistance Available for Energy Projects**

Farmers and other rural, small businesses can receive no-cost technical assistance to identify and assess renewable energy alternatives that can lead to cost-saving energy alternatives through a program at Northampton Community College.

The school's Emerging Technology Applications Center received a two-year grant from the U.S. Department of Agriculture to participate in the Rural Energy for America Program. Funding through this program will help provide technical assistance to eligible participants throughout Pennsylvania. For more information and a determination of eligibility, contact [cyoung@northampton.edu](mailto:cyoung@northampton.edu).

## **Upcoming Workshops for Women in Agriculture to Focus on Conservation**

American Farmland Trust is holding a series of workshops this fall in Pennsylvania for women farmers and farmland owners to learn more about conservation and farmland preservation.

Learning circles are scheduled for September and October in Perry, Dauphin, York, Lebanon and Adams counties. Each session includes a one- to two-day curriculum on conservation options and resources featuring discussions with other local landowners and farmers and services from agencies. There will also be free meals and an optional farm tour.

To learn more information, including the schedule, and to register, visit <https://farmland.salsalabs.org/midatlanticwomenfortheland/index.html>.

## **Nominate Outstanding Ag Educators for 2020-21 Golden Owl Award**

Do you know an outstanding agriculture educator? Nominate them now for the Golden Owl Award. The awards program is presented by Nationwide to recognize exceptional agricultural teachers and provide financial support for their education programs. Nationwide presents the award in five states, including Pennsylvania, where it is awarded in cooperation with Pennsylvania Farm Bureau and Pennsylvania FFA.

The award was presented in Pennsylvania for the first time this year to Mark Anderson, agriculture teacher at Elizabethtown High School in Lancaster County.

Nominations for the 2020-21 award are open now through Dec. 31.

Four finalists will receive \$500 each for their programs and an overall winner will receive the Golden Owl Award trophy and \$3,000 to help bring new educational opportunities to their program.

For more information and to nominate an outstanding agriculture educator, visit [www.nationwide.com/golden-owl-award/pennsylvania](http://www.nationwide.com/golden-owl-award/pennsylvania).

## **Farmers Encouraged to Share Survey Assessing Farmworker Needs**

The Northeast Center for Occupational Health and Safety in Agriculture, Forestry, and Fishing is researching how to better meet the needs of farmworkers amid COVID-19 and is asking farmers to share a confidential survey with employees.

The information gathered will help create materials and programs to better serve farmers and their workers. The survey is voluntary, responses are confidential and no contact information will be collected.

The survey is available in English at:

<https://redcap.bassett.org/redcap/surveys/?s=NH8CHXX499>.

The survey is available in Spanish at:

<https://redcap.bassett.org/redcap/surveys/?s=LND3MR9TPD>.

You can also request paper copies or have your workers complete the survey over the phone by contacting Nicole Blanchard at **607.422.7527** or [farmworkercovidsurvey@bassett.org](mailto:farmworkercovidsurvey@bassett.org).

## **Ag Law updates**

**Brook Duer—Staff Attorney**

**Audry Thompson—Research Assistant**

### **COVID-19: Coronavirus Food Assistance Program Further Expands Eligible Commodities; Application Deadline Extended**

On August 14, 2020 the U.S. Department of Agriculture (USDA) published in the Federal Register two rules: “Notification of Funding Availability; Coronavirus Food Assistance Program (CFAP) Additional Eligible Commodities” (85 FR 49589) and “Coronavirus Food Assistance Program; Correction” (85 FR 49593). According to USDA’s August 10, 2020 announcement, the two rules expand CFAP eligibility to additional commodities and extend the application deadline for the program until September 11, 2020. Going forward, approved producers who have already received 80% of their eligible payment will automatically receive the remaining 20% and new producers first applying for CFAP, USDA will issue 100% of their eligible payment amount upon approval. USDA lists the following commodities now eligible for the program:

Specialty Crops: aloe leaves, bananas, batatas, bok choy, carambola (star fruit), cherimoya, chervil (french parsley), citron, curry leaves, daikon, dates, dill, donqua (winter melon), dragon fruit (red pitaya), endive, escarole, filberts, frisee, horseradish, kohlrabi, kumquats, leeks, mamey sapote, maple sap (for maple syrup), mesclun mix, microgreens, nectarines, parsley, persimmons, plantains, pomegranates, pummelos, pumpkins, rutabagas, shallots, tangelos, turnips/celeriac, turmeric, upland/winter cress, water cress, yautia/malanga, and yuca/cassava.

Non-Specialty Crops and Livestock: liquid eggs, frozen eggs and all sheep. Only lambs and yearlings (sheep less than two years old) were previously eligible.

Aquaculture: catfish, crawfish, largemouth bass and carp sold live as foodfish, hybrid striped bass, red drum, salmon, sturgeon, tilapia, trout, ornamental/tropical fish, and recreational sportfish.

