SDAO Special Districts Association of Oregon

Review of Proposed Federal OSHA Emergency Response Rules

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

This change in federal rules has wide ranging implications for all emergency service providers. Currently Federal OSHA does not have jurisdiction over local government employees. The way that this will affect these local government employees is through the state agreements with Federal OSHA that will require the state to adopt rules that are "as effective as" the Federal rules. South Carolina sued in Federal Court to determine what this means as Federal OSHA has begun to interpret this to appear more as mirroring the federal standard. https://governor.sc.gov/news/2022-08/gov-henry-mcmaster-sues-biden-administrations-osha Oregon OSHA's Administrator Renee Stapleton says she has great concerns that these rules will be adopted and will require them to come into alignment with Federal OSHA leading to compliance challenges for smaller agencies.

Federal OSHA utilized the National Advisory Committee for Occupational Safety and Health (NACOSH) to help develop the rules. This group is made up of "labor and management representatives, career and volunteer emergency management associations, other federal agencies and state plans, national consensus standard organizations, and other general industry skilled support workers." https://www.osha.gov/advisorycommittee/nacosh

Based on my experience as a firefighter and Oregon OSHA Sr. Compliance Officer it is my opinion there are many provisions that are entirely unattainable for nearly every agency in Oregon. Two parts that will be infeasible are the identification of all vacant and unsafe structures in the primary response area of an agency and the requirement for medical physicals that are as effective as the NFPA 1582 physical. Beyond that, the prescriptive nature of these rules yields a very inflexible environment for emergency services to work under. My other concern is that Federal OSHA is using the NFPA and ANSI consensus standards to supplement their own rules thereby creating a minimum standard out of them. These NFPA standards were sparingly used in the creation of Oregon OSHA's firefighter rules for the very reason they are unattainable for many agencies and most create pathways for a compliance officer to branch into other standards and documents not addressed in the rule. I would oppose this proposed rule change in general based on these examples alone. Unfortunately, Federal OSHA included a severability clause in these rules which is something I have never seen before in OSHA rulemaking. Therefore, we will need to object to each section of the rule to make a difference.

For this document I used my work experience and the explanatory statements from Federal OSHA to provide the reader a section-by-section discussion of the proposed rules. I encourage any agency, association, or concerned individual to make public comment regarding this rule and how it will affect public safety in their community. Federal OSHA is accepting comments until May 6th, 2024, through the website. https://www.regulations.gov/docket/OSHA-2007-0073

Summary written and opinions provided by Jason Jantzi, Sr. Risk Management Consultant – Public Safety
jjantzi@sdao.com

Summary of rule language:

1910.155 Scope and Application

(a) Scope – Workplace Emergency Response Employer (WERE) and Emergency Service Organizations (ESO). WERE is defined as an employer who has a workplace emergency response team that responds to emergency incidents to provide services such as firefighting, emergency medical service, and technical search and rescue. ESO is defined as an organization that provides one or more of the following services as a primary function: firefighting, emergency medical service, and technical search and rescue; or the employees perform the emergency service(s) as a primary duty for the employer. All fire departments and fire districts would be covered by this definition, some of the health districts that operate ambulance services may also be included as would private ambulance. I also believe based on the wildland and WUI work that many Oregon state agencies do, they may also be included in this definition, but would most certainly be included in the WERE definition. A WERE employer needs to determine what portions of this rule apply to them. My focus for this discussion is primarily on ESOs. There is another potential group that appears to fit within this definition as either a WERE or an ESO. That would be tactical, or search and rescue teams run by either private organizations or law enforcement agencies as they provide "technical search and rescue" services as well as EMS in certain situations. Federal OSHA gave an example of this by using a tactical team, such as a tactical response team using rope for tactical access to above- or below-grade locations as part of a hostage rescue operation. These employees would not be covered by the proposed rule during the hostage rescue. They would, however, be covered when they are designated to provide rope rescue during non-law enforcement activities, such as helping to secure a person who is trapped on a scaffold. Ski patrols and lifeguards using specialized skills were also discussed in the rulemaking. If these individuals are not included in the main WERE or ESO rules they would likely be considered a skilled support worker (SSW) and would be included in the rules of subsection (p).

