Analysis of Proposed Federal OSHA Emergency Response Rules

Source: OSHA Emergency Response Rulemaking
Regulations: 29 CFR 1910.155 and 156

This document supplements my oral testimony provided to the committee on November 15, 2024, and includes more specific examples. Drawing from my experience as a firefighter/EMT-Intermediate, Oregon OSHA Senior Compliance Officer, and Public Safety Senior Risk Management Consultant for Oregon's public safety districts, I provide a section-by-section discussion of the proposed rules, incorporating explanatory statements from Federal OSHA.

General Environment Affecting Oregon Emergency Service Organizations (ESOs)

Oregon covers approximately 98,500 square miles, with cities and towns occupying about 2,000 square miles. The state includes 890 square miles of inland water and 296 miles of ocean coastline. The largest fire district serves 843 square miles of frontier and rural areas with a population of 2,000, staffed by fewer than twenty volunteer firefighters and an annual budget of around $75,000. In contrast, the largest district by staffing and budget covers 388.5 square miles of metropolitan, suburban, and rural areas, serving an estimated population of 547,142 in 2022, with 605 career firefighters, sixty volunteers, and a budget of approximately $73 million.

Public safety agencies in Oregon are funded by constitutionally limited property taxes, which can only be increased through voter-approved temporary operating levies. Of the 311 fire service agencies, 257 are rural fire protection districts, and fifty-four are city fire departments. Among the rural districts, 144 (56%) have annual budgets under $500,000, and 50 (19.5%) have budgets under $100,000.

The Oregon Safe Employment Act generally does not distinguish between career and volunteer fire agencies, except in rare cases where volunteer firefighters are not covered by workers' compensation insurance. This circumstance affects less than 1% of ESOs in Oregon. The State of Oregon has approximately 3,500 career firefighters and 9,000 volunteers. The paperwork burden of these rules, estimated at 173 hours per year by multiple law firms, minimally impacts operational safety but could deter individuals from volunteering, reducing community protections.

