

October 31, 2025

David Keeling
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor 200 Constitution Ave., N.W.
Washington, DC 20210

Re: Comments on Docket No. OSHA-2025-0006: Opposition to Amending the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators

Submitted via <https://www.regulations.gov>

Dear Assistant Secretary Keeling,

The National Employment Law Project (NELP) submits this comment in opposition to the Occupational Safety and Health Administration’s (OSHA) proposal to amend the medical evaluation requirements in the respiratory protection standard for certain types of respirators at 29 CFR 1910.134 (e). NELP is a non-profit research and advocacy organization that works to advance the rights and interests of working people. For over 55 years, NELP has worked with advocates around the country, including community-based groups, labor organizations, and federal, state and local agencies to achieve strong workplace protections for workers, particularly the most vulnerable workers such as Black, immigrant workers, who because of occupational segregation have been funneled into some of the most dangerous occupations, many of which rely on an effective respiratory protection program, like construction, agricultural workers handling pesticides, and others.¹

¹ Seth A. Seabury, Sophie Terp & Leslie I. Boden, *Racial and Ethnic Differences in the Frequency of Workplace Injuries and the Prevalence of Work-Related Disability*, 36 Health Aff. 266 (2017); see also North Carolina study on construction workers and segregation by race leading to disparities in fatalities. Elizabeth S. McClure et al., *Forty Years of Struggle in North Carolina: Workplace Segregation and Fatal Occupational Injury Rates*, 67 Am. J. Indus. Med. 539, 540 (2024), <https://pubmed.ncbi.nlm.nih.gov/38606790/>; “Compared to the general U.S. workforce, construction workers are more likely to be: Male (90.8% versus 53.2%) Hispanic (28.6% versus 16.4%) Foreign-born (24.7% versus 17.1%).” Nat’l Inst. for Occupational Safety & Health, Ctrs. for Disease Control & Prevention, *About Construction*, (May 22, 2024), <https://www.cdc.gov/niosh/construction/about/index.html>; Finding in 2019 close to half of all agricultural workers were foreign born and close to a quarter of such workers were undocumented. Am. Immigr. Council, *Immigration and Agriculture* (Aug. 16, 2021), <https://www.americanimmigrationcouncil.org/report/immigration-and-agriculture/>; see also Rebecca Dixon, *The Case for a Comprehensive Federal Job Guarantee*, Fed. Rsrv. Bank of Minneapolis, 1, 3 (Nov. 17, 2020), <https://www.minneapolisfed.org/-/media/assets/events/2020/racism-and-the-economy-focus-on-employment/racism-and-the-economy-employment-proposal-dixon.pdf>; Algernon Austin, Derrick Hamilton & William Darity Jr., *Whiter Jobs, Higher Wages: Occupational Segregation and the Lower Wages of Black Men*, EPI (Feb. 25, 2011), https://www.epi.org/publication/whiter_jobs_higher_wages/;

Consequently, we have a strong interest in the government’s role and responsibility in safeguarding workers’ statutory rights, including the right to a safe and healthy workplace, especially as it impacts workers in industries requiring proper usage of filtering facepiece respirator (FFR) or loose-fitting powered air-purifying respirator (PAPR). We appreciate the opportunity to comment on the proposed deregulation.

OSHA has not identified any compelling change in circumstances that would justify the rescission of the carefully considered and longstanding requirement for medical evaluation. Since 1998, workers have been able to benefit from medical evaluations when wearing a PAPR or FFR. A key component of the standard's efficacy is the requirement to provide the medical evaluation questionnaire, a screening tool, to workers. Depending on the answers, a follow-up evaluation by a medical professional may be necessary. Training and fit testing are also core requirements. These evaluations assess and detect workers' underlying medical conditions or undiagnosed medical conditions, such as asthma, claustrophobia, and other conditions that necessitate an accommodation, additional training, or a different work assignment.

