AG ISSUES UPDATE

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USApple Updates

DOL to Enforce New H-2A Worker Protection Provisions in Most Apple States

On August 26, a federal judge in Georgia blocked enforcement of the H-2A Worker Protection Rule that the Department of Labor (DOL) finalized on April 29. The ruling only applies to the 17 states that brought the lawsuit (FL, GA, SC, LA, AR, KS, ID, IN, IA, MO, MT, NE, ND, OK, TN, TX, VA). The basis of the suit was that the Rule would afford some agricultural workers – H-2A workers and corresponding domestic workers – the right to collectively bargain. This would essentially provide rights mirroring those in the National Labor Relations Act (NLRA) to those workers. However, the NLRA does not apply to agriculture and specifically excludes agricultural workers from its provisions. The Georgia judge stated that while the DOL "may assist Congress they cannot become Congress."

The Worker Protection Rule was scheduled to be in full effect on August 28, but that morning DOL announced they would temporarily delay implementation everywhere while they assessed their options. On Tuesday afternoon, DOL announced that starting Wednesday (9-10-24), there will be two sets of rules. Those growers in the 17 states that sued will not be subject to the new provisions, while everyone else will be. The vast majority of apple growers fall into the latter category and will be subjected to additional costs and administrative burdens as a result. USApple is working on our own and with our coalition partners to educate Members of Congress and urge them to tell the DOL that there should be one set of rules for everyone.

- More information on the ruling can be found in this summary provided by legal counsel yesterday.
- A summary of the Final Rule and its impact on the apple industry can be found here.

Last fall, USApple raised strong concerns about the additional administrative burdens, costs and potential enforcement actions created by the Rule, including the same objection in the recent lawsuit that NLRA excludes agricultural workers.

If you have questions, please contact USApple Senior Vice President Diane Kurrle.

Federal Heat Rule Proposed

On August 30, the Occupational Safety and Health Administration (OSHA) issued its long anticipated proposed rule on Heat Injury and Illness Prevention. The nearly 400-page proposal would require both private and public sector employers to develop programs and implement controls to protect employees from heat hazards in both the outdoor and indoor work environments. OSHA first signaled they would be doing so in 2021 when they solicited comments from stakeholders as they began gathering information.

USApple submitted formal comments in January of 2022 stating that, "If OSHA goes forward with a proposed rule, it should be outcome based and not overly prescriptive. The agency should also seek to avoid duplicative requirements when standards are already in place. A one-size-fits all approach will not work given the wide variety of weather conditions in different states and regions as well as different working conditions and practices. For these same reasons temperature thresholds must account for these regional differences."

According to the Small Business Administration, the rule will:

- Require employers to evaluate their workplaces and implement controls to mitigate employee exposures though engineering and administrative controls, training, effective communication, and other measures.
- It includes initial and high heat triggers at the 80- and 90-degree levels, which would require increasingly stringent control measures to protect employees.

USApple and our coalition partners and legal counsel are further analyzing the lengthy proposal and its impact on our growers. We plan to submit formal comments which are due on December 30.

DataCrunch: USApple Revises USDA Production Estimate Lower – Down 10% From Last Season

Each year in mid-August, the USDA releases their crop production estimates for the top seven apple producing states. Following that release, USApple members meet at the annual Outlook conference to discuss these estimates and adjust them accordingly. Bolstering the government data with up-to-date information on growing conditions and adverse weather events that may impact the quality and quantity of the incoming crop makes the USApple estimate the most extensive available anywhere.

According to USDA, the largest apple states will produce a combined 264.5 million bushels – a 2.2% decrease from last year's final revised totals. Based on input from farmers across the major

U.S. apple growing regions, USApple's estimate for the top seven states is 241.8 million bushels – a difference of 22.7 million bushels or 8.6%.

Of course, the size of production outside of the top seven apple growing states is significant and growing. States like North Carolina and Wisconsin now have more bearing age acreage than Oregon (one of the states included in the USDA sample) with Ohio rapidly gaining. USApple has been estimating production from these other states since USDA discontinued its more comprehensive data collection in 2018.

By adding back production from these other states, the new USApple 2024/25 forecast increases to 259.5 million bushels – a decline of 10.1% from last year's production totals and down 3.6% from the five-year production average.

