

# **AG ISSUES UPDATE**

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## **USApple updates**

### **DOL Finalizes Damaging Changes to H-2A Wage Rate**

Today, the Department of Labor (DOL) announced plans to go forward with changes to the calculation of H-2A wage rates as first proposed in December of 2021. Under this new system, H-2A wages will be disaggregated based on the interpretation by the Certifying Officer of job duties included in an H-2A job order. This means that if a harvest worker is occasionally asked to perform a duty deemed to be in another category such as supervising other workers, driving a van or operating equipment they will now have to be paid the wage for whichever category is the highest.

USApple submitted comments to DOL last year, warning that if not modified the changes would “significantly increase the cost of the H-2A program and add additional bureaucracy and administrative burdens.” We recommended that if changes were to be made that the worker be classified and paid based on their “primary” occupation, i.e., at the classification level that covers at least 50 percent of their duties over the life of the contract. The USApple Government Affairs Committee and Board of Directors was also briefed and engaged in this process as it moved forward.

Unfortunately, DOL did not take into consideration the comments of USApple or the dozens of other agriculture groups that raised similar concerns. USApple will continue to push back on the Administration about these changes and the ongoing regulatory and financial burdens facing growers who utilize the H-2A program. This further underscores the need for legislative action. Congress must act, reform the current system, and override these changes. A more detailed summary of the changes can be found here: <https://usapple.org/wp-content/uploads/2023/02/AEWR-Final-Rule-Summary.pdf>

## **USApple Promotes Mitchell Liwanag to Manager of Environmental Affairs**

USApple has promoted Mitchell Liwanag to Manager of Environmental Affairs. In his new role, Liwanag will represent USApple in matters concerning the environment, including pesticides, water, energy, climate and stewardship, as well as identify new areas for the organization to engage and participate in the areas of sustainability and the climate. In addition, Liwanag will create and update USApple Backgrounders and provide support to the association's various programs, events and communication efforts. He will continue to manage the USApple office and serve as the main point of contact for financial management.

"Apple growers have long embraced sustainable farming practices and environmental stewardship," said USApple President and CEO Jim Bair in the press announcement. "As the industry continues to help lead the charge in sustainability initiatives, it makes sense to add environmental affairs capacity to USApple's issue portfolios, and Mitchell's background in environmental policy lends itself to the endeavor. Mitchell has proven himself to be a valued member of the USApple team. His skillset is wide and this is the next step in his providing value to the apple industry."

Liwanag holds a Master of Public Policy, with a concentration in environmental policy, from the University of Massachusetts Dartmouth, and a Bachelor of Science in Agricultural Communication from the California Polytechnic State University, San Luis Obispo.

Liwanag joined USApple in January 2022 as Manager of Association Management. He came to USApple from the National Communication Association where he managed day-to-day office and building operations and assisted with membership management. Prior to this, Liwanag worked for the National Association of State Departments of Agriculture as a policy intern. He also interned with former U.S. Congressman Jeff Denham (Calif.). A native of Stockton, Calif., Liwanag was active in both 4-H and FFA growing up and spent summers picking peaches at a local orchard.

### **Additional Source Updates**

## **Food Safety: 2022 Food Code Allows Food Donation from Retail Food Establishments**

On February 14, 2023, the U.S. Food and Drug Administration (FDA) issued a constituent update stating that the agency's recently released 2022 Food Code "clarify[ies] . . . that food donations from retail food establishments are acceptable as long as proper food safety practices are followed." Specifically, the 2022 Food Code added two new sections addressing food donations:

- Subpart 3-204, "Food Donation," under Chapter 3, "Food," Part 3-2 "Sources, Specifications, and Original Containers and Records," and
- § 3-204.10, "Food Donation," which outlines when an establishment may offer food for donation and contains new specified public health reasons for the section to "address food donation compliance with law and Code applicability."

