

AG ISSUES UPDATE

Edited by Sara Hricko

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USApple Updates

USDA proposes deregulation of Arctic Gala

On June 29, USDA's Animal and Plant Health Inspection Service (APHIS) announced its intent to extend deregulation to the Arctic Gala, developed by Okanagan Specialty Fruits, Inc. using genetic engineering to prevent browning. In its draft plant pest risk similarity (PPRSA) and preliminary Determination, APHIS concluded Arctic Gala apples are not more likely to pose a plant pest risk compared to the previously deregulated Arctic Golden and Arctic Granny apple varieties.

In the U.S., a biotech trait must receive approval from USDA that it is safe to release into the environment, and approval from FDA that it is safe for human consumption. So long as both questions are answered in the affirmative, USDA (the lead agency) has no statutory authority to withhold full deregulatory approval.

USApple Urges Congress to Remember Agriculture in Infrastructure Package

Earlier this month, USApple joined a diverse group of agricultural groups in urging congressional leaders and negotiators to take the needs of agriculture into consideration when crafting an infrastructure package.

"U.S. agriculture is the strongest and most productive in the world; getting products to domestic and international markets quickly and reliably is critical to our economy. We ask all members of the 117th Congress to recognize the importance of infrastructure to the health of the nation's food and agricultural economy and work together to support investment that will allow our workers to remain competitive in a global marketplace."

USApple is delivering this same message in our meetings with congressional offices and Biden administration officials.

President Biden Visits USApple Member

During a stop in Northern Michigan this weekend President Biden visited grower and former Young Apple Leader Juliette King McAvoy of King Orchards in Central Lake. Joining the President were Gov. Gretchen Whitmer and U.S. Senators Debbie Stabenow and Gary Peters. Stabenow chairs the Senate Agriculture Committee. They talked about big issues facing specialty crops: a changing climate, trade issues and labor. The President also met with the orchard's cherry pickers. According to Juliette, he and the others were receptive and engaged in learning more about the challenges growers are currently facing.

King Orchards is a family farm that grows more than 140 acres of fruits, including apples, cherries, peaches, pears and plums. First Lady Dr. Jill Biden visited the orchard previously, during the presidential campaign and apple harvest.

Farm Bureau updates

Farm Bureau Applauds Senate Passage of Growing Climate Solutions Act

Farm Bureau applauds the U.S. Senate for passing the Growing Climate Solutions Act. The act has 55 cosponsors, which makes it the first major piece of bipartisan legislation that would help farmers, ranchers and forest landowners reduce greenhouse gas emissions and build climate resilience through voluntary, market-driven programs. The Growing Climate Solutions Act passed by a vote of 92-8.

The Growing Climate Solutions Act is supported by more than 75 agriculture, food, forestry and environmental groups that are part of the Food and Agriculture Climate Alliance. The alliance advocates for responsible policies that build on voluntary, incentive-based programs, market-driven opportunities and science-based approaches.

This legislation would provide clarity and guidance for farmers, ranchers and forest landowners interested in voluntary participation in private carbon credit markets. With a growing number of ecosystem service providers, producers seek a trusted source for reliable information. The Growing Climate Solutions Act would create a certification program at USDA to help solve technical entry barriers. Landowner participation and the adoption of practices have been slowed by a lack of access to reliable information about private carbon markets, as well as too few qualified technical assistance providers and credit protocol verifiers.

Tax Plans Would Threaten Family Farms

Farm Bureau is opposing plans in Congress that would tax unrealized capital gains at death and eliminate the stepped-up basis on those capital gains, warning that the move could force many family farms out of business.

Enacting those changes would result in a significant tax burden for agriculture, putting at risk the ability of family farms to remain financially sustainable as they continue to the next generation.

Stepped-up basis enables farms to reduce the burden of capital gains taxes by resetting the value of an asset when it is transferred between generations. It's especially important in agriculture because assets, such as land, are often held for decades and passed on from generation to generation.

Currently, the capital gains taxes on the stepped-up value of an inherited asset are deferred until that asset is sold. So, if capital gains are taxed at death and the stepped-up basis is removed, the next generation inheriting the farm could be forced to pay taxes on the increase in value over generations.