At the state level, Washington will account for 60% of U.S. apples with an expected 155 million bushels – a 14.5% year-over-year decline. New York and Michigan are both estimated to produce around 12% of U.S. apples at 31 million and 30.5 million bushels respectively. In New York, this represents a 4.6% year-over-year increase; in Michigan, this would be a 4.4% decrease from last year's near-record production levels. Pennsylvania growers are expected to bring in 11.5 million bushels (-12.7%) followed by California at around 5.5 million bushels (-4.2%). Virginia is looking at a crop of 4.8 million bushels (-5.5%) and Oregon is estimating production around 3.6 million bushels (-5.4%). The states beyond these top seven are projected to add an additional 17.7 million bushels into national inventories, down 3.7% from last year.

These estimates will be reevaluated in December 2024 when inventory from the **USAppleTracker** monthly storage report will be used to gauge their appropriateness. The final production figures will not be known until the USDA releases its revised figures in May 2025.

New Study About Washing Produce

We have been closely monitoring a recent study from China, published in the journal Nano Letters, that has made headlines over the last 10 days. It suggests that washing fruit may not remove all pesticide residues and uses apples as the example.

We have reached out to the FDA to gather their perspective on this study and have also consulted pesticide experts to review the study's methodology. We will provide updates as more information becomes available.

USApple guidance remains the same – that we urge consumers to follow the advice of the FDA, which is supported by replicated science, that washing fruits and vegetables reduces and often eliminates any residues which may be present. Further, USDA testing shows that pesticide residues on apples are extremely low, always a small fraction of EPA tolerances, and often nondetectable.

In alignment with the Alliance for Food and Farming (AFF), we believe that this study's findings are not sufficiently supported to warrant any changes to our current messaging. Therefore, we will continue to advocate for the well-established practice of washing produce.

Canadian Rail Strike Could Impact U.S. Truck Freight Market

Canada's rail service could break down this week. Unless an agreement is reached, two of the country's largest railroads - the Canadian Pacific Kansas City and Canadian National, are threatening to lock out the labor unions, and the unions are threatening to strike. Already the railroads have stopped taking shipments of some types of refrigerated products all cross-border traffic will cease this week. The two rail carriers move about 40,000 railcars of cargo daily. If negotiations fail, shippers of all types of cargo may resort to moving products by truck, and the disruption would likely increase demand for truck freight. The labor contract expired at the end of 2023, but negotiations have continued.

Apple Juice Recall Expanded

On August 26, we alerted members to a voluntary recall of private label apple juice due to elevated arsenic levels. That recall, initially involving 10,000 cases affecting one retailer, has been expanded to 133,500 cases sold under multiple brand names at a variety of national retailers.

At the time of this email, FDA's recall page is down. In the meantime, news coverage lists the products affected.

At this time there are no reported incidents caused by any of these products. The supplier of the apple juice confirmed the products used supplier provided concentrate. Our inquiries into country of origin of the concentrate are ongoing.

As a reminder, USApple has a backgrounder on arsenic in apple juice for your use with customers, consumers or other interested parties.

Apple Juice Recalled Due to Arsenic Levels

We are monitoring a recall of private label Walmart apple juice due to elevated arsenic levels. The products were sold in states on the East Coast and in the southern United States, as well as the District of Columbia and Puerto Rico.

According to the Food and Drug Administration (FDA), the juice contained 13.2 parts per billion (ppb) of inorganic arsenic, which is higher than the new recommended industry action level of 10 ppb set forth in FDA guidance on June 1, 2023. Before then, the industry action level for inorganic arsenic in apple juice was 23 ppb.

The FDA notes in its recall that "...the probability of serious adverse health consequences is remote."

As a reminder, USApple has a backgrounder on arsenic in apple juice for your use with customers, consumers or other interested parties. It is available for download here.

Walmart has removed the products from any impacted stores and is working with the supplier to investigate. The products were supplied by Refresco Beverages Inc., a Dutch-based company whose U.S. headquarters are in Tampa, Florida.

Feel free to direct any media inquires to USApple's Director of Communications Lynsee Gibbons

PSU Ag and Shale Law

Agricultural Labor: Federal Court Grants Preliminary Injunction Against New H-2A Protections Rule

On August 26, 2024, the U.S. District Court for the Southern District of Georgia published an order preliminarily enjoining the U.S. Department of Labor (DOL) from enforcing its recent H-2A final rule, "Improving Protections for Workers in Temporary Agricultural Employment in the United States" (89 FR 33898). *State of Kansas v. DOL*, No. 2:24-cv-00076. The court determined that, though the rule falls within DOL's authority under the H-2A visa program, the rule "violates the [National Labor Relations Act] because the DOL attempts to unconstitutionally create law . . . by affording some agricultural workers—H-2A workers and American workers similarly situated—the right to collectively bargain." The court stated, "Congress has not created that right. And in fact, the NLRA reflects Congressional intent to not create such a right." DOL issued a press release on August 28, 2024, stating that the agency "is carefully reviewing the Kansas Order and assessing various options to comply with the Order." *For background, see ALWR—June 26, 2024, "Seventeen States File Complaint Challenging New H-2A Rule" and ALWR—May 10, 2024, "Department of Labor Publishes H-2A Final Rule."*

