

# AG ISSUES UPDATE

Edited by Sara Hricko

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## USApple Updates

### **Biden Administration Transition**

Since late November USApple has been meeting with officials from the transition team of President-elect Biden. We have been sharing and discussing our priority issues, topped by labor and exports. Meetings held so far have included the transition team in the office of the U.S. Trade Representative, President-elect Biden's rural affairs coordinator and ag labor coordinator, and with Tom Vilsack, his nominee for Agriculture Secretary. Vilsack served as Agriculture Secretary for all eight years of the Obama Administration and is well-known to us.

### **DOL Finalizes H-2A Reforms**

In one of the last actions of the Trump Administration, the Department of Labor announced on January 15<sup>th</sup> the finalization of the H-2A reform regulation first proposed in July of 2019. The proposal included some beneficial improvements as well as some that caused concern. USApple submitted comments on the proposal in September of 2019 as did many other agricultural groups, growers, farmworkers, advocates, and lawmakers.

USApple participated in a stakeholder call with DOL and USDA officials. The rule was described as designed to streamline, simplify and improve the program.

However, no changes will take effect for some time, if at all. The rule will be set to take effect in 30 days with a 150 day transition period. However, with the close proximity to inauguration it will be caught up in the incoming Administration's 60-day regulatory freeze. The Biden team will review the regulation and decide whether to finalize all or part of it or propose an entirely new rule. So, changes, good or not so good will not impact users of the program any time soon.

A preview copy is now available of the 700-plus page document. Over the coming days, we will go over the rule and coordinate with our coalition partners and legal counsel to determine what implementation would mean for the industry. We will convey our assessment of the proposal to the incoming Biden team once the appropriate officials have been named.

### **Update on COVID Relief**

The December COVID-19 relief package included two important amendments to the second Corona Virus Food Assistance Program (CFAP2). The first, allows growers to update their applications to include crop insurance payments as part of their total sales data. This change is now reflected in USDA's [farmers.gov](https://www.farmers.gov) webpage. Amended applications will be accepted through February 26.

The second change gives growers the option to substitute 2018 sales data for 2019 if those data yield a larger payment. USDA has not begun implementing this second provision and it is not clear when that

process will begin.

USApple is conveying the importance of these provisions to the incoming Biden Administration as well as key congressional allies including incoming Senate Agriculture Committee Chair Debbie Stabenow (D-Mich). Stabenow led the effort to ensure key specialty crop provisions were included in the latest relief bill including the amendments to CFAP and funding to assist growers with costs associated with worker protection.

## **Acting FDA Head Named**

The Commissioner of Food and Drugs is a politically appointed position, nominated by the President and subject to confirmation by the U.S. Senate. Except for Cabinet level positions related to national security or the economy which are filled in the first days of a new administration, such nominations and confirmations can take months. In the meantime, the Biden Administration has named Janet Woodcock, MD as Acting Commissioner of the FDA whose responsibilities include food safety in addition to the far larger portfolios of drugs and medical devices. Woodcock joined the FDA in 1984 and has been principally involved in evaluating and approving new drugs. Since 2020 she has been lending her expertise to Operation Warp Speed in the development of treatments for COVID-19. She will serve as Acting Commissioner of FDA until a new Commissioner is nominated and confirmed.

## **USApple Picks 2021 YAL Class**

USApple has announced its class of 2021 Young Apple Leaders (YALs). Fifteen accomplished and aspiring young women and men were selected by the organization, including:

- Ben Bresler, Packaging Corporation of America, Towson, Md.
- Bryce Bauman, Bauman Orchards, Inc., Rittman, Ohio
- David Brugato, Pacific Coast Fruit Company, Portland, Ore.
- Carole Coburn, AgroFresh, Grand Rapids, Mich.
- Matt Dykstra, Riverridge Produce Marketing, Sparta, Mich.
- Kyle Eggers, TreeTop, Selah, Wash.
- Sonia Estrada, Bear Mountain Orchards, Aspers, Pa.
- Jeff Givens, Fruit Marketing Growers Association, Newcomertown, Ohio
- Katie Harmon, Stemilt, Wenatchee, Wash.
- Becky Hinkley, CMI Orchards, Wenatchee, Wash.
- Anthony Mikiciuk, New York Apple Association, Fishers, N.Y.
- Alma Tabuba, Rice Fruit Company, Gardiners, Pa.
- Tristan Williams, Bowman Fruit Sales, Timberville, Va.
- Delaney Woolwine, California Apple Commission, Clovis, Calif.
- Christopher Wright, United Apples Sales, Lyndonville, N.Y.

