

# ~~Smoke and Excessive Heat~~ Rulemaking

July 8, 2021

1pm

## Agenda

- Status of temp Heat rule (Michael Wood with Oregon OSHA)
- Discuss which elements of the draft rule would be workable as part of a possible temporary rule, to be put in place sometime around the beginning of August
- Updates on changes in the draft wildfire smoke rule (Ted Bunch with Oregon OSHA)

Ted Bunch with Oregon OSHA started the meeting at 1:05pm.

## Status of temp Heat rule (Michael Wood)

Adopted the temp heat rule for this season and more fully adopted rule for next season.

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

Ted Bunch: reviewed additions to draft of smoke rule (sent to RAC before the meeting began)

Looked at two elements: 1) language and 2) elements that could be put into a temp smoke rule

### • Section 1

Ted Bunch reviewed additions and removals

Questions/Comments?

- Attendee: second sentence reads as regardless if wildfire smoke is present: "Employee exposure..."
- Attendee: Discuss the timeframe that this occurs in (wildfire smoke during wildfire season), need to do a better job defining that. Concerned this would imply it pertains to prescribed burning.
- Attendee: Narrow the scope to actual wildfire season for consistency sake.
- Attendee: Wanted to check that the intended scope was in fact excluding prescribed burns?
- A. Tom Bozicevic: it was not going to be included in the scope of the rule, but if you have a prescribed burn that leaves its designated area and it becomes a wildfire as a result, it then triggers the rule. We added definitions of wildfire smoke and wildland to help define that.
- Attendee: fire season is declared at different times throughout the state, so just make sure that is clear in the scope and that scope aligns with that.
- A. Tom Bozicevic: that is one of the complications with requiring it for wildfire season. We can take a look at that as far as part of the rule.
- Attendees agreed the scope would be the same for a temp rule.

### • Section 2

Ted Bunch: reviewed additions and removals

Questions/Comments?

- Attendee: Objection of exclusions of ALH from these rules from Day 1. Under Section 2a) Are you saying that ALH has mechanical ventilation system in place? Asked that occupants of labor housing are included.
- Michael Wood: The draft you are looking at is a draft of an intended permanent rule (in that context, labor housing would be separate issue). If we move forward with temporary rulemaking to address both, we may want to consider if there are things that can apply to housing as part of the temporary rule. It is possible to adopt a temporary rule that would get us through this season that might include issues in labor housing and leave the broader labor housing discussion for broader labor housing rulemaking.
- Attendee: In section D, wording suggests that emergency and firefighting operations are excluded.
- Attendee: Section 2(c), I appreciate that you are requiring these employers to comply, fire camp services and fire management should not be exempt as those camps get very smoky and a lot of camp workers are not active firefighters. They would be exposed to smoke. Firefighters themselves should be supplied with masks for optional use as well.
- Attendee: Section 2(c), we also support informational requirement and voluntary use of masks for those workers in those camps (who are not active firefighters).
- Attendee: Section C, I disagree with needing masks for the firefighters on the lines. Creates its own hazard with ability to breath and wearing non fire-retardant materials.

- Attendee: Frontline wildland firefighters who we have spoken to are in support of having them on hand for optional use for smoke, dust, ash.
- Attendee: Section 2(A), especially for the temp rule, we should be really specific about applying to outdoor settings. Would be confusing to apply this to all of those indoor settings (with regard to HVAC). I would encourage this to be limited to outdoor environments where PM2.5 wildfire smoke is present.
- Attendee: We agree with that as well and if you do that it takes care of above Attendee's concern under 2E.
- Attendee: We have employees who were in the minimum approach distance of high voltage electricity and need to wear fire resistant clothing and we do not have fire resistant respirators. I don't know if it needs added that while employees are in the MAD they are exempted from wearing respirators. In section D, fit testing isn't required under voluntary but language in draft rule implies that.
- Attendee: Regarding section D, perhaps the language that you include is NIOSH-approved respirators unless they create a greater hazard. For example, our employees do not go anywhere near a damage that involves gas with a standard respirator, simply is not safe to do so.
- Attendee: I don't think that addressing 2(a) would also address 2(e).
- Attendee: Comment about fit testing for respirators for optional use, fit testing would be required for optional use and that should be included in the rule.
- Attendee: In regards to enclosed buildings and structures in connection with the exemption, there are operations where the doors and openings are constantly being opened and closed, so OSHA needs to take that into consideration with how the exemption applies.
- Attendee: There are going to be a lot of utility operations that occur in areas where they are doing general industry maintenance work on the systems and they may not be anywhere near the wildfire, having mandatory use in those areas would probably violate the MAD rules.
- Attendee: section D, on one hand it says voluntary use but it says encourage to use it, those are conflicting terms.
- Dave McLaughlin: concept here is that voluntary use does not mean required use. But if we say "encourage" it is still voluntary (is a good idea).