- *Penn State Agricultural Weekly Review, February 27<sup>th</sup>, 2023*

## **Pesticides/Herbicides: EPA Proposes New Rule for Pesticide Application Exclusion Zone**

On February 16, 2023, the Environmental Protection Agency (EPA) published a proposed rule in the Federal Register amending the pesticide Application Exclusion Zone (AEZ) requirements by returning largely to the 2015 Agricultural Worker Protection Standards (WPS) from those contained in a 2020 final rule. The proposed rule reduces the AEZ, the area surrounding a pesticide application, from 100 feet to 25 feet for medium or larger sprays applied from a height of greater than 12 inches and, for fine sprays, increases the AEZ to 100 feet. The proposed rule retains aspects of the 2020 regulation on the 1) resumption of suspended pesticide application once individuals have left the AEZ; and 2) immediate family exemption, which allows farm owners and their immediate family to remain within an AEZ if in an enclosed home during pesticide application. The proposed rule is available for public comment until April 17, 2023. - *Penn State Agricultural Weekly Review, February 27<sup>th</sup>, 2023*

## **Crop Insurance: The GAO Publishes a Report Recommending Tying Crop Insurance Payments to Climate Resiliency**

On February 16, 2023, the U.S. Government Accountability Office (GAO) published a report titled, “Climate Change: Options to Enhance the Resilience of Agricultural Producers and Reduce Federal Fiscal Exposure.” In compiling the report, the GAO was asked to review federal efforts to enhance the climate resilience of agricultural producers to reduce the risks from climate disasters on federal crop insurance programs, which, in 2021, covered \$136.6 billion in commodities. The GAO made 13 recommendations to the U.S. Department of Agriculture (USDA)—including tying climate-resilient practices to crop insurance rates and requiring such practices to claim crop insurance premium subsidies, which would require the Federal Crop Insurance Corporation (FCIC) and the Risk Management Agency (RMA) to determine whether such requirements can be introduced under the Federal Crop Insurance Act (FCIA). – *Penn State Agricultural Weekly Review, February 27<sup>th</sup>, 2023*

## **PA Protects 32 Farms, 3,047 Acres in 21 Counties from Future Development**

HARRISBURG, Pa. — The Shapiro Administration announced that Pennsylvania protected 3,047 acres on 32 farms in 21 counties from future residential or commercial development. The investment of more than \$10 million in state, county, and local dollars preserves prime farmland for the future, helping Pennsylvania farms continue to feed our families and our economy. The announcement builds on Governor’s Shapiro continued commitment to the Commonwealth’s agriculture industry and our rural communities.

Since 1988, Pennsylvania has protected 6,180 farms and 622,238 acres in 58 counties from future development, investing more than \$1.6 billion. Pennsylvania leads the nation in preserved farmland.

The newly preserved farms are in Allegheny, Beaver, Berks, Bucks, Butler, Chester, Cumberland, Erie, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Montour, Northampton, Somerset, Susquehanna, Tioga, Union, and York counties.

By selling their land’s development rights, landowners ensure that their farms will remain farms and never be sold to developers. Farm families often sell their land at below market value, donate additional

land, or agree to conservation practices on their farms in order to leverage additional federal and state money to preserve more family farms.

Pennsylvania partners with county and sometimes local governments and non-profits to purchase development rights, ensuring a strong future for farming and food security.

In fall of 2022, Pennsylvania's nation-leading Farmland Preservation Program secured a \$7.85 million federal grant from USDA's Regional Conservation Partnership Program to support climate-smart conservation on preserved Pennsylvania farms.

The dollars will further multiply conservation investments in the 2022-2023 budget, which devotes \$220 million to the new Clean Streams Fund. The fund includes \$154 million to establish a new Agricultural Conservation Assistance Program supporting farmers' efforts to reduce water pollution and improve soil quality, and \$22 million to increase funding for the existing Nutrient Management Fund, which supports technical assistance to farms to reduce run-off. – *Morning Ag Clips, February 26<sup>th</sup>, 2023*

## **PA Announces Expanded Funding to Grow Farm Businesses**

HARRISBURG, Pa. — Agriculture Secretary Russell Redding announced today that the PA Agricultural Business Development Center has boosted funding by \$200,000 to meet demand for Farm Vitality Planning Grants. The PA Farm Bill grants fund strategic business planning to expand, diversify, or transition ownership of farms to the next generation. This new funding is the latest example of Governor Shapiro's commitment to the long-term growth and sustainability of the agricultural industry and rural communities in Pennsylvania.

