SDAO Special Districts Association of Oregon

Analysis of Proposed Federal OSHA Emergency Response Rules

https://www.osha.gov/emergency-response/rulemaking
29 CFR 1910.155 and 156

For this document I used my work experience as a firefighter/EMT-Int, Oregon OSHA Sr. Compliance Officer, and Public Safety Sr. Risk Management Consultant for the fire districts in Oregon in addition to the explanatory statements from Federal OSHA to provide the reader a section-by-section discussion of the proposed rules. I encourage any agency, association, or concerned individual to make public comment regarding this rule and how it will affect public safety in their community. Federal OSHA is accepting comments through the website. https://www.regulations.gov/docket/OSHA-2007-0073

GENERAL ENVIRONMENT THAT AFFECTS OREGON EMERGENCY SERVICE ORGANIZATIONS:

Oregon spans approximately 98,500 square miles with cities and towns encompassing approximately 2,000 square miles of that land mass. Oregon has approximately 890 square miles of inland water and 296 miles of ocean coastline. The largest land mass served by a fire district is 843 square miles of frontier and rural areas with a county population of 2,000. That is approximately 250 square miles smaller than the entire state of Rhode Island. That district has less than 20 volunteer firefighters and an annual budget of approximately $75,000. Contrast this with the largest fire district by staffing and budget that covers an area of approximately 388.5 square miles of metropolitan, suburban, and rural areas. The district's estimated population was 547,142 in 2022. They have a staff of 605 career firefighters and 60 volunteer firefighters funded by an annual budget of approximately $73,000,000. Public safety agencies serving Oregon are funded by constitutionally limited property taxes. These taxes cannot be raised except by a vote of the people authorizing a temporary operating levy. Fire districts are the majority of ESOs by number. Of the 311 fire service agencies there are 257 rural fire protection districts actively providing emergency response services in Oregon. The remaining 54 are city fire departments. Of the 257 fire districts, 144 districts (56%) have an annual operating budget of less than $500,000 and 50 districts (19.5%) have an annual budget under $100,000.

The Oregon Safe Employment Act defines no significant difference between career and volunteer fire agencies except in very limited circumstances where the board of directors by resolution does not cover its volunteer firefighters with workers compensation insurance. This means less than 1% of ESOs would not be covered by the act. In rough numbers there are approximately 3,500 career firefighters and 9,000 volunteer firefighters. Much of the paperwork burden that these rules create have a minor impact on the operational safety of emergency responders. The paperwork burden was estimated at 173 hours per year by multiple law firms. As the pool of skilled emergency services personnel drains, regulatory burdens that do not directly impact operational safety will continue to drive individuals from emergency services. This will be especially true for those volunteering their service to their communities thereby eliminating protections for the community including workplaces.

On January 1, 2024, Oregon OSHA implemented changes to their penalty structure to comply with requirements from Federal OSHA stating that Oregon's penalties were too low. As a result of Oregon Senate Bill 592 and 907 this increased the penalties for a violation by approximately 1000%. The monetary penalties now range from $1,000 to $250,000+. These penalties increase each year based on the Western CPI. Oregon currently makes no distinction between private and public employers for their

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enforcement activities due to statutory language, this is contrary to guidance provided in both Federal Regulations and interpretive documents where federal OSHA makes a distinction for enforcement actions. Due to the caps on public safety funding these penalties will likely outpace any increase in budgets in short order causing public safety organizations to cut services.

Summary of rule language:

1910.155 Scope and Application

(a) Scope – Workplace Emergency Response Employer (WERE) and Emergency Service Organizations (ESO). WERE is defined as an employer who has a workplace emergency response team that responds to emergency incidents to provide services such as firefighting, emergency medical service, and technical search and rescue. ESO is defined as an organization that provides one or more of the following services as a primary function: firefighting, emergency medical service, and technical search and rescue; or the employees perform the emergency service(s) as a primary duty for the employer. All fire departments and fire districts in Oregon would be covered by this definition, some of the health districts that operate ambulance services may also be included as would private ambulance. I also believe based on the wildland and WUI work that many Oregon state agencies do as a primary function, they will also be included in this definition, but would most certainly be included in the WERE definition. There is another potential group that appears to fit within this definition as either a WERE or an ESO. That would be tactical, or search and rescue teams run by either private organizations or law enforcement agencies as they provide "technical search and rescue" services as well as EMS in certain situations. If these individuals are not included in the main WERE or ESO rules they would likely be considered a skilled support worker (SSW) and would be included in the rules of subsection (p). All of these organizations operating in Oregon have staff that can both paid and volunteers. The Oregon Safe Employment Act requires Oregon OSHA to make no distinction between paid and volunteer staff members who are subject workers under the workers compensation rules. Less than 1% of public ESOs have volunteers who are not considered subject workers under the act. The scope of the federal rules must be specifically limited to its jurisdiction to exclude local and state government workers allowing states to regulate their workplaces as they see fit based on their demographics and geography.

GENERAL ANALYSIS AND RESPONSE TO SECTION A:

The scope of the standard is incredibly broad and captures many organizations that do not traditionally consider themselves emergency responders. Based on the plain language and explanatory statements the Oregon fire service believes that this standard would include all traditional fire departments and fire districts, it would also include Sherrif Office Search and Rescue teams, it would include the state agencies that have wildfire firefighting responsibilities, public and private ambulance agencies, as well as the potential for others based on the type of work they do.

(a)–1. OSHA is seeking information about how many private-sector emergency response organizations in States without State Plans (Federal OSHA States) 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 such workers do these organizations have and of what type(s) (fire, EMS, technical rescue)?

(a)–2. OSHA is seeking information about which States with OSHA- approved State Plans expressly cover volunteer emergency responders. In those States, how many emergency response organizations have volunteers? How many volunteers do they have and of what type(s) (fire, EMS, technical rescue)?

(a)–3. OSHA is seeking information 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; and as such may be considered employees within the meaning of Federal law? How many such workers do these organizations have and of what type(s) (fire, EMS, technical rescue)? Additionally, OSHA seeks similar input regarding inmate/ incarcerated workers.

(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.

(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? Why or why not?

(a)–6. OSHA is seeking input on whether the agency should consider excluding other 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.

1910.156 Emergency Response

(b) Definitions. Most of these definitions are familiar to those in public safety. It is always advisable to read how a regulatory agency writes the definition of each term. If the definition is not provided, then the default is to refer to the common dictionary definition of the word. Some of the definitions to be aware of are as follows.

- *Community vulnerability assessment* (The definition also indicates that the assessment is intended to include both human-created vulnerabilities and natural disasters. OSHA intends the assessment to be a systematic evaluation of the community to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. It would include risks and vulnerabilities associated with the prevailing residential structures and principal structures such as schools, colleges, and universities; hospitals and medical centers; large residential structures and hotels; transportation, manufacturing, processing, and warehousing facilities; and retail. It would also include an assessment of the community's critical infrastructure such as available water supply, electric power generation and transmission, routine and emergency communication, and highways and railways.)

- *Facility vulnerability assessment* (A facility's vulnerable areas are those areas which are most susceptible to emergencies or disasters; the loss of which could severely impact the facility's operation, adversely affect the health and safety of employees, or cause potential damage to the environment. OSHA intends for the assessment to be a systematic evaluation of the facility to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. It would include risks and vulnerabilities associated with the principal structures; processing facilities; significant storage; hazardous materials and processes; critical infrastructure such as available water supply, electric

power generation and transmission, and routine and emergency communication; and potential for damage to the environment.)

- *Skilled support worker – SSW* (This definition is based on the description of skilled support personnel in 29 CFR 1910.120, HAZWOPER. Examples of SSWs include operators of equipment such as heavy-duty wrecker/rotator tow vehicles, mechanized earth moving or digging equipment, crane and hoisting equipment, and others such as utility service workers (gas, water, electricity), public works workers, and technical experts. SSWs perform immediate support work that cannot reasonably be performed in a timely fashion by responders or team members, and who will be or may be exposed to the hazards at an emergency incident. The proposed rule does not include requirements for employers of SSWs. However, proposed paragraph (p) establishes requirements for WEREs and ESOs who utilize SSWs to provide for the safety of those SSWs.)
- *Technical search and rescue/technical rescue* (The proposed rule defines this term as a type of service that utilizes special knowledge and skills and specialized equipment to resolve complex search and rescue situations, such as rope, confined space, vehicle/machinery, structural collapse, trench, or technical water rescue. The definition is based on NFPA 2500. With respect to water rescue, OSHA specifically uses the term technical to specify that non-technical water rescue would be excluded from the proposed rule. Examples of non-technical water rescue include services such as pool and water-amusement park lifeguard services, lake and beach lifeguard services that only use non-mechanized equipment such as rescue boards, rescue buoys, rescue tubes and cans, and snorkeling equipment.)

(d) ESO Establishment of ERP and Emergency Services Capability.

(1) and (2) The ESO must develop a written Emergency Response Program. It must include an "up to date" copy of all written plans and procedures. This means that the ESO must review the program as often as necessary to make changes as conditions, facilities, and processes in their response areas change, but at a minimum the ERP must be reviewed annually. OSHA believes the ERP "*promotes a clear understanding and knowledge among responders of the ESO emergency procedures by maintaining those procedures in a central plan that can be readily shared with and accessed by supervisors and employees."* Paragraphs (9) and (10) require the ESO to maintain an archive of the previous 5-years of ERP documentation that includes the changes that have been made. *"The proposed retention and access requirements will also aid OSHA's enforcement and compliance activities."* This could amount to thousands of pages of documents needing to be archived specifically in rapidly growing and changing areas of the state.

(3) The ESO must perform a community or facility vulnerability assessment of hazards within the primary response area where the ESO is expected to respond. The assessment shall identify each vacant structure and location that is unsafe for responders to enter. Responders must be notified of these structures and locations. The ESO must identify all facilities that are subject to the Community Right to Know Act. These locations and structures must be included in the vulnerability assessment. OSHA believes this assessment should include a *"systematic evaluation of the community it services to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. Such assessment would include risks and vulnerabilities associated with the prevailing residential structures; and principal structures such as schools, colleges, and universities; hospitals and medical centers; large residential structures and hotels;*

transportation, manufacturing, processing, and warehousing facilities; and retail. It would also include an assessment of the community's critical infrastructure such as available water supply, electric power generation and transmission, routine and emergency communication, and highways and railways. Natural features such as bodies of water, caves, gorges, mountains, and cliffs would also need to be assessed." Subsequent discussions with Oregon OSHA have established their understanding of this will also include homeless encampments and dumping sites where serious hazards may be present. The ERP requires ESOs to develop mutual aid agreements to ensure adequate resources are available to respond to foreseeable incidents. The ESO must notify responders to any changes in the program and make it available to responders, their representatives, and OSHA.

