



Legislation Text

File #: 2022-0843, **Version:** 2

To: Board of Supervisors, County of Sonoma

Department or Agency Name(s): Emergency Management, Sheriff's Office, Agriculture/Weights & Measures, Office of Equity

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Vote Requirement: Majority

Supervisorial District(s): All Districts

Title:

Agriculture Access Verification Card Program

Recommended Action:

Adopt a Resolution establishing a County Agricultural Access Verification Card Program and delegating authority to the Sheriff to lead administration of said program.

Executive Summary:

As wildfires in Sonoma County continue to increase in frequency and intensity, the threat to life, property and infrastructure has resulted in efforts to provide agricultural producers with access to evacuated areas while also ensuring resident and worker safety. The ability to provide some degree of access into evacuated areas for commercial agricultural operations supports greater compliance with evacuation orders.

In early 2022, the Board established an Ad Hoc Committee to "identify local and state efforts that address evacuation zone access with a focus on farmworker protections and other access issues (livestock and animals, commercial activities, etc.)." (See Board Assignments Ad-Hoc description at <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/board-of-supervisors/assignments/ad-hoc-committees>.)

On July 19, 2022, the Board conducted a community workshop on the subject at its regular meeting. Staff presented a summary report and the Board assessed options. See the report at <https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=5722395&GUID=7CBE4B83-7DE3-4B21-BAF9-F2D9679B7768>. Staff understood the Board's direction to be:

1. Staff representing the departments currently participating in the Ad Hoc Committee should consult with County Counsel to assess legal risk and authorities relevant to establishing an access program; and
2. Staff should return on August 30, 2022 with recommendations regarding the potential scope, parameters, and administration of an access identification card program.

Building on the experiences in Sonoma County over the recent years and based upon stakeholder input, staff has determined that there is no single existing statutory framework sufficient to address the challenges identified. Rather, the Board of Supervisors and the Sheriff both hold authority based on complementary legal

bases to establish an agricultural verification access program that best fits the need of our community. Staff recommends the most legally sound and efficient course of action, which is for the Board of Supervisors to establish an access verification card program incorporating key administrative and functional parameters and authorize the Sheriff to lead administration of said program.

Discussion:

Background

Commercial agriculture is the cultivation of arable land by the raising of agricultural or horticultural crops or livestock and their products as a principal or supplemental source of income intended for sale off the farm, and distribution to wholesalers or retail outlets, as identified by the Sonoma County Agricultural Commissioner.

Possession of an Agriculture Access Verification Card (“Verification Card”) may facilitate - but would not guarantee - expedited and limited access by owners/operators or direct, full-time employees of commercial agricultural operations into areas under evacuation orders to conduct critical activities. Critical activities consist of:

1. Evacuating, transporting, sheltering, feeding, watering, administering veterinary or other care to livestock;
2. Irrigating crops;
3. Fueling emergency generators or providing auxiliary support to peace officers and emergency personnel (such as identifying access roads and water points).

Activities not considered critical include harvesting or sowing crops, food processing, and facility repairs.

Access Program - Recommendation

In order to provide a uniform and efficient method to identify to law enforcement and other emergency personnel those persons who are commercial plant agriculture farm owner-operators, livestock producers (“Commercial Agricultural Operations”), and their direct, full-time employees, staff recommends the Board of Supervisors establish an Agriculture Access Verification Card Program incorporating key administrative and functional parameters (see Attachment Two) and authorize the Sheriff to lead administration of said program.

An Agriculture Access Verification Card Program should incorporate the following administrative and functional parameters:

1. Program shall address owners/operators or direct, full-time employees of commercial agricultural operations.
2. Ag Access Verification cards shall be issued to individual owners/operators or direct, full-time employees of commercial agricultural operations rather than by operation or property location.
3. Program shall incorporate an in-person fire and worker safety training requirement for participating owners/operators and full-time employees that reflects best practices in terms of scope and delivery methods. Training must be provided in the attendee’s requested language and in an accessible format and venue. Staff shall assess the potential for allowing individuals or organizations to provide training subject to their compliance with an approved curriculum. The program shall identify the frequency and

scope of required refresher training.

The four-hour training courses provided in 2020-2021 and documented by the Sonoma County University of California Cooperative Extension (UCCE), Sonoma County Farm Bureau and Sonoma County Winegrowers shall qualify as satisfying this training requirement for initial applications when sufficient proof of attendance is provided. For applications utilizing this training, the expiration of the Verification Card shall be established as being no more than 42 months from date the training was taken by the applicant.