- **Section 3**

Ted Bunch: reviewed additions and removals.

Questions/Comments?

- Attendee: Removing the definition for wildfire and not adding or clarifying language surrounding wildfire smoke definition, does pull in prescribed burning.
- Attendee: Having a clear definition of wildfire and wildfire smoke is essential to this rulemaking (for triggers).
- Attendee: What is the reasoning of prescribed fire smoke being excluded? Why would it not trigger this rule?
- Attendee: Regards to general scope, my understanding that the governor's executive order for this rulemaking was for impacts from wildfires. Is expanding it to general implications from any form of smoke within OSHA's authority?
- A. Michael Wood: Short answer is yes, because we don't accrue authority from the governor's executive order. The authority we are using is already in the Act. The executive order directs us to use our authority that does not preclude us from doing more than the executive order directed.
- Attendee: I am wondering if adding the words "unintended" and "uncontrolled" to wildfire smoke might help define that better to exclude ag burns and prescribed burns.
- Attendee: There was a question on why to exclude it. There is very specific regulation / criteria to do prescribed burns. Need to look at wind conditions and AQI, for example, was negotiated with OHA and I believe ODF. Comingling these two could cause detrimental unintended consequences and we already have very good rules in place that manage potential hazards or health effects related to prescribed burns.
- Carol Trenga: 2018 prescribed burn rule change, goals were to protect health and also allowed more prescribed burning to take place. Rules that pertain to sensitive receptor areas which are populated areas, in this rulemaking, a broader scope in terms of geography and there would be a lot of outdoor workers not in the sensitive areas (SSRAs).
- Attendee: Concerned to calling out specific types of people who are in sensitive groups. Training could run afoul if employers point out who might be in that group. Would like bulleted list to be removed.
- Attendee: Sensitive groups list is good for understanding of who is in that.
- Attendee: Point was about workers and exposure to prescribed fire smoke. Wildland firefighters, it is just as detrimental to health when exposed to prescribed smoke as when they are fighting wildfires.

## Section 4

Ted Bunch: reviewed additions and removals.

Questions/Comments?