Our comments cover three primary areas:

- I. The agency’s proposal is contrary to the law, and its analysis of “material impairment” is flawed because the lack of data showing adverse health impacts from not using a medical evaluation for the use of PAPR or FFR does not support eliminating an important and necessary component of the respiratory protection program standard.**
- II. The proposal withdraws longstanding protections and, if removed, would cause great harm to workers.**
- III. The agency’s own analysis is faulty in that it fails to provide an alternative for workers who are medically unable to don an FFR or PAPR properly.**

- I. The agency’s proposal is contrary to the law, and its own analysis of “material impairment” is flawed because the lack of data showing adverse health impacts from not using a medical evaluation for PAPR or FFR usage does not support eliminating an important and necessary component of the respiratory protection program standard

OSHA’s proposed amendment to eliminate the requirement for a medical evaluation when using a PAPR or FFR is contrary to the purpose and spirit of the OSH act.² In the notice for proposed rulemaking (NPRM), OSHA purports that only 1-2% of workers using FFRs and loose-fitting PAPRs may be adversely affected by eliminating medical evaluations. However, using OSHA’s own reference to the 2005 National Institute for Occupational Safety and Health (NIOSH) survey of private sector respirator use, 2% of the approximately 3 million workers using FFRs or loose-fitting PAPRs would mean that close to 60,000 workers would be put at risk by this hasty and ill-

² “To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act.” The Occupational Safety and Health Act (OSH Act), 29 U.S.C. § 651 et seq.

conceived proposed rule.³ This is contrary to the purpose of the Act and the agency's mission, and would leave thousands of workers exposed, unprotected, and without an alternative to the medical evaluation. The agency offers several illogical reasons to support the rescission that ignore entirely essential aspects of why we have this requirement, and does not offer an alternative. The agency's new position that medical evaluations are no longer needed for PAPR and FFR usage "rests upon factual findings that contradict those which underlay its prior policy" and disturbs "serious reliance interests," and has not provided "a more detailed justification than what would suffice for a new policy created on a blank slate," thereby making this agency decision to retract this protection now arbitrary and capricious.⁴ Additionally, the agency has failed to consider the direct harm this rescission will cause, and its decision to remove this protection is arbitrary and capricious. Because of the reasons below, the justification for the rule is "unreasonable and warrants vacatur on arbitrary and capricious grounds."⁵

To begin, OSHA asserts that there is a lack of data demonstrating that medical evaluations prevent material impairment. However, this claim that no data exists to show material impairment is invalid because the existence of such data would require a study in which an employer violated the medical evaluation requirement and yet agreed to participate in the study. This data doesn't exist because the current regulation prevents it from existing. And while this data does not exist, the data that does exist demonstrates the scientific importance for having the medical evaluation in place, which the agency ignored or failed to include in its health literature review.

There is a lack of data showing adverse effects on workers because that is precisely why the standard exists to prevent adverse effects on workers. OSHA has failed to demonstrate that the reason for the lack of data showing harm to workers is anything other than employers complying with the medical evaluation required by the standard. The lack of data showing adverse health impacts does not mean that there is no harm; it actually demonstrates that harm to workers has been averted due to an effective respiratory protection standard, which includes a medical evaluation requirement. Because the agency has not fulfilled its responsibility to establish a connection between the absence of data showing harm and the rescission of the medical evaluation, the rescission is arbitrary and capricious.⁶

Next, OSHA failed to consider the recent thoughtful and carefully considered revisions to the wildfire smoke standard from Cal/OSHA. In its preliminary draft language for the standard title 8 California Code of Regulations Section 5141.1, it declined to remove the medical evaluation requirement, stating, "Medical evaluations will be required because medical experts have advised that not conducting medical evaluations of a person's ability to use a respirator could be

³ 90 Federal Register 28465; Doney BC et al., *A Survey of Private Sector Respirator Use in the United States: An Overview of Findings*, 2 J. Occup. Environ. Hygiene 267 (2005).

⁴ 5 U.S.C. § 706(2)(A).

⁵ *Window Covering Mfrs. Ass'n*, 82 F.4th at 1287.