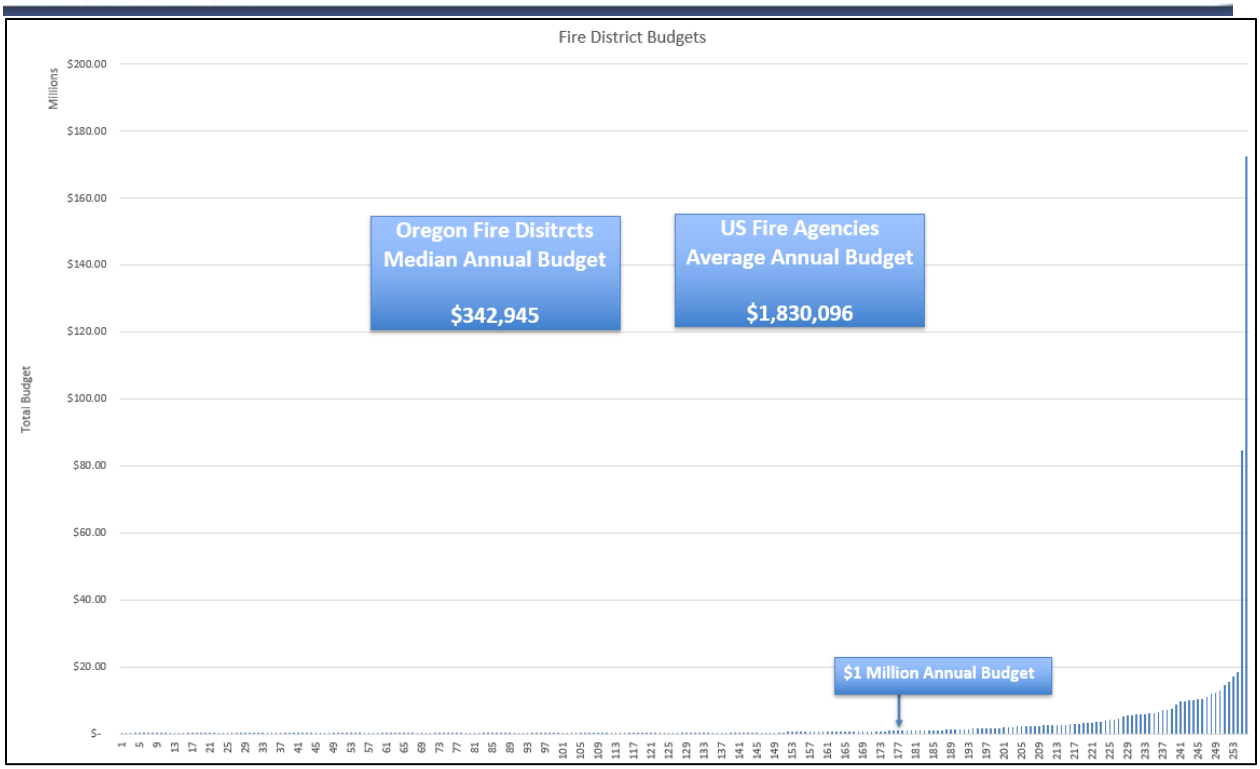

Figure 1 - Annual Fire District Budgets Reported to SDAO 2023

Impact of Penalty Structure Changes

On January 1, 2024, Oregon OSHA increased penalties to comply with Federal OSHA requirements, raising fines by approximately 1000% due to Oregon Senate Bills 592 and 907. Penalties now range from $1,000 to over $250,000, increasing annually based on the Western CPI. Oregon does not distinguish between private and public employers in enforcement, contrary to Federal OSHA guidance, potentially leading to negative budget effects and service cuts in public safety organizations.

Concerns with NFPA Standards Incorporation

The incorporation of NFPA standards by reference poses challenges. Oregon OSHA's enforcement of these standards, which often reference other NFPA standards and manufacturer documents, can lead to extensive citations and penalties. For example, NFPA 1582 references NFPA 1500, 1561, and 1584 with must or shall statements, all of which become part of the rule language. This was confirmed by Oregon OSHA's Administrator during the Oregon Governor's Fire Policy Council meeting in April 2024. Compliance here would require reviewing over 3,000 additional pages of information.

Summary of Rule Language Analysis and Opinions

1910.155 Scope and Application

(a) Scope – Workplace Emergency Response Employer (WERE) and Emergency Service Organizations (ESO)

This section's scope is quite broad, encompassing organizations not traditionally considered ESOs.

- **WERE**: Defined as an employer with a workplace emergency response team that handles incidents like firefighting, emergency medical services, and technical search and rescue. These include Amazon, many large manufacturers, many Ports, and schools and colleges.
- **ESO**: Defined as an organization whose primary function includes one or more of the following services: firefighting, emergency medical services, and technical search and rescue, or where employees perform these services as a primary duty. This could also include Amazon warehouses that employ EMS providers.

Based on the language and explanatory statements, all fire departments and districts in Oregon would fall under this definition. This includes some health districts operating ambulance services and private ambulance services. Additionally, many state agencies in Oregon involved in wildland and WUI work would be included. Tactical or search and rescue teams from private organizations or law enforcement agencies, providing technical search and rescue and EMS, would also fit within this definition. If not covered under the main WERE or ESO rules, they would likely be classified as skilled support workers (SSW) under subsection (p).

All these organizations in Oregon have both paid and volunteer staff. The Oregon Safe Employment Act mandates no distinction between paid and volunteer staff under workers' compensation rules. These federal rules should be limited to Federal OSHA's jurisdiction, excluding local and state government workers, allowing states to regulate based on their demographics and geography.

1910.156 Emergency Response

(b) Definitions

Most definitions are familiar to public safety professionals. Continued discussions with emergency response organizations and other affected stakeholder are encouraged to clarify any unclear or ill-defined terms.

(d) ESO Establishment of ERP and Emergency Services Capability

(1) and (2)
The ESO must develop a written Emergency Response Program (ERP) that includes an up-to-date copy of all written plans and procedures. This means the ERP must be reviewed and updated as necessary to reflect changes in conditions, facilities, and processes within the response area, but at a minimum, it must be reviewed annually. OSHA believes that maintaining these procedures in a central plan promotes a clear understanding among responders and ensures accessibility for supervisors and employees. Additionally, paragraphs (9) and (10) require the ESO to archive the previous five years of ERP documentation, including any changes made. This could lead to the need for archiving thousands of pages, particularly in fast-growing and evolving regions. Oregon, along with many other states, has public records laws that grant the public access to these documents. These laws require organizations to store, provide access to, and distribute these records upon request within a reasonable time limit. This added administrative responsibility appears excessive and, for smaller organizations, often infeasible both economically and technologically.

(3)
The ESO must conduct a community or facility vulnerability assessment to identify hazards within the primary response area. This assessment should identify each vacant structure and location unsafe for responders to enter, and responders must be notified of these hazards. The ESO must also identify all facilities subject to the Community Right to Know Act and include them in the vulnerability assessment. OSHA expects this assessment to systematically evaluate the community to determine the potential impact of emergency incidents, the severity of these impacts, and the resources needed for mitigation. This includes assessing risks associated with residential structures, schools, hospitals, transportation facilities, and critical infrastructure like water supply and power generation. Natural features such as bodies of water and mountains must also be assessed. Oregon OSHA has clarified that this assessment will also include homeless encampments and dumping sites where serious hazards may be present. The ERP requires ESOs to develop mutual aid agreements to ensure adequate resources are available for foreseeable incidents. Responders must be notified of any changes to the program, and it must be accessible to responders, their representatives, and OSHA.

