

California Farm Bureau

FRIDAY REVIEW

LEGISLATIVE AND GOVERNMENTAL UPDATE

June 18, 2021

Agricultural Employment

Cal/OSHA Standards Board Readopts COVID-19 ETS**:** On June 17, The Cal/OSHA Standards Board voted to readopt a revised COVID-19 Emergency Temporary Standard (ETS) proposed to the Board by Cal/OSHA (also see the revised ETS in strikeout/insertion format). Barring further action by the Board or by Governor Newsom, this iteration of the ETS will be effective for 210 days from the date of adoption – mid-January 2022. The California Administrative Procedures Act allows the Board to readopt the ETS one additional time. Under normal circumstances, an emergency temporary standard would only be effective for 180 days; Governor Newsom issued pandemic-related executive orders extending the timelines for various regulatory actions.

This action comes after two prior attempts to revise the ETS that did not comply with guidance from the U.S. Centers for Disease Control (CDC) and California Department of Public Health (CDPH) to the general effect that it is unnecessary for vaccinated persons to use face coverings. The first was proposed and withdrawn from Standards Board consideration by Cal/OSHA, the second was initially rejected by the Board, adopted later in the same meeting, and subsequently withdrawn from consideration by the Office of Administrative Law (OAL) by a vote of the Board before it became effective. Normally, the Board's June 17 readoption of the ETS would be subject to a 10-day OAL review and become effective by June 28. The Governor issued an Executive Order shortly after the Standards Board's action cutting off that review and making the readopted ETS effective immediately.

The readopted ETS has been changed in some positive ways, but also in some ways that will create problems that Cal/OSHA may (or may not) be able to address in guidance and frequently-asked questions (FAQs) published to its website:

- Requirements for physical distancing generally are deleted throughout the ETS, including requirements for spacing of beds and a ban on use of bunk beds in employer-provided housing;
- Employees regardless of vaccination status are no longer required to use face coverings when working outdoors;
- Vaccinated employees are no longer required to use face coverings indoors or in vehicles;
- Employers will still be required to provide face coverings to un-vaccinated employees and ensure their proper use except when employees are alone in a room of vehicle, or when eating or drinking so long as six-foot separation is maintained;
- Employers will be required to furnish face coverings to employees on request, regardless of vaccination status;
- Employer-furnish N95 respirators will be required to be in the correct size on request. In this situation, N95 respirators are used under conditions similar to voluntary use rules for dust masks

or use of respirators used in compliance with the Wildfire Smoke Regulation, except that employers will be required to train employees on determining an effect seal for the employee using the respirator;

- The requirement to install cleanable solid partitions in fixed work locations where it is not possible to maintain six-foot distancing is deleted;
- Vaccinated employees and employees who have recovered from COVID-19 and remained asymptomatic need not be excluded from the workplace and are not subject to the ETS' workplace exclusion and wage-replacement requirements;
- Vaccinated employees are also exempted from the original ETS' requirement to provide testing to non-symptomatic employees who experience a close contact.

The readopted ETS raises some new concerns for employers, namely, ascertaining vaccination status. In order to implement the new face masking requirement, it will be necessary for employers to ascertain an employee's vaccination status and to enforce the requirement for unvaccinated employees to use face masks properly. FAQs issued June 14 offer three possibilities for compliance with this requirement:

- The employee provides a vaccination card, image of the vaccination card, or some other health document indicating vaccinations for the employer's inspection, and the employer retains a copy;
- The employee provides proof of vaccination; the employer maintains a record of employees providing vaccination proof, but does not maintain a copy of the vaccination record itself; or,
- Employees self-attest to their vaccination and the employer maintains a record of employees' self-attestation.

