



# International Association of Fire Chiefs

8251 Greensboro Drive, Suite 650 • McLean, VA 22102  
Tel: 703.273.0911 • Fax: 703.273.9363 • IAFC.org

**July 11, 2024**

## **By Electronic Submission**

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

Re: Comments by the International Association of Fire Chiefs  
On the Emergency Response Standard  
Docket No. OSHA-2007-0073 (RIN 1218-AC91)

Dear Assistant Secretary Parker:

The International Association of Fire Chiefs (IAFC) appreciates the opportunity to provide input on OSHA's proposed Emergency Response Standard.

Established in 1873, the International Association of Fire Chiefs (IAFC) represents the leadership of firefighters and emergency responders worldwide. Our members are the world's leading experts in firefighting, emergency medical services, terrorism response, hazardous materials spills, natural disasters, search and rescue, and public safety policy.

## **The Need for Revised OSHA Standards**

The IAFC thanks OSHA for proposing an update to the 29 CFR 1910.156 standard. Firefighting is a dangerous business, which can cause death, disability, and grievous injury to local firefighters. In 2023, 89 firefighters died from injuries, strokes, aneurysms, and heart attacks while on duty or within 24 hours of the line of duty.<sup>1</sup> In addition, the National Institute of Occupational Safety and Health (NIOSH) conducted research demonstrating that firefighters have a 9% increase in cancer and 14% increase in cancer-related deaths, when compared to the general population.<sup>2</sup> The World Health Organization's International Agency for Research on Cancer (IARC) classified the occupational exposure of firefighters as "*carcinogenic to humans* (Group 1), on the basis of *sufficient evidence* for cancer in humans."<sup>3</sup>

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<sup>1</sup> Richard Campbell and Jay Petrillo, "Fatal Firefighter Injuries in the United States," June 17, 2024. [Firefighter fatalities in the United States | NFPA](#)

<sup>2</sup> "Firefighter Cancer Rates: The Facts from NIOSH Research," [Firefighter Cancer Rates: The Facts from NIOSH Research | Blogs | CDC](#).

<sup>3</sup> <https://www.iarc.who.int/news-events/iarc-monographs-volume-132-occupational-exposure-as-a-firefighter/>

Firefighters also face the risks to mental well-being and the toll of suicide in their profession.<sup>4</sup> In addition, firefighters and other emergency responders face an evolving profile of risks. The modern home is made of plastic composites and other materials that produce hazardous smoke when they burn. The increase in wildland fires and the increase in temperatures across the nation create other health risks to firefighters. Acts of terrorism and active shooter events present a constant threat to both fire and EMS personnel. The presence of fires involving lithium batteries can present another type of exposure risk. Finally, there are concerns about the exposure of firefighters to per- and polyfluoroalkyl substances (PFAS) in firefighting foams and even in their turnout gear. Many of these risks were either unknown or not well-understood when the original 1910.156 regulation was promulgated in 1980.

In light of this new environment, the IAFC appreciates OSHA's focus on improving the safety of America's firefighters. However, as OSHA recognizes, the proposed standard will greatly expand OSHA's scope beyond industrial fire brigades. As such, the IAFC provides the following comments on three subjects of particular interest: (1) incorporation of the standards of the National Fire Protection Association, (2) applicability to volunteer fire departments and (3) the economic impact of the proposed standard. In addition, IAFC provides specific comments on the questions and issues compiled from the Notice of Proposed Rulemaking. If the agency would like additional input, IAFC would be glad to continue dialogue on these and any other issues relating to the proposed standard.

## **MAJOR ISSUES FOR OSHA'S CONSIDERATION**

### **NFPA Incorporation**

The IAFC largely supports incorporation of NFPA standards, provided the OSHA standard incorporates NFPA standard revisions. Many NFPA standards are revised every several years with input from emergency responders and other stakeholders. Incorporation of a static standard would freeze the progression that has effectuated critical development of standards that includes ongoing changes in technology, best practices, and needs in affected communities. This will soon be particularly problematic because NFPA is currently undergoing a consolidation of many of its current standards. By the time the proposed standard is enacted, it likely will refer to many standards that no longer exist. General incorporation of NFPA standards in the proposed standard provides one avenue to avoid these issues. Alternatively, OSHA could consider using NFPA standards generally as recognized industry standards for enforcement purposes.

To wit, the IAFC notes that the proposed standard refers to older versions of NFPA standards, as well as standards that are scheduled to become outdated.

- NFPA 1010 is a consolidation of NFPA 1001, 1002, 1003 and 1005.

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<sup>4</sup> Leslie M. Carson et al. "An analysis of suicides among first responders – Findings from the National Violent Death Reporting System, 2015-2017," *Journal of Safety Research*, Volume 85, June 2023, pages 361-370, [An analysis of suicides among first responders – Findings from the National Violent Death Reporting System, 2015–2017 - ScienceDirect](#).

- OSHA should use the 2024 version of NFPA 1081, again, with the caveat that the agency should incorporate any future updates.
- NFPA 1140 is a consolidation of NFPA 1051, 1141, 1143 and 1144. NFPA 1400 consolidates NFPA 1402, 1403, 1404, 1407, 1408, 1410 and 1451.
- NFPA 1910 consolidates NFPA 1911, 1912, 1925 and 1071.
- NFPA 1950 will consolidate NFPA 1951, 1977 and 1999.
- NFPA 1955 will soon consolidate NFPA 1952 and 1953.
- NFPA 1970 will consolidate NFPA 1971, 1975, 1981 and 1982.
- NFPA 1580 will consolidate NFPA 1581, 1582, 1582 and 1561.
- NFPA 1660 consolidates NFPA 1600, 1616 and 1620.
- NFPA 1750 will consolidate NFPA 1710, 1720, 1730 and 1201.
- NFPA 1850 will consolidate NFPA 1851 and 1852.

The IAFC recommends that OSHA does not incorporate NFPA 1984, the Standard on Respirators for Wildland Fire-Fighting Operations and Wildland Urban Interface Operations. While the IAFC agrees with the standard in principle, in application this standard presents significant issues, as it needs clearer delineation as to when and where respirators should be used. The IAFC recommends that OSHA consider incorporation after this standard has been reworked through the normal NFPA process. Additionally, IAFC notes that NFPA 2500, Standard for Operations and Training for Technical Search and Rescue Incidents and Life Safety Rope and Equipment for Emergency Services, currently is in draft form, and its final version has not yet been determined.

The IAFC also would like to work more closely with OSHA regarding firefighter physicals and fitness screening requirements. Overall, the IAFC supports the concept of annual physical examinations as recommended currently in NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments. However, we have heard concerns from our members both about the cost of administering these physicals annually and the lack of resources, especially for mental health screening. Due to these concerns, OSHA will have to consider a tiered implementation schedule for fire departments. In addition, if the federal government mandates this requirement, Congress will have to fund efforts to help fire departments meet these requirements.

Overall, the IAFC recommends that OSHA adopt the recommendations of the National Wildfire Coordinating Group (NWCG) for wildland fire operations. One of the primary objectives of the

NWCG is to “[e]stablish interagency wildland fire operations standards.”<sup>5</sup> In addition, the NWCG sets “wildland fire position standards, qualifications requirements, and performance support capabilities that enable implementation of the NWCG standards.”<sup>6</sup> In order to prevent confusion on the fireground during wildland fire operations, we urge OSHA to work with NWCG and adopt the NWCG standards as part of its rulemaking.

Finally, IAFC recommends that OSHA include Annex B of NFPA 1500, the Standard on Fire Department Occupational Safety, Health, and Wellness Program, in the body of the new standard to require compliance tracking by jurisdictions that fall under the standard.

### **Applicability to Volunteer Fire Departments**

The volunteer fire departments are concerned about the high costs associated with implementation of the proposed standard, given the disparity in size, employees, and budgets across the country’s fire departments. In particular, the volunteer fire departments servicing rural areas of our country, to which this proposed standard may be applicable, are concerned that they would not have the personnel or financial resources to implement the changes required by the proposed standard, if implemented in its current iteration. While some larger organizations may have the personnel and financial resources to implement the necessary changes, rural volunteer departments do not have those same resources. There is also a concern about the implementation of this proposed standard and whether all portions of the standard would be applicable to every fire department, regardless of size. Therefore, the IAFC respectfully requests that OSHA consider rolling implementations to give small, volunteer fire departments sufficient time to address any necessary changes if the standard is promulgated.

The volunteer fire departments also are concerned about an interruption in service to the communities they serve if the proposed standard is implemented, considering the budget needed to make the necessary changes would cause those small volunteer fire departments to shutter. It is important for OSHA to remember that volunteer firefighters do not receive wages for their services and volunteer fire departments have limited budgets funded by bingo, chicken dinners, and donations from their communities. By adding some of the additional requirements in this proposed standard, volunteer fire departments would have to ask their volunteers to pay for such expenses as the proposed physical exam requirement. In some cases, there may not be a medical facility in the volunteers’ community that could provide the mandated recommended evaluation. This fact would add an additional travel time commitment to the personal cost of the volunteer.

