

AG ISSUES UPDATE

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USApple Updates

Agriculture Labor Reform Bill Advances in House

On March 11, the House of Representatives passed the Farm Workforce Modernization Act (FWMA) with a bipartisan vote of 247-174. The legislation includes provisions to stabilize the current domestic workforce by creating an earned legalization process, as well as improvements to the current H-2A program, including wage relief. This is an important but first step in the process. USApple joined more than 250 agriculture associations and organizations in support of the bill. This is the same legislation that passed the House in December 2019 but was not brought up in the Senate as COVID related issues dominated the past year.

The legislation is a compromise between grower groups like ours and the United Farm Workers. Like any compromise, there are provisions and elements that are not of our choosing. We will work with our allies in the Senate to further improve the legislation as the process moves forward. However, even in its current form the FWMA is an improvement over the status quo. In addition to the important work authorization and legal status it provides for domestic workers, it also provides significant savings for H-2A users. In fact, if the FWMA had been enacted after House passage in 2019 it would have saved H-2A users more than \$350 million in 2020 and 2021. For a summary of the legislation [click here](#). To separate common myths from the facts of the legislation [click here](#).

The majority of House "apple" members voted for the legislation. Thank you to everyone who answered our call to action and weighed in. Please stay tuned as your help will be needed again as the process moves forward.

USApple Plants Apple Trees Near National Mall

USApple last week planted a group of apple trees outside of the Agriculture Department building, adjacent to the National Mall in Washington, D.C., as part of the Farm Journal Foundation's Voice of the Farmer Garden. The trees, Crimson Crisp and RubyRush, were donated by Adams County Nursery in Pennsylvania. The nursery's Phil and John Paul Baugher also lent the equipment and their time, helping to plant the trees. USApple Board Member Philip Glaize III made the trip from Winchester, Va. to lend his help. The next time you're in D.C., be sure to visit USApple's mini orchard! In the meantime, you can check out more photos on USApple's [Instagram](#) and [Facebook](#) pages

Farm Bureau updates

Funding for Agriculture, Nutrition Included in Federal Stimulus Package

Programs to help agriculture and the food supply chain recover from the continued fallout of the COVID-19 pandemic will get a boost through the \$1.9 trillion stimulus plan recently passed by Congress and signed by President Joe Biden.

The American Rescue Plan Act of 2021 allocates about \$10.4 billion for efforts to strengthen agriculture and the food supply chain. That includes a combined \$3.6 billion for food purchases to be distributed to families in need, similar to the Farmers to Families Food Box program, and for farms and food processors to purchase protective equipment and implement other COVID-19 mitigation measures to protect employees.

In addition to funding for food purchases and COVID-19 mitigation costs, the package includes funding to monitor animals for the virus that causes COVID-19 and provides \$100 million in relief to federally inspected small and very small meat, poultry and egg processors to help reduce overtime inspection costs as they work through a processing backlog.

Other provisions include:

- Grants to improve rural health care and assist COVID-19 vaccination efforts in rural communities.
- Debt relief to assist socially disadvantaged farmers as well as additional assistance to support socially disadvantaged farmers, including training, education, technical assistance, grants and loans.
- Funding to purchase U.S. food for international humanitarian efforts.
- Bolstering nutrition programs to assist families in need.

The agriculture and nutrition provision are part of a larger COVID-19 response and stimulus package that also includes direct payments to individuals and families up to certain income limits, expanded unemployment payments and other relief.

State, Federal Tax Filing Deadlines Extended

The Internal Revenue Service and Pennsylvania Department of Revenue have each extended their deadlines to file 2020 taxes until May 17, 2021.

The move comes as the COVID-19 pandemic continues to complicate filing for many taxpayers. And at the federal level, the recently signed federal stimulus package made several changes to tax laws. Pennsylvanians who make estimated payments for state income taxes should continue to follow the same schedule.

Paycheck Protection Program Deadline Extended

Farms and other small businesses affected by the continued economic effects of the COVID-19 pandemic will have an additional two months to apply for relief loans through the U.S. Small Business Administration's Paycheck Protection Program.

Congress passed legislation extending until May 31 the window to apply for the program, which had been set to close at the end of the month. President Joe Biden has signed the measure into law.

The program offers forgivable loans to small business, including farms, that have been affected by the COVID-19 pandemic so they can continue to pay employees and cover certain other expenses. Participants can apply for the loans through eligible lenders.

Farm Bureau Supports Measure to Expand Farmer Eligibility for Relief Loans

Farm Bureau is backing a pair of proposals in Congress that would ensure farm partnerships are eligible for the U.S. Small Business Administration's Paycheck Protection Program loans.

The Paycheck Protection Clarification for Producers Act and PPP Flexibility for Farmers and Ranchers Act have each been introduced in the U.S. House.

The Paycheck Protection Program offers forgivable loans to small business, including farms, that have been affected by the COVID-19 pandemic so they can continue to pay employees and cover certain other expenses. Congress adopted several updates to the program last year designed to expand farmers' access to the program. But the Small Business Administration has continued to deny loans to self-employed farmers who operate in a partnership or as sole-owner LLCs.

