



DATE: February 23, 2024
TO: Phylmar Regulatory Roundtable (PRR), OSH Forum
FROM: Helen Cleary
RE: **FedOSHA NPRM: Emergency Response Standard**

On February 5, 2024, the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA/FedOSHA) noticed a proposed rulemaking (NPRM) for a new safety and health standard: [Emergency Response Standard \(PDF Version\)](#). "The new standard would address a broader scope of emergency responders and would include programmatic elements to protect emergency responders from a variety of occupational hazards." It would completely replace the [Fire Brigades standard: §1910.156](#).

Written comments are due to OSHA by Monday, May 6, 2024 (Docket No. [OSHA-2007-0073](#)). This date may be extended if requested by stakeholders. **PRR members interested in forming a Task Force to discuss the rules' impact on operations and PRR's submission of written comments should review the NPRM and contact Helen Cleary by Thursday March 7, 2024.**

If promulgated, State Plan States (i.e., Cal/OSHA) will be required to adopt regulations at least as effective as. This process will, most likely, take years, but PRR members in California who are concerned about the requirements should consider providing FedOSHA with feedback and recommendations. In addition, PRR members with effective Emergency Response Teams and procedures should consider sharing their experiences with the Agency.

Significant Potential Impact

In addition to applying to traditional emergency response personnel (i.e., firefighters, water rescue personnel, wildland fire protection, search and rescue) and employers who provide these services as a primary function (defined as Emergency Service Organizations, ESOs, in the standard), **elements of the NPRM would apply to emergency response teams assigned, as collateral duties/in addition to primary work duties, to address emergency situations at the workplace** (i.e., fires, medical emergencies, technical search and rescue) prior to law enforcement or fire fighters arriving. The preamble identifies employers in manufacturing, processing, and warehouses with emergency response teams as examples this rule would apply to.

From the proposed standard:

- [§1910.156\(a\) Scope](#) (1) This section applies to: (i) Employers that have a workplace emergency response team, as defined in paragraph (b) of this section. The employees on the team, as a collateral duty to their regular daily work assignments, respond to

emergency incidents to provide service such as firefighting, emergency medical service, and technical search and rescue. For the purposes of this section, this type of employer is called a Workplace Emergency Response Employer (WERE), the team is called a Workplace Emergency Response Team (WERT), and the employees assigned to the team are called team members; and

- **§1910.156(b) - Workplace Emergency Response Employer (WERE)** means an employer who has a workplace emergency response team; and whose employees on the team, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide service such as firefighting, emergency medical service, and technical search and rescue.
- **§1910.156(b) Workplace Emergency Response Team (WERT)** means a group of WERE employees (known as team members) who, as a collateral duty, prepare for and respond to emergency incidents in the WERE workplace.

The regulation would not apply to:

- **§1910.156 (a)(2)(i)** Employers performing disaster site clean-up or recovery duties following natural disasters such as earthquakes, hurricanes, tornados, and floods; and human-made disasters such as explosions and transportation incidents.
- **§1910.156 (a)(2)(ii)** Activities covered by § 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)), § 1910.146 (Permit-Required Confined Spaces in General Industry).
- Operations covered under OSHA’s construction, maritime, or agriculture standards. *(Note: this is not detailed in the proposed text but the standard is specific to general industry and the preamble clarifies this on page 7802, (D) scope)*

The preamble also states that once the emergency is over or the skilled support workers are directed by an ESO, the standard no longer applies to the WERE.

See pages 4 - 8 of this memo for details of the required elements in the proposed standard.

Additional Statements and Questions in the NPRM

The preamble and proposed elements in the NPRM include topics and objectives the Agency is actively trying to address in other agendas and initiatives. **When considering the impact of the**

proposed standard and interest in providing comments to OSHA, PRR members should be aware of the following statements and questions in the NPRM.

