



WORKSAFE
safety, health and justice for workers
seguridad, salud y justicia para los trabajadores



California Rural Legal Assistance, Inc.



CENTRAL CALIFORNIA
ENVIRONMENTAL JUSTICE NETWORK

USW
Local 675
District 12



NATIONAL
EMPLOYMENT
LAW
PROJECT

July 7, 2025

RE: Public Comment Letter for AB 2243 draft language for section 5141.1

Dear Eric Berg and Johnna Landaverde:

Thank you for the opportunity to comment on draft proposed revisions to Cal-OSHA regulation **§5141.1. Protection from Wildfire Smoke**. Our comments address both increasing required protections for outdoor workers from the harmful effects of exposure to wildfire smoke and the enforceability of a standard that to date has had a dismal compliance record, especially in agriculture.

The proposed suggestions will clarify and improve language in the standard. Since 2020, Worksafe, CRLAF, and others have raised implementation issues with the language in the standard and advocated for changes due to worker advocates' reports of weak enforcement.

The suggestions provided below tighten up the regulatory language, which will allow both Cal/OSHA inspectors and businesses to understand exactly what is required.

Ambiguity invites inconsistency, which undermines trust in the regulatory system. With clear standards, enforcement is more likely to be applied regularly and consistently.

(a) Scope

The scope of the regulation should be revised to apply when the current Air Quality Index (AQI) for PM2.5 is 101 or greater, the level “Unhealthy for Sensitive Groups,” because many workers have pre-existing health conditions which increase the risk of developing or exacerbating health problems due to wildfire smoke exposure.

According to the American Lung Association, at an AQI of 101 to 150, children, active adults, and people with respiratory disease such as asthma should limit prolonged outdoor exertion.¹ Outdoor and agricultural workers are active adults,² and many workers may have pre-existing health conditions.³ Furthermore, wildfire-specific PM2.5 can cause a greater impact on respiratory health,⁴ and generally, epidemiological studies show that exposure to wildfire smoke results in respiratory issues.⁵ Therefore, the regulation should be revised to apply when the current Air Quality Index (AQI) for PM2.5 is 101 or greater, the level “Unhealthy for Sensitive Groups.” It is also worth noting that the AQI is designed to advise members of the public whether to spend a few hours outdoors despite the smoke, rather than recommending whether to spend an entire, strenuous workday in the contaminated air.

(b) Definitions

To improve clarity and enforceability we propose adding the following definitions. Note that the definition for Harmful exposure is drawn from the already existing appendix to this regulation. While the appendix to this regulation is considered part of the regulation, it is important to add the definition of harmful exposure to the standard itself - otherwise harmful exposure is not defined within the operative text of the regulation, which can create uncertainty during interpretation, enforcement, and compliance efforts. It is also apparent that “provision of respirator” leaves too much room for interpretation, as reported by farmworkers.

Harmful exposure. Harmful exposure to wildfire smoke in the workplace includes exposures to particulate matter that can irritate the lungs and cause persistent

¹ Air Quality Index, American Lung Association (Sep. 18, 2024) <https://www.lung.org/clean-air/outdoors/air-quality-index>.

² Patient Exposure and the Air Quality Index, EPA (March 20, 2025) <https://www.epa.gov/ozone-pollution-and-your-patients-health/patient-exposure-and-air-quality-index#:~:text=For%20most%20adults%2C%20activities%20that,wheezing%2C%20or%20shortness%20of%20breath>.

³ Migrant and Seasonal Farmworker Health, Rural Health Information Hub (March 17, 2025) <https://www.ruralhealthinfo.org/topics/migrant-health>; See also at Sally Hargreaves et al., *Occupational Health Outcomes Among International Migrant Workers: A Systematic Review and Meta-Analysis*, 7 *The Lancet Glob. Health*, e872, e975 (2019) (discussing two studies with similar outcomes - studies of agricultural workers assessing distinct outcomes such as pulmonary function and respiratory symptoms, which Flunker and colleagues reported in 79% of workers).

⁴ Rosana Aguilera et al., *Wildfire Smoke Impacts Respiratory Health More than Fine Particles from Other Sources: Observational Evidence from Southern California*, 12 *Nat Commun* 1493, at 4 (2021) (discussing how wildfire-specific PM2.5 can cause a greater impact on respiratory health than PM2.5 from other sources).

⁵ Colleen E. Reid et al., *Critical Review of Health Impacts of Wildfire Smoke Exposure*, 124 *Environ Health Perspect* 1334, 1336-39 (2016).

coughing, phlegm, wheezing, or difficulty breathing. Particulate matter can also cause more serious problems, such as reduced lung function, bronchitis, worsening of asthma, heart failure, and early death. People over 65 and people who already have heart and lung problems are the most likely to suffer from serious health effects.

Provision of respirator. Provision of a respirator means issuing a respirator directly to an employee.

(e) Training and Instruction

Many agricultural workers report being sent into fields during very smoky conditions without receiving any training in the health effects of wildfire smoke exposure, the right to obtain medical care, the importance, limitations and benefits of using a respirator, or how to inform the employer if air quality is worsening or the fire is getting closer. These experiences illustrate that the current requirement for providing training to outdoor workers when the AQI for PM_{2.5} reaches or exceeds 151 is failing to protect workers.

