



June 17, 2024

Occupational Health and Safety Administration
200 Constitution Ave NW
Washington, DC 20210

To Whom It May Concern,

The undersigned five organizations jointly submit these comments on behalf of their respective memberships. We represent key, diverse stakeholders across the State of Maryland, including fire chiefs and fire officials, fire service agencies, labor organizations representing professional firefighters, and volunteer fire service organizations. These comments were developed in a series of meetings held over the past four months, and actively facilitated by Maryland's Occupational Safety and Health plan ("MOSH"), a State Plan program with jurisdiction over public sector entities. Our submission represents the consensus view of the leadership of the participating organizations concerning these vital issues.

While there was not sufficient time to address all areas of concern in this proposed standard, the following highlights are offered for consideration:

General Comments:

1. As proposed, 1910.156 requires an ESO to ensure compliance with specific existing OSHA standards, which may lead an ESO to assume only those referenced standards in 1910.156 are applicable to their organization, and not other important standards contained in 1910 generally. *Suggest* all references to existing OSHA standards be deleted for clarity and offered in a separate compliance assistance document.
2. This standard requires written documentation of nearly all requirements but does so in an ambiguous manner. For example, the requirements related to Vehicle Preparedness and Operation are contained in paragraph (l), but the requirement that it must be in writing is contained in paragraph (d), which is 18 pages prior. *Suggest* clearly identifying which elements must be written for transparency.
3. We are requesting OSHA reevaluate the explanation that this proposal does not apply to State and local governments for the purposes of complying with the Unfunded Mandate Reform Act on pages 534-535 of the proposal.



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

(d)(2) requires the written Emergency Response Plan (ERP) to address the provisions in nearly all sections of the standard - this requirement is unreasonable and cost prohibitive to create a written plan that addresses each provision of basically this entire standard related to ESO's. *Suggest* removing written requirements in (d)(2) and place the requirement in the section affected so that the requirement is transparent. Additionally, the requirement to put any provision in writing should be purposeful to ensure feasibility and value.

(d)(3) requires a community or facility to perform a vulnerability assessment; the clarifying "note" in the standard is helpful. This is realistic and appropriate and the requirement may be satisfied by an overarching entity other than the ESO itself. Additionally, and particularly for smaller ESO's, the requirement to be in writing may be overly burdensome without an actual benefit. *Suggest* removing the written requirement and provide that an ESO "shall ensure" an assessment is completed to allow for overarching jurisdictional assessments.

(d)(4) requires an ESO to identify locations that will need a Pre-Incident Response Plan (PIP) in the assessment required in (d)(3) above. The standard further indicates in (4)(i) that each vacant structure is identified and any locations that are unsafe for Responders to enter due to various conditions. It is unreasonable and unattainable to identify every location as prescribed, much less write a PIP for each location in many communities. *Suggest* requiring ESOs to establish policies that identify procedures for responding to specific structure types or localities that the ESO identifies as posing additional risk and delete (4)(i)-(ii).

(d)(8) requires each ESO to develop mutual aid agreements with WEREs or other ESOs wherever the ESO does not have the capability to engage. An ESO may, and should, attempt to develop mutual aid agreements. However, they cannot be held responsible for engaging or causing others to be engaged in every situation. *Suggest* this as a best practice and not a requirement an ESO is held responsible for; an ESO cannot control other parties' willingness to enter into mutual aid agreements.

(e) Team Member and Responder Participation.

No comment at this time.



(f) WERT and ESO Risk Management Plan.

(f)(i)—(iii) requires another written plan, a “comprehensive risk management plan” to address the actual and reasonably anticipated hazards at ESO facilities, during training, vehicle operations, emergency incidents, non-emergency services and activities, and potential exposure to combustion products, carcinogens, and other incident-related health hazards- without limit. The requirements for this written plan are overly broad, include numerous components, and oddly duplicate portions of existing OSHA standards that will prove to be overwhelmingly burdensome for an ESO to document.

