

AG ISSUES UPDATE

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USApple Updates

USDA Expands Eligibility for Worker Safety Grant Program

On September 9, USDA announced a \$700 million Pandemic Response and Safety (PRS) Grant program intended to offset some of the costs faced by employers for worker safety measures. USApple advocated for the past 18 months for the creation of such a program. Congress listened, including designated funds in the December 2020 and March 2021 COVID-relief bills. However, the program as originally structured targeted only the smallest operations, which effectively shut out anyone producing for the commercial market.

USApple made the strong point to our congressional allies and USDA officials that apple growers, packers and processors spent hundreds and some cases thousands of dollars per worker adhering to social distancing through retrofitting packing and processing facilities and securing additional transportation and housing. Growers purchased personal protective equipment for their workers, secured tests and in some cases hired additional workers to step in for those in quarantine.

Our message to USDA and Congress was clear: the more workers employed by a grower, packer, or processor the more workers were protected which in turn helped to protect the wider community. USDA listened, revising the program and expanding eligibility. The program is still not designed to cover everyone, though we believe it should. It is a positive step in the right direction. To find out if you qualify and to apply for assistance <https://usda-prs.grantsolutions.gov/usda>. Although applications are only being accepted through November 22, if you find that you do not qualify, please let us know, by emailing Diane Kurrle. We will not share your personal information. But we will continue to advocate for program expansion, and it will be very helpful to have a better understanding of how many of our members do and do not qualify.

Senate Legislation Introduced to Address Damaging Tariffs

USApple and its partners in the Tariff Reform Coalition sent a joint letter yesterday to members of the U.S. Senate pushing passage of the Bicameral Trade Authority Act of 2021. The coalition is comprised of industries adversely affected by the tariff quotas on imported steel and aluminum, or in the case of the U.S. apple industry by retaliatory tariffs imposed by trading partners in response to the U.S.' tariffs.

Tariffs imposed by the Trump Administration on imported steel and aluminum resulted in retaliatory tariffs from important apple importing countries, most notably India which was the #2 importer of U.S. apples at the time the tariffs were imposed. As a result, U.S. apple exports to India have declined 75 percent in two years.

The legislation, if adopted, would amend the Trade Authority Act to provide greater Congressional oversight to ensure all national interests are taken into account prior to the imposition of tariffs. It would also allow Congress to reconsider tariffs imposed within the last four years and vote to repeal them. Lead sponsors of the legislation are Senators Toomey (R-Pa.) and Warner (D-Va.).

USApple Issues Statement to Media Regarding Steel and Aluminum Tariffs Impacting Apples

USApple issued a statement in response to the Biden Administration's easing of tariffs on steel and aluminum imports from the EU. The tariffs were imposed by the Trump Administration and resulted in retaliatory tariffs from other trading partners that have hurt U.S. apple exports.

"This weekend's announcement that the Biden Administration will ease tariffs on steel and aluminum imports from the European Union should be congratulated as good news. Hopefully this will be the first step in helping reclaim market share for other U.S. export-dependent farm commodities. But for most U.S. apples the announcement will have little positive effect since the EU's unscientific rules against even infinitesimally low residues of modern production compounds lock U.S. growers out of that market. Specifically, the compound used to help prevent storage rot and make those healthy apples available year-round.

"Consistently, U.S. apples sampled through the national pesticide residue monitoring program have either no residues or residues far below EPA's strict tolerances. A child could eat 340 servings of apples every day without effect from pesticide residues. The EU's arbitrary rules deny its own consumers the superior new apple varieties being grown in the United States.

"We hope this announcement will mean a similar review of the steel and aluminum tariffs imposed on India and China, which, respectively, were the second and sixth ranked export markets for U.S. apples before the tariffs. Total tariffs against U.S. apples are 70 percent in India and 55 percent in China, taking a large bite out of the United States' formerly one-billion-dollar apple export market."

Ag Groups Push for Confirmation of Top Ag Negotiator

Last Friday, USApple and 169 ag coalition partners sent a letter to the U.S. Senate leadership supporting swift confirmation of President Biden's choice of Elaine Trevino as the next Chief Agriculture Negotiator at the Office of the U.S. Trade Representative. The position comes with the rank of Ambassador and is the top ag trade official in the Office of the President. Trevino is currently the CEO of the California almond industry association and has previously served as the #2 official in the California Department of Agriculture.