(4)
This section requires the ESO to identify and assess vacant and unsafe structures. OSHA

believes that each vacant structure and unsafe location must be clearly marked to notify responders. Possible means of notification include installing signs or painting warning symbols visible to responders before entry or maintaining information at the emergency dispatch center. The term “vacant” indicates that no person is expected to be inside the structure. OSHA believes responders should only enter unsafe structures during emergencies to perform feasible rescues.

The state of Oregon covers approximately 98,500 square miles, with cities and towns occupying around 2,000 square miles. The state includes about 890 square miles of inland water and 296 miles of ocean coastline. Over three hundred fire service agencies serve roughly 20,100 square miles (21%) of the state. More than one hundred fire agencies have primary response areas exceeding fifty square miles, and over fifty agencies cover more than one hundred square miles. Most of these organizations are volunteer based, often with a paid fire chief.

Tualatin Valley Fire and Rescue, the largest fire district in Oregon by budget, operates with an annual budget of approximately $73 million and covers a primary response area of about 388.5 square miles, ranging from metropolitan to rural areas. In 2022, the district served an estimated population of 547,142, including the cities of Beaverton, Durham, King City, Newberg, North Plains, Rivergrove, Sherwood, Tigard, Tualatin, West Linn, and Wilsonville. This area, primarily in Washington County, also includes parts of Clackamas, Multnomah, and Yamhill counties. Recognized as one of Oregon’s fastest-growing regions, it encompasses densely populated suburbs, rural farmlands, retail, and commercial establishments, and expanding industrial complexes. The Newberg area is notable for its significant agricultural contributions, including key winegrowing regions.

In contrast, South Gilliam County RFPD, the fire district with the largest land mass, serves approximately 883 square miles in Gilliam County, covering the rural communities of Condon, Lonerock, and Thirty Mile. This district operates on an annual budget of about $75,000, serving an estimated population of 2,026 in 2022.

Most of Oregon’s unincorporated land is protected by federal and state ESOs focused on natural resource protection. Ambulance and emergency medical transport services are divided among ESO agencies across the state’s 36 counties, covering the entire 98,500+ square miles. Each County Sheriff provides Search and Rescue services in collaboration with fire agencies’ rescue and emergency medical services.

Oregon fire agencies address a wide range of hazards, including structural and wildland fire suppression, emergency medical response, extrication, hazardous materials response, and specialty technical rescues in environments such as confined spaces, collapsed

buildings, swift water, open water, caves, glaciers, wilderness areas, and high and low angle rope rescues. Of the approximately three hundred fire departments and districts, fewer than twenty have sufficient access to GIS or analytics needed for ongoing community vulnerability assessments. Conducting systematic vulnerability assessments of all structures, transportation systems, infrastructure, and natural features is infeasible due to the size of response areas and limited personnel and data resources. The cost of this section is best illustrated by two of Oregon's larger organizations. Jackson County Fire District #3 estimates that the initial time frame of this section would take 9.5 years to complete due to the number of defined structures in their response area, approximately 27,000. The city of Eugene estimates that the financial cost would be $5 million annually. This does not talk to the natural features that would also be required to be assessed.

There are also significant constitutional considerations, as fire agencies in Oregon lack legal authority to access properties for assessments outside of registered businesses, 911 calls, or exigent circumstances. In many areas of the Pacific Northwest, accessing properties could pose serious life safety concerns due to anti-government sentiments. Federal OSHA's assumptions did not account for demographics, land mass size, resource scarcity, information gaps, and resource costs. While the concepts in this section are valid best practices, ESOs must prioritize these tasks while maintaining their primary mission of emergency response. Compliance with this section would degrade ESOs' response capabilities, negatively impacting all Oregon communities, including workplaces regulated by OSHA. The requirements of this section also affect compliance with other sections, such as (f) and (n), making overall compliance challenging.