Nursery Crops and Flowers: nursery crops and cut flowers. -*Ag Law update 8.14.20 (Please see Apple Bites update above for information on CFAP 2 deadline)*

### **COVID-19: FMCSA Extends Trucking Hours of Service Waiver Until September 14, 2020**

On August 11, 2020, the U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) announced a further 30-day extension of its Emergency Declaration No. 2020-002 Under 49 CFR § 390.25 until September 14, 2020. The declaration, which has been extended

monthly since its March 13, 2020 issuance and was previously set to expire on August 14, 2020, waives hours of service limits for transport of “essential supplies,” including food, feed and livestock. For more on this topic, see “Expanded Emergency Declaration Relaxes Hours of Service Trucking Rules For Food and Other Cargo until April 12, 2020,” Agricultural Law Weekly Review - March 19, 2020 and “Hours of Service Trucking Rules Exemption Includes Feed and Fertilizer as well as Food and Livestock,” Agricultural Law Weekly Review—April 2, 2020.

## **COVID-19: Coronavirus Food Assistance Program (CFAP) Pennsylvania Data**

Every Monday, USDA updates its publicly available data on aggregate Coronavirus Food Assistance Program (CFAP) payments. Pennsylvania totals as of August 10, 2020, are below:

PENNSYLVANIA	Payments	Applications
Non-Specialty Crops	\$15,647,116.47	4,153
Specialty Crops	\$4,353,780.11	76
Livestock	\$23,247,607.07	4,547
Dairy	\$79,937,330.92	2,410
TOTALS	\$123,185,834.57	11,186

## **Agricultural Labor: H-2A Rule Extends Petition Filing Deadline**

On August 20, 2020, the U.S. Department of Homeland Security (DHS) published in the Federal Register a temporary final rule titled, “Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due To the COVID-19 National Emergency: Partial Extension of Certain Flexibilities” (85 FR 51304). The new rule impacts the April 20, 2020 temporary final rule (85 FR 21739) by extending the deadline for employees to file an extension of stay petition until December 17, 2020. Additionally, an employee may begin working for a new employer immediately once the petition is received by the U.S. Citizenship and Immigration Services (USCIS). The rule is effective for three years, beginning August 19, 2020 through August 19, 2023.

## **COVID-19: FDA and OSHA Publish Food Operation COVID-19 Checklist**

On August 19, 2020 the Food and Drug Administration (FDA) and Occupational Safety and Health Administration (OSHA) published a checklist titled, “Employee Health and Food Safety Checklist for Human and Animal Food Operations During the COVID-19 Pandemic,” intended to serve as a quick guide for domestic and foreign producers, manufacturers, and processors of FDA-regulated human and animal food. The checklist is divided into two categories: 1) employee health and work environment logistics, which includes illustrated examples of acceptable and unacceptable work space configurations, and 2) food safety. According to announcements from FDA and OSHA, the checklist should be used alongside “sector-specific” guidance, such as the Centers for Disease Control and Prevention (CDC) and U.S. Department of Labor (DOL) joint interim guidance for agriculture workers and employers and the CDC-OSHA joint guidance for meat and poultry processing workers and employers.

## **COVID-19: \$1 Billion Added for Third Round of Farmers to Families Food Box Distributions**

On August 25, 2020, USDA announced up to \$1 billion in additional funding for a third round of the Farmers to Families Food Box Program funding, as authorized by the Families First Coronavirus Response Act (Public Law No: 116-127, March 18, 2020). USDA also published a list of entities already awarded agreements for its third round of Food Box distributions based upon previous agreement terms. The first and second rounds covered the periods of May 15, 2020 - June 30, 2020 and July 1, 2020 - August 31, 2020, respectively. Submissions for the third round can be made immediately and there is no submission deadline. The performance period runs until August 15, 2022, converting the program to an open-ended standing list of contractors eligible for participation throughout the next two years, regardless of additional funding subsequently added.

## **Farm Bill Programs: USDA Amends Ag Subsidy Payment Eligibility and Limitations**

On August 24, 2020, the U.S. Department of Agriculture (USDA) Commodity Credit Corporation (CCC) published in the Federal Register a final rule titled "Payment Limitation and Payment Eligibility" (85 FR 52033; 7 CFR 1400). The rule implements several changes made by the 2018 Farm Bill, including creating separate payment category limitations for the Noninsured Crop Disaster Assistance Program (NAP); removing payment limits for Marketing Loan Gains (MLG), Loan Deficiency Payments (LDP), and the Emergency Assistance for Livestock, Honeybees and Farm Raised Fish Program (ELAP); and amending the definition of "significant contribution" as factor in establishing "active personal management" for the purposes of payments eligibility. Under the final rule, active personal management involves activities performed by a person on a regular, continuous, and substantial basis that consists of either 25 percent of the total management hours required for the farming operation annually or at least 500 hours of management annually. The rule is effective August 20, 2020.