

AG ISSUES UPDATE
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USApple Updates

Ag Commodity Coalition Urges Biden Administration to Negotiate Trade Agenda

A coalition of agricultural commodity organizations including USApple wrote a letter to U.S. Trade Representative Katherine Tai and Agriculture Secretary Tom Vilsack supporting proactive U.S. engagement on World Trade Organization (WTO) reform, and especially prioritizing market access objectives in the agriculture negotiations.

The WTO is still an irreplaceable asset for the U.S. agriculture sector, but its negotiating function has ground to a halt as differences between some members seem irreconcilable. U.S. negotiators insist that market access be part of the discussions, but there has not been a market access proposal from the U.S. on the table in many years.

U.S. growers have missed out on \$1.4 billion in sales over the last decade due to the rapid decline of exports, making market access a priority.

House Agriculture Labor Working Group Issues Interim Report

On November 7, the bipartisan House Agricultural Labor Working Group released their interim report on the issues identified over the past four months. The focus of the Working Group has been the H-2A program. USApple provided input to the Working Group through several meetings and follow-up emails. Through Apple Bites, USApple also encouraged H-2A users to provide feedback to the Working Group via the survey on their website. The results of that survey are reflected in the report. This is the first step and reflects the information gathered to this date. Next the Working Group plans to take this information and the feedback they get on the report to issue recommendations with the goal of finding a legislative solution.

Specialty Crop Farm Bill Alliance Briefs House and Senate

On November 1, the Specialty Crop Farm Bill Alliance (SCFBA) hosted briefings for House and Senate agriculture staff. As co-chair of the Legislative Committee, USApple Senior Vice President Diane Kurrle made remarks and helped to serve as emcee. Both briefings were well attended with thoughtful questions and follow-up from several staff. Timing for action on a new Farm Bill is still uncertain as Congress continues to grapple with simply keeping the government open. There is bipartisan support from the House and Senate Agriculture Committees to pass an extension of the current law. This would provide continuity of programs including crop insurance, export promotion, research, and specialty crop block grants. USApple and the SCFBA will continue to advocate for passage of a new Farm Bill with the goal of improving and expanding these key programs.

USApple Applauds USDA Purchase of Fresh Apples

USApple applauds the U.S. Department of Agriculture (USDA) approval of a Section 32 purchase of up to \$60 million of fresh apples for distribution to various food nutrition assistance programs across the country. United States Secretary of Agriculture, Tom Vilsack, approved the purchase.

At its Outlook Conference in August, USApple's Executive Committee identified the dire need for this action and charged the association's staff to advocate for it at the highest levels. USApple assisted in USDA's needs analysis by meeting with agency leaders to share its proprietary Outlook report, the most comprehensive apple production and utilization dataset available.

"USDA's decision to purchase a significant number of apples supports U.S. growers, who are still feeling the pain of being locked out of the India and China markets due tariff disputes," said Jim Bair, USApple President & CEO. "Apples are a popular item with schools and food banks, and this will help to better match supply with demand and feed more Americans."

All future information, including solicitation amendments and award notices, will be published on the Selling Food to USDA page on the AMS website.

Section 32 of the Agricultural Adjustment Act of 1935 authorizes the Secretary of Agriculture to make commodity purchases, entitlement purchases, and disaster assistance using funds appropriated annually from U.S. customs receipts. Funds used under Section 32 are designed to support agricultural markets. One way Section 32 supports agricultural markets is by purchasing commodities in surplus in the marketplace and distributing domestically, therefore aligning supply and demand and feeding more Americans. A surplus of apple products in the marketplace is due, in large part, to the decline of exports. In fact, U.S. growers have missed out on \$1.4 billion in sales over the last decade due to the rapid

decline of exports (see table below). With the removal of a retaliatory tariff on exports to India, we're hoping to see this trend begin to reverse.

Apples NOT The Source of Contamination in Recent Puree Recall

As you may have seen in national news, two additional companies selling cinnamon applesauce pouches recalled their products due to possible contamination with lead. They are:

- Schnucks
- Weis Markets

USApple has been in communication with manufacturers and the FDA since last week to understand the source of the contamination. The first company to recall their products, WanaBana, has confirmed to USApple after an in-depth analysis that apples did not cause the lead contamination that resulted in their recall of apple cinnamon fruit puree pouches. WanaBana says, "the investigation is currently focusing on cinnamon as potentially being responsible for this issue, as all other ingredients have been now cleared."

Schnucks has also identified cinnamon as the contaminated ingredient in their product. According to Schnucks, there were "elevated levels of lead found in the cinnamon raw material."

We recommend sharing this update with your customers, so they are aware of the details of the recall if they only saw initial headlines.

