

**COMMENTS OF THE OSHA STATE AND LOCAL GOVERNMENT PLANS OF
NEW JERSEY (NJ PEOSH), AND ILLINOIS (IL OSHA)**

July 19, 2024

VIA REGULATIONS.GOV

The Honorable Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety & Health Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Public Comment on Notice of Proposed Rulemaking – Emergency Response
89 Fed. Reg. 7774 (Feb. 5, 2024)
Docket No. OSHA-2007-0073

Dear Assistant Secretary Parker,

The OSHA State and Local Government Plans (State Plans) of New Jersey and Illinois (collectively, “the States”) hereby submits this comment in response to the request for public comment on the Notice of Proposed Rulemaking to replace 29 CFR §1910.156, Fire Brigades, with 29 CFR § 1910.156, Emergency Response. As State Plans with extensive experience performing fire department inspections (New Jersey and Illinois have completed over 1,000 fire department inspections since 2019), we request that OSHA consider our feedback and provide the States with the opportunity to further collaborate in the rulemaking process.

The States strongly support an update to Section 1910.156 and recognize the difficulty OSHA faces in tackling a comprehensive overhaul of the largely obsolete current standard. However, as State Plan Administrators that routinely interact with fire departments of varying sizes, resources, and levels of sophistication, we believe that any updated standard should be accessible, flexible, and implementable across the broad range of fire departments. In our view, this would mean an update to Section 1910.156 that:

- 1) establishes integrated risk assessment & control as the primary foundational concept to manage health and safety in the inherently hazardous and dynamic domain of emergency response;
- 2) is risk-based, practical, objective, and written in plain language; and
- 3) maximizes often limited public fire department resources in the interests of improving firefighter health and safety.

Most public sector fire departments in New Jersey and Illinois would have significant challenges achieving initial and sustained compliance with the proposed Emergency Response standard, in its current form, as they lack the resources, staff, and technical expertise to meaningfully comply with the proposed additional requirements. Many of the States’ suggestions below are intended to make the standard more accessible and administrable. The States also stress how critically important it will

be for OSHA to develop robust compliance assistance materials for any update to Section 1910.156, including sample materials for all required forms, plans, and documents directly or indirectly required by the standard. Finally, the States echo many of the concerns expressed in the June 5, 2024 public comment from the Occupational Safety and Health State Plan Association to OSHA regarding the proposed standard.

I. Background on New Jersey and Illinois State Plans

A. Legislative Authority to Protect State and Local Government Workers

The New Jersey Department of Labor and Workforce Development’s (“NJ LWD”) Public Employees’ Occupational Safety and Health Office (“NJ PEOSH”) regulates occupational safety and health pursuant to the PEOSH Act (N.J.S.A. 34:6A-25 *et. seq.*). In addition to enforcing all federal OSHA standards, New Jersey also maintains additional regulations for firefighters at N.J.A.C. 12:100-10 *et. seq.* The Illinois Department of Labor’s (“IDOL”) Division of Occupational Safety and Health (“IL OSHA”) regulates occupational safety and health pursuant to the Illinois OSH Act (820 ILCS 219).

B. Fire Department Enforcement Experience

As State and Local Government Plans, New Jersey and Illinois have substantial experience inspecting fire departments.

From calendar years 2019 through 2023:

NJ PEOSH performed 314 fire department inspections (NAICS 922160). 92 of the 314 inspections were comprehensive in scope, inspection “in compliance rate” was only 31.93%, and the average violations issued per inspection was 5.41. Nine inspections had 10 or more serious violations. A total of 883 violations were issued.

IL OSHA performed 691 fire department inspections (NAICS 922160). 610 of the 691 inspections were comprehensive in scope. This is more than any other State Plan during the same period. Inspection “in compliance rate” was only 16.64%, and the average violations issued per inspection were 6.44. 77 inspections had 10 or more serious violations. A total of 3,514 violations were issued, 469 of which were for violations of Section 1910.156.

All federal OSHA area offices in the United States and U.S. territories combined performed a total of 117 inspections (NAICS 922160). Inspection “in compliance rate” was 59.18%, and the average violations issued per inspection were 1.76. A total of 70 violations were issued, zero of which were under 1910.156. An unrestricted NAICS inspection search shows a total of seven Section 1910.156 violations issued by federal OSHA from 2019 – 2023.

The States not only have significant experience enforcing Section 1910.156 (IL) and an at least as effective standard (NJ), but also have experience performing comprehensive fire department inspections that require a review of all aspects of a fire department against applicable standards. Despite a sustained comprehensive inspection program, significant outreach efforts, compliance

assistance materials, and sample programs¹, it is not uncommon for the signatory States to issue a citation to a fire department that includes 10 or more serious violations. These departments often require significant abatement assistance, monitoring inspections, and petitions to modify abatement to successfully abate the violations, demonstrating the ongoing, significant enforcement gap and challenge with these departments.

C. Coverage of and Impact to Volunteers in New Jersey and Illinois

New Jersey and Illinois are two State Plans that do not have discretion over enforcement of standards, as they apply to volunteer versus career fire service personnel.

For example, the [Illinois Occupational Safety and Health Act](#), defines an employee as anyone “in the service of” a public employer, “regardless of whether the service is by virtue of election, by appointment or contract, or by hire, and regardless of whether the relationship is express or implied or established orally or in writing.” 820 ILCS 219/5. As such, all public-sector fire departments and their workers are subject to compliance with Section 1910.156.

Additionally, many fire departments are considered “combination” departments and contain a mix of career, paid-on-call, and volunteer personnel. Many other fire departments are completely volunteer and most also provide emergency medical services and vehicle rescue services. Some provide technical rescue services. The New Jersey and Illinois State Plans do not require fire departments to provide a minimum level of service; that is determined by local government officials and/or other state agencies. Were the proposed updates to Section 1910.156 finalized and adopted by the States, the standard would functionally apply to a significant number of volunteer firefighters. In New Jersey approximately 89%, and in Illinois approximately 80% of fire departments are all or mostly volunteer.² For these reasons, the States strongly support a uniform standard that applies to and protects all public-sector firefighters, regardless of compensation status.

As a policy matter, the States also believe that excluding firefighters from occupational safety and health protections based on compensation status is not the best approach as it could have significant negative impacts on combination departments in terms of uniformity of training and effectiveness during emergency response. In the States’ view, should OSHA wish to develop different regulations

¹ IL OSHA has cooperated with other organizations such as the Illinois Office of the State Fire Marshal and the Illinois Fire Service Institute to develop a wealth of compliance assistance materials for the Illinois Fire Service. Examples of the materials include:

[Occupational Safety and Health Guide for Fire Departments](#)

[Minimum Fire Training Guide](#)

[The Ridge Incident Report](#)

[The Myer Incident Report](#)

[The Marmora Incident Report](#)

[The Ridge Incident Poster](#)

[Video: IL OSHA 101 Fire Department Lesson 1, Introduction](#)

[Video: IL OSHA 101 Fire Department Lesson 2, Inspections](#)

[Video: IL OSHA 101 Fire Department Lesson 3, Compliance Basics](#)

[Fact Sheet: Top 20 violations for Fire Departments](#)

² U.S. Fire Administration. (2022). “*National Fire Department Registry Summary*.” <https://www.usfa.fema.gov/downloads/pdf/registry-summary-2022.pdf>

for different groups of firefighters, any such distinction should be risk-based, such as for interior versus exterior firefighters, and not based on compensation.

