

# **AG ISSUES UPDATE**

**Edited by Sara Hricko**

**December/January 2021-2022**

## **USApple Updates**

### **2022 AEWL Published**

The Department of Labor published the 2022 Adverse Affect Wage Rate (AEWR) used for the H-2A program. USApple first reported on this in our December 1 Apple Bites when the final Farm Labor Survey was published and we could unofficially calculate the new wage rate. As expected, wages on average will increase by about 5 percent. However as is always the case the range between states and regions is significant with some seeing increases as low as one percent while others will increase by as much as ten percent. Most apple states are in the five to ten percent range. The new wages take effect on December 29.

The uneven and unpredictable increase in annual wages underscores the need for legislative reform. The Farm Workforce Modernization Act, which passed the House in December 2019 and again in March 2021, would place a one-year freeze on the AEWL and cap annual increases at three percent. USApple continues to work on our own and with our coalition partners to encourage action in the Senate. We are also in regular discussion with the Biden Administration.

### **USApple Tracker – December 2021**

According to the survey, the total number of apples in storage on December 1, 2021, was 144.4 million bushels, 1.6 percent less than last December's total of 146.8 million bushels and 6.8 percent below the 5-year average for that date.

Fresh apple holdings on this December, totaled 100.2 million bushels, 2.6 percent less than the inventories reported for last December. Processing holdings totaled 44.2 million bushels, 0.6 percent more than last year on December 1.

This report captures more than 95% of the national storage capacity.

The full report can be viewed here: <https://usapple.org/wp-content/uploads/2021/12/USAppleTracker-DEC-2021-FINAL-1.pdf>

## **Retaliatory Tariffs Keep Hammering Apples**

At the end of October, the U.S and European Union agreed to end a dispute over steel and aluminum tariffs that caused retaliation against agricultural products including apples.

Jim Bair, President and CEO of the U.S. Apple Association said in a Nov. 8 interview that retaliatory tariffs against apples have been harmful to apple growers, and he's working to ease this burden.

He said U.S. apple exports totaled 40.8 million bushels for the 2020-21 crop year, down from more than 53 million bushels as recently as 2018-19.

"The most recent data are September 2021, and they show a 6 percent decline for the month compared with last year," Bair said. "It's difficult to predict exports this year as the loss of India and China aren't likely to be made up elsewhere."

In normal years, he said U.S. apple growers export about one-third of the crop.

"Red Delicious and Golden Delicious are at the top of that list but falling fast in preference with U.S. consumers. So, exports have been key to moving those varieties to markets where they won't overhang the domestic market and depress prices."

When the U.S. imposed the Section 232 steel and aluminum tariffs on India, it was the No.2 export market and growing, Bair said. India responded with retaliatory tariffs on apples, and the total tariffs are now 70 percent, which has seen India's imports of U.S. apples plummet 75 percent in two years.

While China is a relatively new market, having just been opened in 2015, Bair said in just three years it had grown to be the No.6 export market.

Total tariffs into China for U.S. apples are now 55 percent, he said, and exports there have declined 50 percent in 3 years.

## **USApple Urges Further Trade and Economic Strategy with China**

Ahead of President Biden's meeting this week with Chinese President Xi Jinping, USApple signed on to a coalition letter urging advancement of a more comprehensive and durable trade and economic strategy with China. The letter, sent to Treasury Secretary Janet Yellen and U.S. Trade Representative Katherine Tai, recommended the U.S. government 1) continue working with China to ensure full implementation of the Phase One Agreement; 2) prioritize making progress on outstanding structural challenges in China that fall outside the scope of the Phase One Agreement to improve the operating environment for U.S. businesses and farmers and ensure American goods and services are treated fairly; and 3) reduce harmful Section 301 tariffs and broaden the tariff exclusion process.

The U.S. agreed to wide open apple trade with China in 2015. Shortly China had grown to be the U.S.' sixth largest apple market, and importantly was purchasing higher value new varieties that are not available in China. Since the U.S. imposed tariffs and China retaliated against U.S. apples, sales have plummeted more than 50 percent.

