

AG ISSUES UPDATE

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USApple Updates

Vote on Farm Workforce Modernization Act Expected Next Week: Weigh in With Your House Member

On March 3, Reps. Zoe Lofgren (D-Calif.) and Dan Newhouse (R-Wash.) reintroduced the Farm Workforce Modernization Act (FWMA). This bipartisan legislation passed the House in December 2019 with the support of USApple and a majority of "apple members" of the House. Progress in the Senate was curtailed by COVID-19 and the obvious shift in congressional priorities. However, the need for meaningful agricultural labor reform has not changed, and in fact has grown even greater.

The FWMA provides much needed reform. It will stabilize the current agricultural workforce by creating a process for foreign born farm workers to earn legal status through a commitment to continue working in agriculture. This provision provides stability and certainty for agricultural workers and employers alike. The bill also reduces labor costs by freezing wages for one year and capping the maximum increase of the Adverse Effect Wage Rate (AEWR), bringing needed modernization and cost containment to the H-2A program. Wage growth will be limited to, at most, 3.25 percent compared to the five to seven percent increase that most states have seen over the past several years. The FMWA provides work authorization and earned legal status for the current "domestic" workforce. The legislation streamlines the H-2A guestworker program and extends access to year-round industries such as dairy.

The legislation is on a fast track and was voted on on March 15th. Thank you to all those who contacted their state representatives and shared their voice on this important matter.

Biden Immigration Bill Introduced Farm Workforce Modernization Act Expected to Follow

President Biden's immigration plan has now been introduced as legislation in the House and Senate. The U.S. Citizenship Act of 2021 would provide an earned eight-year path to citizenship for the approximately 11 million undocumented immigrants once certain conditions are met.

The legislation gives an expedited three-year path for key groups including those who qualify as Dreamers and most farmworkers. The legislation does not address other aspects of immigration reform such as much needed reforms to the H-2A program. The legislation does include some problematic proposals such as applying overtime rules to agriculture. The partisan legislation faces an uphill battle and leadership is expected to take two tracks, the second being the reintroduction of separate bills to address priority groups like Dreamers and farmworkers.

EWG to Release Dirty Dozen list on March 17th

The Environmental Working Group will release its annual "dirty dozen" list on Wednesday, March 17. Commodities included on the 2021 list are very similar to 2020 and include apples, strawberries, spinach, kale, nectarines, grapes, peaches, cherries, pears, tomatoes, celery and potatoes. Although media coverage of the list has dramatically decreased in the previous years (EWG's 2020 release during the pandemic actually backfired on the organization as it received overwhelming negative press attention), USApple is prepared to counter the report with positive, scientific data and messaging about the healthy attributes of apples. To learn more about the Dirty Dozen, click <https://usapple.org/news-resources/environmental-working-groups-annual-dirty-dozen-list-backgrounder> to read USApple's backgrounder.

USApple Meets with New Agricultural Secretary Tom Vilsack

President & CEO Jim Bair participated in an online video meeting with Tom Vilsack, President Biden's Secretary of Agriculture and other ag & food organization CEO's. Secretary Vilsack presented the President's and his vision for USDA. That included topics of interest to the apple industry such as COVID impacts on ag workers and the SNAP and WIC nutrition programs.

2021 Adverse Effect Wage Rate Published

On February 23rd, the Department of Labor published the 2021 Adverse Effect Wage Rate (AEWR) for the H-2A program. On average, wages increased by about 5 percent though many apple states will see slightly higher swings. Publication of the new rates was delayed because the Trump Administration discontinued the Farm Labor Survey they are based on. However, a lawsuit brought by farm labor groups forced them to reinstate the survey and the status quo. H-2A wage rate reform is a top priority for USApple and our coalition partners in the Agriculture Workforce Coalition.

USDA Extends Food Box Program

The Farmers to Families food box contracts will be extended to April, USDA has announced. In December USApple began stressing to the incoming Biden Administration the importance of maintaining the Farmers to Families food box program, even if it meant tweaking or re-branding it. The program has helped offset the loss or decline of apple markets including food service, school lunch and export destinations. New Presidential administrations commonly look to end programs initiated by their predecessor, like food boxes. This is especially true when the predecessor was from the other political party, but the Biden Administration has also made a priority of hunger programs. By most accounts, the food boxes have been timely and filled a critical need.

