



## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

[Docket No. OSHA-2007-0073]

RIN 1218-AC91

#### Emergency Response Standard

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Proposed rule; notice of informal hearing.

**SUMMARY:** OSHA is scheduling an informal public hearing on its proposed rule “Emergency Response Standard.” The public hearing will begin November 12, 2024, at 9:30 a.m. Eastern Time (ET). The proposed rule was published in the *Federal Register* on February 5, 2024. The initial public comment period was scheduled to end May 6, 2024, but was extended to June 21, 2024, in response to numerous requests from the public. The comment period was extended again, until July 22, 2024, due to more extension requests from stakeholders.

**DATES:** *Informal public hearing:* The hearing will be held virtually and will begin November 12, 2024, at 9:30 a.m. ET. If necessary, the hearing will continue from 9:30 a.m. until 4:30 p.m., ET, on subsequent weekdays. Additional information on how to access the informal hearing will be posted at <https://www.osha.gov/emergencyresponse/rulemaking>. To testify or question other witnesses at the hearing, interested persons must electronically submit a Notice of Intention to Appear (NOITA) on or before September 27, 2024. In addition, those who request more than 10 minutes for their presentation at the informal hearing and those who intend to submit

documentary evidence at the hearing must submit the full text of their testimony, as well as a copy of any documentary evidence, no later than October 18, 2024.

**ADDRESSES:**

*Notice of Intention to Appear* (NOITA). A NOITA must be submitted electronically at: <https://www.osha.gov/emergency-response/rulemaking>. Follow the instructions online for making electronic submissions. Those who file NOITAs must also submit electronic copies of all documents that they intend to use or reference during their testimony. Information about how and when to submit these materials will be provided at the time of registration.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007-0073). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments and other materials submitted in the docket, go to Docket No. OSHA–2007-0073 at <https://www.regulations.gov>. All comments and submissions are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:**

*For press inquiries:* Contact Frank Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1999; email: [Meilinger.Francis@dol.gov](mailto:Meilinger.Francis@dol.gov).

*For general information and technical inquiries:* Contact Mark Hagemann, Director, Office of Safety Systems, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2222; email: [OSHA.Emergency.Response@dol.gov](mailto:OSHA.Emergency.Response@dol.gov).

*For hearing inquiries:* Contact Kathryn Marlor, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2222; email: [OSHA.Emergency.Response@dol.gov](mailto:OSHA.Emergency.Response@dol.gov).

*For ASL interpretation and language translation service requests:* Contact Kathryn Marlor, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2222; email: [OSHA.Emergency.Response@dol.gov](mailto:OSHA.Emergency.Response@dol.gov).

## **SUPPLEMENTARY INFORMATION:**

On February 5, 2024, OSHA published a notice of proposed rulemaking (NPRM) (89 FR 7774; 89 FR 21468, March 28, 2024; 89 FR 49119, June 11, 2024) to replace the Fire Brigades standard with a new standard called Emergency Response. OSHA received over 2,500 comments concerning the proposed rule during the public comment period, which ended July 22, 2024.

Witnesses are welcome to testify about any topics, issues, or concerns they have with the proposed rule. OSHA is particularly interested in hearing testimony regarding the following topics:

1. Firefighting services that are not primarily all-hazard/structural, such as wildland, aircraft/airport, and marine, or others. OSHA is particularly interested in hearing testimony related to the appropriate treatment of each of these firefighting categories as related to the

current requirements of the proposed rule and whether or not the unique hazards presented by each category of firefighting warrant differential treatment.

2. Emergency medical service providers that are not fire department based, and those that provide aerial transport.

3. Technical search and rescue service providers, particularly those that are not fire department based such as technical water rescue (including some lifeguards), technical wilderness/mountain search and rescue (such as rope/high angle, ski patrol, etc.).

4. Specific recommendations for reducing the burden(s) on volunteer/non-compensated responders.

5. Specific recommendations for excluding volunteer/non-compensated responders.

6. Public information on the financial profile of emergency response organizations, particularly those with a substantial volunteer element.