4. Commercial agricultural operation owners/operators must acknowledge continued responsibility to comply with all applicable worker safety regulations and protections required for the work location including those administered by the California Division of Occupational Safety and Health (Cal/OSHA) including provision of fresh, potable water and accessible and clean bathrooms during the workday, as well as additional protections required due to high temperatures and poor air quality. Commercial agricultural operation owners/operators shall indicate at the time of application if they are currently the subject of any action by California Labor and Workforce Development Agency Departments and Boards (see <https://www.labor.ca.gov/about/>) for alleged violations of workplace safety and labor regulations.
5. Employers must keep a record of the identity of each employee that enters an area subject to an evacuation order, when they entered, and when they left the property.
6. Applicants must acknowledge and sign a Hold Harmless Agreement waiver.
7. All program materials including program description and application forms shall be made available in English and Spanish and be accessible from the Sheriff's Office website as well as the County's www.SoCoEmergency.org <<http://www.SoCoEmergency.org>> website.
8. Following incidents in which the Ag Access Verification Card program is activated, Sheriff's staff and stakeholders will provide input as regards program effectiveness and performance as part of the County's After Action Report process.
9. The County Department of Agriculture Weights & Measures will provide support, and seek the assistance of UCCE, in assessing the qualifications of applicants.

Employee/Worker Safety Considerations

In areas subject to evacuation orders, owners/operators of commercial agricultural operations remain responsible for compliance with all applicable state/federal worker safety regulations and protective actions required for the work location that reflect any change in conditions (ex. wildfire smoke).

Wildfire smoke contains very fine particles, also called particulate matter (PM). The major health concerns are the smallest particles called "PM2.5" because they are 2.5 microns in diameter or smaller. Under that state law, employers must comply with Title 8 of the California Code of Regulations § 5141.1 when the Air Quality Index for PM2.5 is 151 or greater or if the employer should reasonably anticipate that workers could be exposed to wildfire smoke. Under that state law employers are required to:

1. Monitor air quality for PM2.5 at the start of each shift and periodically as needed using approved sources (ex. US EPA AirNow) or by directly measuring and calculating levels at the worksite.

2. “Establish and implement a system for communicating wildfire smoke *hazards in a language and manner readily understandable by employees*, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.” (Emphasis added.)
3. Provide effective training - in a language and manner readily understandable by the employees - that includes at least the following information regarding wildfire smoke:
 - a. Health effects
 - b. The right to obtain medical treatment without fear of retaliation
 - c. How workers can find out the current AQI for PM2.5
 - d. The requirements of the Cal/OSHA wildfire smoke standard
 - e. The employer’s two-way communication system
 - f. The employer’s methods to protect workers from wildfire smoke
 - g. The importance, limitations, and benefits of using a respirator
4. Reduce workers’ exposure to wildfire smoke through engineering controls (filtering the air for enclosed locations) or administrative controls (relocating employees, changing work schedules, reducing work intensity, or providing more rest periods).
5. Provide sufficient number of respirators if workers’ exposure cannot be reduced to AQI of 150 or lower. When AQI for PM 2.5 is 151 to 500, employers must provide - and encourage the voluntary use of - particulate respirators (ex. N95 masks) for voluntary use. When AQI is higher than 500, employers must provide and require use of particulate respirators that reduce exposure to an equivalent of an AQI less than 151. Note: AB 2243 is currently pending which would lower the threshold at which respiratory equipment becomes mandatory from a PM2.5 of 500 to 200 or more.

Relative to heat protections, California employers are required to take four steps to prevent heat illness (§ 3395): 1) Train all employees and supervisors about heat illness prevention; 2) Provide enough fresh water so that each employee can drink at least 1 quart per hour, or four 8 ounce glasses, of water per hour, and encourage them to do so; 3) Provide access to shade and encourage employees to take a cool-down rest in the shade for at least 5 minutes; and 4) Develop and implement written procedures for complying with the Cal/OSHA Heat Illness Prevention Standard.

The California Code of Regulations also requires employers to address electrical safety in the event of a power outage at the worksite. These requirements include keeping generators outdoors (§ 3662, 5141, 5155), ensuring generators are properly grounded (§ 2395.1-2395.114), and ensuring generators are properly connected to a building’s wiring system including lock-out precautions (§ 2320.9 and 2320.4). Entry granted into evacuation zones in no way relieves a person from compliance with state laws related to worker safety, including those summarized above.

