

SBA OSHA/MSHA Roundtable

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OSHA's Emergency Response Rulemaking

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Emergency Response Proposed Rule – Outline

(a) Scope

(b) Definitions

(c) Organization of the WERT, Establishment of the ERP and Emergency Service Capability

(d) ESO Establishment of ERP and Emergency Service(s) Capability

(e) Team Member and Responder Participation

(f) WERT and ESO Risk Management Plan

(g) Medical and Physical Requirements

(h) Training

(i) WERE Facility Preparedness

(j) ESO Facility Preparedness

(k) Equipment and PPE

(l) Vehicle Preparedness and Operation

(m) WERE Pre-Incident Planning

(n) ESO Pre-Incident Planning

(o) Incident Management System

(p) Emergency Incident Operations

(q) Standard Operating Procedures

(r) Post-Incident Analysis

(s) Program Evaluation

(t) Severability

Emergency Response Proposed Rule

- December 2023 – OSHA released a pre-publication NPRM for “Emergency Response” Standard (to update protections for emergency responders)
- Replaces “Fire Brigades” Standard and makes updates to other standards impacting emergency responders
- 90-day Comment Period from Feb. 5, 2024 publication in Fed. Reg. (due May 6)
- March 23, 2024 – CMC Rulemaking Coalition files request to extend comment period and hold a hearing
- March 28, 2024 – OSHA grants extension of comment period by 45 days (due June 21) and announces that it will hold a hearing after the comment period (details TBA)

Application / Team Name	Employees	Emergency Duties	Examples
Workplace Emergency Response Employer (WERE)	Team members	Collateral	Employees assigned to perform some onsite firefighting, EMS, and/or technical search and rescue services
Emergency Service Organization (ESO)	Responders	Primary	Full-time onsite fire brigade/Municipal Fire Dept.

Emergency Response Rule – Scope/Exclusions

- Does **NOT** apply to:
 - Employers performing disaster site clean-up or recovery duties following natural disasters (e.g., floods, earthquakes, hurricanes); and human-made disasters (e.g., explosions and transportation incidents)
 - Activities covered by 29 CFR 1910.120 (HAZWOPER), 29 CFR 1910.146 (Permit-Required Confined Space)

Emergency Response Rule – Scope/Exclusions

Although not included specifically in the rule’s exclusions, OSHA states:

“ ... there are ... *other general industry OSHA standards that impose requirements on employers concerning emergency-type or related services* – 1910.38 (Emergency action plans); 1910.157 (Portable fire extinguishers); 1910.151 (Medical services and first aid); 1910.119 (Process safety management); and 1910.272 (Grain handling facilities).

“While employees are engaged solely in activities subject to 1+ of these other OSHA standards, OSHA intends that the protections of those standards apply instead of the protections of the proposed rule. So, if an emergency response employer limits its activities exclusively to activities covered by those other standards, it may not be subject to any provisions of this proposed rule. OSHA notes, however, that most employers engaged in activities covered by those other standards are likely to also engage in other emergency response activities and would therefore need to comply w/ the proposed standard in order to prepare for and respond to covered emergency incidents.”

Proposed Requirements

- Develop **Written Emergency Response Program** (evaluate annually)
- Conduct **Facility/Community Vulnerability Assessments**
 - process to ID, quantify, and prioritize potential vulnerabilities of the entire facility, including structures; inhabitants; infrastructure; hazardous conditions or processes
 - vulnerable areas are those most susceptible to emergencies (their loss could severely impact facility operation, adversely affect employee S&H, or cause environmental damage)
- Establish a **process for team member and responder “participation”**
 - in developing, evaluating, implementing, and and updating the Written ERP
 - in walkaround inspections, inspections in response to a safety concern, and incident investigations
- Develop **Written Comprehensive Risk Management Plan** (review annually)
 - to ensure reasonably anticipated risks to team members and responders have been evaluated and a control plan developed to mitigate the risks as low as reasonably practicable
 - covers: training; vehicle operations; operations at emergency incidents; non-emergency services; etc.

Proposed Requirements

- Include **PPE Hazard Assessments; Respiratory Protection Programs; Infection Control Program;** and **Bloodborne Pathogens Plans** for team members and responders
- Provide **Medical Clearance Evaluations** by PLHCP **at least every two years**
- Conduct **annual Fitness For Duty Evaluations** to determine if team members/responders are physically capable to perform the duties required during an emergency response
- Provide **Additional Surveillance** for responders who are exposed to combustion products, including **at an Action Level of 15 exposure incidents or more per year (ESOs only)**
- Provide **behavioral health and wellness resources** for team members and responders
- Ensure **Facility/Vehicle Preparedness** (e.g., inspect firefighting equipment, response vehicles, infrastructure; evaluate decontamination, cleaning, and PPE storage facilities; etc.)

