

Congress of the United States

Washington, DC 20515

June 24, 2024

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su:

On February 5, the Occupational Safety and Health Administration (OSHA) published a proposed rule to establish a new safety and health standard to protect emergency responders from a variety of occupational hazards.¹ The proposed standard replaces OSHA's existing fire brigades standard² and broadens the scope of entities covered beyond firefighting service to include entities that provide technical search and rescue and emergency medical services. While the mission of ensuring the health and safety of our nation's emergency responders is vital, this proposed rule will ultimately do more harm than good and will jeopardize the existence of many fire, rescue, and emergency medical services organizations, ultimately making our communities less safe. Specifically, the proposed rule establishes a one-size-fits-all regulatory regime that does not take into account the resources in a given community, imposes massive administrative and cost burdens, and includes untenable requirements that will exacerbate existing retention and recruitment challenges from emergency service organizations (ESOs). For these reasons, the Department of Labor (DOL) should abandon the proposed rule and consider alternative ways to protect the health and safety of emergency responders.

The Proposed Rule Establishes a One-Size-Fits-All Regulatory Regime

OSHA is attempting to impose a highly prescriptive safety and health standard on a broad group of emergency responders without taking into account the feasibility of the requirements in different communities. The proposed rule updates OSHA's existing fire brigades standard to cover more than one million emergency responders beyond firefighters, including small private sector emergency responders and small public fire and rescue entities in all OSHA state plan states.³ Additionally, while the proposed rule does not explicitly cover volunteers, some volunteers are covered in states with OSHA-approved state plan programs. The proposed rule estimates that more than 330,000 of the emergency responders subject to the proposed rule are volunteers.⁴

The proposed rule would particularly cripple volunteer fire, rescue, and emergency medical services (EMS) departments, which do not operate and are not funded the same way as large

¹ Emergency Response Standard, 89 Fed. Reg. 7774 (proposed Feb. 5, 2024).

² 29 C.F.R. § 1910.156.

³ <https://advocacy.sba.gov/wp-content/uploads/2024/03/Comment-Letter-Extension-Request-of-Emergency-Response-PR.pdf>.

⁴ See Emergency Response Standard, 89 Fed. Reg. at 7776.

departments. As small entity representatives told OSHA in the Small Business Advocacy Review Panel (SBAR) report, many small and volunteer ESOs have no dedicated source of funding and would, therefore, find it difficult to comply with the draft proposed rule.⁵ A small fire department in central New York explained:

If implemented, [the proposed rule] could force us to close our doors due to lack of funding. Currently, 40% of our income comes from contracts, with the remainder from fundraisers and community donations. To meet the demands of new standards, we'd need to increase fundraising efforts twentyfold, further burdening our volunteers.⁶

This echoes the sentiments of dozens of small and volunteer fire, rescue, and EMS departments. All ESOs are not the same. This approach is misguided and will harm our communities. The consequences of implementing the proposed rule without examining the realities and resources of these departments will be devastating, potentially forcing them to cut services or close altogether.

The proposed rule would also harm covered private sector employers in industries such as manufacturing, oil and gas, and warehousing. It fails to take into account existing emergency response-related standards from OSHA and other agencies that are in place and that private sector employers have long been following. The proposed rule does not consider that many of these employers have robust emergency response plans tailored to the needs of their workplace that have been effective in preventing accidents. Therefore, the additional requirements in the proposed rule would do little to enhance safety in these workplaces and would simply create more paperwork. What's worse, the proposed rule's overly burdensome requirements could force private sector employers to shut down certain in-house emergency response functions altogether and instead rely on 911 and local municipal responders. This will lead to increased response times, straining already overly burdened ESOs, and ultimately, making workers in these industries less safe.

The Proposed Rule Imposes a Massive Administrative Burden

The proposed rule would saddle ESOs with excessive administrative requirements that would take resources away from ensuring the health and safety of their workforce. The paperwork required to document compliance with the risk management plan alone is staggering and would especially burden small and volunteer departments without in-house legal or clerical staff. Further, the proposed rule itself is 250 pages long, not including the text of the 23 consensus standards incorporated by reference, which ESOs would be required to follow. OSHA estimates that it will only take departments two hours to read and familiarize themselves with the proposed rule's requirements, which is a gross underestimate.⁷ Several ESOs have said they would be forced to hire clerical staff or outsource these responsibilities to complete the paperwork duties imposed by the proposed rule, as it would be difficult for volunteers to perform these tasks. The

⁵ EMERGENCY RESPONSE SBAR PANEL REPORT, <https://www.regulations.gov/document/OSHA-2007-0073-0115>.

⁶ <https://www.regulations.gov/comment/OSHA-2007-0073-1086>.