(4) This section requires the ESO to specifically identify and assess vacant and unsafe structures. OSHA believes that *"each vacant structure and location that is unsafe for responders to enter due to conditions such as previous fire damage, damage from natural disasters, and deterioration due to age and lack of upkeep; and would require the ESO to provide a means for notifying responders of the vacant structures and unsafe locations…Possible means of notification include installing a sign or painting a warning symbol on the wall adjacent to the entrance(s) that is visible to responders before they would enter the structure and blocking off an unsafe location. Also, the emergency dispatch center could maintain information on file for the vacant structure or unsafe location and could inform responders when an emergency incident occurs. The term vacant indicates that no person would be expected to be inside the structure. OSHA believes that responders should only enter an unsafe structure or location during an emergency incident in an attempt to perform a feasible rescue of a person or persons known to be inside."*

(6) and (7) These sections require an ESO to determine what resources would be needed and available. It also requires the ESO to designate *"tiers of responder responsibilities, qualifications, and capabilities."* In the reality of Oregon's public safety services, we would accomplish this through the establishment of comprehensive job descriptions that would outline combat roles, single role positions, and support positions that are not the SSW defined by this standard. The support roles I foresee being used might be a fire corp member or a cadet that is utilized for rehabilitation of firefighters at an emergency scene. The bottom line is that every position would be required to have a position description that described their responsibilities, required qualifications, and required capabilities.

(8) This section would require the ESO to identify where their agency is unable to provide the "required" level of service to their community. When this occurs, they must have in place a mutual aid agreement with a neighboring agency that is able to provide the services. While this is a common practice the examples that are provided concern me knowing the geography of the Western United States not to mention the budget constraints and personnel limitations. OSHA envisions that if the ESO is unable to provide a service, it would *"develop mutual aid agreements with WEREs or other ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents."* This statement is achievable if the communities are allowed to define what that expected level of service is. It is the examples that Federal OSHA provided that began to start me thinking about how they view "level of service" in the country. "*For example, if an ESO identifies that its community or facility has tall structures that need an aerial ladder or elevated platform vehicle for firefighting or rescue, but does not have such a vehicle, the ESO would need to establish a mutual aid agreement with a neighboring ESO with an aerial ladder or elevated platform vehicle to provide it when needed. Another example is an ESO that only provides EMS at the Basic Life Support level. The ESO would need to establish a mutual aid agreement with a neighboring ESO to provide EMS at the Advanced Life Support level to its primary response area."* There are many areas of the country where a higher level of service would be hours away and a mutual

aid agreement would have little to no impact. A current example of this would be the regional hazmat teams stationed around the state. While there is no other way to accomplish this, these regional teams often have 30 – 90-minute response times simply due to distance and terrain covered.

GENERAL ANALYSIS AND RESPONSE TO SECTION D:

The state of Oregon spans approximately 98,500 square miles with cities and towns encompassing approximately 2,000 square miles of that land mass. Oregon has approximately 890 square miles of inland water and 296 miles of ocean coastline. Slightly over 300 fire service agencies serve roughly 20,100 square miles of the state (21%). Over 100 fire agencies have more than 50 square miles as their primary response areas and more than 50 have greater than 100 square miles. The majority of those organizations are volunteer with the possibility of a paid fire chief. Tualatin Valley Fire and Rescue, the largest fire district in the state based on an annual budget of approximately $73,000,000, has a primary response area of approximately 388.5 square miles of metropolitan to rural areas. The district's estimated population was 547,142 in 2022. This service area includes the cities of Beaverton, Durham, King City, Newberg, North Plains, Rivergrove, Sherwood, Tigard, Tualatin, West Linn, and Wilsonville. While the service area itself is primarily in Washington County (the eastern portion of the county), it also includes unincorporated areas of Clackamas County (northwest corner), Multnomah County (western edge), and Yamhill County (northeast corner). Recognized as one of the fastest growing regions of the state of Oregon, this area encompasses densely populated suburban areas, rural farmlands, retail, and commercial establishments, and growing industrial complexes. The Newberg area also covers significant agricultural areas of Oregon, including important winegrowing regions contributing to the state economy. Contrast that with the fire district with the largest land mass, South Gilliam County RFPD. They service an area of approximately 883 square miles within Gilliam County serving the rural communities of Condon, Lonerock, and Thirty Mile. The district has an annual budget of approximately $75,000. The entire estimated population of Gilliam County in 2022 is 2,026. A majority of the state's unincorporated land area is served by federal and state ESOs tasked primarily with protection of the natural resources. Ambulance or emergency medical transport is divided among ESO agencies in the 36 counties and encompasses the totality of the 98,500+ sq. miles of the state. Each County Sherrif provides Search and Rescue services in conjunction with the rescue and emergency medical services provided by the fire agencies.

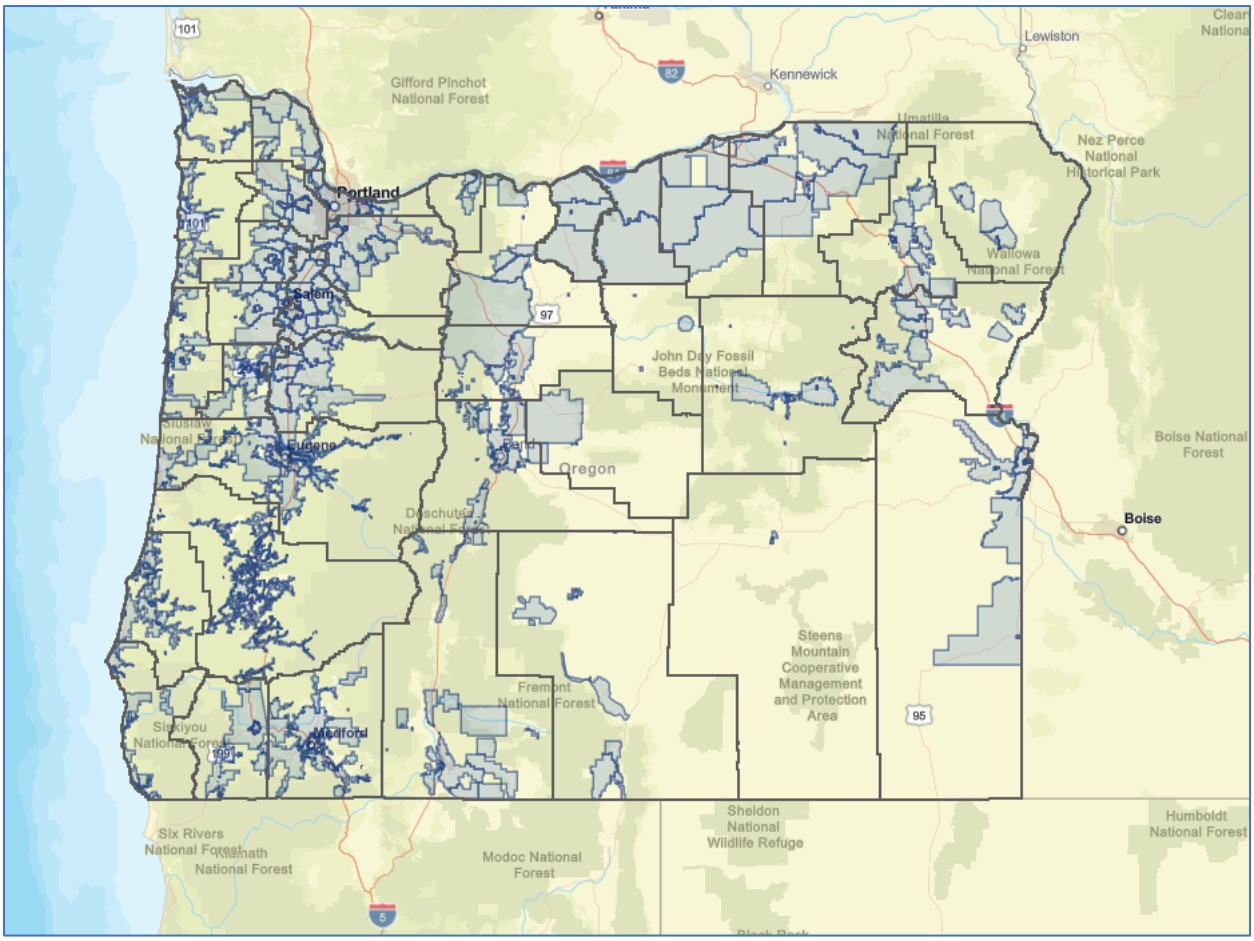
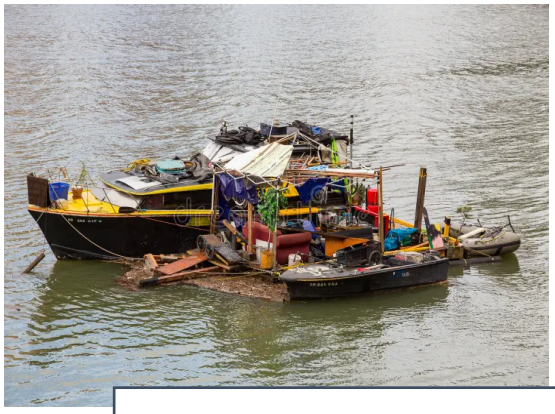


Figure 1 - Map of Oregon - Fire Department and District Primary Response Areas in Blue

Oregon Fire agencies provide services to their communities for a range of hazards including structural fire suppression, wildland fire suppression, emergency medical response, extrication, hazardous materials response, specialty technical rescues in environments such as confined spaces, collapsed buildings, swift water, open water, open ocean water, caves, glaciers, wilderness areas, and high and low angle rope. Of the approximately 300 fire departments and districts *** have paid staff and of those ***, *** have sufficient access to GIS or analytics that would provide the information needed to perform a community vulnerability assessment. It would be infeasible to perform a systematic vulnerability assessment of all structures (including vacant and unpermitted), transportation systems, infrastructure, and natural features based on the size of the response areas and limited number of personnel and data resources available. Surveys of 22 of the 300 fire agencies yielded significant information as to the actual capabilities of fire agencies in Oregon. The feedback received for the questions about capability resulted in statements about staffing, information management, archival of documents created by the process, and access to accurate information. Most respondents stated that a minimum of 2 FTE at approximately $65 to $100 per hour, would be removed from response duties in order to accomplish some of what is asked in this section of the rule. Based on the responses received and depending on the size, staffing, and partnerships with other agencies the initial implementation of this section will take approximately 9.5 years and over $5,000,000 to complete to a minimal effectiveness if it is feasible at all as there are multiple districts and departments where they have tens of thousands of properties that fit these broad definitions. There are also significant constitutional considerations as fire agencies in Oregon do not have

legal authority to access properties to make these assessments outside of a registered business, a 911 call, or other exigent circumstances. In many areas of the Pacific Northwest there would be serious life safety concerns when accessing properties where citizens and other individuals hold a completely anti-government attitude. Federal OSHA's assumptions did not account for demographics, size of land mass, scarcity of resources, lack of information, and cost of those resources. While the concepts contained in this section are valid best practices ESOs must be able to prioritize how to accomplish these tasks while being able to accomplish their primary mission of providing emergency response. Compliance with this section would degrade the response capabilities of all ESOs and would therefore create negative outcomes for all communities in Oregon including the workplaces that OSHA regulates. The requirements of this section also flow into other sections such as (f) and (n) making compliance with those sections challenging.



