

116TH CONGRESS
1ST SESSION

S. 1815

To establish an occupational safety and health standard to protect
farmworkers from wildfire smoke, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2019

Mr. MERKLEY (for himself and Mr. WYDEN) introduced the following bill;
which was read twice and referred to the Committee on Health, Edu-
cation, Labor, and Pensions

A BILL

To establish an occupational safety and health standard to
protect farmworkers from wildfire smoke, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Farmworker Smoke
5 Protection Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that, as of the date of enactment of
8 this Act—

1 (1) the wildfire season has increased by over 2
 2 months since the 1970s, and wildfires have become
 3 increasingly prevalent across the United States due
 4 to prolonged droughts and extreme temperatures;

5 (2) the average annual temperatures in the
 6 western United States have increased by 1.9 degrees
 7 Fahrenheit since 1970;

8 (3) wildfire smoke often contains toxic chemi-
 9 cals and particulates, creating hazardous air quality
 10 conditions;

11 (4) wildfire smoke often persists for extended
 12 periods of time and can travel hundreds of miles;
 13 and

14 (5) wildfire smoke inhalation is harmful to
 15 human health, particularly for vulnerable popu-
 16 lations, including outdoor workers.

17 **SEC. 3. OCCUPATIONAL SAFETY AND HEALTH STANDARD**
 18 **TO PROTECT FARMWORKERS FROM WILD-**
 19 **FIRE SMOKE.**

20 (a) DEFINITIONS.—In this section:

21 (1) AGRICULTURAL OPERATION EMPLOYER.—
 22 The term “agricultural operation employer” means
 23 an employer, as defined in section 3 of the Occupa-
 24 tional Safety and Health Act of 1970 (29 U.S.C.
 25 652), engaged in farming or agricultural operation.

1 (2) FARMWORKER.—The term “farmworker”
2 means an employee, as defined in section 3 of the
3 Occupational Safety and Health Act of 1970 (29
4 U.S.C. 652), engaged in farming or other agricul-
5 tural work for an agricultural operation employer.

6 (3) SECRETARY.—The term “Secretary” means
7 the Secretary of Labor.

8 (4) UNIFORM AIR QUALITY INDEX.—The term
9 “uniform air quality index” means the PM–2.5 cat-
10 egory of the uniform air quality index for the air
11 quality monitoring system required under section
12 319(a) of the Clean Air Act (42 U.S.C. 7619(a)).

13 (b) INITIAL OCCUPATIONAL SAFETY AND HEALTH
14 STANDARD.—

15 (1) IN GENERAL.—During the period beginning
16 on the date of enactment of this Act and ending on
17 the date of the promulgation of the occupational
18 safety and health standard under subsection (c), the
19 Secretary shall deem the initial standard to protect
20 farmworkers from wildfire smoke described in para-
21 graph (2) to be an occupational safety and health
22 standard under section 6 of the Occupational Safety
23 and Health Act of 1970 (29 U.S.C. 655).

1 (2) CONTENTS OF INITIAL STANDARD.—The
2 initial standard described in this subsection shall re-
3 quire that an agricultural operation employer—

4 (A) provide farmworkers with appropriate
5 equipment to protect from wildfire smoke when
6 air quality at the workplace reaches a level of
7 151 or greater, as determined by the uniform
8 air quality index;

9 (B) ensure that the equipment provided
10 under subparagraph (A) includes an N95 mask
11 or N100 mask or other equipment certified by
12 the National Institute for Occupational Safety
13 and Health to protect from wildfire smoke ex-
14 posure;

15 (C) require mandatory use of the equip-
16 ment described in subparagraphs (A) and (B)
17 when air quality at the workplace reaches a
18 level of 201 or greater, as determined by the
19 uniform air quality index; and

20 (D) provide, with the equipment described
21 in subparagraphs (A) and (B), training and
22 education materials to farmworkers, in a lan-
23 guage understood by the farmworkers, regard-
24 ing—

- 1 (i) how to properly use the protective
2 equipment;
3 (ii) how long and under what condi-
4 tions the protective equipment is effective;
5 and
6 (iii) the potential health impacts of
7 breathing wildfire smoke without proper
8 protection.

9 (3) ENFORCEMENT.—The initial standard de-
10 scribed in this subsection shall be enforced in the
11 same manner as a standard promulgated under sec-
12 tion 6 of the Occupational Safety and Health Act of
13 1970 (29 U.S.C. 655), including the prohibition on
14 discrimination under section 11(c) of such Act (29
15 U.S.C. 660(c)).

16 (c) OCCUPATIONAL SAFETY AND HEALTH STAND-
17 ARD.—

18 (1) IN GENERAL.—By not later than 90 days
19 after the date of enactment of this Act, the Sec-
20 retary shall begin promulgating an occupational
21 safety and health standard under section 6 of the
22 Occupational Safety and Health Act of 1970 (29
23 U.S.C. 655) to protect farmworkers from wildfire
24 smoke.

1 (2) REQUIREMENTS.—The standard promul-
2 gated under paragraph (1) shall—

3 (A) provide safety and health protections
4 for farmworkers working for agricultural oper-
5 ation employers that provide at least the same
6 level of health and safety protection as the re-
7 quirements under subsection (b)(2); and

8 (B) detail the potential health impacts of
9 breathing wildfire smoke without proper protec-
10 tion.

11 (d) COLLABORATION AND TECHNICAL ASSIST-
12 ANCE.—

13 (1) IN GENERAL.—An agricultural operation
14 employer may seek advice or assistance from the
15 Secretary of Labor or a State or local health depart-
16 ment regarding the equipment and training and edu-
17 cation materials needed to meet the requirements
18 under subsection (b)(2) (or any similar requirement
19 of a standard promulgated under subsection (c)).

20 (2) DEPARTMENT OF LABOR DUTIES.—The
21 Secretary shall—

22 (A) provide technical assistance, upon the
23 request of an agricultural operation employer,
24 regarding how to meet the employer require-
25 ments of this section; and

1 (B) develop sample training and education
2 materials that may be used by agricultural op-
3 eration employers to meet the requirements of
4 subsection (b)(2)(D) (or any similar require-
5 ment of a standard promulgated under sub-
6 section (c)).

7 (3) COLLABORATION WITH COMMUNITY ORGA-
8 NIZATIONS.—The Secretary may, upon request, pro-
9 vide the training and educational materials devel-
10 oped under paragraph (2)(B) to relevant community
11 and nonprofit organizations.

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