USApple Urges USDA to Better Enforce Buy American Provisions for School Lunches

This week, USApple submitted comments to USDA on proposed changes to the Buy American requirements for school feeding programs. These provisions have been in place since 1988 but schools are allowed to opt out based on availability and price. As a consequence, many common school meal items including apple juice, fish sticks, and canned peaches are imported. In the case of apple juice, 80 percent of juice served in schools comes from China. USApple has long spoken out against this practice and joined other like-minded commodity groups in urging USDA to begin enforcing the Buy American provisions as intended. USApple President & CEO Jim Bair met with Agriculture Secretary Sonny Perdue on this issue early in the Trump Administration and we have raised it with Members of Congress and in meetings with officials from the Biden White House and USDA.

In our comments, we state that "The Buy American provisions for the school lunch program have been in place for nearly thirty-five years, yet 80 percent of the apple juice served in schools comes from China. Ironically, U.S. apple export market to China has been greatly diminished due to retaliatory tariffs, currently set at 55 percent. This is wrong. American students deserve the best food and American taxpayers deserve to know that their funds are used to support U.S. jobs and businesses."

Dear USAppleTracker Readers and Storage Survey Participants

According to the USAppleTracker survey, the total number of apples in storage on November 1, 2021, was 154.9 million bushels, 4.7 percent less than last November's total of 162.6 million bushels and 9.1 percent less the 5-year average for that date.

Fresh apple holdings on this November, totaled 109.2 million bushels, 7.1 percent less than the inventories reported for last November. Processing holdings totaled 45.7 million bushels, 1.7 percent more than last year on November 1.

This report captures more than 95% of the national storage capacity. We thank all the participants and welcome your suggestions and comments about how to improve it.

Attention Farmers and Agritourism Operators

We are excited to introduce the American Farm Trail app - a new agritourism app from The American Farm Bureau Foundation for Agriculture. Sign up for free to showcase your agritourism operation or tour to new visitors. Farms and attractions can create their own profile showcasing their operation, history, products and more.

Tourists using the app will be able to search by area, type of attraction, etc. We hope to launch the app next spring and are currently searching for agritourism stops to add to the app.

The Ag Foundation developed the app with the hope to connect more consumers with where their food comes from. This fits in with their mission to build awareness and understanding of agriculture through education.

We invite you to be among the first to explore the site: American Farm Trail app and sign up your location by clicking the “Get Listed” button.

After you sign up – help us improve the experience by letting us know how it went! The first 100 farms to sign up and complete the pilot survey will receive a \$5 amazon gift card.

Survey link: <https://vivayic.typeform.com/farmtrailapp>

Farm Bureau updates

Senators Introduce Legislation to Protect American Agricultural Interests

Four senators have introduced legislation that would give top U.S. agriculture and food officials permanent representation on the Committee on Foreign Investment in the United States (CFIUS). CFIUS is a panel of government officials tasked with reviewing proposed mergers and acquisitions of U.S. companies, specifically those initiated by foreign entities, to assess whether the transaction could threaten U.S. national security interests.

Senate Agriculture Chairwoman Debbie Stabenow (D-Mich.) and Sens. Chuck Grassley (R-Iowa), Joni Ernst (R-Iowa) and Jon Tester (D-Mont.) introduced the Food Security is National Security Act, which will include new agriculture and food-related criteria for CFIUS to consider when reviewing transactions that could result in control of a U.S. business by a foreign company.

The Food Security is National Security Act would grant permanent representation on CFIUS to both the Secretary of Agriculture and the Secretary of Health and Human Services (HHS), which oversees the Food and Drug Administration. Currently, CFIUS does not include permanent representation from the USDA or HHS, the two agencies with primary responsibility for safeguarding the integrity, resiliency and quality of the nation's food supply.

The legislation also adds new criteria to the CFIUS review process to ensure that proposed transactions are reviewed specifically for their potential impact on American food and agricultural systems, including availability of, access to, or safety and quality of food. Specifically including food and agriculture in the review process is an important national security safeguard and sends a strong signal to potential foreign purchasers.

Bill to Expand Rural Broadband Passes House

The Eliminating Barriers to Rural Internet Development Grant Eligibility (E-BRIDGE) Act (H.R. 3193) recently passed the House of Representatives.

The legislation, which is actively supported by Farm Bureau, removes hurdles for broadband projects under Economic Development Administration grants, including difficult last-mile efforts that often delay rural broadband deployment. It ensures local communities can partner with the private sector in carrying out broadband projects and gives communities more flexibility in complying with their funding match requirements.