(e) Team Member and Responder Participation. The ESO must involve responders in developing the ERP. The ESO must request input from responders regarding modifications to the ESOs facilities. This likely can be accomplished through a safety committee or safety meeting process. It would only require regular discussions with these members to change and update the ERP as items are discovered. There are minimal concerns with this section. Due to the highly technical nature of emergency response participation as addressed by this section should be limited to staff of the ESOs and subject matter experts as determined by the ESO. Outside representatives may not have the expertise to understand the complexities of emergency response. The Oregon fire service has undertaken training Oregon OSHA's staff in order to assist them with understanding the complex actions that responders take at emergency events. As we describe in several sections emergency response organizations have concerns about compliance staff evaluating tactics and decisions that are made by incident commanders when this compliance staff does not have current tactical training and understanding of the missions and goals during events. This threat of enforcement creates uncertainty in the decision-making process which will lead to undesirable outcomes for communities including workplaces that OSHA is tasked to protect.

GENERAL ANALYSIS AND RESPONSE TO SECTION E:

(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, and to paragraph (e)(4) a requirement to allow employee representatives to participate in walkaround inspections, along with team members and responders, and is seeking input from stakeholders on whether employee representative involvement should be added to paragraph (e).

(f) WERT and ESO Risk Management Plan.

(1) The ESO must develop a comprehensive written risk management plan (RMP) based on the type and level of services provided. "*The minimum proposed provisions of the risk management plan are based on NFPA 1500.*" It must cover the risks associated with activities at the ESO facility, training, vehicle operations, operations at the emergency scene, non-emergency services, and activities that lead to exposures to combustion products, carcinogens, and other incident related health hazards. The RMP must include the following components: identification of actual and reasonably anticipated hazards, evaluation of the likelihood of a hazard as well as the severity of potential consequences, establishment of priorities based on this evaluation, risk control techniques for eliminating or mitigating the potential hazards, a plan of implementation of these controls, and post incident evaluation of the effectiveness of the controls. If it is determined that the risk control techniques were not sufficient, the ESO would need to develop and implement improved risk control techniques and subsequently communicate those out to responders. The RMP also must include PPE hazard assessment that meets 1910.132(d), A respiratory program that meets 1910.134, an infection control plan that identifies, limits, and prevents exposure to infectious and contagious diseases, and a bloodborne pathogens exposure control plan that meets 1910.1030. In order to accomplish a portion of this in a somewhat reasonable fashion, a statewide RMP template would need to be developed and adopted that would cover protocols for all foreseeable emergency events, the PPE assessment for all foreseeable hazards, the respiratory program for the use of SCBA and other tight-fitting respirators, and the infection and blood borne pathogen control plan that would cover all foreseeable infectious biological substances. All agency specific risks would need to be addressed by the individual agency plans. Those might include a vehicle maintenance or equipment shop, landscaping done by agency employees, and other miscellaneous tasks that have foreseeable risks.

(2) The RMP must include a policy for extraordinary situations that allows for rescue of a person in "imminent peril" after conducting a risk assessment. This section puts in rule the recognition that there are circumstances where an emergency services employee must take action to save the life of an individual. The explanatory discussion states that *"after making a risk assessment determination based on the team member or responder's training and experience, is permitted to attempt to rescue a person in imminent peril, potentially without benefit of, for example, PPE, tools, or equipment. A team member's or responder's decision to not use a risk control technique that has been identified in the risk management plan is to be made on a case-by-case basis and must have been prompted by legitimate and truly extenuating circumstances. These circumstances typically have a time constraint that would make it infeasible to implement the risk control technique and rescue a person in imminent peril. This proposed provision could allow, for example, an ambulance crew, without benefit of firefighting PPE, to perform a rescue of a person endangered by fire who would potentially sustain significant injury or death if they did not take immediate action."*

(3) The RMP must be reviewed annually and altered when updates are needed.

GENERAL ANALYSIS AND RESPONSE TO SECTION F:

There is no need for an additional burden of analysis or RMP of the station or activities associated with non-emergency activities outside responder training as these activities are directly regulated by other sections of the OSHA standards. Much of this section not related to actual emergency response and training would be duplicative such as PPE requirements for non-emergency activities. Those current rules do not typically require an RMP or equivalent unless they address extraordinary hazards.

Due to the nature of emergency response, it is infeasible to create a written program or plan that establishes concrete control techniques that could be used consistently in contrast to someone operating in a fixed place of employment performing consistent tasks. At best you could create general

guidance and topics to consider as Oregon OSHA rules have done. By its nature emergency response is a process of problem solving and pure risk management where each minute of an event is different than the next. While it is important to develop and train on standard operating guidance each event would be impossible to create a step-by-step process with absolute risk control techniques. The cost in resources to accomplish this section would once again be infeasible due to the ever-changing environment that ESOs operate in. As technology improves and becomes less expensive an upcoming engineering control technique will be the use of robotics to eliminate the need to expose human firefighters to hazardous environments. At this time there are only a few firefighting robots in use around the country. Until their use increases most if not all emergency operations will be conducted by humans in appropriately chosen PPE. Control measures for infectious disease should be addressed in the same manner as all other hazardous environments. Since engineering control techniques are infeasible due to the unknown environment ESOs operate in PPE is the likely control measure. The PPE standard requires an assessment and selection process to be used when hazards are encountered. This is an appropriate process for infectious disease environments and should be duplicated in this standard.

An additional concern surrounds enforcement of this section that would pit industry experts against the opinions compliance officers with little to no current emergency response experience. Taking for example the enforcement staff in Oregon OSHA there are no currently trained firefighters or EMTs. Using untrained individuals to evaluate the actions of industry experts working under duress in an ever-changing environment would be concerning at best and will create a situation where responders will be forced to take less aggressive actions that increase the risk to the public because they concerned with uneducated enforcement of this section. As in prior sections Federal OSHA's assumptions did not account for the individual state's geographic and demographic differences. We are again greatly concerned that while the concepts contained in this section are valid best practices ESOs must be able to prioritize their limited resources as to accomplish these tasks while being able to accomplish their primary mission of providing emergency response. Again because of the drain on finite resources compliance with this section would damage the response capabilities of all ESOs and would therefore create negative consequences for all communities in Oregon including the workplaces and individual employees that OSHA regulates.

(f)–1. OSHA is seeking input on whether other activities or subjects should be specifically included in 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.

(g) Medical and Physical Requirements.

(1) Federal OSHA believes that *"fitness and medical surveillance requirements are a highly effective means of reducing work-related injuries, illnesses, and fatalities and improving the health of team members and responders."* The ESO must establish minimum medical requirements for responders based on the level of service performed and the tiers of qualifications. Skilled Support Workers (SSW) team will not be required to have medical requirements. The ESO must maintain a confidential record of duty restrictions, occupational injuries and illnesses, and exposures to products of combustion, known or suspected toxic products, contagious diseases, and dangerous substances (there is no definition of this,

so we fall to Websters definition) for each responder. This rule has not contemplated how the use of medical and behavioral health evaluations would impact issues under the Americans with Disabilities Act (ADA) once a condition was discovered. "*The physical fitness and physical and mental medical requirements in paragraph (g) serve two purposes: (1) ensuring that responders are physically and mentally capable of performing their duties without injury to themselves or their fellow responders, and (2) identifying and addressing physical and mental health effects resulting from emergency response activities."* Federal OSHA is using statements made by the major fire service associations (IAFC, IAFF, NVFC) that recommend physicals to set the minimum standard to require one calling it *"industry consensus."* What OSHA believes to be appropriate minimum required evaluations are described in this statement, *"The proposed baseline medical examination focuses on health hazards that are common to all team members and responders, with potential additional requirements based on the particular type and level of service(s) performed, while the proposed medical surveillance requiring a full NFPA 1582-compliant physical is reserved for those team members and responders exposed to combustion products above a specific action level. As explained in section VII.C., Costs of Compliance, OSHA expects that only structural and wildland firefighters (emphasis added) will meet the threshold for the full NFPA 1582 requirements."* The medical and mental health evaluation should consider the responders exposure to the variety of hazard types and evaluate them accordingly.

(2) Medical evaluations required by this are to be provided at no cost to the responder at least every two years unless the provider deems that more often is necessary. The ESO must establish a medical evaluation program for each responder. This evaluation is similar to the one for using SCBA but is more specific and must include: Medical history with an emphasis on cardiac and respiratory disease, a physical examination with an emphasis on cardiac, respiratory and musculoskeletal systems, spirometry, and assessment of heart disease risk (blood pressure, cholesterol levels, other heart disease factors), and any additional screening the provider deemed appropriate. *"The purpose of medical evaluations for team members and responders is to determine, where reasonably possible, if the individual can perform emergency response duties without experiencing adverse health effects and to determine the team member's and responder's fitness to use PPE appropriate to their designated duties…Current §1910.156(b)(2) also specifies that the employer ''shall not permit employees with known heart disease, epilepsy, or emphysema, to participate in fire brigade emergency activities unless a physician's certificate of the employees' fitness"* The ESO will establish procedures for "the length of time that absence from duty due to injury or illness requires a responder to have a return-to-duty evaluation" by the provider (this seems like an employment concern and not a safety and health concern).

(3) FOR RESPONDERS WHO ARE OR MAY BE EXPOSED to combustion products fifteen or more times a year, they must be provided a medical physical at least as effective as the NFPA 1582 physical. *"An exposure incident to combustion products is any exposure to materials that are on fire or smoldering regardless of the use of PPE or respiratory protection."* These exposure incidents are counted separately regardless of multiple calls during a duty shift and include wildland and training fires. *"If a responder is exposed to multiple incidents during one shift, the incidents would each be considered one individual exposure incident."* This part of the standard may appear to apply only to combustion products that are borne from an IDLH atmosphere however OSHA maintains that *"some exposures to combustion products may occur outside of such environments. Because the health risks posed by combustion products are not limited to exposures in IDLH environments, the proposed standard would require ESO's to consider all exposures to combustion products, not just those that occur in an IDLH environment."* All exposure incidents are required to be documented by the ESO and maintained in the confidential file.