1910.156 Emergency Response

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

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

environment. OSHA intends for the assessment to be a systematic evaluation of the facility to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. It would include risks and vulnerabilities associated with the principal structures; processing facilities; significant storage; hazardous materials and processes; critical infrastructure such as available water supply, electric power generation and transmission, and routine and emergency communication; and potential for damage to the environment.)

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

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

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

(3) The ESO must perform a community or facility vulnerability assessment of hazards within the primary response area where the ESO is expected to respond. The assessment shall identify each vacant structure and location that is unsafe for responders to enter. Responders must be notified of these structures and locations. The ESO must identify all facilities that are subject to the Community Right to

Know Act. These locations and structures must be included in the vulnerability assessment. OSHA believes this assessment should include a *"systematic evaluation of the community it services to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. Such assessment would include risks and vulnerabilities associated with the prevailing residential structures; and principal structures such as schools, colleges, and universities; hospitals and medical centers; large residential structures and hotels; transportation, manufacturing, processing, and warehousing facilities; and retail. It would also include an assessment of the community's critical infrastructure such as available water supply, electric power generation and transmission, routine and emergency communication, and highways and railways. Natural features such as bodies of water, caves, gorges, mountains, and cliffs would also need to be assessed."* The ERP requires ESOs to develop mutual aid agreements to ensure adequate resources are available to respond to foreseeable incidents. The ESO must notify responders to any changes in the program and make it available to responders, their representatives, and OSHA.

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

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

(8) This section would require the ESO to identify where their agency is unable to provide the "required" level of service to their community. When this occurs, they must have in place a mutual aid agreement with a neighboring agency that is able to provide the services. While this is a common practice the examples that are provided concern me knowing the geography of the Western United States not to mention the budget constraints and personnel limitations. OSHA envisions that if the ESO is unable to provide a service, it would *"develop mutual aid agreements with WEREs or other ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents."* This statement is achievable if the communities are allowed to define what that expected level of service is. It is the examples that Federal OSHA provided that began to start me thinking about how they view "level of service" in the country. "*For example, if an ESO identifies that its community or facility has tall structures*

that need an aerial ladder or elevated platform vehicle for firefighting or rescue, but does not have such a vehicle, the ESO would need to establish a mutual aid agreement with a neighboring ESO with an aerial ladder or elevated platform vehicle to provide it when needed. Another example is an ESO that only provides EMS at the Basic Life Support level. The ESO would need to establish a mutual aid agreement with a neighboring ESO to provide EMS at the Advanced Life Support level to its primary response area." There are many areas of the country where a higher level of service would be hours away and a mutual aid agreement would have little to no impact. A current example of this would be the regional hazmat teams stationed around the state. While there is no other way to accomplish this, these regional teams often have 30 – 90-minute response times simply due to distance and terrain covered.

(e) Team Member and Responder Participation. The ESO must involve responders in developing the ERP. The ESO must request input from responders regarding modifications to the ESOs facilities. This likely can be accomplished through a safety committee or safety meeting process. It would only require regular discussions with these members to change and update the ERP as items are discovered.

(f) WERT and ESO Risk Management Plan.

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

(2) The RMP must include a policy for extraordinary situations that allows for rescue of a person in "imminent peril" after conducting a risk assessment. This section puts in rule the recognition that there are circumstances where an emergency services employee must take action to save the life of an individual. The explanatory discussion states that *"after making a risk assessment determination based*

on the team member or responder's training and experience, is permitted to attempt to rescue a person in imminent peril, potentially without benefit of, for example, PPE, tools, or equipment. A team member's or responder's decision to not use a risk control technique that has been identified in the risk management plan is to be made on a case-by-case basis and must have been prompted by legitimate and truly extenuating circumstances. These circumstances typically have a time constraint that would make it infeasible to implement the risk control technique and rescue a person in imminent peril. This proposed provision could allow, for example, an ambulance crew, without benefit of firefighting PPE, to perform a rescue of a person endangered by fire who would potentially sustain significant injury or death if they did not take immediate action."

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

(g) Medical and Physical Requirements.