⁷ See Emergency Response Standard, 89 Fed. Reg. at 7879.

cost of these salaries alone would account for a substantial portion of their operating budget.⁸ ESOs are already overburdened as it is without the federal government adding unnecessary paperwork requirements that do nothing to improve safety.

The Proposed Rule’s Costs Would Cripple Emergency Service Organizations

The costs imposed by the proposed rule would cripple fire departments, technical search and rescue, and EMS organizations, having a devastating impact on public safety. In addition to having to hire clerical staff to meet the administrative requirements, the proposed rule may necessitate ESOs to replace existing personal protective equipment, upgrade emergency response vehicles, invest in new equipment, and make infrastructure modifications to their facilities. As the National League of Cities explains, local governments may need to allocate funds for capital expenditure to address these needs, further straining limited budgets.⁹

Additionally, the proposed rule severely underestimates the costs to ESOs. For example, the proposed rule estimates an annual cost of \$14,551 for the average volunteer fire department, which OSHA estimates to be around 5 percent of the average department’s annual revenue.¹⁰ While already expensive, this figure does not even begin to cover the costs to departments that will be required to replace existing turnout gear, regardless of condition, which can cost over \$3,000 per firefighter,¹¹ or the cost of replacing vehicles. The increased costs imposed by this proposed rule would cause financial strain, leading ESOs to cut services and thereby harming our communities.

The Proposed Rule’s Requirements Would Exacerbate Existing Retention and Recruitment Challenges

ESOs consistently report on the challenge of recruiting and retaining qualified emergency responders, particularly volunteers. The proposed rule would exacerbate these issues. According to the National Volunteer Fire Council, the number of volunteer firefighters in the United States reached a low in 2020, while at the same time, call volume has more than tripled in the last 35 years, due in large part to the increase in emergency medical calls.¹² A major factor contributing to this decline in volunteer firefighters is increased education requirements, which would expand exponentially under the proposed rule and could deter potential volunteers from signing up because of the large time commitment. The SBAR report explains:

“Since volunteer responders are not compensated for the time they spend engaged in ESO related activities, introducing additional requirements like additional training, fitness requirements, recordkeeping, and other activities would be completed on volunteer responder’s personal time. [Small entity representatives]

⁸ See EMERGENCY RESPONSE SBAR PANEL REPORT, *supra* note 5, at 22.

⁹ <https://www.nlc.org/article/2024/04/09/navigating-oshas-proposed-emergency-response-rule-financial-challenges-for-local-governments-their-fire-departments/>.

¹⁰ See Emergency Response Standard, 89 Fed. Reg. at 7975.

¹¹ See EMERGENCY RESPONSE SBAR PANEL REPORT, *supra* note 5, at 14.

¹² <https://www.nvfc.org/wp-content/uploads/2024/03/fire-service-fact-sheet-updated-032024.pdf>.

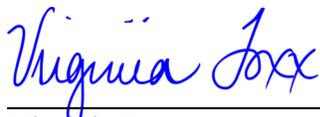
were concerned that this would make it more difficult to recruit and retain volunteer responders.¹³

Further, the increased medical and physical requirements under the proposed rule are overly burdensome and could disqualify a number of volunteers despite their skills and relevant experience. These requirements, as well as the expanded education requirements, would also make it more difficult to recruit and retain EMS workers. This would particularly harm rural communities, as the United States is experiencing a well-documented shortage of EMS personnel, which has led to increased call times in rural areas.¹⁴ Local governments, municipalities, and private sector employers are doing everything they can to recruit and retain qualified emergency responders. The federal government should support this effort rather than exacerbating existing challenges as the proposed rule would do.

Conclusion

Ensuring the health and safety of our nation's first responders is critical, and the federal government should support this mission. However, the one-size-fits-all emergency response proposed rule would cripple covered entities with massive administrative burdens and costs and worsen existing challenges in recruiting and retaining emergency responders. Ultimately, this would jeopardize the ability of emergency response organizations to operate and provide existing services, thereby threatening the health and safety of our communities. For these reasons, DOL should abandon the overly burdensome proposed rule.

Sincerely,



Virginia Foxx
Chairwoman
Committee on Education and
the Workforce



Brandon Williams
Member of Congress

¹³ See EMERGENCY SBAR PANEL REPORT, *supra* note 5, at 7.

¹⁴ <https://www.pbs.org/newshour/show/rural-shortages-lead-to-worsened-ambulance-deserts-and-delayed-medical-care>.



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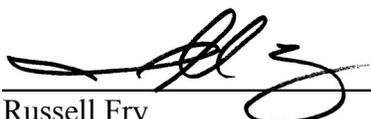
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