In 2021, the Governor signed AB73 which expands worker protections from wildfire smoke by classifying farmworkers as “essential workers” and promoting “policies and standards for PPE surge capacity to ensure sufficient Personal Protective Equipment (PPE) to address wildfire smoke events and to protect agricultural workers during pandemics, wildfire smoke events, and other health emergencies.”

Cal/OSHA provides several resources regarding worker protections in wildfires including training videos (in English and Spanish), a website providing an overview of regulations, and a factsheet on “Protecting Workers Exposed to Wildfire Smoke.” Cal/OSHA maintains a list of vendors who report available supplies of N95 disposable respirators, which is updated regularly. Numerous air quality resources are maintained by other agencies.

Access to a farm or ranch by an employee and use of an Ag Access Verification Card must be fully voluntary. A commercial agricultural operation owner/operator cannot require an employee to obtain or use an Ag Access Verification Card. An Ag Access Verification Card in no way requires its holder to be present in an area subject to an evacuation order during or following a flood, storm, wildfire, or other disaster.

Program Safety Elements

Currently, no county in California has completely implemented the provisions of AB1103. In addition, no county has incorporated the full range of safeguards that are recommended as part of this proposed program, which include:

1. Critical activities are limited to those that should require few employees to perform.
2. Participation is limited to individuals and not organizations. Each person seeking entry must have their Ag Access Verification Card in their possession at all times.
3. Participation by employees is limited to verified direct, full-time employment in which an employer has hiring and firing authority; has direct day to day supervision of the worker; pays the worker's wages; and withholds and transmits applicable taxes on behalf of the worker.
4. Participation is limited to those who have a working knowledge of the operation’s agricultural property, including access to irrigation systems, farm equipment, and other essential infrastructure.
5. Participants must complete a mandatory 4-hour minimum training on fire and worker safety which would also provide information on employee support resources. Training must be provided in-person, in the attendee’s requested language, and in an accessible format and venue.
6. Applicant must disclose if they are the subject of a state action regarding allegations of safety or labor violations at the time of application.
7. Access into areas under evacuation order will not be granted outside of daylight hours and those granted access must exit prior to sunset.
8. Access to a farm or ranch by an employee and use of an Ag Access Verification Card must be fully voluntary. A commercial agricultural operation owner/operator cannot require an employee to obtain or use an Ag Access Verification Card. An Ag Access Verification Card in no way requires its holder to be present in an area subject to an evacuation order during or following a flood, storm, wildfire, or other

disaster.

9. Employers must keep a record of the identity of each employee that enters an area subject to an evacuation order, when they entered, and when they left.

Program Alternatives

If the staff recommendations presented here do not fully represent the Board's interest or intent, the Board could consider alternative approaches including authorizing the Sheriff's Office to establish a program under their administrative authority or directing staff to develop a revised program that could incorporate additional considerations such as additional worker protections, administrative oversight, or address a more limited scope of effort. Should the Board desire to have a different program or different components, staff recommends the Board provide direction to come back at a future Board meeting so that the details can be reviewed and evaluated by staff before adoption. In addition, any new or different program elements will need to be reviewed by County Counsel for legal compliance the CAO's office for fiscal analysis, and the Office of Equity for a racial equity impact assessment.

Racial Equity Impact Assessment

The proposed program will impact the demographic of people who are low-wage, immigrant, non-dominant language-speaking agricultural farmworkers. Thus, it is appropriate to apply a racial equity impact assessment and analysis to this decision to identify, reduce, eliminate, and prevent racial inequities. The racial equity impact assessment will follow and analyze the recommendations presented in this Board item.

The purpose of a Racial Equity Impact Assessment is to evaluate the anticipated impact of County of Sonoma legislative and other decisions on racial equity in the County. The County recognizes that equity is an outcome where race or ethnicity do not denote differences in critical markers of health, wealth, and well-being and a process where the voices and contributions of people of color, low-income and other underrepresented or underserved communities identify solutions to achieve that outcome. Achieving equity usually requires seeing, thinking, and working differently to address the harms that have caused racial inequities.