Based on the input from the IAFC’s members, the IAFC recommends OSHA consider the feasibility of implementation for small and volunteer fire departments and review whether exemptions from some or all parts of the proposed standard would be appropriate for these small and volunteer fire departments. The IAFC also recommends that OSHA consider directing State Plan States to evaluate their current position carefully with regard to applicability to volunteer organizations in their state and determine if that level of applicability should be maintained in the context of this new standard.

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<sup>5</sup> National Wildland Fire Coordinating Group Charter, 2023.

<sup>6</sup> Ibid.

## Costs of Compliance

Since OSHA maintains that the economic impact on employers, governments, communities, and responders is an important factor in the development of the proposed standard, there are significant questions about whether the entire proposal has given appropriate considerations to the costs that will be required to successfully and accurately implement the standard. Therefore, The IAFC respectfully requests that OSHA provide members of the IAFC a seat at the table to collaborate and develop a plan, with feasible guidelines, that will not only improve responder safety, but ensure that Emergency Service Organizations (ESO) can properly budget for all the required components including legal counsel, compliance audits, and risk management tactics. Since failure to comply with this standard could result in extensive costs, ESOs must be proactive, and will require a reasonable, but staggered, timeframe to safeguard against these risks.

IAFC members have gathered empirical data that illuminate the financial impact of the proposed standard on various emergency response organizations. The factors to be considered for compliance include: training existing personnel; hiring and training of new personnel; upgrading and replacing equipment; increased certifications; and additional administrative requirements.

Career departments with between 240 and 600 responders have predicted an increase in annual budget cost of two to ten percent (2%-10%). For these groups it is anticipated that certification and infrastructure requirements will be the most significant cost, and compliance with the rules will take anywhere from 3 to 4 years. However, infrastructure updates may require up to 10 years.

Career departments with less than 150 responders have hypothesized that compliance with the proposed standard will take 3-5 years increase their annual budgets at least by five percent (5%).

Smaller departments with fewer than 70 responders will be critically impacted anticipating as much as a forty-six percent (46%) increase on annuals budgets and up to 10 years to become fully compliant.

In consideration of members' concerns related to costs and implementation of constantly changing NFPA standards, IAFC recommends that OSHA incorporate a statement indicating that an equivalent approach will be deemed to be compliant. IAFC offers the following draft statement for consideration: **“Nothing in this standard shall be intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed in this standard.”**

## Implementation Time

As noted above, fire departments will have to raise funds and engage in long-term efforts to come into compliance with this new Rule. The IAFC appreciates that OSHA proposes a graduated timeline for implementation of the rule. However, there is a concern that the OSHA

timeline may too ambitious, because it does not include local budget schedules and the current multi-year delay in receiving apparatus and equipment due to supply chain shortages.

In light of these challenges, the IAFC recommends the following timeline for implementation:

Time Period	Requirement
12 months	<ul style="list-style-type: none"> <li>• Team Member and Responder Participation.</li> <li>• Reporting Safety &amp; Health Concerns</li> <li>• Pre-Incident Planning.</li> <li>• Incident Management System.</li> <li>• Emergency Incident Operations:               <ul style="list-style-type: none"> <li>○ Incident Command.</li> <li>○ Establish Protective Zones.</li> </ul> </li> <li>• Set requirements for Post- Incident Analysis.</li> <li>• Remove damaged/defective PPE from service.</li> </ul>
36 months	<ul style="list-style-type: none"> <li>• Emergency Response Plans (ERPs) by Workplace Emergency Response Teams (WERT) &amp; Emergency Services Capabilities.</li> <li>• Emergency Response Plans (ERPs) by Emergency Service Organizations (ESO) &amp; Emergency Services Capabilities.</li> <li>• Development of WERT &amp; ESO Risk Management Plans.</li> <li>• Standard Operating Procedures.</li> </ul>
48 months	<ul style="list-style-type: none"> <li>• Develop initial and follow-up training requirements.</li> <li>• Train and provide PPE and other equipment to responders.</li> <li>• PPE hazard assessment.</li> <li>• Ensure use of PPE.</li> <li>• Ensure care &amp; decon of PPE.</li> <li>• Separate contaminated PPE.</li> </ul>
60 months	<ul style="list-style-type: none"> <li>• Require detailed training requirements based on NFPA standards.</li> <li>• Require annual skills checks.</li> <li>• Responder-provided PPE must meet standards.</li> <li>• Provide properly fitting PPE and ensure proper use.</li> </ul>

84 months	<ul style="list-style-type: none"> <li>• Develop medical evaluation program and additional screening.</li> <li>• Develop medical surveillance for exposure to combustion products.</li> <li>• Develop process to evaluate personnel for fitness for duty annually.</li> <li>• Develop health &amp; fitness program.</li> <li>• Establish minimum medical requirements and maintain medical records.</li> <li>• Provide behavioral health and wellness resources at no cost.</li> </ul>
120 months	<ul style="list-style-type: none"> <li>• Come into compliance with facility requirements.</li> <li>• Establish requirements for vehicle safety: <ul style="list-style-type: none"> <li>○ Inspection/removal from service, driver training, crew safety.</li> </ul> </li> <li>• Program Evaluation: <ul style="list-style-type: none"> <li>○ Evaluate ERP.</li> </ul> </li> </ul>

**QUESTIONS AND ISSUES COMPILED FROM THE EMERGENCY  
RESPONSE NOTICE OF PROPOSED RULEMAKING**

***SCOPE***

**(a)-1. OSHA is seeking information and data about how many private-sector emergency response organizations in federal OSHA States (states without State Plans) have workers who are called volunteers but who receive substantial benefits, such as a retirement pension, life and/or disability insurance, death benefits, or medical benefits. How many of these workers do these organizations have and what type(s) of responders (firefighters, EMS, technical rescuers)?**

Private-sector emergency response organizations typically operate two ways - fulltime industrial firefighters and WEREs; in some cases, WEREs are called “volunteers.” Both full-time and WEREs are compensated. Full-time employee compensation is self-evident; WEREs receive a stipend for being on the emergency response team. The stipend pay varies based on rank. Currently, NFPA 1081.156 states fire brigade leadership must be trained to a higher level. Both full-time firefighters and WEREs are employed by the organization and receive benefits that the company offers to any other employee. The only exception to this is that some states have state certified fire departments that have a set of requirements to be certified. If a private organization becomes certified through their state, then they could receive state and federal benefits.

**(a)-2. OSHA is seeking information and data about which States with OSHA-approved State Plans expressly cover volunteer emergency responders as employees. In those States,**

**how many emergency response organizations have volunteer responders? How many volunteers do these organizations have and what type(s) of responders (firefighters, EMS, technical rescuers)?**

Below is a state-by-state breakdown of the percentage of volunteer, mostly volunteer, mostly career, and career fire department as determined by the U.S. Fire Administration<sup>7</sup>:

### State Department Type Breakdown

State totals may not add up to 100 percent due to rounding.

State	Volunteer	Mostly volunteer	Mostly career	Career
Total	69.9	15.5	5.0	9.5
Alabama	79.1	8.9	4.1	8.0
Alaska	56.5	31.8	1.3	10.4
Arizona	30.6	22.6	15.3	31.5
Arkansas	84.0	9.0	2.6	4.4
California	28.8	25.8	15.7	29.7
Colorado	45.0	28.8	11.3	14.9
Connecticut	61.4	22.0	4.5	12.2
Delaware	42.4	55.9	0.0	1.7
District of Columbia	0.0	0.0	33.3	66.7
Florida	34.3	11.0	15.7	39.0
Georgia	48.5	22.7	10.3	18.6
Hawaii	8.3	0.0	16.7	75.0
Idaho	56.9	31.0	4.1	8.1
Illinois	65.2	14.1	6.2	14.5
Indiana	72.6	14.3	3.5	9.6
Iowa	89.6	6.2	0.9	3.3
Kansas	78.6	11.4	3.8	6.2
Kentucky	75.8	14.4	4.0	5.9
Louisiana	47.3	36.8	5.6	10.3
Maine	69.3	23.8	3.3	3.6
Maryland	60.8	27.7	5.0	6.5
Massachusetts	24.0	28.7	15.4	32.0
Michigan	62.2	23.4	4.8	9.6
Minnesota	85.6	10.7	1.0	2.8
Mississippi	71.6	14.6	3.6	10.3
Missouri	71.2	12.6	4.7	11.6
Montana	82.2	11.0	1.8	5.0
Nebraska	92.2	3.9	0.5	3.4
Nevada	54.5	21.6	10.2	13.6
New Hampshire	52.9	30.0	11.0	6.2
New Jersey	75.1	11.8	4.8	8.3
New Mexico	77.8	9.7	2.8	9.7
New York	90.7	3.4	1.7	4.2
North Carolina	61.3	26.5	7.1	5.1
North Dakota	92.0	4.3	0.6	3.1
Ohio	60.7	21.1	5.5	12.7
Oklahoma	81.6	9.6	2.6	6.2
Oregon	44.3	45.3	4.5	5.9
Pennsylvania	89.9	6.8	0.7	2.6
Rhode Island	36.8	25.0	2.9	35.3
South Carolina	52.3	24.1	13.9	9.8

<sup>7</sup> [National Fire Department Registry Quick Facts \(fema.gov\)](https://www.fema.gov/national-fire-department-registry-quick-facts)



### State Department Type Breakdown

State totals may not add up to 100 percent due to rounding.