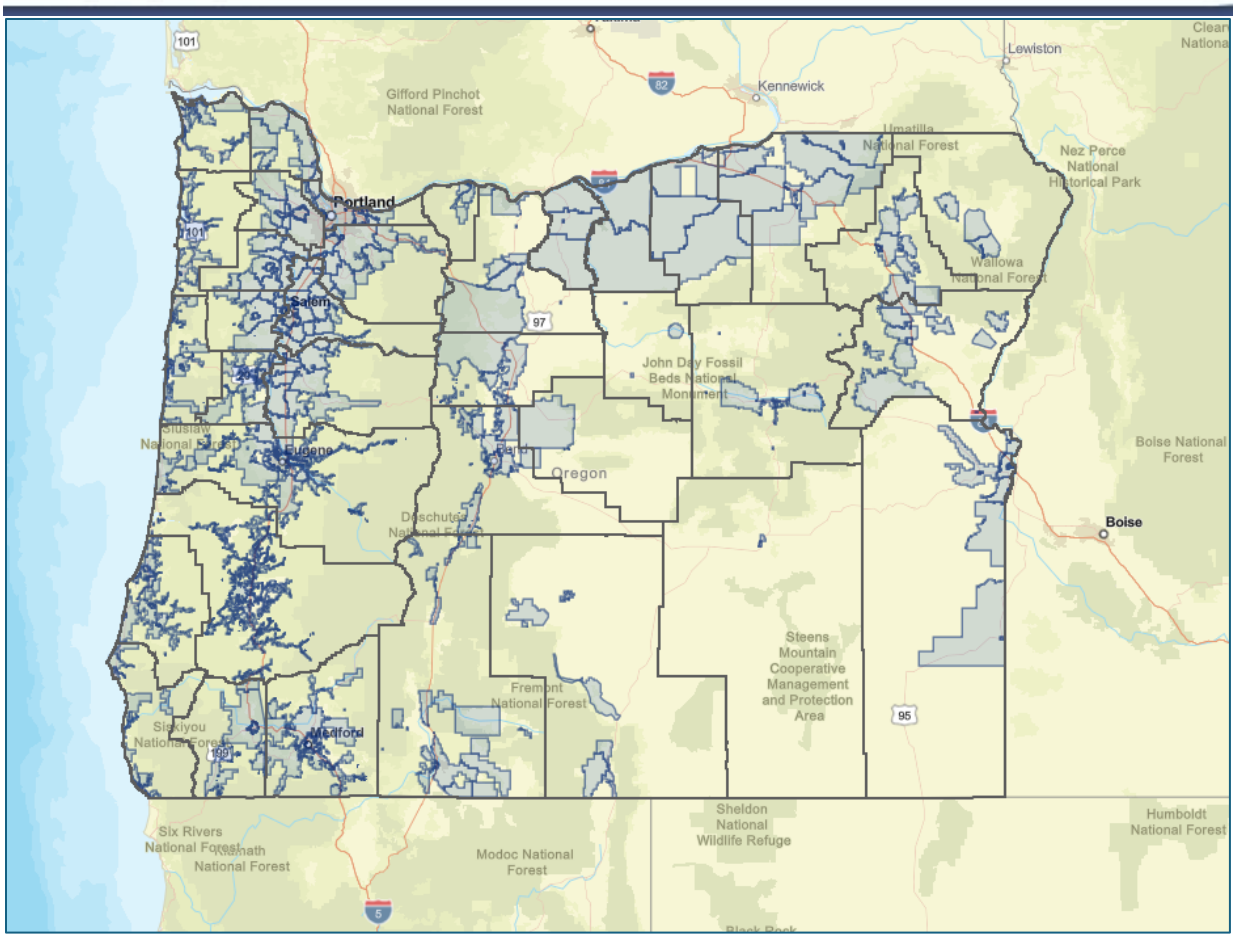

Figure 2 - Map of Oregon - Fire Department and District Primary Response Areas in Blue

(6) and (7)

These sections require the ESO to determine the necessary and available resources and to designate tiers of responder responsibilities, qualifications, and capabilities. In Oregon's public safety services, this would be achieved through comprehensive job descriptions outlining combat roles, single-role positions, and support positions not defined as SSW by this standard. Support roles might include fire corps members or cadets for firefighter rehabilitation at emergency scenes. Each position must include a description outlining responsibilities, required qualifications, and capabilities. In Oregon, certification of fire service personnel is currently voluntary according to state statute. Oregon OSHA rules mandate a minimum training standard of NFPA 1001 for structural firefighters. Beyond this specific requirement, Oregon OSHA has opted for a performance standard, allowing organizations to determine the necessary level of training based on assigned tasks. This approach enables the ESO to customize training to meet the specific needs of the organization and community, considering available resources. This section will have a direct relationship with section (h).

(8)

This section requires the ESO to identify where it cannot provide the required level of service to the community and to establish mutual aid agreements with neighboring agencies that can provide these services. While common, this practice raises concerns due to the geography of the Western United States and budget constraints. OSHA envisions that if an ESO cannot provide a service, it would develop mutual aid agreements with WEREs or other ESOs to ensure adequate resources for foreseeable incidents. This is achievable if communities can define their expected level of service. However, examples provided by Federal OSHA, such as needing an aerial ladder for tall structures or advanced life support for EMS, may not be feasible in areas where higher levels of service are hours away. Regional hazmat teams, for instance, often have response times of 30-90 minutes due to distance and terrain. Much of our concern for this paragraph echoes paragraph 4. Resources are not available to the degree needed for this requirement.