The States also assert that OSHA has likely underestimated the compliance costs for volunteer fire departments, specifically the limited amount of discretionary funds available to address the proposed standard. It is not uncommon for volunteer fire departments in New Jersey and Illinois to have operating budgets of less than \$20,000. These departments already struggle to maintain apparatus, equipment, and facilities to provide a basic level of service. The States request that OSHA review and provide thoughtful consideration of comments from volunteer fire departments that provide detailed evidence of their financial situation and their estimated costs to comply with the proposed standard.

Lastly, it is well recognized that volunteer fire departments across the United States already struggle to attract and retain sufficient members. This had led to reduced services and even closures of fire stations.³ The number of volunteer firefighters nationwide has and continues to dramatically decrease.⁴ Time commitment and family obligations are leading reasons for volunteers leaving service. The substantial increase in the size and complexity of Section 1910.156 could exacerbate the volunteer recruitment and retention crisis, especially in chief officer roles.

D. Outreach and Compliance Assistance to Fire Departments

The States have developed an assertive strategy on providing outreach and compliance assistance to the fire departments under their jurisdiction. For example, since 2019, IL OSHA has performed 39 compliance assistance and outreach activities involving the Illinois Fire Service. While substantial, this effort pales in comparison to the effort that would be necessary should the proposed standard become a final rule. The States would likely seek partnerships with other organizations and agencies to assist with these efforts but will lack funding to support the partnerships. The States request that OSHA develops a process under the 23(g) grant for State Plans that perform public sector fire department comprehensive scope inspections to apply for additional grant funds for the purpose of compliance assistance and outreach. In the absence of assistance from OSHA and State Plans, fire departments will likely have to hire administrative staff and/or outside consultants, if they can afford to, to achieve initial compliance, maintain compliance, and offset the increased demand on limited personnel resources.

Additionally, the States will need to reallocate limited resources from enforcement inspections to outreach and compliance assistance. As a result, the States would seek a proportional adjustment in 23(g) grant annual program goals.

³ ABC 6 Action News. (2024). “*Volunteer shortage forcing Camden County fire department to close 3 firehouses.*” [https://6abc.com/post/volunteer-shortage-forcing-winslow-township-fire-department-to-close-3-firehouses-in-camden-county/14828370/#:~:text=WINSLOW%20TOWNSHIP%2C%20New%20Jersey%20\(WPVI,and%2025%2D9%20in%20Elm.\)](https://6abc.com/post/volunteer-shortage-forcing-winslow-township-fire-department-to-close-3-firehouses-in-camden-county/14828370/#:~:text=WINSLOW%20TOWNSHIP%2C%20New%20Jersey%20(WPVI,and%2025%2D9%20in%20Elm.))

⁴ U.S. Fire Administration. (2023). U.S. Fire Administration Releases New Manual on Recruitment and Retention. <https://www.usfa.fema.gov/blog/retention-and-recruitment-manual/>

II. Comments, Responses, and Suggested Revisions to the Proposed Standard

Drawing from the States' extensive experience in inspections, enforcement, and outreach to fire departments and emergency responders, our high-level recommendations for the proposed standard are as follows.

A. Utilize a Flexible Integrated Risk Assessment and Control Approach

Firefighters and emergency responders have inherently dangerous jobs. Fire departments and chiefs confront dynamic, fast-moving situations that require them to balance their duty to serve the public with the risks to their own personnel and others. For this reason, it is imperative that rank and file firefighters, through fire chiefs, talk and think about risk and associated control measures as part of their regular occupational vocabulary and philosophy.

In the early 2000's, the United Kingdom ("UK") recognized this need for a framework for balancing firefighter safety with operational effectiveness and, after a comprehensive process, the Health and Safety Executive (the UK equivalent to OSHA) created two foundational documents: "Striking the Balance Between Operational Health and Safety Duties in the Fire and Rescue Service" and "Heroism in the Fire and Rescue Service."⁵ From the States' perspective, OSHA should approach an update to Section 1910.156 from this same perspective and establish risk assessment and control as the primary foundational concept to manage health and safety in the inherently hazardous and dynamic domain of emergency response, integrated across all aspects of emergency operations, non-emergency activities, and training.⁶ This foundational approach would be the most important component of an

⁵ UK Health and Safety Executive. (2010). Striking the Balance Between Operational Health and Safety Duties in the Fire and Rescue Service.

<https://nfcc.org.uk/wp-content/uploads/2023/10/Striking-the-Balance-Between-Operational-and-Health-and-Safety-Duties-in-the-Fire-and-Rescue-Service.pdf>

UK Health and Safety Executive. (n.d.). Heroism in the Fire and Rescue Service.

<https://www.hse.gov.uk/services/fire/heroism.htm>

⁶ For reference documents on risk assessment and control in fire service, see:

Aston University. (2005). Assessing risk in dynamic situations: lessons from fire service operations.

https://publications.aston.ac.uk/id/eprint/38455/1/Tissington_Flin_risk.pdf

Journal of Loss Prevention in the Process Industries. (2022). A comprehensive review on dynamic risk analysis methodologies.

<https://www.sciencedirect.com/science/article/abs/pii/S0950423022000110>

Professional Safety. (2013). Human Performance Tools: Engaging Workers as the Best Defense Against Errors & Error Precursors.

<https://onepetro.org/PS/article-abstract/58/02/54/33364/Human-Performance-Tools-Engaging-Workers-as-the?redirectedFrom=fulltext>

Safety and Health at Work. (2010). Risk Assessment in the UK Health and Safety System: Theory and Practice.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3430933/>

Safety & Health Practitioner. (2013). Striking the right balance.

<https://www.shponline.co.uk/legislation-and-guidance/striking-the-right-balance/>

update to Section 1910.156 and would provide a widely-applicable, implementable framework for all Emergency Service Organizations (“ESOs”) notwithstanding their differing levels of resources, training, staffing, etc.

In response to question (a)-4 in the ER-NPRM, the States also believe that an integrated risk assessment and control process (see comments on paragraph (f)), applying feasible measures through a hierarchy of controls methodology, is the preferable framework to addressing technical rescue services. The States believe this process is well-suited to address hazards and risks involved in technical rescue operations.

B. Avoid Duplication and Promote Greater Accessibility by Integrating Requirements Into Vertical Standards

Bearing in mind that any standard OSHA adopts will need to be understood and implemented by even very small volunteer fire departments without the benefit of counsel, occupational safety experts, or administrative staff, the States recommend streamlining related standards found in different subsections into single, vertical standards, wherever possible. This could include:

1) Integrate 1910.120(q) into Section 1910.156

Paragraph (q), emergency response to hazardous substance release of Section 1910.120, addresses hazardous materials emergency response. The States suggest moving this and integrating it into the Emergency Response standard to provide greater clarity and simplicity to ESOs and avoid confusion and potential duplication of or conflict with requirements.

