

# Smoke and Excessive Heat Rulemaking

## March 4, 2021

### 1pm

#### Agenda

- Speaker introductions
- Meeting ground rules
- Rule Advisory Committee member roles
- Executive order 20-04
- Proposed meeting dates
- Future meeting objectives
- Wildfire Smoke overview and Q&A
- Break
- Excessive Heat overview and Q&A

Meeting started at 1:05pm. Agenda was read (see above and slide 2)

- Tom Bozicevic: We conducted a survey to see how many participants on the rule committee wanted to participate in both rule committees for Excessive Heat and Wildfire Smoke, and to determine best day and time for the meetings. Most wanted to participate in both topics. Every third Thursday at 1pm was chosen.

#### **Speaker introductions**

Speaker introductions were conducted. This will not be done for future meetings unless new participants are in attendance.

#### **Meeting ground rules**

Meeting ground rules were shown and stated (see slide 3).

#### **Rule Advisory Committee member roles** (see slide 4)

Provide constructive information. Provide recommendations and suggestions for rule requirement considerations within the scope, not specific rule language. All recommendations and suggestions may or may not be incorporated in the proposed rules.

#### **Executive order 20-04**

Rulemaking on these topics are being brought forth due to the Executive Order 20-04 (see slide 5).

- Issued March 10, 2020
- Directs the Oregon Health Authority (OHA) and the Oregon OSHA to jointly develop a proposal for standards to protect workers from exposures to excessive heat and wildfire smoke.
- Deadline was June 30, 2021.
- OHA requested an extension; the extension was granted until September 30, 2021.

Curtis Cude (OHA): Manages some of the environmental public health programs. OHA conducts its work with equity at the forefront. We consider the diversity of Oregon's communities in looking at how policies are developed and resources are distributed. Our role on this committee is to provide that health equity perspective and provide information on the health outcomes related to smoke and heat exposure. We look forward to sharing more information in upcoming committee meetings.

#### **Proposed meeting dates** (slide 6)

Tom Bozicevic: proposed future meeting dates and future meeting objectives.

- March 4 and 25
- April 15
- May 6 and 27
- June 17
- July 8 and 29
- August 19
- September 9
- Additional meetings may be added if needed.

### **Future meeting objectives** (slide 7)

- Identify determining factors and action levels for worker protections.
- Identify engineering, administrative, and personal protection equipment (PPE) controls appropriate for action levels.
- Establish employer and employee training and instruction.
- Determine potential fiscal impacts of proposed rule requirements.

### **Questions beginning the topic overview?** (slide 8)

- Tom Bozicevic and Renee Stapleton answered that yes, slides are now available to the public on the Oregon OSHA website on the Rulemaking to Protect Employees from Unhealthy Levels of Wildfire Smoke webpage:  
<https://osha.oregon.gov/rules/advisory/smoke/Documents/SmokeHeatIntroductoryPresentation.pdf>
- Tom confirmed that others are allowed to join this group even if they did not attend this first meeting. They should see the Oregon OSHA webpage at <https://osha.oregon.gov/rules/advisory/smoke/Pages/default.aspx> for contact information to be added to future meetings.

### **Wildfire Smoke overview and Q&A**, Ted Bunch with Oregon OSHA (starting on slide 10)

- Scope of Oregon rulemaking
- 2020 Oregon wildfires
- Air Quality Index (AQI)
- US AQI Standards
- California rule (§5141.1 Protection from Wildfire Smoke)