Stakeholder Questions in the NPRM

- Should the standard include Standard Operating Procedures (SOP) to protect team members from **workplace violence** (question (q)-1. Page 7800)
- Is a separate regulation to protect **workers involved in clean-up and recovery efforts** at disaster sites needed? (question (a)-5. Page 7799)
- Should there be requirements to **allow representatives to be** involved in the following:
 - **Development and implementation of Emergency Response Plans (ERPs)** (question (e)-1. Page 7799)
 - **Walkaround inspections with team members and responders.** (question (e)-1. Page 7799)
 - **Review and evaluation of plans during the Post-Incident Analysis** (question (r)-1. Page 7800)
- Should the standard include requirements for operating outside in “elevated temperature[s]” during non-emergency situations. (Section III. Heat page 7801)

Additional questions the Agency is asking for stakeholder input can be found on pages 7799-7800 and throughout the preamble.

OSHA’s General Overview in the Preamble

In general, the proposed updates will:

- Replace the Fire Brigades standard (§1910.156) by expanding the scope of emergency responders and include a “...broad range of hazards emergency responders encounter during emergency response activities.”
- Align with the Federal Emergency Management Agency’s (FEMA) National Response Framework
- Align with current industry consensus standards issued by the National Fire Protection Association (NFPA)

The NPRM states that the proposed standard is performance based and “...focuses on the achievement of desired results – improving emergency responder health and safety and reducing injuries and fatalities – while providing flexibility as to the precise methods used to achieve those results.”

Elements of the Proposed Standard §1910.156 Emergency response

Following are the subsections and high-level details of specific requirements.

(a) Scope –

- Includes emergency response team members with a primary duty to respond to emergencies as part of an Emergency Service Organization (ESO) and team members with a collateral duty to respond as part of a Workplace Emergency Response Team (WERT).
- Does not include clean-up and recovery after the emergency is over or activities covered under HAZWOPER, §1910.120, and §1910.146, Permit-Required Confined Spaces in General Industry.
- Does not apply to operations regulated by OSHA's construction, maritime, and agriculture standards.

(b) Definitions – There are 39 proposed definitions.

(c) Organization of the WERT, and Establishment of the ERP and Emergency Service(s) Capability – This section details the requirements for a written Emergency Response Plan (ERP) for WERTs. It includes:

- The organizational structure and roles, responsibilities, and qualifications of the team members, including the "tiers" of team members (e.g., trainee, awareness, operation, technician, or support during technical search and rescue).
- Facility vulnerability assessments and pre-incident plans for occupied and vacant structures, facilities, and locations.
- Needed resources including personnel and equipment.
- Services the WERE provides and when an ESO will be needed.
- Administrative requirements (i.e, notifying team of vacant structures and changes to the program, five (5) year document retention.)

(d) ESO Establishment of ERP and Emergency Service(s) Capability – This section is specific to ESOs and aligns with (c) above.

(e) Team Member and Responder Participation – This section requires employee involvement in all aspects of the ERP including development, process improvement, hazard identification, walkaround inspections and investigations. It also includes employer posting requirements of safety and health concerns.

NOTE: OSHA is asking for feedback on including employee representatives in this section.

- (f) WERT and ESO Risk Management Plan – This section details the minimum requirements for in a written “comprehensive” risk management plan (RMP). It includes:
- WERT risks from facility activities; training; vehicle operations; emergency incident operations; non-emergency services/activities; activities that lead to exposure to combustion products, carcinogens, other health hazards; risk and hazard assessment/control.
 - Personal Protective Equipment (PPE) hazard assessment; respiratory protection program; Infection control program; and bloodborne pathogens exposure control plan.
 - A policy for “extraordinary situations” when a team member decides (after a risk assessment) and is permitted to attempt to rescue someone in peril without PPE or equipment.
- (g) Medical and Physical Requirements – This section goes into great detail on the minimum medical requirements for individuals on the WERT based on their tier and services established in the ERP and RMP. It includes:
- Confidential medical records for each team member.
 - Medical evaluations and surveillance programs that include fitness for duty and return to duty. Evaluations and physical exams must be designed to detect any physical or medical conditions that could affect their ability to perform essential job functions (i.e., medical history of cardiac/respiratory disease, assessment of heart disease). To be repeated every two years. It is not required for team members in a “support” tier.
 - Behavioral health and wellness resources that include diagnostic assessment; short-term counseling; crisis intervention; and referral services for behavioral health and personal problems that could affect the team member’s emergency response duties. (Provided at no cost by the WERE or available in the community.)
 - Fitness for Duty process to annually evaluate team members ability to perform essential job functions within the required level of service and tier.
 - *Health and Fitness programs are required for ESOs. However, OSHA has asked if these services should also be required for WERTs.*
- (h) Training – This section details the minimum elements in training programs for initial, ongoing, refresher, and professional development training for each team member. It includes:
- The safety and health policy for “extraordinary situations” (see (f) above) and Standard Operating Procedures (see (q) below)

