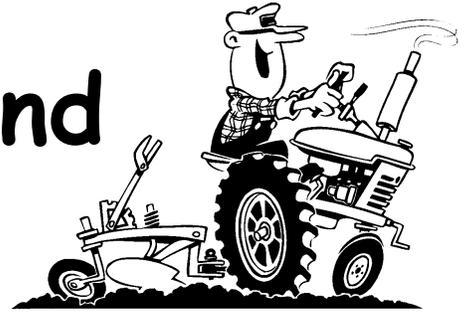


Cultivating Cumberland

October - 2014 VOL. 19, ISSUE 10



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Attachments:

Farm Business & the Affordable Care Act flyer

INVASIVE EMERALD ASH BORER DETECTED IN BURLINGTON COUNTY

NJ Department of Agriculture officials confirmed that the emerald ash borer (EAB), an invasive beetle that attacks and kills ash trees, has been found in Burlington County. The beetle was found in a trap in Westampton that was part of an annual Departments of Agriculture and Environmental Protection survey to detect EAB.

An infestation of emerald ash borer was discovered by a private citizen in Bridgewater, Somerset County, in May, the state's first sign of the destructive pest. The beetle also was found in Bernards Township. Emerald ash borer had already been detected in Pennsylvania and New York counties bordering New Jersey.

EAB is now present in 23 U.S. states and two Canadian provinces. It was first discovered in Michigan in 2002 and has since killed tens of millions of trees.

The adult emerald ash borer is a metallic green insect about one-half inch long and one-eighth inch wide making it hard to detect in the wild. The female beetles lay eggs on the bark of ash trees. The eggs hatch and the larvae bore into the bark to the fluid-conducting vessels underneath. The larvae feed and develop, cutting off the flow of nutrients and, eventually killing the tree. EAB attacks and kills North American species of true ash, and tree death occurs three to five years following initial infestation. EAB is native to Asia.

The state will now survey trees in the area where EAB was found in Burlington County to determine the extent of the EAB infestation. It is expected that a federal quarantine will be expanded to include New Jersey.

Homeowners who own ash trees can take steps to protect their trees. Treatment products are available at local retail establishments and state-certified pesticide applicators can treat for EAB. Signs of EAB include: canopy dieback beginning at the top of the tree and progressing through the year until the tree is bare; sprouts growing from the roots and trunk; split bark with an S-shape gallery; D-shaped exit holes; and more woodpecker activity, creating large holes as they extract the larvae.

To prevent spread of the beetle, do not move firewood. Firewood is a vehicle for movement of tree-killing forest pests including EAB and Asian longhorned beetle. Use locally-sourced firewood when burning it at home and when travelling, burn firewood where you buy it. Make sure to burn all wood purchased.

Report signs of the beetle to the Department of Agriculture at 609-406-6939. For more information about Emerald Ash Borer, visit www.nj.gov/dep/parksandforests/forest/community/Emerald_Ash_Borer.htm.

FSMA Proposed Rule for Produce Safety

The Food and Drug Administration is about to release the proposed changes for comment on this rule. Below is a summary of the key revisions. The comment period opens September 29 for 75 days. Please read the proposed rule and comment. We will email the information on commenting when the rule is released.

Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption

Based on FDA's outreach efforts and public comments, the FDA is proposing revisions to its proposed rule on produce safety that are more flexible and less burdensome in key areas.

Commenting

The FDA is accepting comments for 75 days after the publication date. The FDA published the original proposed rule on January 16, 2013, and the comment period closed on November 22, 2013; no additional comments are being accepted on the original proposed rule. The FDA will accept comments on the revised provisions while continuing to review comments already received on the original proposed rule. The comment period opens September 29, 2014.

At a Glance

Summary of Key Revisions

1. Water quality standard and testing more flexible

- The FDA is proposing various revisions to the microbial standard for water that is directly applied during the growing of produce (other than sprouts). The agency is updating the microbial quality standard to reflect data that supports the 2012 Environmental Protection Agency recreational water quality criteria.
- Farmers with agricultural water that does not initially meet the proposed microbial standard would have additional means by which they could meet the standard and then be able to use the water. These options include establishing a sufficient interval of days between last irrigation and harvest to allow time for potentially dangerous microbes to die off. They could also apply an interval of days between harvest and the end of storage using appropriate microbial die-off or removal rates, provided there is adequate supporting data. And there is an option to calculate and apply appropriate pathogen removal rates for activities such as commercial washing.
 - ◊ A number of commenters felt that the FDA should allow for microbial die-off that occurs naturally in the field before the crop is harvested. This provision provides that flexibility. However, any of these options would have to provide the same level of public health protection and not increase the likelihood that the covered produce will be adulterated.

