

Smoke and Excessive Heat Rulemaking

September 16, 2021

1pm

Agenda

- Updates on changes in the draft wildfire smoke rule (Tom Bozicevic with Oregon OSHA)
 - Break
 - Updates on changes in the draft wildfire heat rule (Ted Bunch with Oregon OSHA)
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Renee Stapleton with Oregon OSHA started the meeting at 1:02 pm. The next scheduled meeting will share information on the proposal for this rule. There will be a public comment period. Please share experiences on the temporary heat rule.

Updates on changes in the draft wildfire smoke rule (Tom Bozicevic with Oregon OSHA).

Attendees were asked to submit redline versions of the draft rule.

Questions/comments?

- Q. Attendee: Fed OSHA has regularity authority over known hazards. This shows regulation for forecasted hazards. Are employers responsible for those too?
- A. Tom Bozicevic: The AQI is a tool employers and employees can use to heighten their awareness of the possibility for PM2.5 concentrations to reach rule action levels. If such concentrations do not reach an action level, there would be no requirement to follow. We recognize that those conditions can change during the day. Employers need to make a good faith effort to identify when those levels may be reached to notify exposed employees and implement exposure controls. Oregon DEQ and other local agencies may put out advisories when level is at or above AQI 151.
- A. Renee Stapleton: There are a lot of standards related to hazards we *do* know. It is not unheard to have control of hazards out of exact knowledge of the hazard itself. Employer's responsibility to anticipate hazards.
- Q. Request to review (1)(a)(C) again. Tom explained the intent.
- Q. Attendee: 1) in definitions, sensitive groups. Plan to define "other licensed health care provider"? Current OHA guidance on that term is very broad. 2) forecasted AQI, if this is something not enforced if it doesn't come true, why put it in the rule? Let's say the forecasted AQI level was in the 80s, but it ended up being in the 200s. The person did not know to plan for that and can't be reached by cell phone. Is that in violation? 3) if AQI method is so ambiguous, is it a good idea to base a rule on it?
- A. Tom Bozicevic: this is not a standalone term in the document, so it would follow general definition. 2) even if the current AQI wasn't above the threshold for requirements, we wouldn't enforce it. For example, for employers who don't have access to the information (no cell coverage, etc.), they should check that information before they get to the area. Forecasted is a tool to plan for it. Could also use 5-3-1 visibility chart. 3) AQI is the best tool we have. Only alternative is employers do direct readings, which is not prohibited in the rule.
- A. Carol Trenga (1ac): Reinforced Tom's discussion. OHA still has some concerns about lack of ceiling of PM2.5 around that exemption. Also, AQI includes the NowCast.
- A. Tom Roick: AQI is designed to provide the information on the exposure over time and index value is based on that.

Tom Bozicevic resumed draft review.

Questions/comments?

- Q. Attendee: What is the definition of feasibility in the document? Concern is the phrase if employer can demonstrate functionally ... or if doing so would prevent completion of the work seems like it is pretty broad. Suggestion is to remove that line "or if doing so would prevent completion of the work." It doesn't seem like the best test of feasibility.
- A. Tom Bozicevic: important to read entire sentence/section. Employer still must take any reasonable/available protections. It isn't a yes/no.

- A. Michael Wood: In previous experiences, employers who were found in violation and said it was infeasible, they rarely succeed. It doesn't say the work will be completed in the amount of time expected or at the expected cost. It says that the work cannot be completed.
- Q. Attendee: In regards to greenhouses, what is the purpose of "must" if yielding to A or B?

NOTE: For indoor work environments that are not exempt from these rules under section (1)(A)(a), the method used for exposure assessment must directly measure indoor air concentration for PM2.5 as covered under section (3)(c) unless the employer chooses to use means under (3)(a) or (3)(b) when applicable.

- A. Tom Bozicevic: Enclosed indoor work environments not exempt from the rule due to lack of mechanical ventilation are more likely to have a lower or equivalent PM2.5 concentration than the AQI level for their location.
- Q. Attendee: forecasted AQI, seems like employers would want to use this.
- Q. Attendee: In the Appendix, employers may have stocked up on KN-95s.
- A. Tom Bozicevic: Will talk more about KN-95s. Action level for training is AQI 101.
- Q. Attendee: 1) Section 5, keeping records. Is this a higher bar to certify vs recordkeeping? 2) Section (c) housing: if employee is off time, have you considered that we can not regulate what they do during that time?
- A. Tom Bozicevic: Certification of training is just more precise than recordkeeping. It is a simple document of keeping the training record.
- Q. Attendee: 1) 4a, b, c seems like this is ambiguous. What are the specific conditions or diagnoses, etc.? Supervisors will need information in training when saying that exposure can lead to chronic conditions or death. 2) Will Oregon OSHA seek employee feedback?
- A. Carol Trenga: 1) Primarily those that cause symptoms that employees can recognize, want to make sure others are covered in the training. Long-term effects of repeated and long-term smoke exposure are well known.
- A. Tom Bozicevic: 2) We don't have a specific mechanism in place for employees to provide feedback but it would be nice to have that. Renee Stapleton: We will be having public hearings with opportunity to share feedback. They are also welcome to call or email us (specifically Tom Bozicevic or Ted Bunch).
- Q. Attendee: 1) Section 5, written certification record, can that be in an electronic management system? Suggest changing it from "written" to include electronic format. 2) verbiage is confusing in Note below (d) "Elastomeric respirators..." 3) make it clear that employers can use KN-95s even if there is a box of N-95s on the shelf.

