

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)*

EMERGENCY

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2019-0719-04E
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

2019 JUL 19 A 11:36
OFFICE OF
ADMINISTRATIVE LAW

JUL 29 2019
At 1:40 pm

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
Occupational Safety and Health Standards Board

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Protection from Wildfire Smoke	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADAPT New Section 5141.1
	AMEND
	REPEAL

3. TYPE OF FILING	ADAPT	AMEND	REPEAL
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Christina Shupe	TELEPHONE NUMBER (916) 274-5721	FAX NUMBER (Optional) (916) 274-5743	E-MAIL ADDRESS (Optional) cshupe@dir.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Christina Shupe</i>	DATE 7-18-2019
TYPED NAME AND TITLE OF SIGNATORY Christina Shupe, Executive Officer	

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Office of Administrative Law

TO

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

TITLE 8, DIVISION 1, CHAPTER 4

Subchapter 7. General Industry Safety Orders
Group 16. Control of Hazardous Substances
Article 107. Dusts, Fumes, Mists, Vapors and Gases

Add new Section 5141.1 to read:

§5141.1. Protection from Wildfire Smoke.

(a) Scope.

(1) This section applies to workplaces where:

- (A) The current Air Quality Index (current AQI) for PM2.5 is 151 or greater, regardless of the AQI for other pollutants; and
- (B) The employer should reasonably anticipate that employees may be exposed to wildfire smoke.

(2) The following workplaces and operations are exempt from this section:

- (A) Enclosed buildings or structures in which the air is filtered by a mechanical ventilation system and the employer ensures that windows, doors, bays, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
- (B) Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
- (C) The employer demonstrates that the concentration of PM2.5 in the air does not exceed a concentration that corresponds to a current AQI of 151 or greater by measuring PM2.5 levels at the worksite in accordance with Appendix A.
- (D) Employees exposed to a current AQI for PM2.5 of 151 or greater for a total of one hour or less during a shift.
- (E) Firefighters engaged in wildland firefighting.

(3) For workplaces covered by this section, an employer that complies with this section will be considered compliant with sections 5141 and 5155 for the limited purpose of exposures to a current AQI for PM2.5 of 151 or greater from wildfire smoke.

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(b) Definitions.

Current Air Quality Index (Current AQI). The method used by the U.S. Environmental Protection Agency (U.S. EPA) to report air quality on a real-time basis. Current AQI is also referred to as the “NowCast,” and represents data collected over time periods of varying length in order to reflect present conditions as accurately as possible.

The current AQI is divided into six categories as shown in the table below, adapted from Table 2 of Title 40 Code of Federal Regulations, Part 58, Appendix G.

<u>Air Quality Index (AQI) Categories for PM2.5</u>	<u>Levels of Health Concern</u>
<u>0 to 50</u>	<u>Good</u>
<u>51 to 100</u>	<u>Moderate</u>
<u>101 to 150</u>	<u>Unhealthy for Sensitive Groups</u>
<u>151 to 200</u>	<u>Unhealthy</u>
<u>201 to 300</u>	<u>Very Unhealthy</u>
<u>301 to 500</u>	<u>Hazardous</u>

NIOSH. The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

PM2.5. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller.

Wildfire Smoke. Emissions from fires in “wildlands,” as defined in Title 8, section 3402, or in adjacent developed areas.

(c) Identification of harmful exposures. The employer shall determine employee exposure to PM2.5 for worksites covered by this section before each shift and periodically thereafter, as needed to protect the health of the employee, by any of the following methods:

(1) Check AQI forecasts and the current AQI for PM2.5 from any of the following: U.S. EPA AirNow website, U.S. Forest Service Wildland Air Quality Response Program website, California Air Resources Board website, local air pollution control district website, or local air quality management district website; or

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(2) Obtain AQI forecasts and the current AQI for PM2.5 directly from the EPA, California Air Resources Board, local air pollution control district, or local air quality management district by telephone, email, text, or other effective method; or

(3) Measure PM2.5 levels at the worksite and convert the PM2.5 levels to the corresponding AQI in accordance with Appendix A.

EXCEPTION: Subsection (c) does not apply where an employer assumes the current AQI for PM2.5 is greater than 500 and uses that assumption to comply with subsection (f)(4)(B).

(d) Communication. As required by section 3203, the employer shall establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal. The system shall include effective procedures for:

(1) Informing employees of:

(A) The current AQI for PM2.5 as identified in subsection (c); and

(B) Protective measures available to employees to reduce their wildfire smoke exposures.

(2) Encouraging employees to inform the employer of:

(A) Worsening air quality; and

(B) Any adverse symptoms that may be the result of wildfire smoke exposure such as asthma attacks, difficulty breathing, and chest pain.

