



Suggestions for Volunteer Departments Drafting Comments for OSHA's Proposed Revised Emergency Response Standard

Background:

The Occupational Safety and Health Administration (OSHA) is proposing a new safety and health standard, titled “Emergency Response,” to replace the existing “Fire Brigades Standard.” The “Fire Brigades Standard” has only received minor updates since it was issued in 1980. 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. This new standard is the product of many years of review dating back to federal agencies conducting reviews of their response standards in the aftermath of September 11, 2001.

The Notice of Proposed Rulemaking (NPRM) updating the “Emergency Response Standard” was published in the Federal Register on February 5. This triggered the start of a public comment period on this proposed rule. The deadline for comments on the proposed rule is July 22, 2024. Anyone can submit comments on this proposed rule during this public comment period. The National Volunteer Fire Council (NVFC) will be submitting comments, and we encourage each of you to submit comments on this proposed rule and request a public hearing so OSHA can have the best possible understanding of how this proposed rule would impact volunteer departments. You can find the full NPRM, proposed rule text, and comment submission instructions here: <https://www.federalregister.gov/documents/2024/02/05/2023-28203/emergency-response-standard>.

Reading this proposed standard, the NVFC acknowledges that it contains many provisions that would be very helpful and improve the safety of emergency responders; however, many of these new requirements would also be overwhelming to small and volunteer departments and carry a significant financial impact. Unfortunately, many small fire departments do not have the resources to comply with this proposed updated standard.

Outline of the NPRM:

The NVFC has reviewed the NPRM containing the proposed rule and compiled [an outline](#) to help you locate areas of interest. There are a couple of different copies of this NPRM. The page numbers in our outline correspond with the version published in the Federal Register found in the link above. All of the page numbers that correspond to the summarized provisions in the attached outline are in bold. Additionally, some of the text in this outline is also bold. The bold text highlights certain excerpts of the NPRM that may be particularly helpful in providing context to your written comments or may be particularly important to small and volunteer departments.

Is Your Department Covered by the Proposed Emergency Response Standard?

Before you start drafting your comments, review the scope of the rule to check if your department would be covered by the proposed updated standard. The NPRM explains most of the eligibility criteria for volunteer departments that may fall within the scope of the rule. These criteria include:

- whether your department is in a state with an OSHA State Plan (information on OSHA state plans can be found here <https://www.osha.gov/stateplans/>),
- whether the OSHA State Plan state your department is located in considers volunteers as employees,
- whether the members of your department are compensated at a level above “significant remuneration,” and
- whether your department is affiliated with a municipality or is a nonprofit. Nonprofit departments may fall within the scope of this rule even if they aren’t in states with OSHA state plans.

The proposed rule needs to do a better job clearly explaining which states with OSHA Plans consider volunteers to be employees, what OSHA considers “significant remuneration,” and whether nonprofit volunteer departments fall within the scope of this rule. If your department falls under any of these criteria that OSHA doesn’t adequately explain, tell them in your comments. Explain why it is unclear if your department is eligible, and explain what OSHA needs to do to improve their explanation of eligibility criteria for this proposed rule. Pages in the proposed rule that address scope and eligibility of the proposed rule are 7795-7799, 7802-7805, 7851-7856 and 7998-7999.

Read the Text of the Proposed Standard:

The next step in assembling your comments should be reading the text of the proposed rule. Don’t worry, this text is only a small fraction of the NPRM and can be found on pages 8009-8023. As you read the text of the proposed rule make a note or highlight the requirements you could fulfill easily, the requirements you could fulfill with some difficulty, and the requirements that you’d be unable to fulfill. Your comments should describe the requirements you would be unable to fulfill and why. Would these requirements be too burdensome due to the lack of staff, funding, or other resources? Additional context for each provision of the proposed rule can be found in pages 7801-7842; our outline breaks down each part of this section of the NPRM.

Describe Your Department:

The data provided in OSHA’s economic analysis of the proposed rule and OSHA’s responses to the concerns raised by the Small Business Advocacy Review show that OSHA lacks an accurate picture of the resources available to small and volunteer departments. For example, OSHA estimates the proposed rule would cost volunteer departments an average of \$14,551 or according to their estimates 4.99% of an average department’s annual revenue.

