



Oregon
Tina Kotek, Governor



July 17, 2024

Mr. Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Proposed Rule for Emergency Response, 29 CFR 1910.156

Dear Assistant Secretary Parker,

Oregon OSHA appreciates the opportunity to provide public comment on your Proposed Rule for Emergency Response (Docket No. OSHA–2007–0073; [89 FR 7774](#)). As an approved OSHA State Plan that promulgates its own rules, emergency responders are critical personnel in our state and deserve the protections afforded by the Oregon Safe Employment Act (ORS 654). Along those lines, Oregon OSHA established a Fire Services Advisory Committee (FSAC) over 25 years ago to help provide technical assistance and guidance to Oregon OSHA in the development of occupational safety and health rules for fire fighters and emergency service providers. The committee's purpose is also to serve as a network between Oregon OSHA and Oregon's fire protection industry (NAICS 922160). Committee members represent many components of the industry, including all sizes of departments, career and volunteer firefighters, officers and line personnel, district directors, organized labor, fire instructors, and emergency medical services. Oregon OSHA and the committee worked together in developing the current Oregon's Rules for Firefighters, OAR 437-002-0182 which have been in place in some form since 1990's. These performance-based rules reference the following National Fire Protection Association (NFPA) standards:

- NFPA 1561: Standard on Emergency Services Incident Management System (2008)
- NFPA 1001: Standard for Fire Fighter Professional Qualifications (2013)
- NFPA 1403: Standard on Live Fire Training Evolutions (2012)
- NFPA 1971: Standard on Protective Clothing for Structural Fire Fighting (1991, 2000 and 2013)
- NFPA 1973: Standard on Gloves for Structural Fire Fighting (1988)
- NFPA 1982: Standard on Personal Alert Safety Systems (PASS) (1983 and 2013)
- NFPA 1911: Standard for the Inspection, Maintenance, Testing, and Retirement of In-service Automotive Fire Apparatus (2007)

Oregon OSHA acknowledges the efforts of federal OSHA to enhance the occupational health and safety of emergency responders through the proposed rule. However, we have identified technical and fiscal challenges that the proposed federal standard would impose on Oregon stakeholders, especially emergency service organizations (ESOs) that rely heavily on volunteers. This letter summarizes these challenges and their potential impacts on Oregon’s emergency response industry.

Oregon Demographics

- Oregon is the ninth (9th) largest U.S. state with approximately 98,000 square miles with cities and towns making up about 2,000 of those square miles
- According to the Oregon Office of Rural Health (ORH), using 2023 Claritas data:
 - 31 percent (1,332,260) of Oregon’s population lives in rural areas:
 - 2 percent (96,950) in frontier,
 - 67 percent (2,866,511) in urban areas
- They are approximately 311 public fire services agencies in the state
 - 257 of the protection districts are rural
 - 54 of the protection districts are city departments
- Approximately 3,700 career firefighters
- More than 11,000 volunteer firefighters
- The largest area in Oregon served by a single fire district is 843 square miles of rural land and is served by 20 volunteer fire service personnel with an annual budget of approximately \$140,000.

Technical Challenges

The proposed rule would introduce a wide array of new compliance requirements that apply to not only public and private firefighters but also emergency medical services, technical rescue operations, and equivalent emergency services. In addition to the anticipated fiscal impact, the complexity of proposal rule poses several technical challenges to Oregon’s regulated community:

Training and Certification Requirements – The proposed rule, if adopted, would adopt by reference twenty-two (22) NFPA consensus standards, thereby making them enforceable by rule. In general, these NFPA standards address firefighting training, personal protective equipment (PPE), and apparatus. Compliance with these NFPA consensus standards necessitates specialized training and certification which many of Oregon’s rural and volunteer fire districts do not currently possess. The need to rapidly upskill or hire qualified personnel to meet these NFPA standards could create a significant hurdle for underfunded and under-resourced public and volunteer fire districts. Additionally, the creation of NFPA consensus standards was originally intended to promote fire safety and reduce the frequency and severity of fires. Although the organization has evolved in its 128-year history, the consensus standards developed are a culmination of best practices that do not undergo the same scrutiny of state or federal administrative rulemaking. Lastly, Oregon OSHA’s current rule addresses training requirements which correlates with the State Agency responsible for Public Safety Standards and Training.

