



September 20, 2019

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Via Email: [ANeidhardt@dir.ca.gov](mailto:ANeidhardt@dir.ca.gov)

RE: Request for Information, Proposed Revisions to Emergency Regulation General  
Industry Safety Orders Subchapter 7, Group 16, Article 107, Section 5141.1  
Protection from Wildfire Smoke  
August 13, 2019

Dear Amalia:

ORCHSE Strategies, LLC (ORCHSE) appreciates the opportunity to comment on the California Division of Occupational Safety and Health (Cal/OSHA) Request for Information on the Proposed Revisions to Emergency Regulation Section 5141.1 Protection from Wildfire Smoke.

ORCHSE became an independent enterprise on January 1<sup>st</sup>, 2014. As the successor to ORC Worldwide and Mercer HSE Networks, ORCHSE has provided a wide array of specialized occupational safety and health services to global businesses for more than 45 years. Currently, more than 110 large (mostly Fortune 500) companies in diverse industries are members of ORCHSE Occupational Safety and Health and Western States Occupational Safety and Health Networks. The focus of these groups is to promote effective and efficient occupational safety and health programs, policies, and practices, to facilitate constructive communications between businesses and government agencies responsible for establishing national occupational safety and health policy, and to advocate responsible business positions on Agency rulemaking. The activities of ORCHSE's Occupational Safety and Health Networks are based on the premise that providing safe and healthful working conditions is the mutual concern of employers, employees, and government agencies.

ORCHSE's comments are solely its own and may differ from some of the views and comments of individual member companies.

## **Background**

It is well known that ORCHSE's predecessor organization, ORC Worldwide, had been one of the key contributors to and supporters of OSHA at both the Federal and State level in providing comments and insight on Agency rulemaking and enforcement activity. ORCHSE continues to believe that constructive input from our organization and its member companies contributes to better and more effective Cal/OSHA rulemaking.

ORCHSE appreciates the circumstances under which Cal/OSHA has undertaken this important emergency and subsequent permanent rulemaking initiative to address informing and protecting employees from wildfire smoke.

## **ORCHSE General Comments**

**1. The definition of wildfire smoke is overly broad and lacks clarity for understanding by employers and employees.**

The definition should be limited to "emissions from fires in "wildlands" as defined in Title 8 Section 3402" (which reads, Wildlands. Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof). The addition of the phrase "or in adjacent developed areas" lacks clarity and could be interpreted to include a great many municipal structure fires that have some undefined proximity to actual wildlands.

**2. Exempted workplaces and operations should be amended to include utility restoration workers.**

Utility restoration workers frequently work directly with firefighters to protect firefighters from electrocution and other utility-based hazards. Where two groups of workers work closely with one another, it makes no sense to exclude only one group from this regulation. Under Section 5144, utility restoration workers would still have access to voluntary and required respiratory protection programs.

**3. The focus on sensitive individuals while using an environmental air contamination metric is problematic with respect to voluntary use and mandatory use thresholds for respirators.**

AQI for PM2.5 is an environmental metric intended to provide guidance for health impact that is built on the assumption of virtually continuous exposure. Occupational exposures are based on the premise of a workday with some period of non-work and recovery. Occupational exposure protection focuses on the typical healthy worker, with a recognition that sensitive individuals exist and require additional protective measures. This is built into Section 5155. To change the focus point in a new regulation with overlapping and duplicative sections versus both Sections 5155 and 5144 will create a lack of clarity and confusion. Following the long established and logical differences between environmental and occupational exposures, we recommend that Section 5141.1 voluntary level regulatory threshold be at AQI PM2.5 = 151 (Unhealthy), and that the threshold for mandatory respirator use be set to AQI PM2.5 = 301 (Hazardous).

4. **The respiratory protection provisions create an unworkable lack of consistency between Section 5144 Respiratory Protection and Section 5141.1 Protection from Wildfire Smoke.**

Having two regulations that address respirator use in different ways creates sure-fire confusion and lack of clarity for employers, employees, and OSHA enforcement personnel. The best approach would be a minor update to Section 5144 listing wildfire smoke protection emergencies as voluntary use point (5). Delete all respirator use provisions from Section 5141.1 except the triggering thresholds for voluntary and required use. This is also where waivers of any portion of Section 5144 due to a wildfire smoke emergency should be listed. This is one of two steps we will discuss that would allow for simplification of Section 5141.1 Appendix B that is currently too long and lacks clarity.

It should also be noted that waiving the requirement to shave facial hair is a dangerous one in an emergency setting where employees will be lightly supervised, or often generally unsupervised while working. Section 5144 and all reputable literature points out that facial hair prevents a facepiece seal, and causes a potentially significant reduction in respiratory protection effectiveness. This is effectively giving employees a false sense of security. We understand this is not an easy issue where collective bargaining, religious and other concerns need to be considered. An advisory committee is recommended for this issue.

