

OSHA COVID EMERGENCY TEMPORARY STANDARD STAYED BY FIFTH CIRCUIT COURT OF APPEALS

November 12, 2021

By PCG staff

The Texas Cotton Ginners Association (TCGA) has summarized several key issues related to a recent announcement by the Occupational Safety and Health Administration (OSHA) which issued its COVID Emergency Temporary Standard (ETS) for general industry on Friday, November 5.

The new temporary rule, which was supposed to take effect immediately and compliance on some provisions to be achieved by December 5, was put on hold November 6 when the Fifth Circuit Court of Appeals granted an emergency stay of the rule. It is expected that the case will be put on a fast track since there may be other cases challenging the rule.

TCGA notes that even though the rule is “on pause” for now, it is important for cotton ginners and others in agriculture to understand what OSHA has proposed and begin determining whether a business or operation may be subject to the currently proposed rule.

Applicability to Agriculture

As TCGA continues to review the ETS, they note that it is important to understand the rule and its’ applicability to agriculture.

First, TCGA states that a cotton gin **IS** considered to be an agriculture industry, whereas, bale warehouses, elevators, stores, etcetera are not viewed as agriculture industry in OSHA’s eyes.

For purposes of the ETS, TCGA’s interpretation is a cotton ginning operation with no other operations should first determine if it supplies housing for gin employees. If the gin does not, then TCGA believes that the operation would not be subject to the ETS.

If the gin does maintain temporary housing for its employees, applicability would then be determined by the maximum number of employees on payroll during the proposed ETS time-period. Operations having less than 100 employees, would probably not be subject to the ETS.

TCGA notes that it has consulted with various attorneys who have agreed with this interpretation of agriculture applicability to the ETS.

However, alternate interpretations of applicability exist and there are some who have suggested that any agricultural operation with migrant housing would be subject to the ETS, regardless of whether they have 100 employees.

In more detail, the new standard states that the 1928 (Ag) industries must follow the new 1910.501 ETS if at least one of the following statements is true (see underlined below):

§ 1928.21 Applicable standards in 29 CFR part 1910.

(a) * * *

(8) COVID-19–§1910.501, but only with respect to –

(i) Agricultural establishments where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field; and

(ii) Agricultural establishments that maintain a temporary labor camp, regardless of how many employees are engaged on any given day in hand-labor operations in the field.

If one of the above statements is true for your business, then you are subject to §1910.501, in which Section 1910.501(b)(1) states:

§ 1910.501 (b)(1)

This section covers all employers with a total of 100 or more employees at any time this section is in effect.

The ETS follows the pattern of earlier executive orders and ETS’s that covered federal contractors and healthcare workers. This new ETS rule is very strict and is explicitly intended to preempt state and local authorities from adopting and enforcing workplace requirements related to this issue.

While intended to be a temporary rule, OSHA is in the process of establishing a final, permanent standard based on the new ETS. To that end, OSHA is currently seeking comment on all aspects of the ETS and how it would be adopted as a final standard.

Stakeholders may submit comments and attachments, identified by Docket No. OSHA-2021-0007, electronically at <http://www.regulations.gov/> Comments must be submitted by December 6, 2021.

TCGA's full explanation of the OSHA standard can be found at: <https://www.tcga.org/2021/11/06/osha-issues-emergency-temporary-standard-for-covid/>

HIGH PLAINS NEARING 50 PERCENT HARVEST THRESHOLD

November 12, 2021

By PCG staff

Producers on the High Plains have been taking advantage of good weather to advance the 2021 harvest. Based on field counts, the area appears to be getting close to the halfway point in the harvest.

Although some areas are well beyond fifty percent complete others are not quite as far along, as producers also continue to harvest some grain and peanut acres.

Despite a mostly stronger U.S. dollar for the week, amid inflation concerns, export demand remains strong providing underlying support for new crop cotton with the December 2021 contract still trading above \$1.17 per pound and the March 2022 contract closing at \$1.15 on November 12.

Crop quality on the High Plains continues to be excellent thanks to timely harvest and favorable weather conditions prevailing thus far.

The 10-day weather outlook for the region is currently calling for daily temperatures averaging 65 degrees for the high and nighttime lows averaging 38 degrees with mostly sunny weather conditions.

This continuation of favorable harvest conditions should keep most producers on track to finish with field operations by the end of November or early December.

2021 COTTON QUALITY REPORTS

The following is a summary of the cotton classed at the Lubbock and Lamesa USDA Cotton Division Cotton Classing Offices for the 2021 production season.

The complete weekly Classing Office reports for Lubbock, Lamesa and Abilene are available on the PCG website at: <https://plainscotton.org/quality-reports/>

2021 High Plains Cotton Quality Summary

Week Ending: 11/11/2021

<i>Office</i>	<i>Bales</i>	<i>Color</i>	<i>Leaf</i>	<i>Staple</i>	
<i>Lamesa</i>	98,016	21+ - 93.2% 31 - 0.8% 12 - 3.8%	1.77	35.81	
<i>Lubbock</i>	214,690	21+ - 88.7% 31 - 2.1 % 12 - 5.9%	2.20	36.23	
		<i>Mike</i>	<i>Strength</i>	<i>Uniformity</i>	<i>Bark</i>
<i>Lamesa</i>	3.98	30.35	79.52	2.6%	
<i>Lubbock</i>	3.78	30.30	79.91	5.4%	

Season Totals To Date:

<i>Office</i>	<i>Bales</i>	<i>Color</i>	<i>Leaf</i>	<i>Staple</i>	
<i>Lamesa</i>	299,556	21+ - 86.8% 31 - 0.7% 12 - 7.6%	1.83	36.03	
<i>Lubbock</i>	669,099	21+ - 77.3% 31 - 1.9% 12 - 12.9%	2.31	36.18	
		<i>Mike</i>	<i>Strength</i>	<i>Uniformity</i>	<i>Bark</i>
<i>Lamesa</i>	4.01	30.52	79.71	3.2%	
<i>Lubbock</i>	3.79	30.53	79.95	7.0%	

Source: USDA AMS

Editor's Note:

"Cotton News", a weekly service of Plains Cotton Growers to the cotton industry and news media in the 42-county High Plains area, is mailed from Lubbock each Friday. Its contents are confined to news items and comments pertaining to the High Plains cotton industry which is so vital to U.S. all. Anyone interested in making comments about the contents of this column can call 806-792-4904 or Email PCG at: website@plainscotton.org