SDAO Special Districts Association of Oregon

July 10, 2024

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

RE: Proposed 29 CFR 1910.155 and 156
Federal Rulemaking Docket No. OSHA 2007-0073

On behalf of the 965 members of the Special Districts Association of Oregon (SDAO), we express great concern regarding the proposed 29 CFR 1910.155 and 156. Special districts provide essential services such as fire protection, water, and healthcare. Our duty is to prioritize health and safety, but the proposed 29 CFR 1910.155 and 156 standards, if unfunded, divert resources from emergency response. Approval would burden Oregon residents due to unfunded mandate costs and property tax limitations.

A total of 298 of SDAO members are directly impacted by these proposed rules. This includes 257 fire protection districts, 29 health and hospital districts that provide EMS services, and twelve 911 communications districts. Of the 257 fire districts, 144 districts have an annual operating budget of less than $500,000 and fifty districts have an annual budget under $100,000.

The financial burden of this proposal could lead to the closure of rural fire districts and departments unable to comply with the requirements. Aside from the reduction of fire protection, the consequence of this closure would eliminate the access to fire insurance for property owners.

Areas of concern include:

- Oregon fire agencies provide essential services, including structural and wildland fire suppression, emergency medical response, and hazardous materials handling. However, fewer than 20 out of approximately 300 fire departments have access to GIS or analytics for ongoing community vulnerability assessments. A systematic assessment of structures, transportation systems, and infrastructure is infeasible due to limited personnel and data resources.

- Incorporating entire NFPA standards by reference, which organizations must adhere to verbatim, poses risks. The additional 3,000 pages of information beyond the federal standard would need thorough examination for compliance.

- NFPA 1582 medical physicals, the gold standard for assessing firefighter health, cost $800 per person. Unfortunately, they are unavailable in most rural areas of Oregon due to a lack of medical providers.

- Due to a shortage of providers, behavioral health and wellness resources remain inaccessible to many Oregonians. Since the ESO lacks control over service access, it is impractical to mandate anything beyond creating a service plan.

- The Oregon fire service emphasizes the importance of individuals being able to perform their assigned tasks. Unlike other occupations, OSHA does not currently mandate fitness-for-duty testing before job tasks. Notably, the majority of the U.S. fire service is comprised of volunteers. If such testing is to be required, careful consideration must be given to the challenges communities face in recruiting and retaining emergency responders.

- NFPA standards, often updated without public input, create a moving target. Oregon OSHA addresses this by using pertinent safety information from the standards rather than incorporating them directly. Specifically, NFPA 1910's inclusion and the broad definition of vehicles, including privately owned ones, present regulatory complexities.

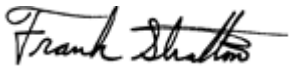
- NFPA 1910 mandates that individuals conducting fire equipment inspection, maintenance, and testing must be qualified as Emergency Vehicle Technicians. However, this requirement poses a significant challenge for volunteer organizations and is likely difficult for any ESO to fully meet.

- NFPA 1910's retirement requirements place a heavy financial burden on taxpayers.

The proposed rules would place rural fire agencies in financial straits, potentially forcing some to cease operations. This closure would impact fire insurance availability for property owners. Reduced fire protection could lead to insurance providers exiting markets, affecting housing accessibility. While Oregon has made strides in firefighter safety, unfunded rules jeopardize public well-being. SDAO, along with the Oregon Fire Chief's Association, Oregon Fire District Directors Association, Oregon State Ambulance Association, Oregon Department of State Fire Marshal, and Oregon Volunteer Firefighters Association, urges reconsideration or suspension of adoption until a thorough financial analysis is conducted.

Following is a detailed analysis of each section and explaining the problematic issues that we have identified.