(e) Team Member and Responder Participation

The ESO must involve responders in developing the Emergency Response Program (ERP). This includes seeking input from responders on modifications to ESO facilities. This can typically be achieved through a safety committee or regular safety meetings, ensuring ongoing discussions to update the ERP as new issues arise.

There are minimal concerns with this section generally. Given the highly technical nature of emergency response, participation as outlined in this section should be restricted to ESO staff and subject matter experts designated by the ESO. External representatives may lack the necessary expertise to fully comprehend the complexities of emergency response.

The Oregon fire service has undertaken the task of training Oregon OSHA staff to help them understand the intricate actions responders take during emergency events. However, there are concerns within emergency response organizations about compliance staff evaluating the tactics and decisions made by incident commanders, especially if these compliance staff do not have current tactical training and a thorough understanding of the missions and goals during such events. This enforcement threat can create uncertainty in the decision-making process, potentially leading to undesirable outcomes for communities, including the workplaces OSHA is tasked with protecting.

(f) WERT and ESO Risk Management Plan

The Risk Management Plan (RMP) must be reviewed annually and updated, as necessary. There is no need for additional analysis or an RMP for station activities or non-emergency tasks outside of responder training, as these are already regulated by other OSHA

standards. Much of this section, unrelated to actual emergency response and training, would be redundant, such as PPE requirements for non-emergency activities. Current rules for these other rules typically do not require an RMP unless they address extraordinary hazards.

Due to the nature of emergency response, it is infeasible to create a written program or plan that establishes concrete control techniques that can be used consistently, unlike in a fixed place of employment with consistent tasks. At best, general guidance and topics to consider, as outlined by Oregon OSHA rules, can be created. Emergency response is inherently a process of problem-solving and risk management, where each minute of an event differs from the next. While developing and training on standard operating guidance is important, it is impossible to create a step-by-step process with absolute risk control techniques for each event. The cost in resources to accomplish this section would be infeasible due to the ever-changing environment that ESOs operate in.

As technology improves and becomes more affordable, the use of robotics to eliminate the need to expose human firefighters to hazardous environments will become a viable engineering control technique. Federal OSHA or NIOSH should fund research for this engineering control technique. Currently, only a few firefighting robots are in use across the country. Until their use becomes widespread, most emergency operations will be conducted by humans using appropriately chosen PPE. Control measures for infectious diseases should be addressed similarly to other hazardous environments. Since engineering control techniques are infeasible due to the unknown environments ESOs operate in, PPE is the likely control measure. The PPE standard requires an assessment and selection process when hazards are encountered, which is appropriate for infectious disease environments and should be duplicated in this standard.

Another concern is the enforcement of this section, which could pit industry experts against compliance officers with little to no current emergency response experience. For example, Oregon OSHA's enforcement staff currently includes no trained firefighters or EMTs. Using untrained individuals to evaluate the actions of industry experts working under duress in an ever-changing environment is concerning and could force responders to take less aggressive actions, increasing public risk due to concerns about uneducated enforcement. Federal OSHA's assumptions did not account for individual states' geographic and demographic differences. While the concepts in this section are valid best practices, ESOs must prioritize their limited resources to accomplish these tasks while maintaining their primary mission of emergency response. Compliance with this section would drain finite resources, damaging the response capabilities of all ESOs and creating

negative consequences for all communities in Oregon, including the workplaces and employees that OSHA regulates.

We agree that this allowance for extraordinary situations allowing for the rescue of a person in "imminent peril" must be maintained. Emergency responders are highly trained professionals with years of experience in their fields. Removing or hindering their ability to respond to potential life-threatening situations would create a greater community hazard.

To facilitate this, a statewide or national RMP template should be developed by Federal OSHA and adopted by ESOs, covering protocols for all foreseeable emergency events, PPE assessments, respiratory programs for SCBA and other respirators, and infection and bloodborne pathogen control plans. Individual agency plans must address specific risks, such as vehicle maintenance, equipment shops, and landscaping tasks.