Proposed Requirements

- Develop **Pre-Incident Plans** (review annually or when conditions or hazards or change)
- Implement **Incident Management System** to manage incident scene operations
- **Emergency Incident Operations** (e.g., IMS, Incident Commander or Unified Command, etc.)
- WEREs and ESOs must ensure Incident Commander develops an **Incident Action Plan**
- Implement **Standard Operating Procedures** for emergencies likely to be encountered
- **Post-Incident Analysis** of effectiveness of response after significant event or near-miss
- **22 NFPA standards incorporated by reference** (in whole or part); approx. ½ relate to PPE

Proposed Compliance Schedule



Preliminary Positions

Unclear Scope

Admin Burden

Compliance-
Related Issues

Duplicative
Requirements

NFPA/IBR

ESO
Categorization

Impacts on
Volunteers

Training
Burden

Fitness for
Duty Concerns

Unclear AL
Triggers

Workplace
Violence
Considerations

NPRM Questions - SCOPE

(a)-1. OSHA seeks info and data re: how many private-sector emergency response organizations in fed OSHA States have workers who are called volunteers but who receive substantial benefits (e.g., retirement pension, life and/or disability insurance, death benefits, or medical benefits. How many of these workers do these organizations have and what type(s) of responders (firefighters, EMS, technical rescuers)?

(a)-2. OSHA seeks info and data re: which State OSH Plans expressly cover volunteer emergency responders as employees. In those States, how many emergency response organizations have volunteer responders? How many volunteers do these organizations have and what type(s) of responders (firefighters, EMS, technical rescuers)?

(a)-3. OSHA seeks info and data re: State OSH Plans that do not expressly cover volunteer emergency responders. In those States, how many emergency response organizations have workers who are called volunteers but who receive substantial benefits? These volunteers may be considered employees in the context of federal law. How many volunteer responders do these organizations have and what type(s)?

NPRM Questions - SCOPE

OSHA seeks info re: State OSH Plans that utilize incarcerated workers; e.g., in wildland firefighting operations. How many emergency response organizations utilize these workers? How many of these workers do these organizations have and what type(s)?

(a)-4. OSHA seeks input re: types and levels of search and rescue services and whether technical search and rescue services should be included or excluded from the rule (and where to draw the line b/n technical and nontechnical search and rescue activities.)

(a)-5. OSHA seeks input re: whether the agency should consider developing a separate rule for clean-up of disaster sites, and associated recovery efforts?

(a)-6. OSHA seeks input re: whether the agency should consider excluding other emergency response activities besides those in 1910.120 (HAZWOPER) and 1910.146 (Permit-Required Confined Spaces in General Industry).

NPRM Questions

OSHA believes some employees of aligned employers face similar hazards to those who mitigate incidents; e.g., many jurisdictions depend on State Fire Marshal's office employees to conduct fire investigations even though these agencies may not provide a firefighting service. Similarly, many jurisdictions depend on other organizations for training such private entities or State-run training centers that do not perform incident mitigation. OSHA is seeking input and supporting arguments on whether these types of aligned employers should be included within the scope of this rule.

DEFINITIONS - (b)-1. OSHA seeks info re: whether Workplace Emergency Response Employers (WEREs) have living areas for team members, and if so, whether WEREs should be included in the definition for Living area.

EMERGENCY RESPONSE PROGRAM - (e)-1. OSHA is considering adding to (e)(1) and (2) a requirement to permit employee representatives to be involved in the development and implementation of an ERP, and/or adding to (e)(4) a requirement to allow employee representatives to participate in walkaround inspections. OSHA is seeking input on whether employee representative involvement should be added to (e)

NPRM Questions

RISK MANAGEMENT

(f)-1. OSHA is seeking input on whether other activities or subjects should be added to the list of minimum requirements for the risk management plan.

(f)-2. OSHA is proposing to have a performance-based infection control program provision in the risk management plan. OSHA is seeking comment on this approach including whether a final standard should incorporate a particular consensus standard or other guidance, or otherwise include specific requirements regarding infection control.