Vehicle Preparedness and Operation – The proposed rule, if adopted, would extend public and private employer-preparedness and operational requirements to vehicles and apparatuses. Compliance requirements for vehicles and apparatuses could preclude many of Oregon’s rural fire districts and voluntary organizations from operating due to their reliance on aging fleets that may not meet new standards without substantial investment. Oregon OSHA’s current rules for firefighters have provisions regarding fire apparatus design, construction, operation, maintenance, and repair.

Pre-Incident Planning – The proposed rule, if adopted, would require all Oregon fire service employers to develop a pre-incident plan (PIP) for each location or facility (irrespective of vacancy) within its primary response area. PIPs would be required to be disseminated to all emergency responders as well as reviewed and updated annually. This specific compliance requirement would be disproportionately impactful on underfunded and volunteer emergency response organizations.

PIPs have always been an objective in Oregon to focus on, but the reality is that the urban departments have better resources to effectively develop and maintain them, since urban departments often focus on the high hazard industries within their response area. Conducting and maintaining PIPs to the level in the proposed rule would not be achievable for all fire services in Oregon, especially for rural fire districts that have many structures within their jurisdiction, but due to a lower population and a smaller tax base, may only have minimal levels of volunteer staff.

One local fire district shared:

“Not counting highways, railways, waterways, caves, gorges, mountains, and cliffs, we have 27,000 structures needing assessment as we interpret the definition. If we spend 1 hour per structure (which is pretty ambitious if you account for drive time, the actual assessment, and data entry) we will spend the next 3.082 years doing this and NOTHING ELSE.”

Recently shared data using their most recent Community Risk Assessment to estimate the cost to conduct assessment of vacant buildings and other critical infrastructure within the city:

“I added the following to account for staff time to input data into the CAD & supplemental software we use to access preplans at 1 hour per assessment (1013 hours) plus 1007 hours for assessments = 2021.

2021 hours is essentially a full-time employee. Our cost for a Deputy Fire Marshal (salary plus benefits) = approximately \$215,000.00.”

Medical Surveillance, Physical Fitness, and Mental Health – The proposed rule, if adopted, would require public and private employers in Oregon to develop a comprehensive medical surveillance program that covers all responders. Additionally, this new rule would require that physical and behavioral evaluations be provided at least every two years for each responder. The prescriptive nature of this specific compliance requirement would be disproportionately impactful on underfunded and volunteer emergency response organizations. Oregon OSHA currently has requirements relating to medical surveillance and physical fitness.

Fiscal Challenges

The fiscal impact of the proposed rule on Oregon’s public and private emergency service providers, particularly those in rural areas that rely on voluntary workers cannot be overstated:

Financial Constraints of Oregon Fire Districts – According to stakeholder provided data, Oregon fire districts have an annual budget ranging from approximately \$16,000 to \$172,650,000. 60 percent of fire districts in Oregon have an annual budget of less than one million dollars. The proposed rule would be disproportionately impactful to underfunded rural fire districts and volunteer brigades.

Federal OSHA’s Incomplete Fiscal Impact Assessment – The fiscal impact assessment conducted by federal OSHA of \$15,027 for an annualized cost for small public organization of the proposed rule does not consider the unique financial and operational realities faced by public entities and volunteer organizations within Oregon. These entities, which are crucial to our state's emergency response capabilities, are subject to Oregon OSHA's jurisdiction and face distinct challenges that differ from those of private sector organizations. Federal OSHA does not have jurisdiction over public entities or volunteer operations and may not be familiar with the unique facets that public entities encounter. For example, many rural departments do not have the budget to purchase new equipment and instead rely on used equipment from larger organizations. While that equipment is still usable and still meet the standards from when it was manufactured, these rules would effectively prevent the use of used equipment if it does not meet the updated NFPA standards which the proposed federal OSHA rule would require. Therefore, federal OSHA did not completely assess the fiscal impact of this proposed rule on these entities in its rulemaking impact analysis. The absence of a comprehensive evaluation of the impact on these public and volunteer organizations raises questions about the feasibility of implementing the proposed standard, without compromising their ability to provide essential emergency services, or causing a significant economic dislocation of rural fire departments from Oregon’s fire service industry.