- Recognizing that water sources have different levels of contamination risk, the FDA is proposing a tiered and more targeted approach to testing each source of untreated water that will be less burdensome on farmers while still protective of public health. The revisions reduce how often the water is tested, with the frequency depending on the water source (i.e. surface or ground water) and on the results of prior tests.

2. Manure strategy to be further studied

- The FDA is removing the nine-month proposed minimum-time interval between the application of untreated biological soil amendments of animal origin (including raw manure) and crop harvesting. The agency is deferring its decision on an appropriate time interval until it pursues certain actions. These include conducting a risk assessment and extensive research to strengthen scientific support for any future proposal, working with the U.S. Department of Agriculture and other stakeholders.
- At this time, the FDA does not intend to take exception to farmers complying with the USDA's National Organic Program standards, which call for a 120-day interval between the application of raw manure for crops in contact with the soil and 90 days for crops not in contact with the soil.
- The FDA is proposing to eliminate the previously proposed 45-day minimum application interval for compost (also known as humus), including composted manures. Properly treated and handled compost is safer than raw manure from a public health standpoint and this change to the proposal would help facilitate its use while still providing an appropriate level of public health protection.

3. Covered farms better defined

- The FDA is proposing that farms or farm mixed-type facilities with an average annual monetary value of produce sales of \$25,000 or less will not be covered. The original proposed rule defined that monetary threshold in terms of all food sales. The FDA is also proposing corresponding changes to the definitions of "very small business" and "small business" to base those monetary thresholds on produce sales rather than food sales. The monetary threshold for the qualified exemption with modified requirements, however, would not change because that exemption is defined by statute.
- The definition of "farm" would be revised; a farm would no longer be required to register as a food facility merely because it packs or holds raw agricultural commodities grown on another farm under a different ownership. The FDA is proposing that such activities would be subject to the produce safety rule rather than the preventive controls rule for human food.

4. Withdrawal of qualified exemptions process further clarified

- The proposed revisions would establish procedures to guide the FDA in withdrawing an exemption for a farm for food safety reasons as specified in the proposed regulation:

- ◇ The FDA may consider one or more other actions to protect public health prior to withdrawal, such as a warning letter, recall, administrative detention, or seizure and injunction.
- ◇ The FDA must notify the farm of the circumstances that jeopardize the exemption, provide an opportunity for the farm to respond, and consider actions taken by the farm to address the issues raised by the agency.
- The revisions also provide procedures for reinstating a withdrawn exemption.

5. Clarifying provisions on wild animals

- The FDA states in the proposed revisions that the proposed produce regulation does not authorize or require farms to take actions that would constitute the “taking” of a threatened or endangered species in violation of the Endangered Species Act. There were concerns expressed that growers would interpret the original proposed rule in ways that would harm wildlife, including taking measures to exclude animals from outdoor growing areas or destroying animal habitats. This clarification is intended to relieve those concerns.

Compliance Dates

- Very small businesses, those with more than \$25,000 but no more than \$250,000 in annual produce sales, would have four years after the rule’s effective date to comply with most provisions.
- Small businesses, those with more than \$250,000 but no more than \$500,000 in produce sales, would have three years after the rule’s effective date to comply with most provisions.
- All other farms would have two years after the effective date to comply with most provisions.
- The compliance dates for water quality standards, and related testing and recordkeeping provisions would be an additional two years beyond the compliance dates for the rest of the final rule.

For more information, go to:

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>

**Rutgers Annie's Project New Jersey Presents:
"Retail Marketing Conference for Farm Women"**

October 15, 2014 from 8:30-4:30

Now more than ever, farmers need to have marketing plans. It takes careful planning and a comprehensive understanding of the marketplace in order to develop a business strategy that will ensure success. The most successful businesses have undoubtedly started with a marketing plan. Marketing fulfills a vital function. A business owner must be familiar with their customer base, as well as the strengths and weaknesses of their competitors. These factors should be identified in a well-prepared marketing plan.