## **2022 H-2A Wage Rate**

Last week, USDA released the final 2021 Farm Labor Survey making it possible to calculate the 2022 Adverse Effect Wage Rate (AEWR) used for the H-2A program. On average, wages will increase by about five percent. However, as is usually the case, the ranges and disparity between states is significant with some states seeing increases as low as two percent and others as much as ten percent. Most apple regions will see increases of at least five percent with some closer to ten. The National Council of Agricultural Employers ran the numbers—to see what your new AEWR is visit <https://usapple.org/wp-content/uploads/2021/12/2021.11.24-FLS-results.pdf>. The uneven and unpredictable increase in annual wages underscores the need for legislative reform. The Farm Workforce Modernization Act, which passed the House in December 2019 and again in March 2021, would place a one-year freeze on the AEWR and cap annual increases at three percent.

USApple continues to work on our own and with our coalition partners to encourage action in the Senate. We are also in regular discussion with the Biden Administration. Today, the Department of Labor published proposed changes to the methodology of the AEWR calculation. This is the next step in the process that began during the Trump Administration but was not finalized. The Trump proposal included a one-year AEWR freeze. The Biden rule does not. USApple will review the proposal, consult with legal/H-2A experts and submit comments to the Department of Labor.

## **US Apple Exports to India Down 79 Percent; USApple Urges Removal of Steel and Aluminum Tariffs**

Falls Church, Va. (Nov. 30, 2021)—Following the start to agricultural trade negotiations last week at the U.S.-India Trade Policy Forum in New Delhi, the U.S. Apple Association said more needs to be done to ensure U.S. apple growers can once again compete in the Indian market.

Since the U.S. imposed tariffs on steel and aluminum imports from India in 2018—resulting in retaliatory tariffs by India on U.S. apples and other exports—total tariffs on U.S. apples have reached 70 percent and India's purchases of U.S. apples have plummeted 79 percent.

In most years, U.S. apple growers export one-third of their crop, valued at about \$1 billion. Prior to India's retaliatory tariffs taking hold it was the second largest market for U.S. apple growers and was quickly growing.

## **FDA Releases Proposed Ag Water Rule**

On December 6, the U.S. Food and Drug Administration (FDA) published a proposed rule on agricultural water requirements within the Food Safety Modernization Act (FSMA): Docket No. FDA-2021-N-0471

The requirements in this proposed rule, if finalized, would replace the pre-harvest microbial quality criteria and testing requirements in the Produce Safety Rule with requirements for systems-based pre-harvest agricultural water assessments.

These assessments would be used to identify conditions that are reasonably likely to introduce known or reasonably foreseeable hazards into or onto produce or food contact surfaces, and to determine whether corrective or mitigation measures are needed to minimize the risks associated with pre-harvest agricultural water.

This rule is not concerned with requirements for harvest and post-harvest uses of agricultural water.

The proposed rule is available for public comment for 120 days (by April 5, 2022). USApple will review and submit comments on behalf of members, but individual comments may also be submitted to the Federal Register Docket No. FDA-2021-N-0471.

## **Farm Bureau updates**

### **President Signs Into Law Infrastructure Plan to Spur Growth in Rural America**

President Joe Biden recently signed into law the Infrastructure Investment and Jobs Act (H.R. 3684), which includes several provisions designed to boost the resiliency of farms, ranches and rural communities.

The Farm Bureau-supported bill touts \$500 billion in new spending over the next five years, including \$110 billion in U.S. roads and bridges, \$65 billion for broadband, and \$17.3 billion for ports and inland waterways. Pennsylvania, specifically, is expected to receive \$11.3 billion for federal-aid highway apportioned programs and \$1.6 billion for bridge replacement and repairs over five years. Pennsylvania will also receive a minimum allocation of \$100 million to help provide broadband coverage across the state.

Sec. 23018 of the bill also includes an exemption for livestock and insect haulers from Hours of Service regulations within a 150 air-mile radius from their final destination.

The Infrastructure Investment and Jobs Act makes significant investments in western water infrastructure that is necessary to ensure future production opportunities for members being negatively impacted by prolonged drought conditions. In addition, the bill pledges funding to passenger and freight rail, public transit, airports, power and grid, and low-carbon and zero-emission school buses and ferries.

