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**Subject:** California State University - Wildfire Smoke Regulation Comments  
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[Chico State - comments on the proposed Wildfire Smoke permanent rule.docx](#)

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October 1, 2019

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### **RE: Permanent Regulation re Wildfire Smoke Protections**

The 23 Campuses of the California State University (CSU) and the Office of the Chancellor have concerns with the Proposed Revisions to Emergency Regulation Section 5141.1. It could impact the Campuses' ability to provide essential services for its 481,000 students and over 94,000,000 Gross Square Feet of facilities. The services include those for students living on-campus who may have few off-campus options for temporary housing during a wildfire smoke event.

#### Use of Existing Air Quality Monitoring Infrastructure

The present language does not authorize use of air quality monitors which are closer to the worksite than approved monitors, because there is no provision allowing use of nearby monitors which are not on site.

In order to allow the use of existing air monitoring tools that are already in place, we ask that section (d) of the Discussion Draft Rule be amended as follows:

(3) Measure PM<sub>2.5</sub> levels at, **or within a reasonable proximity of**, the worksite and convert the PM<sub>2.5</sub> levels to the corresponding AQI in accordance with Appendix A.

Or, alternatively, we propose adding the following subsection:

(4) **Obtain air quality data from air quality monitoring devices within a reasonable proximity of the worksite and, if necessary, convert the PM<sub>2.5</sub> levels to the**

corresponding AQI in accordance with Appendix A.

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#### Clarifying Appendix B Requirements

Appendix B should inform employees of requirements of the mandatory respirator threshold that may be controversial, such as being sent home or being forced to utilize protective equipment they may not want, or potentially shaving facial hair to continue to work.

So, Appendix B should warn employees, that in order to work at an AQI of 500:

- They may be required to shave their face in order to continue working, as this is required for functionality of some respirators;
- Employers may opt to provide required medical evaluations and fit-testing, or may cease outdoor operations.

This information will help employees and the Campuses prepare.

#### **Proposed Substantive Changes for Later Rulemaking**

##### Do not Change AQI Thresholds from 150 and 500

The Discussion Draft Rule contains significantly lower AQI thresholds for PM2.5 than the Emergency Rule. These new proposed thresholds are overreaching, will not benefit workers, and will result in challenges and potential substantive business interruption expenses in conducting Campus operations during wildfires. One might argue, this is an unfunded mandate.

##### The Mandatory Respirator Threshold Should Remain at 500.

The burden on Campuses to comply with a shift in the mandatory respirator threshold from 500 to 300 AQI would be considerable. For example:

- Fit testing takes approximately 15-20 minutes, and requires that employees shave their facial hair. Many employees enjoy their facial hair, and are concerned that employer demands to shave, especially in an urgent manner, are problematic. There is also a risk that anti-discrimination laws may protect facial hair and add additional litigation risks in the event that employers ask or compel employees to shave their facial hair
- Medical evaluations require individual assessments by a physician or licensed healthcare professional considering the individual's health, job responsibilities, respirator type, and conditions. Accomplishing this for potentially hundreds of employees in the event of a wildfire is logistically and financially infeasible.
- The use of respirators by campus employees may create an expectation by students and other non-employee members of the campus community to be provided respirators and these populations generally do not have adequate training to make decisions regarding proper respirator use or to use them safely.

For these reasons, we believe the 500 threshold is appropriate. It ensures that employees have access to respirators at lower levels (beginning at 150 AQI), and will continue to have access to respirators up to an AQI of 500. Simultaneously, it also recognizes the disruption that a 300 AQI would pose to Campus operations.