- PPE, portable fire extinguishers, the Incident Management System (IMS), exit and evacuation, CPR and AED.
 - HAZWOPER.
 - Limitations and awareness training for entering hazardous locations.
 - Vocational training including certification and proficiency requirements that follow NFPA standards (if applicable – i.e., for firefighting, vehicle operation, supervisor/crew leader role).
- (i) WERE Facility Preparedness – This section includes facility requirements:
- Compliance with §1910 Subpart E: Exit Routes and Emergency Planning ([§1910.33 - §1910.39](#)).
 - Ability to provide or have an off-site process to maintain PPE and equipment (i.e., decontaminate, clean, store).
 - Fire detection, suppression, and alarms; and firefighting support (i.e., aid from ESOs, firefighting infrastructure and fire hose valves (FHV)).
 - Clear identification of FHV.
- (j) ESO Facility Preparedness – This section is specific to ESO and aligns with (i) above.
- (k) Equipment and PPE – This section details the requirements to provide, inspect, and maintain equipment and PPE including, required assessments, training, proper use, and decontamination. It includes the National Fire Protection Association standards that will be Incorporated By Reference (IBR) and need to be complied with.
- (l) Vehicle preparedness and operation – This section details the requirements to inspect, maintain, and repair vehicles used by team members and the WERE. It also has specific elements on team member training and use. For example:
- Ensure vehicle does not move until everyone is seated with seatbelt or harness.
 - Ensure team members remain seated and secure while in motion.
 - Ensure seatbelts/harnesses are not loosened for any purpose, including donning, or removing PPE.
- (m) WERE Pre-Incident Planning – This section requires Pre-Incident Plans (PIP) for locations and facilities that may be accessed by the WERT. The Plan shall include:
- Locations of unusual hazards (i.e., flammable liquids/gases; toxic agents, permit-required confined spaces)
 - Locations of fire suppression, alarms, evacuation systems, etc.
 - Actions to be taken by the WERT (to the extent feasible).

- (n) ESO Pre-Incident Planning - This section is specific to ESO and aligns with (m) above.
- (o) Incident Management System Development – This section details the requirements to have an Incident Management System (IMS) based on the type and level of WERT services. It must provide structure and guidance for management, including when the Incident Safety Officer (ISO) is absent.
- (p) Emergency incident operations – This section details the required elements to have in place during incident:
- Incident command and management
 - Incident commander
 - Control zones
 - On-scene safety and health measures
 - Communication
 - Personnel accountability
 - Medical monitoring and rehabilitation procedures
 - Traffic safety procedures
 - Use of Skilled Support Workers (SSW)
- (q) Standard Operating Procedures – This section requires development of SOPs the WERE is "reasonably likely to encounter, based on the type(s) and level(s) of service(s)." It includes specific SOPs that address:
- Team member actions for unusual hazards.
 - Systematic approaches for contaminants, using PPE and equipment, including using soap and water and changing clothing.
 - Vehicle operation
 - Radio use and communication
 - Vacant, structurally unsound, or unsafe structures/locations
 - Personnel accountability and coordination
 - Mayday situations
 - Medical monitoring and rehabilitation
- (r) Post-Incident Analysis – This section requires a prompt Post-Incident Analysis (PIA) to determine the effectiveness of the WERTs response after a significant event (i.e., large-scale incident; significant near-miss; injury or illness that requires off-scene treatment; fatality). It includes the elements of the PIA and requires implementing prompt changes, or a timeline to make the changes, as needed.