Join other farm women for a full day of learning and networking at *the Annie's Project New Jersey, "Retail Marketing Conference for Farm Women"*. Topics include agritourism, social media, marketing strategies, value-added enterprises, financial goals, marketing plan and crop insurance. At the end of the day, once participants have a rough draft of a marketing plan, the group will take a bus trip down the road to the Rutgers Food Innovation Center where you will see how they help farmers realize their dreams in developing value-added products.

The conference will be held at the Rutgers Agricultural Research & Extension Center, 121 Northville Road, Bridgeton, NJ 08302. To sign up please go to: <http://anniesprojectmarketingconference.eventbrite.com>. The cost of the full day conference is \$75 and a full breakfast and lunch will be provided. Please contact Jenny Carleo (Rutgers Cooperative Extension of Cape May County) at 609-465-5115 for more details. For more information on Annie's Project New Jersey go to: <http://aesop.rutgers.edu/~farmmgmt/anniesproject.html>

Annie's Project New Jersey is funded by the USDA National Institute of Food and Agriculture Risk Management Agency and Rutgers Cooperative Extension. Cooperating agencies include Rutgers, The State University of New Jersey, the U.S. Department of Agriculture and County Boards of Chosen Freeholders. Rutgers Cooperative Extension, a unit of the New Jersey Agricultural Experiment Station, is an equal opportunity program provider and employer.

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APPLICATIONS NOW BEING ACCEPTED FOR THE NJ AGRICULTURAL ACHIEVEMENT AWARD

Scholarship for H.S. Seniors Interested in a Career in Agriculture or the Sciences

New Jersey residents who are entering their senior year in high school this fall and are planning a career in agriculture or science may apply for the New Jersey Agricultural Achievement Award. One winner will be selected and awarded a scholarship to honor their achievements.

The New Jersey Agricultural Achievement Award, sponsored by Dr. Amy Butewicz, a former New Jersey Equestrian of the Year, was started because of her desire to give back to the community. Worth \$500, this scholarship is meant to assist its recipient in beginning their future in agriculture.

The qualifications for receiving this award include submitting an application, found by visiting the following website: www.jerseyequine.nj.gov/agachievementapplform.pdf, a resume along with an essay answering the question, "How has your involvement within your respective nominating organization helped to shape your future career choice?"

In addition, a contestant is required to be a current, active member of an organization either on the New Jersey Equine Advisory Board and/or represented at the Youth Reception portion of the New Jersey State Agricultural Convention. Each organization on the New Jersey Equine Advisory Board and a participant of the State Agricultural Convention is able to nominate a maximum of two contestants.

The winner of the Agricultural Achievement Award must attend the Annual New Jersey Bred Equine Breeders Award Luncheon to be held on Sunday, January 26, 2015 in Eastampton and will read his or her essay to the attendees.

Please mail application, resume and essay by January 2, 2015 to:

NJDA
Attn: Lynn Mathews
P.O. Box 330
Trenton, New Jersey 08625

If you have any questions, contact Lynn Mathews, 609-292-2888 or lynn.mathews@agstate.nj.us.

Calendar of Important Events

↗ Indicates the newly added event since last calendar

October 2014

October 1

Statistics for Food Scientists, Rutgers Cont. Ed., 102 Ryders Lane, New Brunswick; \$395 by 9/17; \$425 after. For more info call 732-932-9271 or visit: www.cpe.rutgers.edu/food

October 13

Emergency Pesticide Recertification Seminar, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; \$245 by 9/29; \$265 after; 9am-4pm. Pesticide credits: 5 in 3B; 2 in 3A and PP2; 4 in CORE & 6B. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

October 15-17

Hazard Analysis Critical Control Point Plan Development for Food Processors, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; \$945 by 10/1; \$995 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu/food

October 17-19

Produce Marketing Assoc. Fresh Summit, Anaheim, Calif. For more information visit: www.freshsummit.com

October 20

Pesticide Calibration, 9am-1pm; Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; \$195 by 10/6; \$210 after. Pesticide credits: 8 CORE. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

October 21

Emergency Pesticide 1/2 Day Classes in 3A & 3B; 10/21 9am-noon (3A with 6 credits) and 10/21 1pm-4pm (3B with 6 credits); \$175 by 10/7; \$190 after; Rutgers Continuing Education, 102 Ryders Lane, New Brunswick. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

November 2014

November 2-5

Western Growers Association Annual Meeting, Las Vegas. For info visit: www.wgannualmeeting.com

November 4-6

Produce Safety: A science-based Framework Workshop, University of California Davis. For info call 530-752-7672.