(1) Federal OSHA believes that *"fitness and medical surveillance requirements are a highly effective means of reducing work-related injuries, illnesses, and fatalities and improving the health of team members and responders."* The ESO must establish minimum medical requirements for responders based on the level of service performed and the tiers of qualifications. Skilled Support Workers (SSW) team will not be required to have medical requirements. The ESO must maintain a confidential record of duty restrictions, occupational injuries and illnesses, and exposures to products of combustion, known or suspected toxic products, contagious diseases, and dangerous substances (there is no definition of this, so we fall to Websters definition) for each responder. This rule has not contemplated how the use of medical and behavioral health evaluations would impact issues under the Americans with Disabilities Act (ADA) once a condition was discovered. "*The physical fitness and physical and mental medical requirements in paragraph (g) serve two purposes: (1) ensuring that responders are physically and mentally capable of performing their duties without injury to themselves or their fellow responders, and (2) identifying and addressing physical and mental health effects resulting from emergency response activities."* Federal OSHA is using statements made by the major fire service associations (IAFC, IAFF, NVFC) that recommend physicals to set the minimum standard to require one calling it *"industry consensus."* What OSHA believes to be appropriate minimum required evaluations are described in this statement, *"The proposed baseline medical examination focuses on health hazards that are common to all team members and responders, with potential additional requirements based on the particular type and level of service(s) performed, while the proposed medical surveillance requiring a full NFPA 1582-compliant physical is reserved for those team members and responders exposed to combustion products above a specific action level. As explained in section VII.C., Costs of Compliance, OSHA expects that only structural and wildland firefighters (emphasis added) will meet the threshold for the full NFPA 1582 requirements."* The medical and mental health evaluation should consider the responders exposure to the variety of hazard types and evaluate them accordingly.

(2) Medical evaluations required by this are to be provided at no cost to the responder at least every two years unless the provider deems that more often is necessary. The ESO must establish a medical evaluation program for each responder. This evaluation is similar to the one for using SCBA but is more specific and must include: Medical history with an emphasis on cardiac and respiratory disease, a physical examination with an emphasis on cardiac, respiratory and musculoskeletal systems, spirometry, and assessment of heart disease risk (blood pressure, cholesterol levels, other heart disease factors), and

any additional screening the provider deemed appropriate. *"The purpose of medical evaluations for team members and responders is to determine, where reasonably possible, if the individual can perform emergency response duties without experiencing adverse health effects and to determine the team member's and responder's fitness to use PPE appropriate to their designated duties…Current §1910.156(b)(2) also specifies that the employer ''shall not permit employees with known heart disease, epilepsy, or emphysema, to participate in fire brigade emergency activities unless a physician's certificate of the employees' fitness"* The ESO will establish procedures for "the length of time that absence from duty due to injury or illness requires a responder to have a return-to-duty evaluation" by the provider (this seems like an employment concern and not a safety and health concern).

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

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

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

(6) The ESO must establish a health and fitness program for responders that includes: a designated individual to oversee the program, periodic assessment of the responder's health, exercise training, and education and counseling regarding health and wellness. *"OSHA intends these provisions to ensure that responders have the opportunity, means, and knowledge necessary to maintain fitness for duty and to*

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

(h) Training

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

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

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

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

(1) The ESO must provide facilities for decontamination, disinfection, cleaning, and storage of PPE. If the PPE is to be decontaminated off-site, then the ESO must provide for the bagging and storage of the dirty equipment. *"The manner of compliance with proposed paragraph (j)(1)(ii) would vary depending on an ESO's facility and manufacturers' instructions. However, basic cleaning and gross decontamination typically involves using a utility hose and brushes, a large sink with a spray nozzle, appropriate cleaning chemicals and disinfectants, and drying racks. Some ESOs may choose to install commercial-style washing machines or extractors for PPE. Alternatively, if PPE is to be decontaminated off-site, ESOs must provide for bagging and storage of contaminated PPE while it is still at the ESO facility."* The rule now addresses fire poles, slides, and chutes specifically. *"ESO must ensure that each fire pole has a landing cushion that is at least 30 inches in diameter, has a contrasting color to the surrounding floor, and has impact absorption to reduce the likelihood and severity of injury. The minimum diameter requirement is meant to accommodate responders of varying shapes and sizes. The contrasting color would enhance visibility to the potential tripping hazard on the floor. The landing cushion would also need to be made of a material with sufficient thickness to reduce the impact of a responder landing on the cushion."* The opening that provides access to the chute, pole, or slide must be appropriately protected in a way that meets the standards in the sub-division D Walking-Working Surfaces to avoid unintended falls. Federal OSHA is seeking input from stakeholders about prohibiting these devices entirely and providing a phase-in period where ESO will be required to remove them from service.