Pesticides/Herbicides: EPA Publishes Bilingual Pesticide Labeling Resources, Spanish Translation Required by 2030

On August 27, 2024, the U.S. Environmental Protection Agency (EPA) updated its Bilingual Pesticide Labeling webpage to include new resources to help pesticide registrants translate their labels into Spanish, as required by the Pesticide Registration Improvement Act of 2022. According to EPA, by "December 29, 2025, product labels on restricted use pesticide products and agricultural use products with the highest toxicity (category 1) will be required to bear Spanish language translations for the health and safety sections" and, by 2030, "[a]ll pesticide labels must have translations." Under the law, "translations must appear on the pesticide product container or must be provided through a hyperlink or other readily accessible electronic method."

Agricultural Data: Federal Communication Commission Announces $9 Billion for Rural 5G Broadband

On August 29, 2024, the Federal Communication Commission (FCC) published a report and order "adopt[ing] new rules to move forward with targeted investments in the deployment of advanced, 5G mobile wireless broadband services in rural communities." Also announced by the FCC, the report identifies several actions the agency will take, including distributing "up to $9 billion" to rural areas through a "multi-round reverse auction" under the 5G Fund for Rural America, established in 2020. FCC states that it now possesses "improved mobile coverage data . . . reflected on [its] new National Broadband Map" that allows the agency "the most comprehensive picture to date about where mobile broadband service is and is not across the entire country," which "has significantly enhanced [its] ability to hold a successful 5G Fund auction." According to the announcement, FCC "will announce the expected start of the auction through a Public Notice." *See also ALWR—Mar. 25, 2024, "FCC Report Finds Rural Areas Lack Sufficient Internet, Adopts New Broadband Benchmark."*

MORNING AG CLIPS

USDA: Largest Investment in Rural Electrification since the New Deal

WESTBY, Wis. — During a visit to Wisconsin today [Sept. 5, 2024], President Joe Biden and U.S. Department of Agriculture (USDA) Secretary Tom Vilsack will announce more than $7.3 billion in financing for rural electric cooperatives to build clean energy for rural communities across the country through the Empowering Rural America (New ERA) program. Together, New ERA and other investments in rural clean energy in the President's Inflation Reduction Act make up the largest investment in rural electrification since President Franklin Delano Roosevelt signed the Rural Electrification Act into law in 1936 as part of the New Deal.

Collectively, the 16 selections announced today – funded by President Biden's Investing in America agenda – will leverage private investments of more than $29 billion to build more than 10 gigawatts of clean energy for rural communities across the country. The selectees announced today will reduce and avoid at least 43.7 million tons of greenhouse gases annually, equivalent to removing more than 10 million cars off the road every year.

These projects will create good-paying jobs, lower energy costs for rural communities, significantly reduce pollution, enhance the resiliency of the nation's electric grid, and advance the Biden-Harris Administration's Justice40 Initiative. The 16 selectees will use New ERA funds to:

- Deliver cleaner, more affordable and more resilient electricity to approximately 5 million households across 23 states, representing 20% of the nation's rural households, farms, businesses and schools. The states served by this set of selectees include Alaska, Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, Nevada, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Wisconsin and Wyoming.
- Support more than 4,500 permanent jobs and 16,000 construction jobs.
- Reduce pollution by 2.9 billion tons over the lifetime of the projects, or more than 43.7 million tons of greenhouse gases annually, equivalent to removing more than 10 million gasoline-powered cars off the road.
- Build or purchase over 10 gigawatts of clean energy – including 3,723 megawatts of wind, 4,733 megawatts of solar, 804 megawatts of nuclear and 357 megawatts of hydropower – and make enabling investments in transmission, substation upgrades, and distributed energy resource management software, lowering energy costs for rural Americans and enhancing grid resiliency, all of which will help meet growing electricity demand and power President Biden's manufacturing renaissance.
- Build 1,892 megawatt hours of battery storage, which increases grid reliability and significantly reduces outage times for local customers.