- Attendee: why wasn't there a certified IH on the panel?
- A. There are at least three attendees who are CIHs.
- Attendee: Analytical method should be listed.
- Attendee: My concern is that we really do look at OSHA as the gold standard and we are not using the IH principles in regards to timeframes, doses, durations. Websites for AQI may be delayed. Handheld would be instantaneous but as of now we are not referencing dose and duration as a scientific process, in regards to negative health impacts of exposure. AQI increase may just be for 15-20 minutes. Not feasible to run to put everyone in respirators for that time period and then pull everyone out of that if the wind changes. Need clear data on the negative health impacts.
- Carol Trenga: These recommendations and rules are based on the science of the AQI, is based on health impacts of specific concentrations of PM2.5 for specific populations. Ambient conditions, so there are a lot of different considerations on how they are measured and how they vary. AQI sites are updated hourly. Forecasting is also available to help employers make decisions and comply with these rules.
- Attendee: Most CIHs are trained to use methods that rely on traditional pump and sampling like that (whether it be 8-hour exposures or short-term exposure limits). We don't have the opportunity to do that on a day-to-day basis for all of our employers. We are relying on direct readings or other avenues that can correlate with what we believe shows the science. We are in unexplored territory in regards to our climate. Still learning about the health effects on sensitive groups.
- Michael Wood: there is a balance throughout OSHA rulemaking between the gold standard and rules that can be practically implemented and applied. Myth that there is an exact dose response ratio that applies consistently across the population.
- Attendee: PM2.5 is a number that has been used and derived for some time. We have a very diverse workforce [in being bothered by smoke]. The science is there and does correlate. It can be calculated and calibrated. Issue has been dealt with by saying we have to follow manufacturers' instructions for care, maintenance, calibration. One of the problems with the PM2.5 is if there is a direct correlation between our workplace and the nearest station. From work experience, sometimes there is not. It used to be PM10, but chemicals attached to those particulates increases risk to sensitive groups and general population. There is no safe exposure. Drawing the line at a number, AQI is a starting point.
- Attendee: In section 4a, is there a distance requirement for nearest air quality station or is the closest acceptable?
- Attendee: Tying into discussions on distance, we have talked about areas of the state not covered by a monitoring station. Some employers/crews may not have had access to up-to-date information on websites and they used other methods to get that monitoring results. Way draft rule is written, it is pinning employers down to what monitoring stations they can use to get that data that is also accurate. May not have access to that data in certain areas of the state if only certain stations are required. I still struggle with the word "infeasible" in (d) because that is a pretty high bar to cross in order to use that visibility chart.
- Attendee: I am uncomfortable with the infeasibility bar. May be feasible to get internet or a smartphone but impracticable. Need to consider the practicability side for our more remote work locations.
- Tom Roick: AQI that we maintain is updated hourly and publicly available. In regards to distance from a monitoring station: hard to answer because it is also affected by other factors (wind, etc.). Person should also look at whether data they are seeing online is what they are seeing in person in the area they are in.
- Attendee: If I recall correctly, 5-3-1 visibility chart was also added for power outages or cell phone towers being down.
- Attendee: 1) Does OSHA recognize the AQI for any other exposures other than wildfire smoke? 2) Also, two different towers, equal distance apart could give very different results, in regards to needing to wear a respirator.
- Ted Bunch and Tom Bozicevic: 1) not to my knowledge.
- Attendee: Plan is to triangulate between towers.
- Tom Roick: There is an advantage to more than one method because it can vary. Option of employers having their own monitoring devices but correlations of data to wildfire smoke could pose problems. Power outages could cause issues. Using option of using 5-3-1 visibility chart could be better than having no data at all, although not ideal.

## Section 5

Ted Bunch: additions to section

Questions/Comments?

- Attendee: Minor word editing suggested: 1) what is an “affected employee”? 2) adverse symptoms is very broad 3) new (i) can we get rid of the word “hazard”?
- Attendee: 1) When would the emergency rule on smoke be effective? 2) Section 5 states training and that would not be possible before September of this year. Consider loosening standards on training for this year.
- Ted Bunch: 1) We hope to have something drafted by the first of August. 2) understood and thank you.
- Attendee: Smartphone weather apps show AQI and are usually dead-on with the DEQ number. Option that we need to make sure everyone is aware of.
- Attendee: Don't want to limit ourselves to just the two official sites. The more options employers have to access this data, the better, especially given the diversity across the state. Also, “adverse” is difficult to determine the intention.
- Ted Bunch: Suggestions for temp rule?
- Attendees: OSHA should supply a webinar or online training for employers to get out to employees, especially for this year on a temporary basis with such a quick turnaround and with employers working with emergency heat rule right now.
- Attendee: In regards to OSHA producing training materials, I think starting out, consistency is going to be critical. There are sections that are critical to the education in employees reporting, etc. and giving us data we need.
- Attendee: Do we have historical data from wildfire smoke injuries and is this being data driven?
- Carol Trenga: We have extensive data from healthcare visits. Occupational data is somewhat limited (less complete) for a variety of reasons in capturing ag workers or outside workers. Are somewhat limited on capturing ag and other outdoor workers (visits may not be during work hours, may be widespread exposure occurring, people may be hesitant to seek care, connection may not be made to the specific exposure). Increasing evidence about toxic effects of PM2.5 for wildfire smoke as compared to other sources of PM2.5.
- Michael Wood: There is a robust set of research going back more than two decades that shows that health conditions are dramatically under reported in BLS and WC data. Diagnosis may never be linked back to work. Also, less likely to get a workplace association for this health hazard.