5. **Section 5141.1 should explicitly recognize that workers exposed to arc flash hazards are not required to wear respirators due to the greater hazard presented.**

There are currently no respirators approved for arc flash protection. Mandating respirator use by workers potentially exposed to arc flash at all times carries the risk of melting or burning the respirator against the face – something we should all agree is a greater hazard than wildfire smoke. The proposal to revise language requiring the employer to demonstrate the greater hazard in each situation is a duplication of work that will waste precious resources unnecessarily. Therefore, the exception outlined in Section 5141.1 (g)(4)(B) should be rewritten as follows:

Respirator use is not required if the employees are exposed to arc flash hazards.

6. **Demand for respirators may far outstrip supply very quickly.**

Past events including fires and pandemic disease have demonstrated that the demand for N95 and similar respirators in emergencies can quickly surpass available local, regional and potentially national supplies. This has significant compliance considerations for employers. Some utilities report stockpiles of up to 100,000 respirators, but calculate this may be only a few days to a week supply in a wide-spread emergency. How much stockpile, at what cost, and where it should be located are not sufficiently addressed to avoid a lack of clarity for employers. Supply also has significant healthcare potential impacts since emergency demand for respirators will at least in part compete for the same respirators hospitals and other healthcare facilities use for control of airborne infections. Will employers be cited for not having respirators to provide to employees when all supplies have been exhausted? Would this mean that work must stop or be rescheduled (if possible)? Would this include emergency restoration workers? These are among the questions

that must be thought through and answered in the regulation or supporting guidance.

7. **Appendix B provisions for communicating information on the employer plan for wildfire smoke protection are duplicative of the requirements in Section 3203 Injury and Illness Prevention Program, and should be removed.** Appendix B in part attempts to create a handout to be given to employees with information about the employer's wildfire smoke protection plans. The vast majority of employers, if not all, will integrate provisions for protection from wildfire smoke into their IIPP. IIPPs must include provisions for communication with employees, and many employers use simple provisions such as Tool Box Meetings or online resources to communicate hazard and protection measures to employees. Section 5141.1 should simply require wildfire smoke protection provisions to be added to IIPPs, and could note that where an IIPP does not exist, then a separate plan and communication process will be required. Then eliminate the planning/communication parts of the Appendix B of Section 5141.1. This is the second of our recommendations that would help to simplify Appendix B.
8. **Section 5141.1(d) should be revised to require employers to determine employee exposure to PM2.5 "before each shift and periodically thereafter, such as every 4 hours", instead of "at the start of each shift..."**.  
At start of shift allows no time for any planning that may be needed to activate required provisions before employees start work.
9. **Proposed 5141.1(f) should be revised to call for "effective instruction" regarding voluntary use of respirators, as opposed to, the current text "effective training and instruction"**.  
Provisions of Section 3203 IIPP have specific qualifications for trainers that would be triggered by the training and instruction language. Given the unpredictable nature of wildfire emergencies, there will be a lack of clarity regarding how employers are to provide such training. The proposed requirements of Section 5141.1 conflict with the requirements spelled out in Section 3203. Are employers to comply with Section 5141.1, in potential violation of Section 3203, due to the wildfire emergency, or are they to violate Section 5141.1 by delaying instruction while implementing the voluntary respirator provisions?
10. **Permanent Section 5141.1 should be revised to provide suitable time for facility owners to assess, re-design, upgrade, and where necessary, replace HVAC systems that do not have the design capacity to simply add high-efficiency filtration systems. A 3-year period for compliance may be appropriate given the wide applicability of the rule that will create competition for limited HVAC engineering resources. None of these design considerations can be addressed until Section 5141.1 is revised with MERV specifications that will be required.**  
We concur with and incorporate the Emergency Rule comments from the Ventura County Office of Education, which will also represent the situation many other facility owners will face:

*The proposed regulations also incorporate a migration to the use of upgraded air filters. Many of our local school districts have informed us of the difficulty to upgrade*

*because their existing systems lack the capacity for the new filters. In order to meet these requirements, they would need to completely overhaul and/or replace these systems; requiring both time and money better spent on our children's education. If this proposed regulation becomes reality, will funding be provided to upgrade these systems?*

- 11. Permanent Section 5141.1 should be revised to require employers to instruct sales, service, and other field workers that windows and doors in vehicles and non-controlled facilities should be kept closed to the degree possible to minimize entry of wildfire smoke, as opposed to current requirements that they ensure vehicles and non-controlled facilities are kept closed.**

This type of employee typically works in a generally unsupervised status, so on a practical basis, it is not feasible for the employer to “ensure” closure status. One way to address the concern for these remote workers would be to add a provision that employers must include a process for remote workers to notify the employer about adverse conditions at facilities where they are working, so the employer can attempt to resolve with the owner or withdraw employees.

Thank you for the opportunity to comment. Please contact us if you have questions regarding any of our comments.

Sincerely,



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