State	Volunteer	Mostly volunteer	Mostly career	Career
South Dakota	91.8	4.8	0.3	3.1
Tennessee	73.7	13.2	4.7	8.3
Texas	69.9	11.8	6.7	11.6
Utah	64.4	21.3	5.3	9.0
Vermont	87.8	7.3	3.4	1.5
Virginia	70.7	16.9	5.4	7.0
Washington	39.2	38.4	10.7	11.7
West Virginia	90.7	4.8	1.3	3.3
Wisconsin	78.8	13.7	1.6	5.9
Wyoming	70.2	18.4	0.9	10.5
U.S. territories	14.3	0.0	14.3	71.4

Based on OSHA’s rulemaking, we believe volunteers in the following states would be affected by the OSHA Rule: Alaska, Arizona, California, **Connecticut**, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, **Minnesota**, Nevada, New Jersey, New York, Oregon, Puerto Rico, **South Carolina**, **US Virgin Islands**, and Washington (bolded states are ambiguous in their definition but are included by OSHA for the purposes of this analysis.)

**(a)-3. OSHA is seeking information and data from States with OSHA-approved State Plans that do not expressly cover volunteer emergency responders. In those States, how many emergency response organizations have workers who are called volunteers but receive substantial benefits, such as a retirement pension, life and/or disability insurance, death benefits, or medical benefits? These volunteers may be considered employees in the context of federal law. How many volunteer responders do these organizations have and what type(s) of responders (firefighters, EMS, technical rescuers)?**

This question raises the important issue of volunteer compensation. In accordance with U.S. Department of Labor (DOL) regulations, public employers may pay volunteers’ expenses, reasonable benefits, a nominal fee, or any combination thereof, without jeopardizing their volunteer status. Public employers must be careful, however, to not exceed these permissible payments to volunteers. If payments to volunteers rise to the level of “compensation” for services rendered, the individual will no longer qualify as a *bona fide* volunteer, but will be deemed an employee for purposes of Fair Labor Standards Act minimum wage and overtime liability. Ultimately, DOL will evaluate “the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation” to determine whether the individual loses volunteer status by virtue of payments made by the public agency.

#### **THE 20 PERCENT RULE**

In an August 7, 2006, opinion letter, the DOL provided definitive clarification as to what amounts will qualify as a nominal fee. The IAFC sought this opinion letter to elicit a bright-line test to assist fire departments in defining the line between what constitutes a nominal fee to volunteers and what amounts to compensation.

Previously, in its November 10, 2005 opinion letter, the DOL stated that a public school employee could receive a nominal fee to volunteer as a coach or advisor for extracurricular

activities so long as the fee does not exceed 20 percent of what the public school would otherwise pay a to hire a full-time coach or advisor.

Extending application of the 20 percent rule to volunteer firefighters, in the August 7, 2006, opinion letter, the DOL explained that “generally, **an amount not exceeding 20 percent** of the total compensation that the employer would pay to a full-time firefighter for performing comparable services **would be deem nominal.**” Further, DOL indicated that – so long as the fee is 20 percent or less of total compensation for comparable services – DOL will be less likely to focus on whether the fee is paid on an annual, monthly, or daily basis.

Fire departments apply the 20 percent rule to evaluate whether a fee paid to a volunteer firefighter is a nominal amount based on market information, including:

- Compensation paid to a full-time firefighter on the fire department’s payroll.
- Information from neighboring jurisdictions, the state, or the nation (including data from DOL’s Bureau of Labor Statistics, [www.bls.gov](http://www.bls.gov)).

The DOL did not clarify whether fire departments must use the compensation for a specified level of firefighter (for example, entry level or advanced) when calculating fees based on the 20 percent rule. The DOL explained that the information necessary to make this calculation generally is within the knowledge and control of fire departments, and thus, the actual determination should be made by fire departments in good faith based on “[a]ny full-time firefighter a particular fire department has on its payroll.”

The IAFC urges OSHA to consider the 2006 opinion letter, when calculating compensation and the volunteer status of a firefighter. Since many fire departments follow this longstanding opinion, it will affect the number of volunteer firefighters that fall under the scope of the Rule.

**OSHA seeks information and data from States with OSHA-approved State Plans that utilize inmate/incarcerated workers. Inmate/incarcerated workers are typically used in wildland firefighting operations. How many emergency response organizations utilize these workers? How many of these workers do these organizations have and what type(s) of responders (firefighters, EMS, technical rescuers)?**

The IAFC is aware of the following jurisdictions using inmate/incarcerated workers for wildland fire operations: Cal Fire; Los Angeles County; and the state of Nevada, including its Division of Forestry. The IAFC recommends that OSHA contact these jurisdictions to obtain the detailed answers required by this question.

**(a)-4. OSHA is seeking input regarding what types and levels of search and rescue services and technical search and rescue services should be included or excluded from the rule, and the extent to which those inclusions or exclusions should be specifically listed. OSHA is seeking input about how and where to draw the line between technical and non-technical search and rescue activities.**

The IAFC recommends that searches that are typically conducted by municipal fire and emergency service organizations should be included in the scope of the regulations. These types of searches include wide area, rapid, or hasty searches done in the initial stages of an event.

For more advanced technical rescue, there are existing regulations. Technical rescuers must apply any pertinent fire brigade regulations (1910.156) and respiratory protection regulations (1910.134). However, US&R and technical rescue must also know and implement regulations involving confined spaces (1910.146), hazardous materials (1910.120), trenches and excavations (1926.651 and 652), fall protection (1926.501), and there are also general construction industry regulations (1926) and water and marine operations (1918) that apply. OSHA may not want to create confusion by trying to extend the Rule to cover technical search and rescue, when those functions are covered by existing OSHA standards.

**(a)-5. OSHA is seeking input whether the agency should consider developing a separate rule for protecting workers involved in the clean-up of disaster sites, and associated recovery efforts? Commenters should provide substantiation for developing or not developing such a rule.**

This is another example where OSHA should evaluate its existing catalog of standards. For example, OSHA already has rules for clean-up of hazardous materials incidents and after disasters. OSHA should be careful not to create confusion by creating a new standard if there are existing standards for these efforts.

**(a)-6. OSHA is seeking input on whether the agency should consider excluding other emergency response activities besides those in 29 CFR 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)), 29 CFR 1910.146 (Permit-Required Confined Spaces in General Industry). Commenters should provide substantiation for excluding any other emergency response activities.**

For this Rule, the IAFC recommends that OSHA consider excluding any other operations that have their own standards. For example, OSHA already has standards for incidents involving confined spaces (1910.146), hazardous materials (1910.120), trenches and excavations (1926.651 and 652), fall protection (1926.501). In addition, OSHA should consider adopting the NWCG standards for wildland fire operations,

**OSHA believes that some employees of aligned employers face similar hazards to those who mitigate incidents. For instance, many jurisdictions depend on State Fire Marshal's office employees to respond to incident scenes to conduct fire investigations even though these agencies may not provide a firefighting service. Similarly, many jurisdictions depend on other organizations for training such private entities or State-run training centers that do not perform incident mitigation. OSHA is seeking input and supporting arguments on whether these types of aligned employers should be included within the scope of this rule.**

Many of the examples stated above are administered by state agencies, like state fire marshals' offices or state fire training academies. The IAFC recommends that OSHA work with the states to address this question.

## ***DEFINITIONS***

***(b)-1. OSHA is seeking information and data on whether Workplace Emergency Response Employers (WEREs) have living areas for team members, and if so, whether WEREs should be included in the definition for *Living area*.***

The IAFC believes that WEREs should be included in the definition of “Living Area.” It is important to recognize that industrial organizations may have living quarters like a municipal fire department or use a sleeping area within the onsite fire department.

## ***EMERGENCY RESPONSE PROGRAM (ERP) DEVELOPMENT***

***(e)-1. OSHA is considering adding to both paragraphs (e)(1) and (2) a requirement to permit employee representatives to be involved in the development and implementation of an ERP. OSHA is also considering adding to paragraph (e)(4) a requirement to allow employee representatives to participate in walkaround inspections, along with team members and responders. OSHA is seeking input on whether employee representative involvement should be added to paragraph (e).***

The IAFC supports the use of employee representatives in the development and implementation of the emergency response plan, including in the case of WERTs. However, due to the specificity of the risks, threats, and emergency response capabilities of a fire department, we urge OSHA to limit the employee representatives to members of that department. The IAFC has concerns about outside representatives not having the expertise to understand the complexities of that fire department’s risk, capabilities, and operations.

## ***RISK MANAGEMENT***

***(f)-1. OSHA is seeking input on whether other activities or subjects should be added to the list of minimum requirements for the risk management plan.***

The IAFC recommends that risk management plans should cover all the chapters of NFPA 1550, Standard for Emergency Responder Health and Safety, and NFPA 1580, Standard for Emergency Responder Occupational Health and Wellness.