Sincerely,



Frank Stratton
Executive Director, Special Districts Association of Oregon

Cc: Gov. Tina Kotek
Senator Ron Wyden
Senator Jeff Merkley
Representative Suzanne Bonamici
Representative Cliff Bentz
Representative Earl Blumenauer
Representative Val Hoyle
Representative Lori Chavez-DeRemer
Representative Andrea Salinas

Special Districts Association of Oregon

Detailed Analysis and Comments

Proposed 29 CFR 1910.155 and 156

NFPA INCORPORATION BY REFERENCE

The incorporation of NFPA standards by reference demands our immediate attention. The Oregon fire service possesses firsthand insights into how Oregon OSHA interprets these standards when they are directly integrated into regulations. Notably, many NFPA standards contain cross-references to other NFPA standards, as well as manufacturer documents and recommendations.

Oregon OSHA's enforcement staff diligently follow these references to other standards and documents, issuing citations with monetary penalties based on their findings. However, the practice of incorporating entire NFPA standards verbatim poses risks. Organizations are held strictly accountable to comply with these standards, word for word. For instance, NFPA 1582 refers to NFPA 1500, NFPA 1561, and NFPA 1584—all of which become integral parts of the rule language through incorporation. These standards also include additional referenced materials, such as manufacturer documents.

During a presentation at the Oregon Governor's Fire Service Policy Council meeting in April 2024, the head of Oregon OSHA confirmed our assessment. Currently, it is estimated that there exists over 3,000 pages of supplementary information beyond the federal standard that organizations would need to examine and potentially implement to remain compliant. Regrettably, these additional pages are not included in the federal register for examination.

GENERAL ANALYSIS AND RESPONSE TO SECTION A:

The scope of the proposed standard is remarkably broad, encompassing organizations that may not traditionally identify as emergency responders. Drawing from the plain language and explanatory statements, the Oregon fire service contends that this standard would apply to all traditional fire departments and fire districts. Additionally, it would extend to Sheriff's Office Search and Rescue teams, state agencies responsible for wildfire firefighting, and both public and private ambulance services. Furthermore, there's potential for inclusion based on the nature of an organization's work.

Operating within Oregon, these diverse organizations employ staff who can be either paid professionals or dedicated volunteers. However, the Oregon Safe Employment Act mandates that Oregon OSHA treats both paid and volunteer staff members equally when it comes to health and safety rules.

To strike an effective balance, the scope of federal rules must be explicitly limited to their jurisdiction, excluding local and state government workers. By granting states the autonomy to regulate workplaces according to their unique demographics and geographical considerations, we can prevent the unintended consequences of rigid standardization. Without this local control, emergency response organizations may face closures, resulting in critical service gaps within many communities.

GENERAL ANALYSIS AND RESPONSE TO SECTION D:

Oregon, spanning approximately 98,500 square miles, boasts a diverse landscape. Cities and towns occupy around 2,000 square miles, while inland water covers about 890 square miles, and the coastline stretches for 296 miles. The state is served by over 300 fire service agencies, covering roughly 20,100

square miles (about 21% of Oregon's total area). Among these agencies, more than 100 have primary response areas exceeding 50 square miles, with some exceeding 100 square miles. Most of these organizations rely on volunteer firefighters, often led by part-time paid fire chiefs.

Tualatin Valley Fire and Rescue, the state's largest fire district with an annual budget of approximately $73 million, oversees a primary response area of about 388.5 square miles. This region includes the cities of Beaverton, Durham, King City, Newberg, North Plains, Rivergrove, Sherwood, Tigard, Tualatin, West Linn, and Wilsonville. While primarily situated in Washington County, it also encompasses unincorporated areas in Clackamas County, Multnomah County, and Yamhill County. Known as one of Oregon's fastest-growing regions, this area combines densely populated suburbs, rural farmlands, retail centers, and expanding industrial complexes. Additionally, the Newberg area plays a vital role in Oregon's economy, particularly in winegrowing.

In contrast, the South Gilliam County RFPD covers an expansive 883 square miles within Gilliam County, serving the rural communities of Condon, Lonerock, and Thirty Mile. Despite its large land mass, the district operates on an annual budget of approximately $75,000. Gilliam County's estimated population in 2022 was 2,026. Much of Oregon's unincorporated land falls under the jurisdiction of federal and state ESOs (emergency service organizations), primarily focused on protecting natural resources. Emergency medical transport services are distributed across the state's 36 counties, with each county sheriff's office providing search and rescue services alongside fire agencies.