The bill passed the House with strong bipartisan support by a vote of 410-16. It is unclear on whether the Senate will take up the legislation at this time.

Adam Ortiz to be Appointed EPA's Regional Administrator for Region 3

Adam Ortiz will become the EPA's Regional Administrator for Region 3, which covers Pennsylvania along with Delaware, the District of Columbia, Maryland, Virginia, West Virginia and seven federally recognized Tribes.

As the EPA's Regional Administrator for Region 3, Ortiz will be responsible for the execution of EPA programs and ensure the views and needs of the region are incorporated into the formulation of agency and national policy.

"I am excited and honored to assist President Biden and Administrator Regan to address the great environmental challenges before us," Ortiz said in a media release. "The mid-Atlantic region is rich in both environmental treasures and innovative solutions. I look forward to working closely with local and state governments, advocates, utilities, Tribes, and other community stakeholders to ensure our part of the country leads the way for environmental protection."

Ortiz is currently the Director of the Montgomery County Maryland Department of Environmental Protection. According to the release, he launched programs to boost recycling, curbside compost collection, energy efficiency standards, and ecological targeting to watershed restoration projects. He previously was the Director of the Department of Environment for Prince George's County in Maryland and served in the administration of Governor Martin O'Malley and at the Department of Labor under former Secretary Tom Perez. Ortiz also served three terms as the mayor of Edmonston, Maryland.

EPA Announces Appointment of Rod Snyder as EPA Agriculture Advisor

The EPA has announced the appointment of Rod Snyder to become the agency's agriculture advisor. Snyder, who will lead outreach and engagement efforts with the agriculture community for EPA, joins the EPA after serving as the president of Field to Market: The Alliance for Sustainable Agriculture. He is recognized for his work at the intersection of agricultural and environmental issues, including climate change, water quality, biodiversity and pest management.

Prior to his work at Field to Market, Snyder worked for the National Corn Growers Association and CropLife America. In 2015, he co-founded the Sustainable Agriculture Summit, which has grown to be the largest annual sustainable agriculture conference in North America.

"I am honored to serve as EPA's agriculture advisor as we forge practical, science-based solutions that protect the environment and ensure a vibrant and productive agricultural system," Snyder said.

"America's farmers and ranchers are vital partners in achieving clean air and clear water, all while playing the critical role of delivering a healthy and secure food supply."

Snyder holds a B.A. in Political Science from Eastern University in St. Davids, Pennsylvania. He resides on his family farm in Shenandoah Junction, West Virginia.

Bob Morgan Appointed RD State Director for Pennsylvania

The USDA has announced the appointment of Bob Morgan as the Rural Development (RD) State Director for Pennsylvania.

Morgan will serve as the chief executive director of Pennsylvania's rural development and is responsible for promoting the mission and strategic goals of rural development and providing key leadership to develop and support a productive, diverse and inclusive state workforce. He will lead an office that offers grants, loans and loan guarantees to help create jobs and support economic development and essential services.

Morgan, a lifelong Pennsylvanian and resident of a rural community, has spent 25 years in investment, insurance and banking, assisting Pennsylvanians in making decisions that affected and improved their lives. He also worked eight years as Deputy Chief of Staff and District Director for Congressman Matthew A. Cartwright, working with community leaders on several major economic development initiatives in the northeastern corner of Pennsylvania.

USDA's Rural Development mission aims to improve the economy and quality of life in rural America.

Four Pennsylvania Counties Designated Natural Disaster Areas

Bucks, Monroe, Northampton and Pike counties in Pennsylvania have been designated as natural disaster areas by the USDA. The designation allows the FSA to extend emergency credit to producers recovering from natural disasters through emergency loans.

Excessive rain occurring from Aug. 21 through Sept. 2 triggered one designation and Hurricane Ida on Sept. 1-2 triggered the second. Bucks County is eligible for both disasters, while Monroe, Northampton and Pike counties are only eligible for the first excessive-rain disaster. The USDA designated five New Jersey counties as primary natural disaster areas with the four Pennsylvania counties among the eligible contiguous counties.

Emergency loans can be used to meet various recovery needs, including the replacement of essential items such as equipment or livestock, reorganization of a farming operation or refinancing of certain debts. The FSA will review the loans based on the extent of losses, security available and repayment ability. The deadline to apply is June 7, 2022.

More information is available via the Disaster Assistance Discovery Tool.

Pennsylvania House Passes Bill Clarifying Farmers' Driver's License Exemption

The state House has unanimously passed Senate Bill 725, which clarifies farmers' use of Class C driver's licenses.