In Pennsylvania, the average cropland value has increased 168 percent since 1997, resulting in an estimated capital gains tax of \$890 per acre. In that scenario, the capital gains tax would be close to 10 times the average cash rental rate.

USDA Details Additional Pandemic Relief for Agriculture

The U.S. Department of Agriculture has announced plans to establish programs within the next 60 days to deliver additional financial relief to farmers affected by the COVID-19 pandemic.

The new assistance is part of the Pandemic Assistance for Producers Program the agency announced in March to fill gaps not addressed through previous rounds of assistance and direct additional relief to agriculture.

Within the next two months, USDA plans to implement programs that include:

- Additional support for dairy farmers and processors including a \$400 million Dairy Donation, additional pandemic payments targeted to dairy farmers that have demonstrated losses that have not been covered by previous pandemic assistance, and about \$580 million in supplemental Dairy Margin Coverage for small and medium farms.
- \$200 million for small, family-owned timber harvesting and hauling businesses.
- \$700 million for biofuels producers.
- Assistance for poultry and livestock producers left out of previous rounds, including contract growers of poultry and livestock and poultry producers who were forced to euthanize animals during the pandemic.
- \$700 million in Pandemic Response and Safety Grants to reimburse producers, processors, distributors, and farmers markets for personal protective equipment and other worker protection measures.
- Up to \$20 million in additional organic cost share assistance, including for producers who are transitioning to organic.

Agritourism Civil Liability Reform Signed Into Law

Pennsylvania farm families will have more opportunity to diversify their businesses and connect with their communities around food and agriculture thanks to a new law that addresses a significant legal barrier to offering agritourism activities.

Gov. Tom Wolf recently signed legislation to enact commonsense legal protections for agritourism—one of Pennsylvania Farm Bureau's top legislative priorities for close to a decade—following its passage by the General Assembly.

Farmers have sought for years to secure civil liability limits for agritourism to help family farms remain viable through a changing farm economy and connect with their communities around family fun and local food. PFB led the effort to put momentum behind the measure, making it a priority of the organization's grassroots advocacy campaign and holding a news conference last fall to build support.

The law offers 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, farms that offer agritourism activities will now have reasonable protection from lawsuits that arise from circumstances beyond their control and in which no party is at fault as long as they warn visitors of the inherent risks of being on a farm, such as uneven ground, weather, and unpredictable animals.

At the same time, farmers will still need to take reasonable steps to ensure guest safety. The law does not give farms a free pass from ensuring guest safety and farms can still be held accountable if they fail to fix or warn patrons of obvious and dangerous safety risks. The measure is modeled off similar laws already on the books in at least 20 other states, including New York and Ohio.

The threat of frivolous lawsuits has been a significant barrier for agritourism operations. In addition to putting their farms at risk by inviting the public onto their property, farmers who engage in agritourism have difficulty finding insurance coverage or have to pay high premiums due to the legal risks involved. The new law limiting civil liability seeks to address this challenge.

Agriculture Funded in State Budget but Opportunities Missed

Pennsylvania Farm Bureau believes the 2021-2022 state budget will maintain funding for programs important to Pennsylvania farmers, and address two important tax issues, but misses opportunities to make additional investments that are needed to strengthen the state's number one industry and grow rural communities throughout the commonwealth.

The budget includes a 5 percent increase for the Pennsylvania Department of Agriculture's general government operations and would maintain level funding for the Penn State Cooperative Extension, the University of Pennsylvania School of Veterinary Medicine and the Pennsylvania Agricultural Surplus System, which assists in getting excess food from Pennsylvania farms and food processors into the charitable food network. The budget also maintains funding for agriculture programs that had been zeroed out in the proposed budget Gov. Tom Wolf outlined in February and the accompanying tax code bill includes two tax provisions important to agriculture that PFB supported.

However, PFB is disappointed that the spending plan does not include additional funding to expand broadband internet access in rural communities or to assist with implementation of on-farm practices to protect water quality.

Specifically, PFB had advocated for using some federal pandemic relief funding allocated to the state to help in areas such as rural broadband expansion and farm conservation.

PA House Passes Bill to Allow State Tax Flexibility for Crop Insurance

A Pennsylvania Farm Bureau-supported bill that would give Pennsylvania farmers greater flexibility in paying state income taxes on crop insurance payments has cleared the state House.