(4) The ESO will provide at no cost behavioral health and wellness resources that include at a minimum: diagnostic assessment, short term counseling, crisis intervention, and referral services for "behavioral health and personal problems that could affect the responder's performance." The ESO must tell responders regularly and after "potentially traumatic events" that resources are available. *"For those ESOs who do not provide behavioral health resources at their place of employment, they would need to identify local, state, or Federal governmental, non- governmental, and non-profit behavioral health resources that can be accessed by team members and responders. Behavioral health resources provided by an ESO's health care plan would meet the requirements of the proposed rule."* Any records generated or provided to the ESO must be kept confidential.

(5) The ESO must establish and implement a process to annually evaluate the ability to perform essential job functions, these should be found in the ESO's position descriptions. This evaluation would likely be based on the criteria from section (g). The ESO is required *"to determine if the team member or responder is physically capable to perform the duties required of them during an emergency response. It is possible for a team member or responder to have no medical limitations to performing emergency response activities and still not be physically able to perform the duties… OSHA expects that assessment of the ability to perform essential job functions would be determined during training scenarios in which emergency response activities are practiced under controlled conditions, or during the skills checks."*

(6) The ESO must establish a health and fitness program for responders that includes: a designated individual to oversee the program, periodic assessment of the responder's health, exercise training, and education and counseling regarding health and wellness. *"OSHA intends these provisions to ensure that responders have the opportunity, means, and knowledge necessary to maintain fitness for duty and to prevent work-related injury and illness."* Federal OSHA indicated that these rules would require a fitness evaluation of each responder at least once every three years. *"The proposed rule would require a periodic fitness assessment for all responders, not to exceed every three years. The purpose of the fitness assessment is to inform the responder on their fitness status and whether their fitness has improved, maintained, or decreased. This physical fitness assessment is different from the fitness for duty evaluation described in proposed paragraph (g)(5) in that it is solely a physical fitness-related evaluation and is indirectly related to the evaluation of a responder's ability to perform essential job tasks. The physical fitness assessment should evaluate physical parameters such as responder muscular strength, muscular endurance, cardiovascular endurance, and mobility/ flexibility."* The ESO would also be required to promote fitness and provide health education resources to responders.

GENERAL ANALYSIS AND RESPONSE TO SECTION G:

NFPA 1582 medical physicals are the gold standard for providing important health information to firefighters. These medical physicals are averaging $800 per person and are not available in most rural areas of Oregon due to a lack of medical providers. Many Oregon fire service agencies have attempted to work with local physicians to develop a suitable alternative that identifies major health concerns and is affordable. Oregon fire district budgets are set and capped and can only increase by a voter approved operating levy that must be renewed every 3 years. Of the 257 fire districts, 144 districts have an annual operating budget of less than $500,000 and 50 districts have an annual budget under $100,000. The cost of the medical physicals would be financially infeasible and would ultimately result in the closure of many rural fire districts and departments due to an inability to comply with this section. The consequence of this closure would eliminate the access to fire insurance for property owners. OFCA has confirmed that the elimination or even substantial reductions in fire protective services such as fire suppression work from only the exterior of a structure to eliminate exposures to products of combustion

would result in an ISO protection class rating of 10 or the equivalent of no fire protection. The western states have already seen insurance providers exit the market in vast areas due to wildfire threats. It cannot be emphasized strongly enough that reducing fire protection availability in areas with no access to NFPA 1582 medical physicals due to enforcement of this section will indirectly cause fire insurance providers to pull out of markets making housing inaccessible to many disadvantaged communities as is currently happening in our neighboring state of California.

Behavioral health and wellness resources are an important service that is not available to many Oregonians due to a lack of providers. The ESO will have no control over access to these services therefore it is infeasible to require anything more than the creation of a plan to provide services. Volunteer ESO's would not provide health insurance to their members as it would be cost prohibitive. In order to implement this program, the cost estimated by several mental health providers across the state is approximately $250 to $350 per person annually. Clinician cost for counseling services is between $125 and $250 an hour outside the program cost. Many areas of the state require two hour or more travel time each way to see a clinician for service making it extremely problematic to see a clinician for services. Peer support and Chaplain services are more readily available to agencies but do not comply with the requirements in this section. The geographic and demographic diversity of Oregon and the Western states make this section infeasible to comply with and is something that likely was not considered by the Federal OSHA assumptions. The Oregon fire service has a strong relationship with Oregon OSHA and can independently develop an acceptable and feasible answer to the needs of responders while ensuring the limited resources of ESOs are available for emergency response thereby keeping the communities and workplaces safe.

As to the requirements for fitness-for-duty tests, the Oregon fire service believes it is important that individuals are capable of performing the tasks they assigned. Currently there are no other occupations that OSHA requires fitness-for-duty testing before performing job tasks. The great majority of the fire service in the United States is made of volunteers. If a fitness-for-duty test is to be required, there must be consideration given to the severe inability of communities to recruit and retain emergency responders. The current shortages of responders would be greatly exacerbated by placing additional hurdles to becoming a responder rendering communities unprotected. The ESO should have the ability to create its own capability testing for the responders based on the tasks assigned to that individual. Employment law regulates much of the topic of fitness for duty requirements and should be examined to determine if the OSHA rules would come into conflict. Based on the federal register it appears this rule has not contemplated how the use of medical and behavioral health evaluations would impact issues under the Americans with Disabilities Act (ADA) once a condition was detected.

(g)–1. OSHA is seeking input and data on whether the proposed rule's requirements for medical evaluations are an appropriate minimum screening. Should the minimum screening include more or fewer elements, and if so, what elements? Provide supporting documentation and data that might establish the appropriate minimum screening. OSHA is also seeking additional data and information on the feasibility of the proposed medical evaluation and surveillance requirements for WEREs and ESOs.

(g)–2. OSHA is seeking input on whether an action level of 15 exposures to combustion products within a year 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. 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.

(g)–4. OSHA is seeking input and data on whether stakeholders support the proposed fitness for duty 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 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 period of time would be appropriate. The agency is seeking any available data to support an alternative length of time between evaluations.

(h) Training

(1) Minimum training levels. The ESO must establish the minimum training requirements based on the level of service. ESOs are *"required to restrict the activities of each new team member and responder during emergency operations until the team member or responder has demonstrated to a trainer/ instructor, supervisor/team leader/ officer, the skills and abilities to safely complete the tasks expected."* Instructors must have the knowledge, skills, and abilities to train the subject matter. OSHA believes that *"It is intuitive that those teaching should be more knowledgeable in the subject matter than those being taught, and when physical skills are required it can be important for the instructor/trainer to have the ability to demonstrate the skills or address a problem when it arises."* Training must be provided in a language and literacy level that responders understand and must be interactive. *"ESOs must thus consider language, literacy, and social and cultural appropriateness when designing and implementing training programs for team members and responders."* Responders must be trained on the RMP from (f) (1) and on safety and health policies and SOPs. Training must be provided on the selection, use, and limitations of portable fire extinguishers. Training must be provided on the Incident Management System, accountability systems, and evacuation procedures. Responders must be trained at a minimum to the awareness level requirements in 1910.120 HAZWOPER. Responders must be trained to a minimum of awareness level for every specific hazard they may respond to such as a confined space, excavations, or swift moving water. Responders must be trained to perform CPR and AED use.

(2) Vocational Training levels. Because this standard separates out firefighters from the general "responders" category the ESO must train responders who perform firefighting duties to NFPA 1001 Structural Fire Fighter Professional Qualifications 2019 Edition or equivalent; interior structural firefighting to NFPA 1407 Standard for Training Fire Service Rapid Intervention Crews 2020 edition or equivalent; vehicle operators to NFPA 1002 Standard for Fire Apparatus Driver/Operator Professional Qualifications or equivalent EVOC training; managers/supervisors/crew leaders/officers to NFPA 1021 Standard for Fire Officer Professional Qualifications 2020 Edition or equivalent; Wildland firefighters to NFPA 1140 Standard for Wildland Fire Protection 2022 Edition or equivalent, or NWCG "Red Card"; technical rescue responders to NFPA 1006 Standard for Technical Rescue Personnel Professional Qualifications 2021 edition or equivalent; marine firefighters to NFPA 1005 Standard for Professional Qualifications for Land-based Firefighters 2019 edition or equivalent; EMS providers to state or national certification or licensing standards for the level of care provided.

(3) Proficiency. The ESO must ensure that an annual (once each twelve-month period) skill check is completed on every responder based on the level of service provided and what is required in the preceding two sections. *"OSHA recognizes that skill checks may be completed in different ways, and within the minimum annual period between skill checks the appropriate interval for additional skill checks varies with the nature of the skill in question. For instance, if a pumper operator regularly operates the vehicle, including pumping hose lines, routine observation may substitute for a separate skills check. However, an operator who has not operated the vehicle and pump for nine months may need a more formal skills check to ensure they can still perform the tasks safely even if they last passed a skills check eleven months earlier."*

GENERAL ANALYSIS AND RESPONSE TO SECTION H:

Oregon has had rules in place that define appropriate training levels and place the burden on the ESO to specify the level of training that will be provided based on the tasks assigned. Because of the diversity in Oregon's emergency responders, it would be difficult to prescribe the training standards that are appropriate for every agency. A more general performance standard allows for maximum flexibility and places the burden on the ESO to make the determination as to what is appropriate. Creating a significant training burden on small and rural agencies will likely cause increased losses of responders greater than current losses. Without adequate staffing ESOs will no longer be able to provide service to their constituents. In 2018 Oregon's legislature was preparing a bill that would statutorily limit the training requirements on frontier fire agencies. Oregon OSHA and the Oregon Department of Public Safety Standards and Training were able to craft rules that satisfied the bill's sponsors. These proposed rules would do the opposite and increase the training requirements for these frontier agencies and the likely result would be legislative intervention once again.

(h)–1. OSHA is seeking stakeholder input and data regarding the appropriate methods and interval(s) for skills checks, as it relates to proposed paragraph (h)(3).

(j) ESO Facility Preparedness. The ESO facility must follow the general requirements that OSHA enforced in subpart E of 29 CFR 1910 in addition to what is contained in this section of 1910.156. For Oregon specifically all parts of what is known as division 2 is applicable for "in station" work unless there is a specific requirement in this rules that addresses a topic directly. This is what OSHA refers to as a vertical standard. https://osha.oregon.gov/OSHARules/enforcement/firm.pdf Chapter 2.