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

administratively through polices and standards that require responders to remove PPE before entering live areas of a station.

(k) Equipment and PPE.

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

(2) Personal Protective Equipment (PPE). The ESO must conduct a hazard assessment for the selection of ensemble elements and protective equipment based on the level of service provided to the community.

The protective equipment, protective ensembles, and protective elements must be provided at no cost to the responders and must be designed to provide protection to the responders based on the hazards they are likely to encounter. The PPE must also comply with the requirements laid out in subpart I of 29 CFR 1910. This includes a requirement that the PPE is properly fitted to the individual. The fire service is used to this standard because of the requirements in the respiratory protection rules requiring a fit test to ensure the tight-fitting face piece is sized appropriately. *"OSHA's position that ''properly fits'' means the PPE is the appropriate size to provide the team member or responder with the necessary protection from hazards and does not create additional safety and health hazards arising from being either too small or too large."* PPE provided by the ESO must comply with NFPA 1951 Standard on Protective Ensembles for Technical Rescue 2020 edition, NFPA 1952 Standard on Surface Water Operations Protective Clothing and Equipment 2021 edition, NFPA 1953 Standard on Protective Ensembles for Contaminated Water Diving 2021edition, NFPA 1971 Standard on Protective Ensembles for Structural Firefighting and Proximity Firefighting 2018 edition, NFPA 1977 Standard on Protective Clothing and Equipment for Wildland Firefighting and Urban Interface Firefighting 2022 edition, NFPA 1981 Standard on Open-circuit SCBA for Emergency Services 2019 edition, NFPA 1982 Standard on Personal Alert Safety Systems (PASS) 2018 edition, NFPA 1984 Standards on Respirators for Wildland Firefighting Operations and Wildland Urban Interface Operations 2022 edition, NFPA 1986 Standard on Respiratory Protection for Tactical and Technical Operations 2023 edition, NFPA 1987 Standard on Combination Unit Respirator Systems for Tactical and Technical Operations 2023 edition, NFPA 1990 Standard on Protective Ensembles for Hazardous Materials and CBRN Operations 2022 edition, NFPA 1999 Standard on Protective Clothing and Ensembles for Emergency Medical Operations 2018 edition, and ANSI 207-2011 ANSI for High-Visibility Safety Vests 2011 edition. Any protective equipment that is self-selected by the responder must also comply with these standards. The section on respirators appears to envision the use of different types of respirators beside the traditional SCBA for firefighting. One example provided is the use of an air purifying respirator, like a half-face cartridge style. *"Air-purifying respirators are ineffective in IDLH atmospheres because they do not provide protection from the inhalation of gases and vapors, particularly the superheated gases present during fires. They are, however, appropriate for use by team members and responders performing duties such as post-fire overhaul, fire investigation, collapsed building search and rescue, trench/excavation rescue when exposure to respirable crystalline silica is possible, and for emergency medical operations where an airborne infectious disease is known or suspected to be present."* This leads me to believe that federal OSHA may begin enforcement when respirators are not used for operations like those listed above unless the agency can provide air monitoring showing that there are no airborne hazards. *"Proposed paragraph (k)(2)(vii) would require that each ESO ensure that each team member and responder properly uses or wears the protective ensemble, ensemble elements, and protective equipment whenever the team member or responder is exposed, or potentially exposed to the hazards for which it is provided. PPE is effective only when it is worn and used properly. This provision makes clear that the ESO is not only responsible for providing required PPE and equipment, but must also ensure that they are used whenever exposure to the hazard for which they are provided is reasonably foreseeable."*