The Senate passed the bill by a vote of 69-30 in August, and the House approved the legislation by a vote of 228-206 in November. Pennsylvania Representatives cast their votes along party lines with one exception. Republican Brian Fitzpatrick joined Pennsylvania Democrats in voting for the bill.

## **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.

## **Robert Califf Nominated for FDA Commissioner**

President Joe Biden has nominated Robert Califf to serve as FDA Commissioner. Califf previously served as FDA Commissioner at the end of the Obama administration.

Califf was previously the FDA Commissioner from 2016-17 and has nearly 40 years of experience as a doctor, researcher, leader and public servant. Currently, he is a professor of medicine at the Duke University School of Medicine, where he previously served as Vice Chancellor and found the Duke Clinical Research Institute.

“Dr. Robert Califf is one of the most experienced clinical trialists in the country, and has the experience and expertise to lead the Food and Drug Administration during a critical time in our nation’s fight to put an end to the coronavirus pandemic,” President Biden said in a statement.

Califf, if confirmed, will be charged with managing the FDA’s COVID-19 response efforts. He will also oversee food safety rules and regulations, as well as the agency’s portfolio, including the execution of the Federal Food, Drug, and Cosmetic Act.

## **Robert Bonnie Confirmed as USDA’s Undersecretary for Farm Production and Conservation**

The United States Senate recently confirmed Robert Bonnie as USDA’s Undersecretary for Farm Production and Conservation Programs.

President Joe Biden nominated Bonnie for the position in April.

Bonnie has been serving as deputy chief of staff for policy and senior advisor on climate to Secretary of Agriculture Tom Vilsack. He previously served in the Obama administration as Undersecretary for Natural Resources and Environment, overseeing the U.S. Forest Service and the Natural Resources Conservation Service. From April 2009 to July 2013, Bonnie was a senior advisor to Secretary Vilsack for environment and climate change.

Bonnie was the co-chair of the Biden administration’s transition team for USDA and has previously spent time as the vice president for land conservation at the Environmental Defense Fund.

More recently, Bonnie served on the steering committee for the Nicholas Institute-facilitated Climate 21 Project at Duke University. The project provided advice to the incoming Biden-Harris administration on a whole-of-government response to climate change.

The farm production and conservation mission area includes the Farm Service Agency, the Risk Management Agency and the Natural Resources Conservation Service.

## **Governor Wolf Signs Rural Broadband Bill**

The Pennsylvania General Assembly passed House Bill 2071 this week, which will help bridge the digital divide when it comes to rural broadband in the state. The bill will establish the Pennsylvania Broadband Development Authority, that will address the lack of reliable broadband service in rural areas. The bill now heads to the governor for his expected approval.

The bill addresses the need for broadband expansion by creating an authoritative body that can implement a statewide broadband plan, and serve as a point of contact for entities that look to expand or start new services. The Broadband Development Authority will also oversee the allocation of federal dollars to these projects.

The bill also puts in place safeguards to ensure that areas that have the slowest internet speeds or lack of access are prioritized, and that money and resources are being distributed to those areas first.

## **Governor Signs Bill Clarifying Farmers' Driver's License Exemptions**

Governor Tom Wolf has signed into law Senate Bill 725, which clarifies farmers' use of Class C driver's licenses.

SB 725 clarifies the types of driver's licenses farmers can use when operating farm vehicles. 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 gross vehicle weight of 26,000 pounds or greater. SB 725 allows farmers with Class A, B or C licenses to operate trucks, or truck combinations, with a GVW more than 26,000 pounds.

PFB supported SB 725, which was introduced by Sen. Camera Bartolotta and unanimously passed by both the Senate and House. SB 725 goes into effect immediately.

## **Pennsylvania House Advances Two Transportation Bills**

The Pennsylvania House recently passed House Bills 122 and 1307. Both bills amend Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes.

HB 122 allows for "drive your tractor to school" day. The bill permits children 14 or older to drive farm equipment to school for an annual agriculture-related educational event. The equipment must be less than 11 feet in width, and the distance between the residence and school must be less than 25 miles. HB 122 passed 115-84, along a mostly party-line vote with most Republicans supporting.

