

AG ISSUES UPDATE

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USApple Updates

Meeting with USDA Secretary Vilsack

On October 7, U.S. Department of Agriculture (USDA) Secretary Tom Vilsack hosted USApple and other agriculture associations for a discussion of key issues with an emphasis on challenges facing growers in the H-2A program. The meeting was a follow-up to the joint meeting that Secretary Vilsack and Acting Department of Labor (DOL) Secretary Julie Su hosted in May. USApple and our coalition partners will continue to engage with Secretary Vilsack's team to identify areas where we can work together on behalf of growers.

East Coast Port Strike

On October 1, approximately 45,000 longshoremen at East Coast and Gulf Coast ports went on strike after their union and port owners failed to reach an agreement on a new contract.

For several weeks USApple has been working in multiple coalitions urging the Biden Administration to help facilitate an agreement to minimize the devastating economic effects of a strike. We joined nearly 200 organizations on a letter to President Biden and have provided background information to the Administration on the impact of the strike on U.S. apple exports.

Many apple exporters rely on key markets during holiday seasons, particularly around Christmas and Chinese New Year. Even a brief work stoppage can create shipping congestion, potentially disrupting the entire holiday schedule. If you have additional stories about how this situation is negatively impacting your business, please share them with us so we can communicate them to the Administration.

Approximately 60% of U.S. container shipments of all cargo go through East Coast and Gulf of Mexico ports, including the Port of New York and New Jersey, the country's third-busiest, as well as fast-growing ports in Virginia, Georgia and Texas. West Coast ports are not affected since their workers are covered under a separate contract. However, shippers of all types of cargo will likely begin shifting from East Coast to West Coast ports. That will slow down apple exports, the majority of which are shipped from West Coast ports.

We will share any key updates as soon as they become available. Please let us know if you have any questions.

Contract Negotiations Threaten East Coast Exports

Stalled contract negotiations are threatening east coast ports with the members of the International Longshoremen's Association threatening to strike if an agreement isn't reached by October 1. USApple is active in agriculture and business coalitions working to avert a strike and urging the Biden Administration to help facilitate an agreement. It has been reported that the Port Authority of New York and New Jersey has begun to wind down operations to avoid a pileup of containers. USApple joined nearly 200 organizations on a letter to President Biden stating that "it is imperative that the Administration engage with the parties to quickly negotiate a new deal or agree to continue negotiations while keeping the ports open and cargo flowing. A strike at this point would have a devastating impact on the economy especially as inflation is on the downward trend."

Estimates suggest that a one-day strike will take one week to recover from, a one week strike would take a month to recover from. Disruption and even the potential disruption of trade through these ports is already impacting apple exports from eastern states destined for key markets including Central America, Israel and Vietnam.

Maintaining and expanding export markets is a top priority for USApple. In addition to pushing the Administration to open new markets, we will continue to highlight the importance of keeping the ports open and urge increased funding for trade promotion programs like the Market Access Program.

PSU Ag and Shale Law

Agricultural Labor: Federal Court Partially Enjoins 2023 H-2A Adverse Effect Wage Calculation Rule

On September 18, 2024, the U.S. District Court for the Western District of Louisiana issued a memorandum opinion partially granting a preliminary injunction against the Department of Labor's (DOL) February 2023 final rule, which amended the H-2A adverse effect wage rate (AEWR) calculations to include data from non-agricultural occupations. *Teche Vermilion Sugar Cane Growers Assoc. Inc v. Su*, No. 6:23-cv-00831. In their complaint, the plaintiffs "challenge[d] the DOL's decision to base the AEWR for H-2A workers who haul sugarcane from the field to the processing plants using heavy or tractor-trailer trucks on the wage rates for . . . non-agricultural heavy truck drivers," which raised the wage rates for Louisiana H-2A sugarcane workers "from approximately \$13 an hour to approximately \$25 an hour." Although federal courts in two previous cases had rejected challenges to the rule, the Louisiana Western

District Court noted that, under *Loper Bright*, “Chevron’s rule of deference is no longer applicable,” and determined that it “must . . . exercis[e] independent judgment in determining the meaning of” the underlying statute to analyze whether the two groups of workers are “similarly employed” such that the H-2A sugar cane workers’ wages might adversely affect the wages of domestic heavy truck drivers. The court then analyzed the employment duration, work environment, nature of tasks performed, and credential requirements and found that the two groups of workers are not “similarly employed,” noting that “DOL does not address the fact that an H-2A worker with no [Commercial Driver’s License] is qualified to haul sugarcane during the harvest season but would not be qualified to perform other transportation jobs falling under the non-farm Heavy and Tractor-trailer Truck Driver” classification. The court further stated, “DOL appears to ground its new AEW methodolgy—at least as it applies to sugarcane truck drivers—solely on the type of equipment used by these workers without considering the broader question of whether the wages and working conditions of one group will have any impact on the wages and working conditions of the other group, which is what section 1188 requires.” The preliminary injunction is “limited to H-2A workers employed in sugar cane farming and processing operations in the State of Louisiana,” and “applies only to H-2A workers hired by the . . . Plaintiffs” and their members.

