

# AG ISSUES UPDATE

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## USApple Updates

### **Congress Passes Ocean Shipping Reform Bill**

For the first time since 1998 Congress has passed legislation to overhaul ocean shipping laws. President Biden will sign the bill into law in a White House ceremony on Thursday, June 16th, with USApple President & CEO Jim Bair as an invited guest. Apple leaders from around the U.S. advocated for this change during USApple's annual Capitol Hill Day in March.

The Ocean Shipping Reform Act is designed to help clear port blockages and prevent ocean carriers that brought foreign goods from leaving the U.S. with empty containers rather than take on U.S. export cargo. It passed unanimously from the Senate and with a large bipartisan majority in the House.

The bill mandates that Federal Maritime Commission (FMC) to complete rulemaking defining unreasonable refusal of U.S. exports. That language isn't as tough as groups representing ag shippers would have liked, with earlier versions telling the FMC how to define unreasonableness. So work remains to ensure the bill's implementation brings the needed changes.

### **Washington State Issues Emergency Heat and Smoke Rule**

As the U.S. gears up for another hotter-than-average summer, the Washington State Department of Labor & Industries recently issued emergency rules to protect outdoor farm workers from extreme heat and exposure to wildfire smoke.

From June 15 through the end of September, employers in Washington will be required to monitor temperatures and air quality, take steps to protect workers from heat and smoke hazards, and provide training and information, among other things.

**Outdoor Heat Exposure Rules:** When temperatures are at or above 89 degrees, the emergency heat rules combined with existing rules require employers to:

- Provide enough sufficiently cool water for each employee to drink at least a quart an hour;
- Provide sufficient shade that is large enough for and close enough to workers;
- Encourage and allow workers to take paid preventative cool-down breaks as needed; and,
- Require a 10-minute, paid cool-down break every two hours.

**Wildfire Smoke Rules:** If the Air Quality Index (AQI) is at 69 or higher, employers are encouraged to limit their workers' exposure to smoke by:

- Reducing, rescheduling, or relocating work;
- Providing enclosed buildings or vehicles where the air is filtered; and,
- Reducing the work intensity or increasing rest periods.

At AQI 101, employers must provide respirators for voluntary use—an increase in protection from last year's wildfire smoke rule.

## **FDA Issues Draft Action Levels for Lead in Apple Juice – Announces Stakeholder Webinar**

In April, the Food and Drug Administration (FDA) issued draft action levels for lead in single-strength (ready to drink) apple juice and other juice drinks. The action is intended to reduce the potential for negative health effects from dietary exposure to lead and supports the agency's "Closer to Zero" action plan that sets forth the FDA's efforts to reduce exposure to toxic elements in food.

Specifically, the plan limits levels to 10 parts per billion (ppb) for lead in single-strength apple juice and 20 ppb for lead in other single-strength juices, including juice blends that contain apple juice. The FDA issued a lower draft action level for apple juice because it is the juice most commonly consumed by young children. The current acceptable levels of lead in juice are 50 ppb.

## **President Biden to Nominate Chief Ag Trade Negotiator Well-Known to USApple**

USApple sent the following press release out today regarding the nomination of Doug McKalip to chief ag trade negotiator.

**President Biden to Nominate Chief Ag Trade Negotiator Well-known to USApple**

Falls Church, Va. (June 8, 2022)—The U.S. Apple Association today applauded President Biden’s announcement that he intends to nominate Doug McKalip to be chief agricultural trade negotiator in the White House Office of the U.S. Trade Representative. McKalip is well-known to USApple and its leaders, including speaking at a USApple Leadership Luncheon during the organization’s annual Capitol Hill meetings.

Currently McKalip is a senior advisor to Agriculture Secretary Tom Vilsack on matters related to trade, plant and animal health and national security. He previously held roles at USDA’s Animal and Plant Health Inspection Service and the Natural Resources Conservation Service, as well as in the rural affairs office in the White House Domestic Policy Council.

As the position is a presidential appointment, the nomination requires confirmation by the U.S. Senate.

## **Other Source Updates**

### **Misclassification of Employees as Independent Contractors Under the Fair Labor Standards Act**

The misclassification of employees as independent contractors is one of the most serious problems facing affected employees, employers and the U.S. economy. Misclassified workers are denied basic workplace protections including rights to minimum wage and overtime pay, making it harder for them to support themselves and their families. Lower pay caused by misclassification reduces workers’ purchasing power, which undermines the entire economy. Meanwhile, employers who comply with the law are at a competitive disadvantage when competing against employers who misclassify employees and pay them less than the law requires and fail to provide other employment-based worker protections.

For too many workers, misclassification causes lost wages, benefits, unemployment insurance, and workers’ compensation coverage. Even if they recognize that they are misclassified, many employees may be afraid to assert their employment rights because of retaliation. Through its enforcement, the Wage and Hour Division has found misclassification occurs in many industries including construction and health care—even dishwashers have been misclassified.

The Department published a rule on this issue, Independent Contractor Status Under the Fair Labor Standards Act, on Jan. 7, 2021, during the prior Administration. The Department delayed the rule on March 4, 2021, and then withdrew it on May 6, 2021, believing that it was inconsistent with the Fair Labor Standards Act’s text and purpose. However, on March 14, 2022, a district court vacated the Department’s rules to delay and withdraw the Independent Contractor Status Under the Fair Labor Standards Act rule. The court determined that the prior Administration’s Independent Contractor Status

Under the Fair Labor Standards Act rule took effect as of its original effective date, March 8, 2021, and remains in effect.

The Department now plans to engage in rulemaking on determining employee or independent contractor status under the FLSA. We remain committed to ensuring that employees are recognized correctly when they are, in fact, employees so that they receive the protections the FLSA provides. At the same time, we recognize the important role legitimate independent contractors play in our economy. – *US Department of Labor Blog, June 3, 2022*