November 6

Sports Field Managers Association of New Jersey Fall Field Day & Trade Show, Raritan Bay Waterfront Park, South Amboy, NJ. Free Admission. For more information call 856-514-3179

November 6 or 7

Introduction to Plant Identification, 9am-3:30pm; Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; \$395 by 10/23; \$430 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

November 9-11

International Hotel, Motel & Restaurant Show, Jacob K. Javits Convention Center, New York City. For more information call 508-743-8513; email: IHMRS-BDNY@xpressreg.net or visit: www.ihmrs.com

November 12-13

Pacific Northwest Vegetable Association Conference & Trade Show, Three Rivers Convention Center, Kennewick, Wash. For more information call 509-585-5460 or visit: www.pnva.org

November 17-18

Large Tree Climbing and Rigging, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-3:30pm; \$395 by 11/3; \$430 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

November 17-19

2014 Southeast Strawberry Expo, Pinehurst, North Carolina. For more information visit: www.ncstrawberry.com

November 17-21

2014 Irrigation Show & Ed. Conf., Phoenix Irrigation Association. For more information visit: www.irrigation.org

November 19-21

Better Process Control School, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; \$995 by 11/5 \$1,095 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu/food

November 25

Hazardous Tree Identification, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; \$245 by 11/11; \$270 after; 9am-3:30pm. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 2014**December 1-3**

Washington State Horticultural Association Annual Meeting, Tri-Cities, Wash. For more information call 509-665-9641 or visit: www.wahort.org

December 1 & 8

Soil and Plant Relationships, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-3:30pm; \$295 by 11/17; \$325 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 2-3

29th Annual Southeast Vegetable & Fruit Expo, Kingston Plantation Embassy Suites, Myrtle Beach, S.C. For more information visit: www.ncvga.com

December 3

Managing Turfgrass Insects, Rutgers Cont. Ed., 102 Ryders Lane, New Brunswick; 9am-3:30pm; \$195 by 11/19; \$210 after. For info call 732-932-9271 or visit: www.cpe.rutgers.edu

December 4

Snow & Ice Removal, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 8:30am-3:30pm; \$195 by 11/20; \$210 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 5

It's Not the Economy, It's You!, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-4pm; \$195 by 11/21; \$210 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 9-11

Great Lakes Fruit, Vegetable & Farm Market EXPO, DeVos Place Convention Center, Grand Rapids, Mich. For more information visit: www.glexpo.com

December 15

Growing Ornamental Plants, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-3:30pm; \$195 by 12/1; \$210 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 16

Common Sense Business and Pricing, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-4pm; \$195 by 12/2; \$210 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 17

Water Management and Drainage, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-4pm; \$195 by 11/3; \$210 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

December 18

Basics of Turfgrass Management, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-3:30pm; \$195 by 12/4; \$210 after. Pesticide credits: 11 in 3B; 8 in 13 & 8C and 4 in 10. For more information call: 732-932-9271 or visit: www.cpe.rutgers.edu

January 2015

January 5

Pest Management of Ornamental Landscape Plants, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-4pm; \$195 by 12/22; \$210 after. Pesticide credits: 2 CORE, 8 in 2, 3A, 6B, 8C & PP2. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

January 6, 8, 20, & 22

Irrigation Systems: Design and Installation, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick, 9am-4pm; \$695 by 12/23; \$725 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

January 7-9

Illinois Specialty Crops, Agritourism and Organic Conference, Springfield, Ill. For more information call 309-557-2107 or email: cblary@ilfb.org

January 8-11

Southeast Regional Fruit & Vegetable Conference, Savannah, Ga. For more information visit: www.seregionalconference.com

January 9, 16, 23, 30, Feb. 6, 13, 20, 27, Mar 6, 13, & 20

Landscape Plants: Identification, Selection and Application, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 8:30-noon; \$895 by 12/26; \$950 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

January 12

Managing Diseases of Ornamental Plants, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-3:30pm; \$195 by 12/29; \$210 after. Pesticide credits: 10 in 3A, 8 in 2 and 2 in 10. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

