

AG ISSUES UPDATE

Edited by Sara Hricko

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USApple updates

House Passes Enforcement-Only Border Security Bill

On May 11th, the House passed H.R 2, the Secure the Border Act of 2023, on a party line vote. The legislation includes mandatory E-Verify. USApple has a long-standing policy of opposing E-Verify unless it is coupled with significant reforms, as was the case with the Farm Workforce Modernization Act. Apple leaders carried this message to Capitol Hill in March.

USApple has been actively engaged with key congressional offices, outlining the ramifications of this enforcement only approach for farms and ultimately for food security. In addition to Members of the House from districts with apples we also brought this message to the House Agriculture Committee and the leadership including the Speaker's office. During the debate on the bill, many members of Congress expressed support for immigration reform and many specifically cited the need for agricultural labor reform. Many Republican members who voted for the bill share our concerns about E-Verify and remain committed to advancing agricultural labor reforms. Representative Dan Newhouse (R-WA) called on his colleagues and the Republican leadership to get back to work on bipartisan legislation. In response, Majority Leader Steve Scalise (R-LA) told Newhouse that he would “commit to work with you on legislation to address the workforce needs of our agricultural industry.”

The bill will not advance in the Senate in its current form. However, as the crisis at the border is expected to worsen, this issue will not go away, and other legislation could be introduced or advanced at a later date. We will continue to work with the many champions we have on both sides of the aisle and advocate for the inclusion of reforms in future legislation.

Apple Leaders Push Back on Regulations, Call for Legislative Action

On Monday, USApple and the Steering Committee of the Agriculture Workforce Coalition (AWC) hosted a briefing for House agriculture staffers on the devastating costs and administrative burdens imposed by recent changes to the H-2A guestworker program. Michigan apple grower Katie Vargas, Virginia apple and nursery grower Jim Saunders, and South Carolina peach grower Chalmers Carr were the speakers at the briefing.

Vargas enumerated the complications and expenses associated with the new rules governing joint employers, which will make it impossible for smaller operations to band together to bring workers in under one contract as they have traditionally done. Saunders and Vargas detailed the real-world consequences of disaggregating wages and job duties. Under this new system, 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 paid at the highest rate. Vargas concluded that, with these changes to the program, "we are now at a point where farms are beginning to develop exit strategies." Saunders predicted that many growers would not be able to withstand the added costs, calling the new regulations "the biggest threat we have faced in the 32 years I have been on the family farm."

While in D.C., Vargas and Saunders joined USApple's Senior Vice President Diane Kurrle for meetings with key Michigan and Virginia congressional offices. Throughout the briefing and subsequent meetings, the message to Congress was clear: Congressional action is needed now.

USApple warned DOL in 2022 that if not modified the changes would "significantly increase the cost of the H-2A program and add additional bureaucracy and administrative burdens." DOL did not take into consideration the comments of USApple or the dozens of other agriculture groups that raised similar concerns. A detailed summary of the changes can be found here: <https://usapple.org/wp-content/uploads/2023/02/AEWR-Final-Rule-Summary.pdf>