We propose requiring training before wildfires occur, and adding requirements for training in emergency action procedures, including how evacuation will be conducted if needed. We recommend the following revisions, which are aligned with the language in the Illness and Injury Prevention Program:

(e) Training and instruction. As required by section 3203, the employer shall provide employees with effective training and instruction in a language and manner readily understandable by employees. At a minimum, this shall contain the information in Appendix B and will include emergency action plan procedures including procedures for evacuation of a work area if needed. Trainings will be conducted where the AQI for PM 2.5 is 101 or greater:

1. Annually to current employees
2. To all new employees
3. To all employees given new job assignments for which training has not previously been received
4. For supervisors to familiarize themselves with harmful exposure of wildfire smoke that employees under their immediate direction.

(f) Control of harmful exposures to employees.

As explained above under Scope, the trigger for controlling exposure of workers by engineering controls, such as air filtration indoors and in vehicles, administrative controls including relocating employees to areas where the AQI for PM 2.5 is lower or for providing respirators for voluntary use, should be reduced to the AQI for PM 2.5 of 101, the level unhealthy for sensitive groups.

Section (f)(2) Administrative Controls should be revised to add a requirement for paid hourly rest periods of at least 10 minutes when working in areas where the AQI for PM

2.5 is 101 or above due to wildfire smoke because of increased heat stress when wearing a respirator. The heat regulation includes a similar requirement for paid rest breaks of at least 10 minutes in high heat every two hours, but wearing PPE at lower temperatures causes heat exhaustion faster.⁶

Section (f)(3) Control by Respiratory Protective equipment should be revised to specify that employers shall provide and issue respirators to all employees free of charge for voluntary use. The regulation should also be revised to specify: Respirators shall be cleaned or replaced daily at the start of the workshift or more frequently as needed, stored, and maintained, so that they do not present a health hazard to users.

These revisions are needed to make it clear that “providing respirators” means that they need to be issued to employees rather than merely be available (such as in a supervisor’s truck), that it is illegal to charge for respirators, and to specify the necessary or appropriate replacement or cleaning intervals. We conclude that the regulation needs to specify that respirators must be provided free of charge because many agricultural workers have reported during past wildfires that their supervisors made them pay for respirators.

We agree with the Division’s conclusion that no worker should be required to wear a respirator unless they have a medical evaluation because some health conditions make using a respirator dangerous.

Written program is needed

We also urge the Division to add a requirement for employers to establish, implement and maintain a written program for controlling wildfire smoke exposure if they can reasonably anticipate that they may have employees working outside when the AQI for PM 2.5 may exceed 101 due to wildfire smoke. The proposed regulatory text aligns with other regulations in Title 8 that require written prevention programs but that incorporate the provisions of the wildfire smoke standard. We propose the following regulatory text:

(g) Wildfire Smoke Illness [or Harmful Exposure] Prevention Program

Any employer who can reasonably expect to have employees working outside when the AQI for PM 2.5 may exceed 101 due to wildfires smoke shall establish, implement, and maintain, an effective wildfire smoke harmful exposure [or illness] prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Wildfire Smoke Illness [or Harmful

⁶ See CDC, *PPE Heat Burden*, (Aug. 19, 2024), <https://www.cdc.gov/niosh/heat-stress/recommendations/ppe.html>; See also Zhaosong Fang et. al., *Human Thermal Physiological Response of Wearing Personal Protective Equipment: An Educational Building Semi-Open Space Experimental Investigation*, 877 *Sci. of the Total Env't* 162779 (2023) at 9 -14 (finding that PPE use while working outdoors lowered the threshold of acceptable temperature, with mean skin temperature rising and stabilizing only after 60 minutes after removal of PPE, and demonstrating that PPE reduces acceptable working temperature thresholds from standard levels to 24.5 °C at a 50% unacceptability rate).

Exposure] Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain:

(1) A system for communicating wildfire smoke hazards in a language and manner readily understandable by employees referred to in subsection d, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the workplace without fear of reprisal that includes all procedures described in 5141.1 d.

(2) Training and instruction in accordance with subsection e, and in Appendix B.

(3) Emergency Response or emergency action plan procedures including procedures for evacuation of a work area if needed.

(4) Control of harmful exposure methods and procedures in accordance with subsection (f) including but not limited to how respirators will be provided or issued for voluntary use if exposure to an AQI for PM 2.5 of greater than 101 can not be prevented.

Rest breaks tied to respirator use

We propose a new subsection, (i), to create a mandatory hourly paid rest break with respirator use. Farmworkers that want to use respirators as a form of protection have reported that when it is hot, it is difficult to breathe in the respirator, and that breaks are necessary to avoid injurious health impacts.⁷ Farmworkers have reported difficulty breathing and fainting. When breaks are not provided, farmworkers are disincentivized to use the PPE that would provide them the protection they need from wildfire smoke exposure.