You can read more here: <https://usapple.org/news-resources/usapple-selects-2021-young-apple-leaders>

## **Nominate a Fellow Grower Today**

How about taking a minute to honor a deserving grower? American Fruit Grower® and Western Fruit Grower® magazines' Apple Grower of the Year award, sponsored by Valent U.S.A. in cooperation with USApple, honors apple growers who go beyond the boundaries of the orchard and have, through their

involvement and leadership, made their mark on the apple industry. Nominate a grower today. Nominations are due May 21.

## **Farm Bureau updates February**

### **Apply Now for Expanded COVID-19 Relief Programs**

Farmers can apply now for two of the expanded relief programs included in the recently adopted federal COVID-19 relief package.

The application window is open through March 31 for the second round of the U.S. Small Business Administration's Paycheck Protection Program.

The program is open to businesses with fewer than 300 employees that show a 25 percent loss between comparable quarters in 2019 and 2020. Farmers and business owners can apply for the loans through a participating lender.

Learn more at [www.sba.gov/ppp](http://www.sba.gov/ppp).

In addition, the U.S. Department of Agriculture has reopened Coronavirus Food Assistance Program (CFAP) to producers who were not previously eligible but now qualify due to the relief bill. Newly eligible producers include:

- Contract producers of swine, broilers, laying hens, chicken eggs and turkeys who suffered a drop in revenue due to COVID.
- Producers of pullets and turfgrass sod.

In addition, USDA will allow certain producers to modify existing CFAP applications to reflect updated payment calculations. Visit <http://bit.ly/3iftMP7> for details on updated payment calculations for:

- Certain producers of specialty crops, aquaculture, tobacco, specialty livestock, nursery crops and floriculture.
- Certain producers with crop insurance coverage who grew barley, corn, sorghum, soybeans, sunflowers, and wheat.

Newly eligible producers who need to submit a CFAP application or producers who need to modify an existing one can do so through Feb. 26 by contacting their local USDA Service Center. New applicants can also obtain one-on-one support with applications by calling 877.508.8364.

Learn more at [www.farmers.gov/cfap](http://www.farmers.gov/cfap).

### **Funding Available to Help with Crop Quality Losses Due to 2018 Moisture and Flooding**

The U.S. Department of Agriculture is making funding available to help farmers who suffered crop quality losses as a result of natural disasters in 2018 and 2019.

Applications for the latest round of the Quality Loss Adjustment Program are open through March 5.

Eligible farmers who suffered losses due to natural disasters and are in counties where a disaster declaration was made can apply for the funding. That includes farmers in 39 Pennsylvania counties where a disaster declaration was made due to excessive rainfall and flooding in 2018.

Most crops that can be covered by federal crop insurance or the Noninsured Crop Disaster Assistance Program are eligible if the producer suffered a quality loss due to a qualifying event and had a 5-percent or greater discount due to the disaster event.

Farmers can apply online or through local USDA service centers. Learn more details about the program, including additional eligibility information and payment details, at [www.farmers.gov/quality-loss](http://www.farmers.gov/quality-loss).

## **Farm Bureau Urges USDA to Quickly Resume Processing Relief Payments**

Farm Bureau is calling on the U.S. Department of Agriculture to quickly resume processing payments for its Coronavirus Food Assistance Program, or CFAP.

Processing of payments for the program, which offers direct aid to producers who suffered losses as a result of the COVID-19 pandemic, has been temporarily halted as part of an effort by President Joe Biden's administration to review regulatory actions taken towards the end of former President Donald Trump's administration. The agency will continue to accept applications while the program is under review.

The CFAP program was recently expanded to include some producers who were left out of previous rounds of aid, including contract growers. Producers of certain commodities can also revise their applications to take advantage of updated payment rates.

## **USDA Halts Foreclosures and Other Actions on FSA Loans**

The U.S. Department of Agriculture is temporarily suspending foreclosures and past-due debt collection on certain Farm Service Agency loans to give distressed borrowers relief as they contend with continued economic fallout of the COVID-19 pandemic.