***(f)-2. OSHA is proposing to have a performance-based infection control program provision in the risk management plan. OSHA is seeking comment on this approach including whether a final standard should incorporate a particular consensus standard or other guidance, or otherwise include specific requirements regarding infection control.***

The IAFC recommends that OSHA follow the provisions in NFPA 1580, the Standard for Emergency Responder Occupational Health and Wellness. Infection control (currently covered in NFPA 1581, Standard on Fire Department Infection Control Program) will be a chapter in NFPA 1580. That should be the document used by all fire departments. NFPA 1581 will not be in existence, when this Rule is finalized.

## ***MEDICAL SCREENING AND SURVEILLANCE***

**(g)-1. OSHA is seeking input and data on whether the proposed rule’s requirements for medical evaluations are an appropriate minimum screening for team members and responders. Should the minimum screening include more or fewer elements, and if so, what elements? Commenters should provide documentation and data supporting any additions or subtractions from the minimum medical screening. OSHA is also seeking additional data and information on the Emergency Service Organizations (ESOs).**

The IAFC recommends that the ESO have the discretion to determine minimum screening requirements. The ESO should work with its medical provider to determine what conditions to screen and the proper time period for performing these evaluations.

It is important to recognize the cost of the physicals recommended by NFPA 1582, the Standard on Comprehensive Occupational Medical Program for Fire Departments. For example, in Oregon, there are 257 fire districts of which 144 districts have an annual operating budget of less than \$500,000 and 50 districts have an annual budget under \$100,000. Their budgets are set and can only increase by a voter-approved operating levy that must be renewed every three years. The costs of NFPA 1582 physicals can average \$800 per person. So, if OSHA mandates the use of NFPA 1582 physicals, it may cause financial distress to many Oregon fire departments. Many other fire departments would be in a similar financial situation.

If OSHA were to mandate NFPA 1582 physicals for emergency service organizations, Congress would have to establish new funding sources to help cover the costs of this mandate.

**(g)-2. OSHA is seeking input on whether an action level of 15 exposures to combustion products within a year to trigger medical surveillance consistent with National Fire Protection Association (NFPA).**

The IAFC recommends that OSHA follow the recommendations of the National Fire Protection Association. We are unaware of the 15-exposure requirement being ascribed to NFPA.

**(g)-3. OSHA is seeking input on whether the additional medical surveillance proposed in paragraph (g)(3) should be extended to include WEREs and team members. Commenters should provide supporting documentation and data that substantiate team member exposures to combustion products at or above the proposed action level.**

The IAFC recommends that OSHA follow the recommendations of the National Fire Protection Association. We are unaware of the 15 exposure requirement being ascribed to NFPA.

**(g)-4. OSHA is seeking input and data on whether stakeholders support the proposed fitness for duty (ability to physically accomplish required job tasks safely) requirements or whether the requirements pose a burden on or raise concerns for team members, responders, WEREs or ESOs. Commenters should provide explanation and supporting information for their position.**

The IAFC recommends that the OSHA should base its recommendations for the fitness for duty requirements on the 15 essential tasks required by the NFPA as defined in NFPA 1582. However, the local fire department should be given flexibility to determine its fitness requirements for purposes of OSHA enforcement.

These 15 Essential Jobs Tasks in NFPA 1582 are:

## 5.1 Essential Job Tasks and Descriptions.

### 5.1.1

The fire department shall evaluate the following essential job tasks against the types and levels of emergency services provided to the local community by the fire department, the types of structures and occupancies in the community, and the configuration of the fire department to determine which tasks apply to individuals:

**(1)\*** Wearing personal protective equipment (PPE) and self-contained breathing apparatus (SCBA) while performing firefighting tasks (e.g., hose line operations, extensive crawling, lifting and carrying heavy objects, ventilating roofs or walls using power or hand tools, forcible entry), rescue operations, and other emergency response actions under stressful conditions, including working in extremely hot or cold environments for prolonged time periods.

(2) Wearing the respirators required by the jurisdiction (e.g., N-95, half-face elastomeric, PAPR, SCBA), which includes a demand-valve-type positive-pressure facepiece or filter respirator, achieving a successful fit-test and tolerating increased respiratory workloads.

(3) Exposure to toxic fumes, irritants, particulates, biological (i.e., infectious) and nonbiological hazards, or heated gases, despite the use of PPE and SCBA.

(4) Climbing at least six flights of stairs or walking a similarly strenuous distance and incline in jurisdictions without tall buildings while wearing PPE and SCBA, commonly weighing 40–50 lb. (18–23 kg) and carrying equipment/tools weighing an additional 20–40 lb. (9–18 kg).

(5) Wearing PPE and SCBA that is encapsulating and insulated, which will result in significant fluid loss that frequently progresses to clinical dehydration and can elevate core temperature to levels exceeding 102.2°F (39°C).

- (6) Working alone while wearing PPE and respirators required by the jurisdiction, searching, finding, and rescue-dragging or carrying victims to safety in hazardous conditions and low visibility.
- (7) While wearing PPE and SCBA, advancing water-filled hose lines up to 1 3/4 in. (45 mm) in diameter from fire apparatus to occupancy [approximately 150 ft (50 m)], which can involve negotiating multiple flights of stairs, ladders, and other obstacles.
- (8) While wearing PPE and SCBA, climbing ladders, operating from heights, walking, or crawling in the dark along narrow and uneven surfaces that might be wet or icy, and operating in proximity to electrical power lines or other hazards.
- (9) Unpredictable, prolonged periods of extreme physical exertion as required by emergency operations without benefit of a warm-up period, scheduled rest periods, meals, access to medication(s), or hydration.
- (10) Operating fire apparatus or other vehicles in an emergency mode with emergency lights and sirens.
- (11) Critical, time-sensitive, complex problem solving during physical exertion in stressful, hazardous environments, including hot, dark, tightly enclosed spaces, that is further aggravated by fatigue, flashing lights, sirens, and other distractions.
- (12) Ability to communicate (i.e., give and comprehend written or verbal orders) while wearing PPE and respirators required by the jurisdiction, under conditions of high background noise, poor visibility, and drenching from hose lines or fixed protection systems (e.g., sprinklers).
- (13) Functioning as an integral component of a team, where sudden incapacitation can result in mission failure or in risk of injury or death to members of the public or other team members.
- (14) Working in shifts, including during nighttime, that can extend beyond 12 hours.
- (15) Performing EMS tasks, such as CPR or lifting or moving patients, while wearing PPE and respirators required by the jurisdiction.”

However, it is important to realize that many organizations, especially volunteer and combination fire departments, have a variety of roles and positions filled by volunteers. Many organizations are dependent on volunteers who have a wide range of physical capabilities. Mandating a fitness requirement would be detrimental to these fire departments' operations.

In addition, the fitness requirements for particulate positions may be different. For example, a responder charged with entering an Immediately Dangerous to Life or Health (IDLH) environment would have a different fitness standard than a member who might only participate in some type of non-strenuous training (e.g. CPR).

As such, OSHA may want to recommend that ESOs use the 15 essential tasks to determine fitness for duty requirements. However, OSHA should provide flexibility to allow the ESO to determine its own fitness requirements, and then ensure that the ESO is meeting its self-defined requirements.

**(g)-5. OSHA is seeking input on whether the required health and fitness program in proposed paragraph (g)(6) should be extended to include WEREs and team members.**

The IAFC recommends that OSHA adopt the same approach that we recommended for question (g)-4.

**(g)-6. OSHA is seeking input on whether every three years is an appropriate length of time for fitness re-evaluation, and if not, what interval would be appropriate. The agency is seeking information and data to support an alternative interval between evaluations.**

The IAFC supports a recommendation by OSHA that a fitness re-evaluation be held annually as required by NFPA 1582. However, consistent with our discussion on physicals and fitness for duty requirements, we recommend that OSHA should provide flexibility to allow the ESOs to determine their own fitness evaluation requirements, and then ensure that the ESO is meeting its self-defined requirements.

## ***TRAINING***

**(h)-1. OSHA is seeking input and data regarding the appropriate methods and interval(s) for skills checks, as it relates to a team member's or responder's ability to perform essential job tasks and proposed paragraph (h)(3).**

Maintaining minimum proficiency in skills is critical to remain at the ready to serve our communities. ESOs have the ability to develop these skill checks and can likely determine abilities based on training events and the ability to perform tasks. The IAFC recommends that the establishment of a minimum interval to demonstrate proficiency should remain a local issue based on the capability and need of the state, county, or agency. The IAFC recommends that OSHA communicate with Verisk (ISO) to evaluate the documentation of training and continuing skills evaluation as a possible model to follow.



## ***FACILITIES***

***(i)-1. OSHA is seeking input regarding what WEREs are currently doing for decontamination, disinfection, cleaning, and storage of PPE and equipment, and whether OSHA should include any additional requirements for these processes in a final standard.***

The IAFC understands that WEREs currently are doing decontamination, disinfection, cleaning and storage of PPE and equipment. The IAFC recommends that OSHA adopt the NFPA standard and identify how an organization should meet the standard. For example, the WERT may use a vendor or a partnership with a local fire department to clean PPE, while other organizations have their own cleaning equipment on site to clean PPE.