“Governor Shapiro knows Pennsylvania agriculture is a key part of our Commonwealth's economy and a pillar of so many of our communities. For every one of Pennsylvania's 52,700 farm families, business planning is more than just growing their bottom line,” Secretary Redding said. “It is protecting their family legacy. Farm Vitality Grants help bring to the table the experience, in-depth knowledge, market analysis, and risk management expertise that is vital to realizing their vision, and sustaining not only their farm's future, but Pennsylvania's future.”

The program, initiated as part of the historic PA Farm Bill in 2019, has accepted 308 applications to date, funding more than \$2,003,439 in project planning, financial and technical expertise to feed farm growth and sustainability.

Farmers and prospective farmers are eligible for up to \$7,500, to cover up to 75% of project planning costs. Applications for the program exceeded the funding originally available, and the PA Agriculture Business Development Center has set aside additional dollars to meet demand for the program.

Applications will be accepted until funds are exhausted. Apply online through the Department of Community and Economic Development's single electronic application. Full program guidelines are published in the February 18 edition of the PA Bulletin [Opens In A New Window](#).

Farm Vitality Planning Grants can be combined with other PA Farm Bill funding, including these programs, to help plan and finance farm transitions:

- Beginning Farmer Tax Credit Program, which provides tax credits as an incentive to those who sell or rent agricultural assets to beginning farmers. Twenty-one farm owners have received Beginning Farmer Tax Credits, saving them collectively \$343,009 on their taxes and helping them pass the torch to the next generation to take up farming.
- Beginning Farmer Realty Transfer Tax Exemptions through which the department has certified 44 beginning farmers purchasing preserved farms and generating \$492,311 in tax savings on the sale of those farms.
- Next Generation Farmer Loan Program, which uses federal tax-exempt financing to reduce a farmer's interest rate for capital purchases, such as the purchase of farmland 2022 to help young families fund farm expansions and purchases.

For planning resources, financing and other information to support your farm business' future, visit the Agricultural Business Development Center at [agriculture.pa.gov](http://agriculture.pa.gov).

For more about other PA Farm bill initiatives and investments to support Pennsylvania agriculture, visit [agriculture.pa.gov/pafarmbill](http://agriculture.pa.gov/pafarmbill). – *Morning Ag Clips, February 22, 2023*

## **Conservation Programs: Consolidated Appropriations Act Authorizes USDA Carbon Credit Market Oversight**

On December 29, 2022, when President Biden signed into law the 2023 Consolidated Appropriations Act (H.R.2617), the law contained carbon credit provisions from the Growing Climate Solutions Act (S.1251)—which the Senate passed by a 92-8 vote in 2021 but was never brought up for a vote in the House of Representatives. As a result, the U.S. Department of Agriculture (USDA) is now authorized to create the “Greenhouse Gas Technical Assistance Provider and Third-Party Verifier Program” to provide a regulatory framework for contractual production and sale of carbon credits by agricultural operations for re-sale through private markets. A summary of the law’s provisions has been authored by Peggy Kirk Hall, Assoc. Professor, Agricultural & Resource Law, Ohio State University Extension, titled *Carbon Credit Market Assistance Program Now in the Hands of USDA. – Penn State Agricultural Law Weekly Review, February 17<sup>th</sup>, 2023*

## **Agricultural Finance: USDA Simplifies Direct Loan Applications**

On February 7, 2023, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) announced a simplified direct loan application. This simplified application is 13 pages long—compared to the previous 29-page application—and can be filed electronically or in person at an FSA farm loan office. FSA anticipates this simplified application, paired with the Loan Assistance Tool released in October 2022, will decrease the number of incomplete applications unfiled due to the application’s length and complexity. The simplified application will be available beginning March 1, 2023. – *Penn State Agricultural Law Weekly Review, February 17<sup>th</sup>, 2023*