2) Address Fire Service Self-Contained Breathing Apparatus in Section 1910.156

As is discussed further below, OSHA should consider incorporating all regulations specific to fire service self-contained breathing apparatus (SCBA) operations in the Emergency Response standard so that 1910.156 can function as a vertical standard, in lieu of 1910.134 for ESOs. During over 1,000 (with over 700 comprehensive scope) fire department inspections since 2019, the States continue to identify significant hazards and associated violations for respiratory protection in fire departments that use SCBA. During 2022 and 2023, seven of the top twenty fire department violations issued by IL OSHA were Section 1910.134 violations related to SCBA use. Moving all fire service SCBA related regulations

T & D World. (2021). Safety Spotlight: Making Safer Decisions Using S.T.A.R.
<https://www.tdworld.com/vegetation-management/article/21179246/safety-spotlight-making-safer-decisions-using-star>

U.K. Health and Safety Executive. (1999). The Management of Health and Safety at Work Regulations 1999.
<https://www.legislation.gov.uk/uksi/1999/3242/contents/made>

U.S. Department of Energy. (2009). Human Performance Improvement Handbook.
<https://bushcohipi.com/wp-content/uploads/2017/05/DOE-HPI-Manual-Vol-2-HPI-Tools.pdf>

Veriforce CHAS. (2022). What Are the Types of Risk Assessments?
<https://www.chas.co.uk/blog/risk-safety-statement-types/>

for ESOs to Section 1910.156 would allow small, resource-challenged ESOs to review, in a single standard, the significant regulatory differences between using SCBA for high-risk, offensive, interior and IDLH operations, versus providing a service without SCBA for lower-risk, defensive, non-IDLH operations.

C. Eliminate Incorporation by Reference for Consensus Standards

In recognition of the three main goals referenced earlier these comments, the States do not support the addition of 22 NFPA standards incorporated by reference (“IBR”) into Section 1910.6. While the States understand OSHA constraints and direction in Section 6(b)(8) of the OSH Act on the need to adopt existing consensus standards, this action would exponentially increase complexity of the standard and make good faith compliance an almost insurmountable task for small fire departments. Furthermore, the States cannot identify any regulation requiring OSHA to incorporate an entire voluntary consensus standard by reference. OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, defines agency “use” of voluntary consensus standards as “inclusion of a standard in whole, *in part* (emphasis added), or by reference in regulations.”

As stated previously in section B, the States seek a standard that can be understood and implemented by small organizations without the benefit of counsel, occupational safety experts, or administrative staff. The States agree that there are a wealth of good practices and concepts focused on occupational safety and health in the consensus standards proposed for incorporation. However, there are also practices and concepts in the consensus standards that are not related to occupational safety and health and are beyond OSHA’s jurisdiction. The basis of certain language in the update to Section 1910.156 should come, *in part*, from applicable consensus standards and be contained within Section 1910.156.

D. Provide Guidance for Working at Height During Emergency Response

After a thorough review, the States cannot identify any language in the proposed standard that addresses fire service personnel working at height during emergency response activities. On page 184 (7957) of the ER-NPRM, OSHA recognizes that, “Fatal accidents related to burns, falls, and asphyxiations mainly occurred at the scene of an emergency during participation in response activities.” The States have investigated several instances of firefighter falls from height, particularly in urban settings, including a recent tragic fatality investigation in Illinois. A quick internet search demonstrates that this experience is not unique to New Jersey or Illinois. Indeed, there are numerous media reports involving firefighters falling off and through roofs during structure fires.⁷ Additionally,

⁷ NBC 4i News. (2024). *Firefighter falls off roof of burning Ohio home*.
<https://www.nbc4i.com/news/local-news/columbus/firefighter-falls-off-roof-of-columbus-home-on-fire/>

Fox 6 News. (2023). *Milwaukee firefighter feel from roof; badly hurt*.
<https://www.fox6now.com/news/milwaukee-firefighter-injured-80th-oklahoma>

The Charlotte Observer. (2023). *Firefighter battling blaze falls through roof and dies, cops say. ‘Loved by so many’*
<https://www.msn.com/en-us/news/us/firefighter-battling-blaze-falls-through-roof-and-dies-cops-say-loved-by-so-many/ar-AA1jSuvA>

FireRescue1. (2023). *Nearly \$75K raised for Philadelphia firefighter who fell off roof*.

the fire service has recognized the hazards and risks of operating on roofs.⁸ While there are several standards in Part 1910 and Part 1926 that address fall protection and working at height, they are so prescriptive that none can be feasibly applied to responders working in a highly dynamic emergency environment, such as operating on the roof of a building fire. The States request that OSHA address working at height during emergency response through the hierarchy of controls methodology, as is described more fully in comments on paragraph (f) of the proposed standard below.

E. Timeline for Compliance

Given the scope and complexity of this proposed rule, the States recommend a minimum 24-month compliance and implementation period after the final rule is published. This extended compliance timeline is necessary for the States to train inspectors on the new standard, develop and deliver outreach and compliance assistance, and allow employers time to develop a phased approach to achieve compliance. Outreach, education, and consultation will take a significant amount of time and State Plan resources as there are at least 750 fire departments in New Jersey, and at least 1,100 fire departments in Illinois.

<https://www.firerescue1.com/injury/articles/nearly-75k-raised-for-philadelphia-firefighter-who-fell-off-roof-OwP2pGnI5Gvz4Hox/>

Firefighter Nation. (2023). *Video Shows Houston (TX) Firefighters Saving Firefighter Who Fell Through Flaming Roof Collapse.*

<https://www.firefighternation.com/news/video-shows-houston-tx-firefighters-saving-firefighter-who-fell-through-flaming-roof-collapse/>

Firefighter Nation. (2023). *Mobile (AL) Falls Off Roof Fighting Laundromat Fire.*

<https://www.firefighternation.com/news/mobile-al-firefighter-falls-off-roof-fighting-laundromat-fire/>

NBC 5 Chicago News. (2022). *Firefighter Injured After Falling Off Roof Fighting Blaze in West Englewood: Officials.*

<https://www.nbcchicago.com/news/local/firefighter-injured-after-falling-off-roof-fighting-blaze-in-west-englewood-officials/2808331/>

Fox 31 Denver News. (2019). *Firefighter dies after falling from roof of Copper Mountain condo.*

<https://kdvr.com/news/local/firefighter-dies-after-falling-from-roof-of-copper-mountain-condo/>

CBS KCAL Los Angeles News. (2019). *Firefighter Falls Off Roof Of Sun Valley Home While Battling Large Blaze.*

<https://www.cbsnews.com/losangeles/news/firefighters-battle-large-house-fire-in-sun-valley/>

New York Daily News. (2017). *FDNY Firefighter William Tolley dies after he falls five stories off roof while battling Queens blaze.*

<https://www.nydailynews.com/2017/04/21/fdny-firefighter-william-tolley-dies-after-he-falls-five-stories-off-roof-while-battling-queens-blaze/>

⁸ National Institute for Occupational Safety and Health. (2017). *Career Fire Fighter/Engineer Dies After Falling Through Translucent Corrugated Roof Panel While Searching for Fire Extension – Colorado.*

<https://www.cdc.gov/niosh/fire/reports/face201513.html>

National Institute for Occupational Safety and Health. (2003). *Career Fire Fighter Dies After Roof Collapse Following Roof Ventilation – Iowa.*

<https://www.cdc.gov/niosh/fire/reports/face200240.html>

New fire department programs, policies, and standard operating procedures will also entail significant resources because they often require thoughtful consideration, approval processes, and budgeting. Difficulties with implementation, such as those caused by financial restrictions and/or limitations and a steep knowledge-learning curve, will likely be experienced with a magnified effect at small volunteer departments who do not have personnel available on a full-time basis to implement the standard.