(g) Medical and Physical Requirements

1. **General Requirements**: Federal OSHA emphasizes that fitness and medical surveillance are crucial for reducing work-related injuries, illnesses, and fatalities, and for improving the health of team members and responders. The ESO must set minimum medical requirements for responders based on their service level and qualifications. Skilled Support Workers (SSW) are exempt from these medical requirements. The ESO must keep confidential records of duty restrictions, occupational injuries and illnesses, and exposures to hazardous substances for each responder. This rule does not address how medical and behavioral health evaluations might affect issues under the Americans with Disabilities Act (ADA) once a condition is discovered.
2. **Medical Evaluations**: Medical evaluations must be provided at no cost to responders at least every two years, or more frequently if deemed necessary by the provider. The ESO must establish a medical evaluation program that includes a detailed medical history, physical examination, spirometry, and heart disease risk assessment. The purpose is to determine if responders can perform emergency duties without adverse health effects and to assess their fitness to use PPE. The ESO must also establish procedures for return-to-duty evaluations after injury or illness.

    NFPA 1582 Medical Physicals

    NFPA 1582 medical physicals are considered the gold standard for providing essential health information to firefighters. However, these physicals cost a minimum $800 per person and are not readily available in many rural areas of

Oregon due to a shortage of medical providers. Many Oregon fire service agencies have tried to collaborate with local physicians to develop affordable alternatives that identify major health concerns with little luck.

Oregon fire district budgets are fixed and can only increase through voter-approved operating levies, which must be renewed every three years. Out of 257 fire districts, 144 have an annual operating budget of less than $500,000, and fifty have budgets under $100,000. The prohibitive cost of these medical physicals would be financially unfeasible, potentially leading to the closure of many rural fire districts and departments. This closure would eliminate access to fire insurance for property owners. The Oregon Fire Chiefs Association (OFCA) has confirmed that significant reductions in fire protective services, such as limiting fire suppression to the exterior of structures, would result in an ISO protection class rating of ten, equivalent to no fire protection. Western states have already seen insurance providers exit the market due to wildfire threats. Reducing fire protection availability in areas without access to NFPA 1582 medical physicals could cause fire insurance providers to withdraw from these markets, making housing inaccessible to many disadvantaged communities, similar to what is happening in California.

3. **Exposure to Combustion Products**: Responders exposed to combustion products fifteen or more times a year must receive a medical physical equivalent to the NFPA 1582 physical. Exposure incidents include any contact with materials on fire or smoldering, regardless of PPE use. These incidents are counted separately, even if multiple occur during one shift. The use of may be exposed in this section causes concern as this would be such a fluid circumstance. We could argue that “may” would require an ESO to assume the individual could be exposed and therefore NFPA 1582 physicals would be required at all times. As we described earlier there are challenges in obtaining the testing.

4. **Behavioral Health and Wellness**: The ESO must provide behavioral health and wellness resources, including diagnostic assessment, short-term counseling, crisis intervention, and referral services. Responders must be informed regularly and after potentially traumatic events about available resources. If the ESO does not provide these resources, they must identify accessible local, state, or federal resources. All records must be kept confidential.

Behavioral Health and Wellness Resources

Behavioral health and wellness resources are crucial but are not available to many Oregonians due to a lack of providers. The ESO cannot control access to these services, making it impractical to require more than the creation of a plan to provide them. Volunteer ESOs cannot afford to provide health insurance to their members. Implementing this program would cost approximately $250 to $350 per person annually, with counseling services costing between $125 and $250 per hour. Many areas require two or more hours of travel each way to see a clinician, making it difficult to access these services. Peer support and Chaplain services are more accessible but do not meet the requirements of this section. The geographic and demographic diversity of Oregon and the Western states makes compliance with this section challenging, a factor likely not considered by Federal OSHA. The Oregon fire service has a strong relationship with Oregon OSHA and can develop feasible solutions to meet responders' needs while ensuring ESOs' limited resources are available for emergency response, keeping communities and workplaces safe.

5. **Annual Evaluation of Job Performance**: The ESO must annually evaluate responders' ability to perform essential job functions, based on position descriptions. This evaluation should determine if responders are physically capable of performing their duties during an emergency response. Assessments may be conducted during training scenarios or skills checks.

   Fitness-for-Duty Tests

   The Oregon fire service believes it is essential for individuals to be capable of performing their assigned tasks. Currently, no other occupations require fitness-for-duty testing before performing job tasks. The majority of the U.S. fire service is made up of volunteers. If fitness-for-duty tests are required, consideration must be given to the difficulty communities face in recruiting and retaining emergency responders. Additional hurdles could exacerbate current shortages, leaving communities unprotected. The ESO should be able to create its own capability testing based on the tasks assigned to each responder. Employment law regulates much of the fitness-for-duty requirements, and it should be examined to determine if OSHA rules conflict with these regulations. The federal register indicates that this rule has not considered how medical and behavioral health evaluations might impact issues under the Americans with Disabilities Act (ADA) once a condition is detected.