(1) The ESO must provide facilities for decontamination, disinfection, cleaning, and storage of PPE. If the PPE is to be decontaminated off-site, then the ESO must provide for the bagging and storage of the dirty equipment. *"The manner of compliance with proposed paragraph (j)(1)(ii) would vary depending on an ESO's facility and manufacturers' instructions. However, basic cleaning and gross decontamination typically involves using a utility hose and brushes, a large sink with a spray nozzle, appropriate cleaning chemicals and disinfectants, and drying racks. Some ESOs may choose to install commercial-style washing machines or extractors for PPE. Alternatively, if PPE is to be decontaminated off-site, ESOs must provide for bagging and storage of contaminated PPE while it is still at the ESO facility."* The rule now addresses fire poles, slides, and chutes specifically. *"ESO must ensure that each fire pole has a landing cushion that is at least 30 inches in diameter, has a contrasting color to the surrounding floor, and has impact absorption to reduce the likelihood and severity of injury. The minimum diameter requirement is meant to accommodate responders of varying shapes and sizes. The contrasting color would enhance visibility to the potential tripping hazard on the floor. The landing cushion would also need to be made of*

a material with sufficient thickness to reduce the impact of a responder landing on the cushion." The opening that provides access to the chute, pole, or slide must be appropriately protected in a way that meets the standards in the sub-division D Walking-Working Surfaces to avoid unintended falls. Federal OSHA is seeking input from stakeholders about prohibiting these devices entirely and providing a phase-in period where ESO will be required to remove them from service.

(2) The ESO must ensure that all sleeping and living areas have "interconnected hard-wired smoke alarms with battery backup" installed inside and outside the door to sleeping areas on and on all levels including basements. All living and sleeping areas must have a functioning carbon monoxide detector installed. New ESO facilities constructed after the implementation of the rule must be protected by an automatic sprinkler system. Sleeping and living areas must be protected from exposure and contamination by vehicle exhaust and contamination from dirty PPE. *"OSHA believes that compliance with this provision can be achieved by any of several means, including direct or source capture systems attached to vehicle exhaust pipes, automatic ventilation systems, positive air pressure in sleeping and living areas, self-closing doors with weather seals, and others."* PPE contamination should be dealt with administratively through polices and standards that require responders to remove PPE before entering live areas of a station.

GENERAL ANALYSIS AND RESPONSE TO SECTION J:

The section covering facility preparedness could become duplicative of other OSHA rules related to facilities. This section needs to be constrained to issues unique to emergency response and not to building codes. There are many stations in this state that do not have running water available due to location and budgets. Retrofitting stations to include many of the provisions in the section would be exceedingly costly. With the exception of immediately hazardous conditions ESOs must have the ability to prioritize between response capabilities and station upgrades. When building a new station, it is easier to add in these changes like ventilation. A timeframe to achieve these renovations should be predicated on a discussion of significant construction changes. It is entirely appropriate to require an ESO to make updates when undertaking a building retrofit or construction project of a certain scope. If these changes are required to be made upon passage of this rule it is likely that emergency responder organizations would be forced to choose between staffing, response capability, and facilities costs. Unnecessary expenditures of finite resources would damage the response capabilities of all ESOs and would therefore create negative consequences for all communities in Oregon including the workplaces and individual employees that OSHA regulates.

(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 facilities should be protected by automatic sprinkler systems, as proposed in paragraph (j)(2)(ii).

(k) Equipment and PPE.

(1) The ESO must provide equipment and PPE necessary to perform emergency services work at no cost to the responder. The equipment must be maintained in a "safe manner" according to manufacturer instructions and industry practices. The ESO must inspect, maintain, and functionally test the equipment at least annually **and** in accordance with manufacturer instructions and industry practices. The ESO must immediately remove from service any defective equipment. *"The provision states ''provide . . . or ensure*

access to'' because WEREs and ESOs may have their own training equipment for tasks they frequently perform, but may depend on a centralized cache of equipment, other WEREs or ESOs, or a training facility for other equipment." This means that there can be a training association or other agency that owns the equipment and then loans it out to the ESO for training of their responders. As for the PPE necessary to provide emergency services, *"Employers are already required to provide necessary PPE at no cost to employees under OSHA's general PPE requirements, 29 CFR 1910.134(h). Proposed paragraph (k)(1)(i) reiterates this requirement and makes clear that non-PPE equipment needed to train for and safely perform emergency services must also be provided at no cost to team members and responders."* Any equipment that is procured by the ESO must be safe to use before placing it into service. OSHA considers *''Newly purchased or acquired'' means purchased or acquired after the effective date of any final rule that would result from this rulemaking. Often, when WEREs and ESOs purchase or obtain new(er) equipment, they donate or sell their older equipment to other WEREs or ESOs. This provision would require the receiving WERE and ESO to ensure that the equipment received is safe for use prior to utilizing the equipment. Under proposed paragraphs (k)(1)(iii), each WERE and ESO would be required to inspect, maintain, functionally test, and service test equipment at least annually, in accordance with the manufacturer's instructions and industry practices, and as necessary to ensure equipment is in safe working order. Functional testing and service testing are different in that functional testing is performed by using and observing the equipment as it would normally be used. Service testing involves following specific procedures and evaluating test criteria, such as hydrostatic testing of SCBA air cylinders and flow testing SCBA regulators… Many pieces of equipment, such as hand tools, ladders, and rope rescue equipment, would be inspected after each use, and some would only require annual service testing. The manufacturer's instructions are the best source of information about inspection frequency and appropriate maintenance and testing. However, if a WERE or ESO has reason to believe a piece of equipment may not be in safe working order, that equipment would need to be inspected and tested immediately or removed from service, regardless of the inspection frequency recommended by the manufacturer."* It appears that OSHA will be using the manufacturers documents as the baseline for frequency and inspection process. It is imperative that ESOs research these requirements from the manufacturer when purchasing equipment so as to not be caught unaware of this during an enforcement inspection as has occurred in the recent past. As a fire service we need to educate manufacturers to this fact so that they provide information that is necessary and in a manner that doesn't place undue regulatory burden and potential monetary penalties on ESOs.

(2) Personal Protective Equipment (PPE). The ESO must conduct a hazard assessment for the selection of ensemble elements and protective equipment based on the level of service provided to the community. The protective equipment, protective ensembles, and protective elements must be provided at no cost to the responders and must be designed to provide protection to the responders based on the hazards they are likely to encounter. The PPE must also comply with the requirements laid out in subpart I of 29 CFR 1910. This includes a requirement that the PPE is properly fitted to the individual. The fire service is used to this standard because of the requirements in the respiratory protection rules requiring a fit test to ensure the tight-fitting face piece is sized appropriately. *"OSHA's position that ''properly fits'' means the PPE is the appropriate size to provide the team member or responder with the necessary protection from hazards and does not create additional safety and health hazards arising from being either too small or too large."* PPE provided by the ESO must comply with NFPA 1951 Standard on Protective Ensembles for Technical Rescue 2020 edition, NFPA 1952 Standard on Surface Water Operations Protective Clothing and Equipment 2021 edition, NFPA 1953 Standard on Protective Ensembles for Contaminated Water Diving 2021edition, NFPA 1971 Standard on Protective Ensembles for Structural Firefighting and Proximity Firefighting 2018 edition, NFPA 1977 Standard on Protective Clothing and

Equipment for Wildland Firefighting and Urban Interface Firefighting 2022 edition, NFPA 1981 Standard on Open-circuit SCBA for Emergency Services 2019 edition, NFPA 1982 Standard on Personal Alert Safety Systems (PASS) 2018 edition, NFPA 1984 Standards on Respirators for Wildland Firefighting Operations and Wildland Urban Interface Operations 2022 edition, NFPA 1986 Standard on Respiratory Protection for Tactical and Technical Operations 2023 edition, NFPA 1987 Standard on Combination Unit Respirator Systems for Tactical and Technical Operations 2023 edition, NFPA 1990 Standard on Protective Ensembles for Hazardous Materials and CBRN Operations 2022 edition, NFPA 1999 Standard on Protective Clothing and Ensembles for Emergency Medical Operations 2018 edition, and ANSI 207-2011 ANSI for High-Visibility Safety Vests 2011 edition. Any protective equipment that is self-selected by the responder must also comply with these standards. The section on respirators appears to envision the use of different types of respirators beside the traditional SCBA for firefighting. One example provided is the use of an air purifying respirator, like a half-face cartridge style. *"Air-purifying respirators are ineffective in IDLH atmospheres because they do not provide protection from the inhalation of gases and vapors, particularly the superheated gases present during fires. They are, however, appropriate for use by team members and responders performing duties such as post-fire overhaul, fire investigation, collapsed building search and rescue, trench/excavation rescue when exposure to respirable crystalline silica is possible, and for emergency medical operations where an airborne infectious disease is known or suspected to be present."* This leads me to believe that federal OSHA may begin enforcement when respirators are not used for operations like those listed above unless the agency can provide air monitoring showing that there are no airborne hazards. *"Proposed paragraph (k)(2)(vii) would require that each ESO ensure that each team member and responder properly uses or wears the protective ensemble, ensemble elements, and protective equipment whenever the team member or responder is exposed, or potentially exposed to the hazards for which it is provided. PPE is effective only when it is worn and used properly. This provision makes clear that the ESO is not only responsible for providing required PPE and equipment, but must also ensure that they are used whenever exposure to the hazard for which they are provided is reasonably foreseeable."*

Additionally, there is a lengthy discussion about the proper cleaning, decontamination, maintenance, and retirement of this PPE. As with most OSHA rules the standard is to follow the manufacturer's instructions for this. However, OSHA does agree that the NFPA standard of retiring PPE after 10 years may not be wholly appropriate. *"NFPA 1851, Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting (Document ID 0115, pp. 13–14), which calls for PPE to be retired ten years after the date of manufacture. OSHA recognizes that there are users with concerns that there may be a gap in the scientific evidence on whether PPE aged beyond the retirement schedule published in NFPA 1851 is incapable of providing the designed protection level, regardless of the amount of use. Additionally, OSHA recognizes that older PPE may still be of use for activities where the primary protective properties of the PPE are not needed, for example for some exterior activities on fire scenes, during some training scenarios, and firefighting PPE used for identification and for protection against sharp edges at vehicle accident scenes. However, there is concern that older PPE could be used in situations where it is no longer able to provide the needed protection. In the proposed rule, OSHA is not proposing specific retirement age criteria for any PPE, and instead requires that PPE be cared for and maintained in accordance with manufacturer's instructions. OSHA is seeking input in Question (k)–1 on whether the agency should specify retirement age(s) for PPE. Paragraph (k)(2)(ix) of the proposed rule would require each WERE and ESO to immediately remove from service any defective or damaged protective ensembles, ensemble elements, or protective equipment. Defective or damaged PPE is not protective and could expose team members and responders to the hazards that the PPE is supposed to be protecting against."*

(3) Protection from Contaminants. The ESO must ensure that gross decontamination of PPE and equipment occurs, or they are "separately contained" before the crew leaves the scene. Contaminated PPE and equipment cannot be in the passenger compartments of vehicles with the crews. OSHA states that *"Decontaminating these items as soon as possible after an incident is an important step in protecting team members and responders from contaminants. It is preferable to perform gross decontamination of PPE and non- PPE equipment before the team member or responder leaves the incident scene. Gross decontamination is defined in paragraph (b) of this section. Examples include rinsing with a hose to reduce or dilute liquid contaminants, or rinsing and brushing to displace solid particulate matter."* The fire service has almost universally come around to this idea when it is feasible to do so. The statewide associations could support this by providing a "shopping list" of sorts for agencies to use as a basic supplies list. The infeasibility of gross decontamination could come into play during certain weather conditions, and this is discussed in the federal registry. The bagging of PPE means that secondary clothes would need to be available for responders. Careful consideration must be used for seating positions on apparatus that do not have fully enclosed cabs. In these areas it is my opinion, and likely would need clarification from OSHA as there is no discussion about it, that these areas are not included in this requirement to "separately contain" and therefore PPE could be worn, however those positions would need to be cleaned to remove products of combustion to the extent possible.