The move affects distressed borrowers under FSA's Farm Storage Facility Loan and the Direct Farm Loan programs. USDA estimates more than 12,000 borrowers—about 10 percent of the 129,000 producers who borrow from the agency—are eligible for the relief.

Specifically, USDA will temporarily suspend non-judicial foreclosures, debt offsets or wage garnishments, and referring foreclosures to the U.S. Department of Justice. In addition, USDA will work with the U.S. Attorney's Office to stop judicial foreclosures and evictions on previously referred accounts.

USDA has also extended deadlines for producers to respond to loan servicing actions, including loan deferral consideration for financially distressed and delinquent borrowers and added flexibility to the Guaranteed Loan program.

## **Agritourism Bill Clears House Committee**

The state House is again on track to consider granting commonsense legal protection to farms that invite the public onto their property for agritourism activities.

The House Agriculture and Rural Affairs Committee voted unanimously to send House Bill 101 to the full House for consideration.

The bill, sponsored by Rep. Barb Gleim of Cumberland County, would provide agritourism operations limited immunity from lawsuits over factors beyond their control. The proposal is based on similar laws already on the books in neighboring states.

Agritourism gives many farms an opportunity to tap into growing consumer interest in local agriculture as a way to diversify their operations and remain viable for the future. But the threat of frivolous lawsuits remains a significant barrier for farmers that want to invite the public onto their property.

The bill would give agritourism operations immunity from lawsuits where no one is at fault as long as they notify visitors of the inherent risks of being on a farm, such as uneven ground, unpredictable animals, and weather-related issues. Farmers would still be responsible for making reasonable efforts to

ensure guest safety and could still be held responsible in cases of extreme negligence or failing to address obvious safety hazards.

The measure passed the state House last fall with a bipartisan, 120-81 vote. It cleared the Senate after being amended into a separate bill related to COVID-19 but was ultimately vetoed by Gov. Tom Wolf. Wolf cited concerns about the COVID-19 measure as the reason for his veto and did not signal any objection to the agritourism bill.

## **Budget Proposal Would Maintain Funding for Key Agriculture Programs**

Gov. Tom Wolf's 2021-2022 state budget proposal would largely maintain funding for key agriculture programs, setting a good starting point for Pennsylvania Farm Bureau to advocate for greater investment in agriculture.

The spending plan would maintain existing funding levels for several key programs, including Penn State University's agricultural research and Cooperative Extension services and University of Pennsylvania School of Veterinary Medicine's food safety and animal welfare programs. The Department of Agriculture's General Government Operations, which provides funding for jobs and services that support Pennsylvania agriculture, would receive a \$1.3 million—or 4 percent—boost. Meanwhile, funding would be cut from some programs.

## **PGC Gives Preliminary Approval to Sunday Hunting Expansion, Other Changes**

The Pennsylvania Board of Game Commissioners gave preliminary approval to a slew of changes to the seasons and bag limits for the upcoming 2021-2022 hunting seasons at their virtual meeting on Jan. 23. Included in these changes are the expansion of species that would be allowed to be hunted on two of the authorized Sundays.

The board approved a measure that would expand the species allowed to be hunted on Sunday, Nov. 14 and Sunday, Nov. 21 to include most small game species, along with deer -archery and bear-firearms, which were allowed for the first time last season. The species to be added are squirrel, ruffed grouse, rabbit, ring-necked pheasant, bobwhite quail, woodchuck (groundhog), opossum, striped skunk, weasel, raccoon and porcupine.

Also approved were a 14-day concurrent antlered and antlerless deer season, a move to allow hunters to apply for and carry extra antlerless tags, and an extension to the DMAP application deadline.

The 'unlimited' antlerless tag provision would allow hunters to purchase extra antlerless licenses over the counter starting on the second Monday of Sept. Hunters would be allowed to have four unfilled tags at a time, and could purchase more as they fill their tags, as long as there are tags still available. The PGC hopes to get more allocated antlerless tags filled during the hunting season with this change. The first three rounds of application would remain unchanged.

The board also approved an extension of the deadline to apply to enroll their properties in the Deer Management Assistance Program (DMAP). The annual deadline would be extended from May 1 to June 1.