Additionally, there is a lengthy discussion about the proper cleaning, decontamination, maintenance, and retirement of this PPE. As with most OSHA rules the standard is to follow the manufacturer's instructions for this. However, OSHA does agree that the NFPA standard of retiring PPE after 10 years may not be wholly appropriate. *"NFPA 1851, Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting (Document ID 0115, pp. 13–14), which*

calls for PPE to be retired ten years after the date of manufacture. OSHA recognizes that there are users with concerns that there may be a gap in the scientific evidence on whether PPE aged beyond the retirement schedule published in NFPA 1851 is incapable of providing the designed protection level, regardless of the amount of use. Additionally, OSHA recognizes that older PPE may still be of use for activities where the primary protective properties of the PPE are not needed, for example for some exterior activities on fire scenes, during some training scenarios, and firefighting PPE used for identification and for protection against sharp edges at vehicle accident scenes. However, there is concern that older PPE could be used in situations where it is no longer able to provide the needed protection. In the proposed rule, OSHA is not proposing specific retirement age criteria for any PPE, and instead requires that PPE be cared for and maintained in accordance with manufacturer's instructions. OSHA is seeking input in Question (k)–1 on whether the agency should specify retirement age(s) for PPE. Paragraph (k)(2)(ix) of the proposed rule would require each WERE and ESO to immediately remove from service any defective or damaged protective ensembles, ensemble elements, or protective equipment. Defective or damaged PPE is not protective and could expose team members and responders to the hazards that the PPE is supposed to be protecting against."

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

(L) Vehicle Preparedness and operation.

(1) The ESO must ensure that the vehicles are ready for safe use or be immediately removed from service. The ESO must inspect, maintain, and repair each vehicle and component parts according to the manufacturer's instructions or NFPA 1910 Standard for the Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels 2024 Edition. *"OSHA intends for the term vehicle to include any device used to transport responders and team members while performing their duties. This covers a broad range of modes of conveyance for transporting a person or people by land, water, or air. Examples include bicycles, motorcycles, snowmobiles, golf carts, utility carts, cars, trucks, buses, ambulances, watercraft, and aircraft."* The ESO

must create an inspection process that meets or exceeds the manufacturer's requirements in terms of areas of inspection as well as frequency. Vehicles must be immediately placed out of service when deficiencies that directly affect safety are identified through use or inspection. *"Examples include a bird strike on the windshield that affects the driver's visibility, a missing or broken windshield wiper during inclement weather, the driver's seat belt not functioning properly, a door not latching closed properly, loose or missing lug nuts, brakes not functioning properly, a cot retention mechanism not latching, and no heat or air conditioning in the patient transport compartment. Manufacturers' instructions and guidance from national consensus standards such as NFPA 1910, 2024 ed., offer a broad range of examples of potential deficiencies. When a safety-related deficiency is identified, the vehicle would be required to be taken out of service as soon as possible."* Once repaired the vehicle may be returned to service. One major concern that was raised and was addressed favorably by OSHA was due to their reference of NFPA 1910, Standard for Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels, 2024 ed. The concern is that this document has a recommended vehicle replacement schedule. *"OSHA recognizes that there are many variables related to the amount of use and conditions of operation for the wide variety of vehicles used by team members and working life of a particular vehicle and firm deadlines for retiring vehicles may result in costly and unwarranted replacement. Given this variability, OSHA is not proposing particular timeframes for vehicle replacement. Instead, the proposed rule requires that vehicles be inspected, maintained, and repaired as specified by the manufacturer and that any vehicle with a safety-related deficiency be immediately removed from service."* The rules incorporate NFPA 1910 by reference and this would require the inspections, maintenance, and testing to be performed by a qualified Emergency Vehicle Technician (EVT).

While the use of seatbelts is common practice, the use of a safety harness while performing patient care may not be as widespread. The rule has the requirement to use a safety harness while performing patient care while the vehicle is underway. *"A vehicle safety harness would be used in place of a seatbelt, typically in a patient transport vehicle where the EMS provider needs access to treat a patient that would not be possible while using a seatbelt. Team members and responders would be required to use the seats, seatbelts, and vehicle safety harnesses as specified in proposed paragraph (l)(2) of this section."* This would likely require a retrofit to medical transport vehicles. Vehicles that are not designed to have a restraint such as All-Terrain Vehicles, passenger seats in buses, bicycles, motorcycles, snowmobiles, boats, and personal watercraft would be exempted from this requirement.

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

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

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

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

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

are consistent with, NFPA 1500, and NFPA 1561, Standard on Emergency Services Incident Management System and Command Safety, 2024 ed."