(f) should instead focus on overall risk reduction and hazard identification skills to give the Responders the means to engage in the multitude of hazardous environments they face. *Suggest* OSHA remove the written requirement of this section or narrow the scope of the itemized list to match the scope of this standard. The items listed in 1910.156(f)(1)(iii) are already covered by other OSHA standards, are redundant, and need to be removed.

(g) Medical and Physical Requirements.

(3)(i)(A) generally states that Responders who may be exposed to combustion products (i.e. smoke) 15 times or more a year must be provided a comprehensive medical examination at least as effective as NFPA 1582 (2022). *Suggest* all ESO Responders should be required to have a medical evaluation pre-entry as well as annually, and not based on a perception of the possible number of exposures to products of combustion annually.

(4)(i) requires ESOs to provide or identify various levels of behavioral health services free of charge to Responders available in the community. While incredibly important to the wellbeing of ESO Responders, the lack of available resources in the community creates a situation where ESOs may not be able to comply as prescribed and immediately be in violation without a feasible means of abatement. Rather, requiring awareness training to assist in destigmatizing behavioral health in the public safety field is needed, achievable, and will be a positive step forward in addressing this epidemic.

(6) requires an ESO health and fitness program. As written, the requirements place undefined and unmeasurable requirements on ESOs including “periodic fitness assessments”, “exercise training” during working hours, “health promotion”, etc. There is no standard to meet, just vague requirements that are open to interpretation. *Suggest* maintaining (g)(6)(i) and deleting (g)(6)(ii).

(h) Training

(1)(ii) requires an ESO to provide initial training, ongoing training, refresher training, and professional development training. These four categories are undefined and open to a



variety of interpretations, and potential wage and hour implications. *Suggest* specifically remove “refresher training” and “professional development” as they can be included in ongoing training.

(1)(viii) creates a vertical standard regarding training employees on Personal Protective Equipment (PPE) that limits the applicability of the existing 1910.132 standard, which is more protective. *Suggest* deleting this section.

(2) requires training to the equivalent of certain NFPA standards for a variety of specialties performed by ESO’s. The edition dates for the NFPA standards cited are not inclusive and could invalidate decades of fire service training. As currently written, Responders who received training prior to the editions listed will immediately be in violation of the proposed standard and ineligible to perform their duties. *Suggest* requiring Responders to be trained to the NFPA (or equivalent) edition current at the time the training is provided. Additionally, this suggestion allows for the evolution of future editions to be applicable.

(3) requires an annual skills check to ensure skills proficiency based on the services provided. The levels of service Responders perform are vast and built on years of acquired skill sets and is infeasible to “check” every skill of every Responder annually. *Suggest* deleting and relying on prior requirements in (h)(1)(ii) for ongoing training.

(j) ESO Facility Preparedness.

(j)(1)(iv) requires an ESO to ensure installation, testing, and maintenance of fire detection, suppression, and alarm systems, and occupant notification systems in accordance with manufacturer’s instructions and existing 29 CFR 1910 Subpart L - Fire Protection. The provision to require strict compliance with manufacturers’ instructions may financially incentivize the manufacturer to modify instructions to require costly and unnecessary procedures/replacements (and allows unlimited de facto rulemaking) and may conflict with current NFPA requirements and local building codes.

(j)(2)(i)—(ii) specifies requirements for smoke alarms and automatic sprinklers that are generally under the authority of state/local jurisdictions’ Building and Fire Codes and will present conflicts with existing and future requirements. *Suggest* deleting these sections, as they are covered in jurisdictional Building Codes and create conflicts of authority.

(j)(2)(iv) requires an ESO to prevent Responder exposure to vehicle exhaust emissions (without a threshold), OSHA needs to set specific exposure limits or remove this section.



(k) Equipment and PPE.

(k)(1)(iii) requires ESOs to (1) inspect, (2) maintain, (3) functionally test, and (4) service test equipment as prescribed. There is no limit or threshold to identify which equipment this standard refers to and could include everything from a clipboard to a pump. This section also provides when “equipment” must have these four procedures completed, according to a variety of time frames: annually, manufacturer’s instructions, industry practices, and the all inclusive “as necessary”. *Suggest* replacing section with requiring ESO’s establish and implement a maintenance program for all life safety equipment not otherwise covered in paragraph (l).