Oregon Fire District Survey

Oregon OSHA engaged with the fire service community and provided a survey on its website to better understand the anticipated impact of the proposed emergency response standard on Oregon’s fire protection industry. While this proposed rulemaking has a multitude of new topic areas, this survey focused on capturing those items that Oregon OSHA has no direct information on regarding operations including: demographic information, self-contained breathing apparatus (SCBA) equipment, fire

apparatuses, and pre-incident planning activities per the proposed federal OSHA emergency response standard. The survey data was collected between March 12 to April 15, 2024.

Response Results and Discussion

The respondent data shows that departments with less than 41 firefighters and serving smaller communities have older equipment and plan on retaining the equipment for longer periods of time. Of the respondents to this survey, the majority – 66 percent – have 40 or fewer employees (Figure 1). Most fire departments in Oregon – about 58 percent – are a mix of both volunteer and career firefighters. However, there are more that rely solely on volunteers than career firefighters (Figure 2).

Figure 1: Oregon fire department size by employment

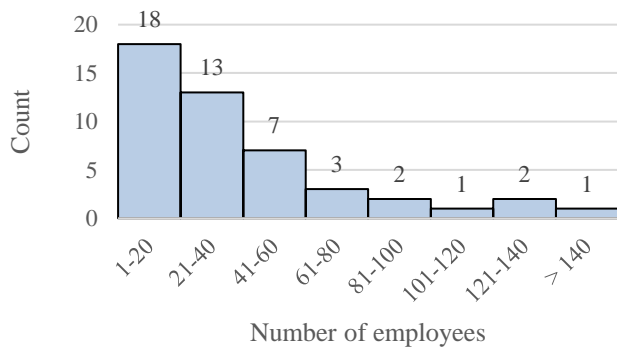


Figure 2: Fire department type

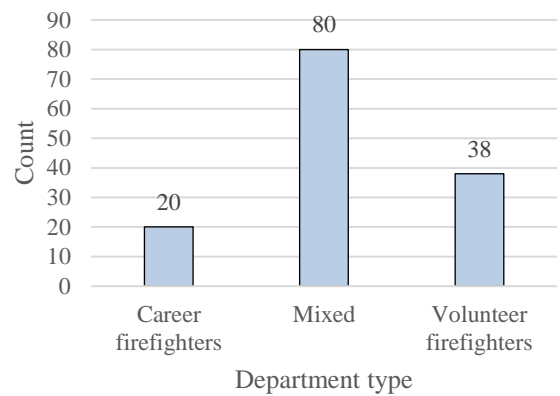


Table 1 shows the service level (based on the population of the community served) of Oregon fire departments by the type of service. Smaller communities tend to be served by all volunteer or mixed firefighters.

Table 1

Department type	Fewer than 10,000	10,001 to 50,000	50,001 to 100,000	100,001 or more	Grand Total
Career firefighters	0	7	3	10	20
Mixed	45	29	3	3	80
Volunteer firefighters	34	3	0	0	38
Grand Total	79	39	6	13	138

Table 2 shows that departments serving fewer people have older self-containing breathing apparatus (SCBA) respirator stock. Of those who responded to the question, 78 percent have SCBA respirators that are three or more years old.

Table 2

Service level	Less than 1 year	1 year to fewer than 3 years	3 years to fewer than 5 years	5 years or more	Grand Total
Fewer than 10,000	5	9	23	40	79
10,001 to 50,000	3	6	10	19	39
50,001 to 100,000	0	4	0	2	6
100,001 or more	0	2	2	3	13
No answer	0	0	0	0	1
Grand Total	8	21	35	64	138

Table 3 shows how many years fire departments expect it will be until they replace their stock of SCBA respirators. Fire departments serving smaller communities have a longer estimated service life for their SCBA respirators. For example, about 65 percent of departments serving communities of less than 10,000 people expect their SCBA respirators to be fully replaced in more than five years.

Table 3

Service level	Less than 1 year	1 year to fewer than 3 years	3 years to fewer than 5 years	5 years or more	Grand Total
Fewer than 10,000	6	7	12	52	80
10,001 to 50,000	2	6	9	21	39
50,001 to 100,000	0	0	0	6	6
100,001 or more	0	0	2	5	13
No answer	0	0	0	0	1
Grand Total	7	12	23	84	139

Table 4 shows that fire departments serving smaller communities have a longer estimated life for their fire apparatus stock. Of respondents, 60 percent of departments servicing areas of fewer than 10,000 people estimate their fire apparatus stock is 10 or more years old, whereas 49 percent of departments servicing areas with more than 10,000 people estimate their fire apparatus stock is 10 or more years old.