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

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

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

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

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

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

(2) The ESO must designate an IC at all emergency incidents and use a common system known to responders. The ESO must designate a way to communicate with that IC or UC and if a location is designated a visual signal must be used to lead responders to that area. Again, OSHA places an emphasis on the safety duties of the command structure, the requirements of this section state the *"ESO would need to ensure the IC conducts a comprehensive and ongoing size-up of the incident scene that places life safety as the highest priority and conducts a risk assessment based on the size up before actively engaging the incident. Factors involved in a size-up vary depending on the type of incident (e.g., fire, EMS, technical rescue), but all size- ups need to include evaluation of the safety hazards to the person/people involved in the incident, bystanders, and team members and responders. Size-up is an ongoing process that includes a continuing evaluation of information received and assessment of the*

hazards present. When feasible, the size-up should include a 360-degree walkaround survey of the involved structure or incident scene to evaluate the incident from all angles…" The ESO must require the IC to develop an Incident Action Plan (IAP) at all times. This plan does not universally need to be a written plan. *"For the majority of incidents, the IAP is usually not a formal, written plan, although for some large-scale incidents the IC or UC may develop a written plan. Often, the IAP may only be documented on a fill-in incident management/incident command template, chart, magnetic or wipe-off board, or others means depending on the IC's preference. If a PIP was developed for the incident scene location, proposed provision (p)(2)(vi) would require that it be used in the development of the IAP."*

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

(4) On scene safety and health measures are required. These measures require the ESO to identify minimum staffing levels, ensure that there are a minimum of four responders on scene before entering an IDLH atmosphere unless a rescue is required, a minimum of two responders in visual or voice contact when entering any IDLH atmosphere (i.e., structure fire, confined space, or collapsed structure). *"OSHA recognizes that many WERTs and ESOs ''do more with less.'' The proposed provisions would require the WERE and ESO to identify the staffing needed for various types of incidents that they may respond to, potentially prompting a request for mutual aid resources, but also that they limit operations to those that can be safely performed with the team members and responders on the scene. NFPA 1710 and NFPA 1720 provide guidance on staffing levels for various types of firefighting ESOs. To be clear, OSHA is not specifying, nor recommending minimum staffing levels for emergency response vehicles, or the minimum number of team members or responders needed on an incident scene for safe incident operations, except with respect to the ''2-in, 2-out'' requirement…"* A change to past requirements is the need for 2-in, 2-out not only in structural firefighting but anywhere that is deemed IDLH. *"As part of this rulemaking, OSHA intends to delete existing paragraph (g)(4) from 29 CFR 1910.134 and insert a note there referring readers to this rule for the requirements on interior structural firefighting. WEREs and ESOs are required to continue to comply with the remaining provisions of 29 CFR 1910.134. In addition, under proposed paragraphs (p)(4)(iii) through (v), the coverage is expanded to include all IDLH atmospheres that team members and responders enter, not just interior structural firefighting. Team members and responders performing other duties, such as technical rescue in an IDLH, face many of the same hazards as those performing interior structural firefighting, and need to be afforded the same protective measures."*

Essentially whenever there is an IDLH atmosphere that requires entry into it, the ESO must have a minimum of 4 individuals on scene participating and no less than a two-person entry team that remains in visual or voice communication with each other. This section also requires the use of respiratory protection during post fire operations. *"Under proposed paragraph (p)(4)(viii), the WERE and ESO would ensure that team members and responders use NIOSH-certified respiratory protection during post-fire extinguishment activities, such as overhaul and fire investigation."*

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

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

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

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

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

(10) The ESO must provide PPE and training to all skilled support workers (SSW). OSHA will require the *"ESO to ensure that prior to participation at an incident scene, each SSW has and utilizes PPE appropriate to the task(s) to be performed; an initial briefing is provided to each SSW that includes, at a minimum, what hazards are involved, what safety precautions are to be taken, and what duties are to be performed by the SSW; an effective means of communication between the IC and each SSW is provided"* These SSWs

are defined as participants who are not affiliated with the ESO other than they respond with them to offer support functions such as a tow truck driver or bulldozer operator. The ESO becomes responsible for this individual(s) when they are utilized on-scene including *"Any additional PPE that the SSW would need to be protected at the incident scene would need to be provided by the WERE or ESO*."

(q) Standard Operating Procedures.

