

QUESTIONS AND ISSUES COMPILED FROM THE EMERGENCY RESPONSE NOTICE OF PROPOSED RULEMAKING

This document is a compilation of the questions posed and issues raised in the Notice of Proposed Rulemaking (NPRM) for OSHA’s Emergency Response standard. It is provided as a resource for stakeholders to use as they prepare their submissions during the public comment period. Stakeholders are encouraged to read the NPRM for the full context of the subject matter related to these questions and issues.

OSHA considers stakeholder submissions during development of a final rule. Stakeholders are encouraged to respond and submit supporting information and data to any or all of the questions and issues listed below. Stakeholders may also address any issues not specifically listed below that are important for OSHA to consider in development of the final rule.

In their public comment submissions, OSHA encourages stakeholders to include the question/issue number [identified below such as (a)-1], provide a short synopsis of the issue/question, or identify the regulatory paragraph number [such as (a)(3)(iii)], so that OSHA can appropriately evaluate the comment. Comments can be submitted to: <https://www.regulations.gov/docket/OSHA-2007-0073> during the public comment period which is open until May 6, 2024.

For more information on OSHA’s rulemaking process and how stakeholders can participate, visit: <https://www.osha.gov/laws-regs/rulemakingprocess>.

SCOPE

(a)-1. OSHA is seeking information and data about how many private-sector emergency response organizations in federal OSHA States (states without State Plans) have workers who are called volunteers but who receive substantial benefits, such as a 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 is seeking information and data about which States with OSHA-approved State 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 is seeking information and data from States with OSHA-approved State Plans that do not expressly cover volunteer emergency responders. In those States, how many emergency response organizations have workers who are called volunteers but receive substantial benefits, such as a retirement pension, life and/or disability insurance, death

benefits, or medical 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) of responders (firefighters, EMS, technical rescuers)?

OSHA seeks information and data from States with OSHA-approved State Plans that utilize inmate/incarcerated workers. Inmate/incarcerated workers are typically used 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) of responders (firefighters, EMS, technical rescuers)?

(a)-4. OSHA is seeking input regarding what types and levels of search and rescue services and technical search and rescue services should be included or excluded from the rule, and the extent to which those inclusions or exclusions should be specifically listed.

OSHA is seeking input about how and where to draw the line between technical and non-technical search and rescue activities.

(a)-5. OSHA is seeking input whether the agency should consider developing a separate rule for protecting workers involved in the clean-up of disaster sites, and associated recovery efforts? Commenters should provide substantiation for developing or not developing such a rule.

(a)-6. OSHA is seeking input on whether the agency should consider excluding other emergency response activities besides those in 29 CFR 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)), 29 CFR 1910.146 (Permit-Required Confined Spaces in General Industry). Commenters should provide substantiation for excluding any other emergency response activities.

OSHA believes that some employees of aligned employers face similar hazards to those who mitigate incidents. For instance, many jurisdictions depend on State Fire Marshal's office employees to respond to incident scenes 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 is seeking information and data on 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 (ERP) DEVELOPMENT

(e)-1. OSHA is considering adding to both paragraphs (e)(1) and (2) a requirement to permit employee representatives to be involved in the development and implementation of an ERP. OSHA is also considering adding to paragraph (e)(4) a requirement to allow employee representatives to participate in walkaround inspections, along with team members and responders. OSHA is seeking input on whether employee representative involvement should be added to paragraph (e).

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 is seeking input and data on whether the proposed rule's requirements for medical evaluations are an appropriate minimum screening for team members and responders. Should the minimum screening include more or fewer elements, and if so, what elements? Commenters should provide documentation and data supporting any additions or subtractions from the minimum medical screening. OSHA is also seeking additional data and information on the feasibility of the proposed medical evaluation and surveillance requirements for WEREs and Emergency Service Organizations (ESOs).

(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.

(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's 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.

(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.

VEHICLES

(l)-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.

(l)-2. OSHA is seeking input on how compliance with (l)(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?

(l)-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.

(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 is seeking input on current practices for identifying and communicating the various control zone boundaries. What marking methods are used? How are they communicated to team members and responders? 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.

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.

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.

OSHA is seeking comment on the estimates of technical search and rescue organizations and responders. The agency also encourages anyone with additional data that could be used to refine these estimates to submit those data to the rulemaking record. [same as (a)-4]

OSHA is seeking 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 is seeking comments on the estimated wages used to represent volunteers and also whether the valuation of volunteers' time and incarcerated individuals' time is reasonable. The is seeking comments and data on different wage rates that may better capture the value of these responders' time.

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

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

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.

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.

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.

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).