Table 4

Service level	Less than 1 year	1 year to fewer than 5 years	5 years to fewer than 10 years	10 years or more	Grand Total
Fewer than 10,000	2	8	22	45	82
10,001 to 50,000	1	5	9	19	44
50,001 to 100,000	0	3	2	1	6
100,001 or more	0	1	4	3	15
No answer	0	0	0	0	1
Grand Total	3	17	37	68	151

Table 5 shows how long fire departments expect it will be until they replace their current stock of fire apparatus. Of respondents, 58 percent of fire departments servicing communities with fewer than 10,000 people expect to replace their current stock of fire apparatus in 10 or more years. About 48 percent of fire departments servicing communities with more than 10,000 people expect to replace their current stock of fire apparatus in 10 or more years.

Table 5

Service level	Less than 1 year	1 year to fewer than 5 years	5 years to fewer than 10 years	10 years or more	Grand Total
Fewer than 10,000	2	8	22	45	83
10,001 to 50,000	1	5	9	19	45
50,001 to 100,000	0	3	2	1	6
100,001 or more	0	1	4	3	15
No answer	0	0	0	0	1
Grand Total	3	17	37	68	150

Table 6 shows that of respondents, most of the fire departments in Oregon, regardless of size, have only completed “Pre-Incident Planning” in a small percentage of required facilities and locations. About 66 percent of the fire departments have completed “Pre-Incident Planning” in less than 10 percent of locations and facilities. Less than 7 percent have completed “Pre-Incident Planning” in more than 75 percent of locations and facilities.

Table 6

Service level	Less than 10 percent	11 percent to 50 percent	51 percent to 75 percent	76 percent or more	Grand Total
Fewer than 10,000	50	12	2	6	79
10,001 to 50,000	16	7	1	0	39
50,001 to 100,000	2	4	0	0	6
100,001 or more	2	2	1	1	13
No answer	0	0	0	0	1
Grand Total	70	25	4	7	138

Table 7 shows how much fire departments estimate it will cost to complete all “Pre-Incident Planning”. Most respondents – about 47 percent – believe it will cost between \$25,000 and \$100,000 to complete all the required pre-incident planning within 3 years.

Table 7

Service level	Less than \$25,000	\$25,000 to \$100,000	\$100,001 to \$500,000	More than \$500,000	Grand Total
Fewer than 10,000	19	41	8	2	79
10,001 to 50,000	2	7	14	1	39
50,001 to 100,000	0	2	2	2	6
100,001 or more	1	0	3	2	13
No answer	0	0	0	0	1
Grand Total	22	50	27	7	138

Oregon OSHA's survey of fire organizations and discussions with its Fire Service Advisory Committee highlighted challenges regarding the technical and fiscal feasibility of complying with the proposed federal OSHA rule. Incorporating several NFPA consensus standards by reference and the stringent requirements for pre-incident planning and training is expected to impact a majority of fire departments, potentially leading to a reduction in protective services. If there is a reduction in protection services, there will be a direct effect on insurance premiums which will result in an increase in cost for communities and possibly make them uninsurable. Oregon's wildfires have been increasing over the years, and the reduction in protective services could result in large scale fire losses and an increase in large fire conflagrations.

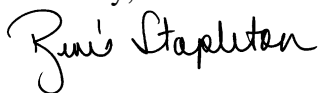
Lastly, the reduction on protection services; which are often relied upon by employers to respond to workplace incidents, there may be an increase in workplace fatalities due to an increase in emergency response times. As previously mentioned, much of Oregon is rural and employers rely heavily on their local emergency service providers to respond to workplace accidents and illnesses and a reduction in services could result in loss of life.

Conclusion

Oregon OSHA urges federal OSHA to consider the unique challenges faced by Oregon's public and private emergency service organizations, particularly those in rural areas, in the implementation of the proposed Emergency Response Standard. We recommend a thorough evaluation of the rule's potential impacts on these stakeholders and the exploration of alternative approaches that balance safety improvements with the practical capabilities of Oregon's emergency response community.

For further discussion or clarification, please feel free to contact me.

Sincerely,



Renée Stapleton
Administrator, Oregon OSHA