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

(2) and (3) The ESO must establish SOPs that describe: actions to be taken for unusual hazards (i.e., downed power lines, gas leaks, flammable liquid spills, bomb threats), how responders will operate at incidents that are beyond the capability of the ESO, systematic approach to protecting responders from contaminates and for decontamination of responders, PPE, and equipment, how responders will operate vehicles for both non-emergency and emergency operations, protocols and terminology for radio communications, procedures for operating at vacant or otherwise unsafe for responders to enter, establishing an accountability system for personnel, mayday procedures, medical monitoring and rehabilitation at emergency incidents, protecting responders from vehicle traffic on and adjacent to roadways, operating at incidents that are primarily related to law enforcement (active shooter, crime scene, and civil unrest), other *"non-emergency service responses that includes how to present themselves in uniform, PPE, vests or other apparel that clearly identifies them as fire/rescue/EMS responders and a requirement that responders wear ballistic vests if provided*."

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

are provided by the ESO. OSHA is also concerned with workplace violence experienced by workers in various aspects of providing health care, both facility-based and home-based."

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

(s) Program Evaluation. The ESO must "*evaluate the adequacy and effectiveness of the ERP at least annually, and upon discovery of deficiencies, and document when the evaluation(s) are conducted; determine if it was implemented as designed or if modifications are necessary to correct deficiencies; and identify and implement recommended changes to the ERP and provide a written timeline for correcting identified deficiencies as soon as feasible based on the program review, giving priority to recommendations that most significantly affect team member or responder safety and health."*

(t) Severability. If any provision of the standard is held invalid or unenforceable, the provision shall be severed from the standard and will not affect the remainder of the standard. This is the first time I have seen this in any OSHA rule. I assume this is in response to recent court decisions striking down OSHA rules. *"The severability provision, paragraph (t) of the proposed rule, serves two purposes. First, it expresses OSHA's intent that the general presumption of severability should be applied to this standard; i.e., if any section or provision of the proposed rule is held invalid or unenforceable or is stayed or enjoined by any court of competent jurisdiction, the remaining sections or provisions should remain effective and operative. Second, the severability provision also serves to express OSHA's judgment, based on its technical expertise, that each individual section and provision of the proposed rule can continue to sensibly function in the event that one or more sections or provisions are invalidated, stayed, or enjoined; thus, the severance of any provisions, sections, or applications of the standard will not render the rule*

ineffective or unlawful as a whole. Consequently, the remainder of the rule should be allowed to take effect. With respect to this rulemaking, it is OSHA's intent that all provisions and sections be considered severable. In this regard, the agency intends that: (1) in the event that any provision within a section of the rule is stayed, enjoined, or invalidated, all remaining provisions within shall remain effective and operative; (2) in the event that any whole section of the rule is stayed, enjoined, or invalidated, all remaining sections shall remain effective and operative; and (3) in the event that any application of a provision is stayed, enjoined, or invalidated, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law. Although OSHA always intends for a presumption of severability to be applied to its standards, the agency has opted to include an explicit severability clause in this standard to remove any potential for doubt as to its intent. OSHA believes that this clarity is useful because of the multilayered programmatic approach to risk reduction it proposes here. The agency has preliminarily determined that the suite of programmatic requirements described in the Summary and Explanation of the Proposed Rule, section V. of this preamble, is reasonably necessary and appropriate to protect emergency responders from the significant risks posed by their workplace activities. While OSHA preliminarily finds that these requirements substantially reduce emergency responders' risk of occupational injury and illness when implemented together, the agency also believes that each individual requirement will independently reduce this risk to some extent, and that each requirement added to the first will result in a progressively greater reduction of risk. Therefore, it is OSHA's intent to have as many protective measures implemented in as many workplaces as possible to reduce emergency responders' risk of occupational exposure to injury, illness, and death. Thus, should a court of competent jurisdiction determine that any provision or section of this standard is invalid on its face or as applied, the court should presume that OSHA would have issued the remainder of the standard without the invalidated provision(s) or application(s). Similarly, should a court of competent jurisdiction determine that any provision, section, or application of this standard is required to be stayed or enjoined, the court should presume that OSHA intends for the remainder of the standard to take effect. See, e.g., Am. Dental Ass'n v. Martin, 984 F.2d 823, 830–31 (7th Cir. 1993) (affirming and allowing most of OSHA's bloodborne pathogens standard to take effect while vacating application of the standard to certain employers)."

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