MEDICAL SCREENING AND SURVEILLANCE - (g)-1. OSHA seeks input re: whether the requirements for medical evaluations are an appropriate min. screening for team members and responders. Should the screening include more or fewer elements, and if so, what elements? OSHA also seeks additional data re: feasibility of the proposed medical evaluation and surveillance requirements for WEREs and ESOs

NPRM Questions

(g)-2. OSHA is seeking input on whether an action level of 15 exposures to combustion products within a year to trigger medical surveillance consistent with National Fire Protection Association (NFPA) 1582 is too high, too low, or an appropriate threshold. OSHA is also considering action levels of 5, 10, or 30 exposures a year as alternatives and is seeking public input on what action level would be appropriate. Commenters should provide supporting documentation and data that would help with identifying an appropriate action level.

(g)-3. OSHA is seeking input on whether the additional medical surveillance proposed in paragraph (g)(3) should be extended to include WEREs and team members. Commenters should provide supporting documentation and data that substantiate team member exposures to combustion products at or above the proposed action level.

(g)-4. OSHA is seeking input and data on whether stakeholders support the proposed fitness for duty (ability to physically accomplish required job tasks safely) requirements or whether the requirements pose a burden on or raise concerns for team members, responders, WEREs or ESOs. Commenters should provide explanation and supporting information for their position.

(g)-5. OSHA is seeking input on whether the required health and fitness program in proposed paragraph (g)(6) should be extended to include WEREs and team members.

NPRM Questions

(g)-6. OSHA is seeking input on whether every three years is an appropriate length of time for fitness re-evaluation, and if not, what interval would be appropriate. The agency is seeking information and data to support an alternative interval between evaluations.

TRAINING

(h)-1. OSHA is seeking input and data regarding the appropriate methods and interval(s) for skills checks, as it relates to a team member's or responder' ability to perform essential job tasks and proposed paragraph (h)(3).

FACILITIES

(i)-1. OSHA is seeking input regarding what WEREs are currently doing for decontamination, disinfection, cleaning, and storage of PPE and equipment, and whether OSHA should include any additional requirements for these processes in a final standard.

(j)-1. OSHA is seeking input on whether the agency should consider prohibiting the installation of fire poles in new ESO facilities.

NPRM Questions

(j)-2. OSHA is seeking input on whether ESO facilities with sleeping areas should be protected by automatic sprinkler systems, as proposed in paragraph (j)(2)(ii).

PERSONAL PROTECTIVE EQUIPMENT (PPE)

(k)-1. OSHA is seeking input on whether the agency should specify retirement age(s) for PPE. Commenters should provide information and data to support specific retirement/remove from service criteria for PPE.

(k)-2. OSHA is seeking input on whether WEREs and ESOs are currently isolating and/or separating contaminated PPE and non-PPE equipment from team members and responders and also how this separation is being accomplished?

(k)-3. OSHA is seeking information on whether there is evidence of per- and polyfluoroalkyl substances (PFAS) in PPE causing health issues for team members and responders. Commenters should provide information and data to support release of PFAS from the PPE and movement of PFAS into the responder.

(k)-4. OSHA is seeking input on whether the scheduled updates to NFPA 1971 will address or alleviate stakeholder's concerns about PFAS in PPE.

NPRM Questions

VEHICLES

(I)-1. OSHA is seeking information on whether there are any other situations or vehicles where OSHA should require, or exclude, the use of seat belts and vehicle harnesses. If so, please explain.

(I)-2. OSHA is seeking input on how compliance with (I)(2)(iii), where emergency vehicles are not moved until all passengers are seated and belted, would be achieved in situations where PPE must be donned enroute to an incident. Would the team members or responders stop enroute or wait until arrival at the scene to don their PPE?

(I)-3. OSHA is seeking input on whether it should require that patients be restrained during transport to prevent an unrestrained patient from being thrown into a team member or responder in the event of a vehicle collision or an evasive driving maneuver.

INCIDENT MANAGEMENT

(o)-1. OSHA is seeking input about WERE and ESO current use of an Incident Management System (IMS), whether the National Incident Management System (NIMS) and National Response Framework were used as guidance for the IMS, and if there are any concerns with being compatible with NIMS.

NPRM Questions

(o)-2. OSHA is seeking input on which aspects of an IMS are the most effective and the least effective in protecting the safety and health of team members and responders. Commenters should explain how and why certain IMS components are or are not effective.

EMERGENCY INCIDENT OPERATIONS - (p)-1. OSHA seeks input re: current practices for identifying and communicating the various control zone boundaries. What methods are used? How are they communicated? Do the marking methods help or hinder on-scene operations?

