

COVID-19 UPDATE

Governor Newsom orders "Shelter-In-Place" in California; Agricultural Jobs deemed "critical infrastructure" and therefore essential; PACA Trust Important Update



Governor Newsom orders "Shelter-In-Place" for all Californians

Yesterday evening Governor Gavin Newsom ordered a statewide "Shelter-In-Place" to begin today. Despite these unsure times and the continually evolving situation surrounding the COVID-19 concerns, the California Apple Commission has continued to engage with both national and state public health and government leaders to advocate on the importance of maintaining operations at your individual facilities.

Below is information provided to us by Governor Newsom's Office regarding his announcement yesterday evening:

The Executive Order is attached and can be found here: <https://covid19.ca.gov/img/N-33-20.pdf>

More information on California's response to COVID-19 and other resources can be found here: <https://covid19.ca.gov/>

The Order uses the federal guidance on critical infrastructure sectors to define essential businesses and services. Information on critical infrastructure sectors can be found here: <https://www.cisa.gov/critical-infrastructure-sectors>

Agricultural Jobs Deemed “Critical Infrastructure” and Therefore Essential

The summary of critical infrastructure sectors in agriculture are defined as shown below. Additionally, attached to this email is a letter that you may complete with your company’s details and provide to your employees so that they may travel to and from work without any issue. If you have any questions regarding the use of this letter or the definitions listed below, please do not hesitate to contact us.

The summary of critical infrastructure sectors in agriculture are listed below:

Food and Agriculture:

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees-to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and block chain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

Critical Manufacturing:

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

PACA Financial Information Update

One of the most important regulations supporting the fresh produce trade is the Perishable Agricultural Commodities Act, and especially the PACA Trust. The PACA trust enables produce sellers to have first priority for repayment of debts in the event of a customer's bankruptcy. Produce sellers actually have higher priority than banks, tax payments or any other debts in the event of dissolution of assets to debtors.

We strongly advise you to be careful to not inadvertently waive your rights under the PACA trust. In discussions with the USDA PACA branch today, we have confirmed the following:

All produce sellers – whether growers, shippers, wholesalers, or others should NOT enter into extended payment terms beyond 30 days, before the initial 30-day payment period is past. We know that many companies want to cooperate with one another, but extending terms before the end of the 30-day period waives your PACA trust rights and the ability to have preferential trust rights in the event of your customer's bankruptcy.

However, regulations DO ALLOW a seller and buyer to agree to a partial payment plan or enter into a payment schedule AFTER the 30-day period without losing your PACA trust rights. The specific regulatory language provided to us from the USDA PACA branch is as follows:

Section 46.46.(e)3: If there is a default payment as defined in 46.46(a)(3), the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)1 and (2) of this section will not forfeit eligibility under they trust by agreeing in any manner to a schedule for payment of the past due amount or by accepting a partial payment.