It is important to note that the ETS does not prevent an employer from requiring masking of all employees rather than enforcing face covering for unvaccinated employees. *Staff: Bryan Little: 916-561-5622; blittle@cfbf.com*

Animal Health

AB 1103 (Dahle, R-Bieber) a bill which would create an "Ag Pass" to allow farmers, ranchers and eligible employees to access private property for the protection of livestock and commodities during a wildfire, has passed in the Senate Ag Committee and has been subsequently referred to the Senate Committee on Governmental Organization, and is recommended for Consent. Farm Bureau is in support of AB 1103. *Staff: Robert Spiegel at rspiegel@cfbf.com or 916-446-4647.*

Budget (*Wildfire Related Funding*)

Farm Bureau has recently submitted a letter supporting Governor Newsom's $1.5 billion budget framework for wildfire preparedness and community resiliency. Farm Bureau has been working with the California Building Industry Association, California State Association of Counties, Personal Insurance Federation of California and the American Property Casualty Insurance Association, among others, to move beyond just environmental and forest management objectives given the lack of meaningful progress in mitigating wildfire risk by the state. Communities, private property owners, timber companies and others continue to face astonishing challenges related to insurance, community protection, and emergency preparation. This coalition prioritizes the protection of private property, community infrastructure and the lives of Californians. We've asked for more resources related to community planning, creation of jobs within industries that have the capacity and expertise (timber, vegetation management, construction and engineering). We've also embarked on a process to develop home and community wildfire mitigation data

to help better inform insurers as to the wildfire risk of communities – with the goal of ensuring a robust private market of insurance availability. *Staff: Robert Spiegel at rspiegel@cfbf.com or 916-446-4647.*

Farm Bureau is also specifically supporting a coalition effort designed to provide economic stimulus for California's forestry industries. Within the $1.5 billion wildfire proposal is approximately $70 million for various activities that could benefit timber companies. Led by the California Forestry Association, Farm Bureau has joined their effort to ensure that the Governor Newsom recognizes the importance of the forestry industry to California meeting the wildfire mitigation goals. The coalition of stakeholders, including the Association of California Water Agencies, the Nature Conservancy and Rural County Representatives of California, have also been advocating for funding to offset transportation costs related to the procurement of wood waste for biomass energy generation. Given the diversity and expertise of this coalition, we feel confident that California's timber industry will receive a meaningful amount of economic stimulus from the state. *Staff: Robert Spiegel at rspiegel@cfbf.com or 916-446-4647.*

Climate Change

A bill creating a carbon sequestration goal for natural and working lands and a registry to connect investors with practitioners, **AB 27** (Nancy Skinner, D-Berkeley), has been recently amended. These amendments, which are non-substantive, would require additional analysis of impacts and an accounting of carbon sequestration for projects before they're placed on the registry. The bill is set to be heard in the Assembly Natural Resources Committee on June 23rd next week. As the author has taken significant amendments proposed, Farm Bureau has moved to neutral. *Staff: Taylor Roschen, troschen@cfbf.com or 916-446-4647.*

The State Air Resources Board will be meeting next week on Thursday, June 24th to discuss, among other things, an informational update provided by staff on the 2022 Scoping Plan update process. Friday Review readers may remember that ARB has hosted a series of workshops throughout this month on Carbon Neutrality (by 2045), Natural and Working Lands, Transportation, Electricity and Environmental Justice and Equity. All workshops and public comments were recorded and can be viewed here. More information on the specific item will be made available a day prior to the meeting. *Staff: Taylor Roschen, troschen@cfbf.com or 916-446-4647.*

Commodities

AB 535 (Cecilia Aguiar-Curry, D-Winters), a bill governing labeling on olive oil and California origins, has been postponed from being heard in Senate Agriculture Committee. The bill, which many County Farm Bureaus have engaged on, was set to be heard on Wednesday of this week, but the Chair has rescheduled it to be heard at the next hearing on July 1st. Amendments may be forthcoming in the interest of negotiating between the supporters and opponents. *Staff: Taylor Roschen, troschen@cfbf.com or 916-446-4647.*