NOTE: Elastomeric respirators, such as half facepiece or full facepiece tight-fitting respirators are not included for use under section (7)(a) and (c). Use of such respirators for wildfire smoke protection must comply with all applicable requirements under 1910.134, Respiratory Protection.

- A. Tom Bozicevic: 1) Main thing is that it contains those elements. 3) did remove wording and added that KN-95s are only allowed for this fire season. Can look into this though for existing supply of KN-95s.
- Q. Attendee: 1) confusing in one section and then later mentions feedback from employees when things change. 2) have had order in for N-95s for over a year. We can get other kinds. Also, having sizing available is challenging based on brand.

(3) Exposure assessment. Employers must determine and monitor employee exposure to wildfire smoke where ambient air concentration for PM2.5 is at or above 35.5 ug/m³ (AQI 101). Such assessments must be conducted at the start of each shift and as needed to identify and implement appropriate exposure controls under section (7), by using one or more of the following means and methods:

(a) Check the current **and forecasted** AQI value for PM2.5 from the [Oregon Department of Environmental Quality](#), [U.S. EPA AirNow](#) or [Interagency Wildland Fire Air Quality Response Program](#) websites, or equivalent source;

- A. Ted Bunch: please add additional comments on wildfire smoke to comments during the meeting or send those after the meeting.
- Q. Attendee: 1) Question on “ceiling.”

(C) Work activities involving intermittent employee exposures of less than 15 minutes in an hour for a maximum of two hours total within a single 24-hour period;

2) seems to need to be a second look at mask sizing. 3) (4) training, what is triggered by those requirements? We would want to get to the point that workers don't have those symptoms that need reported. Support an air quality break in a less hazardous environment, with medical supervision. Doesn't seem to discuss mandatory breaks.

- A. Michael Wood: these are working drafts that have not be through a rigorous review on our end. We will develop a draft that would be a proposal if we went that route immediately after this meeting. But we will send it out to the group first. We will look at the cost of compliance and specifically cost to small employers. We want the permanent rule, if there is one, to be in place well before the next season. We want to give everyone time to provide feedback.

Break

Updates on changes in the draft wildfire heat rule (Ted Bunch with Oregon OSHA)

Questions/comments?

- Q. Attendee: provide rationale for excluding wildland firefighters from the requirements from acclimatization.
- A. Ted Bunch: if they are responding to a wildfire, they may not have time to acclimatize.
- Q. Attendee: indoor, sedentary workers, consider excluding them. If I have an office with no AC, I have to send my workers outside in the shade to take a break where it may be warmer than inside the office.
- Q. Attendee: is there some minimal level of physical activity for this rule to apply?
- Q. Ted Bunch: we will take that under advisement. Encouraged sending suggested language.
- Q Attendee: [did not record comment.]
- Q. Attendee: chart on break times, should take exertion into account.
- A. Ted Bunch: can consider a way to put that language back in that was in a previous draft.
- Q. Attendee: We support NIOSH chart because important to have a work-rest schedule. High heat procedures, need for a pre-shift meeting when high heat starts to alert workers of what they need to do that day.
- Q. Attendee: exemptions, consider listing all emergency services here.
- Q. Attendee: 1) definitions, availability of water. Suggest to be changed to immediately available instead of readily available. Feasibility, same concerns on this word in both rule drafts. 2) in covered hoop houses, creates humid environment. Not sure how employers will measure this.
- A. Ted Bunch: employers could use a thermometer that shows relative humidity. Michael Wood: this is something we need to look at and require employers to include the humidity.
- Q. Attendee: confused by the requirements here.

(d) Employers must ensure that each employee takes a minimum ten-minute preventative cool-down rest period in the shade at least every two hours, regardless of the overall length of the shift.

- A. Ted Bunch: I can't tell you at this time what the NIOSH standard is but can follow up.
- A. Renee Stapleton: NIOSH is work/rest is variable depending on all of those factors, based on circumstances. It was in an earlier draft. We should be able to get that information to you pretty quickly.
- Q. Attendee: acclimatization plan. What is the benefit of writing up a plan that isn't used?
- A. Ted Bunch: Did not record comment.

- Q. Attendee: 1) shade outside, for shade to be adequate, the shade must lower body temperature. In regards to indoor employees needing to take breaks outside in the shade. 2) Employers need to be able to protect workers but also comply. People aren't medical providers in the field.
- Q. Attendee: [Did not record comment.]
- Q. Attendee: cost of compliance evaluation, there is a cost of compliance and non-compliance for workers too (chronic illness, death). Does OSHA take that into account?
- A. Michael Wood: the law does not require a cost benefit analysis but requires a cost of compliance analysis.
- Q. Attendee: asking for more clarity on how added NIOSH chart would be used.
- A. Michael Wood: haven't yet agreed to put the chart in. But if we do, it would be with the intention for employers to abide by it. There are benefits to it but challenge is that it adds a layer of complexity.
- Q. Attendee: is there a requirement on reporting the training done in the Heat rule like the smoke?
- A. Tom Bozicevic: does not need to be *reported*, but confirmed that Attendee meant *documenting* training.
- A. Ted Bunch: there is no current requirement for documenting the training on heat.
- Q. Attendee: consider having it be "provided upon request" as is other training documentation.
- A. Renee Stapleton: Looking to do listening sessions in the future.

Adjourned at 3:51pm