GENERAL ANALYSIS AND RESPONSE TO SECTION K:

PPE is exceedingly important to emergency responders as we discussed in our comments under section f related to the risk management plan. Oregon currently has an adequate rule related to PPE for the fire service. The NFPA standards that were referenced are directed toward the manufacturing of the PPE and not to the inspection, use or care. ESO agencies must be frugal in their expenditures and having the additional expense of regularly cycling through PPE that has "expired" according to an NFPA standard could be catastrophic. The organizations who would likely be most severely affected are ones who have low call volumes and likely use their PPE infrequently. PPE should be inspected and removed from service when deficiencies are noted and not due to an arbitrary date. Many of these PPE items are infrequently exposed to environments that are damaging such as direct sunlight for extended periods of time. Additionally, the incorporation of the NFPA for wildland respirators may be premature. There has been little research done to determine the effectiveness and health effects of these respirators on crews in the wildland setting. These respirators are not widely available for crews and would therefore increase the price due to scarcity.

(k)–1. OSHA is seeking input on whether the agency should specify retirement age(s) for PPE.

(k)–2. OSHA is seeking input regarding whether and how WEREs and ESOs currently provide separation and distinction of PPE and non-PPE equipment that have not undergone gross decontamination. (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.

(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.

(L) Vehicle Preparedness and operation.

(1) The ESO must ensure that the vehicles are ready for safe use or be immediately removed from service. The ESO must inspect, maintain, and repair each vehicle and component parts according to the

manufacturer's instructions or NFPA 1910 Standard for the Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels 2024 Edition. *"OSHA intends for the term vehicle to include any device used to transport responders and team members while performing their duties. This covers a broad range of modes of conveyance for transporting a person or people by land, water, or air. Examples include bicycles, motorcycles, snowmobiles, golf carts, utility carts, cars, trucks, buses, ambulances, watercraft, and aircraft."* The ESO must create an inspection process that meets or exceeds the manufacturer's requirements in terms of areas of inspection as well as frequency. Vehicles must be immediately placed out of service when deficiencies that directly affect safety are identified through use or inspection. *"Examples include a bird strike on the windshield that affects the driver's visibility, a missing or broken windshield wiper during inclement weather, the driver's seat belt not functioning properly, a door not latching closed properly, loose or missing lug nuts, brakes not functioning properly, a cot retention mechanism not latching, and no heat or air conditioning in the patient transport compartment. Manufacturers' instructions and guidance from national consensus standards such as NFPA 1910, 2024 ed., offer a broad range of examples of potential deficiencies. When a safety-related deficiency is identified, the vehicle would be required to be taken out of service as soon as possible."* Once repaired the vehicle may be returned to service. One major concern that was raised and was addressed favorably by OSHA was due to their reference of NFPA 1910, Standard for Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels, 2024 ed. The concern is that this document has a recommended vehicle replacement schedule. *"OSHA recognizes that there are many variables related to the amount of use and conditions of operation for the wide variety of vehicles used by team members and working life of a particular vehicle and firm deadlines for retiring vehicles may result in costly and unwarranted replacement. Given this variability, OSHA is not proposing particular timeframes for vehicle replacement. Instead, the proposed rule requires that vehicles be inspected, maintained, and repaired as specified by the manufacturer and that any vehicle with a safety-related deficiency be immediately removed from service."* While the use of seatbelts is common practice, the use of a safety harness while performing patient care may not be as widespread. The rule has the requirement to use a safety harness while performing patient care while the vehicle is underway. *"A vehicle safety harness would be used in place of a seatbelt, typically in a patient transport vehicle where the EMS provider needs access to treat a patient that would not be possible while using a seatbelt. Team members and responders would be required to use the seats, seatbelts, and vehicle safety harnesses as specified in proposed paragraph (l)(2) of this section."* This would likely require a retrofit to medical transport vehicles. Vehicles that are not designed to have a restraint such as All-Terrain Vehicles, passenger seats in buses, bicycles, motorcycles, snowmobiles, boats, and personal watercraft would be exempted from this requirement.

(2) The ESO must ensure that the vehicles are operated in a safe manner. The ESO must ensure the vehicle is operated by trained personnel or trainees under the direct supervision of a qualified operator, driven in accordance with SOPs developed by the RMP, ensure the vehicle does not move until all responders are belted (including donning and doffing PPE), EMS personnel must be belted or secured to the vehicle while providing patient care, and the ESO must provide "alternative means" of protection when it is determined it is not feasible to be belted. "*OSHA anticipates team members and responders would don PPE before being seated and secured, as required by proposed paragraph (l)(2)(iii). However, there are often occurrences when team members and responders are not wearing PPE while the vehicle is moving, such as for driver training, community assessment and familiarity, and other non-response driving situations, and they are dispatched to respond to an incident that requires donning PPE. The proposed provision requires that they not release or loosen seat belts or vehicle safety harnesses to don*

PPE when the vehicle is moving. Conversely, if the PPE has already been donned, the proposed provision prohibits the loosening of seat belts or vehicle safety harnesses to doff the PPE when the PPE is no longer needed, such as when the response is terminated." Equipment stored inside the passenger compartment must be secured by a "positive mechanical means of holding the item." There is additional discussion around the specific challenges for training operators of boats, tractor drawn apparatus, parades, and pump and roll operations. *"OSHA anticipates a variety of alternatives for compliance such as the use of ladder belts, harnesses, or other fall protection, and limitations on the speed vehicles may travel."* This language appears to indicate that OSHA would consider that compliance with this standard would be more "performance based" than code based. The ESO must establish policies and procedures for the use of privately owned or leased vehicles by responders. *"This scenario presents hazards that are directly related to emergency response activities. As such, OSHA does not consider this sort of home response to be a commute to the workplace as described in 29 CFR 1904.5(b)(2)(vii), which is not treated as work-related for purposes of recordkeeping and injury and illness reporting requirements under 29 CFR part 1904. Rather, OSHA intends to cover these types of home responses under the proposed standard. Under the proposal, the WERE's or ESO's procedures for use of POV vehicles in these circumstances would need to include the same elements as those for driving their emergency vehicles, including requirements for wearing seatbelts, speed limits, stopping and proceeding at traffic control devices, passing other vehicles, and the use of warning lights and signals."*

GENERAL ANALYSIS AND RESPONSE TO SECTION L:

Generally, we oppose the incorporation of NFPA standards in their entirety. NFPA standards have direct links to other standards and documents that need to be considered and vetted. Based on past experience OSHA enforcement has followed these links to other document to issue citations. These documents are updated without the benefit of public input and at times with little or no notice creating a moving target. The way Oregon OSHA has addressed this concern is to remove a standard incorporated by reference and removed the pertinent safety and health information to be used in the rule language. This allows for the incorporation of the consensus language without creating that moving target.

In this section specifically the inclusion of NFPA 1910 and the broad definition of vehicles, including privately owned vehicles, creates a morass of regulatory challenges. NFPA 1910 requires that individuals performing the inspection, maintenance and testing of fire equipment be qualified as Emergency Vehicle Technicians. This would be an insurmountable bar for volunteer organizations and one that is likely difficult for any ESO to meet fully. Additionally, NFPA 1910 has requirements regarding retirement of apparatus placing an enormous financial burden on the community's taxpayers. Considering that a type 1 engine now costs more than $800,000 and isn't available for several years after ordering this would be another insurmountable challenge for most agencies in this state. It cannot be said enough that the local jurisdiction must be allowed to prioritize spending based on their unique situations.

All of these additional requirements do not account for the monumental costs associated with them. For example, if privately owned vehicles are now considered under the purview of the ESO as stated in the explanatory language and therefore must be inspected, maintained and tested as fire apparatus this would eliminate any volunteer organization that allows response from home. This leaves vast portions of Oregon without protection from these ESOs.

(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) 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?

(l)–3. OSHA is seeking input on whether it should also 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.

(m) WERE Pre-Incident Planning (PIP) does not apply to public entities acting as ESOs.

(n) ESO Pre-incident planning (PIP). The ESO must develop pre-incident plans (PIP) for each location or facility that was identified by the vulnerability assessment (these included vacant structures and locations). In addition, the ESO must develop a PIP for each facility within the ESO's primary response area that is subject to reporting requirements under 40 CFR part 355 pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) *"The provisions in proposed paragraph (n) are based on the pre-incident planning paragraphs in NFPA 1660, Standard for Emergency, Continuity, and Crisis Management: Preparedness, Response, and Recovery, 2024 ed."* These plans must be done in consultation with personnel knowledgeable about these locations and facilities use, contents, processes, hazards, and occupants. The plans must be prepared by an individual who is knowledgeable in how to identify and collect the required information. *"For instance, all necessary facility information must be recorded, items of concern must be noted, and accurate sketches or diagrams must be prepared."* The PIPs must be kept up to date and disseminated to all responders. *"OSHA is aware that some ESOs use electronic versions of PIPs in a database, while others use hardcopies kept in binders in response vehicles. Any method that ensures the PIPs are accessible and available would comply with the provision."* The PIP must be reviewed annually and updated as needed.

GENERAL ANALYSIS AND RESPONSE TO SECTION N:

As we previously stated in our response to section D and F, we have grave concerns that the resources required to accomplish the task of the community assessment would not be available. It would be infeasible to perform a systematic vulnerability assessment of all structures (including vacant and unpermitted), transportation systems, infrastructure, and natural features based on the size of the response areas and limited number of personnel and data resources available. Without this assessment it is impossible to comply with the full requirements of this section. Pre-incident planning priorities should be left to the local authority having jurisdiction (AHJ) based on Emergency Planning and Community Right-to-Know Act (EPCRA) reporting and available resources of the ESO.