SB 725, introduced by Sen. Camera Bartolotta, clarifies the types of licenses that farmers are required to have when operating trucks or truck combinations with a gross vehicle weight more than 26,000 pounds. It specifically clarifies Act 170, which the General Assembly unanimously passed in 2014. That legislation says that farmers do not need a commercial driver's license (CDL) to operate a farm vehicle, or combination, with a GVW of 26,000 pounds or greater. Recent action by State Police has left confusion as to whether farmers need a Class A license instead of the more-common Class C license. SB 725 clarifies that farmers are permitted to operate vehicles with a GVW over 26,000 pounds with a Class C driver's license.

SB 725 passed the Senate in September and will next be sent to the Governor for final approval.

Pennsylvania Farmers Eligible for Conservation Assistance

Pennsylvania agriculture producers and landowners are eligible for technical and financial assistance through the Regional Conservation Partnership Program (RCPP) administered by the USDA's NRCS.

The assistance is intended to improve and enhance natural resources on farm and forest land, and five projects in Pennsylvania have funding available. The eligible projects include land in the following counties: Adams, Allegheny, Armstrong, Berks, Butler, Chester, Cumberland, Dauphin, Franklin, Lancaster, Perry and York.

NRCS accepts applications year-round but makes funding selections at application cut-off deadlines. The Partnership for Chesapeake Bay Water Quality project in Chester County and the Implementing Conservation Practices and Certified Nutrient Management Plans on Pennsylvania Preserved Farms project, which has funding available for producers in Adams, Cumberland, Dauphin, Franklin, Perry and York counties, have their first cut-off deadlines on Oct. 29. The next cut-off deadline for both projects will be Dec. 30.

Three other projects — the Ag BMP Implementation in the Chesapeake Bay, Buffalo Creek Conservation Alliance, and Lancaster's Common Agenda for Clean Water — are new in 2021, so the first cut-off deadline is Dec. 30 for each.

Applicants should be farmers or farm or forest landowners and must meet eligibility criteria. Interested producers should visit their local NRCS service center.

Read more information on the projects.

Ag Law updates

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COVID-19: U.S. House Select Subcommittee Issues Report on Farmers to Families Food Box

On October 13, 2021, the U.S. House Select Subcommittee on the Coronavirus Crisis released a sixty-six page report titled “Farmers to Families? An Investigation Into the Trump Administration’s Food Box Program.” As a result of the report’s contents, a referral letter to the USDA Office of Inspector General (OIG) states that “the Program was operated in a manner that created significant risks of fraud, waste and abuse” and requests “work to reclaim wasted funds for American taxpayers.” A summary of the reports’ finding is contained in the Select Subcommittee’s accompanying press release. The Select Subcommittee’s investigation began on August 24, 2020, and the Farmers to Families Food Box Program was ended on May 31, 2021.

Pesticides/Herbicides: Producer Groups File EPA Petition Challenging Chlorpyrifos Tolerance Revocation

On October 19, 2021, more than eighty producer groups filed a petition with the U.S. Environmental Protection Agency (EPA) challenging the agency’s August 30, 2021, final rule (86 FR 48315) revoking all chlorpyrifos tolerances after February 28, 2022. *Chlorpyrifos; Tolerance Revocations*, EPA-HQ-OPP-2021-0523. As recited at the outset of the final rule, it was issued in response to litigation and a court order that effectively compelled it. The petition cites examples of sugar beet growers, soybean farmers, Michigan cherry producers, and others who stand to experience substantial economic loss resulting from their inability to use chlorpyrifos, which provides the most effective pest control for their crops. The groups argue that EPA wrongly determined the rule to be “not economically significant” and, as such, failed to seek its review by the Office of Information and Regulatory Analysis (OIRA). Additionally, the groups point to the rule’s underlying statute, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—a “risk-benefit statute”— and argue that, in revoking all chlorpyrifos tolerances, EPA only identified a “potential” hazard, which the groups claim “EPA’s own experts believe .

. . can be mitigated using existing controls.” The groups are asking EPA to rescind the rule, effective October 29, 2021, and stay its implementation.

Conservation Programs: USDA Announces 2022 Conservation Funding Programs

On October 21, 2021, the U.S. Department of Agriculture’s (USDA) Natural Resources Conservation Service (NRCS) announced several upcoming application cycle opportunities for the fiscal year 2022 programs: the Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), Agricultural Conservation Easement Program (ACEP), and Agricultural Management Assistance (AMA). The agency advises producers to apply for the programs by their state-specific ranking date for optimal consideration. For Pennsylvania, the upcoming EQIP and AMA ranking dates are Nov. 1, 2021; Jan. 1, 2022; and March 1, 2022.