Pesticides/Herbicides: EPA Publishes Pesticide Exposure Final Rule

On October 4, 2024, the U.S. Environmental Protection Agency (EPA) published in the Federal Register a final rule titled, “Pesticides; Agricultural Worker Protection Standard; Reconsideration of the Application Exclusion Zone Amendments” (89 FR 80767). Also announced by EPA, the rule “finalizes the agency’s 2023 proposed rule without change” and reinstates several provisions of the 2015 Agricultural Worker Protection Standards. The final rule reduces the application exclusion zone (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. Additionally, the final rule allows farm owners and their immediate family members to remain within an AEZ during pesticide application if they are inside an enclosed home. *See also ALWR—Feb. 27, 2023, “EPA Proposes New Rule for Pesticide Application Exclusion Zone.”*

MORNING AG CLIPS

EPA Proposes to Expand Public Access to Information on PFAS “Forever Chemicals”

WASHINGTON — on Oct. 2, the U.S. Environmental Protection Agency (EPA) is proposing to add 16 individual per- and polyfluoroalkyl substances (PFAS) and 15 PFAS categories representing more than 100 individual PFAS to the Toxics Release Inventory (TRI). It would also designate them as chemicals of special concern so they must meet more robust reporting requirements, including reporting even for

small concentrations. This proposed expansion of TRI would advance the commitments of the Biden-Harris Administration and EPA's PFAS Strategic Roadmap to address the health and environmental impacts of PFAS by promoting pollution prevention, and informing the public about environmental releases of these so called "forever chemicals." This proposal also advances the Biden-Harris Administration's commitment to environmental justice as well as the Administration's commitment to ending cancer as we know it as part of the Biden Cancer Moonshot by helping to connect the public and regulatory agencies with data to help inform decision-making with regard to chemicals with toxicity, including cancer, concerns because people can use TRI data to identify sources of pollution in their communities and ways that facilities can eliminate or reduce such pollution.

"With this rule, EPA would be able to collect data on how more than a hundred PFAS are released into the environment through Toxics Release Inventory reporting requirements," said Assistant Administrator for the Office of Chemical Safety and Pollution Prevention Michal Freedhoff. "This information will help EPA and communities better understand how PFAS are being used and managed across the country."

TRI was created to help track the waste management of toxic chemicals and support actions to prevent pollution and safeguard public health. TRI requires regulated facilities to report annually to EPA the amount of these toxic chemicals released into the environment and managed through recycling, energy recovery and treatment. Facilities must also report on practices used to prevent or reduce the generation of these chemicals as waste. EPA makes the data publicly available to inform decision-making and support pollution prevention efforts.

These PFAS are being proposed for addition to the TRI based on their toxicity to human health, the environment, or both. Data shows that the PFAS being proposed are linked to health outcomes such as cancer; damage to the liver and kidneys; and damage to reproductive and developmental systems.

EPA is proposing to set a reporting threshold of 100 pounds for manufacture, processing and other uses. This is consistent with reporting requirements for other PFAS on the TRI list added pursuant to the National Defense Authorization Act for Fiscal Year 2020 (NDAA). If finalized as proposed, all of the PFAS in a given category would count towards the 100-pound reporting threshold for that category. This change would improve reporting on PFAS by ensuring that facilities would not be able to avoid reporting on PFAS that are similar to one another if each PFAS does not meet the reporting threshold individually. For the same reason, EPA is also proposing to reclassify some PFAS that were previously added to the TRI individually as part of one of the 15 PFAS categories.

Finally, with this rule, EPA is also proposing to clarify how PFAS are automatically added to the TRI under the NDAA. The NDAA provides the framework for the automatic addition of PFAS to the TRI each year in response to specified EPA activities, including whenever the agency "finalizes a toxicity value." To assist stakeholders in understanding this automatic addition provision within the NDAA, EPA is proposing a list of different types of EPA toxicity values which automatically initiate the process of adding any PFAS associated with the toxicity value to the TRI list. – *October 3rd, 2024*

AFBF: Dockworker Strike Highlights Importance of Food Independence

WASHINGTON — American Farm Bureau Federation President Zippy Duvall commented on Oct. 1, 2024 on the impact of the East Coast dockworker strike.