7. Public information for estimating the number of employers (and affected employees) who would be classified as Workplace Emergency Response Employers under the proposed standard.

8. Detail on the current practice for various proposed provisions (e.g., medical exams) among emergency response organizations.

#### I. Informal Public Hearing—Purpose, Rules and Procedures

Several commenters (see, *e.g.*, Document ID 0814, 0894, 0987, 1188) requested that OSHA hold a public hearing. OSHA has agreed to do so. OSHA invites interested persons to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing to provide the agency with the best available evidence to use in developing the final rule. The hearing will be fully virtual to provide the opportunity for more

stakeholders from across the country to participate in and/or observe the hearing without the financial and logistical burden of traveling to Washington, DC to attend in person.

Pursuant to 29 CFR 1911.15(a) and 5 U.S.C. 553(c), members of the public have an opportunity at the informal public hearing to provide oral testimony and evidence on issues raised by the proposal. An administrative law judge (ALJ) will preside over the hearing and will resolve any procedural matters relating to the hearing.

OSHA's regulation governing public hearings (29 CFR 1911.15) establishes the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ and questioning of witnesses is allowed on crucial issues, the proceeding is largely informal and essentially legislative in purpose. Therefore, the hearing provides interested persons with an opportunity to make oral presentations in the absence of rigid procedures that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the Federal Rules of Evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. Accordingly, questions of relevance, procedure, and participation generally will be resolved in favor of developing a clear, accurate, and complete record.

Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the proposal, the ALJ has the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure a full and fair hearing, the ALJ has the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters pertinent to the issues the proposed rule raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit the time for such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments, and arguments from those who participated in the hearing (29 CFR 1911.16). In addition, pursuant to 29 CFR 1911.4, the Assistant Secretary may, on reasonable

notice, issue additional or alternative procedures to expedite the proceedings, to provide greater procedural protections to interested persons, or to further any other good cause consistent with applicable law.

At the close of the hearing, there will be a post-hearing comment period during which interested persons may submit final briefs, arguments, summations, and additional data and information to OSHA.

## II. Notice of Intention to Appear at the Hearing

Interested persons who intend to provide oral testimony or documentary evidence at the hearing must file a written NOITA prior to the hearing and in accordance with the instructions in the ADDRESSES section earlier in this document. To testify or question other witnesses at the hearing, interested persons must electronically submit their NOITA on or before September 27, 2024. The NOITA must provide the following information:

(1) Name, address, email address, and telephone number of each individual who will give oral testimony;

(2) Name of the establishment or organization each individual represents, if any;

(3) Occupational title and position of each individual testifying; and

(4) A brief statement of the position each individual will take with respect to the issues raised by the proposed rule.

The agency will consider the information in each submission when setting the hearing schedule. Before the hearing, OSHA will make the hearing procedures and hearing schedule available at <https://www.osha.gov/emergency-response/rulemaking> and in the docket. OSHA emphasizes that the hearing is open to the public; however, only individuals who file a NOITA may testify at the hearing.

Witnesses will be asked to specify the approximate amount of time requested for each individual or group's testimony (5, 10, 15, or 20 minutes). Individuals or groups who request more than 10 minutes to present their oral testimony at the hearing or who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than October 18, 2024. The agency will review each submission and determine if the information it contains warrants the amount of time the individual requested for the presentation. If OSHA believes the requested time is excessive, the agency will allocate an appropriate amount of time for the presentation. The agency also may limit to 5 minutes the presentation of any participant who fails to comply substantially with these procedural requirements and may request that the participant return for questioning at a later time. Before the hearing, OSHA will notify participants of the time the agency will allow for their presentation and, if less than requested, the reasons for its decision.

### III. Certification of the Hearing Record and Agency Final Determination

Following the close of the hearing and the post-hearing comment period, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. The ALJ, however, will not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review all the evidence received into the record and will issue the final rule based on the record as a whole.

### IV. Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under the authority of sections 4,

6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; Secretary of Labor's Order No. 8-2020 (85 FR 58383-94); and 29 CFR part 1911.

Signed at Washington, DC, on July 17, 2024.

**Douglas L. Parker,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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