F. Overlap of or Conflict with State Standards

NJ PEOSH identifies the following state standards that may differ from the current proposed rule: N.J.A.C. 12:100-10 et. seq. If adopted, this rule will require review and potential re-submittal to OSHA of New Jersey State regulations, which could disrupt the regulated community in the process.

There is considerable overlap between the NJ PEOSH Act and the regulations enforced by the New Jersey Division of Fire Safety (DFS). Areas regulated by the DFS, and referenced by NJ PEOSH, include: N.J.A.C. 5:73, “Standards for Fire Service Training and Certification” and N.J.A.C. 5:75, “Incident Service Incident Management.” The topics subject to regulation by these administrative laws are extensive. The Commissioner of Community Affairs has specific statutory authority (N.J.S.A. 34:6A-49) to regulate these areas and NJ PEOSH has made every effort to remain within jurisdictional boundaries by citing the NJ PEOSH General Duty clause referencing these codes when serious hazards are identified because of non-compliance.

Adoption of the proposed standard will likely create numerous conflicts between NJ PEOSH and the DFS. In particular, New Jersey has specific requirements for “Incident Management Levels” which are not referenced in the proposal. Considerations should be made in the proposal to address incident command responsibilities regardless of rank. Further, the proposed standard does not contemplate much in the way of incorporating NIMS into various ICS processes that exist in many forms in many jurisdictions. For example, how does OSHA propose that EMS agencies incorporate the use of the ICS during routine calls as required by paragraph (o)?

In addition, other New Jersey Departments of State Government, such as the Department of Community Affairs, has adopted NFPA standards by law such as NFPA 1561-1995 with New Jersey amendments. Due to language in the NJ PEOSH Act, NJ PEOSH cannot conflict with the Department of Community Affairs. If NJ PEOSH was to adopt disparate versions of NFPA standards a conflict will be created between two different New Jersey departments of State government. This will undoubtedly result in confusion as fire departments attempt to comply.

III. Specific Comments on the Proposed Standard, by Paragraph

Please note that the absence of a specific comment on an item in the proposed rule by the States does not imply an endorsement of that item or paragraph.

(a) Scope

The States have no comment.

(b) Definitions

Consistent terminology and definitions will be important in maintaining understanding within the responder community. Some terms in the proposed rule conflict or overlap with the fire service's common established understanding of those terms. For example, "emergency response" is not defined within the proposed rule but is defined within 29 CFR § 1910.120. Also, the term Rapid Intervention Team ("RIT") has significant overlap with a current industry term, Firefighter Assist and Search Team ("FAST").

The term "medical evaluations" is utilized throughout paragraph (g) of the proposed standard. It appears that the description of a medical evaluation in the proposed Emergency Response standard does not match the description of a medical evaluation in 1910.134. A medical evaluation in the proposed Emergency Response standard includes a physical examination, while a medical evaluation in 1910.134 may or may not include a physical examination. The States request that OSHA standardizes, defines, and simplifies use of terms such as "evaluation," "examination," "surveillance," "assessment," "screening," and "consultation" in the Emergency Response standard for clarity and ease in understanding.

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

The States have no comment.

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

Subparagraph (d)(2) will require ESOs to create a written Emergency Response Program ("ERP") that addresses 14 sections of the new Emergency Response standard. During over 1,000 (700 comprehensive scope) fire department inspections conducted since 2019, the States have rarely encountered a document of similar type, length, and complexity. The States acknowledge the importance of a *basic* central plan that can be readily shared and accessed, however, many small fire departments will lack the resources and expertise necessary to create a compliant written ERP. The States request significant compliance assistance resources that include sample ERP templates written in plain language, available in an editable electronic format, and easily accessible online.

Additionally, for any policy, program, or procedure required by this rulemaking, the final rule should specify when any such policy, program, or procedure must be documented in writing, and how frequently it must be reviewed and updated as well as provide enhanced plain-language definitions of all key terms used throughout the standard.

Subparagraph (d)(3) will require ESOs to perform a community vulnerability assessment ("CVA") of hazards within their primary response area. Again, through extensive experience with comprehensive scope fire department inspections, the States have rarely encountered this type of document. The States assert that most fire departments in New Jersey and Illinois will lack the resources, expertise, and data necessary to perform a systematic evaluation of the community and create a compliant CVA that will positively impact employee safety. The following data elements are recognized by Dr. Lori Moore-Merrell, currently serving as Administrator of the U. S. Fire Administration, as necessary for an effective community vulnerability/risk assessment: 1-3 years of

computer aided dispatch data, station response zones and geographical boundaries, building data, parcel data, demographic data, and GIS/physical data.⁹ The [FIRECARES](#) database administered by the International Public Safety Data Institute is advertised to have specific community risk data at the fire department level, however, for small fire departments -- the very organizations that would need significant assistance to develop a CVA -- the data is often incomplete or missing altogether.¹⁰

The States recommend that OSHA removes the requirement for ESOs to perform a CVA as the requirement is not feasible for most fire departments. The States assert that the objective of a CVA to match fire department resources to risk levels inherent to hazards in the community can be effectively addressed through paragraph (n) on pre-incident planning and through improvements to paragraph (f) on risk management of the proposed standard. Performing a CVA should be considered a best practice but would likely only be beneficial to large fire departments with the financial resources to produce a thoughtful and comprehensive CVA.

As required by subparagraph (d)(6), the States support a document that establishes the types and levels of service an ESO intends to perform as part of the ERP. The States assert that for most public sector fire departments in New Jersey and Illinois, this is determined as a function of financial resources and is ultimately the decision of the community through their elected and appointed officials. If a service is provided, it must be done in compliance with State Plan standards. While the standard could not possibly address every type of service, OSHA can list services that would be widely recognized across ESOs for basic emergency response. Language could require ESOs to establish additional services not listed in the standard.

Recommended ESO service list for the standard:

- Station support
- Scene support (defined as no hot zone entry)
- Exterior firefighting, non-SCBA (defensive operations)
- Interior firefighting and other operations requiring SCBA (offensive operations)
- Technical rescue awareness (type of technical rescue, e.g. vehicle/machinery, rope, etc.)
- Technical rescue operations (type of technical rescue, e.g. vehicle/machinery, rope, etc.)
- Technical rescue technician (type of technical rescue, e.g. vehicle/machinery, rope, etc.)
- Hazardous materials (awareness, operations, technician, specialist)
- Special firefighting (type of special firefighting, e.g. wildland, marine, etc.)
- Emergency medical (e.g. basic life support, advanced life support, etc.)