HB 1307 allows multipurpose agricultural vehicles to travel up to 10 miles on the road. The existing statute only allows for MAVs to travel up to five miles. HB 1307 passed the House 120-79, mostly on a party-line vote with Republicans in support.

HB 122 and HB 1307 both head to the Senate for further consideration.

The House also considered HB 2071, unanimously recommitting the bill to the Appropriations Committee. The bill, introduced by Rep. Martin Causer, would establish a broadband authority to provide broadband internet access to unserved and underserved residents. The bill also requires the creation of a broadband plan for the state. Pennsylvania will receive a minimum of \$100 million to help provide broadband coverage across the state from the Infrastructure Investment and Jobs Act recently signed into law by President Joe Biden.

Rural broadband is a top public policy item for Pennsylvania Farm Bureau. PFB recently provided testimony in support of HB 2071, outlining straightforward goals:

- Identifying a plan for deployment that prioritizes spending in areas of greatest need and provides a technology-neutral solution that results in broadband speeds that, at least, meet the current Federal Communications Commission definition of broadband
- Identifying an authority best equipped to deploy grants to providers that will fill in those gaps of service
- Investing substantial financial resources to the issue

The House is expected to further consider HB 2071 in December.

## **NRCS Announces Available Funding for Pennsylvania Landowners**

The NRCS has announced \$300,000 in available funding for forest landowners in targeted Pennsylvania counties.

Landowners in Adams, York, Berks, Bedford, Huntingdon, Blair, Cambria, Centre, Mifflin, Snyder, Armstrong and Beaver counties may be eligible for the funding, which is made available through the Healthy Forest Reserve Program (HFRP). HFRP is a voluntary program to assist landowners in restoring, enhancing and protecting forestland resources on private lands through easements and cost-share agreements. HFRP aids the recovery of endangered and threatened species under the Endangered Species Act, improves plant and animal biodiversity and enhances carbon sequestration.

Interested landowners should visit the NRCS website for more details and eligibility requirements.

Applications are due no later than Jan. 4, 2022, and must be submitted through local NRCS County Field Offices.

## **NRCS Announces 2022 Funding Opportunities for Agriculture Producers**

The NRCS announced funding opportunities for agricultural producers and private landowners for fiscal year 2022.

Key programs like the Environmental Quality Incentives Program (EQIP), Agricultural Management Assistance (AMA) program and Agricultural Conservation Easement Program (ACEP) are available to producers in Pennsylvania.

The EQIP is a voluntary conservation program that aims to provide financial and technical assistance to ag producers to address natural resource concerns. Through the program, the NRCS provides assistance to producers to plan and implement conservation practices. Interested applicants should visit the NRCS website for more information.

The AMA program, through the NRCS, Agricultural Marketing Service and Risk Management Agency, helps producers manage financial risk through diversification, marketing or resource conservation practices. The NRCS provides more details on its website.

The ACEP protects the agricultural viability and related conservation values of eligible land through Agricultural Land Easements and Wetland Reserve Easements. The easements protect the agricultural use and conservation values of eligible land. More details on the program and eligibility requirements are available from the NRCS.

While the NRCS accepts applications for the programs year-round, producers and landowners should apply for AMA and EQIP by Jan. 1, 2022, and ACEP by Jan. 4, 2022, to be considered for this year's funding.



## **Ag Law updates**

**Brook Duer—Staff Attorney**

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### **Agribusiness: USDA Announces Applications Now Available for Rural Development Broadband ReConnect Program**

On November 24, 2021, the U.S. Department of Agriculture (USDA) announced that it is accepting applications for the ReConnect Program from state, local, and tribal governments; cooperative organization; corporations; and limited liability companies. According to the announcement, USDA has allocated \$1.15 billion in funding for the program, separate from the \$2 billion available through the recently passed Infrastructure Investment and Jobs Act (H.R.3684), including \$700 million for grants, \$200 million for loans, and \$250 million for grant/loan combinations. The funds must be used to improve broadband connectivity in rural areas where at least 90% of the households lack service at minimum speeds of 100 megabits per second (Mbps) (download) and 20 Mbps (upload). USDA states that it will prioritize low-density population areas and areas without broadband service at minimum speeds of 25 Mbps (download) and 3 Mbps (upload).