Oregon fire agencies offer a wide range of services to their communities, including structural and wildland fire suppression, emergency medical response, hazardous materials handling, and specialized technical rescues. These rescues occur in various environments such as confined spaces, collapsed buildings, swift water, open ocean, caves, glaciers, wilderness areas, and high and low-angle rope situations.

Out of approximately 300 fire departments and districts, fewer than 20 have sufficient access to GIS or analytics for ongoing community vulnerability assessments. Conducting a comprehensive assessment of all structures (including vacant and unpermitted ones), transportation systems, infrastructure, and natural features is infeasible due to limited personnel and data resources. In-depth surveys of 22 fire agencies revealed insights into their capabilities, including staffing, information management, archival processes, and access to accurate information.

Respondents indicated that dedicating at least two full-time equivalents (FTEs) at an hourly rate of approximately $65 to $100 would be necessary to address the requirements outlined in this section. Considering agency size, staffing, and partnerships, initial implementation could take around 9.5 years and cost over $5,000,000 annually. However, constitutional limitations prevent fire agencies from accessing properties for assessments unless specific conditions (such as a registered business or a 911 call) apply.

While the concepts align with best practices, balancing these tasks with the primary mission of emergency response remains crucial. Compliance with this section could negatively impact the response capabilities of all emergency service organizations (ESOs) in Oregon, affecting communities and workplaces regulated by OSHA. Additionally, compliance challenges extend to other related sections.

