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The National League of Cities (NLC) and the National Association of Counties (NACo), which represent the nation's 19,000 cities and 3,069 counties, respectfully submit the following comments on the Occupational Safety and Health Administration's (OSHA) proposed rule aimed at improving the safety of emergency response organizations (EROs) and their workers. We appreciate OSHA's initiative to enhance protections for emergency responders, a group that consistently faces high-risk situations in their commitment to public safety. The proposal to expand emergency response definitions and include measures against occupational hazards is praiseworthy and crucial for the well-being of emergency personnel.

However, we express significant concern regarding the financial, legal and liability implications for local governments, particularly given their current financial constraints. The proposed rule has the effect of an unfunded mandate, leading to considerable increases in local spending on fire and emergency services without appropriate federal support and resources, a concern highlighted by the steep rise in fire service expenditures over the past decades.

The breadth of responsibilities for today's fire departments has expanded significantly, intensifying the financial burden on municipalities. According to the U.S. Bureau of Economic Analysis, state and local governments spent \$75.4 billion on fire services in 2022, a substantial increase from the approximately \$6 billion spent in 1980.<sup>1</sup> This escalation in costs highlights the financial pressures municipalities face in maintaining

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<sup>1</sup> U.S. Bureau of Economic Analysis, Government current expenditures: Public order and safety: Fire [G160101A027NBEA], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/G160101A027NBEA>, April 2, 2024.

and enhancing fire and emergency services. With over a million career and volunteer firefighters nationwide, ensuring their safety is a complex and costly endeavor, further complicated by a widespread lack of comprehensive health and wellness programs, as well as necessary safety measures like exposure tracking and decontamination practices.<sup>2</sup> Additionally, the financial challenges of updating and constructing fire stations, coupled with the insufficiency of federal aid, exacerbate the pressure on local governments. This situation risks leading to budget cuts and staffing reductions, worsening the operational and financial strains on emergency services.

We are particularly concerned that the implementation of OSHA's regulations, especially the adoption of NFPA standards, could disproportionately affect smaller municipalities with limited resources. While we acknowledge OSHA's efforts in rule development, the potential financial and operational impacts on local governments and EROs cannot be overlooked. Additionally, the legal and liability requirements imposed by the rules will significantly impact local governments.

Although we acknowledge the considerable time and effort OSHA has dedicated to developing these regulations, it is essential to note that most local governments and fire department executives are unaware of the proposed rules and their potential impact on operations.

The comments below look to address some of the issues and specific questions posed by OSHA:

### ***OSHA Justification for Regulations***

OSHA's justification for the need for new regulations rests primarily on "market failure" in protecting emergency responders. OSHA references Executive Orders 12866 and 13563, directing regulatory agencies to assess the need for Federal regulation beyond what is legally required. It emphasizes regulations should address compelling public needs arising from market failures, specifically where private markets fail to protect or improve public health, safety, the environment, or the well-being of the American people.

OSHA points to several market imperfections that contribute to inadequate protection for emergency responders. According to OSHA both employers and workers often lack complete information about workplace hazards, impeding efficient market operation and risk compensation. OSHA also states that costs of occupational injuries and illnesses can spill over to parties not involved in the employment transaction, leading to social costs not accounted for by employers or workers. Finally, OSHA states that the job market may not be perfectly competitive, with large numbers of employers and workers, meaning individual actions can affect risk-adjusted wages.

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<sup>2</sup> NFPA Fifth Needs Assessment <https://www.nfpa.org/education-and-research/research/nfpa-research/fire-statistical-reports/needs-assessment>

OSHA states that non-regulatory and quasi-regulatory approaches like information dissemination, workers' compensation systems and tort liability options, finding them insufficient in addressing the risks emergency responders face. These mechanisms are deemed inadequate for various reasons, including the complexity of occupational health hazards, the limitations of workers' compensation in covering occupational diseases and the inefficiencies and limitations of tort liability options.