Fertilizers

The California Department of Food and Agriculture is announcing three vacancies on the Fertilizer Inspection Advisory Board (FIAB) Technical Advisory Subcommittee related to plant nutrition and nutrient management. This subcommittee reviews all research and education proposals for the Department's grant program. Applicants must have technical, applied or scientific expertise in agronomy, soil science, plant physiology, production agriculture or environmental issues in pesticide use. The term is for three years. Interested parties should submit a resume and a completed

questionnaire to FREP@cdfa.ca.gov by July 14, 2021. *Staff: Taylor Roschen, troschen@cfbf.com or 916-446-4647.*

Food Safety

The California Department of Food and Agriculture and the Monterey County Farm Bureau is hosting a virtual townhall on June 21st from 1-2pm to present an interim report and talks from panelists on the California Agricultural Neighbors (CAN) regarding the shared responsibility of food safety between neighboring agricultural operations and discuss best practices. The 27-member CAN Dialogue Group includes representation from the agricultural production community (leafy greens, cattle ranching, viticulture, compost), academia, associations (industry, retail, consumers) and government (local, state and federal). Participants can join via Zoom or phone using the following information:

- Zoom meeting: https://www.zoomgov.com/j/16128653823
- Call-in number: (669) 254 5252 Meeting ID: 161 2865 3823

Following this town hall, the CAN will be hosting a broader series of subject matter expert panels on specific topics, including:

- June 30th 1-2:30pm: Reservoirs of *E. coli* O157:H7 and other STEC-- A series of speakers will share the research and current knowledge of E. coli O157:H7 in cattle and wildlife populations. They will cover the challenges and opportunities to reduce shedding of E. coli in cattle populations and will discuss the transference of pathogens among populations in a localized environment.
- July 7th 9-10:30am: Off-farm factors that may affect STEC movement on the landscape-- There are opportunities to share biosecurity best practices across agriculture disciplines. In this discussion, animal agriculture biosecurity practices will be shared to address practical, science-based solutions that can help reduce pathogen transference in the environment among neighboring agriculture operations. In addition, an overview of management practices will be shared by a local Salinas Valley cattle producer and an expert will shed light on regional climate and weather factors and how these may be important factors related to food safety.
- July 14th 9-11am: On-farm factors that may affect STEC survival and contact with produce-- The U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, Risk Assessment and Modeling team is uniquely focused on the issue of modeling for pathogen persistence and contamination of produce and will present some of their work that they have published recently in this regard. In addition, information will be shared on leafy green seasonality trends and learnings.

More information about this panels and how to view them will be available later. *Staff: Taylor Roschen, troschen@cfbf.com or 916-446-4647.*

Insurance

SB 11 (Rubio, D-Baldwin Park) has reached a re-negotiated agreement with the California Department of Insurance. SB 11 is Farm Bureau's sponsored legislation to authorize the California FAIR Plan to underwrite insurance coverage for commercial farms and ranches. The agreed upon language is primarily clarifying and intended to provide certainty as to the farm related components that would be eligible for coverage. The amended version of SB 11 has the support of Commissioner Ricardo Lara and the coalition is waiting to discuss next steps with the Governor's Office. *Staff: Robert Spiegel at rspiegel@cfbf.com or (916) 446-4647.*

Pollinators

A Farm Bureau supported bill, **AB 391** (Carlos Villapudua, D-Stockton) passed the Senate Agriculture committee unanimously and has now been assigned to be heard by the Appropriations Committee at a date to be determined. This bill would create a program at the Department of Food and Agriculture to incentivize private landholders to participate in state and federal pollinator habitat and forage establishment programs. The bill would provide $5 million General Fund to CDFA to do so. *Staff: Taylor Roschen, troschen@cfbf.com or 916-446-4647.*

Water

Governor Gavin Newsom announced the following appointments this week.