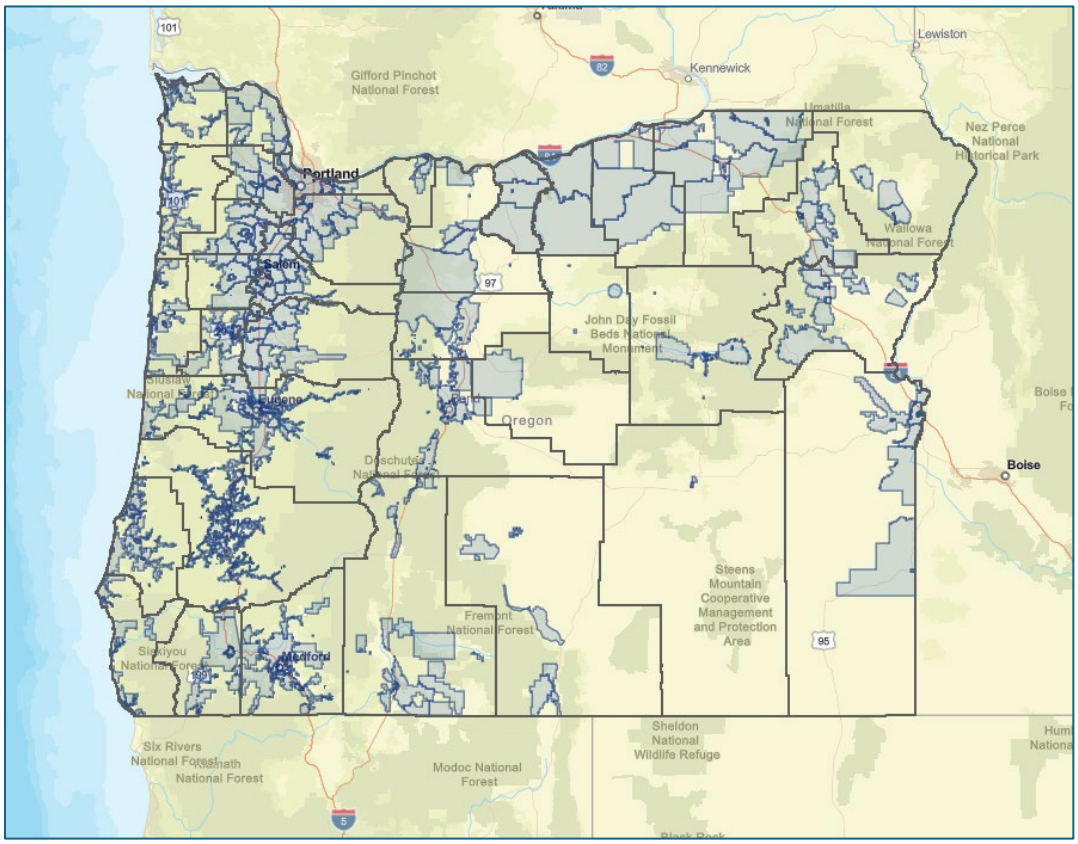


Figure 1 - Map of Oregon - Fire Department and District Primary Response Areas in Blue

GENERAL ANALYSIS AND RESPONSE TO SECTION E:

Due to the highly technical nature of emergency response, we recommend limiting participation to ESO staff and subject matter experts, as determined by each individual ESO. External representatives may lack the expertise needed to fully comprehend the intricacies of emergency response. The Oregon fire service has assumed the responsibility of training Oregon OSHA staff, helping them understand the complex actions taken by responders during emergency events. However, emergency response organizations express concerns about compliance staff evaluating tactics and decisions made by incident commanders, especially when those compliance staff members lack current tactical training and a comprehensive understanding of mission goals during events. This potential enforcement threat introduces uncertainty into the decision-making process, ultimately leading to undesirable outcomes for the communities and workplaces that OSHA aims to protect.

GENERAL ANALYSIS AND RESPONSE TO SECTION F:

There is no need for an additional burden of analysis or RMP for the station or activities associated with non-emergency tasks outside responder training. These activities are already directly regulated by other sections of the OSHA standards. Much of this section, which is not directly related to actual emergency response and training, would be duplicative—for instance, personal protective equipment (PPE) requirements for non-emergency activities. The current rules do not mandate an RMP or equivalent unless they address extraordinary hazards.

Due to the dynamic nature of emergency response, creating a written program or plan that establishes concrete control techniques for consistent use is infeasible. Emergency response involves problem-

solving and pure risk management, where each event minute differs from the next. While it's crucial to develop and train on standard operating guidance, attempting to create a step-by-step process with absolute risk control techniques for every event would be impractical due to the ever-changing environment in which ESOs operate. As technology advances and becomes more affordable, robotics may offer an engineering control technique to eliminate the need for human firefighters to enter hazardous environments. However, currently, only a few firefighting robots are in use nationwide. Until their adoption increases, most emergency operations will continue to be conducted by humans wearing appropriate PPE.

Addressing infectious disease control measures should follow the same approach as other hazardous environments. Since engineering control techniques are unfeasible due to the unpredictable environment in which ESOs operate, PPE remains the likely control measure. The PPE standard requires an assessment and selection process when encountering hazards, which is also suitable for infectious disease environments and should be replicated in this standard.

Another concern pertains to enforcement of this section, potentially pitting industry experts against compliance officers with limited or no current emergency response experience. For instance, Oregon OSHA's enforcement staff lacks trained firefighters or EMTs. Using untrained individuals to evaluate the actions of industry experts working under duress in a constantly changing environment is concerning. Such enforcement could force responders to take less aggressive actions, increasing risks to the public due to uneducated application of this section. Federal OSHA's assumptions often overlook individual state-specific geographic and demographic differences. We emphasize that while the concepts in this section represent valid best practices, ESOs must prioritize their limited resources to achieve these tasks while fulfilling their primary mission of providing emergency response. Compliance with this section, given finite resources, could impair the response capabilities of all ESOs, negatively impacting communities throughout Oregon, including workplaces and individual employees regulated by OSHA.