(o) Incident Management System Development. (Generally, this is something that most agencies in Oregon have done) *"OSHA is aware that some ESOs use the terms IMS and Incident Command System (ICS) synonymously, the definition also indicates that incident command is a functional component of the IMS. An IMS provides for the safety and health of team members and responders by establishing structure and coordination for the management of emergency incident operations."* The use of NIMS would be sufficient for compliance with this rule. *"Many of the provisions in this section are based on, or are consistent with, NFPA 1500, and NFPA 1561, Standard on Emergency Services Incident Management System and Command Safety, 2024 ed."*

(1) The ESO must develop and implement an Incident Management System (IMS) for all emergency incidents. The IMS must take into account: Type and level of service provided, the vulnerability assessment, and the PIPs.

(2) The IMS should be based on NIMS and is currently in use by most agencies in some fashion. It is likely that most agencies will only need to refresh and update their current systems.

(3) The ESO must designate the responsibilities of the Incident Commander (IC).

(4) The ESO must ensure that the IC has the training and authority to carry out their duties.

GENERAL ANALYSIS AND RESPONSE TO SECTION O:

In general, the Oregon fire service uses an ICS system and does incorporate portions of NFPA 1561 that are applicable to firefighter health and safety. We do have concerns about broadly incorporating NFPA standards as the rule. If there are important feature of that consensus standard, then those should be drawn out and used at the language for the rule specifically. Because these standards are continually evolving and changing, including a simple change such as the numbering system, we can foresee a time in the future where a different system may be introduced that is more effective and efficient. If the NFPA is used as the standard and becomes outdated OSHA would be required to do additional rulemaking which can be a lengthy and contested process. If Federal OSHA was to use effective safety and health portions of the NFPA standards those should be less likely to change. We would encourage the OSHA staff to use their safety and health knowledge to tease out the important language and discard the extraneous language.

(o)–1. OSHA is seeking input about WERE and ESO current use of an IMS, whether the NIMS and NRF 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.

(p) Emergency Incident Operations (Generally, this is something that most agencies in Oregon have done)

(1) The ESO must use the IMS developed in (o) and all emergency incidents require an IC or UC to oversee the operations. The ESO must *"ensure that the IMS developed in accordance with paragraph (o) of this section is used at every emergency incident and that every incident has an Incident Commander (IC) or a Unified Command (UC)."* The concept is that there is someone in charge of the scene who has the training and authority to guide the incident. This is likely the most senior person at the incident. The change may be creating purposeful training for these individuals who may be in charge, but until now haven't held a rank such as company officer or chief officer. OSHA does envision that the ESO *"would need to ensure that the task of overseeing incident safety is addressed, or an ISO is assigned and designated to monitor and assess the incident scene for safety hazards and unsafe situations and develop measures for ensuring team member and responder safety. The task of overseeing incident safety is sometimes referred to as the ''safety'' role. Typically, the IC would oversee the safety role on small(er) incidents. For larger or more complex incidents, where division of labor is appropriate so that the IC is not overwhelmed, a team member or responder (usually with seniority or in a higher tier) can be designated to fill the safety role as the ISO. Whoever fulfills the safety role needs to be mindful of observed and anticipated safety hazards and develop measures to stop or correct them to prevent injuries or fatalities."* This emphasis on safety leads OSHA to specifically address the need for rehab for these incident

managers as well as firefighters. A process to ensure a rotation of command staff must be developed and implemented.

(2) The ESO must designate an IC at all emergency incidents and use a common system known to responders. The ESO must designate a way to communicate with that IC or UC and if a location is designated a visual signal must be used to lead responders to that area. Again, OSHA places an emphasis on the safety duties of the command structure, the requirements of this section state the *"ESO would need to ensure the IC conducts a comprehensive and ongoing size-up of the incident scene that places life safety as the highest priority and conducts a risk assessment based on the size up before actively engaging the incident. Factors involved in a size-up vary depending on the type of incident (e.g., fire, EMS, technical rescue), but all size- ups need to include evaluation of the safety hazards to the person/ people involved in the incident, bystanders, and team members and responders. Size-up is an ongoing process that includes a continuing evaluation of information received and assessment of the hazards present. When feasible, the size-up should include a 360-degree walkaround survey of the involved structure or incident scene to evaluate the incident from all angles…"* The ESO must require the IC to develop an Incident Action Plan (IAP) at all times. This plan does not universally need to be a written plan. *"For the majority of incidents, the IAP is usually not a formal, written plan, although for some large-scale incidents the IC or UC may develop a written plan. Often, the IAP may only be documented on a fill-in incident management/incident command template, chart, magnetic or wipe-off board, or others means depending on the IC's preference. If a PIP was developed for the incident scene location, proposed provision (p)(2)(vi) would require that it be used in the development of the IAP."*

(3) Control zones must be used to designate no-entry, hot, warm, and cold zones and must be marked in some fashion that responders understand. *"Under proposed paragraphs (p)(3)(iv)(A) through (C), the WERE and ESO would need to ensure that control zones are established as no-entry, hot, warm, and cold, as defined in proposed paragraph (b); marked in a conspicuous manner, with colored tape, signage, or other appropriate means, unless such marking is not possible; and communicated to all team members and responders attending the incident before the team member or responder is assigned to a control zone."* OSHA appears to have a keen interest in what they refer to as "freelancing" and how to curb it. *"Team members or responders entering the hot zone without an assigned task would be considered to be freelancing, thus operating outside the scope of the IMS…"* ESOs would be required to address this issue. Each of the control zones that are required have different protective measures that are need based on the hazards located in them. The rule requires an ESO to identify and require the use of these protective measures including the use of PPE. OSHA recognized this fact and states that *"The protective levels of PPE needed vary for each zone level, with the highest level needed for the hot zone. A protective measure for a downed electrical wire could be to a maintain a certain, safe distance away from the downed wire (a no-entry zone), with no specific PPE needed."*

(4) On scene safety and health measures are required. These measures require the ESO to identify minimum staffing levels, ensure that there are a minimum of four responders on scene before entering an IDLH atmosphere unless a rescue is required, a minimum of two responders in visual or voice contact when entering any IDLH atmosphere (i.e., structure fire, confined space, or collapsed structure). *"OSHA recognizes that many WERTs and ESOs ''do more with less.'' The proposed provisions would require the WERE and ESO to identify the staffing needed for various types of incidents that they may respond to, potentially prompting a request for mutual aid resources, but also that they limit operations to those that can be safely performed with the team members and responders on the scene. NFPA 1710 and NFPA 1720 provide guidance on staffing levels for various types of firefighting ESOs. To be clear, OSHA is not specifying, nor recommending minimum staffing levels for emergency response vehicles, or the minimum*

number of team members or responders needed on an incident scene for safe incident operations, except with respect to the ''2-in, 2-out'' requirement…" A change to past requirements is the need for 2-in, 2-out not only in structural firefighting but anywhere that is deemed IDLH. *"As part of this rulemaking, OSHA intends to delete existing paragraph (g)(4) from 29 CFR 1910.134 and insert a note there referring readers to this rule for the requirements on interior structural firefighting. WEREs and ESOs are required to continue to comply with the remaining provisions of 29 CFR 1910.134. In addition, under proposed paragraphs (p)(4)(iii) through (v), the coverage is expanded to include all IDLH atmospheres that team members and responders enter, not just interior structural firefighting. Team members and responders performing other duties, such as technical rescue in an IDLH, face many of the same hazards as those performing interior structural firefighting, and need to be afforded the same protective measures."* Essentially whenever there is an IDLH atmosphere that requires entry into it, the ESO must have a minimum of 4 individuals on scene participating and no less than a two-person entry team that remains in visual or voice communication with each other. This section also requires the use of respiratory protection during post fire operations. *"Under proposed paragraph (p)(4)(viii), the WERE and ESO would ensure that team members and responders use NIOSH-certified respiratory protection during post-fire extinguishment activities, such as overhaul and fire investigation."*

(5) Communication. The ESO must ensure that radio communication is actively monitored by a dispatch center. *"ESO must still take all feasible steps to ensure adequate monitoring of on-scene radio, such as by notifying the communications and dispatch center of the need for monitoring and cooperating with them to facilitate such monitoring."* OSHA's concern is that mayday calls may not be heard on-scene. The ESO must ensure that radios are interoperable with mutual aid agencies. *"OSHA is not proposing to require that WEREs and ESOs replace existing radio equipment with the latest equipment. Instead, the proposed provision would require the WERE or ESO to ensure communication capability, which could be that those WEREs or ESOs with mutual aid agreements be equipped with two-way radios that match or work with each lotter on DSK11XQN23PROD with PROPOSALS2 other's frequency(ies), or that a separate mutual aid frequency be established and provided on their existing radios."*

(6) The ESO must personnel accountability system is established at each emergency incident. This is something that Oregon requires currently. At times there has been some confusion about the requirement that an accountability system is to be used at all incidents, this removes that ambiguity. *"Many WEREs and ESOs are accustomed to using some form of personnel accountability system. The proposed provision would require that a personnel accountability system be used at every incident."*

(7) a rapid intervention crew (RIC) is implemented at each structure fire where crews would enter an IDLH atmosphere. What is not clear is whether the 2-out portion of the 2-in, 2-out would be acceptable in this instance. There was no discussion about this section.

(8) The ESO must implement medical monitoring and rehabilitation procedures as needed. *"The IC would need to consider the circumstances of each incident and make provisions for rest, medical monitoring, and rehabilitation of team members or responders operating at the scene…. Having preplanned medical monitoring and rehabilitation procedures that can be applied to a variety of incident types is essential for the health and safety of team members and responders."*

(9) The ESO must implement traffic safety procedures as needed. OSHA envisions that there will be a need to close lanes of travel. It is also apparent that they intend to provide the authority to shut down vehicle travel entirely. *"ESOs would need to establish traffic safety procedures that could include using a large vehicle to block traffic lanes and the wearing of reflective PPE. Also, WEREs and ESO should consult with the appropriate authorities regarding procedures for the complete shutdown of traffic movement on*

the roadway or highway to protect team members and responders from moving vehicles on the scene of an emergency incident."

(10) The ESO must provide PPE and training to all skilled support workers (SSW). OSHA will require the *"ESO to ensure that prior to participation at an incident scene, each SSW has and utilizes PPE appropriate to the task(s) to be performed; an initial briefing is provided to each SSW that includes, at a minimum, what hazards are involved, what safety precautions are to be taken, and what duties are to be performed by the SSW; an effective means of communication between the IC and each SSW is provided"* These SSWs are defined as participants who are not affiliated with the ESO other than they respond with them to offer support functions such as a tow truck driver or bulldozer operator. The ESO becomes responsible for this individual(s) when they are utilized on-scene including *"Any additional PPE that the SSW would need to be protected at the incident scene would need to be provided by the WERE or ESO*."