Representatives voted 201-1 to advance House Bill 1006, sponsored by Rep. Carl Metzgar of Somerset County. The legislation now heads to the Senate for consideration.

The bill would allow farmers to defer crop insurance payments from state income taxes for one year, bringing state tax policy on crop insurance in line with federal rules. PFB believes the move would give farmers greater flexibility in paying taxes on crop insurance payments at the times when they need it the most. Because crop insurance payments are triggered at times of severe weather and significant crop loss, farmers receive such payments when the year did not go as planned. Greater flexibility for state income taxes would help farmers manage income and expenses in difficult years.

Bill to Improve Broadband Infrastructure Clears House Committee

A bill supported by Pennsylvania Farm Bureau that would identify opportunities to expand high-speed internet infrastructure is moving forward in the state House of Representatives.

The state House Consumer Affairs Committee approved Senate Bill 442 with a 23-2 vote, sending the measure to the full chamber for consideration. The state Senate passed the bill in May.

The legislation, sponsored by Sen. Kristen Phillips-Hill of York County, would direct the state Department of General Services to compile a list of state-owned assets that be used to host technology to expand broadband access.

Increasingly, broadband access is becoming critical to agriculture, business and daily life but many rural areas in Pennsylvania lack adequate service. That digital divide was especially highlighted during the COVID-19 pandemic, when many essential aspects of daily life such as work, education and medicine moved online putting residents in areas where service is lacking at a disadvantage.

Pennsylvania Farm Bureau believe a multi-pronged approach is needed to expand high-speed internet access in Pennsylvania and examining state assets that could assist in broadband deployment is just one of those steps.

Sunday Hunting Expansion Push Advances in State Senate

A push to further expand Sunday hunting in Pennsylvania and remove the limits imposed by the 2019 law that allowed hunting on three Sundays has taken its first step in the General Assembly.

Pennsylvania Farm Bureau opposes the measure and believes it would result in a significant expansion of Sunday hunting while removing the ability of farmers and other rural landowners to have their concerns heard and addressed through the legislative process.

Senate Bill 607, sponsored by Sen. Dan Laughlin of Erie County, cleared the Senate Game and Fisheries Committee with a 7-4 vote. The measure now heads to the full chamber for consideration.

The bill would grant the Pennsylvania Game Commission full authority to set Sunday hunting rules, taking those decisions away from the General Assembly. While Sunday hunting was previously limited to foxes, crows and coyotes, a 2019 law allowed expanded hunting to occur on three Sundays only and, if on private land, only with written permission from the landowner. The legislation would remove both of those limits.

While PFB has historically opposed Sunday hunting, grassroots members voted in November 2018 to shift PFB policy so that the organization could take a neutral stance on a Sunday hunting bill that met certain criteria. That paved the way for a compromise bill in 2019 that met those objectives: Limiting hunting to three Sundays, requiring written permission, and strengthening trespass laws.

PFB believes that Senate Bill 607 would essentially renege on that compromise by allowing Sunday hunting to be greatly expanded without farmers and other rural landowners having that same opportunity to see their concerns addressed through their elected legislators.

PA House Passes Bill to Allow Heavier Loads of Spring Planting Materials

The state House of Representatives has passed legislation supported by Pennsylvania Farm Bureau that would allow for transportation of heavier loads of spring planting materials.

Representatives voted 122-79 in favor of House Bill 1232, sponsored by Rep. Jason Silvis of Westmoreland County. The measure now heads to the state Senate for consideration.

The bill would create a seasonal overweight permit for the movement of up to 95,000 pounds of lime, fertilizer and/or seed between March and June. PFB believes this would help farmers get ready for spring planting with fewer truck trips.

Ag Law updates

Brook Duer—Staff Attorney

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COVID-19: USDA Announces \$2.6 Billion in Additional Funding for Pandemic Assistance for Producers

On June 15, 2021, the U.S. Department of Agriculture (USDA) announced \$2.6 billion in additional funding under the agency's Pandemic Assistance for Producers programs. According to the announcement, the agency has allocated funds as follows: small timber businesses—\$200 million, biofuels producers—\$700 million, Dairy Donation Program—\$400 million, Supplemental Dairy Margin Coverage—\$580 million, and organic cost share assistance—\$20 million. Additionally, USDA has allocated \$700 million for Pandemic Response and Safety Grants, which will reimburse producers for worker protection efforts and purchases of Personal Protective Equipment (PPE). USDA states that it will proceed with the announced funding assistance within 60 days.