### Scope of Oregon Wildfire Smoke rulemaking (workplaces) (Slide 11)

- Workplaces included: TBD
- Workplaces *not* included:
  - *Enclosed buildings or structures* in which the air is filtered by a mechanical ventilation system and the employer ensures that windows, doors, bays, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
  - *Enclosed vehicles* in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed to minimize contamination by outdoor or unfiltered air.
  - *Labor housing* -- not because housing is “indoors” but because housing is a distinct standard within our rules and already has an active rulemaking project to address housing issues.
- 2020 Oregon wildfires (slide 13) – 2020 was 13 times the average number of acres of the past 10 years
- Air Quality Index (slides 15-20)
  - Definition
  - Where to access AQI
  - US AQI standards
  - AQI during the 2020 Labor Day wildfires in Oregon
  - Air quality and outdoor activity guidance for schools (Airnow.gov)
  - Oregon School Activities Association (OSAA)
- Example: California rule was discussed (§5141.1 Protection from Wildfire Smoke) (slides 21-28)  
Neighboring states to Oregon have promulgated related rules.
- Questions on Wildfire Smoke? (slides 28-29)
  - Q. Attendee: In the California rule, are these [controls] listed in the hierarchy of controls order or is it that you can choose as an employer how to handle it? Does the CA rule spell out that first an employer does this step, then this step, or can any and all be done in any order?
  - A. Ted Bunch (Oregon OSHA): In regards to slide 28, when the AQI is between 151-499, then respiratory use is voluntary. When it exceeds 500, then respiratory use is required.
  - Q. cont. Attendee: Is the hierarchy of controls embedded in the rule? So they first have to try to eliminate and then substitute, etc.?

- Ted Bunch: Yes
- Q: Attendee: Does the California rule require compliance with respiratory protection standard when it's required to be worn for a wildfire?
- A: Ted Bunch (Oregon OSHA): Yes
- Q: Attendee: Do we know how this rule has worked in California to protect workers during smoke?
- A: Ted Bunch (Oregon OSHA): I believe the California rule came out at the end of wildfire season last year. I don't know that there as been an opportunity to put it to the test.
- A: Attendee: I believe they had a temporary rule in California before the final rule so the temporary rule would have been in effect during wildfire season.
- Q: Attendee: Were there any changes from the temporary rule to the final rule?
- A: Attendee: None that I remember.
- Q: Attendee: other than California, are there other states that have similar rules (Montana, Idaho, Colorado)?
- A: Ted Bunch (Oregon OSHA): I will follow up on that. Washington L&I is also currently working on a rule.
- A: Michael Wood (Oregon OSHA): Some other states (Colorado, Montana, Idaho) do not have state OSHA plans to make such a rule.
- Q: Attendee: Have violations/penalties occurred under California's rule?
- A: Renee Stapleton (Oregon OSHA): I don't know but can reach out to California to ask. In general, Oregon's penalty structure is different than California's. We are not advocating for any other state's plan. We are just looking at what is out there.

### **Excessive Heat** (intro slides 33-34) Ted Bunch

- Scope of Excessive Heat rulemaking (workplaces) (slide 34)
  - Included: Workplaces directly affected by outdoor weather conditions, including indoor workplaces such as warehouses and processing operations that do not have climate control systems that insulate them from outside weather conditions
    - Not included:
      - Indoor workplaces where the work (hot process) or the indoor environment is itself the source of the heat (e.g., foundries, kilns, plastic injection molding, etc.).
      - Labor housing - not because housing is "indoors" but because housing is a distinct standard within our rules and already has an active rulemaking project to address housing issues, which will include heat and heat stress.
      - Q. Comment, Attendee: this list does not seem to be completely separated. Several examples come to mind that do not fit in this list as shown.
      - A. Ted Bunch: that will need to be something to discuss as we move forward [in the rulemaking].
- Heat related illnesses (HRI) and illness prevention, California (slides 34-51)
  - Q. Attendee: Are employers at worksites where there may be higher likelihood of accidents (like construction sites) required to monitor what happens under excessive heat/smoke conditions? Cont. incidents more likely to occur during these conditions.
  - A. Tom Bozicevic: We do have protective measures already in place to protect workers from falls; using respiratory protection when doing certain types of activities.
  - Cont. Attendee: confirmed that they would like the rulemaking to consider the possibility of heat and smoke relating to a higher chance of incidents occurring and what that might be related to.
- Example: Outdoor heat exposure (Washington) (slides 52-63) Neighboring states to Oregon have promulgated related rules.
- Q&A
  - Q. Attendee: are employees paid during the cooldown rest periods under the California rule?
  - A. Ted Bunch: Yes, to the best of my knowledge.
  - Q. Attendee: does a single employee working outside a customer's home fall into Cal OSHA's outdoor place of work rules?
  - A. Ted Bunch: I do not know that answer.