January 13, 14 & 15

Integrated Pest Management, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 9am-4pm; \$395 by 12/30; \$430 after (three days); \$195 by 12/30; \$210 after (single day); Pesticide credits: Day 1: 5 in 3A & 3B; 8 in 13; Day 1-3: 16 in 3A, 3B & 13. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

January 16, 23, 30, Feb. 6, 13, 20, 27, & Mar. 6

Landscape Design I: The Basics, Rutgers Continuing Education, 102 Ryders Lane, New Brunswick; 1pm-4:30pm; \$745 by 1/2; \$795 after. For more information call 732-932-9271 or visit: www.cpe.rutgers.edu

January 19-21

2015 OPGMA Congress, Kalahari Resort & Conv. Center, Sandusky, Ohio. For more information visit: www.opgma.org

January 20-22

Empire State Fruit & Vegetable Expo, Oncenter Convention Center, Syracuse, NY. For more information contact Jeanette Marvin at: nysvga@twcny.rr.com

January 20-22

Indiana Hort Congress, Wyndham Indianapolis West, Indianapolis. For more information visit: www.inhortcongress.org

January 21-22

WSCGA Winter Meeting & Trade Show, Wisconsin Cranberry School, Stevens Point, Wis. For more information visit: www.wiscran.org

January 22-23

Upper Midwest Regional Fruit & Vegetable Growers Conference, for more information contact Paul Hugunin at Paul.Hugunin@state.mn.us

January 27-29

Mid-Atlantic Fruit & Vegetable Convention, Hershey, PA. For more information visit: www.mafvc.org

Have you visited the Cumberland County website for the Present and/or past issues of "Cultivating Cumberland"? It's a great resource for information and dates.....

<http://Cumberland.njaes.rutgers.edu/>

Public Notification and Non-discrimination Statement

Rutgers Cooperative Extension is an equal opportunity program provider and employer. Contact your local Extension Office for information regarding special needs or accommodations. Contact the State Extension Director's Office if you have concerns related to discrimination, 848-932-3584.

REGULARLY SCHEDULED MEETINGS

✓ Indicates meeting will be held at RCE of Cumberland County

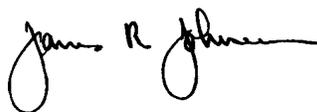
<p>✓</p> <p>Pesticide Certification Exam Schedule—Cumberland County 291 Morton Avenue Millville, NJ 08332 (Between Rosenhayn & Carmel)</p> <p><u>2014</u></p> <p>Nov 20</p> <p>To Register call 609-984-6614 For directions call 856-451-2800 *****</p>	<p>✓</p> <p>Cumberland County Agriculture Development Board 291 Morton Avenue Millville, NJ 08332 (Between Rosenhayn & Carmel)</p> <p><u>2014</u></p> <p>Oct 8 Nov 12 Dec 10</p> <p>Reg. Meetings start at 7 p.m. Call DeAnn at 856-453-2211 *****</p>	<p>✓</p> <p>Cumberland County Board Of Agriculture 291 Morton Avenue Millville, NJ 08332 (Between Rosenhayn & Carmel) 7 pm meetings</p> <p><u>2014</u></p> <p>Oct 16 Nov 20 Dec 18</p> <p>For info call Shirley Kline, President 856-685-3784 *****</p>
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**Cumberland County Improvement Authority (CCIA)
Pesticide Container Recycling
9:00 a.m. to 12 Noon**
Cumberland County Solid Waste Complex
169 Jesse's Bridge Rd. (located off Route 55 Exit 29)
Deerfield Township, New Jersey

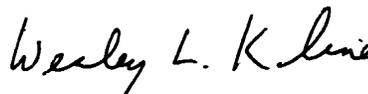
Questions? Call Division of Ag & Natural Resources, NJ Dept. of Ag 609-292-5532

October 17 November 21

Sincerely,



James R. Johnson
Agricultural Agent
Nursery Management Commercial
Internet: jjohnson@njaes.rutgers.edu



Wesley L. Kline, Ph.D.
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Pesticide User Responsibility: Use pesticides safely and follow instructions on labels. The user is responsible for the proper use of pesticides, residues on crops, storage and disposal, as well as damages caused by drift.

Use of Trade Names: Trade names are used in this publication with the understanding that no discrimination is intended and no endorsement is implied. In some instances the compound may be sold under different trade names, which may vary as to label.