***(j)-1. OSHA is seeking input on whether the agency should consider prohibiting the installation of fire poles in new ESO facilities.***

It is our understanding that NFPA 1550, the NFPA's new Standard for Emergency Responder Health and Safety does not address the issue of fire poles. So, we recommend leaving the decision about fire poles to the authority having jurisdiction over the facility.

***(j)-2. OSHA is seeking input on whether ESO facilities with sleeping areas should be protected by automatic sprinkler systems, as proposed in paragraph (j)(2)(ii).***

NFPA 1550 requires smoke alarms and carbon monoxide detectors in ESO facilities. Automatic fire sprinklers are proposed for new construction. There is not a requirement to retrofit old buildings with fire sprinklers (12.1.4). The IAFC supports the need for sleeping facilities (and the entire facility) to be protected by automatic sprinklers for all new fire stations. Existing fire stations should be grandfathered in unless specific funding is provided for retrofit stations with fire suppression.

## ***PERSONAL PROTECTIVE EQUIPMENT (PPE)***

***(k)-1. OSHA is seeking input on whether the agency should specify retirement age(s) for PPE. Commenters should provide information and data to support specific retirement/remove from service criteria for PPE.***

The IAFC understands that NIOSH currently is researching the lifespan of PPE through a study by the National Personal Protective Technology Laboratory. OSHA should consult with NIOSH in determining the life span of PPE.

***(k)-2. OSHA is seeking input on whether WEREs and ESOs are currently isolating and/or separating contaminated PPE and non-PPE equipment from team members and responders and also how this separation is being accomplished?***

Overall, many ESOs are currently isolating and separating contaminated PPE and non-PPE equipment. There are a number of reasons for this practice: lessons learned from COVID-19; concern about exposure to carcinogens in living areas and crew quarters; exposure to asbestos and

other materials after a building collapse; and exposure to new elements like contamination from fires involving lithium-ion batteries. All contaminated equipment is getting gross decontaminated on scene then bagged/or placed into compartments away from responders. It is isolated from the workers and then cleaned prior to being placed back into service. The IAFC encourages OSHA to ensure that PPE is not stored or permitted in the living quarters of fire stations, when separation between apparatus shortage and living quarters are separate.

**(k)-3. OSHA is seeking information on whether there is evidence of per- and polyfluoroalkyl substances (PFAS) in PPE causing health issues for team members and responders. Commenters should provide information and data to support release of PFAS from the PPE and movement of PFAS into the responder.**

The IAFC is aware of studies by the National Cancer Institute's Division of Cancer Epidemiology and Genetics on the relationship between cancer and the exposure to PFAS: [PFAS Exposure and Risk of Cancer - NCI](#). In addition, we would like to highlight studies by the National Institute of Standards and Technology that highlight the exposure to firefighters of PFAS in PPE, especially when the gear is subject to "wear and tear:" [Wear and Tear May Cause Firefighter Gear to Release More 'Forever Chemicals' | NIST](#).

**(k)-4. OSHA is seeking input on whether the scheduled updates to NFPA 1971 will address or alleviate stakeholder's concerns about PFAS in PPE.**

The IAFC recommends that OSHA discuss this question with the NFPA.

## **VEHICLES**

**(l)-1. OSHA is seeking information on whether there are any other situations or vehicles where OSHA should require, or exclude, the use of seat belts and vehicle harnesses. If so, please explain.**

Seatbelts should always be required.

The use of seat belts, harnesses, collision response airbags, and other current and future restraint systems are common sense and best practice. This rule applies to both the civilian transportation sector as well as the fire service. The IAFC believes that the North American fire service has long ago moved beyond accepting the risks that accompany fire personnel not utilizing said restraints and has vehemently embraced policy and practice requiring fire personnel to be properly restrained. Simply stated, fire personnel should be properly restrained in all forms of fire apparatus while in motion, whether by a traditional lap and belt system, harness system, or alternate option as provided and certified by the manufacturer.

Examples where this practice may be a challenge, yet not impossible, is in the wildland environment where firefighters are in exterior riding positions and firefighters/emergency medical personnel performing patient care in an ambulance. In those, and similar scenarios, technology and applications exist to ensure the safe restraint of personnel. However, it is common to experience personnel resisting use of those restraint systems as they feel their maneuverability may

be limited. This notation is made purely for the point of allowing the reader to recognize the broadness of the North American fire service and how our ever-expanding responsibilities can challenge even the most thoughtfully produced safety standard.

**(l)-2. OSHA is seeking input on how compliance with (l)(2)(iii), where emergency vehicles are not moved until all passengers are seated and belted, would be achieved in situations where PPE must be donned enroute to an incident. Would the team members or responders stop enroute or wait until arrival at the scene to don their PPE?**

The opinion of the (IAFC) Emergency Vehicle Management Section (EVMS) is that fire personnel stopping while enroute to don PPE is simply not a logical nor practical approach. Rather fire service policies and practices should dictate that personnel don their PPE to the level acceptable by the local Authority Having Jurisdiction (AHJ), as stated in internal policies and guidelines, prior to mounting inside the apparatus and applying the appropriate restraint system. Once the apparatus is in motion, said personnel should remain properly restrained until such time that the apparatus has arrived at its destination, movement ceased, and parked and/or the air brake applied. Again, following AHJ policies and guidelines, personnel can then dismount the apparatus and complete the donning of PPE if needed. In another example of the broadness of the North American fire service, there are myriad practices regarding PPE inside of apparatus crew areas across the service. While many fire departments allow and encourage the traditional approach of full structural firefighting PPE inside crew areas, many other departments have moved to what is commonly called a clean-cab concept, whereby most PPE is kept in exterior equipment compartments. The variety of policies and practices, combined with the variety of apparatus options from the manufacturers, dictates a broader approach to restraint rules. Simply stated, fire personnel should remain properly restrained while any apparatus is in motion, and either be donned in PPE prior to the vehicle moving or don PPE once it is safely stopped (or a combination of this approach). Regardless, it is not acceptable for personnel to release their restraint systems while in motion for the purpose of donning PPE.

**(l)-3. OSHA is seeking input on whether it should require that patients be restrained during transport to prevent an unrestrained patient from being thrown into a team member or responder in the event of a vehicle collision or an evasive driving maneuver.**

Yes, NFPA 1917, the Standard for Automotive Ambulances, requires patient cot retention. In addition, OSHA may wish to consult SAE J3027-201407, Ambulance Litter Integrity, Retention, and Patient Restraint, which discusses testing and performance methodology for the patient litter, the litter retention system, and patient restraint.

### ***INCIDENT MANAGEMENT***

**(o)-1. OSHA is seeking input about WERE and ESO current use of an Incident Management System (IMS), whether the National Incident Management System (NIMS) and National Response Framework were used as guidance for the IMS, and if there are any concerns with being compatible with NIMS.**

The IAFC supports the ICS system or command systems that meet the framework of NIMS and should be utilized and supported in all emergencies. We recommend that all ESOs and WEREs be trained to utilize it. Finally, IAFC recommends that OSHA include the provisions from NFPA 1561 (which is being consolidated into NFPA 1550, the Standard for Emergency Responder Health and Safety).

**(o)-2. OSHA is seeking input on which aspects of an IMS are the most effective and the least effective in protecting the safety and health of team members and responders. Commenters should explain how and why certain IMS components are or are not effective.**

Overall, the IAFC supports the use of NIMS and recommends that standard be adopted. The IAFC believes that more training is required to ensure adoption of NIMS among both ESOs and partners like law enforcement and public health agencies. There are challenges to NIMS adoption, especially among non-fire agencies, which can be resolved with a greater federal focus on NIMS adoption and training.

### ***EMERGENCY INCIDENT OPERATIONS***

**(p)-1. OSHA is seeking input on current practices for identifying and communicating the various control zone boundaries. What marking methods are used? How are they communicated to team members and responders? Do the marking methods help or hinder on-scene operations?**

The IAFC defines hot, warm, and cold zones as:

- Hot Zone - Area where there is a known hazard or direct and immediate life threat (i.e., any uncontrolled area where an active shooter/bomber could directly engage a Rescue Task Force (RTF)).
- Warm Zone - Area of indirect threat (i.e., an area where law enforcement has either cleared or isolated the threat to a level of minimal or mitigated risk). This area can be considered clear but not secure. The RTF will deploy in this area, with security, to treat and remove victims.
- Cold Zone - Area where there is little or no threat, due to geographic distance from the threat or the area has been secured by law enforcement (i.e., casualty collection points, the area where fire/EMS may stage to triage, treat, and transport victims once removed from the warm zone).

During mass casualty or active shooter events, the IAFC also recommends that the responding agencies use NIMS, and the Incident Command System, in particular. Agencies involved in the response should use common communications terminology. Fire department personnel must understand common law enforcement terms, such as Cleared, Secured, Cover, Concealment, Hot Zone/Warm Zone/Cold Zone, and other related terms (red, green, etc.).<sup>8</sup>

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<sup>8</sup> "IAFC Position: Active Shooter and Mass Casualty Events," October 10, 2013.