STANDARD OPERATING PROCEDURES - (q)-1. OSHA seeks input on whether the agency should include requirements for Standard Operating Procedures (SOPs) regarding protections against workplace violence for team members and responders, and for any data or documentation to support or refute potential requirements. OSHA notes that its regulatory agenda includes a separate rulemaking addressing workplace violence against health care workers. While OSHA has not published a proposed rule in that rulemaking, OSHA welcomes comments on whether violence against emergency responders should be addressed in a potential Emergency Response final rule in addition to that Workplace Violence rulemaking, instead of in that rulemaking, or primarily in that other rulemaking.

NPRM Questions

POST INCIDENT ANALYSIS - (r)-1. OSHA is considering adding a requirement to permit team members, responders, and their representative to be involved in the review and evaluation of the relevant plans as part of the Post-Incident Analysis and would like stakeholder input on whether to add this requirement.

PORTABLE FIRE EXTINGUISHERS - OSHA's current standard, 29 CFR 1910.157, Portable Fire Extinguishers, is based on the 1978 edition of NFPA 10, Standard for Portable Fire Extinguisher, and was last updated more than 20 years ago. OSHA is seeking stakeholder input and data regarding whether the agency should consider updating the standard to improve consistency with the version of NFPA 10, that will be current when the final rule is published.

HEAT - OSHA is seeking stakeholder input and supporting documentation on whether it should include requirements for operating in external environments with elevated temperature in situations that are not emergency incidents.

NPRM Questions

CONSENSUS STANDARDS- OSHA is seeking input on the potential impacts of incorporating by reference of various NFPA standards, and how equivalency or consistency could be achieved if the NFPA standards were not incorporated by reference.

PROFILE OF AFFECTED INDUSTRIES - OSHA is seeking input on whether this is an appropriate approach to estimating the number of affected responders. The agency welcomes additional data or information on how volunteer responders are treated regarding OSHA protections in State Plan states. [same as (a)-2]

OSHA is seeking additional data about the number of WEREs and team members who would fall within the scope of the proposed rule.

OSHA is seeking information on additional or alternate data sources that would allow the agency to better estimate the universe of EMS providers.

NPRM Questions

OSHA seeks comment on the estimates of technical search and rescue organizations and responders, and encourages anyone w/ additional data that could be used to refine these estimates to submit it.

OSHA seeks additional data on private technical search and rescue service providers that would allow the agency to better estimate the universe of these employers.

COSTS OF COMPLIANCE

OSHA seeks comment on the estimated wages used to represent volunteers and whether the valuation of volunteers' and incarcerated individuals' time is reasonable.

OSHA is seeks comment and data on the level at which organizational costs are incurred for state plan states with inmates engaged in firefighting.

OSHA seeks comment and data on compensation by organizations for responder fitness activities.

NPRM Questions

OSHA made an initial assumption that EMS providers at smaller ESOs would have lower levels of certification and therefore require less training time but seeking comment and data on this assumption.

BENEFITS

OSHA is seeking comment and data on the estimated incidence of work-related heart attacks that the agency might use to better estimate this parameter of the analysis.

OSHA is aware that heart attacks among emergency responders besides firefighters are prevalent and therefore is seeking comment on this estimate and encourages the public to submit any additional data or data sources that the agency might use to better estimate this parameter of the analysis.

OSHA assumes the benefit of reduced fatalities due to colorectal cancer begins in Year 10 after publishing a final rule but is seeking comment and data on the most appropriate lag time to begin seeing this benefit.

OSHA is seeking comment and data to support the overall reduction in cancer fatalities by the proposed rule and also how long it will take (lag time) for these benefits to be realized.

NPRM Questions

OSHA is seeking comment and data on avoided cases of non-fatal cancer due to the proposed rule and also how long it will take (lag time) for these benefits to be realized.

ECONOMIC FEASIBILITY

There has been no economic feasibility threshold established for public entities equivalent to the ten-percent profits threshold for private entities.

OSHA is seeking comment on what economic feasibility threshold would reasonably apply to the public sector. OSHA is also seeking comments, information, and data on the economic feasibility of compliance for public organizations.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act requires OSHA to show impacts on small entities and defines small government entities as those serving populations of less than 50,000. Given the unique circumstances of volunteer fire departments, some other approach may be more useful for purposes of OSHA's analysis. OSHA is seeking comments, information, and data on additional analyses that the agency should develop to demonstrate economic feasibility and illustrate economic impacts on small entities.