Additional Source Updates

NCAE Challenges Adverse Effect Wage Rate Rule

(Washington, D.C.) The National Council of Agricultural Employers (NCAE) filed a Motion for Preliminary Injunction against the Department of Labor's (DOL) new Adverse Effect Wage Rate (AEWR) regulation, Friday evening, April 21, 2023. The lawsuit alleges that the Secretary's action in developing the regulation was arbitrary and capricious and an abuse of the Secretary's discretion. "This regulation continues the DOL's abusive practice of mandating minimum wages farmers and ranchers must pay under the Temporary H-2A Agricultural Program completely disconnected from the market for agricultural labor anywhere on the planet," noted Michael Marsh, President and CEO of NCAE. "Not only does the rule continue to misuse the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS) to establish wage rates, but it also piles on farm and ranch families by requiring nonfarm wages drawn from the Bureau of Labor and Statistics (BLS) for simple, routine, on farm activities, jobs which have been performed on American farms and ranches for generations. Some farmworker wages will more than double under this new rule forcing family operations out of business. And, of course, these mandated minimum wages impact all farm wages, whether employers use the program or not." The DOL received comments on this rulemaking from family farms and ranches located across the country raising concerns regarding the madness of the Secretary's approach. Commenters pointed out that the DOL's regulations and its continued misuse of survey instruments not designed to capture actual agricultural wage rates were forcing America's food production to flee to overseas competitors. As a result of DOL's ignoring the pleas of U.S. legacy farming operations, today more than 60% of the fresh fruit and more than 35% of the fresh vegetables consumed in the U.S. are being produced by overseas competitors. Farm and ranch families, the Small Business Administration, economists, and others had warned the Secretary that such irresponsible action was putting America's food security at risk—a concern seemingly ignored by the Secretary. "NCAE has repeatedly petitioned the Secretaries of Labor to make a determination of an adverse effect to the domestic workforce due to the employment of H-2A workers prior to mandating devastating AEWRs. Sadly, for America, the DOL has turned its back on commonsense and the American people. The economic evidence overwhelmingly supports our cause and the fact that DOL's estimates of cost impact are short by hundreds of millions, if not ultimately, billions of dollars! These are incredible errors," said Marsh. "Having been slammed face first into the dirt by the Executive Branch, NCAE and our farm and ranch family members had no other choice than to turn to the Judiciary hoping the Court will hear and recognize the importance of our pleas for relief." The legal challenge is being brought in Federal District Court in Tampa, Florida, on behalf of NCAE and several named NCAE member plaintiffs. NCAE is the national trade association focusing on agricultural labor issues from the employer's viewpoint. – *NCAE email update, April 24th, 2023*

Russell Redding Confirmed to Serve as 27th PA Agriculture Secretary

HARRISBURG, Pa. — Today, the Pennsylvania Senate unanimously confirmed **Russell Redding** to serve as Pennsylvania's 27th Secretary of Agriculture. **Governor Josh Shapiro** nominated Redding, who previously served as Agriculture Secretary under Governors Tom Wolf and Ed Rendell.

"It is an honor and privilege to serve Pennsylvania under Governor Josh Shapiro's dedicated leadership," Secretary Redding said. "Since our first conversation, I have been struck by his energy, experience, and vision for Pennsylvania and for agriculture.

I have dedicated my life to agriculture and public service, working to advance an industry that is at the center of some of the most important issues of our time, and shapes the quality of life for every Pennsylvanian."

Since the beginning of the Shapiro Administration in January, under Redding's leadership, the department has:

- Continued to respond to the Hi-Path Avian Influenza outbreak that has caused devastating losses to Pennsylvania's \$7.1 billion poultry industry, resulting in a loss of 4,650,840 birds statewide since April 2022. Of 47 states hit by the outbreak, Pennsylvania has been the only state to dedicate a \$25 million recovery fund to helping poultry producers cover their losses, a fund which Governor Shapiro has proposed adding \$25 million Opens In A New Window to in the next budget year
- Begun to distribute \$154 million from the new Clean Streams Fund's Agricultural Conservation Assistance Program to build healthier soil, and cleaner waterways, and boost farm viability for the future.
- Invested more than \$15 million in partnership with county and local governments to ensure that 54 more farms covering 5,085 acres across the state will remain farms and be protected from residential or commercial development forever.
- Launched a \$1.6 million grant program to expand access to emergency food supplies in underserved areas, increasing food security and access to healthy food for children and families wherever they live.

- Won an \$8.8 million boost in federal food assistance funding, plus a performance-based funding increase for effectively administering nutrition programs for low-income seniors.
- Joined other Shapiro Administration agencies in responding directly to needs and concerns of Pennsylvania farmers and others affected by the Norfolk Southern train derailment. Conducting plant tissue testing in partnership with PennState Extension, and monitoring of soil, water, and air testing results in partnership with the PA Dept. of Environmental Protection and the federal Environmental Protection Agency.
- Awarded \$200,000 to further invest in Pennsylvania's growing hemp industry and boost the potential of farms to supply sustainable, plant-based plastics, construction and other materials, and added \$200,000 to funding for Farm Vitality grants to help PA farm businesses plan and sustain their operations in the future.
- Expanded the quarantine and continued work to slow the spread of the destructive pest spotted lanternfly, and invited county conservation districts to apply for \$150,000 in grants to help slow the spread locally. – *Morning Ag Clips May 10th, 2023*