## ***STANDARD OPERATING PROCEDURES***

***(q)-1. OSHA seeks input on whether the agency should include requirements for Standard Operating Procedures (SOPs) regarding protections against workplace violence for team members and responders, and for any data or documentation to support or refute potential requirements. OSHA notes that its regulatory agenda includes a separate rulemaking addressing workplace violence against health care workers. While OSHA has not published a proposed rule in that rulemaking, OSHA welcomes comments on whether violence against emergency responders should be addressed in a potential Emergency Response final rule in addition to that Workplace Violence rulemaking, instead of in that rulemaking, or primarily in that other rulemaking.***

Because OSHA is engaged in other rulemaking on workplace violence, the IAFC believes that OSHA does not need to include this issue in the final Rule to prevent confusion. The IAFC also would like to point out that workplace violence or violence against first responders should be addressed in the state and federal legal system. Department SOP/SOG provides the local framework to protect first responders. State and federal laws protecting first responders would be more impactful.

In addition, OSHA may want to discern the difference between the violence by the public against emergency responders and internal bullying within the ESO. The IAFC's Safety, Health and Survival Section has a Bullying Prevention Program, which explains that bullying can lead to workplace violence and worse.

## ***POST INCIDENT ANALYSIS***

***(r)-1. OSHA is considering adding a requirement to permit team members, responders, and their representative to be involved in the review and evaluation of the relevant plans as part of the Post-Incident Analysis and would like stakeholder input on whether to add this requirement.***

The IAFC supports the inclusion of Post-Incident Analysis (PIA), with some latitude for smaller ESOs to meet this requirement. It is important that the PIA address the emergency response component of the incident to improve future planning and assess current capabilities. There is some concern about mandating representatives from outside the jurisdiction, who may not be familiar with the incident and the capabilities of the ESO.

## ***PORTABLE FIRE EXTINGUISHERS***

**OSHA's current standard, 29 CFR 1910.157, Portable Fire Extinguishers, is based on the 1978 edition of NFPA 10, Standard for Portable Fire Extinguisher, and was last updated more than 20 years ago. OSHA is seeking stakeholder input and data regarding whether the agency should consider updating the standard to improve consistency with the version of NFPA 10, that will be current when the final rule is published.**

The IAFC recommends that OSHA adopt “the latest version of NFPA 10” in order to ensure that the most recent version of the standard is in effect. The portable fire extinguisher standard needs to be updated to account for Class K fires that involve combustible cooking materials, such as vegetable or animal oils and fats. The Class K fire designation was established in 1994 to address changes in restaurant cooking fires.

## ***HEAT***

**OSHA is seeking stakeholder input and supporting documentation on whether it should include requirements for operating in external environments with elevated temperature in situations that are not emergency incidents.**

Due to the fact that OSHA is working on standard for “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings,” the IAFC recommends that OSHA not address this issue in this Rule to prevent confusion. It is our understanding that NFPA 1580 will include a chapter on training in elevated temperatures.

## ***CONSENSUS STANDARDS***

**OSHA is seeking input on the potential impacts of incorporating by reference of various NFPA standards, and how equivalency or consistency could be achieved if the NFPA standards were not incorporated by reference.**

Earlier in our comments, the IAFC discussed the need for OSHA to account for the consolidation of some NFPA standards. In addition, NFPA standards are updated based on a pre-determined time cycle, which can create discrepancies between the new Rule and the NFPA standards over time.

In addition, the IAFC recommends that OSHA does not incorporate NFPA 1984, the Standard on Respirators for Wildland Fire-Fighting Operations and Wildland Urban Interface Operations. The IAFC agrees with the standard in principle, but in application, this standard presents significant issues, as it needs clearer delineation as to when and where respirator should be used. The IAFC recommends that OSHA consider incorporation after this standard has been reworked through the normal NFPA process. Additionally, IAFC notes that NFPA 2500, Standard for Operations and Training for Technical Search and Rescue Incidents and Life Safety Rope and Equipment for Emergency Services, currently is in draft form, and its final version has not yet been determined.

The IAFC also would like to work more closely with OSHA regarding firefighter physicals and fitness screening requirements. Overall, the IAFC supports the concept of annual physical examinations as recommended currently in NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments. However, we have heard concerns from our members both about the cost of administering these physicals annually and the lack of resources, especially for mental health screening. Due to these concerns, OSHA will have to consider a tiered implementation schedule for fire departments. In addition, if the federal

government mandates this requirement, Congress will have to fund efforts to help fire departments meet these requirements.

Overall, the IAFC recommends that OSHA adopt the recommendations of the National Wildfire Coordinating Group (NWCG) for wildland fire operations. One of the primary objectives of the NWCG is to “[e]stablish interagency wildland fire operations standards.” In addition, the NWCG sets “wildland fire position standards, qualifications requirements, and performance support capabilities that enable implementation of the NWCG standards.”<sup>9</sup> In order to prevent confusion on the fireground during wildland fire operations, we urge OSHA to work with NWCG and adopt the NWCG standards as part of its rulemaking.

### ***PROFILE OF AFFECTED INDUSTRIES***

**OSHA is seeking input on whether this is an appropriate approach to estimating the number of affected responders. The agency welcomes additional data or information on how volunteer responders are treated regarding OSHA protections in State Plan states. [same as (a)-2]**

The IAFC answered this question in (a)-2.

**OSHA is seeking additional data about the number of WEREs and team members who would fall within the scope of the proposed rule.**

The IAFC has 151 industrial fire agencies listed as members of its Industrial Fire and Safety Section. The pharmaceutical, tech, and chemical industries are rapidly growing and building large new facilities with full-time industrial fire departments. A rough estimate is that there are approximately 1,000 industrial fire brigades within the U.S.

**OSHA is seeking information on additional or alternate data sources that would allow the agency to better estimate the universe of EMS providers.**

The best data source for the state of the EMS industry is the National Association of State EMS Officials’ 2020 EMS Assessment ([2020-National-EMS-Assessment Reduced-File-Size.pdf](https://www.nasemso.org/2020-National-EMS-Assessment-Reduced-File-Size.pdf) ([nasemso.org](https://www.nasemso.org))).

**OSHA is seeking comment on the estimates of technical search and rescue organizations and responders. The agency also encourages anyone with additional data that could be used to refine these estimates to submit those data to the rulemaking record. [same as (a)-4]**

The IAFC recommends that OSHA contact the FEMA Urban Search & Rescue (US&R) program office. Both FEMA and the State Urban Search and Rescue Alliance (SUSAR) are engaged in an effort to identify and catalog all of the federal, state, and local urban search and rescue teams across the nation.

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<sup>9</sup> Ibid.

**OSHA is seeking additional data on private technical search and rescue service providers that would allow the agency to better estimate the universe of these employers.**

The IAFC recommends contacting the FEMA US&R and SUSAR to see if they can help obtain this information as part of their cataloging effort (mentioned above).

### ***COSTS OF COMPLIANCE***

**OSHA is seeking comments on the estimated wages used to represent volunteers and also whether the valuation of volunteers' time and incarcerated individuals' time is reasonable.**

One major issue relating to these regulations is the coverage of volunteer fire and EMS personnel. We recommend that OSHA follow existing regulations and policies develop by the U.S. Department of Labor's Wage and Hour division.

### **PAYMENTS TO VOLUNTEERS**

In accordance with DOL regulations, public employers may pay volunteers expenses, reasonable benefits, a nominal fee, or any combination thereof, without jeopardizing their volunteer status. Public employers must be careful, however, to not exceed these permissible payments to volunteers. If payments to volunteers rise to the level of "compensation" for services rendered, the individual will no longer qualify as a *bona fide* volunteer, but will be deemed an employee for purposes of FLSA minimum wage and overtime liability. Ultimately, DOL will evaluate "the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation" to determine whether the individual loses volunteer status by virtue of payments made by the public agency.

### **THE 20 PERCENT RULE**

In an August 7, 2006, opinion letter, DOL provided definitive clarification as to what amounts will qualify as a nominal fee. IAFC sought this opinion letter to elicit a bright-line test to assist fire departments in defining the line between what constitutes a nominal fee to volunteers and what amounts to compensation.

Previously, in its November 10, 2005 opinion letter, DOL stated that a public school employee could receive a nominal fee to volunteer as a coach or advisor for extracurricular activities so long as the fee does not exceed 20 percent of what the public school would otherwise pay a to hire a full-time coach or advisor.

Extending application of the 20 percent rule to volunteer firefighters, in the August 7, 2006, opinion letter, DOL explained that "generally, **an amount not exceeding 20 percent** of the total compensation that the employer would pay to a full-time firefighter for performing comparable services **would be deem nominal.**" Further, DOL indicated that – so long as the fee is 20 percent or less of total compensation for comparable services – DOL will be less likely to focus on whether the fee is paid on an annual, monthly, or daily basis.

Fire departments apply the 20 percent rule to evaluate whether a fee paid to a volunteer firefighter is a nominal amount based on market information, including:



- Compensation paid to a full-time firefighter on the fire department’s payroll.
- Information from neighboring jurisdictions, the state, or the nation (including data from DOL’s Bureau of Labor Statistics, [www.bls.gov](http://www.bls.gov)).

DOL did not clarify whether fire departments must use the compensation for a specified level of firefighter (for example, entry level or advanced) when calculating fees based on the 20 percent rule. DOL explained that the information necessary to make this calculation generally is within the knowledge and control of fire departments, and thus, the actual determination should be made by fire departments in good faith based on “[a]ny full-time firefighter a particular fire department has on its payroll.”