NPRM Questions

There appear to be limitations on the systematic data available to develop such analyses for smaller governmental jurisdictions. OSHA is also seeking comments, information, and data on what analyses would be most useful for understanding the potential impacts on small entities.

OSHA is seeking comment on the feasibility of the planning requirements for small government agencies.

MISCELLANEOUS

OSHA recognizes that organizations such as the National Wildfire Coordinating Group (NWCG) develop standards applicable to their member organizations, and other organizations who perform wildland firefighting services. OSHA seeks input on whether standards such as those developed by NWCG should be considered equivalent to various provisions in the proposed rule; particularly those related to policies and procedures, personal protective equipment, and medical evaluation and surveillance requirements. Are there standards for other “specialty or non-structural” types of firefighting that OSHA should consider? Commenters should provide supporting data, documents, and side-by-side comparison.

OSHA is seeking comment on specific provisions that could be enhanced to be made more performance oriented.

OSHA seeks additional information and data on how emergency response activities contribute to cardiovascular disease.

NPRM Questions

TIMELINE FOR COMPLIANCE

OSHA is open to considering alternative compliance dates for the proposed standard and seeks input on what reasonable implementation periods would be for specific provisions and why. The agency is also interested if extended compliance timelines would be particularly helpful to small and/or volunteer organizations as a way of mitigating the impact of the rulemaking.

INFORMATION COLLECTION AND RECORDKEEPING

OSHA is seeking comment on whether the collections of information are necessary for the proper performance of the agency's functions, including whether the information is useful.

OSHA is seeking information and data on the accuracy of OSHA's estimate of burden in terms of time and cost of the collections of information, including the validity of the methodology and assumptions used.

OSHA is seeking comment on the quality, utility, and clarity of the information collected.

OSHA is seeking comment on ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information (78 FR 56438).

the **OSHA Defense** report



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2023 in Review and 2024 Forecast
Wednesday, January 17th

OSHA Recordkeeping, E-Recordkeeping and Reporting
Thursday, February 8th

OSH and Employment Law Compliance in ESG Programs
Thursday, March 21st

Preventing and Responding to Workplace Violence
Wednesday, April 24th

Mid-Year OSHA and MSHA Review
Tuesday, May 28th

Impact of EPA's TSCA Regs on OSHA Chemical Safety
Wednesday, June 12th

National and Local Enforcement Emphasis Programs
Thursday, July 18th

Process Safety Management and CalARP
Monday, August 5th

Unique Aspects of State OSH Plans
Thursday, September 19th

Whistleblower and Retaliation Complaints
Wednesday, September 25th

2nd Annual Cal/OSHA and Employment Law Summit
Tues., October 8th and Thurs., October 10th

OSHA Hazard Communication Standard Update
Tuesday, October 15th

Intersection of Artificial Intelligence and OSHA Law
Wednesday, November 13th

12 Ways to Improve Your OSHA Readiness
Wednesday, December 18th

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California's Workplace Violence Prevention Law
Thursday, November 9th (2023)

Cal/OSHA Enforcement and Regulatory Update
Tuesday, December 12th (2023)

California's Indoor Heat Regulation
Tuesday, January 30th

Top Cal/OSHA Violations
Wednesday, February 21st

OSH and Employment Law Compliance in ESG Programs
Thursday, March 21st

Responding to Workplace Violence
Wednesday, April 24th

Mid-Year Review of Cal/OSHA Developments
Wednesday, May 22nd

Process Safety Management and CalARP
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Prepare for and Manage Cal/OSHA Inspections
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Artificial Intelligence and OSH/Employment Law
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OSHA Recordkeeping and Reporting Masterclass

01

OSHA Recordkeeping

- Scope of OSHA's Recordkeeping Authority
- OSHA Recordkeeping Forms
- Steps to Recordkeeping
- Recordkeeping Hypotheticals
- Summarize, Certify, Post and Maintain
- 5 Common Recordkeeping Mistakes

02

Significant Injury and Fatality Reporting

- Hospitalization, Amputation, Fatality Reqs
- Reporting Timing Issues
- Common Reporting Mistakes
- What Happens After You Report?

03

E-Recordkeeping

- Recordkeeping Data Submission Reqs
- How to Use OSHA's Injury Tracking App
- E-Recordkeeping Enforcement and Site-Specific Targeting Inspection

04

COVID-19 Recordkeeping and Reporting

- COVID-19 Recordkeeping and Reporting Requirements
- Determining Work-Relatedness of COVID-19 cases

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Questions?