As required by subparagraph (d)(7), the States support a document that establishes responder tiers as part of the ERP. The States request that OSHA establishes a basic list of tiers for the standard as this format will harmonize with tiers identified in 1910.120(q)(6) (e.g. first responder awareness level, hazardous materials technician). While the standard could not possibly address every type of tier, OSHA can provide tiers that would be widely recognized across ESOs for basic emergency response. Language could require ESOs to establish additional tiers for other types and levels of service they

⁹ Lexipol. (2019). 3 Elements of an Effective Fire Department Community Risk Assessment. <https://www.lexipol.com/resources/blog/3-elements-of-an-effective-fire-department-community-risk-assessment/>

¹⁰ See, e.g., International Public Safety Data Institute. (2018). *Dana Volunteer Fire Department, IL*. <https://firecares.nfors.org/departments/79308/dana-volunteer-fire-department>

intend to perform through the “such as” language currently included in subparagraph (d)(7). Naturally, responders may have multiple tiers (e.g. Responder Jones is an interior firefighter, driver/operator, vehicle/machinery operations, and incident commander trainee).

Recommended ESO tier list for the standard:

- Trainee (type of training, e.g. interior firefighter, vehicle/machinery operations, etc.)
- Station support
- Scene support (defined as no hot zone entry)
- Exterior firefighter (non-SCBA)
- Interior firefighter (SCBA)
- Incident Commander
- Driver/Operator
- Technical rescue awareness (type of technical rescue, e.g. vehicle/machinery, rope, etc.)
- Technical rescue operations (type of technical rescue, e.g. vehicle/machinery, rope, etc.)
- Technical rescue technician (type of technical rescue, e.g. vehicle/machinery, rope, etc.)
- Hazardous materials (awareness, operations, technician, specialist)
- Special firefighting (type of firefighting, e.g. wildland, marine, etc.)
- Emergency medical (type of license, e.g. first responder, EMT-B, Paramedic, etc.)
- Training officer

The States further request that subparagraph (d)(8) is amended to require ESOs to develop and maintain external aid resource information that is accessible to responders during an incident in lieu of requirements to develop mutual aid agreements. The States would consider the [MABAS](#) Box Alarm Card to meet the requirements for external aid resource information. These cards are almost always provided by the fire department to their dispatch center for ease in dispatching resources. Examples of box cards can be found [here](#). This request is similar in nature to the proposed language in paragraph (n) that requires pre-incident plans (PIPs) to be accessible during an incident. The States assert that external aid resource information will compliment PIPs. While PIPs are building/address specific, this information is broader and can be developed to address occupancy types, incident types, geographical areas, and identify external resources for types and levels of services that the fire department does not provide.

While mutual and automatic aid agreements are foundational documents that ensure a legal framework for external aid, external aid resource documents are the operational result of informal or formal agreements. Responders need readily accessible information during incidents to request appropriate external aid in a timely manner. Lack of this information was identified in IL OSHA inspection [1531592](#) and the associated [incident report](#) as an indirect cause of three firefighters being seriously injured after exiting a window and falling 21 feet during a structure fire.

Making external aid resource information available to responders at the scene of an incident can improve firefighter safety through streamlined communications, a reduction in incident commander and telecommunicator workload, and a reduction in decision time for what resources to request and from where.

(e) Team Member and Responder Participation

The States support language to ensure employee involvement and a just culture reporting environment.

(f) WERT and ESO Risk Management Plan

As discussed above, the States believe that now is the time to develop foundational risk assessment and control concepts (see footnotes on pages 5 and 6) for the American Fire Service and include them in paragraph (f) along with supporting documents in an associated appendix for inclusion as minimum risk assessment and control (risk management plan) components.

The States further recommend that paragraph (f) is renamed “WERT and ESO Integrated Risk Assessment & Control” to emphasize that risk management is more than just a written plan, it is an operating philosophy that must be integrated across the entire spectrum of the organization. Furthermore, this paragraph does not need to specify the requirement for a written plan as subparagraph (d)(2) already requires a written section covering paragraph (f) in the Emergency Response Program.

Subparagraph (f)(1)(ii) identifies several minimum components of a Risk Management Plan (“RMP”). In response to question (f)-1 in the ER-NPRM, The States assert that certain foundational risk management concepts are missing and requests their inclusion as minimum plan components which may replace certain language in paragraph (f). The States further assert that it is the responsibility of OSHA, in cooperation with State Plans and fire service organizations, to provide most of the language in and guidance for paragraph (f).

1. Generic Risk Assessment

The States strongly recommend OSHA publishes guidance (as an appendix to 1910.156) in cooperation with State Plans and fire service organizations to provide generic hazard and risk information and associated control measures to support more specific risk assessment development by ESOs. This guidance should be in the form of recognized hazards and associated control measures for common ESO emergency operations, non-emergency activities, and training.

2. ESO/Department Level Risk Assessment

The States strongly recommend language that requires ESOs to conduct a risk assessment for emergency operations, non-emergency activities, and training based on the types and levels of service the ESO intends to perform; to identify actual and reasonably anticipated hazards and risks to personnel for those operations; and to identify and implement control measures applying the hierarchy of hazard controls methodology to reduce risk as low as reasonably practicable. OSHA should publish guidance (as an appendix to 1910.156) in cooperation with State Plans and fire service organizations providing additional explanations for this process as well as on-demand training. This requirement would supersede the requirement for a personal protective hazard assessment required in 1910.132(d).

The States strongly recommend language that requires ESOs to conduct risk assessments for all operations, activities, and training, but only requires the risk assessment to be in writing for high-risk operations, activities, and training. Control measures identified in the risk assessments should then be integrated into applicable Standard Operating Procedures, Pre-incident Plans, and training

documents.¹¹ The States suggest that “high-risk” is defined. For example, it could be defined to align with the OSHA definition of a “serious” violation classification which is a hazard that, “could cause an accident or illness that would most likely result in death or serious physical harm.”

3. Dynamic Risk Assessment (DRA)

The States strongly recommend language that requires a dynamic risk assessment (“DRA”) to be conducted by the incident commander *prior* to deploying responders into a hot (hazard) zone. The language should explain that dynamic risk assessments are to be conducted and applied by responders during all situations where risks can change quickly, risks may not be fully known, and decision-making time is limited. This is a critical component of risk management and operationalizes the application of risk assessment & control for incident management. The DRA is the ideal, proven, systematic risk assessment & control tool for emergency response.

The DRA process should be defined and included paragraph (f) as: Step 1) Evaluate the situation, identify hazards and who is at risk, evaluate risks; 2) Select safe systems of work and applicable standard operating procedures; 3) Assess whether the risks are proportional to the potential benefits and declare an operational mode (offensive/defensive); 4) Introduce additional control measures where possible to further reduce risk and; 5) Continually reassess the risk/benefit as the situation changes.

4. Individual Risk Assessment (IRA)

The States strongly recommend language that requires all responders that operate in the hot (hazard) zone to conduct their own individual risk assessment (“IRA”). The IRA serves as a human performance tool to help workers focus attention before performing a task. Responders that perform work at the task level in a hot zone, often without supervision, are susceptible to being so focused on the task they are performing that their situational awareness is diminished, and they fail to recognize hazards. The IRA process should be defined and included in paragraph (f). The States recommend the Stop-Think-Act-Review (“STAR”) method is utilized to define the IRA process.