“America is bracing for the impact of the massive dockworker strike that threatens to paralyze traffic of goods in and out of the United States. Our nation relies on international trade for everything from electronics to machinery.

“Families also count on the import of food like bananas, coffee and specialty items, including chocolates and European beer. While there is a risk of shortages of some items, the United States is fortunate that it can meet its nutritional needs without importing food. America’s farmers grow a diverse range of food items that ensure the nation’s food independence. Rest assured, America’s food supply is strong, and store shelves will continue to be stocked with domestically raised products.

“That’s not to say rural America won’t feel the effects of a dockworker strike. Farmers and ranchers rely on international partners to sell billions of dollars of home-grown food to markets around the world. A disruption at the ports could leave perishable food rotting at the docks, which threatens the livelihood of farmers.

“It’s important that farmers can continue to meet the needs of America’s families. They do that with help from the farm bill. Ironically, the farm bill extension expired at the same time the dockworkers strike began. Farmers and ranchers are focused on growing the food, fiber and fuel families depend on, but they’re working under a cloud of uncertainty as several safety net programs designed to help them survive tough times begin to sunset.

“We urge both sides of the dockworker disagreement to work on a solution that will return vital ports to normal operations. We also urge Congress to recognize the importance of America’s food independence and pass a new, five-year farm bill to ensure a stable food supply for America’s families.” – *October 2nd, 2024*

USDA Statement on East Coast and Gulf Coast Ports

WASHINGTON — On Oct. 1st, the U.S. Department of Agriculture (USDA) released the following statement in response to labor disputes at East Coast and Gulf Coast ports:

“The Administration is taking action to monitor and address potential impacts on consumers due to labor disputes at East Coast and Gulf Coast ports. Our analysis shows we should not expect significant changes to food prices or availability in the near term. Thanks to the typically smooth movement

through the ports of goods, and our strong domestic agricultural production, we do not expect shortages anytime in the near future for most items.

“Likewise, non-containerized bulk export shipments, including grains, would be unaffected by this strike. For meat and poultry items that are exported through East and Gulf Coast ports, available storage space and re-direction of products to alternative domestic and international markets can alleviate some of the pressure on farmers and food processors. We are keeping an eye on downstream impacts in the west, and we will continue to monitor and work with industry to respond to potential impacts.

“Our Administration supports collective bargaining as the best way for workers and employers to come to a fair agreement, and we encourage all parties to come to the bargaining table and negotiate in good faith—fairly and quickly.” – *October 1st, 2024*

AFBF : Congress Must Not Leave Farmers in a Lurch

WASHINGTON — Sept. 30, 2024 marks the expiration of the one-year extension of the 2018 farm bill, leaving farmers and ranchers anxious about whether Congress can secure a new, five-year reauthorization. Despite Congress giving themselves a full extra year to craft and pass a new farm bill, inaction remains the status quo in the halls of Congress.

When the farm bill expires, some impacts will be felt immediately, while other consequences will be triggered in the coming months. New enrollment for some critical conservation programs, including the Conservation Reserve Program, will halt, affecting agriculture’s work to meet sustainability goals. When the new year begins, Dairy Margin Coverage payments will cease, and farm safety net programs revert back to outdated 1940s policy that threatens to disrupt markets.

Congress must pass a new, modernized farm bill, but farmers need help now. Until a new bill is enacted, Farm Bureau calls on lawmakers to provide funds for natural disaster and economic assistance to bridge the gap. -*September 30th, 2024*

NASDA’s Newly Elected Board of Directors Urge Congress to Pass Farm Bill in 2024

INDIANAPOLIS – NASDA’s newly appointed board of directors unanimously passed a resolution expressing support for the expeditious passage of a comprehensive, bi-partisan farm bill.

“America’s farmers and ranchers provide the food, fiber, fuel and shelter that we all depend on every single day, but they are subject to numerous and complex challenges that are out of their control,” newly-elected NASDA President Wes Ward said. “Agriculture is national security and it is critical that Congress pass a new farm bill in 2024.”

The resolution highlights the recent extreme weather events, elevated input and interest costs and supply chain disruptions farmers and ranchers continue to battle daily. It also focuses on the need to strengthen nutrition security across the U.S., and the farm bill's role in funding critical food and nutritional assistance programs and bolstering local and regional food systems for improved supply chain resilience.

Agricultural producers, the rural economy and communities of every size rely upon a forward-looking, and fully funded farm bill that provides a safety net for our farmers and ranchers while also protecting critical food and nutritional assistance for those who need it most. NASDA continues to ask Congress to pass a farm bill in 2024. -*September 26th, 2024*