⁶ 5 U.S.C. § 706(2)(A).

extremely harmful to certain employees.”⁷

Also, the American Public Health Association conducted a review of the literature. In their comments to the agency for this Notice for Proposed Rule Making (NPRM), APHA identified **10 references** [that] OSHA in its NPRM failed to include, including studies done during COVID, plus **systematic reviews of between 14 to 55 studies** of physiological and health effects of FFRs. The APHA, in its comments to OSHA, stated that “all studies found some adverse physiological effects in healthy individuals at high exercise levels. Furthermore, many individuals reported experiencing symptoms while wearing FFRs, including shortness of breath, headaches, dizziness, and fatigue.”⁸ These are exactly the type of workers the medical evaluation is supposed to help: to identify underlying health conditions such that the worker is unable to wear an FFR or PAPR medically.

Another illogical justification the agency relies on is data that has emerged from the COVID-19 pandemic, claiming “little to no evidence exists to support the need for medical evaluation.” For example, in its health literature review section, the agency uses COVID-19 as an example to support this unsubstantiated conclusion: “despite large increases in respirator usage after the emergence of COVID-19, no evidence has surfaced illustrating the need for medical evaluations,” and that “available data on effects largely show minimal impact on health.”⁹ OSHA’s NPRM only includes five references to support these statements.

However, using the COVID-19 pandemic as an example of adequate respirator usage without medical evaluations is misplaced. First, medical evaluations were already required for most healthcare workers. For others, the lack of medical evaluations is not very relevant without fit testing. For example, workers in California during the wildfires of 2020, especially farmworkers, who are majority Latine, immigrant, faced even more terrible workplace conditions, necessitating respirators. They were either provided under California’s wildfire smoke standard, which does not require fit testing, or worn under the voluntary use provision of the standard, which does not require a mandatory medical evaluation. There is plenty of evidence that many farmworkers were either not provided with respirators or wore them incorrectly, exposing them to COVID-19, fine particulate matter (PM2.5) from wildfire smoke, pesticides, and other hazards, thereby increasing their risk of negative health consequences and death.¹⁰ But this is

⁷ Pursuant to Labor Code Section 6721 (enacted in 2022 by Assembly Bill 2243), the Division of Occupational Safety and Health (Cal/OSHA) is posted proposed draft changes to the Title 8 workplace wildfire smoke protection standard <https://www.dir.ca.gov/dosh/doshreg/Wildfire-Smoke/>; see also Gabrielle M Garra, Darlene Parmentier, Gregory Garra, Physiologic Effects and Symptoms Associated with Extended-Use Medical Mask and N95 Respirators, *Annals of Work Exposures and Health*, Volume 65, Issue 7, August 2021, Pages 862–867, <https://doi.org/10.1093/annweh/wxab010>; see also Jon Williams et al., *The Physiological Burden of Prolonged PPE Use on Healthcare Workers during Long Shifts*, NIOSH Sci. Blog (June 10, 2020), <https://blogs.cdc.gov/niosh-science-blog/2020/06/10/ppc-burden/>.

⁸ Am. Pub. Health Ass'n, *Comment Letter on the Proposed Rule Amending the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators under 29 CFR Part 1910*, 90 FR 28463, Docket # OSHA-2025-0006 (Oct. 24, 2025).

⁹ 90 Federal Register 28465

¹⁰ Paul Brown, Edward Flores, Ana Padilla, *Farmworker Health and California: Health in a Time of Contagion, Drought, and Climate Change*, 7, 15, 36 (August 2022),

clearly not evidence of proper usage of a respirator without medical evaluation that would support OSHA's proposal, which would apply when both fit testing and medical evaluation are mandatory.

Given the degree to which respirator use was voluntary during the pandemic and the use of non-approved respirators, such as KN-95s, there is little reason to believe that this sort of evidence of proper usage of respirator without medical evaluation showing minimal impact on health would have arisen from the pandemic. In other words, for mandatory use, which is what this standard is for, you need to have a respirator worn adequately with a proper seal for many of the adverse physical health effects to manifest. Since this was not the context for many workers in which they were mandated to wear respirators, have a proper fit and medical evaluation, it's no surprise that this type of evidence showing adverse health effects is limited.