Food Labeling: Vermont Law School Announces New “Labels Unwrapped” Website

On June 22, 2021, Vermont Law School's Center for Agricultural and Food Systems, announced the roll-out of a new website titled “Labels Unwrapped,” at labelsunwrapped.org, containing consumer-oriented information on understanding label requirements and content across multiple commodity groups and federal statutes, as well as providing a research section and more in-depth information from other sources for food industry professionals. According to the Center, “While the Food and Drug Administration (FDA) has developed a resource intended to assist producers with compliance (see A Food Labeling Guide: Guidance for the Industry), the guide is intended for that audience. In turn, it is highly technical and doesn't fully serve the needs of consumers and other audiences trying to make sense of food product labels. This site fills that gap by providing an easy-to-navigate and user-friendly resource to serve consumers, producers, and others working in the food label area.”

Biotechnology: APHIS Publishes Environmental Assessments for Deregulation of Genetically Engineered Apple Variety

On June 30, 2021, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) posted notice in the Federal Register (86 FR 34713) announcing publication of three documents relating to the deregulation of genetically engineered PG451 Arctic Gala apples, requested by Canada-based Okanagan Specialty Fruits, Inc. (Okanagan): 1) Deregulation Extension Request, 2) Draft Plant Pest Risk Similarity Assessment, and 3) Preliminary Determination. APHIS has already deregulated two other genetically engineered apple varieties from Okanagan, the GD743 Arctic Golden apple and GS784 Arctic Granny apple. According to an announcement, APHIS has concluded that the PG451 Arctic Gala apples, which were genetically engineered to prevent browning, "are not more likely to pose a plant pest risk than the [two] previously deregulated . . . apple varieties." APHIS is accepting comments on the assessments and Okanagan's request until July 30, 2021.

International Trade: EU Parliament, Council Announce New Common Agricultural Policy

On June 25, 2021, the European Commission announced that, after three years, the European Parliament and Council have agreed upon a new Common Agricultural Policy (CAP). The new CAP will include rigorous environmental standards, provide support for young farmers, and mandate adherence to European social and labor law. According to the announcement, all farms must dedicate at least 3% of "arable land . . . to biodiversity and non-productive elements" and member states "must allocate at least 25% of their income support budget to ecoschemes" which compensate producers for implementing "climate and environmentally-friendly practices" like organic farming and integrated pest management.

Antitrust: USDA Announces Actions in Response to Executive Order on Competition

On July 9, 2021, the U.S. Department of Agriculture (USDA) announced several actions in response to President Biden's "Executive Order on Promoting Competition in the American Economy," issued the same day. According to the announcement, USDA will initiate three rulemakings under the Packers and Stockyards Act that will: (1) define "unfair," "deceptive," and "unjustly discriminatory" conduct that USDA considers a violation of the Act; (2) address unjust practices in the poultry industry; and (3) clarify USDA's stance that "it is not necessary to demonstrate harm or likely harm to competition in order to establish a violation of the Act." USDA also states that it will develop a plan to increase opportunities for producers to access new markets and will initiate new labeling rules in accordance with the Federal Trade Commission's "Made in USA" rule for products regulated by the Food Safety and Inspection Service (FSIS). Additionally, USDA will request comments on how to best utilize \$500 million to improve meat and poultry processing infrastructure and has developed overtime and holiday inspection fee reductions for small meat, poultry, and egg production plants.

Food Labeling: Federal Trade Commission Issues New "Made in USA" Labeling Rule

On July 1, 2021, the Federal Trade Commission (FTC) announced the completion of a final rule titled, “Made in USA Labeling Rule,” which codifies that product packaging and online labels may not identify a product as “Made in USA” unless: “1) final assembly or processing of the product occurs in the United States; 2) all significant processing that goes into the product occurs in the United States; and 3) all or virtually all ingredients or components of the product are made and sourced in the United States.” The rule allows the FTC to charge civil penalties of up to \$43,280 per violation. The rule will become effective 30 days after publication in the Federal Register. For background, see *ALWR—Week Ending October 2, 2020, FTC Closes Comment Period on “Made in USA.”*