5. Safe Person Concept

The States strongly recommend language that identifies the “safe person” concept as a key component of integrated risk assessment & control. The “safe person” concept includes the personal responsibility for responders to take reasonable care for their own health and safety. This includes an obligation to follow ESO policies and OSHA regulations. The “safe person” concept is especially important as it is ideal for the emergency response environment that recognizes that the incident scene is inherently dangerous and that it may be unlikely or impossible to eliminate all hazards from the incident scene. The “safe person” concept can be defined as “the right person, doing the right job, with the right equipment, at the right time.” The five key elements of the “safe person” concept include: Competency, self-awareness, being observant and constantly aware of the situation, and being decisive about hazards, risks, and communication.¹²

¹¹ Fire Technology. (2013). *Development of Best Practice Standard Operating Procedures for Prevention of Fireground Injuries*.

<https://link.springer.com/article/10.1007/s10694-013-0342-9>

¹² UK Department of Communities and Local Government. (2013). Fire and Rescue Authorities. Health, safety and welfare framework for the operational environment.

<https://assets.publishing.service.gov.uk/media/5a7c8b8240f0b62aff6c26b7/HSFrameworkJunecombined.pdf>

An explanation of the safe person concept should be included in an appendix to 1910.156 as a minimum component of the written section covering paragraph (f) in the Emergency Response Program.

6. Hierarchy of Hazard Controls

The States strongly recommend language that identifies the [hierarchy of hazard controls](#) as the primary methodology for controlling hazards. An explanation of the hierarchy of hazard controls should be included in an appendix to 1910.156 as a minimum component of the written section covering paragraph (f) in the Emergency Response Program.

Subparagraph (f)(2) requires that the RMP contains a policy for extraordinary situations. The States assert that the language and requirements of (f)(2) are problematic, open to wide interpretation, and do not provide ESOs with sufficient guidance. Rather than OSHA placing the burden on tens of thousands of ESOs to individually develop such a policy, the States believe that the burden and responsibility to set expectations for such extraordinary situations rests with OSHA in cooperation with State Plans and fire service organizations. As previously mentioned, the United Kingdom Health and Safety Executive, created two documents to address extraordinary situations, [Striking the balance between operational health and safety duties in the Fire and Rescue Service](#), and, [Heroism in the fire and rescue service](#). The States believe that now is the time to develop similar documents for the American Fire Service and include them in the 1910.156 appendix for inclusion as a minimum component of the written section covering paragraph (f) in the Emergency Response Program.

The States assert that the approach provided above still aligns with the provisions of NFPA 1500 but does so in a manner that is more effective, more conducive for integration into ESO operations, better suited to develop integrated risk assessment & control as an operating philosophy for emergency response, and is based on the "best available evidence" and "scientific data" as required by Section 6(b)(5) of the OSH Act. The States welcome the opportunity to discuss these recommendations further and seeks to cooperate with OSHA on improving paragraph (f) to ensure integrated risk management & control becomes a primary and foundational piece of the new standard.

(g) Medical and Physical Requirements

The States request that any update to Section 1910.156 identify all medical and physical requirements for ESO responders to avoid confusion and duplication of requirements in Sections 1910.134 and 1910.120. ESOs making a good faith effort at compliance should not have to attempt to discern medical requirements from three separate standards.

The States request that OSHA moves ESO responder respirator medical requirements from 1910.134 to the Emergency Response standard in the same manner that OSHA is moving structural firefighting requirements from 1910.134(g)(4) to the new standard. This will allow OSHA to integrate the respirator medical requirements into paragraph (g) to avoid confusion and potential duplication of requirements. In addition to the respirator medical re-evaluation criteria in 1910.134(e)(7), the States request the addition of a biennial (every two years) respirator medical re-evaluation period for ESO responders designated to wear respirators to harmonize with the biennial medical evaluation requirement in (g)(2)(v). The States request the same biennial frequency for annual fit testing of

designated members that wear positive pressure SCBA in lieu of the annual requirement in 1910.134(f)(2). Ideally these requirements would be integrated into paragraph (g) and not serve as additional burdens.

The States request that OSHA moves medical requirements for ESO responders that are members of hazardous materials teams from 1910.120 to the Emergency Response standard. This will allow OSHA to integrate the medical requirements for hazardous materials team members into paragraph (g) to avoid confusion and potential duplication of requirements and standardize re-evaluation periods. The biennial frequency period allowed under 1910.120(f)(3)(i)(B) for medical examinations harmonizes with the biennial medical evaluation requirement in (g)(2)(v). Ideally this requirement would be integrated into paragraph (g) and not serve as an additional burden.

Subparagraph (g)(1) item (i) requires ESOs to establish minimum medical requirements for team members and responders based on tier assignments. The current language is open to wide interpretation, does not provide ESOs with sufficient guidance, and does not identify a legal minimum. The States request that OSHA revises (g)(1)(i) with more objective language.

Subparagraph (g)(5) requires ESOs to establish and implement a process to evaluate and re-evaluate annually the ability of team members and responders to perform essential job functions, based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of the proposed standard. The States request that OSHA identifies and lists the processes that are acceptable to evaluate and re-evaluate team members and responders. This will provide ESOs with objective direction and reduce the likelihood that OSHA will have to develop a letter of interpretation as the current standard language necessitated: <https://www.osha.gov/laws-regs/standardinterpretations/1991-01-29>. The States request that the re-evaluation period be biennial to harmonize with the biennial medical evaluation requirement in (g)(2)(v).

In response to question (g)-6 in the ER-NPRM, the States support a global biennial (every two years) re-evaluation period. This period should be harmonized for all medical and health & wellness periodic re-evaluations and assessments including ESO responders that wear respirators and ESO responders that are HAZMAT team members. This harmonization will simplify the re-evaluation cycle and schedule for ESOs, avoid unnecessary duplication, and provide appropriate surveillance.

(h) Training

1. Subparagraph (h) (1)

Subparagraph (h)(1) item (ii) states, “Provide initial training, ongoing training, refresher training, and professional development for each team member and responder commensurate with the safe performance of expected duties and functions based on the tiers of team members and responders and the type and level of service(s) established in paragraphs (c) and (d) of this section;”. The States assert that this language does not provide ESOs with sufficient guidance and eliminates the objective minimum periodic requirements for training “at least annually” and for interior firefighters to have “an education session or training at least quarterly” currently contained in Section 1910.156(c)(2). The States believe such objective minimum periodic training intervals are critical for firefighter safety. The States also assert that there is a significant difference between initial training and subsequent periodic training and requests that OSHA addresses these items separately for clarity.

The States strongly recommend OSHA retains language requiring periodic training, however, the States propose training frequency should be risk-based. The States also recommend clarifying language for interior firefighter training such as, “Ensure each responder who is designated to perform interior structural firefighting duties completes a training session in full structural firefighting PPE and SCBA while on breathing air.”