GENERAL ANALYSIS AND RESPONSE TO SECTION G:

NFPA 1582 medical physicals serve as the gold standard for providing crucial health information to firefighters. However, these physicals, averaging $800 per person, are not accessible in most rural areas of Oregon due to a shortage of medical providers. Many Oregon fire service agencies have attempted to collaborate with local physicians to create an affordable alternative that identifies major health concerns. Unfortunately, the cost of these medical physicals is financially infeasible for fire districts. Of the 257 fire districts, 144 operate on an annual budget of less than $500,000, and 50 districts have an annual budget under $100,000. Enforcing this requirement would likely lead to the closure of many rural fire districts and departments, leaving property owners without fire insurance coverage. The situation is exacerbated by the fact that western states have already seen insurance providers exit the market due to wildfire threats. Reducing fire protection availability in areas lacking access to NFPA 1582 medical physicals could indirectly cause fire insurance providers to withdraw from markets, further impacting housing accessibility for disadvantaged communities.

Regarding behavioral health and wellness resources, their limited availability in Oregon poses challenges. The ESO lacks control over access to these services, making it infeasible to mandate more than the creation of a service plan. Volunteer ESOs cannot provide health insurance to their members due to cost constraints. Implementing a program would require an estimated $250 to $350 per person annually for mental health services. Clinician costs for counseling services range from $125 to $250 per hour, and travel distances to see clinicians can be problematic. While peer support and chaplain services are more

accessible, they do not fully comply with the requirements in this section. Given Oregon's geographic and demographic diversity, compliance with this section is challenging, and the Oregon fire service aims to find an acceptable and feasible solution independently while ensuring resources remain available for emergency response.

As for fitness-for-duty tests, the Oregon fire service emphasizes the importance of ensuring that individuals can effectively perform their assigned tasks. Currently, OSHA does not require fitness-for-duty testing for any other occupations before performing job tasks. However, it's crucial to consider the challenges faced by communities in recruiting and retaining emergency responders. Given the existing shortages of responders, imposing additional hurdles for becoming a responder could leave communities vulnerable. The ESO should have the autonomy to design capability tests tailored to the specific tasks assigned to each individual. Additionally, it's essential to examine employment law to determine if OSHA rules might conflict with existing regulations. Notably, the federal register does not appear to address how medical and behavioral health evaluations would impact issues under the Americans with Disabilities Act (ADA) once a condition is detected.

GENERAL ANALYSIS AND RESPONSE TO SECTION H:

Oregon has established regulations that outline appropriate training levels and place the responsibility on ESOs to specify the training required based on assigned tasks. Given the diverse landscape of Oregon's emergency responders, it would be challenging to prescribe uniform training standards for every agency. Instead, adopting a more flexible performance standard allows ESOs to determine what is suitable.

However, imposing significant training burdens on small and rural agencies could lead to increased losses of responders, surpassing the current losses. Without sufficient staffing, ESOs may struggle to provide essential services to their constituents. According to the Fire Training Program Manager for the State of Oregon, implementing specific training requirements would necessitate a substantial increase in the number of certified instructors statewide. Federal OSHA's provided estimates show the number of hours required to comply with the listed training for an ESO providing fire protection is in the hundreds of hours annually. Strangely these listed hours are also inconsistent between career (308 hours), mixed (192 hours), and volunteer (110 hours) staff even though the requirements are the same.

In 2018, Oregon's legislature considered a bill that aimed to limit training requirements for frontier fire agencies due to severe recruitment and retention challenges. Interestingly, the proposed rules now under consideration would actually increase training requirements for these frontier agencies, potentially prompting legislative intervention once again.

GENERAL ANALYSIS AND RESPONSE TO SECTION J:

The section on facility preparedness could become duplicative with existing OSHA rules related to facilities. To address this, we should focus on emergency response-specific issues rather than building codes. Many stations in our state lack running water due to location and budget constraints. Retrofitting these stations with the provisions outlined in the section would be prohibitively expensive. However, ESOs must balance response capabilities and station upgrades, except in immediately hazardous conditions. When constructing new stations, it's more feasible to incorporate changes like improved ventilation. We should establish a reasonable timeframe for renovations based on significant construction discussions. While requiring ESOs to update facilities during building retrofits or

construction projects is appropriate, mandating immediate changes upon rule passage could strain resources and negatively impact response capabilities for all communities in Oregon.