GENERAL ANALYSIS AND RESPONSE TO SECTION P:

These concepts have been in place in Oregon for many years. The exception is section 10. These vendors are used on site due to their expertise and equipment. Rarely does the ESO direct the employees of that vendor to do work as their expertise is mostly utilized after an incident has been controlled and is in a cleanup mode. ESOs in Oregon do not contract with these vendors to do specific work and is generally left up to the property owner to hire them. If a vendor as described is used during an emergency operation, then there would be delays in operations if additional PPE or other equipment was required. These situations are very infrequent and are not preplanned for to the detail of knowing the individual contractor. The costs of the additional PPE would again burden these ESOs finite budgets.

(p)–1. OSHA is seeking stakeholder 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?

(q) Standard Operating Procedures.

(1) The ESO must develop and implement SOPs for events that are reasonably likely to occur based on the level of service provided and the vulnerability assessment. The SOPs are intended by OSHA to *"provide direction for team members and responders on what they need to do to safely perform job tasks that are routine and predictable. SOPs ensure consistent work performance, contribute to a safe work environment, and create a template for how to resolve issues and overcome obstacles… While OSHA intends to provide discretion to WEREs and ESOs in the crafting of most provisions of the SOPs, it does not intend to allow WEREs and ESOs to avoid the mandatory requirements in this proposal even if similar requirements are exempted at the state or local level."* This is another area where a statewide baseline document would be very helpful to address the majority of these events that would require an SOP.

(2) and (3) The ESO must establish SOPs that describe: actions to be taken for unusual hazards (i.e., downed power lines, gas leaks, flammable liquid spills, bomb threats), how responders will operate at incidents that are beyond the capability of the ESO, systematic approach to protecting responders from contaminates and for decontamination of responders, PPE, and equipment, how responders will operate vehicles for both non-emergency and emergency operations, protocols and terminology for radio communications, procedures for operating at vacant or otherwise unsafe for responders to enter, establishing an accountability system for personnel, mayday procedures, medical monitoring and rehabilitation at emergency incidents, protecting responders from vehicle traffic on and adjacent to

roadways, operating at incidents that are primarily related to law enforcement (active shooter, crime scene, and civil unrest), other *"non-emergency service responses that includes how to present themselves in uniform, PPE, vests or other apparel that clearly identifies them as fire/rescue/EMS responders and a requirement that responders wear ballistic vests if provided."*

(3)(iii) The section requiring SOP(s) for "non-emergency" situations is difficult to envision what OSHA is contemplating and needs additional clarification. The register states, *"Under proposed paragraph (q)(3)(iii), ESOs would be required to establish a baseline set of procedures for conducting non-emergency services. Rather than just requiring the ESO to address certain subjects, these would be mandatory SOPs with specific minimum requirements that could then be supplemented with additional detail at the ESO's discretion: responders must present themselves in uniforms, PPE, vests, or other apparel that clearly identifies them as fire/rescue/EMS responders and must wear ballistic vests if they are provided by the ESO and appropriate for the type of incident. In non-emergency situations, team members and responders might not wear their usual, identifiable PPE. However, it is important for them to be identifiable by some means so as not to be confused with bystanders, appear to be trespassers or intruders, or be mistaken for law enforcement officers. Often, when family members or friends are unable to contact an individual, they call 911 and ask for assistance in checking on the well-being of the individual. These situations can pose a risk to the responders because if they are not wearing something that identifies them as responders, they may appear to be trespassers or intruders. In these situations, the same concerns would dictate that the SOP would need to require the wearing of ballistic vests if they are provided by the ESO. OSHA is also concerned with workplace violence experienced by workers in various aspects of providing health care, both facility-based and home-based."*

GENERAL ANALYSIS AND RESPONSE TO SECTION Q:

This is another section that has been contemplated by the Oregon fire service and Oregon OSHA. While having guidelines in place that address the general requirements of incidents, there is no feasible way to craft provisions that would address all circumstances and cannot be a "one size fits all" approach. Incident command personnel are given years of training and experience to develop the ability to adapt to situations that arise events and generally have additional staff to draw on for assistance. Responders train frequently to create "muscle memory" for the tasks that are assigned. OSHA staff does not have the appropriate level of training and current experience to evaluate the appropriateness of decisions made in a fluid environment of emergency services. As stated in our response to section (f) ESO Risk Management Plan it concerning that less trained and experienced individuals would be evaluating details that are used to craft these SOPs. The once again sets up a situation where ESOs may take a less aggressive approach and be unwilling to act decisively due to the threat of citations and monetary penalties creating an unsafe environment for communities and workplaces.

(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.

(r) Post Incident Analysis. The ESO must promptly conduct a post incident analysis (PIA) to determine the effectiveness of the ESO's response after a significant event (large scale incident, significant near-miss, a responder or SSW injury or illness requiring off-scene treatment, or responder fatality). The PIA must include a review of the RMP, IMS, PIPs, IAPs and SOPs for "accuracy and adequacy." Any deficiencies that are noted are required to be promptly changed or a written timeline established to implement the changes as soon as feasible. *"OSHA believes that requiring a PIA after significant events will help WEREs and ESOs identify strengths and challenge points where improvements are needed in their systems, plans, and procedures… The requirement that the PIA take place promptly following the incident ensures important information and observations are relayed before team member's and responder's memories fade."* There are certain elements that OSHA believes should be evaluated for effectiveness in each area as follows; The PIA *"would include a basic review of the conditions present upon arrival at the incident scene and any changes during the incident, the actions taken by team members and responders, and any effect of the conditions and actions on the safety and health of team members or responders. The RMP would be evaluated for its effectiveness regarding anticipated outcomes and to identify flaws or shortcomings that need to be corrected. The IMS would be evaluated to determine if it functioned as intended. If a PIP was developed, it would be evaluated to ensure it is up to date and accurate, and if it functioned as intended or if revisions are needed. The PIA may also indicate that a PIP is needed for a particular type of location where one was not previously developed. SOPs would be reviewed to determine if they were followed and effective, or if changes are needed. IAPs are typically developed on the incident scene and may be documented. A review of the IAP would determine its effectiveness and whether different actions should be taken at future similar incidents."*

GENERAL ANALYSIS AND RESPONSE TO SECTION R:

The post incident analysis is generally done for significant events through an after-action review (AAR). Guidance and definitions would need to be created to ensure enforcement was consistent as to when the analysis was required. Oregon OSHA requires an accident investigation to be conducted any time an employee is injured to the point of missing three or more days of work. This rule has been in effect since 1991.

These analyses are costly and time consuming and should not be undertaken lightly. The terms "large scale incident" and "significant near miss" are used in the explanatory statements. These are extremely vague and broad terms with little objective measurement making consistent enforcement difficult. Evaluations after an injury or fatality are definite and concrete terms that can be appropriately enforced.

The addition of "representatives" outside the responders will become problematic as they would be exposed secondarily to these events. We have discovered that office staff and even Oregon OSHA enforcement officers who listened to stories about events from responders become emotionally attached and develop behavioral health trauma. We are opposed to drawing in additional non-essential persons into these discussions as this exposes them to potential mental health injuries requiring treatment.

(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.

(s) Program Evaluation. The ESO must "*evaluate the adequacy and effectiveness of the ERP at least annually, and upon discovery of deficiencies, and document when the evaluation(s) are conducted;*

determine if it was implemented as designed or if modifications are necessary to correct deficiencies; and identify and implement recommended changes to the ERP and provide a written timeline for correcting identified deficiencies as soon as feasible based on the program review, giving priority to recommendations that most significantly affect team member or responder safety and health."

GENERAL ANALYSIS AND RESPONSE TO SECTION S:

Program evaluation is conducted informally by all the fire service. Adding a written requirement to this process would become challenging for organizations that are currently working with limited staff both career and volunteer. What is being asked for is the work of OSHA enforcement officers and consultants.

(t) Severability. If any provision of the standard is held invalid or unenforceable, the provision shall be severed from the standard and will not affect the remainder of the standard. This is the first time I have seen this in any OSHA rule. I assume this is in response to recent court decisions striking down OSHA rules. *"The severability provision, paragraph (t) of the proposed rule, serves two purposes. First, it expresses OSHA's intent that the general presumption of severability should be applied to this standard; i.e., if any section or provision of the proposed rule is held invalid or unenforceable or is stayed or enjoined by any court of competent jurisdiction, the remaining sections or provisions should remain effective and operative. Second, the severability provision also serves to express OSHA's judgment, based on its technical expertise, that each individual section and provision of the proposed rule can continue to sensibly function in the event that one or more sections or provisions are invalidated, stayed, or enjoined; thus, the severance of any provisions, sections, or applications of the standard will not render the rule ineffective or unlawful as a whole. Consequently, the remainder of the rule should be allowed to take effect. With respect to this rulemaking, it is OSHA's intent that all provisions and sections be considered severable. In this regard, the agency intends that: (1) in the event that any provision within a section of the rule is stayed, enjoined, or invalidated, all remaining provisions within shall remain effective and operative; (2) in the event that any whole section of the rule is stayed, enjoined, or invalidated, all remaining sections shall remain effective and operative; and (3) in the event that any application of a provision is stayed, enjoined, or invalidated, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law. Although OSHA always intends for a presumption of severability to be applied to its standards, the agency has opted to include an explicit severability clause in this standard to remove any potential for doubt as to its intent. OSHA believes that this clarity is useful because of the multilayered programmatic approach to risk reduction it proposes here. The agency has preliminarily determined that the suite of programmatic requirements described in the Summary and Explanation of the Proposed Rule, section V. of this preamble, is reasonably necessary and appropriate to protect emergency responders from the significant risks posed by their workplace activities. While OSHA preliminarily finds that these requirements substantially reduce emergency responders' risk of occupational injury and illness when implemented together, the agency also believes that each individual requirement will independently reduce this risk to some extent, and that each requirement added to the first will result in a progressively greater reduction of risk. Therefore, it is OSHA's intent to have as many protective measures implemented in as many workplaces as possible to reduce emergency responders' risk of occupational exposure to injury, illness, and death. Thus, should a court of competent jurisdiction determine that any provision or section of this standard is invalid on its face or as applied, the court should presume that OSHA would have issued the remainder of the standard without the invalidated provision(s) or application(s). Similarly, should a court of competent jurisdiction determine that any provision, section, or application of this standard is required to be stayed or enjoined, the court should*

presume that OSHA intends for the remainder of the standard to take effect. See, e.g., Am. Dental Ass'n v. Martin, 984 F.2d 823, 830–31 (7th Cir. 1993) (affirming and allowing most of OSHA's bloodborne pathogens standard to take effect while vacating application of the standard to certain employers)."

GENERAL ANALYSIS AND RESPONSE TO SECTION T:

This is the first rule that we are aware of that includes a severability clause. Severability clauses are usually held for contracts and legislation and not agency rulemaking. If a section of the rule is deemed inappropriate the remedy for OSHA is to update the rule as has always been the case. This section is unnecessary and should be removed.

The public notice of this rule is found at https://www.dol.gov/newsroom/releases/osha/osha20231221