More information about managing volunteer firefighters in a consistent manner can be found in the IAFC handbook, “Managing Volunteer Firefighters for FLSA Compliance: A Guide for Chiefs and Community Leaders ([Managing Volunteer Firefighters for FLSA Compliance: A Guide for Fire Chiefs and Community Leaders \(iafc.org\)](http://www.iafc.org)).

**OSHA is seeking comment and data on the level at which organizational costs are incurred for state plan states with inmates engaged in firefighting.**

The IAFC recommends that OSHA work with the states of California and Nevada to determine an answer to this question. These states use inmates for firefighting operations.

**OSHA is seeking comment and data on compensation by organizations for responder fitness activities.**

Some fire departments provide incentives to promote firefighter fitness. However, they may not be issued in a form of remuneration. For example, many fire departments have internal fitness facilities that firefighters can use while they are on shift. In addition, ESOs in Oregon include wellness incentives through health insurance programs.

**OSHA made an initial assumption that EMS providers at smaller ESOs would have lower levels of certification and therefore require less training time but seeking comment and data on this assumption.**

OSHA's assumption that EMS providers at smaller Emergency Service Organizations (ESOs) would have lower levels of certification and therefore require less training time may not be entirely accurate. Several factors should be considered to provide a more nuanced understanding of the training needs for EMS providers at smaller ESOs:

- **Certification Levels:** While it is possible that some smaller ESOs may have EMS providers with lower levels of certification, this is not a universal rule. Many smaller ESOs employ highly trained and certified professionals who require extensive and ongoing training to maintain their skills and certifications. (EMT’s do have lesser CEU requirements than Paramedics, usually bi-annually renewals of licensure.)

- **Scope of Services:** Smaller ESOs often serve rural or underserved areas (EMS/ambulance deserts) where EMS providers must be prepared to handle a wide range of emergencies due to limited healthcare facilities nearby. This necessitates comprehensive training to ensure providers can manage diverse and complex medical situations independently.
- **Resource Limitations:** Smaller ESOs may have fewer resources and personnel, which means each EMS provider might have to perform a broader range of tasks compared to their counterparts in larger ESOs. This can require more, not less, training to ensure they are proficient in all necessary skills.
- **Continuing Education:** Regardless of the size of the ESO, EMS providers must meet state and federal requirements for continuing education and recertification. Smaller ESOs must ensure their staff receive the same quality and quantity of training to remain compliant and effective in their roles.
- **Local Needs and Risks:** The specific needs and risks of the communities served by smaller ESOs should be considered. In some cases, these areas might present unique challenges that require specialized training beyond standard certification levels.

To accurately assess the training needs of EMS providers at smaller ESOs, OSHA should gather detailed data on the certification levels, scope of responsibilities, and community-specific requirements of EMS providers across various ESOs. Input from these organizations and their providers will be crucial in forming a comprehensive understanding of their training needs and ensuring that regulations and support structures are appropriately tailored to their circumstances.

## ***BENEFITS***

**OSHA is seeking comment and data on the estimated incidence of work-related heart attacks that the agency might use to better estimate this parameter of the analysis.**

OSHA may wish to refine its definition of the term “heart attack.” For example, is OSHA seeking information about sudden cardiac arrests resulting in death and/or resuscitation or is it seeking information about myocardial infarctions? In addition, is OSHA seeking data concerning fatal and/or non-fatal cardiac events? Additionally, is OSHA evaluating other cardiovascular events, including fatal and non-fatal aortic aneurisms, cerebral-vascular accidents (CVA/Stroke), malignant cardiomyopathy, and electrical conduction deficits (arrhythmias) as falling within the umbrella term of “heart attacks”?

In any case, the IAFC recommends that OSHA consult the NFPA report on “U.S. Firefighter Injuries” ([Research \(nfpa.org\)](https://www.nfpa.org/research)). The report lists the number of heart attacks by firefighters that occurred on the fireground, in non-fire emergencies, responding to or returning from an incident, in training, and other situations for 2022.

In addition, the IAFC recommends that OSHA use the U.S. Fire Administration’s firefighter fatality database ([Firefighter Fatalities in the United States \(fema.gov\)](https://www.fema.gov)) to track the number of fatal heart attacks suffered by firefighters. This database covers a time period from 1990 to 2021. The

database indicates that there were approximately 1,460 firefighter deaths by heart attack during that time frame.

**OSHA is aware that heart attacks among emergency responders besides firefighters are prevalent and therefore is seeking comment on this estimate and encourages the public to submit any additional data or data sources that the agency might use to better estimate this parameter of the analysis.**

There are a number of medical journal articles that OSHA can use to determine the death by heart attack of EMS personnel. Among them are:

- Miller, Anastasia. “Emergency medical service personnel injury and fatality in the United States,” *Journal of Epidemiological Research* (2018), Vol. 4, No. 2, May 23, 2018 (<https://twu-ir.tdl.org/server/api/core/bitstreams/7ec06a9b-220c-43a0-8c89-f234685099f5/content>)
- Maguire, Brian J. et al. “Occupational fatalities in emergency medical services: a hidden crisis,” *Annals of Emergency Medicine* (2002 Dec; 40(6)) (<https://pubmed.ncbi.nlm.nih.gov/12447340/#:~:text=Using%20the%20highest%20cause%2Dspecific,EMS%20worker%20fatalities%20during%20these>)

**OSHA assumes the benefit of reduced fatalities due to colorectal cancer begins in Year 10 after publishing a final rule but is seeking comment and data on the most appropriate lag time to begin seeing this benefit.**

**OSHA is seeking comment and data to support the overall reduction in cancer fatalities by the proposed rule and also how long it will take (lag time) for these benefits to be realized. OSHA is seeking comment and data on avoided cases of non-fatal cancer due to the proposed rule and also how long it will take (lag time) for these benefits to be realized.**

The IAFC consulted with the Firefighter Cancer Support Network to answer the preceding three questions. Each one of these questions is difficult as they rely on some speculation and some research. There is some research that would say screenings have limited improvements to improved outcomes of many cancers, however we have learned throughout the years that when cancer is found during screening it is typically found early, therefore saving lives, particularly those of firefighters. There remains a gap in research for firefighter specific cancer screening programs.

The Firefighter Cancer Support Network promoted colorectal screenings at age 40, breast screenings at age 35 for women, as well as low dose CT at 50 for lung cancer. They also advocate for annual medical exams that follow the NFPA 1582, which provides for additional blood and physiological screenings that not only detect cancer but many other medical problems. The Firefighter Cancer Support Network’s reasoning comes from firsthand knowledge of physicians working with firefighters that have indicated that these ages and tests make a difference in outcomes in their work. It also comes from the many firefighters that have discovered cancer early before symptoms arrive through a screening.

Implementation of these screenings would demonstrate an immediate benefit to the firefighters. However, the implementation of these screenings by fire departments across the nation could be the hurdle that would contribute to a longer realization of benefits and reduced fatalities.

OSHA also may want to reconsider the comment in the rule that firefighters with 15 exposures a year should be required to get screened. Cancer screening would benefit all firefighters, because exposures vary from fire to fire. It becomes difficult to measure the amount of exposure in a single fire. A firefighter that had a mask failure or some event that contributed to prolonged smoke exposure should be considered as at risk as someone that had 15 exposures but used best practices to reduce their overall risk.

### ***ECONOMIC FEASIBILITY***

**There has been no economic feasibility threshold established for public entities equivalent to the ten-percent profits threshold for private entities. OSHA is seeking comment on what economic feasibility threshold would reasonably apply to the public sector.**

**OSHA is also seeking comments, information, and data on the economic feasibility of compliance for public organizations.**

IAFC members have gathered empirical data that illuminate the financial impact of the proposed standard on various emergency response organizations. The factors to be considered for compliance include: training existing personnel; hiring and training of new personnel; upgrading and replacing equipment; increased certifications; and additional administrative requirements.

Career departments with between 240 and 600 responders have predicted an increase in annual budget cost of two to ten percent (2%-10%). For these groups it is anticipated that certification and infrastructure requirements will be the most significant cost, and compliance with the rules will take anywhere from 3-4 years. However, infrastructure updates may require up to 10 years.

Career departments with less than 150 responders have hypothesized that compliance with the proposed standard will take 3-5 years increase their annual budgets at least by five percent (5%).

Smaller departments with less than 70 responders will be critically impacted anticipating as much as a forty-six percent (46%) increase on annuals budgets and up to 10 years to become fully compliant.

Considering these various costs to the ESOs, we respectfully request that OSHA provide members of the IAFC a seat at the table to collaborate and develop a plan, with feasible guidelines, that will not only improve responder safety, but ensure that ESOs can properly budget for all the required components including legal counsel, compliance audits, and risk management tactics.