All of the above changes are preliminary and would need to be approved at the next board meeting in April. Comments can be submitted to the board ahead of the meeting by emailing [pgccomments@pa.gov](mailto:pgccomments@pa.gov)

## **Six PA Counties Included in Disaster Designation for Spring Frost**

Six Pennsylvania counties—McKean, Potter, Susquehanna, Tioga, Warren, and Wayne—have been included in a federal disaster designation related to freeze and frost that damaged crops last spring.

Farmers in those counties will be eligible to apply for assistance from the U.S. Department of Agriculture's Farm Service Agency, including emergency loans, to help with losses. In McKean, Susquehanna, Warren and Wayne counties, the designation covers freeze and frost that occurred between April 1 and June 1, 2020. In Potter and Tioga counties, the designation covers freeze that occurred between April 15 and June 1, 2020.

The deadline to apply for emergency loans under this designation is Sept. 15, 2021.

While the disaster designation primarily covers counties in New York, contiguous counties in Pennsylvania are also eligible.

For more information about assistance, contact your FSA county office or visit [www.farmers.gov/recover](http://www.farmers.gov/recover).

## **Webinar Series to Examine Energy Savings**

Penn State Extension and the Pennsylvania Department of Environmental Protection are offering a free, lunchtime webinar series to help farmers learn more about options for improving energy efficiency.

The sessions will focus on strategies that farmers can implement to improve their bottom lines by reducing energy costs, while also benefiting the environment. Topics include solar power, information for new farmers, high-efficiency lighting, heating, biogas, analyzing utility bills and strategies specific to dairy and poultry operations.

The hour-long webinars will be held each Thursday at noon March 25 through May 6.

Learn more and register at [bit.ly/farmenergyday](http://bit.ly/farmenergyday).

## **Ag Law updates**

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## **Executive Branch Transition: White House Executive Order Directs Review of Previous Administration Actions, Cancels and Revokes Others**

On January 25, 2021, President Biden published in the Federal Register Executive Order (EO) 13990, titled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 FR 7037 Among other things, the EO directs agency heads to immediately review all agency actions taken between January 20, 2017 and January 20, 2021 that "are or may be inconsistent with, or present obstacles to" the administration's voluminous policies articulated in the EO. The agency heads shall consider suspending, revising or rescinding those actions as well as proposing rulemaking to do the same. A list of considered actions in response to the review is due to the Office of Management and Budget (OMB) within 30 days for actions that can be completed by December 31, 2021 and within 90 days for actions to be completed by December 31, 2025. The order also takes multiple immediate actions, such as revoking, specific EOs and permits and reversing other executive actions by the preceding Presidential administration and its executive agencies. No USDA actions have yet been impacted by the executive order.

## **COVID-19/Ag Labor: Executive Order Directs OSHA to Issue Guidance and Consider Emergency Temporary Standards**

On January 29, 2021, the U.S. Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) announced the issuance of new guidance titled “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace,” consistent with January 21, 2021’s Executive Order 13999 directing DOL to, among many other things, issue revised COVID-19 workplace safety guidance within two weeks and consider the necessity of mandatory emergency temporary standards on COVID-19 and, if necessary, issue them by March 15, 2021. EO 13999 also directs USDA, DOL and Health and Human Services (HHS) and the Department of Energy to “explore mechanisms to protect workers not protected under OSHA,” which may include an examination of the so-called “small farm exemption” to OSHA jurisdiction which prevents enforcement of OSHA standards on farming operations of less than 10 employees and no employer-supplied housing.

### **COVID-19/Ag Labor: South African H-2 Workers Eligible for Entry Suspension Exception**

On January 25, 2021, the President issued a proclamation, titled *Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease*, published at 86 FR 7467, prohibiting entry into the United States by persons who, during the 14-day period preceding attempted entry, were physically present within the Schengen Area, the United Kingdom, the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa. On January 28, 2021, as the result of an American Farm Bureau Federation letter of the same date to the U.S. Departments of Homeland Security and State raising the absence of an H-2A worker exemption, the U.S. Department of State issued an announcement stating that H-2A and H-2B workers who have been present in South Africa may qualify for national interest exceptions to be applied for at the time of Embassy /Consulate interviews.