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CAL/OSHA PROPOSES SEMI-PERMANENT RULE TO REPLACE ETS



Cal/OSHA has proposed a semi-permanent rule to replace the existing COVID-19 Emergency Temporary Standard (ETS) which is set to expire on December 31st.

The semi-permanent standard is expected to take effect on January 1, 2023, and all of its provisions are slated to stay in effect for two years. While this replacement rule follows the May 2022 ETS in many areas, there are some significant changes which we discuss here.

The definition of “**close contact**” will be expanded in accordance with a recent California Department of Public Health definition update. While previously, any employee within six feet of the COVID-19 positive individual for 15 minutes in a 24-hour period was considered to have close contact, the new rule will define close contact as “*sharing the same indoor airspace as a COVID-19 case for a cumulative total of 15 minutes or more over the 24-hour period during the COVID-19 case’s infectious period.*” This expansion of close contact, by removing the six feet provision has the potential to significantly increase requirements for contact tracing and administration of testing.

Once a positive case in the work-environment is identified, all employees sharing the same indoor airspace with COVID-19 employee will need to be tested and excluded where required under the rule. This proposed rule does not define “indoor airspace” and it is possible Cal/OSHA, or the CDPH, may revise this proposed language to define or alter this term prior to it taking effect next year.

Additionally, there is a proposed change from the May 2022 ETS **definition of “infectious period”** allowing for a shortened infectious period under certain circumstances. Cal/OSHA will likely revise this as they get feedback from the industries and as things progress throughout the year.

The proposed rule has eliminated **exclusion pay** completely. Unlike the May 2022 ETS, the proposed rule makes no mention of exclusion pay, meaning employers are not required to offer exclusion pay once this rule takes effect next year. Again, this could change significantly before the rule is finalized.

COVID-19 Prevention Program (CPP) requirements are greatly relaxed. While the May 2022 ETS required employers to include numerous elements in their CPP or integrated into their Illness and Injury Prevention Program (IIPP), the proposed rule relaxes those elements in lieu of general requirements that:

1. Employees “receive training regarding COVID-19”

consistent with Cal/OSHA’s existing Injury and Illness Prevention program training requirements;

2. Employers develop, implement, and maintain effective policies to prevent transmission of COVID-19 by persons who had close contacts;
3. Employers determine the date and time a COVID-19 case/diagnosis/symptom was last present; and identify/respond to person with COVID-19 symptoms at the workplace.

This is also a proposed addition of record keeping requirements. Under the proposed rule, employers must maintain a record of COVID-19 cases and close contacts, including employee name and other specific information for two years or more where specified. Employers must also maintain a copy of the COVID Notice provided to employees and their representatives, which we have recommended from the start.

What This Means for Employers

DO not throw out your COVID policies and CPP just yet. The changes discussed above are just some of the requirements of the proposed semi-permanent COVID rule and these changes may be revised up until the rule is finalized and enacted, which is expected later this year. Employers are encouraged to review the full text of the proposed rule. As of the writing of this article, no hearing dates for this proposed regulation have been scheduled, so there is no indication as to when the agency will finalize this rule. It is important to remember that the May 2022 ETS will stay in effect until December 31, 2022, and the proposed rule is still subject to change.

Employers should maintain their policies consistent with the May 2022 ETS, subject to any updates from Cal/OSHA or the CDPH.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with **Barsamian & Moody** at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*

CFFA TESTIFIES AT FARM BILL LISTENING SESSION



CFFA staff provided public comments at the Farm Bill Listening Session that was held at Fresno State on July 7th.

The goal of the session for was members of the House Agriculture Committee to hear from the agriculture industry on how to

improve upon the 2018 Farm Bill in 2023. The listening session was hosted by Chairman of the House Subcommittee on Livestock and Foreign Agriculture, Congressman Jim Costa. For additional details, please contact CFFA President Ian LeMay (ilemay@cafreshfruit.com).