### ***INITIAL REGULATORY FLEXIBILITY ANALYSIS***

**The Regulatory Flexibility Act requires OSHA to show impacts on small entities and defines small government entities as those serving populations of less than 50,000. Given the unique circumstances of volunteer fire departments, some other approach may be more useful for purposes of OSHA's analysis. OSHA is seeking comments, information, and data on additional analyses that the agency should develop to demonstrate economic feasibility and illustrate economic impacts on small entities.**

The IAFC recommends that OSHA consider not just population served by the volunteer or combination fire department. OSHA also should consider other factors, such as number of volunteer and career firefighters serving in the volunteer or combination department; the budget of the department; and the department's ability to raise funding to meet OSHA's requirements. Many volunteer fire departments raise funds through contributions and fundraising pancake dinners and fish fries. For example, a volunteer fire department may not be able to hold enough community fish fries to cover the medical screening costs required by OSHA or to pay over \$1 million to replace a 20-year-old fire apparatus. The fire department also may not have other funding alternatives.

**There appear to be limitations on the systematic data available to develop such analyses for smaller governmental jurisdictions. OSHA is also seeking comments, information, and data on what analyses would be most useful for understanding the potential impacts on small entities. OSHA is seeking comment on the feasibility of the planning requirements for small government agencies.**

The IAFC found from a limited survey that career departments with less than 150 responders have hypothesized that compliance with the proposed rules will take 3-5 years increase their annual budgets up to five percent (5%). This data may help provide information about the costs of compliance for small government agencies and the time for them to implement the regulations.

### ***MISCELLANEOUS***

**OSHA recognizes that organizations such as the National Wildfire Coordinating Group (NWCG) develop standards applicable to their member organizations, and other organizations who perform wild land firefighting services. OSHA seeks input on whether standards such as those developed by NWCG should be considered equivalent to various provisions in the proposed rule; particularly those related to policies and procedures, personal protective equipment, and medical evaluation and surveillance requirements. Are there standards for other "specialty or non-structural" types of firefighting that OSHA should consider? Commenters should provide supporting data, documents, and side-by-side comparison.**

The IAFC recommends that OSHA adopt the recommendations of the National Wildfire Coordinating Group (NWCG) for wildland fire operations. One of the primary objectives of the NWCG is to "[e]stablish interagency wildland fire operations standards."<sup>10</sup> In addition, the NWCG sets "wildland fire position standards, qualifications requirements, and performance support capabilities that enable implementation of the NWCG standards."<sup>11</sup> In order to prevent confusion on the fireground during wildland fire operations, we urge OSHA to work with NWCG and adopt the NWCG standards as part of its rulemaking.

**OSHA is seeking comment on specific provisions that could be enhanced to be made more performance oriented.**

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<sup>10</sup> National Wildland Fire Coordinating Group Charter, 2023.

<sup>11</sup> Ibid.

The IAFC has no recommendations for this section.

**OSHA seeks additional information and data on how emergency response activities contribute to cardiovascular disease.**

The IAFC recommends that OSHA contact Dr. Denise Smith with the U.S. Fire Administration or Dr. Stefanos Kales at the Harvard T.H. Chan School of Public Health or solicit specific input from them. Consult past studies including “Effects of Heat Stress and Dehydration on Cardiovascular Function” <https://www.skidmore.edu/responder/documents/smith-dhsS10-fs-report.pdf>.

***TIMELINE FOR COMPLIANCE***

**OSHA is open to considering alternative compliance dates for the proposed standard and seeks input on what reasonable implementation periods would be for specific provisions and why. The agency is also interested if extended compliance timelines would be particularly helpful to small and/or volunteer organizations as a way of mitigating the impact of the rulemaking.**

Fire departments will have to raise funds and engage in long-term efforts to come into compliance with this new Rule. The IAFC appreciates that OSHA proposes a graduated timeline for implementation of the rule. However, we are concerned that the OSHA timeline may too ambitious, because it does not include local budget schedules and the current multi-year delay in receiving apparatus and equipment due to supply chain shortages.

In light of these challenges, the IAFC recommends the following timeline for implementation:

Time Period	Requirement
12 months	<ul style="list-style-type: none"> <li>• Team Member and Responder Participation.</li> <li>• Reporting Safety &amp; Health Concerns</li> <li>• Pre-Incident Planning.</li> <li>• Incident Management System.</li> <li>• Emergency Incident Operations:               <ul style="list-style-type: none"> <li>○ Incident Command.</li> <li>○ Establish Protective Zones.</li> </ul> </li> <li>• Set requirements for Post- Incident Analysis.</li> <li>• Remove damaged/defective PPE from service.</li> </ul>
36 months	<ul style="list-style-type: none"> <li>• Emergency Response Plans (ERPs) by Workplace Emergency Response Teams (WERT) &amp; Emergency Services Capabilities.</li> <li>• Emergency Response Plans (ERPs) by Emergency Service Organizations</li> </ul>

	<p>(ESO) &amp; Emergency Services Capabilities.</p> <ul style="list-style-type: none"> <li>• Development of WERT &amp; ESO Risk Management Plans.</li> <li>• Standard Operating Procedures.</li> </ul>
48 months	<ul style="list-style-type: none"> <li>• Develop initial and follow-up training requirements.</li> <li>• Train and provide PPE and other equipment to responders.</li> <li>• PPE hazard assessment.</li> <li>• Ensure use of PPE.</li> <li>• Ensure care &amp; decon of PPE.</li> <li>• Separate contaminated PPE.</li> </ul>
60 months	<ul style="list-style-type: none"> <li>• Require detailed training requirements based on NFPA standards.</li> <li>• Require annual skills checks.</li> <li>• Responder-provided PPE must meet standards.</li> <li>• Provide properly fitting PPE and ensure proper use.</li> </ul>
84 months	<ul style="list-style-type: none"> <li>• Develop medical evaluation program and additional screening.</li> <li>• Develop medical surveillance for exposure to combustion products.</li> <li>• Develop process to evaluate personnel for fitness for duty annually.</li> <li>• Develop health &amp; fitness program.</li> <li>• Establish minimum medical requirements and maintain medical records.</li> <li>• Provide behavioral health and wellness resources at no cost.</li> </ul>
120 months	<ul style="list-style-type: none"> <li>• Come into compliance with facility requirements.</li> <li>• Establish requirements for vehicle safety. <ul style="list-style-type: none"> <li>○ Inspection/removal from service, driver training, crew safety.</li> </ul> </li> <li>• Program Evaluation. <ul style="list-style-type: none"> <li>○ Evaluate ERP.</li> </ul> </li> </ul>

## ***INFORMATION COLLECTION AND RECORDKEEPING***

**OSHA is seeking comment on whether the collections of information are necessary for the proper performance of the agency's functions, including whether the information is useful.**

Since the data collected will naturally be broad, it should show how, from an industry perspective, this Rule will be challenging to fit the variety of programs they intend for it to cover. Therefore, data collection is supported. However, it cannot come with a time or financial burden on the local fire departments. The IAFC recommends that OSHA consider requiring ESOs and WERTs to participate in the U.S. Fire Administration's new National Emergency Response Information System to collect and report data on performance. By making this requirement mandatory, fire departments also would be eligible for federal grant programs like the Assistance to Firefighters Grant (AFG) program and the Staffing for Adequate Fire and Emergency Response (SAFER) program.

**OSHA is seeking information and data on the accuracy of OSHA's estimate of burden in terms of time and cost of the collections of information, including the validity of the methodology and assumptions used.**

It is extremely difficult for OSHA to accurately estimate the time and cost burden of its collections. Many items need further definition and explanation of how and at what cost compliance would be achieved. Therefore, there is a grave concern that any estimate would be highly inaccurate. More data must be collected to determine the true impact. The current methodology is designed for private businesses or government agencies. The volunteer and combination fire departments are distinctly different than the agencies used in the current method.

For example, in Oregon, multiple law firms have estimated that these rules will require an additional 173 hours annually to fulfill the paperwork and recordkeeping requirements. Assuming that the estimates of the Oregon survey are correct there are agencies that will never be able to accomplish the required recordkeeping and analysis of data.

**OSHA is seeking comment on the quality, utility, and clarity of the information collected.**

The data OSHA collected during its initial phases of rulemaking were very limited and missed data from many of the western states. Because Federal OSHA does not have jurisdiction over local government employees, few if any ESOs in those states responded to requests for information. For example, fire departments in states that have a state OSHA plan, like Oregon, also did not respond to requests for information, because they did not consider federal OSHA rules until Oregon OSHA proceeds to adopt them due to the jurisdiction issues pointed out earlier.

**OSHA is seeking comment on ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information (78 FR 56438).**

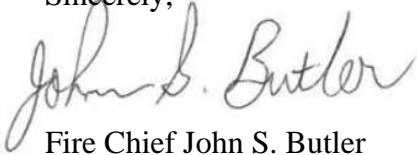


The IAFC recommends that OSHA consider using Annex H of NFPA 1550 to monitor compliance. It allows all fire departments to put together their plan, which includes Expected Compliance Dates to meet the standard.

Technology can be an important tool, and the fire service should investigate how to utilize technology to minimize the compliance burden. However, technology is very expensive, and unless supported through grants or other funding sources, the advancement of technology for many departments will be unachievable.

Thank you for hearing our concerns.

Sincerely,

A handwritten signature in cursive script that reads "John S. Butler". The signature is written in black ink and is positioned above the typed name.

Fire Chief John S. Butler  
President and Board Chair