- **Nichole S. Morgan**, 46, of Sacramento, has been appointed to the State Water Resources Control Board, where she has been Assistant Deputy Director of Financial Assistance since 2019 and served in several positions from 2009 to 2019, including Supervising Water Resources Control Engineer in the Division of Financial Assistance, Water Resources Control Engineer in the Division of Water Rights and in the Office of the Delta Water Master, and Water Resources Control Engineer in the Division of Financial Assistance. Morgan held multiple positions at the California Regional Water Quality Control Board, Central Valley from 2011 to 2014, including Supervising Water Resources Control Engineer and Senior Water Resources Control Engineer. She was Project Manager VII at URS Corporation in 2009 and Project Manager III and Operations Manager at RMC Water and Environment from 2006 to 2009. Morgan was Project Engineer at Kimley-Horn and Associates from 2005 to 2006. She was Senior Civil Engineer and Departmental Construction and Maintenance Supervisor at the California Department of Parks and Recreation from 2004 to 2005. Morgan was Project Manager at Psomas from 2001 to 2004 and Assistant Civil Engineer at the Sacramento County Regional Sanitation District from 1999 to 2001. This position requires Senate confirmation and the compensation is $159,068. Morgan is a Democrat and replaces Tam Doduc on the Board in the Civil Engineer position, qualified in the fields of water supply and water rights. Her term expires January 15, 2025.
- **Thomas R. Gibson**, 53, of West Sacramento, has been appointed Chief Counsel at the California Department of Water Resources. Gibson has been Assistant Chief Counsel at the California Department of Fish and Wildlife since 2020. He held multiple positions at the California Natural Resources Agency from 2014 to 2020, including Deputy Secretary and Special Counsel for Water, Undersecretary and Deputy Secretary and General Counsel. Gibson held multiple positions at the California Department of Fish and Wildlife from 2007 to 2014, including General Counsel and Assistant Chief Counsel. He was a Partner at Best, Best & Krieger LLP from 2005 to 2008, where he was an Associate from 2002 to 2005. Gibson was an Associate at Hyman, Phelps & McNamara PC from 1999 to 2002 and at Kronick, Moskovitz, Tiedemann & Girard PC from 1997 to 1999. He earned a Juris Doctor degree from Northwestern School of Law of Lewis & Clark College. This position does not require Senate confirmation and the compensation is $189,996. Gibson is registered without party preference.

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As part of the North State Drinking Water Solutions Network and the ongoing efforts in the Sacramento River Basin to ensure safe and reliable drinking water, the Department of Water Resources, in coordination with the Water Board, is hosting the upcoming briefings. On June 29th and 30th the department will hold sessions to develop groundwater management principles and strategies to monitor, analyze, and minimize impacts to drinking water wells to ensure the potential impacts of drought on communities are anticipated and proactively addressed. For additional information and background go to: https://mydrywatersupply.water.ca.gov/report/.

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As a follow up to last week's reporting on the State Water Resources Control Board's Water Rights Fees Stakeholder meetings in Friday Review, the cost drivers for the projected fee increases are as follows: Upon further review by water board staff and conversation with them this week, staff said the difference in the 4.9% budget increase to the 6.3% projected fee increase is related to a structural deficit (revenues less than expenditures) in which fees last year were not fully raised and the shortage was deferred to this year. The actual impact for this revenue deferral is 2%. When this is added to the budget cost drivers, it equates to a 6.9% change:

- 3.6% Removal of Furlough Salary Savings
- 2.0% Structural Deficit Deferral
- 0.7% Pro Rata
- 0.6% State Operations
- 6.9% Net Change

Based on current revenue projections, staff is only projecting a need for a 6.3% increase at this time. *Staff: Danny Merkley, dmerkley@cfbf.com or (916) 446-4647.*

The California Water Commission has released its White Paper – "A State Role in Financing Conveyance to Meet Climate Change Needs". The White Paper, that was presented to the Commission at this week's meeting, describes the essential criteria for resilient water conveyance projects that meet the needs of a changing climate, the potential public benefits of such projects, and the implications of various financing options. *Staff: Danny Merkley, dmerkley@cfbf.com or (916) 446-4647.*