

Temporary Rule on Wildfire Smoke

Summary of Key Elements

Oregon OSHA (in consultation with the Oregon Health Authority) has been working on a rule addressing the hazards of wildfire smoke in response to Executive Order 20-04, with the expectation that a proposed rule would be filed before the end of September. However, Oregon OSHA has adopted a temporary rule to address the 2021 fire season. The rule takes effect August 9, with the training requirements effective on August 16. As with other temporary rules, Oregon OSHA's rule attempts to balance the potential health consequences against what is possible and appropriate in the context of a temporary rule – it does not reflect the scope of what would be considered in a permanent rule addressing the same issues.

This document also provides an abbreviated comparison with the existing California rule and the recently adopted Washington emergency rule.

A. The rule requires employers to provide training about the hazards of wildfire smoke and how to address them to employees who will encounter such hazards.

The rule requires employers to provide training before exposing employees to wildfire smoke when the AQI is at or above 101 (other than intermittent exposure of less than 15 minutes in an hour or short duration exposure of less than two hours in a single 24-hour period).

In contrast, the California rule applies when the AQI exceeds 151 (other than short duration exposure of less than one hour per shift). The new Washington rule effectively requires training whenever an employer anticipates employees may be exposed to wildfire smoke above an AQI of 69 (other than short duration exposure of less than one hour per shift).

B. The rule requires employers to make respirators available to employees who will encounter such hazards.

The rule requires employers to make respirators available for voluntary use when the AQI is at or above 101 (other than intermittent exposure of less than 15 minutes in an hour or short duration exposure of less than two hours in a single 24-hour period).

In contrast, the California rule requires such availability for voluntary use when the AQI exceeds 151, while the Washington rule requires it when the AQI exceeds 69.

C. The rule requires the use of *feasible* engineering or administrative controls to reduce exposures below an AQI of 201.

The rule requires the use of engineering controls (such as providing enclosed buildings, structures, or vehicles where the air is adequately filtered) or administrative controls (such as relocating work or changing work schedules) to reduce exposures when the AQI is at or above 201. It does not include a hierarchical preference between the two approaches.

The California rule requires such controls at an AQI of 151 when feasible, but it reflects a preference for engineering controls over administrative controls. The Washington rule encourages exposure controls at an AQI of 69 and requires them if feasible at an AQI of 151. Like Oregon, Washington's rule treats administrative and engineering controls as equivalent.

D. The rule requires use of respirators with minimal respiratory protection program requirements if exposure controls do not reduce exposures below an AQI of 201.

As is normally the case, the Oregon OSHA rule requires respirators to be used if engineering or administrative controls cannot reduce exposures to below the required level. However, because the goal is risk reduction of a health hazard unlikely to present an acute risk, the Oregon rule also minimizes the

resulting Respiratory Protection Program requirements, focusing on training and the use of seal checks in the absence of required fit tests to significantly reduce airborne exposures (even if the normal 95 percent reduction is not achieved). Because the health risks from the actual use of an N-95 or comparable respirator are minimal, medical evaluations to use a filtering facepiece are not required in this context. The rule allows the use of previously FDA-approved KN-95s.

Presumably, because of the burdens created by the resulting Respiratory Protection Program requirements, neither California nor Washington follows the normal approach of requiring respirators when exposure controls are not sufficiently effective. California requires employers to provide respirators and encourage employees to use them at an AQI of 151. Washington encourages employers to make respirators available at an AQI of 69 and requires employers to make them available and encourage employees to use them at an AQI of 151. California's rule predates last year's widespread use of KN-95s and does not address them. Washington's rule allows them to be provided as a substitute during the current season.

E. The rule requires the use of respirators with a complete Respiratory Protection Program at an AQI at or above 501.

When exposures are at or above an AQI of 501, Oregon's rule requires the use of respirators, including the full Respiratory Protection Program requirements. At this higher level, KN-95s are no longer an option.

The California rule includes the same requirement at the same trigger. The Washington rule never requires respirators.

F. The rule would apply to transit such as buses and light rail where the continual opening of the door makes it impossible to protect the indoor environment from the smoke outdoors.

Neither the California nor Washington rule explicitly address this issue, leaving it to be assessed on a case-by-case basis.

G. The rule would have limited application to wildland firefighting and other emergency response activities.

The rule would require training and the availability of respirators when they do not create a greater hazard in such operations. They would not be required to implement exposure controls or require respirator use.

The Washington and California rules both exempt wildland firefighting, and requires respirators to be made available for voluntary use at an AQI of 151 or greater for other emergency response activities. Worker advocates have reacted strongly to such limited protection, particularly for firefighters and support personnel in fire camps. The narrowed application reflected by Oregon's rule emphasizes employee training on the hazards of wildfire smoke, and appears to strike an appropriate balance for greater hazard situations that make respirators inappropriate, which are experienced at times by firefighters, emergency responders and utility workers during large scale wildfire events.

H. The rule includes the same anti-retaliation note we included in the COVID-19 rules and in the temporary heat rule.

This note simply reiterates existing law.

I. Separate from the rule itself, the state will be making filtering facepiece respirators available from its stockpiles for employers

Oregon OSHA will not be providing such respirators directly, but the state will make them available through outlets such as the OSU extension service, the Oregon Home Builders Association, and members of the Associated General Contractors, including Hoffman Construction. When those arrangements have been made they will be posted on the Oregon OSHA website.