Agricultural workers are predominantly immigrants from Mexico (84%) and Central America (4%). There are also high numbers of undocumented workers in agriculture, as reported by the U.S. Department of Agriculture's Economic Research Service, citing California farmworkers as representing the highest share of undocumented workers in the country. A large majority of farmworkers do not speak or understand English, and a growing number are monolingual indigenous language-speaking, and experience resulting marginalization. Agricultural workers also experience some of the highest levels of workplace vulnerabilities and injuries, according to official statistics held by the National Institute for Occupational Safety and Health (NIOSH). While there is very limited information about how exposure to wildfire smoke impacts farmworkers, experts "do know that, even in the short term, particle pollution from wildfires - including tiny bits of ash, dust and soot - can worsen heart problems, reduce lung function and aggravate asthma. In this way, wildfire smoke can affect health in similar ways as diesel exhaust or smoke from cigarettes. Wildfire smoke can also include heavy metals like lead and arsenic, and hazardous chemicals like benzene and formaldehyde gas, all of which are present in cigarette smoke and can cause cancer." While the Board has received testimony indicating there are agricultural workers who have experienced difficulty in accessing required employer-provided resources such as travel trailers with toilets, clean and fresh drinking water, protections from excessive heat, and personal protective equipment in areas that

have been subject to evacuation orders, there was also testimony from some workers that this has not been their experience.

As a result of these and other structural and institutional inequities, health, wealth, and educational outcomes for farmworkers and their families is markedly lower than other workers and residents in Sonoma County. Given the structural vulnerabilities that low-wage and immigrant farmworkers already experience, there is potential for such wildfire smoke and other exposures, within and outside of evacuated areas, to result in adverse health and other life outcomes.

Additional requirements, like requiring enhanced personal protective equipment, capping the numbers of workers by agricultural organization, limiting access to supervisory or managerial employees, and expanded training to include labor rights could mitigate some of the issues that farmworkers have raised and experienced while working in mandatory evacuation zones during active wildfire emergencies.

While there are existing worker protections in State law, regulations protecting farmworkers and other outdoor workers enacted in 2019 are “still in their infancy”. As reported in *Sonoma Magazine*, of the 144 Sonoma County complaints filed in 2020 with Cal/OSHA, only 4 arose from wildfire smoke, and only one led to a citation. In that same article, it was reported that Cal/OSHA is severely understaffed, with only 10 inspectors for the 5-county district to which Sonoma is part, and only one speaks Spanish, and none speak any indigenous languages spoken here. These gaps in protections and enforcement may exacerbate racial inequities and disproportionately negative health outcomes for this population.

There may also be unintended consequences or the potential for lost wages during the height of the harvest season due to increased limitations to workers’ access to their places of work, if they are in evacuation zones. A paid disaster leave program could mitigate that consequence and your Board’s recent dedication of resources to investigate these options in the future provides an opportunity to address these impacts.

A racial equity impact analysis also inquires and analyzes the fiscal sufficiency of a proposed program, as well as how a program will ensure accountability, communicate with stakeholders, and evaluate results. To secure the viability and sustainability of any program, it must be adequately funded and include mechanisms to ensure successful implementation and enforcement. The data collection, stakeholder engagement, public reporting, and public accountability are critical functions to review efficacy and to ensure this novel program has the benefit of stakeholder feedback, and especially from the population most impacted by this decision. In order to assess the impacts of the program, the proposed recommendation includes a requirement for data to be collected and shared for inclusion in an After Action Report. While an After Action Report is important, the Board may want to follow up with stakeholder feedback, especially from the population most impacted by the program following an actual evacuation event where verification cards were utilized for granting access.

Prior Board Actions:

July 19, 2022: Conducted a community workshop on Agriculture Access into Evacuated Areas and directed staff to return to the Board on August 30, 2022 with updated information on legal authorities relevant to establishing an access program and recommendations regarding program scope and administration.

June 15, 2022: Budget Hearings: Board set aside \$2,000,000 to support an Immediate Needs Disaster Fund and \$1,000,000 to support a proposed Low Wage Disaster Pay Program.

May 3, 2022: Received a status report on efforts to date by the Evacuation Zone Access Ad Hoc Committee.

February 1, 2022: Established an Evacuation Zone Access Ad Hoc Committee.

FISCAL SUMMARY

Expenditures	FY 22-23 Adopted	FY23-24 Projected	FY 24-25 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

No later than by the end of the current calendar year, staff will return to the Board and present fiscal and programmatic considerations regarding the Board allocations in the FY2022/23 budget for \$2,000,000 to support an Immediate Needs Disaster Fund and \$1,000,000 to support a proposed Low Wage Disaster Pay Program.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

None.

Attachments:

1. Resolution
2. County Agriculture Access Verification Card Program

Related Items "On File" with the Clerk of the Board:

None.