6. **Health and Fitness Program**

OSHA's intention with these provisions is to ensure responders have the necessary opportunities, means, and knowledge to maintain fitness for duty and prevent work-related injuries and illnesses. Federal OSHA requires a fitness evaluation for each responder at least once every three years. This periodic fitness assessment aims to inform responders about their fitness status and whether it has improved, maintained, or decreased. Our question to OSHA is what the responsibilities of the ESO are when a responder is found to not meet the requirements. Are they to be terminated after a certain period of time? Are there ADA considerations if the condition is declared a disability? Clarification on these issues is paramount for ESO's to ensure that they would be found in compliance. If this section is intended to be more advisory, then the section should be moved to a non-mandatory appendix.

(h) Training

Oregon has established rules that define appropriate training levels, placing the responsibility on the ESO to determine the training required based on assigned tasks. Given the diversity among Oregon's emergency responders, prescribing uniform training standards for every agency is challenging. A more general performance standard allows for maximum flexibility, enabling the ESO to decide what is appropriate. Imposing significant training burdens on small and rural agencies could lead to increased responder attrition, exacerbating current losses. Without adequate staffing, ESOs may be unable to serve their communities effectively. Additionally, Oregon has limited numbers of instructors available to teach the higher-level standards. Given that there is a growing shortage of responders it is highly likely that there will also be fewer proficient instructors. This will result in a statewide inability to train to these levels that have been prescribed.

In 2018, Oregon's legislature considered a bill to limit training requirements for frontier fire agencies. Oregon OSHA and the Oregon Department of Public Safety Standards and Training crafted rules that met the bill's sponsors' needs. However, the proposed rules would increase training requirements for these frontier agencies, likely prompting legislative intervention once again or cause the ESO to reduce or cease operations.

(j) ESO Facility Preparedness

The section on facility preparedness would overlap with other OSHA rules related to facilities. It should focus on issues unique to emergency response rather than general building codes. Many stations in Oregon lack running water due to their location and budget constraints, making retrofitting for these provisions extremely costly. Except for immediately hazardous conditions, ESOs should be able to prioritize between response capabilities and station upgrades.

When constructing a new station, incorporating changes like ventilation is more feasible. Renovation timelines should be based on significant construction changes. It is reasonable to require ESOs to make updates during building retrofits or construction projects of a certain scope. If these changes are mandated immediately upon the rule's passage, emergency responder organizations might have to choose between staffing, response capability, and facility costs. Unnecessary expenditures of limited resources would harm the response capabilities of all ESOs, negatively impacting communities in Oregon, including workplaces and employees regulated by OSHA.

(k) Equipment and PPE

While the fire service generally supports the practice of gross decontamination when feasible, certain weather conditions may make this process impractical. Statewide associations could assist by providing a basic supplies list for agencies. Bagging PPE means responders will need secondary clothing available. Special consideration is needed for seating positions on apparatus without fully enclosed cabs. It is my opinion, pending OSHA clarification, that these areas are not included in the "separately contained" requirement, allowing PPE to be worn. However, these positions should be cleaned to remove combustion products as much as possible.

PPE is crucial for emergency responders, as highlighted in our comments under section (f) related to the risk management plan. Oregon already has adequate rules for fire service PPE. The referenced NFPA standards focus on the manufacturing of PPE, not its inspection, use, or care. ESOs must be mindful of their budgets, and the additional expense of regularly replacing PPE that has "expired" according to an NFPA standard could be financially devastating. This is especially true for organizations with low call volumes that use their PPE infrequently. PPE should be inspected and removed from service when deficiencies are found, not based on an arbitrary expiration date. Many PPE items are rarely exposed to damaging environments, such as prolonged direct sunlight.

Furthermore, incorporating NFPA standards for wildland respirators may be premature. There is limited research on the effectiveness and health impacts of these respirators in wildland settings. These respirators are not widely available, which could drive up costs due to scarcity.

(L) Vehicle Preparedness and Operation

Generally, we oppose the full incorporation of NFPA standards. These standards often reference other documents that need thorough consideration and vetting. Based on past experience, OSHA enforcement has followed these links to issue citations. These documents can be updated without public input and sometimes with little or no notice, creating a moving target. Oregon OSHA has addressed this by removing standards incorporated by reference and instead using the pertinent safety and health information

directly in the rule language. This approach allows for the incorporation of consensus language without creating a moving target.