The first round of selectees and the states they serve are as follows:

- Allegheny Electric Cooperative Inc., Pennsylvania and New Jersey
- Arizona Electric Power Cooperative, Inc., Arizona, California, Nevada, and New Mexico
- Basin Electric Power Cooperative, Montana, North Dakota, and South Dakota
- Buckeye Power, Inc., Ohio
- CORE Electric Cooperative, Colorado
- Dairyland Power Cooperative, Wisconsin, Iowa, Illinois, and Minnesota
- East Kentucky Power Cooperative, Kentucky
- Golden Valley Electric Association, Alaska
- Great River Energy, Minnesota, North Dakota, and Wisconsin

- Hoosier Energy, Indiana and Michigan
- Minnkota Power Cooperative, North Dakota and Minnesota
- San Miguel Electric Cooperative Inc., Texas
- Seminole Electric Cooperative, Inc., Florida
- Tri-State Generation and Transmission Association, Inc., Colorado, New Mexico, Nebraska, and Wyoming
- United Power, Colorado
- Wolverine Power Supply Cooperative, Michigan – *September 5th*

USDA Announces Almost $10M in Organic Market Development Grants

WASHINGTON — The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) awarded an additional $9.7 million for 13 grant projects through the Organic Market Development Grant (OMDG) program, bringing the total amount awarded through the program to $85 million. These projects will support the development of new and existing organic markets to increase the consumption of domestic organic agricultural products. The projects funded through this program, are anticipated to benefit over 119 million producers, buyers, and consumers.

"This final round of awards through the Organic Market Development Grant program marks an unprecedented investment into our nation's organic industry and we will see the impacts of this funding for years to come," said USDA Under Secretary for Marketing and Regulatory Programs Jenny Lester Moffitt. "The projects awarded through this program are making great strides in expanding market opportunities for organic businesses and ensuring producers and processors have the infrastructure to meet the growing consumer demand for organic products."

Consumer demand for organically produced goods surpassed $69 billion in the U.S. in 2023, accounting for about 4% of total U.S. food sales. The Biden-Harris Administration recognizes how crucial the organic agricultural industry is to the nation's economy and the investments needed to meet this incredible consumer demand. There are more than 27,800 organic farms and businesses across the nation producing and handling delicious organic food and products of all kinds. There are more than 47,000 such businesses around the world, providing vital ingredients and fresh foods not produced in the U.S. With this final award announcement, AMS has now awarded nearly $85 million to 106 projects in 36 states across the nation and the District of Columbia through the Organic Market Development Grant program, supporting these organic farmers and investing in the capacity of this growing sector. AMS previously announced awards through this program in January, March, and May 2024. This final round of awards and all OMDG grants, which are supporting development of new and existing organic markets, is made available through the Commodity Credit Corporation (CCC).

This round of awards includes projects for the market development and promotion, simplified equipment-only, and processing capacity expansion project types. The funded projects will increase the availability and demand for domestically produced organic agricultural products and address the need for additional market paths. -*August 27th*

$82.3M in Grants Awarded to Strengthen Specialty Crops Industry

WASHINGTON — The U.S. Department of Agriculture (USDA) announced it is awarding $82.3 million to 65 recipients to enhance the competitiveness of specialty crops—including fruits, vegetables, tree nuts, and nursery crops—and support the industry's producers. The funding is being awarded through USDA's Specialty Crop Block Grant Program (SCBGP) and the Specialty Crop Multi-State Grant (SCMP) Program.

From market development to consumer education to research, these programs expand markets and increase competitiveness of the specialty crop industry and increase access to specialty crops for consumers. The Specialty Crop Block Grant and Specialty Crop Multi-State programs are funded by the 2018 Farm Bill and administered by USDA's Agricultural Marketing Service (AMS).

Through the Specialty Crop Block Grant Program, USDA is awarding $72.9 million to 54 states and territories to support specialty crop growers through marketing, education, and research. The states and territories use the funding to provide subawards to projects that focus on areas such as investing in food safety, research on conservation and environmental outcomes, developing new and improved seed varieties, and pest and disease management. To date, USDA has invested over $1 billion to more than 12,400 projects through this program.

Additionally, $9.4 million is being awarded to 11 projects through the Specialty Crop Multi-State Program. The program funds collaborative multi-state partnerships to enhance the competitiveness of specialty crops. Specialty Crop Multi-State grants address regional or national level specialty crop issues through research, crop-specific projects addressing common issues, and marketing and promotion. Since 2015, this program has awarded over $29 million to 40 projects across the country. -*August 25th.*