

July 17, 2024

Mr. Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Proposed Rule for Emergency Response, 29 CFR 1910.156

Dear Assistant Secretary Parker,

The Occupational Safety and Health State Plans of Alaska, and Oregon appreciate the opportunity to provide joint public comment on the Proposed Rule for Emergency Response (Docket No. OSHA–2007–0073; [89 FR 7774](#)). As two of the state plans formerly of Region X, we have come together to share collective thoughts on the proposed standard. Alaska and Oregon firmly believe that emergency service responders should be protected from occupational injury and illness and actively work to reduce occupational loss in this vital industry. However, it is our position that promulgating rules should be done at the state level to account for the unique circumstances facing first responders and the dynamics of the community needs.

The Pacific Northwest has one of the most geologically diverse and unique landscapes in the world. Its volcanic peaks, high desert plateaus, snowy tundra, temperate rainforest, oceans, rivers, and rural expanse, combine to create an exceptionally challenging operational environment for emergency service responders compared to other states. In addition to a shared landscape, the two state plans have a similar emergency services structure that includes jurisdiction over volunteers. Federal OSHA's proposed rule would introduce a wide array of new compliance requirements that cover not only public and private firefighting but also emergency medical services, technical rescue operations, and equivalent services.

The Department of Labor's fiscal analysis is purely academic and is not based on the reality facing the emergency service responders in our communities. There are scores of employers in both states who have an annual operating budget far below the estimate reported by federal OSHA. DOL's projection of \$15,027 as an annualized cost on table VII-E-4 for small organizations is wholly unrepresentative of the employers (many are volunteer organizations) in our states. Decisions impacting this critical industry must be made by the states who have the requisite knowledge of what it takes to operate in this diverse region and understands the unique risks and needs of its communities. Federal OSHA does not even have jurisdiction over the bulk of employers who will be subject to the requirements of this rule in Alaska, and Oregon much less the rest of the country.

This proposed rule is expected to have a disproportionate impact on each state plan's fire service providers. The fire service responders are almost exclusively provided by public entities over which federal OSHA has no jurisdiction. Additionally, each state relies heavily on a significant population of volunteer fire personnel, which are also not covered by federal OSHA. To propose such a rule belies federal OSHA's lack of knowledge or expertise about how to properly assess what measures are needed to protect emergency responders while simultaneously ensuring that communities are kept safe and rescue services remain available.

During the Small Business Advocacy Review (SBAR) process, many Small Employer Representatives (SER) raised concerns about the impact of this proposed rule and federal OSHA has done little to allay the concerns raised by these representatives. The following concerns raised in 2021 SBAR process continue to be relevant to the proposal, and are reflective of concerns both states have heard from their respective regulated community such as:

- "While the SERs showed general support for the safety requirements proposed in the draft standard for emergency service organizations (ESOs), concern about the economic feasibility of implementing these requirements in smaller, particularly volunteer, fire departments was common."
- "Many of the SERs expressed concern over the inclusion of small and/or volunteer ESOs within the scope of the rule. SERs repeatedly raised the fact that many small and/or volunteer ESOs have no dedicated source of funding and would, therefore, find it difficult to complete the additional tasks that they would need to undertake to comply with the draft standard. One SER told the Panel they supported exemptions for some ESOs, especially for smaller ESOs that operate on little to no budget. Another SER thought that this draft rule would "kill" small fire departments. Furthermore, SERs questioned OSHA's authority to regulate volunteer responders and to regulate public employees in non-State Plan states."
- "A common concern among SERs was that given the limited resources of many volunteer fire departments, this standard, if promulgated, would force small ESOs to close. A number of SERs said they anticipated the financial costs would be unmanageable. One SER indicated that they anticipated that this rule would close three firehouses in their community and that if that 8 happened, the closest remaining department would be 30 minutes away placing residents and property at greater risk if there was a fire."
- "Many SERs were concerned with OSHA's extensive use of NFPA consensus standards in the development of the draft regulation, and the incorporation by reference of certain NFPA standards. Several SERs commented that NFPA represents the "gold standard," and is, in their view, primarily developed by manufacturers. (OSHA notes that NFPA strives to maintain a balance of interests in its standards development committees; including manufacturers, users, labor representatives, enforcers, consumers, special experts, and more.) Many SERs expressed

that ESOs in large metropolitan areas were capable of adhering to NFPA standards, but small and volunteer departments find them prohibitive. SERs expressed difficulty with the financial and time commitments needed to comply, saying they would put small and volunteer ESOs out of business, leaving large gaps in community emergency response protection.”

- “One SER said that they did not think that small or rural departments would be able to develop the written plans as required by the draft standard. Some SERs were concerned that, where responders were all volunteers, it would be difficult at best for a volunteer ESO chief to complete the necessary written plans while responding to emergencies and attending to their occupational and life responsibilities.”
- “One SER correctly pointed out that the draft standard, if promulgated, would not cover state, local, and municipal employees in non-State Plan states, meaning that only roughly half of responders would be covered.”

This last comment strikes at the heart of the issue of this unbalanced federal proposal. Lastly, twenty-nine state plans would be required to adopt standards that are “at least as effective” (ALAE) as federal OSHA which would dramatically change the landscape of the nation’s public emergency services response, while the twenty-seven federally administered states and territories have no net effect for public employers and would continue to operate as they are today. An example of the dichotomy will be how workers will be protected in the former Region X (Alaska, Idaho, Oregon, and Washington), with three of these states (AK, OR, WA) would be required to adopt regulations that were ALAE and one (ID) would not. This is not because there is no risk to those workers but simply a jurisdictional issue which highlights the disingenuous nature of this rulemaking.

Alaska and Oregon rely heavily on our emergency responders and this proposed rulemaking could dramatically affect our collective states’ ability to protect our communities. We respectfully request you to reconsider the enormous impact that this proposed rule would have on the vital protectors of those who live, visit, and work throughout the Pacific Northwest.

Respectfully,



Renee Stapleton
Administrator, Oregon OSHA



William “Dale” Williamson
Chief of Enforcement, AKOSH