IL OSHA has identified the importance of periodic training for SCBA proficiency during hundreds of comprehensive-scope fire department inspections. During an inspection, an IL OSHA inspector will often request an interior firefighter to don a SCBA and go “on air” to “demonstrate knowledge” in accordance with 1910.134(k)(1). Between 2022 and 2023 IL OSHA issued sixty 1910.134(k)(1) violations during fire department inspections for interior firefighters failing to demonstrate knowledge. Several of these interior firefighters failed to properly don their SCBA, and in some cases, never achieved going “on air.” SCBA proficiency is a perishable skill.¹³ It is critical that any update to 1910.156 includes minimum interval periodic training for interior firefighters.

Consider the following risk-based periodic training language:

“ESOs shall provide ongoing training at the following minimum intervals for each team member and responder commensurate with the safe performance of expected duties and functions based on their assigned tier(s). Minimum intervals for training not specified shall be based on the ESOs determination of risk to team members and responders. Members and responders that do not objectively demonstrate competency, or do not operate in a safe manner during training shall receive additional training.”

- Interior/offensive firefighter: quarterly or more often to objectively demonstrate competency.
- Incident commander: every six months or more often to objectively demonstrate competency.
- Operations level or higher technical rescue: every six months or more often to objectively demonstrate competency.
- Special firefighting: annually or more often to objectively demonstrate competency.
- Driver/operator: annually or more often to objectively demonstrate competency.
- Hazardous materials response: annually or more often to objectively demonstrate competency.
- Respiratory protection: annually or more often to objectively demonstrate competency.
- High risk operations: annually or more often to objectively demonstrate competency.
- Fire extinguisher: every other year or more often to objectively demonstrate competency.
- Bloodborne pathogens: every other year or more often to objectively demonstrate competency.
- Low risk operations: every other year or more often to objectively demonstrate competency.

¹³ Bond University. (2019). *Quantifying Perishability in Skills: A Critical Review*.
<https://research.bond.edu.au/en/publications/quantifying-perishability-in-skills-a-critical-review>

Training should also be required if there is a change in operations or equipment. The minimum intervals identified above should supersede other standards when applied to ESOs as 1910.156 will serve as the more vertical standard.

Subparagraph (h)(1) items (vi) and (vii) require ESOs to provide training on the risk management plan, safety and health policy, and Standard Operating Procedures (SOPs). The States assert that the items recommended for incorporation as minimum risk management plan components are critical to improving responder safety and health. However, the concepts and components within the risk management plan, safety and health policy, and SOPs must be integrated into all aspects of an ESO training program and not function as “check the box” standalone training topics. The States strongly recommend that OSHA recognizes the importance of integration of the programs and concepts into an ESO training program through clear language in paragraph (h).

2. Subparagraph (h)(2)

Subparagraph (h)(2) item (ii) requires interior firefighters to be trained to a level at least as equivalent to job performance requirements of NFPA 1001, 2019 ed. Item (iii) requires interior firefighters to be trained to a level at least as equivalent to job performance requirements of NFPA 1407, 2020 ed. Item (iv) requires vehicle operators to be trained to a level at least as equivalent to job performance requirements of NFPA 1002, 2017 ed. Item (v) requires officers to be trained to a level at least as equivalent to job performance requirements of NFPA 1021, 2020 ed. Items (vi) – (viii) also require compliance with certain NFPA job performance requirements. While the States understand OSHA constraints and direction on the need to develop standards based on national consensus standards, the proposed language for items in subparagraph (h)(2) presents several problems.

First, the standard references a consensus standard using “at least equivalent to” language, rather than providing specific training areas/objectives. The States assert that the language is problematic, open to wide interpretation, and does not provide ESOs with sufficient guidance. The States request that OSHA consider revising subparagraph (h)(2) to utilize a tier/competency format that harmonizes with 1910.120(q)(6) which identifies competency areas for different tiers of hazardous materials responders. This format is already recognized and familiar to ESOs. The States have provided proposed tiers to be included in the standard. The States also request that OSHA revise subparagraph (h)(2) to utilize language that allows competency compliance to be achieved through an equivalent state (or US territory) certification for that tier.

Consider the following format example:

“Ensure each ESO responder who has a tier designation of interior firefighter is trained in the following [insert list of competency areas in similar format to 1910.120(q)(6) competency areas] to safely perform the duties assigned or has achieved equivalent state certification.”¹⁴

A second problematic aspect of the proposed (h)(2), is that while item (v) does address officer training, it fails to identify specific training for incident commanders. Again, in the States’ view, identifying the incident commander tier and associated competency areas in the 1910.156 update is critical to firefighter safety. While most operational fire officers are considered incident commanders, many responders at the firefighter rank functionally operate as incident commanders due to seniority,

¹⁴ An example of the tier/competency area format is contained in the [Illinois Fire Service Institute Minimum Fire Training Guide, 2021 ed.](#)

the absence of an officer on the first apparatus to arrive, or because they are a firefighter in an acting officer role. The States strongly recommend OSHA places less emphasis on the officer staff rank, and more emphasis on the incident commander operational role/duty/function/tier. OSHA has already recognized the importance of identifying competency areas for the incident commander role/duty/function/tier in 1910.120(q)(6) for hazardous materials incidents.

A third concern with the proposed language in (h)(2) is that the job performance requirements in NFPA standards are designed to accomplish more than just "the safe conduct of emergency response activities" as OSHA asserts in the executive summary. They also address non-emergency staff duties, administrative functions, and other activities beyond the scope of occupational safety and health.

3. Subparagraph (h)(3)

Subparagraph (h)(3) requires annual skills checks. The States strongly recommend the following edit to subparagraph (3). "The WERE and ESO shall provide annual skills checks to ensure each team member and responder maintains proficiency in the **technical and non-technical** skills and knowledge commensurate with the safe performance of expected duties and functions, based on the type and level of service(s) established in paragraphs (c) and (d) of this section." This revision would help emphasize the functional importance of non-technical skills training in the emergency response environment, such as risk assessment, decision making, teamwork, leadership, assertiveness, resilience, and situational awareness; skills that are critical for incident commanders to strike the balance between firefighter safety and operational effectiveness.¹⁵ The States strongly recommend that responders that are designated as incident commanders receive periodic training and assessments of technical and non-technical skills.

In response to question (h)-1 of the ER-NPRM: The States strongly recommend a minimum annual skills check interval. The standard should include language describing the skills check to ensure that it is documented and administered as an unassisted assessment of technical and non-technical skills and knowledge.

¹⁵ Cognition, Technology & Work. (2019). Development of a behavioural marker system for incident command in the UK fire and rescue service: THINCS.

https://orca.cardiff.ac.uk/id/eprint/118866/7/Butler2019_Article_DevelopmentOfABehaviouralMarke.pdf

Human Factors and Ergonomics Society. (2015). An Investigation of Operational Decision Making in Situ: Incident Command in the UK Fire and Rescue Service.

<https://journals.sagepub.com/doi/abs/10.1177/0018720815578266>

Human Factors and Ergonomics Society. (2023). Decision-Making During High Risk Events: A Systematic Literature Review.