Cal/OSHA has already enacted a provision in the outdoor heat regulation to require preventative cooldown rest breaks every 2 hours when the temperature is 95 degrees Fahrenheit. This temperature would be excessively high for farmworkers wearing respirators. This is why we recommend the provision be triggered at an AQI of 101 - at the proposed voluntary respirator use trigger. This rest break would be provided to those wearing the respirators.

(i) For employees employed in agriculture, the following shall also apply:

When employees use respirators while working outdoors due to hazardous air quality conditions, the employer shall ensure that the employee takes a minimum ten minute net preventative rest period every one hour. The preventative paid rest period required by this paragraph may be provided concurrently with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8 CCR 11140) if the timing of the preventative rest period coincides with a required meal or rest period thus resulting in no additional preventative cool-down rest period required in an eight hour workday. If the workday will extend beyond eight hours, then an additional preventative rest period will be required at the conclusion of the eighth hour of work; and if the workday extends beyond ten hours, then another preventative rest period will be required at the conclusion of the tenth hour and so on. For purposes of this section, preventative cool-down rest period has the same meaning as "recovery period" in Labor Code Section 226.7(a). Upon an employee's request, a preventive rest period shall be provided as soon as practicable, but in no case longer than fifteen (15) minutes after the

⁷ *Id.*

request is made. During preventative rest periods, employees shall have access to potable drinking water.

(j) Exclusion pay for agricultural workers - mandatory evacuation zones

We propose a new subsection (j) that specifies provision of exclusion pay for agricultural workers who may otherwise be required to work in a mandatory evacuation zone. There are many farmworkers who have reported that they have been in dangerous and unsafe work environments during an active wildfire being exposed to a lot of smoke while working in a mandatory evacuation zone. They are unable to decline the work because it is infeasible economically, and farmworkers fear both retaliation for declining to come to work and not being asked to come back to work. This is a reasonable fear because Worksafe has had reports that farmworkers who did decline unsafe work conditions like this were told they were being provided a “last” paycheck and not asked to return back to work. Furthermore, Labor Code section 1139 mandates that an employer shall not take or threaten adverse action for refusing to report or leaving a worksite when there is an emergency condition like a mandatory evacuation zone and more. This exclusion pay would be consistent with Labor Code section 1139 that flags these worksites as unsafe and would provide employees with the financial ability to refuse unsafe work and return to work once workplace conditions are safe. We recommend that the exclusion pay provision reference this Labor Code section 1139 for continuity and consistency.

(j) Employers shall exclude agricultural employees from the worksite when there is a mandatory evacuation order in place due to an active wildfire in the area.

(1) For employees excluded from work under subsection (j) employers shall continue and maintain an employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave for this purpose to the extent permitted by law. Wages due under this subsection are subject to existing wage payment obligations and must be paid at the employee's regular rate of pay no later than the regular pay day for the pay period(s) in which the employee is excluded. Unpaid wages owed under this subsection are subject to enforcement through procedures available in existing law. If an employer determines that one of the exceptions below applies, it shall inform the employee of the denial and the applicable exception.

Note: Reference Section 1139, Labor Code.

(k) Exclusion pay for agricultural workers - AQI >500

We propose a new subsection (j) that creates exclusion pay for agricultural workers when the AQI exceeds 500 at their worksites, with an exception to this rule so long as the employer follows subsection (f)(3)(B) where the employer must require employees

to have medical evaluations to determine their fitness for respirator use and a fit test of respirators so that they have a proper seal for effective protection.

Furthermore, it is critical that employers provide information and train employees who are working where the AQI exceeds 500 or working inside mandatory evacuation zones. While employers must provide this information beforehand, it may be necessary to make clear in this provision that this is required. Cal/OSHA should strongly consider giving serious citations under this provision when employers violate this subsection.

(k) Employers shall exclude agricultural employees from the workplace when the Air Quality Index (AQI) for PM 2.5 reaches 500 or above at the work location resulting from an active wildfire. Employers shall exclude these agricultural employees under (k) until air quality conditions improve, unless one of the exceptions in subsection (1) applies.

(1) Exception: When the Air Quality Index (AQI) for PM 2.5 reaches 500 or above at the workplace, an agricultural employee may choose to work. The employer must comply with subsection (f)(3)(b) if the employee is not excluded.

(A) If the employer does not exclude an employee when AQI conditions at 500 or above the employer shall provide the employee with medical evaluation and fit-testing for respirator use and information about wildfire smoke health risks, proper use of respiratory protection, and, any applicable precautions recommended by the California Office of Emergency Services including but not limited to training on the employer's evacuation plan.

(2) For employees excluded from work under subsection (k), employers shall continue and maintain an employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave for this purpose to the extent permitted by law. Wages due under this subsection are subject to existing wage payment obligations and must be paid at the employee's regular rate of pay no later than the regular pay day for the pay period(s) in which the employee is excluded. Unpaid wages owed under this subsection are subject to enforcement through procedures available in existing law. If an employer determines that one of the exceptions below applies, it shall inform the employee of the denial and the applicable exception.

Note: Reference Section 1139, Labor Code.

Thank you again for this opportunity to comment. We look forward to participating in an advisory committee meeting when it is convened.

Sincerely,

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