USDA Reopens, Expands COVID-19 Aid to Agriculture

The U.S. Department of Agriculture is putting at least \$6.5 billion into new and/or expanded programs to help farmers recover from continued fallout of the COVID-19 pandemic while continuing to make payments through previously established aid programs.

The agency's signature pandemic assistance program for farmers, the Coronavirus Food Assistance Program (or CFAP), will be reopened and incorporated into the new, \$12 billion USDA Pandemic Assistance for Producers initiative. The expanded program aims to fill gaps that USDA said it identified in previous aid programs and reach more producers affected by the pandemic.

The CFAP program, which offers direct payments to help eligible producers of certain commodities offset losses caused by the pandemic, has been on hold as part of a government-wide review by President Joe Biden's administration of regulatory action taken toward the end of former President Donald Trump's administration. While USDA continues to accept applications, payment and application processing were temporarily suspended.

USDA will reopen for at least 60 days the window for producers to apply for the second round of CFAP in an effort to target underserved producers. At the same time, USDA will resume processing applications and payments related to the expanded CFAP aid enacted in December. That includes:

Additional payments to cattle producers who applied for the first round of CFAP and for producers of certain non-specialty crops who applied for the second round of CFAP. (Eligible producers will be paid without need to re-apply).

Opportunities for pullet and turfgrass sod producers (who were not previously eligible) to apply for aid.

Opportunities for producers to modify existing applications to take advantage of updated payment calculations related to crop insurance and indemnity and disaster assistance programs.

Processing of additional payments to swine producers and applications from contract growers (who were also made eligible in December) remain on hold as USDA reviews those programs. However, producers may continue to apply.

In addition to reopening CFAP and resuming most processing, USDA is allocating at least \$6 billion to create new programs or expand current ones to provide assistance in the following areas:

- Dairy farmers (through the Dairy Donation Program or other means)

- Producers who had to euthanized livestock and/or poultry

- Biofuels

- Specialty crops, beginning farmers, local, urban and organic farms

- Costs associated with organic certification or conservation activities

- Other potential expansions of CFAP

- Timber harvesting and hauling

- Personal Protective Equipment and other protective measures for food and farm workers

- Efforts to improve the resiliency of the food supply chain (including assistance to meat and poultry operations to facilitate interstate shipment)

- Infrastructure to support donation and distribution of perishable commodities

- Efforts to food waste

USDA is also allocating an additional \$500 million to a variety of programs that support agriculture through research; commodity marketing; assistance for socially disadvantaged, veteran, and beginning producers; animal disease assistance and response; and more.

Agriculture, Food Workers to Be Prioritized for Vaccine

Gov. Tom Wolf and members of Pennsylvania's bi-partisan COVID-19 Vaccine Task Force announced a new strategy for targeted vaccinations during a press conference Friday, in which farmers and agriculture workers will be eligible to start receiving the Johnson & Johnson coronavirus vaccine by April 1.

Wolf said that everyone in the Phase 1A group (Pennsylvanians living in long-term care facilities, people age 65 and older, and those age 16-64 with high-risk conditions) who wants to get vaccinated will be able get at least their first dose by March 28. He also said that beginning in April, the state will receive a significant increase in supply of Johnson & Johnson's one-dose vaccine. This will allow the state to begin targeting frontline workers, including meat processing and agriculture workers.

The increased supply of the Johnson & Johnson vaccine will also allow the state to establish regional vaccination clinics throughout Pennsylvania counties. Counties will be encouraged to work within their region to submit a proposal for a mass vaccination clinic, community vaccination clinics, mobile clinics or other strategies to vaccinate their populations.

Wolf explained that the task force is still working through the details of these next special initiatives and will announce more information before additional Johnson & Johnson allocations become available on March 28.

Agritourism Liability Bill Advances in State Senate

A bill that would limit civil liability for farms that invite the public onto their property for agritourism activities, one of Pennsylvania Farm Bureau's top legislative priorities, is a step closer to becoming law.

The Senate Agriculture and Rural Affairs Committee voted unanimously this week to send House Bill 101 to the full Senate for consideration. The bill cleared the state House of Representatives with a bipartisan vote in February.

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 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 PFB and other agriculture organizations. The measure passed the state House last fall with a bipartisan vote. The Senate then passed the legislation as part of a separate bill related to COVID-19 but that measure 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.

Free Equipment, Assistance Available for Farm Markets to Accept SNAP

Pennsylvania farmers who sell their products direct to consumers through farmers markets or their own retail stores can expand their markets and help address food insecurity by taking advantage of free assistance and equipment to start accepting payments using Supplemental Nutrition Assistance Program (SNAP) benefits.

Department of Human Services recently received a U.S. Department of Agriculture grant to help more farms with retail operations get started accepting SNAP. The grant covers free wireless, EBT-processing equipment (which is needed to accept SNAP benefits), set-up costs, and one-year of transactions fees.