(k)(2)(iv) requires an ESO to ensure *existing* PPE complies with the requirements of the NFPA edition that was current at the time of manufacture. *Suggest* adding wording to allow for “or equivalent”.

(k)(2)(v) then continues to require all *new* PPE meet specified editions of various NFPA standards, which will remain static in time even as standards progress. *Suggest* deleting section (v) and simply modify (iv) to require *all* equipment used to meet the NFPA, or equivalent, in effect at time of manufacture.

(l) Vehicle Preparedness and Operation.

(l)(1)(i) requires an ESO to “immediately remove” from service any vehicle with, undefined, “safety-related deficiencies”. Federal DOT has set requirements for safe vehicles operations and ESOs must have the ability to “evaluate” - not all safety related deficiencies rise to the level of removing a critical emergency response vehicle from service. *Suggest* replacing “immediately remove” with “evaluate”.

(l)(1)(iv)—(v) requires pump and aerial testing compliance with NFPA 1910 Standard for the Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels (2024 edition) which will remain static in time even as standards progress, as mentioned in previous comments. Additionally, the inclusion of the word “Retirement” in the title of NFPA 1910 could cause confusion. *Suggest* clarifying this section to highlight the standard is “only” requiring the ESO to inspect, maintain, and service test aerial devices on vehicles.

(l)(2)(ix) requires an ESO to establish and implement policies and procedures for motor vehicles, including privately-owned vehicles. *Suggest* this requirement be removed from the standard. Oversight should defer to local or State motor vehicle laws.



(n) ESO Pre-Incident Planning.

The entire section addresses determining the locations in an ESO jurisdiction where pre-incident planning (PIP) is required. Paragraph (1) is attainable and sound practice. Paragraphs (2)—(9) however, are unrealistic to implement and have limitless application. For example, the requirement in paragraph (2) to “...develop PIPs for facilities, locations, and infrastructure where emergency incidents may occur.”, as defined, may be construed to be literally anywhere. Where does it end?

Suggest that while we understand the value of pre-incident planning, we feel the feasible solution would be to limit section (n) to the provisions in paragraph (1) only.

(o) Incident Management System Development.

It is felt the use of National Incident Management System (NIMS) and National Response Framework satisfies the requirements contained in Section (o) for Incident Management System (IMS).

(p) Emergency Incident Operations.

(p)(4)(viii) requires the use of “...NIOSH-certified respiratory protection during post-fire extinguishment activities, such as overhaul and investigation...” *Suggest* adding “...until a hazardous atmosphere no longer exists.”

(q) Standard Operating Procedures.

Most ESO’s are an “All Hazards” Response Agency and it is unreasonable to require detailed written standard operating procedures for every hazard that the ESO may respond to. The universe of hazards is infinite, and the methodology of response actions are ingrained in the Responder through training. How to respond to each possible incident could not be predetermined or documented, rather the skill to respond to varying hazards in a variety of situations is what is taught. Most of this section is already addressed in the training sections or cannot be prescribed without eliminating flexibility needed by ESOs to function. *Suggest* delete entire Section (q), except to relocate (q)(2)(vi), (vii), (viii) and (ix) to section (p) Emergency Incident Operations.

(r) Post-Incident Analysis.

(r)(3) requires the ESO to take corrective action on each “lesson learned” during post incident analysis (PIA) without thoughtful evaluation or consideration of the feasibility. This may deter an ESO from including non-management personnel on the post incident analysis review panel. PIA findings should be untethered to corrective action to provide inclusion, transparency and unrestrained analysis in the process.



(s) Program Evaluation.

This section requires an annual review of the ESO's Emergency Response Plan, which is overly prescriptive and infeasible. *Suggest* replacing the entire section with a requirement that each ESO establish a methodology for review and updating of their ERP, so the requirement is more performance based.

(t) Severability.

No comment at this time.

We again thank OSHA for its efforts to protect the health and safety of firefighters and emergency medical personnel in this dangerous yet important line of work. We kindly ask that our recommendations are considered as OSHA works to develop and implement the final rule.

Sincerely,

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