H.R. 8243 AMERICAN PORT ACCESS PRIVILEGES ACT INTRODUCED

On June 29th, Congressmen John Garamendi and Jim Costa introduced H.R. 8243, the "American Port Access Privileges Act". This legislation builds upon the Ocean Shipping Reform Act of 2022 that was signed by President Biden on June 16th.

The American Port Access Privileges Act would ensure fair trade for U.S. businesses and keep foreign markets accessible to California agricultural exporters by:

- Codifying the current preferences for military, Jones Act, and other US-flagged vessels in place at many major American ports.
- Establishing a secondary berthing preference for ocean-going commercial vessels servicing multiple ports in the United States or with significant cargo bookings of American exports. This new preferential berthing will reward ocean carriers that serve both importers and American exporters by moving those vessels to the front of the queue for unloading and loading. It will similarly incentivize ocean carriers to make second-leg voyages to ports like the Port of Oakland, which is critical for California's agricultural exporters.
- Ensuring that the new preferential berthing for export carrying-vessels would never interfere with U.S. Coast Guard orders for commercial vessels, port safety, or collective bargaining agreements for port workers.
- Requiring that export-carrying vessels seeking preferential berthing report cargo bookings at least 7 days in advance to port operators.
- Authorizing the U.S. Department of Transportation's Bureau of Transportation Statistics to collect data on berthing and cargo practices at U.S. ports. This will evaluate ocean carriers' practices for port calls and cargo bookings, as well as the impact of preferential berthing afforded under the bill.

The bill is currently awaiting action by the House Committee on Transportation and Infrastructure. For additional information, contact Director of Trade Caroline Stringer (cstringer@cafreshfruit.com).

CALIFORNIA TRUCKING ASSOCIATION VERSUS BONTA



In September of 2019, Governor Newsom signed **AB 5 (Gonzalez)** into law, which went into effect January 1, 2020. The California Trucking Association (CTA) filed suit against the California Attorney General asserting that AB 5 is preempted under the Federal Aviation

Administration Authorization Act of 1994 (FAAA).

CTA was initially successful at the trial level and obtained an injunction from enforcement of AB 5 but lost at the 9th Circuit Court of Appeals.

On June 30, 2022, the U.S. Supreme Court denied CTA's Petition for Certiorari, effectively ending the case and the stay of implementation of AB 5 in the California trucking industry.

How does this affect truckers and the California supply chain?

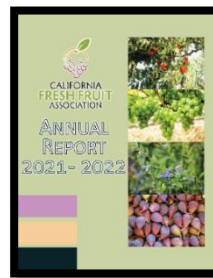
Unless some sort of administrative action is taken, Owner-Operator/Independent Truckers are now prohibited under AB 5. They will not qualify for the business-to-business exemption under AB 5 and cannot negotiate their own rates with the motor carrier pursuant to Federal law. Owner-Operators lease their services and trucks and lack independent operating authority. Further, the specific requirements of AB 5, which require a separate business location and contracting requirements, are also a barrier for owner operators due to the requirements of the FAAA.

After the decision was announced, CTA stated "In addition to the direct impact on California's 70,000 owner-operators who have seven days to cease long-standing independent businesses, the impact of taking tens of thousands of truck drivers off the road will have devastating repercussions on an already fragile supply chain, increasing costs and worsening runaway inflation."

Additional information on AB 5 can be found at (<https://www.labor.ca.gov/employmentstatus/>).

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CFFA RELEASES 2021/22 ANNUAL REPORT



CFFA has released its 2021/22 Annual Report. Each year, Association staff puts together a review of the previous fiscal year that highlights the challenges and accomplishments that faced the California fresh fruit industry. To access the report, please visit (<https://cafreshfruit.com/about/annual-reports/>). For questions, please contact Director of Member Services and

Communications, Courtney Razor (crazor@cafreshfruit.com).

CFFA MEMBERSHIP ROSTER NOW AVAILABLE

CFFA's 2022/23 fiscal year membership roster is now available. An electronic version of the roster has been sent out to each member company and hard copies are available to those who requested to receive one. If you would like a hard copy version of the membership roster, please contact Office Manager Allyson Calderon (acalderon@cafreshfruit.com).