While research and data exist to demonstrate the importance of medical evaluations and worker health and safety, experts and advocates agree that more research and assessment should be prioritized. Such research should focus on improving workplace protections, backed by scientific research and assessments that demonstrate why all components, including training, fit testing, worker-centered engineering, administrative measures, and personal protective equipment, along with proper medical evaluation when using FFR or PAPR, contribute to healthier and safer workplaces. For example, as the APHA emphasizes and recommends, NIOSH should examine both short-term and long-term benefits of having a medical evaluation for respirators, assessment of impacted industries and occupations, and evaluate and recommend alternatives or other requirements that may ultimately require/mandate other controls, such as stopping work (elimination of the hazard), or changing when the work is done (administrative).¹¹

II. The proposal withdraws longstanding protections and, if removed, would cause great harm to workers.

While agencies may change their policy positions, they must, at a minimum, acknowledge the change and provide a "reasoned explanation for the change, display awareness that they are changing position, and consider serious reliance interests."¹² Here, OSHA has failed to meet that

https://clc.ucmerced.edu/sites/g/files/ufvvjh626/f/page/documents/fwhs_report_2.2.2383.pdf?_gl=1*fyx6ud*_ga*MTkyMTYxMTgxNy4xNjczMDU2MTM4*_ga_TSE2LSBDQZ*MTY3NTQ1MTgzMS4yMC4xLjE2NzU0NTIyOTkuNTMuMC4w; Kirk Siegler, *Farm Workers Face Double Threat: Wildfire Smoke And COVID-19*, NPR (Sept. 7, 2020, 5:00 AM), <https://www.npr.org/2020/09/07/909314223/farm-workers-face-double-threat-wildfire-smoke-and-covid-19>.

¹¹ Am. Pub. Health Ass'n, *Comment Letter on the Proposed Rule Amending the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators under 29 CFR Part 1910*, 90 FR 28463, Docket # OSHA-2025-0006 (Oct. 24, 2025).

¹² "One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions." *Encino*, 579 U.S. 221, 221 (2016); *FDA v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898, 917 (2025); *see also* An agency "it need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old on it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

threshold.

OSHA's revised Respiratory Protection Standard 29 CFR §1910.134 and 29 CFR §1926.103 went into effect April 8, 1998. By removing the requirement for medical evaluation, this proposal is decreasing the effectiveness of this control in protecting workers and mitigating exposure, without offering an alternative for workers who may be medically unable to wear the loose-fitting PAPR or FFR. Contrary to OSHA's misguided assumption that workers can quickly address the issue if they need to remove their respirator, the increased breathing resistance could also contribute to falls or other injury incidents if it causes someone with an underlying respiratory condition to become dizzy.

The hazards present in workplaces in 1998 still exist today and are likely even more compounded by other hazard, for example, the increased pace of work, heat, and other climate-induced hazards. This standard in its entirety was necessary then and continues to be important, especially for vulnerable workers, like immigrants and underpaid workers who are concentrated in dangerous and precarious occupations, such as in agriculture, construction, etc.

In fact, this particular requirement of medical evaluation is so incredibly important to workers in specific industries that the Environmental Protection Agency (EPA) also requires a medical evaluation for pesticide handlers, such as those who work in farms, nurseries, or greenhouses under its Worker Protection Standard.¹³ This medical evaluation is part of a more protective and comprehensive standard for workers who handle pesticides, including training, monitoring, and identification of health impacts for those who handle pesticides, and is enforced by the EPA. However, under the EPA's standard, it explicitly references conformity with OSHA respirator requirements, including medical evaluations for FFR or loose-fitting PAPR—the very requirement that OSHA is attempting to eliminate in this NPRM.¹⁴ OSHA has also not considered the direct harm this would cause to agricultural workers, who this rescission will impact. This is especially important for filtering facepiece respirators that are rated to resist or prevent penetration by oils. Many pesticide applications are oil-based, and if OSHA were to eliminate medical evaluations for agricultural workers who handle pesticides, this would compromise workers' ability to work with their respirator sealed to their face while working with these hazardous chemicals.