(e) Training and instruction. As required by section 3203, the employer shall provide employees with effective training and instruction. At a minimum, this shall contain the information in Appendix B.

(f) Control of harmful exposures to employees.

(1) In emergencies, including rescue and evacuation, subsections (f)(2) and (f)(3) do not apply, and employers shall comply with subsection (f)(4). Emergencies include utilities, communications, and medical operations, when such operations are directly aiding firefighting or emergency response.

(2) Engineering Controls. The employer shall reduce employee exposure to PM2.5 to less than a current AQI of 151 by engineering controls whenever feasible, for instance by providing enclosed buildings, structures, or vehicles where the air is filtered. If engineering controls are

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not sufficient to reduce exposure to PM2.5 to less than a current AQI of 151, then the employer shall reduce employee exposures as much as feasible.

(3) Administrative Controls. Whenever engineering controls are not feasible or do not reduce employee exposures to PM2.5 to less than a current AQI of 151, the employer shall implement administrative controls, if practicable, such as relocating work to a location where the current AQI for PM2.5 is lower, changing work schedules, reducing work intensity, or providing additional rest periods.

(4) Control by Respiratory Protective Equipment.

(A) Where the current AQI for PM2.5 is equal to or greater than 151, but does not exceed 500, the employer shall provide respirators to all employees for voluntary use in accordance with section 5144 and encourage employees to use respirators. Respirators shall be NIOSH-approved devices that effectively protect the wearers from inhalation of PM2.5, such as N95 filtering facepiece respirators. Respirators shall be cleaned, stored, maintained, and replaced so that they do not present a health hazard to users. Employers shall use Appendix B to this section in lieu of Appendix D to section 5144 for training regarding voluntary use of respirators.

NOTE: For voluntary use of filtering facepieces, such as N95 respirators, some of the requirements of section 5144 do not apply, such as fit testing and medical evaluations.

(B) Where the current AQI for PM2.5 exceeds 500, respirator use is required in accordance with section 5144. The employer shall provide respirators with an assigned protection factor, as listed in section 5144, such that the PM2.5 levels inside the respirator correspond to an AQI less than 151.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.

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Add new Appendix A to new Section 5141.1 to read:

Appendix A to Section 5141.1. Protection from Wildfire Smoke
Measuring PM2.5 Levels at the Worksite
(Mandatory if an Employer Monitors with a Direct Reading Instrument)

- (a) An employer may use a direct-reading particulate monitor to determine PM2.5 levels for section 5141.1, if the employer can demonstrate that it has complied with this appendix and selected a monitor that:
- (1) Does not underestimate employee exposures to wildfire smoke; or
 - (2) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to PM2.5 to ensure that employee exposure levels are not underestimated.
- (b) The monitor shall be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.1 micrometers up to and including 2.5 micrometers. The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM2.5 levels.
- (c) The employer shall ensure that the monitor it uses is calibrated, maintained, and used, including the use of necessary accessories, in accordance with the manufacturer's instructions for accurately measuring PM2.5 concentrations.
- (d) The employer shall use the following table to convert the PM2.5 concentration to the AQI for PM2.5.

<u>PM2.5 in Micrograms per Cubic Meter ($\mu\text{g}/\text{m}^3$)</u>	<u>Air Quality Index (AQI) Categories for PM2.5</u>
<u>0 to 12.0</u>	<u>0 to 50</u>
<u>12.1 to 35.4</u>	<u>51 to 100</u>
<u>35.5 to 55.4</u>	<u>101 to 150</u>
<u>55.5 to 150.4</u>	<u>151 to 200</u>
<u>150.5 to 250.4</u>	<u>201 to 300</u>
<u>250.5 to 500.4</u>	<u>301 to 500</u>

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(e) The person supervising, directing, or evaluating workplace monitoring for PM2.5 shall have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.

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Add new Appendix B to new Section 5141.1 to read:

**Appendix B to Section 5141.1. Protection from Wildfire Smoke
Information to Be Provided to Employees (Mandatory)**

(a) The health effects of wildfire smoke.

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is “particulate matter,” the tiny particles suspended in the air.

Particulate matter can irritate the lungs and cause persistent 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.

The smallest—and usually the most harmful—particulate matter is called PM2.5 because it has a diameter of 2.5 micrometers or smaller.

(b) The right to obtain medical treatment without fear of reprisal.

Employers shall allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not punish affected employees for seeking such treatment. Employers shall also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

(c) How employees can obtain the current Air Quality Index (AQI) for PM2.5.