GENERAL ANALYSIS AND RESPONSE TO SECTION K:

PPE plays a crucial role for emergency responders, as we discussed in our comments related to the risk management plan under section f. Currently, Oregon has a satisfactory rule regarding PPE for the fire service. However, it's essential to recognize that the NFPA standards primarily address PPE manufacturing, not its inspection, use, or care.

ESOs must be prudent with their expenditures. Regularly cycling through PPE that has "expired" based on NFPA standards could have dire consequences. Particularly affected would be organizations with low call volumes, which likely use their PPE infrequently. Instead of arbitrary expiration dates, we should focus on inspecting and removing PPE from service when deficiencies are noted.

Many PPE items are rarely exposed to damaging environments, such as prolonged direct sunlight. Additionally, incorporating NFPA standards for wildland respirators might be premature. Research on their effectiveness and health impact for crews in wildland settings is limited. Furthermore, these respirators are not widely available, which would drive up costs due to scarcity.

GENERAL ANALYSIS AND RESPONSE TO SECTION L:

The Oregon fire service generally opposes the incorporation of NFPA standards in their entirety. These standards are interconnected with other documents that require careful consideration and vetting. Unfortunately, updates to these documents often occur without public input, creating a moving target. To address this, Oregon OSHA removes specific standards incorporated by reference and instead incorporates relevant safety and health information directly into the rule language. This approach allows for consensus language adoption without the moving target issue.

Specifically, the inclusion of NFPA 1910 and the broad definition of vehicles—private ones included—poses regulatory challenges. NFPA 1910 mandates that those inspecting, maintaining, and testing fire equipment must be qualified as emergency vehicle technicians (EVTs). For volunteer organizations, this requirement is insurmountable, and even established ESOs find it challenging. During the May conference of the Oregon Fire Chiefs Association, I surveyed over 100 chiefs, and only eight agencies had qualified EVTs on staff. Additionally, NFPA 1910's apparatus retirement requirements place a significant financial burden on taxpayers. Given that a type 1 engine costs over $800,000 and has a lengthy delivery time, this poses another challenge for most agencies in the state. It's crucial to recognize that local authorities should prioritize spending based on their unique circumstances.

The proposed standard includes additional requirements, but their monumental costs are often overlooked. For instance, if privately owned vehicles fall under the ESO's purview—as indicated in the explanatory language—they must be inspected, maintained, and tested like fire apparatus. This change would render any volunteer organization allowing home-based responses ineffective, leaving vast portions of Oregon without ESO protection. Furthermore, other costly or unavailable requirements, such as NFPA training mandates, patient care belting or restraint rules, and wildland respirators, compound the challenges faced by agencies.

GENERAL ANALYSIS AND RESPONSE TO SECTION N:

In our previous response to sections D and F, we expressed serious concerns regarding the feasibility of conducting a comprehensive community assessment. The resources required for such an assessment—

covering structures (including vacant and unpermitted ones), transportation systems, infrastructure, and natural features—are simply not available. Given the size of the response areas and the limited personnel and data resources, performing a systematic vulnerability assessment would be impractical.

Without this assessment, full compliance with the section's requirements becomes impossible. Instead, we recommend that pre-incident planning priorities be determined by the local authority having jurisdiction (AHJ). This approach should consider Emergency Planning and Community Right-to-Know Act (EPCRA) reporting and the available resources of the ESO.

GENERAL ANALYSIS AND RESPONSE TO SECTION O:

The Oregon fire service generally employs an ICS system and selectively incorporates relevant portions of NFPA 1561 for firefighter health and safety. However, we have reservations about adopting NFPA standards wholesale as part of the rule.

If specific features from the consensus standard are crucial, they should be explicitly extracted and incorporated into the rule language. These standards are dynamic, evolving over time—even minor changes like numbering adjustments can occur. Anticipating future developments, we recognize the possibility of a more effective and efficient system emerging.