Export Coalition Writes to President Biden

The Agriculture Transportation Coalition, comprised of organizations including USApple that represent export-dependent ag and food industries, wrote to President Biden to bring his attention to the practice of ocean container carriers refusing to carry export cargo of U.S. agricultural commodities. This practice comes at a time when the ocean carriers are reporting their most profitable period in decades. 99 percent of the international ocean container carriers are headquartered overseas.

The coalition told the President that unless the Shipping Act and other tools available to our government are applied promptly, agriculture industries will continue to suffer. The situation is so egregious that the Federal Maritime Commission (FMC) last year issued a rule setting forth guidelines as to what would be reasonable carrier practices. The Shipping Act provides the FMC with the authority to prohibit unreasonable, unjust practices, however none of the guidelines have been implemented by the carriers,

deepening the problem.

Farm Bureau updates February

Vilsack Confirmed as USDA Secretary

Tom Vilsack has officially taken the helm at the U.S. Department of Agriculture.

The U.S. Senate recently confirmed President Joe Biden's nomination of Vilsack as USDA secretary, allowing Vilsack to resume the post he held from 2009 through 2016. A Pittsburgh native, Vilsack was governor of Iowa before he was picked to lead USDA by President Barack Obama. Vilsack served throughout the Obama administration.

Farmers Can Continue to Apply for Expanded COVID Relief

The U.S. Department of Agriculture is expected to give farmers more time to submit new or revised applications for the expanded Coronavirus Food Assistance Program, which offers direct payments to producers to help offset losses caused by the COVID-19 pandemic.

As of early March, no official announcement had been made; however, USDA Secretary Tom Vilsack indicated that the agency was planning to extend the deadline.

In early January, USDA reopened CFAP to some producers who were not previously eligible and allowed some previously eligible producers to revise their applications to take advantage of updated payment rates for certain commodities.

USDA has temporarily paused processing of CFAP applications and payments as part of a government-wide review by President Joe Biden's administration of regulatory action taken at the end of former President Donald Trump's administration. USDA is continuing to accept applications.

In a letter to Vilsack, Farm Bureau urged USDA to give farmers an additional 30 days after the processing freeze is lifted to apply for the program.

Farmers should continue to apply for the program at this time. Producers who are newly eligible for the expanded CFAP 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 is allowing 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.

In addition to those changes, hog producers who participated in the first round of CFAP will automatically receive a \$17 per head additional payment.

Newly eligible producers who need to submit a CFAP application or producers who need to modify an existing one can do so 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.

Bill Would Increase Borrowing Flexibility for Farm Programs

Legislation was recently introduced in Congress that would more than double the borrowing limit for U.S. Department of Agriculture programs that support farmers.

The measure would increase to \$68 billion the annual borrowing limit for the Commodity Credit Corporation, USDA's financing tool for many farm bill programs and other initiatives, such as recent relief programs related to COVID-19 and trade. The CCC's borrowing limit was capped at \$30 billion in 1987 and has not been increased to keep up with inflation.

USDA Halts Foreclosures, 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.

PA Counties Included in Disaster Designations for Drought, Frost and Freeze

Farmers in 28 Pennsylvania counties may be eligible for federal disaster relief to assist with losses due to one or more weather events in 2020.

There are 25 Pennsylvania counties included in a pair of disaster designations related to drought conditions that occurred last summer and fall. Meanwhile, six counties—including three that were covered by the designations for drought—were included in disaster designations related to frost and freeze last spring.

A Secretarial disaster designation from the U.S. Department of Agriculture means that eligible farmers in those counties will be able to apply for assistance from USDA's Farm Service Agency, including emergency loans.

Farmers in Armstrong, Blair, Cambria, Cameron, Center, Clarion, Clearfield, Clinton, Elk, Forest, Huntingdon, Indiana, Jefferson, Lycoming, McKean, Mifflin, Potter, Union, and Warren counties can apply for relief related to losses due to drought June 1, 2020, through Nov. 30, 2020. Farmers in Adams, Cumberland, Dauphin, Franklin, Perry, and York counties can apply for relief related to losses due to drought June 1, 2020, through Nov. 17, 2020.