Specifically, the inclusion of NFPA 1910 and the broad definition of vehicles, including privately owned vehicles, presents significant regulatory challenges. NFPA 1910 requires that individuals performing inspection, maintenance, and testing of fire equipment be qualified as Emergency Vehicle Technicians. This requirement is insurmountable for volunteer organizations and challenging for any ESO to fully meet. Additionally, NFPA 1910's requirements for apparatus retirement place a substantial financial burden on taxpayers. With a type 1 engine costing over $800,000 and not being available for several years after ordering, this is another significant challenge for most agencies in the state. Local authorities must be allowed to prioritize spending based on their unique situations.

These additional requirements do not account for the monumental costs associated with them. For example, if privately owned vehicles fall under the ESO's purview and must be inspected, maintained, and tested as fire apparatus, it would eliminate any volunteer organization that allows response from home. This would leave vast portions of Oregon without protection from these ESOs.

(n) ESO Pre-Incident Planning (PIP)

As previously mentioned in our responses to sections D and F, we have significant concerns about the availability of resources needed to complete the community assessment. Conducting a systematic vulnerability assessment of all structures (including vacant and unpermitted ones), transportation systems, infrastructure, and natural features is impractical given the size of the response areas and the limited personnel and data resources available. Without this assessment, it is impossible to comply fully with the requirements of this section. Pre-incident planning priorities should be determined by the local authority having jurisdiction (AHJ) based on EPCRA reporting and the available resources of the ESO.

(o) Incident Management System Development

The Oregon fire service generally uses an ICS system and incorporates relevant portions of NFPA 1561 to ensure firefighter health and safety. However, we have concerns about broadly incorporating NFPA standards into the rule. Key features of these consensus standards should be extracted and specifically included in the rule language.

NFPA standards are continually evolving and changing, sometimes even in their numbering systems. This could lead to a situation where a more effective and efficient system is introduced in the future. If NFPA standards are used as the rule and become

outdated, OSHA would need to undertake additional rulemaking, which can be a lengthy and contested process.

We recommend that Federal OSHA use the effective safety and health portions of NFPA standards, as these are less likely to change. We encourage OSHA staff to leverage their expertise to identify and incorporate the essential language from these standards while discarding any extraneous content.

(p) Emergency Incident Operations

These concepts have been in place in Oregon for many years, with the exception of section 10. Vendors are typically used on-site for their expertise and equipment, primarily after an incident has been controlled and during the cleanup phase. ESOs in Oregon do not typically direct these vendors' employees, as the property owner generally arranges their involvement. If a vendor is needed during an emergency operation, requiring additional PPE or equipment would cause delays. These situations are rare and not preplanned to the extent of knowing the individual contractor. The additional PPE costs would further strain the limited budgets of ESOs.

(q) Standard Operating Procedures

This section has already been considered by the Oregon fire service and Oregon OSHA. While guidelines addressing general incident requirements are useful, it is impractical to create provisions that cover all possible circumstances. A "one size fits all" approach is not feasible. Incident command personnel receive years of training and experience to adapt to evolving situations and often have additional staff for support. Responders train frequently to develop "muscle memory" for their tasks.

OSHA staff may not have the necessary training and current experience to evaluate decisions made in the dynamic environment of emergency services. As mentioned in our response to section (f) ESO Risk Management Plan, it is concerning that less trained and experienced individuals would be assessing the details used to craft these SOPs. This could lead ESOs to take a less aggressive approach and hesitate to act decisively due to the threat of citations and monetary penalties, ultimately creating an unsafe environment for communities and workplaces.

(r) Post Incident Analysis

Post-incident analysis is typically conducted for significant events through an after-action review (AAR). Clear guidance and definitions are needed to ensure consistent enforcement regarding when the analysis is required. Oregon OSHA mandates an accident investigation whenever an employee is injured to the extent of missing three or more days of work, a rule in effect since 1991.

These analyses are costly and time-consuming and should not be undertaken lightly. Terms like “large scale incident” and “significant near miss” are vague and broad, lacking objective measurement, which complicates consistent enforcement. Evaluations following an injury or fatality are concrete and enforceable terms.

Including “representatives” outside the responders in these analyses can be problematic, as they may experience secondary exposure to traumatic events. We have found that office staff and even Oregon OSHA enforcement officers who hear about these events can develop behavioral health trauma. Therefore, we oppose involving additional non-essential personnel in these discussions to prevent potential mental health injuries requiring treatment.

(s) Program Evaluation

Program evaluation is already conducted informally by the fire service. Implementing a written requirement for this process would be challenging for organizations with limited staff, both career and volunteer. The tasks being requested resemble the work typically performed by OSHA enforcement officers and consultants.

(t) Severability

This is the first rule we know of that includes a severability clause. Typically, severability clauses are found in contracts and legislation, not in agency rulemaking. If a section of the rule is deemed inappropriate, OSHA’s remedy has always been to update the rule. Therefore, this section is unnecessary and should be removed.