Various government agencies monitor the air at locations throughout California and report the current AQI for those places. The AQI is a measurement of how polluted the air is. An AQI over 100 is unhealthy for sensitive people and an AQI over 150 is unhealthy for everyone.

Although there are AQIs for several pollutants, Title 8, section 5141.1 about wildfire smoke only uses the AQI for PM2.5.

The easiest way to find the current and forecasted AQI for PM2.5 is to go to www.AirNow.gov and enter the zip code of the location where you will be working. The current AQI is also available from the U.S. Forest Service at <https://tools.airfire.org/> or a local air district, which can be located at www.arb.ca.gov/capcoa/dismap.htm. Employees who do not have access to the

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internet can contact their employer for the current AQI. The EPA website www.enviroflash.info can transmit daily and forecasted AQIs by text or email for particular cities or zip codes.

(d) The requirements in Title 8, section 5141.1 about wildfire smoke.

If employees may be exposed to wildfire smoke, then the employer is required to find out the current AQI applicable to the worksite. If the current AQI for PM2.5 is 151 or more, the employer is required to:

- (1) Check the current AQI before and periodically during each shift.
- (2) Provide training to employees.
- (3) Lower employee exposures.
- (4) Provide respirators and encourage their use.

(e) The employer's two-way communication system.

Employers shall alert employees when the air quality is harmful and what protective measures are available to employees.

Employers shall encourage employees to inform their employers if they notice the air quality is getting worse, or if they are suffering from any symptoms due to the air quality, without fear of reprisal.

The employer's communication system is: _____

(f) The employer's methods to protect employees from wildfire smoke.

Employers shall take action to protect employees from PM2.5 when the current AQI for PM2.5 is 151 or greater. Examples of protective methods include:

- (1) Locating work in enclosed structures or vehicles where the air is filtered.
- (2) Changing procedures such as moving workers to a place with a lower current AQI for PM2.5.
- (3) Reducing work time in areas with unfiltered air.
- (4) Increasing rest time and frequency, and providing a rest area with filtered air.
- (5) Reducing the physical intensity of the work to help lower the breathing and heart rates.

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The employer's control system at this worksite is: _____

(g) The importance, limitations, and benefits of using a respirator when exposed to wildfire smoke.

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the AQI for PM2.5 is less than 151, to provide additional protection.

When the current AQI for PM2.5 is 151 or greater, employers shall provide their workers with proper respirators for voluntary use. If the current AQI is greater than 500, respirator use is required.

A respirator should be used properly and kept clean.

The following precautions shall be taken:

(1) Employers shall select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Center for Disease Control and Prevention certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, T-shirts, and bandannas will not provide protection against wildfire smoke. An N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(2) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations. The manufacturer's instructions for medical evaluations, fit testing, and shaving should also be followed, although doing so is not required by Title 8, section 5141.1 for voluntary use of filtering facepiece respirators.

(3) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect employees against gases or vapors, and it will not supply oxygen.

(4) Employees should keep track of their respirator so that they do not mistakenly use someone else's respirator.

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(5) Employees who have a heart or lung problem should ask their doctor before using a respirator.

(h) How to properly put on, use, and maintain the respirators provided by the employer.

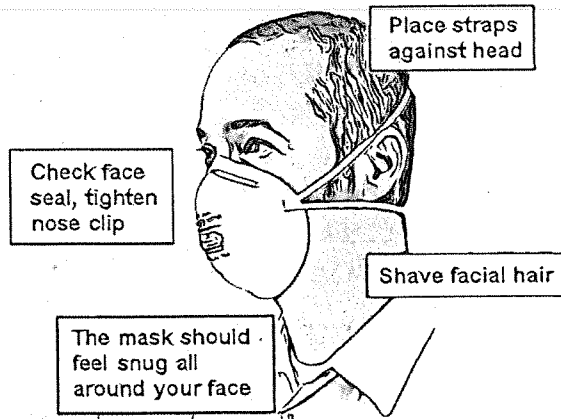
To get the most protection from a respirator, there must be a tight seal around the face. A respirator will provide much less protection if facial hair interferes with the seal. Loose-fitting powered air purifying respirators may be worn by people with facial hair since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator.

For those who use an N95 or other filtering facepiece respirator mask that is made of filter material:

(1) Place the mask over the nose and under the chin, with one strap placed below the ears and one strap above.

(2) Pinch the metal part (if there is one) of the respirator over the top of the nose so it fits securely.



*Drawing Showing Proper Fitting of a Filtering Facepiece Respirator
(shaving is not required for voluntary respirator use)*

For a respirator that relies on a tight seal to the face, check how well it seals to the face by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

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Respirator filters should be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, dizziness, or nausea, go to an area with cleaner air, take off the respirator, and get medical help.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.