Under the EPA regulation, pesticide handlers are allowed to wear a FFR or loose-fitting PAPR if the exposure is determined to be to particulates, aerosols, solid products or liquid products, but

¹³ The Environmental Protection Agency (EPA) Worker Protection Standard, requires “Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of 29 CFR 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.” 40 CFR 170.507(b)(10)(iii); EPA responding to question about compliance, stating employers must “[provide] respirator fit testing, training, and medical evaluation that conforms to OSHA standards for any handler required by pesticide labeling to wear a respirator. Env'tl. Protection Agency, *Worker Protection Standard Frequently Asked Questions* (2016), 3, <https://www.epa.gov/sites/default/files/2016-04/documents/wps-faq.pdf>.

¹⁴ *Id.*

not organic vapors and the exposure is judged to be mitigated by a respirator with a 10x protection factor, then a filtering facepiece can be used.¹⁵ If the pesticide requires protection from organic vapors and particulates, then some PAPRs are permitted for use.¹⁶ Ultimately, if respirator use is required for workers to be safe and healthy, a medical evaluation should be conducted. Filtering facepieces, such as N95s and loose-fitting PAPRs, can impede breathing resistance, which can pose serious health risks for individuals with certain respiratory or cardiac conditions. The purpose of conducting the medical evaluation is to determine whether workers with these underlying or undiagnosed conditions require an accommodation or additional training. Eliminating the OSHA requirement explicitly referenced in the EPA's standard, without offering an alternative to workers, will create confusion, especially around compliance, and increase workers' exposure to harmful and hazardous pesticides.

III. The agency's own analysis is faulty in that it fails to provide an alternative for workers who are medically unable to don FFR or loose-fitting PAPR properly.

The agency does not provide an alternative mechanism for workers to demonstrate to their employer that they require additional training for proper usage, the use of other controls, or other accommodations because they are medically unable to wear a FFR or a loose-fitting PAPR properly. The medical evaluation is an important and easily understood requirement and process for employers to verify that a worker may require alternative protection due to a pre-existing medical condition or an unmanaged condition.

The agency acknowledges that 1-2% of workers who wear respirators have a medical condition that prevents them from using the respirator their employer assigns.¹⁷ That is roughly 60,000 workers.¹⁸ And yet the agency fails to explain or consider what happens to these people when they are required to enter a work area with a harmful atmosphere. Nor does the agency address the responsibilities of the employer when the employee experiences difficulty wearing the respirator due to their medical condition. It pretends this is not a problem. It does not even propose alternative processes or responsibilities for employers who are confronted with the obvious hazard of a worker not properly wearing a respirator because they are unable to do so. In OSHA's proposal, the Hobbesian choice faced by these employees—continue working in hazardous conditions without respiratory protection or suffer the health effects of wearing a respirator they are unable to breathe through—simply goes away. The failure to consider these harms renders the proposal arbitrary, capricious, and thus fatally flawed.¹⁹

By eliminating the medical evaluation, failing to provide workers with an alternative method to get an accommodation or more training, and failing to provide employers with instruction on

¹⁵ U.S. Env't Prot. Agency, *Respirator Section of Label Review Manual Chapter 10*, (2018), https://www.epa.gov/sites/default/files/2018-03/documents/lrm-chapter-10-respirator-language-6-mar-2018_0.pdf.

¹⁶ *Id.*

¹⁷ 90 Federal Register 28465; Doney BC et al., *A Survey of Private Sector Respirator Use in the United States: An Overview of Findings*, 2 J. Occup. Environ. Hygiene 267 (2005).

¹⁸ *Id.*

¹⁹ 5 U.S.C. § 706(2)(A).

how to comply with the respiratory protection standard when workers cannot medically tolerate the FFR or loose-fitting PAPR, increases the propensity for harmful exposures to and in some cases, lethal workplace exposures. This rescission may also increase the risk of potential liability for increased occupational harm resulting from employers' confusion of their legal responsibilities, especially those that may have to comply with other standards or regulations, such as those found in the EPA's Worker Protection Standard.

The proposed rescission of basic federal protections for workers required to wear FFR or loose-fitting PAPR would likely create devastating and material harm that will reverberate across many industries. We urge OSHA not to enact the proposed rescission.

Sincerely,

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