##### The Voluntary Respirator Threshold Should Remain at AQI 150.

The AQI assumes a 24-hour exposure, rather than an 8-hour exposure period, which Cal/OSHA uses as a standard to assess harm from airborne exposures. We ask that the Standards Board

not lower the AQI threshold to 100 for the following reasons:

- The AQI was not designed to measure and assess harm for employee exposures over one hour (the threshold for the regulation's application).
- Subsection (c) of the Discussion Draft Rule forces employers to supply respirators to all of their workers whether or not they are vulnerable or sensitive individuals, and thus wastes respirators, adds costs and detracts resources for more pressing wildfire smoke event response efforts.
- Lowering the AQI threshold to 100 will result in more confusion over when the rule is triggered. In many areas/regions of California the non-smoke related daily air quality is above AQI 100 vs the less commonly reached AQI of 150. For example, the San Joaquin Valley area experiences approximately 30 days per year with an AQI above 100. This rule would change the paradigm of what is, and isn't healthful PM; such a shift should be evaluated as to health impacts. Without an objective trigger, this leaves Campuses uncertain as to whether they should "reasonably anticipate" a wildfire is causing the AQI increase.

### **Creation of New "100-150 AQI Tier" Unnecessarily Complicates the Discussion Draft Rule**

We believe the addition of a new tier of obligations (100-150 AQI) is not productive and adds unnecessary complexity to this rule. As a preliminary matter, we do not believe an expansion of the rule to include AQI's as low as 100 is justified, as discussed above. However, more broadly, the creation of this additional tier is ambiguous and should be clarified.

AQI tier 100-150, as drafted, claims to waive the application of two Subsections ((d) and (e)) but will in fact not change the burden. Subsection (d) will still require Campuses to monitor the AQI at the start of each shift. Similarly, Subsection (e) will still require Campuses to establish a communications protocol to provide AQI information to employees at the start of their shifts.

### **Minimum MERV levels**

We are concerned with the implications of incorporating minimum MERV standards into the Discussion Draft Rule related to vehicles and structures. We have considerable concern that air filtration equipment is not so standardized between structures and vehicles that they are easily interchangeable, making any broad rule inherently problematic. As the Discussion Draft Rule was only released August 13, 2019, and we have not had time to complete the comprehensive analysis necessary to fully comment on the scale of this change, its costs, and its effects, below is provided a list of variables which we believe should be considered by the Division in this area:

- The present levels of MERV filtration are already in existence across the CSU System
- The effectiveness of different MERV filtration devices, as compared with voluntary respiratory use
- The effectiveness of different MERV filtration devices, as compared with medically evaluated and fit-tested respirator use
- The cost of upgrading filtration in every building across the CSU System to any given MERV level
- The present levels of filtration in the CSU fleet
- The costs to upgrade or replace the vehicle fleet to different MERV thresholds

- The time necessary for such upgrades to be undertaken across the System
- Differences in MERV/filtration feasibility in vehicles and structures, related to size, shape, and other physical constraints

### **Procedural Concerns Regarding the Emergency**

We are concerned with the apparent intent of moving quickly through to the passage of the permanent rule and then addressing most issues subsequent to a permanent rule being in place. As a matter of process, both our public comment period input and the Standards Board expressed discontent with the rushed final stages of the emergency regulation's passage and the resulting substantive issues therein. To base the permanent regulation's text on this rushed framework, then rush the permanent regulation into place without an opportunity for a thorough review and revision is procedurally and substantively concerning. We hope that the Division and the Standards Board will, to the best of their abilities, preserve the opportunity for a thorough consideration of the Discussion Draft Rule prior to passage into a permanent rule.

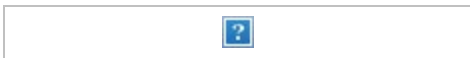
Attachments:

- Chico State – comments on the proposed Wildfire Smoke permanent rule

Note – Chico State suffered significant impacts from wildfire smoke during the Camp Fire that devastated Paradise CA.

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Chico State University comments on the proposed Wildfire Smoke permanent rule:

- Respirator fit testing:

The job or position descriptions for many of the CSU affected employees (at 300 AQI) do not have “ability to wear a respirator” as a requirement. Changing these job and positions descriptions will require an extensive meet and confer process, thus making the proposed timeline impractical.

- Expectations for respirators by students:

The expectation could lead to distribution of masks for approximately 16,000 to 18,000 students. During a multi-day smoke event, this would be a huge logistical challenge to purchase, store, and then try to distribute to thousands of students.

- Minimum MERV levels

The ingress/egress from sizable buildings servicing thousands of employees and students could negate increased MERV filtration levels.