- Q. Comment. Attendee: At [our business], we don't get and stay hot long enough to allow for acclimatization.
  - A. Tom Bozicevic: with that topic, temperature spikes and heat waves need to be considered. The weather may not give people time to adjust to the temperature changes. That will be something to be discussed in future meetings.
  - Q. Attendee: Why is Oregon pursuing rulemaking on this topic? Is it because Washington and California are? Is there justification for this rule in statistics of accidents?
  - A: Ted Bunch and Renee Stapleton: this is a direct result of the Governor's Executive Order. We have been directed to propose a rule as a result. Also, Renee clarified a comment in the chat box of this meeting that the rule addresses excessive heat AND wildfire smoke. The use of the word "or" instead of "and" was a typo. The executive order is part of the slide deck presented during this meeting. Look for OHA section.
  - Q. Comment. Attendee: Injuries [related to heat] are vastly underreported in Oregon. There have been incidents of death in California and Washington in the agriculture industry. We welcome the state to take a look at this. We would like to see the opportunity for workers to speak about their experiences on this topic.
- Slide on heat clothing (slide 53)
    - Q. Attendee: was arc rated fire resistant clothing on that list?
    - A. Ted Bunch: No, the slide shows the rule language in its entirety.
- Questions on Excessive Heat?
    - Q. Attendee: We are already doing these steps daily in the summer. I don't understand what differences it would make as it gets hotter, excessive heat, if I start out in using my embedded programs, what's changing? I don't understand the purpose of another rule where we're already conducting these steps. Isn't this federal rule for these steps already in place?
    - A. Tom Bozicevic: It is commendable that your organization is doing that. There may be others who are not as proactive. Renee Stapleton: there is no federal standard on heat. Federal OSHA has been petitioned a few times over the years to create a rule on heat. They use the general duty clause which has challenges. By and large, probably most employers are doing these things.
    - Q. Attendee: OSHA can't use the general duty clause for heat-related violations. Attendee shared a link in the meeting chat to Bloomberg Law website on the court case Sturgill v. OSHA <https://news.bloomberglaw.com/safety/worker-heat-death-citations-reversed-by-review-commission-1> I have heard some discussion to putting together a federal regulation on heat.
    - Attendee: Pointed to the United States Department of Labor, Section 3 Chapter 4 outlines all programs and elements for construction companies to follow.
    - Renee Stapleton: that is a recommendation and is not a citable prevention program under federal rules. Oregon has the authority to issue the general duty clause but does not very often.
    - Q. Comment. Attendee: we see employers not being diligent like it sounds like employers on this call are. We want to be able to say to workers, you have the rights to certain things: breaks, shade, etc.
    - Q. Attendee: From the Executive Order: "OHA and the Oregon Occupational Safety and Health Administration (OSHA) are directed to jointly develop a proposal for standards to protect workplace employees from exposure to wildfire smoke and excessive heat. The proposal should be completed no later than June 30, 2021." Doesn't this mean the proposal should address excessive heat caused by the wildfires, not just heat in general?
    - Renee Stapleton: When the order came out in February 2020, we were reading it as two separate things, not as heat from wildfires. We hope to have a proposal before the end of September 2021 on the two separate concepts. (added from chat in meeting) General Timeframe: Advisory meetings March through April, draft language in April and May, circulate a draft in June to stakeholders, refine draft in July for stakeholder review, and be ready to propose language in August or September.
  - Q. Attendee: Div 4 for Ag we do have rules around in-field work for heat. Is there a separate set of administrative from the existing rules?
  - A. Renee Stapleton: All divisions are related to heat and water. It is too early in relation to current rules (ag, general, and logging industries). This will need to be discussed within this committee. We will ask if there are conflicts that we need to resolve.