Your Farm Business and the Affordable Care Act

Marc Lovell

Tax School and Department of Agricultural and Consumer Economics
University of Illinois

August 26, 2014

farmdoc daily (4):161

Recommended citation format: Lovell, M. "[Your Farm Business and the Affordable Care Act](#)." *farmdoc daily* (4):161, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, August 26, 2014.

Permalink URL <http://farmdocdaily.illinois.edu/2014/08/your-farm-business-and-the-affordable-care-act.html>

Beginning in 2015, a farm that is an "applicable large employer" (ALE) generally must either provide health coverage to full time employees and their dependents, or pay a penalty for not offering coverage. Generally, a penalty is triggered if an employee of the farm business is offered coverage by the farm business that does not meet the minimum guidelines or if an employee obtains coverage through a Marketplace exchange. The rule that requires the farm business to either provide coverage or pay a penalty has become known as the "play or pay" rule under the Affordable Care Act (ACA).

At this point in 2014, there are several aspects of the ACA that farmers with employees should know about in order to determine how this law affects them. Questions that farmers have regarding this law and its impact on their farm business include the following.

- Is my farm business subject to the mandate or it is exempt?
- Is there any deferral of this mandate for my farm business?
- If I want to offer coverage to full time employees so I don't have to pay a penalty, what are some of the requirements that the coverage must meet?
- How much is the penalty if I do not offer coverage?

COUNTING FARM BUSINESS EMPLOYEES

The farm business is subject to the "play or pay" rule if it falls under the definition of an "applicable large employer" (ALE) under the ACA. A farm business is an ALE if the farm business employed an average of at least 50 full-time employees on business days during the previous calendar year. Under the rules for counting employees, in order to determine whether the farm business has over 50 employees, the farmer must add together:

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- All full time employees, and
- Part time employees that will be treated as “full time equivalents” (FTEs).

A full time employee under the rules is an employee that was employed at least 30 hours per week or 130 hours in a calendar month. Part-time employees are counted by adding up the total number of service hours for the month for all part-time employees and dividing that sum by 120.

Example. Liverpool Farms, Inc. (Liverpool) has 17 employees, each of whom works an average of 33 hours per week in each month of 2014. In addition, there are 48 part-time employees. Each of the part-time employees averages 80 hours of service each month for 2014. Liverpool must determine whether it is an ALE for 2015 based on the number of their employees and the average hours the employees have worked during 2014. Liverpool makes this determination using the following calculations.

First, the 17 employees who average 33 hours per week in each month of the previous year are counted as full-time employees because these employees have worked at least 30 hours per week each calendar month for the preceding year.

In addition to the 17 full-time employees, Liverpool must calculate the number of FTEs to determine whether it has 50 or more full-time employees.

$$\begin{aligned}
 \text{Number of FTEs} &= \frac{\text{Aggregate number of hours worked by all part time employees}}{120} \\
 &= \frac{48 \text{ part time employees} \times 80 \text{ average hours}}{120} \\
 &= \frac{3840}{120} \\
 &= 32 \text{ FTEs in each month during 2014.}
 \end{aligned}$$

For purposes of the employer shared responsibility rules, Liverpool has a total of 49 employees in 2014 (17 full-time employees + 32 FTEs). Therefore, it is not subject to the employer mandate in 2015 because it does not have at least 50 full-time employees in 2014.

Note. If the result of the FTE calculation is not a whole number, it is rounded to the next lowest whole number in determining the number of FTEs.

For farmers that own multiple farm businesses, there are special rules that generally require the farmer to aggregate those farm businesses and count all the employees for them as if they were one business.

Applicable Time Period

In determining whether it is subject to the employer mandate for 2015, the farm employer can choose any consecutive 6-month period during 2014 as the time period over which to count farm employees. The farm employer is only subject to the employer mandate if it employed 50 or more full-time workers (taking into account the sum of the full-time employees and FTEs) on business days during the consecutive 6-month period within 2014 that the farm employer chooses.

Seasonal Worker Exception

Farm businesses may be able to make use of a special exception for employees that are seasonal. The farm employer will not be subject to the “play or pay” rules if the farm employer qualifies for the seasonal worker exception. A farm employer qualifies for this exception if both of the following apply.

- The sum of the full-time and FTE employees is greater than 50 for a period of 120 days or less during the preceding calendar year.
- Those employees in excess of 50 qualify as seasonal workers.

