

117TH CONGRESS
1ST SESSION

S. 2751

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2021

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish an occupational safety and health standard to protect farmworkers from wildfire smoke and excessive heat, 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 and Excessive Heat Protection Act of 2021”.

6 **SEC. 2. FINDINGS.**

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

9 (1) the wildfire season has increased by over 2
10 months since the 1970s, and wildfires have become

1 increasingly prevalent across the United States due
 2 to prolonged droughts and extreme temperatures;

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

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

9 (4) wildfire smoke often persists for extended
 10 periods of time and can travel hundreds of miles;

11 (5) wildfire smoke inhalation is harmful to
 12 human health, particularly for vulnerable popu-
 13 lations, including outdoor workers;

14 (6) excessive heat poses a potentially deadly
 15 threat to those without protection from the heat, in-
 16 cluding outdoor workers; and

17 (7) more than 100 people died during the June
 18 2021 heat wave in Oregon, including a farmworker.

19 **SEC. 3. OCCUPATIONAL SAFETY AND HEALTH STANDARD**
 20 **TO PROTECT FARMWORKERS FROM WILD-**
 21 **FIRE SMOKE AND EXCESSIVE HEAT.**

22 (a) DEFINITIONS.—In this section:

23 (1) AGRICULTURAL OPERATION EMPLOYER.—
 24 The term “agricultural operation employer” means
 25 an employer, as defined in section 3 of the Occupa-

1 tional Safety and Health Act of 1970 (29 U.S.C.
2 652), engaged in farming or agricultural operation.

3 (2) EXCESSIVE HEAT.—The term “excessive
4 heat” includes outdoor or indoor exposure to heat at
5 a level that exceeds the capacities of the body to
6 maintain normal body functions and may cause
7 heat-related injury, illness, or fatality (including
8 heat stroke, heat exhaustion, heat syncope, heat
9 cramps, or heat rashes).

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

15 (4) SECRETARY.—The term “Secretary” means
16 the Secretary of Labor.

17 (b) INITIAL OCCUPATIONAL SAFETY AND HEALTH
18 STANDARD.—

19 (1) IN GENERAL.—During the period beginning
20 on the date of enactment of this Act and ending on
21 the date of the promulgation of the occupational
22 safety and health standard under subsection (c), the
23 Secretary shall deem the initial standard to protect
24 farmworkers from wildfire smoke and excessive heat
25 described in paragraph (2) to be an occupational

1 safety and health standard under section 6 of the
2 Occupational Safety and Health Act of 1970 (29
3 U.S.C. 655).

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

7 (A) provide farmworkers with appropriate
8 equipment to protect from wildfire smoke when
9 air quality at the workplace reaches a level de-
10 termined by the Secretary to be dangerous to
11 human health;

12 (B) ensure that the equipment provided
13 under subparagraph (A) includes a N95 res-
14 pirator or N100 respirator or other equipment
15 certified by the National Institute for Occupa-
16 tional Safety and Health to protect from wild-
17 fire smoke exposure;

18 (C) require mandatory use of the equip-
19 ment described in subparagraphs (A) and (B)
20 when air quality at the workplace reaches an
21 extremely dangerous level, as determined by the
22 Secretary;

23 (D) provide farmworkers with appropriate
24 equipment to protect from excessive heat when

1 the heat reaches a level determined by the Sec-
2 retary to be dangerous to health;

3 (E) ensure that the equipment provided
4 under subparagraph (D) includes water and
5 cooling facilities to protect from excessive heat;

6 (F) require mandatory use of the equip-
7 ment described in subparagraphs (D) and (E)
8 when the excessive heat reaches an extremely
9 dangerous level, as determined by the Sec-
10 retary; and

11 (G) provide, with protective equipment pro-
12 vided under any of subparagraphs (A) through
13 (F)—

14 (i) training and education materials to
15 farmworkers, in a language understood by
16 the farmworkers, regarding—

17 (I) how to properly use the pro-
18 tective equipment;

19 (II) how long and under what
20 conditions the protective equipment is
21 effective; and

22 (III) the potential health impacts
23 of breathing wildfire smoke without
24 proper protection or the signs of heat
25 illness, as applicable; and

1 (ii) an opportunity for the farm-
2 workers to ask questions and receive re-
3 sponses regarding the training and edu-
4 cation materials described in clause (i);
5 and

6 (H) require that, once the air quality or
7 heat level has reached a dangerous or extremely
8 dangerous level, as determined by the Secretary
9 under subparagraph (A), (C), (D), or (F),
10 farmworkers be provided mandatory rest
11 breaks—

12 (i) of at least 10 minutes every 2
13 hours; and

14 (ii) in shaded areas where the expo-
15 sure to smoke is decreased or the tempera-
16 ture is decreased, as applicable.

17 (3) ENFORCEMENT.—The initial standard de-
18 scribed in this subsection shall be enforced in the
19 same manner as a standard promulgated under sec-
20 tion 6 of the Occupational Safety and Health Act of
21 1970 (29 U.S.C. 655), including the prohibition on
22 discrimination under section 11(c) of such Act (29
23 U.S.C. 660(c)).

24 (c) OCCUPATIONAL SAFETY AND HEALTH STAND-
25 ARD.—

1 (1) IN GENERAL.—By not later than 90 days
2 after the date of enactment of this Act, the Sec-
3 retary shall begin promulgating an occupational
4 safety and health standard under section 6 of the
5 Occupational Safety and Health Act of 1970 (29
6 U.S.C. 655) to protect farmworkers from wildfire
7 smoke and excessive heat.

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

10 (A) provide safety and health protections
11 for farmworkers working for agricultural oper-
12 ation employers that provide at least the same
13 level of health and safety protection as the re-
14 quirements under subsection (b)(2);

15 (B) provide no less protection than the
16 most protective smoke or heat protection stand-
17 ard adopted by a State;

18 (C) detail the potential health impacts of
19 breathing wildfire smoke without proper protec-
20 tion; and

21 (D) detail the potential health impacts of
22 working in excessive heat without proper pro-
23 tection.

24 (d) COLLABORATION AND TECHNICAL ASSIST-
25 ANCE.—

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

8 (2) DEPARTMENT OF LABOR DUTIES.—

9 (A) IN GENERAL.—The Secretary shall—

10 (i) provide technical assistance, upon
11 the request of an agricultural operation
12 employer, regarding how to meet the em-
13 ployer requirements of this section; and

14 (ii) develop sample training and edu-
15 cation materials that may be used by agri-
16 cultural operation employers to meet the
17 requirements of subsection (b)(2)(G) (or
18 any similar requirement of a standard pro-
19 mulgated under subsection (c)).

20 (B) COLLABORATION.—In developing
21 training and education materials under sub-
22 paragraph (A), the Secretary shall—

23 (i) work with community organiza-
24 tions for hard-to-reach farmworkers due to

1 geographic isolation, language barriers, or
2 literacy issues; and

3 (ii) seek input in the development of
4 the training and education materials in al-
5 ternative languages, including indigenous
6 languages.

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.

○