SNAP assists more than 1.8 million Pennsylvanians through a monthly payment based on income and household size, which can be used to purchase eligible produce and groceries. For farmers, accepting SNAP is the same as accepting debit or credit transactions. SNAP benefits cover the full price for a product that any other consumer would pay.

Fewer than 5 percent of Pennsylvania farmers markets and on-farm markets are currently registered to accept SNAP.

Interested farm retailers or market owners should apply to accept SNAP through USDA's Food and Nutrition Service. Once approved, free equipment can be obtained by contacting Pennsylvania's EBT processing vendor, Conduent, at 888.736.6328.

Spotted Lanternfly Quarantine Area Expanded to Eight Counties

Pennsylvania Department of Agriculture has added eight more counties to its spotted lanternfly quarantine area in an effort to stop further spread of the invasive species before spring hatch.

The newly added counties—Cambria, Cameron, Franklin, Lackawanna, Montour, Pike, Wayne, and Westmoreland—are not completely infested but have a few municipalities with a known infestation. They join the 26 counties already under quarantine: Allegheny, Beaver, Berks, Blair, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Huntingdon, Juniata, Lancaster, Lebanon, Lehigh, Luzerne, Mifflin, Montgomery, Monroe, Northampton, Northumberland, Perry, Philadelphia, Schuylkill, and York.

Businesses, including farms, that operate within or cross through the quarantine counties must comply with certain regulations, including obtaining a permit demonstrating that they can identify the spotted lanternfly and will take steps to stop its spread.

An invasive pest native to Asia, the spotted lanternfly was first discovered in Berks County in 2014. It poses a major threat to agricultural commodities, including grapes, tree fruit, hops and hardwood.

Wedding Barn Bill Passed by Senate

A bill supported by Pennsylvania Farm Bureau that aims to make it easier for farmers to rent out barns for weddings and similar social events has been passed by the state Senate.

Senators voted 28-19 in favor of Senate Bill 191, sponsored by Sen. Judy Ward of Blair County. The measure now heads to the House 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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Organic Agriculture: Federal Court Upholds USDA Organic Foods Production Act Interpretation to Include Hydroponic Production

On March 19, 2021, the U.S. District Court for the Northern District of California issued an order granting summary judgment in favor of the U.S. Department of Agriculture (USDA) respecting the agency's interpretation of the Organic Foods Production Act of 1990 (OFPA) to allow for organic certification of hydroponic production systems. *Center for Food Safety v. Perdue*, No. 3:20-cv-01537. The complaint, filed by the Center for Food Safety (the Center), asked the court to review USDA's denial of the Center's rulemaking petition requesting USDA to prohibit organic certification of hydroponic systems. The Center claimed that OFPA language referencing or establishing soil fertility requirements created a prerequisite that all organically certified crop production must utilize soil-based cultivation. The court found that because OFPA neither directly nor indirectly mentions or considers hydroponic systems nor methods, the statute does not speak directly to the issue and cannot compel any action related to hydroponics. As such, the court held USDA's OFPA interpretation—that OFPA soil provisions apply only to production systems using soil and do not create soil requirements for organic production—is a permissible reading of the statute.

COVID-19: OSHA Issues Updated Interim COVID-19 Enforcement Plan

On March 12, 2021, the U.S. Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) issued an enforcement memorandum for regional OSHA administrators and state OSHA plan designees titled "Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)," which outlines the agency's new National Emphasis Program (NEP), established by DIR 2021-01 (CPL-03), also issued the same day. The NEP provides guidance to compliance officers and area offices for addressing COVID-19 reports and prioritizes on-site inspection and enforcement in high-risk settings where employees work in close contact, including "meat, poultry, and other food processing," and high-volume retail settings. Effective upon publication, the NEP specifies that targeted inspections begin on March 26, 2021. The NEP is in response to the January 21, 2021 Executive Order, "Protecting Worker Health and Safety" (E.O. 13999). Notably, OSHA has yet to issue Emergency Temporary Standards, which according to E.O. 13999 were to be issued by March 15, 2021. See *ALWR—week ending February 5, 2021*, "Executive Order Directs OSHA to Issue Guidance and Consider Emergency Temporary Standards."

Disaster Assistance: USDA Designates Six Pennsylvania Counties as Natural Disaster Areas

On February 24, 2021, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) announced its designation of six Pennsylvania counties as primary natural disaster areas due to droughts between June 2020 and November 2020, and established producer eligibility for emergency loans in the designated counties: Centre, Clearfield, Clinton, Cumberland County, Elk, and Jefferson. According to the announcement, producers in contiguous counties are also eligible to apply for loans: Adams, Armstrong, Blair, Cambria, Cameron, Clarion, Dauphin, Forest, Franklin, Huntingdon, Indiana, Lycoming, McKean, Mifflin, Perry, Potter, Union, Warren, and York. The deadline for loan application is October 19, 2021.