Seasonal work is defined as labor ordinarily performed during certain seasons or periods of the year which, by its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal job to another may still be considered a seasonal worker even though that worker may be employed for a major part of the year.

DEFERRAL OF THE MANDATE FOR CERTAIN FARM EMPLOYERS

Originally, the ACA declared that ALE farm businesses would first become subject to the employer mandate for 2014. However, this initial effective date was delayed until 2015.

In addition, farm employers with 50 to 99 employees may continue to be exempt from the employer mandate penalties for a further year until January 2016. This exemption includes all of 2015. Farm employers with a health plan year that is not based on the calendar-year are exempt from the mandate and any penalties until the first date of the 2016 plan year. To qualify for the exemption, the employer with 50 to 99 employees generally must use a special form to certify to the IRS in writing that the farm employer meets the following requirements.

- At least 50 but less than 100 full-time employees were employed during 2014.
- There has been no reduction of work force size or a reduction of overall hours of service in order to meet the required number of employees necessary for this exemption.
- There has been no material reduction or elimination of any health coverage that is offered from the period February 9, 2014, through December 31, 2014.

The rules in this area are complex and there are additional specific limitations and definitions. Farm employee reductions for genuine business reasons are acceptable, and certain reductions in any existing farm business health care plan may also be allowed without disqualifying the farm employer from the exemption. The IRS is still developing the required form to be used for the farm business to certify it qualifies for this additional year of deferral. Presumably, this form will be made available before the end of 2014.

OFFERING COVERAGE TO FARM BUSINESS EMPLOYEES

Generally, the employer mandate of the Affordable Care Act requires the farm employer to either offer “**minimum essential coverage**” (MEC) to full time employees and their dependents or pay a penalty. MEC is generally coverage that is comprehensive medical coverage. A plan that only provides coverage for limited purposes, such as for only dental or vision benefits, nursing home care or that covers only a specific illness or disease will not qualify as MEC. Generally, any plan offered by the Marketplace (the exchange that the farm employer may obtain a plan from for its employees) will qualify. In addition, some plans are “grandfathered” under the Affordable Care Act under special rules. If the farm employer already offered a plan that qualifies for grandfathered status under the applicable rules, that plan will generally qualify as MEC.

In addition, to avoid a penalty, the farm employer that chooses to offer coverage must offer coverage to 95% of full time employees and their dependents. However, for 2015 only, this rule has been made easier to comply with because the farm employer will not face a 2015 penalty if at least 70% of full time employees are offered coverage (and generally, no penalty will be triggered in 2015 if dependents of full time employees are not covered).

In addition, the coverage offered must be “**affordable**” to employees and provide “**minimum value**” under ACA guidelines. “Affordable” generally means that any employee costs for the coverage will not exceed 9.5% of the employee’s household income (which is generally a measure of the employee’s family income that is calculated under special rules). Because the farm employer will not likely know the income of the employee’s spouse or other members of the employee’s household, special rules allow the farm employer to rely on the employee’s wages that will appear on the employee’s Form W-2 (or other amounts attributable to the employee that are known by the farm business) in order to ensure this requirement is met. In addition, the coverage offered will provide “minimum value” to employees if it pays

at least 60% of the cost of the health care services the plan covers (taking into account deductibles, copayments and other such costs to the employee).

If the farm employer offers coverage that does not meet these guidelines, or does not offer coverage at all, the employer will face a penalty.

PENALTIES FOR FARM BUSINESSES

There are two alternative penalties that may apply to the farm employer: a penalty for the farm employer that does not offer coverage (referred to as the §4980H(a) penalty) and another penalty that will apply for the farm employer that does offer coverage but does not meet the necessary requirements discussed previously (referred to as the §4980H(b) penalty). Sections 4980H(a) and (b) are the Tax Code sections that outline the details of each penalty. Each of them is calculated differently.

Farm Employers Not Providing Coverage

The ACA does not require farm employers to offer coverage to employees. However, starting in 2015, farm employers with 100 or more employees will be subject to a penalty if:

- The farm employer fails to offer its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan, and
- At least one full-time employee has been certified as having enrolled in a Marketplace exchange and receives the Premium Tax Credit (PTC) or qualifies for cost sharing (because the employee was required to go to the Marketplace to obtain their necessary coverage).

These farm employers are subject to a shared-responsibility payment, which is calculated on a monthly basis using the following steps.