- (s) Program Evaluation – The ERP must be evaluated annually and when deficiencies are identified. Prompt corrections or a timeline that includes prioritization must be implemented.
- (t) Severability – Each section and element is separate and severable from other sections and provisions.

In addition, the following current standards will be updated/revised to align with the new requirements. (These changes are less substantial):

- §1910 Subpart H: Hazardous Materials
 - §1910.120 Hazardous waste operations and emergency response
 - Appendices: B, C, E
- §1910 Subpart I: Personal Protective Equipment - §1910.134 Respiratory protection
- §1910 Subpart L: Fire Protection - §1910.155 Scope, application and definitions applicable to this subpart.
- §1910.157 Portable fire extinguishers
- §1910.158 Standpipe and hose systems

Sections of Interest in NPRM:

Federal Register Vol.89, No. 24/Monday, February 5, 2024 [PDF Version](#)

- The **proposed text is at the end of the NPRM pdf: pages 8009 – 8023.**
- Pages 7776 – 7792 detail the reasons and need for the standard including the exposures and health effects impacting emergency responders.
- Pages 7792 – 7795 include the National Consensus Standards (NFPA and ANSI/ISEA) the Agency intends to Incorporate By Reference (IBR).
- Pages 7799 – 7800 include the specific questions OSHA is asking for feedback on.
- Pages 7802 – 7842 provide an explanation of each element.

Background

Currently, emergency responder safety and health protections are covered in a “patchwork of hazard-specific standards” all of which were promulgated decades ago and were not designed as a comprehensive standard. They do not address improvements in safety and health practices or equipment, follow industry consensus standards, or current industry best practices.

Following September 11, 2001 (9/11) government agencies were tasked with strengthening preparedness and response to terrorist attacks, major disasters, and emergencies. FedOSHA published a Request for Information (RFI) using the Fire Brigades standard as the baseline to determine if updates and expansion were necessary. This prompted the National Advisory Committee for Occupational Safety and Health (NACOSH) to develop a subcommittee of emergency response stakeholders, which drafted regulatory language. In addition, a SBREFA panel (Small Business, Regulatory Enforcement Fairness Act) also reviewed and submitted recommendations to the Agency.

Need for the Standard

OSHA's explanation of the need highlights the standard's intent and is reflected in the scope and elements of the proposed rulemaking.

OSHA determined a need for the standard by analyzing fatalities and injuries and the health effects of emergency response activities. The analysis determined that individuals at risk include a wide variety of tasks that include firefighting, medical assistance, search and rescue, and non-emergency situations such as training and routine tasks; specific tasks and hazards associated with injuries and fatalities that were analyzed are detailed in the NPRM.

OSHA also categorized the health effects of emergency response activities:

- Exposures
 - Combustion products
 - Other contaminants and substances
 - Infectious diseases
- Acute and Chronic Health Conditions
 - Cancer
 - Cardiovascular Disease
 - Respiratory disease
- Behavioral Health
 - General mental health
 - Suicide
 - Substance use disorders
- Violence – verbal and physical which contributes to mental and physical health. OSHA also notes hazards that are a result from emergency response situations with a law enforcement aspect.

Timeline

Unless OSHA requests an extensive or delay, the effective date for a FedOSHA rule is 60 days after publication of the final rule. However, OSHA is proposing additional time for the following sections in the standard:

- (c) and (d)—6 months
- (e)—2 months
- (f)—6 months
- (g)(1), (4)—6 months
- (g)(2), (3), (5), (6)—12 months
- (h)(1)—12 months
- (h)(2) (3)—24 months
- (i) and (j)—24 months
- (k)(1)—12 months
- (k)(2)(i), (vii) through (x), (k)(3)—6 months
- (k)(2)(ii) through (vi)—24 months
- (l) through (q), and (s)—12 months
- (r)—6 months

The Agency is also requesting input on reasonable implementation periods for requirements.

Next Steps

PRR will convene a Task Force to draft written comments if multiple members express interest by Thursday March 7, 2024.

END