Historically, U.S. apple products have never had an issue with lead toxicity, and after details of this investigation have emerged, that remains to be the case. Since 1990, the FDA has published an annual report on certain contaminants found in U.S. food products and no apples, apple juice, or apple products has been found to have any level of lead that would be of concern. The FDA's Total Diet Study from 2018-2020 also shows no lead detected in fresh apples, apple juice and baby food applesauce.

FDA Recall of Branded Puree Pouches Due to Elevated Lead Levels

We are monitoring and gathering information about the recent FDA recall of branded apple puree pouches due to elevated lead levels. At the moment, we do not think an industry-wide response is warranted, since the recall and news coverage surrounding it is focused on one specific brand. We have made contact with the manufacturer's communications firm to learn more about the origin of the contamination and will report back if appropriate.

If you are receiving any questions from your employees or customers, feel free to use the below:

1. This is an illustration that FDA's recall system works to remove products of concern from the marketplace. The apple industry and our national trade association, USApple, support getting the word out so that these specific products from this particular manufacturer are not consumed.
2. Though this is a serious situation, it is an outlier event, and it is important to keep in mind that the recalled products represent a very small segment of the market.
3. The FDA publishes an annual report on certain contaminants found in U.S. food products, which has been published since about 1990. No apples, apple juice, or products has been found to have any level of lead that would be of concern. 2014-2019 testing by FDA found no lead at the LOD (level of detection) of the analytical equipment.
4. Lead in the environment can settle on or be taken up by plants, including fruits, vegetables and grains, as well as be ingested by animals. Companies have a responsibility to implement controls to significantly minimize or prevent exposure to this chemical hazard. FDA regulates this, and if the agency finds that the level of lead causes a food to be unsafe – which they have in the case of this manufacturer – they take swift action. We're seeing that now.
5. Earlier this year, FDA announced new draft guidance for lead in processed foods that are intended for babies and children under two years of age. The new guidance is part of FDA's "Closer to Zero" initiative, which sets forth the FDA's approach to continually reducing exposure to lead, arsenic, cadmium, and mercury to the lowest levels possible in foods eaten by babies and young children.

We will continue to monitor and push back on any news coverage that incorrectly lumps in other apple brands or products with this recall. So far, we have not seen that.

Farm Bureau Updates

Funding Available for Agricultural Employers Under the Seasonal H-2A Visa Program

The USDA Farm Labor Stabilization and Protection Pilot Program (FLSP) will award up to \$65 million in American Rescue Plan Act funding to provide support for agricultural employers in implementing robust labor standards to promote a safe, healthy work environment for both U.S. workers and workers hired

from northern Central American countries under the seasonal H-2A visa program. The program is funded by the Farm Service Agency and will be administered by the Agricultural Marketing Service and the Farm Production and Conservation Business Center.

The purpose of the FLSP program is to improve food and agricultural supply chain resiliency by addressing challenges agricultural employers face with labor shortages and instability. The FLSP Program seeks to advance the following Administration priorities:

- Goal 1: Drive U.S. economic recovery and safeguard domestic food supply by addressing current labor shortages in agriculture;
- Goal 2: Reduce irregular migration from Northern Central America through the expansion of regular pathways; and
- Goal 3: Improve working conditions for all farmworkers.

The 2023 FLSP grant application period closes November 28, 2023.

Penn State Ag and Shale Law Updates

Agricultural Labor: Senators Send Letter to DHS Requesting 60-Day Extension for H-2 Rule

On November 1, 2023, twenty-eight U.S. senators sent a letter to the U.S. Department of Homeland Security (DHS) requesting that the agency extend the comment period an additional 60 days for the proposed rule titled “Modernizing H-2 Program Requirements, Oversight, and Worker Protections” (88 FR 65040) from the scheduled closing date, November 20, 2023. According to the senators, “Any proposed regulatory changes to the H-2A program have potential ramifications for the entire American agricultural supply chain and food security. Therefore, it is of the utmost importance that [their] constituents be provided adequate time to thoroughly analyze this proposed rule and its effects on their operations.” For background on the proposed rule, *see ALWR—Sept. 25, 2023, “DHS Publishes Proposed Rule Amending H-2 Program.”*

Agricultural Labor: White House Publishes H-2B Worker Protection Taskforce Report

On October 19, 2023, the White House announced the publication of a report titled “Strengthening Protections for H-2B Temporary Workers.” The report identified several actions to “advance protections for H-2B and H-2A workers” to be taken by the Department of Homeland Security (DHS), Department of Labor (DOL), Department of State, and the U.S. Agency for International Development (USAID), including 1) “[C]larifying that a worker who has remained in the U.S. longer than initially permitted due to a workplace labor dispute will be protected from certain adverse immigration consequences [and] expediting prosecutorial discretion for such workers where appropriate,” 2) “Leveraging existing data to increase transparency,” including publishing information on DHS’s H-2B Data Hub, and 3) “Establishing a standing Interagency H-2 Worker Protection Working Group.” *For more agricultural labor issues, see the Center’s H-2A Program Issue Tracker.*