- Attendee: we strongly object if there is to be another carved out for agricultural workers this time working in the fields. You have already set out a separate route which I don't know when it will start for agricultural workers who are not necessarily indoors in housing that will now be covered by these proposals in labor housing with respect to smoke and excessive heat. In regards to field sanitation, the current rules discuss access to potable water and field san up to 1/4 a mile away. I don't know of any provisions in regards to shade. I want the audience to know what the separate is.
- A. Renee Stapleton (Oregon OSHA): We will need to work and discuss as a team. This is new.
- Local Emphasis Program (LEP): Preventing Heat Related Illness
- Questions, continued.
  - Q. Attendee: would a vehicle be considered a climate controlled area in this rule?
  - Ted Bunch (Oregon OSHA): It would, assuming the vehicle has air conditioning.
  - Attendee: the mobile construction crews, where is the shade made available? Vehicle needs to be the climate controlled space.
  - Q. Attendee: Are you thinking the local emphasis program will serve as some use as we are talking about this rule? That perhaps this rule will include some of the things that you were focusing on there?
  - A. Ted Bunch (Oregon OSHA): Yes
  - Q. Attendee: How does OHA partner with Oregon OSHA in this rulemaking?
  - Q. Curtis Cude (OHA): We approach our work with a health equity lens. We bring in expertise on environmental exposures and related health outcomes.
  - Q. Comment. Attendee: With respect to COVID and other infectious diseases, thinking about this longer term, it would be useful to have information about what has been done. For example the shaded area, I think it was in California, there was square feet per person and they had to expand it or adjust. I am thinking that if shade is part of the component that we need to think about having adequate space between people to avoid other complications.
  - Attendee: Have you found with folks where acclimatization was actually an option? In most of our service area, we don't get hot and stay how for a week plus. This topic has some significant limitations based on area of the state being considered.
  - A. Renee Stapleton (Oregon OSHA): area that is challenging. The lower part of Oregon for example tends to get more consecutive heat days. Things that need to be considered are timeframe considered, areas of Oregon, how many days, what temperature is an issue?
  - Attendee: different areas of the state are very different temperatures and number of heat days at certain temperatures and humidity is different. California is not the same as other states.
  - Attendee: what is the fiscal impact?
  - Renee Stapleton (Oregon OSHA): we will have a committee [for fiscal impact] if needed but is not planned at this early stage. Any time someone comes to us and says something will cost money, that information will be documented.
  - Q. Attendee: Requirement of wearing masks when not able to physical distancing [for example] on a construction site in relation to rulemaking for excessive heat. In Florida, they needed to remove the mask requirement because it was causing heat-related incidences. Any consideration from the health standpoint of someone who is outside for 12-hours a day (running a jackhammer) and wearing a mask?
  - A. Tom Bozicevic (Oregon OSHA): That will be taken under consideration. In the example of a construction site, other measures like physical distancing would eliminate the need for mask wearing.
  - Q. Attendee: Some situations, physical distancing is not possible with number of people in a crew on a specific task.
  - Attendees: Our interpretation is that in construction, there is no exemption to remove a mask based on a 6ft rule, indoors or outdoors.
  - Tom Bozicevic: Please continue to share and discuss this information through this rulemaking process.
  - Attendee: what is the timeline of objectives for the next nine meetings?
  - Renee Stapleton (Oregon OSHA): internal deadlines of two bills in legislature related to wildfire smoke, May/June.
  - Tom Bozicevic (Oregon OSHA): Information regarding objectives for upcoming meetings will be provided ahead of time. We are doing information gathering at this point.

- Renee Stapleton (Oregon OSHA): in chat box: General Timeframe: Advisory meetings March through April, draft language in April and May, circulate a draft in June to stakeholders, refine draft in July for stakeholder review, and be ready to propose language in August or September.
- Tom Bozicevic: Two rules may not run parallel (in timeframe). Comments will be shared at next meeting.

Next Meeting: March 25 at 1pm

Meeting adjourned at 3:52pm