Farmers in McKean, Susquehanna, Warren and Wayne counties, can apply for relief related to losses due to freeze and frost that occurred between April 1 and June 1, 2020. Farmers in Potter and Tioga counties, can apply for relief related to losses due to freeze that occurred between April 15 and June 1, 2020.

For more information about assistance, contact your FSA county office or visit farmers.gov/recover.

House Passes Agritourism Liability Bill

A bill that would limit civil liability for farms that invite the public onto their property for agritourism activities has cleared the state House.

Representatives voted 142-60 in favor of House Bill 101, sending the legislation to the Senate for consideration.

The bill, sponsored by Rep. Barb Gleim of Cumberland County, would offer commonsense legal protection to farms that invite the public onto their property for agritourism activities, such as corn mazes, pick-your-own produce, hayrides, and similar attractions. Specifically, the bill would grant farms that offer agritourism activities reasonable protection from lawsuits that arise from circumstances beyond their control as long as they warn visitors of the inherent risks of being on a farm. At the same time, farmers would still need to take steps to ensure guest safety.

The legislation would protect farms from lawsuits in cases where no party is at fault if they warn visitors of potential risks by either having them sign a waiver or printing a disclaimer on a ticket or other material that's given to visitors. The measure would not give farms a free pass from ensuring guest safety and farms could still be held accountable if they fail to fix or warn patrons of obvious and dangerous safety risks. The bill is modeled off similar laws already on the books in at least 20 other states, including New York and Ohio.

Reforming civil liability for agritourism has been a longtime priority for agriculture organizations. 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 but includes opportunities 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.

The plan also calls for increasing funding for the Pennsylvania Agricultural Surplus System, which assists with getting excess food from Pennsylvania farms and food processors into the charitable food system. The program was boosted last year by federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding and proved instrumental in helping both farmers and families in need during the pandemic. The governor's plan would zero out funding for several agriculture line items, including programs related to agricultural research; agricultural promotion, education, and exports; hardwoods research and promotion; livestock and consumer health protection; animal health and diagnostics; and food marketing and research.

Protective Gear Bill Gets OK from House Committee

Legislation that would provide grants to help food processors equip their employees with personal protective equipment is moving forward in the General Assembly.

The state House Agriculture and Rural Affairs Committee voted unanimously to approve House Bill 179, sending it to the full chamber for consideration. The same measure, sponsored by Rep. Bridget Kosierowski of Lackawanna County, cleared the House unanimously last year but did not reach a vote by the Senate.

Pennsylvania Farm Bureau believes the measure would assist food processors with keeping their employees safe and maintain a critical link in the food supply chain. Closures of food processing operations due to COVID-19 outbreaks last spring led to significant supply chain bottlenecks that

resulted in shortages of certain products at grocery stores while farmers were left with livestock and commodities that they could not market.

Committee Advances Wedding Barn Bill

Legislation that would make it easier for farmers to rent out barns and other on-farm buildings for weddings and similar social events has cleared its first hurdle in the General Assembly.

The state Senate Labor and Industry Committee voted 7-3 last month to advance Senate Bill 191, sponsored by Sen. Judy Ward of Blair County. The measure now heads to the full Senate for consideration.

The bill would exempt certain agricultural buildings that are used occasionally for weddings or other social events from some parts of the Uniform Construction Code, as long as other safety conditions are met. The exemption would apply only to existing structures, not new construction.

With more people wanting to connect with agriculture and hold events in rustic settings, wedding barns can be a great option for farms to diversify and bring in additional revenue to supplement farm income. However, some municipal governments have required farms that want to host events to retrofit historic barns and agricultural buildings to meet the entirety of the construction code, which can be cost prohibitive, especially if a sprinkler system is required.

The legislation would allow farms to avoid having to install a sprinkler system in existing buildings if they meet certain safety requirements. Those include: ensuring electrical wiring is up to date, ensuring there are sufficient and operational smoke detectors and portable fire extinguishers on site, prohibiting smoking and open flames (except for food-warming trays), and ensuring there are multiple ways to exit the building safely in an emergency.