## BREAK

## Section 6

Tom and Ted reviewed additions and removals

Questions/Comments?

- Attendee: How am I supposed to communicate with employees working all over the state and constantly moving throughout the day? They have a check-in requirement. Sometimes they are out of cell range for much of the day and would be unreachable.
- A. Tom Bozicevic: Employers who already have a process in place for communicating to mobile crews, incorporate that process of notification of smoke levels that require action.
- Attendee: We have a similar problem that we are not going to be able to notify mobile crews when levels are too high and then go lower again, throughout the day. Crews are only checking in max twice a day.
- Attendee: We could use forecasting as general rule in the mornings. Crews being mobile and not having communication abilities, achieving compliance with the rule is challenging with the way the current language is written.
- Attendee: For employees in remote areas, what about using the paper visibility index (5-3-1)?
- Attendee: I agree with previous comment of equipping staff on 5-3-1 or other methods, factoring that into training. Shift power to employees.
- Attendee: What is the goal with sections 5 vs 6, information and training?
- A. Tom Bozicevic: This is the general information that employees would need to know (communication, exposures, actions needed). Took this from the CAL-OSHA rule as a framework. Intent is to make sure that employees have been made aware of the level that requires action on their part and what that action is (if employees don't have access, that someone is back at an office, for example, who can provide them with that information).

- Attendee: Simple way to address this issue is to add sentence that this communication system may include equipping employees in remote areas or field with devices to monitor so they have information to make those decisions.

## Section 7

Ted Bunch reviewed additions and removals

Questions/Comments?

- Attendee: Under engineering controls, I can't think of one that wouldn't throw you into an exemption. CA rule has different allowances and should be looked at, if this section and admin controls remains as-is. CA rule allows them to do work above that first action level and up to the mandatory respirator requirement. Number of 151 for mandatory respirator usage is very extreme, would shut down a lot of operations. Number of 300 is a number I think I could support. In Note, wording "if available" does not give any guidance.
- A. Tom Bozicevic: Maybe a miscommunication of this section of the rule compares to the exceptions. For employees who normally work in enclosed buildings, for example an office building, that is their normal operation. When we are talking about exposure controls (specifically, in this section, engineering controls), it is really for those businesses who have workers who normally work outside. It isn't that they are automatically exempt. They have to do something to protect those workers. For workers who normally work outside and the employer uses controls to move them to an enclosed building, for example.
- Attendee: The way I read CAL-OSHA rule under administrative controls (levels are 151 and 500), if their engineering controls did not get below 151, then they can look at moving locations. So if the location they were going to do work was at an AQI of 400, the rule says can you move that to an area that is lower? It doesn't say that area has to be below 151. Reads that I cannot work outside without a respirator if levels are 151 or above.
- Attendee: Our biggest issue is that the trigger level is so different than California's rule. Look at consistency since a lot of our employers also work in California. In speaking with employers, they said that a level of 151 would be completely unworkable. Wearing a respirator could create a new hazard.
- Attendee: Support previous comments. Not practicable to use 151 as a trigger level. A lot of unanswered questions regarding fit testing (facial hair and religious practices, for example). Also, wording "if available" is unclear on how to apply that.
- Attendee: Our employees are greatly pushing back on wearing respirators, fit testing. We have no issue with providing masks or training. Many people are not in sensitive risk groups and do not wear a mask. Our hands are tied since masks are the only option. Schedule changes are not an option for us as we are a 24/7 operation.
- Attendee: In looking at descriptions of the AQI levels on the AirNow website, I question requiring respiratory protection when many people are unlikely to have health impacts.
- Attendee: I support previous comments of unrest from employees having to wear mandatory respirators. Number of 151 is far too low of a threshold for mandatory respirators.
- Attendee: I support previous comments. Would be cleaner rule if employers are required to provide certain PPE and encourage its use when a level was at a certain higher number (than 151).
- Attendee: CAL-OSHA's trigger of 500 AQI is pretty ridiculous given that health effects would be present at much lower levels. Levels in this draft rule as written are good.
- Attendee: Maybe for the temporary rule, OR-OSHA considers no mandatory levels and instead focuses on education and training, etc. and act when they see a threat.
- Attendee: Arguing that an AQI of 500 is aggressive and it [inaudible] a lab test. Workers who suffered at levels lower than 500, and some unions were involved and pushed management. A lot of workers and unions felt like they did not want to be working in those conditions and were sent home, for example.
- Tom Bozicevic: Shared EPA's 2019 and 2020 Oregon wildfire smoke level data, number of days that the AQI was at levels for these locations (June 1 to Sept 30), what we would see as far as exposures.
- Attendee: This data supports stakeholders' opinions, that if this is so infrequently why am I going to have 1100 companies send their people through medical clearance to wear respirators for only this amount of days? The intent would be the same if we didn't make it mandatory but is available. Still meet the requirement of keeping people safe. Steps and expense would have to be taken well before the wildfire season.
- Attendee: Data shows this would be infrequent. Make levels recommended.
- Attendee: Crazy what would have to be done for just a few days. Expense is tough on small and large companies.