<https://journals.sagepub.com/doi/abs/10.1177/15553434221147415>

Journal of Contingencies and Crisis Management. (2023). Towards a common framework to support decision-making in high-risk, low-time environments.

<https://onlinelibrary.wiley.com/doi/full/10.1111/1468-5973.12487>

Journal of Risk Research. (2022). A naturalistic decision-making approach to managing non-routine fire incidents: evidence from expert firefighters.

<https://www.tandfonline.com/doi/abs/10.1080/13669877.2021.1936609>

(i) WERE Facility Preparedness

The States have no comment.

(j) ESO Facility Preparedness

Subparagraph (j)(1)(ii) requires an ESO to provide “facilities” for decontamination, disinfection, cleaning, and storage of PPE and equipment. The States recommend that OSHA changes “facilities” to “processes” to illustrate the need for processes that may, or may not, occur at an ESO facility or necessarily require a facility.

(k) Equipment and PPE

Subparagraph (k)(1)(iii)(B) requires ESOs to inspect, maintain, functionally test, and service test equipment in accordance with manufacturer’s instructions and “industry practices.” The States recommend that OSHA removes this language that would essentially convert “industry practices” into legal regulations. Using the phrase “in accordance with manufacturer’s recommendations” would harmonize with 1910.134(h)(3)(i)(B) which applies to ESO respirators for emergency situations (SCBA). The States would support using this language for safety critical equipment.

Subparagraph (k)(2)(i) requires ESOs to conduct a personal protective equipment (PPE) hazard assessment. The States see this as a duplicative and unnecessary requirement. A broader ESO/department level risk assessment (see page 14) should be conducted and integrated into an overall framework under paragraph (f) to ensure that ESO’s perform assessments using the hierarchy of hazard controls, not just PPE. The States recommend removal of (k)(2)(i) from the proposed standard as a more holistic approach to risk assessment would supersede this requirement.

Subparagraph (k)(3) contains specific language for ESO’s to implement during operations. These provisions should be re-located to paragraph (q) covering Standard Operating Procedures. Placing contaminant protection requirements into paragraph (q) will properly guide ESOs on minimum components to include in SOPs.

Lastly, in response to question (k)-1 in the ER-NPRM, the States do not believe that OSHA should specify a retirement age for PPE unless peer-reviewed research supports a retirement age for a certain type of PPE. During inspections, the States have observed relatively new structural firefighting turnout gear in unserviceable condition where a violation is justified but have also observed turnout gear over 10 years old in remarkable, almost new condition due to low emergency call volumes. With one set of structural firefighting gear (coat and pants) often exceeding \$2500, small fire departments would face significant challenges replacing PPE if an artificial retirement age was set.

(l) Vehicle Preparedness and Operation

Subparagraph (l)(2)(i) and (l)(2)(vi) requires WERE and ESOs to ensure vehicle operator training. This requirement should naturally be re-located to paragraph (h) covering training.

(m) WERE Pre-Incident Planning

The States have no comment.

(n) ESO Pre-Incident Planning

The States have no comment.

(o) Incident Management System Development

The States assert that use of an appropriate incident management system (IMS) is imperative to safe and effective ESO operations. Minimum components for an IMS in paragraph (o) should be re-located to paragraph (q) covering Standard Operating Procedures (SOPs). The vast majority of ESOs are familiar with and utilize SOPs for operations. Placing IMS requirements into paragraph (q) will properly guide ESOs on minimum IMS components to include in SOPs.

Subparagraph (o)(4) requires the WERE and ESO to ensure the incident commander (IC) has the training and authority to perform their assigned duties. This requirement should naturally be re-located to paragraph (h) covering training. The States strongly recommend language that specifies that IC training must include “technical and non-technical skills” training.

Re-locating these items will eliminate the need for paragraph (o), reducing complexity of the standard for ESOs and increasing the likelihood of understanding and compliance.

(p) Emergency Incident Operations

Minimum components and requirements for emergency incident operations in paragraph (p) should be relocated to paragraph (q) covering Standard Operating Procedures (SOPs). The vast majority of ESOs are familiar with and utilize SOPs for operations. Placing emergency incident operation components and requirements into paragraph (q) will properly guide ESOs and reduce complexity of the standard.

The States understand OSHA's justification for the proposed “two-in, two-out” language in subparagraph (p)(4), however, this language is more complex than the current "two-in, two-out" language in Section 1910.134. The States propose that this language is split into two categories: (1) interior structural firefighting; and (2) other IDLH atmospheres. The States also propose that this language is simplified so it can be easily understood and applied responders. Additionally, this language should be moved to paragraph (q) for incorporation into SOPs.

Consider the following language on entry teams and communications (“two-in”) for interior structural firefighting:

“When a dynamic risk assessment by the incident commander justifies an offensive mode, teams of at least two SCBA-equipped responders entering the structure must establish, prior to entry, and maintain, until exit, radio communication with a responder on scene outside of the IDLH atmosphere.

Teams shall enter the IDLH atmosphere of the structure together, always stay together in visual or voice contact, and exit the IDLH atmosphere of the structure together.”

The States assert that exceptions to the suggested language above are not necessary with improvements to paragraph (f) that should provide explanatory language on extraordinary situations, balancing the goal conflict between protecting the public and firefighter safety, and on what is and what is not heroic. Furthermore, OSHA's Field Operation Manual provides for enforcement discretion in life-saving situations.

The States support proposed language that requires the use of a NIOSH-certified respirator during post-fire extinguishment activities. The States request that OSHA provides guidance in the 1910.156 appendix on how an ESO can properly assess environmental conditions to determine when respirators are no longer necessary post-extinguishment.

(q) Standard Operating Procedures

As previously explained, the States assert that several sections in previous paragraphs related to operations should be relocated to paragraph (q). The vast majority of ESOs are familiar with and utilize SOPs for operations. Placing emergency incident operation components and requirements into paragraph (q) will properly guide ESOs and reduce complexity of the standard. In addition to (q)(1), the standard should require the following minimum SOPs for ESOs that perform offensive/interior firefighting operations: Incident Command, Accountability, Mayday/Firefighter Emergency, Decontamination, and Rehabilitation.

Additionally, as discussed in comments for paragraph (f), control measures identified in risk assessments should be integrated into applicable Standard Operating Procedures (SOPs).

(r) Post-Incident Analysis

Paragraph (r) will require ESOs to conduct a post-incident analysis when certain events or incidents occur. Many small fire departments will lack the knowledge and expertise necessary to conduct such an analysis. The States support the requirement for a post-incident analysis process but requests significant compliance assistance resources not limited to on demand training for fire departments to conduct a post-incident analysis, and sample documents to assist in the analysis that are written in plain language and available in an editable electronic format.

(s) Program Evaluation.

The States have no comment.

(t) Severability

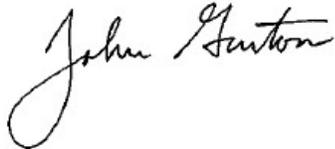
The States have no comment.

Closing

The State and Local Government Plans of New Jersey and Illinois appreciate the opportunity to provide comments on the proposed Emergency Response standard and look forward to further discussion and collaboration with OSHA on this important rulemaking.

Respectfully,

FOR THE STATE OF NEW JERSEY



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