### **Pesticides/Herbicides: EPA Publishes Pesticide Registration Review Schedule Through 2025**

On December 2, 2021, the U.S. Environmental Protection Agency (EPA) announced the agency's pesticide registration review schedule through fiscal year 2025, which the agency states it will now update quarterly rather than annually, the agency's historical precedent. Although the 2007 amendments to the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) require EPA to review all registered pesticides every fifteen years, EPA anticipates that it will extend its review beyond October 1, 2022 for some pesticides registered before October 1, 2007 due to pandemic challenges. According to the announcement, of the 726 pesticide cases registered before October 1, 2007, EPA has cancelled some or all uses in 120 cases and imposed new mitigation measures for 51% of antimicrobial pesticides and 70% of conventional pesticides with an interim or final decision. In the next few months, EPA states that it will publish its first pesticides workplan compliant with the Endangered Species Act (ESA), also a part of the registration review process, which the agency says will outline ESA-compliance steps "in ways that are fair and transparent to the agriculture sector."

## **Crop Insurance: Micro Farm Insurance Available for 2022 Crop Year**

On November 30, 2021, the U.S. Department of Agriculture's (USDA) Risk Management Agency (RMA) announced the availability of the Micro Farm Program for the 2022 crop year. Previously announced in October 2021, the policy is available for all U.S. farms with approved revenues up to \$100,000 and covers value-added products and post-production costs. Under the Micro Farm Program, a single value is assigned to all farm commodities based on the average revenue for the prior three years. Producers with vertically integrated operations or crops insured through an alternate insurance policy are ineligible for the Micro Farm Program. For background, see *ALWR—Oct. 8, 2021*, "USDA Announces New 'Micro Farm' Whole-Farm Revenue Protection for Small, Local Producers, Includes Value-Added Sales Revenues."

## **Crop Insurance: USDA Accommodates Cover Crops Through Crop Insurance Changes**

On December 1, 2021, the U.S. Department of Agriculture's (USDA) Risk Management Agency (RMA) announced multiple material changes to several crop insurance programs and eligibility provisions, which include changes to prevented planting program eligibility accommodating a producer's establishment and maintenance of cover crops while not interfering with prevented planting claims made for a principal crop on the same acreage. In addition, on December 2, 2021, RMA announced revisions to the hemp crop insurance policy to account for real-world hemp production contract terms, such as contracts with both acreage and a production amount. The revisions removed delivery requirements for a crop with no economic value due to regulatory non-compliance and utilize more accurate crop value measurements which account for hemp acreage grown from seeds as well as seedlings.

## ***Additional Notes on Proposed Crop Insurance Changes***

### **RMA Publishes Proposed Changes to the Apple Crop Insurance Policy**

WASHINGTON — The U.S. Department of Agriculture (USDA) announced publication of a proposed rule in the *Federal Register* to amend the Apple Crop Provisions. The proposed changes are based on stakeholder feedback and recommended changes from a contracted study on the apple crop insurance program. Following feedback from the proposed rule, USDA's Risk Management Agency (RMA) will publish a final rule that is expected to be effective for the 2023 crop year.

"It is vital that we hear from the producers and public about possible updates to our policies and products," said Marcia Bunger, RMA Administrator. "Information from apple producers will help us create a more effective and beneficial service to America's agricultural community."

RMA is proposing to make changes to the apple crop insurance program that:

- Enable producers to elect different coverage levels and percent of price elections by type, which allows producers to manage individual coverage and price risk more effectively.
- Allow producers' premiums to be reduced in response to orchard management practices, such as removing or grafting trees, that typically occur after the acreage reporting date and decrease an orchard's productivity.
- Allow producers to insure at a higher price for apples sold predominantly to direct markets or premium processing markets.
- Exclude apples sold for the slicer market from being considered "fresh apple production."
- Introduce a fresh fruit factor to account for the reduced market value of production insured under the Quality Option sold for a grade other than U.S. Fancy.

RMA is soliciting comments on these proposed changes. The comment period will close on Feb. 14, 2022.

Interested parties can submit comments via the *Federal Register*. – Morning AgClips, Dec. 15<sup>th</sup>