- Attendee: Not suggesting opposition to voluntary use or that employers supply of respirators to employees. The sticky point is the concept of mandatory use at 151 AQI.
- Attendee: I would [agree with] Attendee's comments above. The point is when is it no longer the employee's choice to wear a respirator. We encourage a higher threshold than 151, and to not remove the employee choice.
- Attendee: We are looking at these very high temperatures as if they are a 1 in a million event instead of looking at scientific data of where climate trends are going.
- Attendee: I want to echo what was said about climate trends. Employees look to employers for clues. The word voluntary could imply to workers that they should not do that. I would think that employers would want to have the fit testing done in any case.
- Attendee: As stated earlier in this meeting, there is no safe level of exposure. Some workers are exposed to smoke levels much more frequently, so the data showing community exposure is one thing. Some workers by the nature of their work are exposed to much higher and frequent levels of smoke.
- Attendee: What I hear employers objecting to is that they have to require employees to wear respiratory protection whether they want to or not, at a fairly low level of PM2.5.
- Attendee: Medical fit testing/eval every year is not feasible. Not realistic that workers would need to be ready to wear respirators at all times. No issue with supplying materials and training to employees. Mandatory makes things virtually impossible.
- Attendee: If optional, workers will come under peer pressure to not wear protection even if they feel like they should. If mandatory, there is no question.
- Attendee: Aside from bravado, employees will consider speed and productivity. For employees working in teams, they may have differing views on wearing masks.

## Section 8

Ted reviewed additions and removals

Questions/Comments?

- Attendee: This is problematic and a paperwork burden. Section should change to something effective and needed. Opinion would apply to temp rule.
- Attendee: I would echo what was just mentioned. And point out that wording should say "remainder" instead of reminder. Add word "year" after calendar.
- Attendee: With recordkeeping requirement, employers also have to keep track of when it wasn't at certain levels, in case there is a complaint or investigation.
- Attendee: There would be extensive data to record for every work location.
- Attendee: Exceptions should not apply at expense of worker safety.
- Attendee: Burden of reporting as stated creates that requirement to be done by every crew, every day.
- Attendee: One issue with recording at each work location, issue is how finite is the PM2.5 data? I am not sure of the benefit to the employer or the regulator.
- Attendee: Suggest keeping training records of who has been trained that year, and not individual, daily AQI.
- Attendee: I don't think it is a big issue for supervisors, etc. to monitor AQI.
- Attendee: What is the scope of the recordkeeping requirement?
- Attendee: This doesn't strike me as all that burdensome because online resources give this information for free and it is accessible.
- Two attendees: Not realistic for mobile crews or ag crews, will need to be paper copies. May or may not have cell coverage.
- Attendee: I have asked in the past, what is the purpose of recordkeeping? I assume this is for protection of both worker and employer. This would be forcing employers to pay attention to something that is critical to their operation and to the safety of workers.
- Attendee: Looking at AQI for one area would accomplish what we want to keep employees safe. It would be challenging to monitor 50 different sites throughout the day, as crews move throughout the day.

Further comments can be shared via contact information on Oregon OSHA's website.

<https://osha.oregon.gov/rules/advisory/smoke/Pages/default.aspx>

Meeting was adjourned at 4:13pm.