Agricultural Labor: Homeland Security Secretary Stops “Ice Raids”

On October 12, 2021, U.S. Department of Homeland Security Secretary Mayorkas issued a department-wide memorandum on enforcement objectives, goals, priorities and methods which states, among other things, that the Department will be “focusing our worksite enforcement efforts on unscrupulous employers” and directing that the department “no longer conduct mass worksite operations,” commonly referred to as ICE raids. The memo recites a policy review process in which the Department will engage.

International Trade: EU Parliament Passes Farm to Fork Resolution

On October 20, 2021, the European Parliament announced that Members of the European Parliament (MEPs) voted October 19, 2021, to adopt resolution 2020/2260, “A Farm to Fork Strategy for a fair, healthy and environmentally friendly food system.” The “Farm to Fork Strategy” recommends multiple strategies to produce sustainable, healthy food and safeguard farmer income and food security. Such strategies include member state-binding pesticide reduction targets, agricultural emissions reduction targets, rigid biomass-based renewable energy criteria, and phasing out the use of cages in animal farming. The resolution provides a framework for future European Commission legislation. According to the announcement, the vote passed with 452 votes in favor, 170 against, and 76 abstentions.

Agribusiness: Federal Court Allows Securities Fraud Claims to Proceed Against Bayer Re: Monsanto Purchase

On October 19, 2021, the U.S. District Court for the Northern District of California issued an order denying Bayer's motion to dismiss a suit brought by Bayer investors alleging that the company's actions in connection with its acquisition of Monsanto violated the Securities and Exchange Act of 1934. *Sheet Metal Workers National Pension Fund v. Bayer Aktiengesellschaft*, No. 3:20-cv-04737. The plaintiffs, multiple pension funds, claim that Bayer misstated the safety of glyphosate and Roundup, Bayer's own due diligence efforts, and the legal risks of acquiring Monsanto. The court held that the plaintiffs adequately pled a cause of action under Sections 10(b) and 20(a) of the Securities and Exchange Act for "fraud or deceit" in connection with the purchase of Monsanto. The case was filed in July 2020 and now will proceed through discovery and other trial preparation. No trial date has been set.

COVID 19: OSHA Vaccination Mandate Issued and Immediately Stayed by Federal Court

On November 5, 2021, the U.S. Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) published in the Federal Register, "COVID-19 Vaccination and Testing; Emergency Temporary Standard (86 FR 61402), an interim final rule that consists of an emergency temporary standard (ETS) immediately effective requiring employers of 100 or more employees by December 5, 2021, to "develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead adopt a policy requiring employees to either get vaccinated or elect to undergo regular COVID-19 testing and wear a face covering at work in lieu of vaccination." A public comment period on the ETS closes on December 6, 2021. Information is available on OSHA's dedicated webpage about the ETS, including webinars, FAQs and employment policy templates. The ETS does not mention the so-called "agricultural exemption" from OSHA enforcement for employers with 10 or less employees and no employer-supplied housing. However an OSHA ETS could not legally supersede that act of the U.S. Congress. That same day, multiple legal challenges, which included emergency motions requesting the ETS be stayed temporary and permanently, were filed by numerous parties, including state governments and state attorneys general, in numerous federal courts across the country. On November 6, 2021, the United States Court of Appeals for the Fifth Circuit, located in New Orleans, Louisiana, entered an order stating, "Because the petitions give cause to believe there are grave statutory and constitutional issues with the [ETS], the [ETS] is hereby STAYED pending further action by

this court.” *BST Holdings, et. al, v. OSHA, et. al*, No. 21-60845. The DOL was ordered to respond to the petition for a permanent injunction by 5:00 PM November 8, 2021 and the petitioner were ordered to reply by the same time on November 9, 2021. No hearing or oral argument date was set.

Invasive Species: Pennsylvania Spotted Lanternfly Compliance Checks Announced

On October 20, 2021, the Pennsylvania Department of Agriculture (PDA) announced that, beginning October 25, 2021, the Spotted Lanternfly Compliance and Enforcement Team will begin auditing businesses in Cumberland and York counties for compliance with spotted lanternfly permits and inspection records. According to the announcement, businesses receiving notice of non-compliance will have 30 days to become compliant before being subject to any financial penalty.