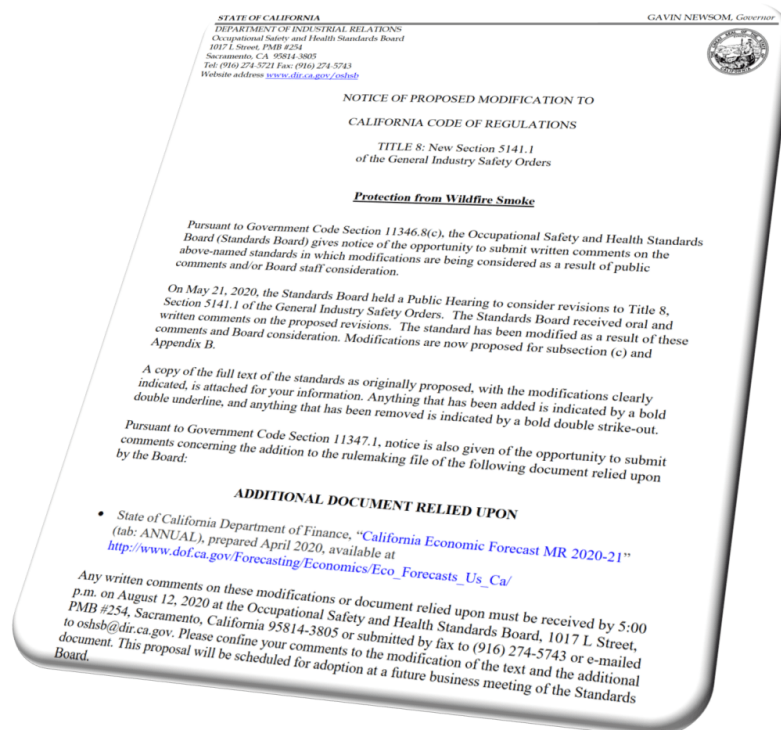


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Update on Cal/OSHA's Wildfire Smoke Rule

By [Andrew Sommer](#) and [Fred Walter](#)

In May of this year, Conn Maciel Carey's OSHA Practice submitted [comments to the Cal/OSH Standards Board on behalf of the Wildfire Smoke Rule Industry Coalition](#) about the agency's effort to make permanent what had been [Emergency Temporary Standard](#) to protect workers from the respiratory hazards of California wildfires.



Last month, the Cal/OSH Standards Board issued [a 15-day Notice of Proposed Modifications](#) to what would become the permanent wildfire smoke rule. The proposed changes are not major, mostly clarifying that one of the methods for determining the Air Quality Index for particulate matter 2.5 is the Interagency Wildland Fire Air Quality Response Program.

Another change to be expected in the final rule is a revision to the Appendix B training instructions to address

cleaning and maintenance of reusable respirators, purportedly to address critical shortages of N95 respirators exacerbated by the COVID-19 pandemic. While anything that extends the supply of N95 masks is welcome, that change alone is not nearly enough to solve a massive compliance problem created by the rule. With the Wildfire Smoke Rule, DOSH requires workers exposed to wildfire smoke be supplied with N95 respirators, and it does not consider surgical masks to be acceptable substitutes. DOSH concedes that N95 respirators are generally not available to any but medical workers right now, but they have no recommended substitutes.

That was one of the primary points of emphasis in our coalition's comments — the rule needed to include some flexibility around the requirement for employers to supply N95 respirator masks for all potentially affected workers. There were already problems with N95 shortages even before the COVID-19 pandemic, but now, the shortage is extreme, and with the CDC's and OSHA's recommendations that all supplies of N95s should be reserved for the healthcare industry obviously makes compliance with a rigid N95 requirement for wildfire smoke protection impossible for most employers. Now in the midst of another wildfire season in California, employers are continuing to experience N95 shortages.



CMC's [national OSHA Practice](#) has been trying on its own and in coordination with the California Chamber of Commerce to facilitate some relief for California employers from the obvious tension between the Wildfire Smoke Rule's demand for supplying N95 respirators and the COVID-19 guidance from every entity that those respirators should be reserved for healthcare providers. In a recent [press release from DOSH](#), DOSH Chief Doug Parker offered no solace to employers, in either relaxing enforcement over the respirator requirement or approving a suitable alternative respirator type, remarking:

"Cal/OSHA is working diligently to identify viable available temporary alternatives that would

provide workers with an acceptable alternative to a compliant respirator such as an N-95 mask."

CMC signed on to a letter from the California Chamber of Commerce seeking acceptable alternatives to N95 masks and assurances that DOSH will not issue citations over this N95 requirement until supplies become available. As of now, we have heard nothing supportive yet from DOSH or the governor on this issue.

One potential solution employers should consider for interim compliance with the Wildfire Smoke Rule is use of N95 masks with exhalation valves. Supplies of N95 masks with exhalation valves are easier to access right now because they are not recommended for use in managing the pandemic; i.e., the exhalation valve runs counter to the source control benefit of N95 masks for reducing spread of the airborne virus from the wearer of the mask to others. That same concern does not exist for wildfire smoke protection. Since N95s for wildfire smoke protection would always be used outdoors, the potential for COVID-19 exposure is less and social distancing measures can be more easily employed to mitigate that risk.

The Standards Board has not yet announced what, if any, other changes will be made to the final rule. We will look out for the final rule, and will analyze any changes in it that were sought by our industry coalition or other employer groups. Note that although what we will see soon is a "permanent" rule, the Standards Board considers this to be a placeholder standard that will eventually be replaced by a set of wildfire smoke rules substantively incorporating feedback from DOSH and stakeholders such as our industry coalition. We will have another shot then at raising our concerns.