The bill is based on agreements that some farmers have reached with local officials in their municipalities and would establish a statewide standard that makes it easier for farms throughout the commonwealth to host events safely.

Ag Law updates

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COVID-19: USDA and FDA Issue Joint Statement on “No Transmission of COVID-19 Through Food or Food Packaging”

On February 18, 2021, the U.S. Department of Agriculture (USDA) and the U.S. Food and Drug Administration (FDA) issued a joint statement to underscore that there is no credible evidence suggesting that COVID-19 is contracted or transmitted through food or food packaging. This statement is consistent with the findings of the U.S. Centers for Disease Control and Prevention (CDC), which states that the risk of getting sick with COVID-19 from eating or handling food (including frozen food and produce) and food packages is considered very low. FDA and USDA emphasize that COVID-19, unlike foodborne or gastrointestinal viruses, such as norovirus and hepatitis A, is a respiratory illness spread through person-to-person contact, not contaminated food. The agencies state that consumers should be reassured that “the foods they eat and food packaging they touch are highly unlikely to spread SARS-CoV-2.”

Agricultural Labor: 2021 Adverse Effect Wage Rate Published in Federal Register

On February 23, 2021, the Department of Labor (DOL) Employment and Training Administration (ETA) published in the Federal Register a notice titled “Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2021 Adverse Effect Wage Rates for Non-Range Occupations” 86 FR 10996. The Adverse Effect Wage Rates (AEWR), or the minimum wage rates for H-2A workers, vary by state and are based upon the recently released 2020 Farm Labor Report. For background, see *ALWR—week ending February 19, 2021*, “NASS Publishes 2020 Farm Labor Report; 2021 H-2A Minimum Wage to be Published.” According to the notice, the AEWR for Pennsylvania is \$14.05, effective February 23, 2021.

COVID-19: USDA Indefinitely Extends CFAP Application Deadline

On February 25, 2021, the U.S. Department of Agriculture (USDA) has updated its webpage titled “Coronavirus Food Assistance Program – Additional Assistance” to reflect that the February 26, 2021 program signup deadline has been eliminated. Previously, USDA announced its suspension of payments under the Coronavirus Food Assistance Program (CFAP). See *ALWR—week ending January 29, 2021*, “CFAP Additional Assistance Payments Halted Pending Further Review.” According to the webpage, USDA continues a review of the program and will keep accepting applications throughout its review process. USDA states that once it announces a decision regarding CFAP, producers will have at least an additional 30 days to apply.

Agricultural Labor: NASS Publishes 2020 Farm Labor Report; 2021 H-2A Minimum Wage to be Published

On February 11, 2021, the U.S. Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) released the 2020 Farm Labor Report, originally scheduled for release November 25, 2020. The delay was caused by USDA suspending the October 2020 Agricultural Labor Survey, which provides the July – October 2020 data for this annual report, as part of the U.S. Department of Labor’s (DOL) implementation of a new final rule issued November 5, 2020, dispensing with the survey to calculate the annual H-2A Adverse Effect Wage Rate (AEWR), i.e. the federally mandated minimum wage for H-2A workers by state. However, as part of a December 23, 2020, injunction entered in *United Farm Workers v. United States Department of Labor*, No. 1:20-cv-01690-DAD-JLT, a legal challenge to the DOL’s final rule, the United States District Court for the Eastern District of California stayed the new rule’s and in subsequent orders directed that the survey shall be completed and the report shall be issued and the AEWR shall be established by February 25, 2020. For background, see *ALWR—week ending November 6, 2020*, Department of Labor Modifies H-2A Minimum Wage Calculation and *ALWR—week ending December 25, 2020*, Federal District Court Grants Injunction Against Revised H-2A Minimum Wage Calculation. Also see notice published at 85 FR 79463. The 2021 AEWR establishing the H-2A minimum wage is to be published in the Federal Register by February 25, 2021. According to a report published by the American Farm Bureau Federation on February 16, 2021, the 2021 AEWR for Pennsylvania will be \$14.05.