Describe your department to OSHA: How many people are in your department? What’s your budget? What’s the area you serve like? Do you have the funds to comply with this proposed standard? Do you have the staffing to comply with this proposed standard? How would your area be negatively impacted if your department had to shut down due to this standard? Does your department rely on fundraising for much of your income? If so, how many pancake breakfasts, raffles, or spaghetti dinners would you need to hold to comply with this proposed rule? Would your municipality be able to assist you in covering the costs of this proposed rule? If not, why? What specific provisions of this proposed rule are the most difficult for your department to comply with? Why are they difficult? What alternatives to this proposed rule should OSHA consider to improve the safety of volunteer departments?

Comment on the Feasibility of the Proposed Standard:

As mentioned earlier, it is hard to argue with the benefits of many of the safety provisions in this proposed rule; it would be very effective if every department had the funding and staff to comply with it. However, OSHA does need to show that there is significant risk and that the standard is feasible and appropriate. Pages 7797-7798 of the NPRM delve further into the concepts of reasonably necessary or appropriate, significant risk, technologically feasible, and economically feasible.

If you believe this standard is not reasonable, appropriate, feasible, or doesn’t address a significant risk, explain this in your comments. For example, the proposed standard addresses many risks that may not be relevant to small departments that don’t encounter many emergency calls.

Other Items to Consider for Your Comments:

- **Small Business Advocacy Review:** In accordance with the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA), OSHA convened a Small Business Advocacy Review (SBAR) panel in the fall of 2021. The panel, comprising members from the Small Business Administration’s (SBA) Office of Advocacy, OSHA, and OMB’s Office of Information and Regulatory Affairs, listened to and reported on what Small Entity Representatives (SERs) from entities that would potentially be affected by the proposed rule, including volunteer departments, had to say.

The [outline](#) has several of the SBAR's comments mentioned in the NPRM in bold, and pages 7989-7993 of the NPRM outline the SBAR Panel Recommendations and OSHA Responses. Many of the SBAR's comments and recommendations express those of small and volunteer departments and would be relevant to raise in your own comments. Particularly those where OSHA's responses were weak.

- **Consensus Standards Incorporated into the Proposed Rule:** The proposed Emergency Response Standard would incorporate 22 National Fire Protection Association (NFPA) Standards and one American National Standards Institute (ANSI) standard by reference. Additional information can be found on pages 7792-7794 of the NPRM. There are also 14 other NFPA standards on which many of the provisions of the proposed rule are based. Additional information of these standards can be found on pages 7794-7795 of the NPRM. How would incorporation of these consensus standards into OSHA's proposed Emergency Response Standard impact your department? Would your department be able to comply with them?
- **Timeline of Implementation:** Pages 7801 and 7998 address the timeline of implementation if this proposed Emergency Response Standard is finalized as is. It may take far longer for small and volunteer departments to comply with this proposed rule if it is finalized as is. Finalization of this rule could be as soon as not long after the conclusion of the current public comment period or more likely take some time for public hearings and other proposed versions of the standard to be considered. OSHA's need to provide small and volunteer departments with additional time to comply with this standard could also be included in your comments.
- **Workplace Violence:** Page 7841 of the NPRM expresses concern about workplace violence and mentions that a rulemaking on workplace violence for emergency responders is on OSHA's regulatory agenda. This means the final Emergency Response Standard could include provisions related to workplace violence. You could submit comments regarding a possible standard on workplace violence and emergency responders.
- **Summary of Questions and Provisions OSHA is Seeking Comment On:** Here is a link to a document summarizing the specific questions and items OSHA is seeking comment on in this NPRM. This document can also be helpful for framing your comments:
https://www.osha.gov/sites/default/files/ER_NPRM_Questions_and_Issues.pdf

Additional Helpful Resources:

- AFDSNY Landing page contains a number of helpful resources including a draft comment period extension letter: [Take Action and Alerts - Association of Fire Districts of the State of New York \(afdsny.org\)](#)
- Links to three helpful webinars on OSHA's Proposed Emergency Response Standard:
 - NVFC webinar:
<https://www.youtube.com/watch?v=4oF0oPG2V9I>
 - AFDSNY webinar:
https://archcapgroup.zoom.us/rec/share/JdW_4UyRAePYBCOU64uTOYwBp-SZfwQ5O8AtVxmYTmb17Bv_2PbjTiUWy8AzHw4p.UVlaVI9j6Wrv1GCy
 - Keene College webinar:
<https://oshaedne.com/webinar-emergency-response-rule/>