- Subtract 30 employees from the total number of full time and FTE employees
- Multiply that reduced number of employees by \$2,000.¹

Note. This penalty is **not tax deductible** by the farm employer.

Example. During all of 2015, Eastern Farms, Inc. did not offer MEC to its full-time employees. Taking into account all full-time and part-time employees, Eastern Farm's full time employee count for each month was 127. Since this number of full time employees is at least 50, Eastern Farms is an ALE subject to the penalty. Several employees qualified for the premium tax credit (PTC) an/or cost sharing when they obtained coverage through the Marketplace exchange. Because at least one employee qualified for the PTC or cost sharing, Eastern must pay a 2015 penalty.

To calculate this penalty, Eastern Farms first reduces the 127 FTE employee count by 30. This results in an adjusted employee count of 97 (127 – 30 employees).

The §4980H(a) penalty is \$194,000 (\$2,000 × 97 employees).

Observation. Although a 30-employee reduction is permitted in the calculation of this penalty to the farm business, this same reduction is **not** permitted when calculating the number of employees for the purpose of determining whether the farm business is an ALE subject to the "play or pay" rules.

Farm Employees Providing Coverage²

Farm employers that do offer coverage to employees must ensure the coverage qualifies as MEC, is affordable to employees and meets minimum value requirements as discussed earlier, or face a penalty.

¹ The \$2,000 amount is subject to an inflation adjustment in future years.

² IRC §4980H(d)(2).

This penalty is \$3,000 per year for each employee who qualifies for the PAC or cost-sharing reduction. The \$3,000 penalty amount is subject to annual inflation adjustments. In addition, the farm employer's penalty under this rule payment cannot be larger than the penalty that would be incurred if the employer did not offer coverage to its employees (discussed in the last section). Accordingly, the cap on the §4980H(b) penalty to the employer offering coverage is the amount of the §4980H(a) penalty the employer would incur, calculated as if that employer did not offer coverage. Moreover, this penalty, like the §4980H(a) penalty mentioned earlier, is not tax deductible by the farm business.

Example. During 2015, Sigma Farms has 90 full-time employees. The company offers MEC to its full time employees but the coverage was not affordable (with regard to the 9.5% rule mentioned earlier) for eight employees. These eight employees obtained their coverage for the entire year from the Marketplace exchange. These eight employees receive a PTC for the year in connection with their plans obtained through the Marketplace exchange. For each of these eight employees, Sigma Farms owes a §4980H(b) penalty of \$3,000. The annual penalty is therefore \$24,000 ($\$3,000 \times 8$ employees). However, the cap this §4980H(b) penalty is the amount of §4980H(a) penalty Sigma Farms would pay had it not offered coverage to employees. This §4980H(a) maximum cap on the §4980H(b) penalty is calculated as follows.

90 employees – 30 employees = 60 employees
Maximum §4980H(a) penalty = \$120,000 ($\$2,000 \times 60$ employees)

Therefore, while the maximum §4980H(b) penalty is capped at \$120,000, Sigma Farms is liable for the \$24,000 penalty as calculated above.

Note. *The 30-employee reduction that is allowed in the calculation of the §4980H(a) penalty is not provided in the calculations for the §4980H(b) penalty. In addition, while the above examples are based on penalty amounts for a full year, the actual rules base the penalty on a monthly calculation.*

Notice that the 4980H(a)³ penalty is based on the total number of employees of the farm business (less the 30 employees the statute permits the farmer to subtract from the total) but the §4980H(b) penalty is based only on the number of employees that qualify for the PTC or other cost subsidization from the Marketplace exchange.

CONCLUSION

In 2015, farm employers with 100 or more employees will become subject to the mandate to either provide coverage that meets certain requirements or pay a penalty. Those farm employers with 50 to 99 employees become subject to this mandate in 2016. Farm employers that have not given this “play or pay” area of the Affordable Care Act much consideration still have enough time to plan ahead to minimize its financial impact and an investigation of the options, assessment of potential penalty liability and the making of key decisions that will affect the farm business permanently should be aspects considered sooner rather than later. Farmers with employees should consult a tax advisor who is very familiar with these ACA rules to obtain the necessary advice if they haven't already done so. This will ensure enough time to properly develop and implement plans to address the major impact the ACA will have on a farm business.

³ IRS Notice 2012-31, 2012-20 IRB 906.