Using NFPA as the standard could lead to outdated requirements, necessitating additional OSHA rulemaking—a lengthy and contentious process. Instead, if Federal OSHA focuses on the effective safety and health aspects of NFPA standards, those provisions are less likely to change. We encourage OSHA staff to leverage their expertise to distill essential language while discarding extraneous details.

GENERAL ANALYSIS AND RESPONSE TO SECTION P:

In Oregon, these concepts have been in place for many years. The exception is section 10. On-site vendors are utilized due to their expertise and equipment. Rarely does the ESO directly instruct vendor employees to perform work; instead, their expertise is primarily used after an incident has been controlled and is in cleanup mode. ESOs in Oregon typically don't contract with these vendors for specific work; it's usually up to the property owner to hire them. If a vendor fitting this description is used during an emergency operation, there may be delays if additional PPE or other equipment is required. However, such situations are infrequent and not preplanned down to knowing individual contractors. The costs of additional PPE would further strain these ESOs' finite budgets.

GENERAL ANALYSIS AND RESPONSE TO SECTION Q:

This section has been considered by the Oregon fire service and Oregon OSHA. While guidelines are in place to address the general requirements of incidents, it's challenging to create provisions that cover all circumstances. A "one size fits all" approach isn't feasible. Incident command personnel undergo years of training and experience to adapt to evolving situations. They often have additional staff to assist them. Responders train frequently to develop "muscle memory" for assigned tasks. However, OSHA staff lacks the necessary training and current experience to evaluate decisions made in the dynamic emergency services environment. Our response to section (f) of the ESO Risk Management Plan highlights concerns about less trained and less experienced individuals evaluating details used to create these SOPs. This situation could lead to ESOs taking a less aggressive approach, unwilling to act decisively due to the threat of citations and monetary penalties, ultimately jeopardizing community and workplace safety.

GENERAL ANALYSIS AND RESPONSE TO SECTION R:

The post-incident analysis typically occurs for significant events through an after-action review (AAR). To ensure consistent enforcement, guidelines and definitions should be established regarding when such analyses are necessary. Oregon OSHA mandates accident investigations whenever an employee is injured to the extent of missing three or more days of work—a rule in effect since 1991.

While these analyses are resource-intensive, they should not be taken lightly. The terms 'large-scale incident' and 'significant near miss' used in explanatory statements are overly broad and lack objective measurement, making enforcement challenging. In contrast, evaluations following an injury or fatality provide concrete terms that can be appropriately enforced.

Regarding the inclusion of 'representatives' beyond responders, caution is warranted. Exposure to these events may affect non-essential personnel adversely. We've observed that office staff and even Oregon OSHA enforcement officers, upon hearing stories from responders, develop emotional attachments and behavioral health trauma. Therefore, we oppose involving additional individuals in these discussions, as it could lead to mental health injuries requiring treatment.

GENERAL ANALYSIS AND RESPONSE TO SECTION S:

Program evaluation occurs informally across all fire service organizations. However, introducing a written requirement for this process poses challenges, especially for organizations operating with limited staff—both career and volunteer. The requested level of detail aligns more closely with the responsibilities of OSHA enforcement officers and consultants.

GENERAL ANALYSIS AND RESPONSE TO SECTION T:

This is the first rule that we are aware of that includes a severability clause. Severability clauses are usually held for contracts and legislation, not agency rulemaking. As has always been the case, if a section of the rule is deemed inappropriate, the remedy for OSHA is to update the rule. This section is unnecessary and should be removed.

The proposed concepts, as these examples starkly illustrate, come with a compliance cost that could potentially jeopardize emergency response services for certain communities. In Oregon, the safety of our firefighters remains paramount, evident in workers' compensation rules, presumption laws, and Oregon OSHA regulations. Achieving this has involved local communication and negotiation.

However, a prescriptive, one-size-fits-all model is unlikely to succeed when the prescribing agency lacks full awareness of available resources. To make 29 CFR 1910.155 and 156 a reality, additional funding for critical staff and resources is essential. If this proposed rule takes effect, Oregon's 'discretionary immunity law' will no longer allow emergency response agencies the latitude to independently determine the most effective use of our resources, potentially creating additional liability.