Ultimately, OSHA concludes that despite some employers' efforts and existing standards, new protections are needed to ensure the safety and health of emergency responders. It argues that labor markets, augmented by information programs, compensation systems and tort options, fail to achieve an optimal level of risk due to informational, external, and competitive imperfections. Thus, the proposed rule is deemed necessary to correct these market failures and provide adequate protection to emergency responders.

However, OSHA's justification neglects to acknowledge the financial strain municipalities already face and the significant budgetary pressures and the additional costs associated with compliance with the current NFPA voluntary consensus standards. While local governments and EROs strive for compliance with the standards, this is not a simple matter of prioritizing one important service over another. Meeting the new requirements could result in potential significant reduction in public services such as education, healthcare and infrastructure maintenance, which are also fundamental to community well-being. The requirement for upgraded equipment, comprehensive training programs and ongoing administrative efforts could siphon off resources from these essential areas, compounding the challenges faced by underfunded public sectors and exacerbating existing disparities within communities.

Furthermore, heightened standards to this extent could widen the scope of litigation to local governments both as employers as well as responsible parties for compliance. Any surge in litigation places a considerable financial burden on local governments and their communities. An increased litigation risk means that local governments will need to divert financial resources toward defending legal actions and this could damage public confidence in emergency services and local governance.

Moreover, the administrative load required to ensure compliance with new regulations could distract from the core mission of emergency services, potentially impeding their ability to respond swiftly and effectively to emergencies. The diversion of attention from emergency preparedness to compliance tasks could erode the responsiveness of these essential services, at a time when natural disasters and emergencies are becoming increasingly complex and frequent.

The proposition of a one-size-fits-all regulatory approach fails to recognize the vast diversity of conditions under which emergency services operate, from rural volunteer fire departments to urban professional responders. Imposing uniform standards without

consideration for these differences risks placing insurmountable burdens on certain segments of the emergency response community, potentially leading to a decrease in service coverage in the most vulnerable areas. We are also concerned that OSHA's top-down Federal regulatory approach could significantly erode a more collaborative approach, engaging directly with those at the front lines of emergency response to yield more tailored and effective solutions that enhance safety without compromising service delivery or imposing untenable burdens on local governments.

NLC and NACo urge OSHA to treat this proposed rule as one that should be subjected to the full provisions of the Unfunded Mandated Reform Act and to properly resource and support local governments that will feel the impacts of this unfunded mandate. Therefore, we request that OSHA provide additional resources and assessments to properly fund and support the activities in the rulemaking including: 1) a summary of the submitted state, local and tribal government concerns and how they have been addressed; 2) consider reasonable regulatory alternatives and explain why the agency has not gone with the alternative choices; and most importantly 3) consult with elected officials of state, local and tribal governments (or their designated employees with proper authority) to provide meaningful input into the development of the proposed rule.<sup>3</sup>

### ***Preliminary Economic Analysis***

The proposed rule is estimated to cost \$661 million per year in 2022 dollars, with all costs annualized using a 3% discount rate over a 10-year period. OSHA states that career fire departments incur significant costs related to medical and physical requirements, training, equipment and PPE, among others, with medical and physical requirements alone accounting for over \$46 million in annualized costs. Volunteer and mixed fire departments also face substantial costs, particularly in training and equipment provision. According to OSHA, the average annualized cost per public fire department is approximately \$17,012, while for private organizations, it's estimated at \$22,464.

OSHA states that the costs as a percent of revenue for public organizations generally range from less than 0.01% to 0.16% on small entities. Public volunteer fire departments will have costs estimated to exceed 4.99% of revenues, highlighting a significant burden relative to their budget. For small entities, average annualized costs vary by type, with private fire departments expected to spend an average of \$15,100 annually to comply. Training and medical requirements are highlighted as significant cost factors across all emergency service sectors.

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<sup>3</sup> See Unfunded Mandates Reform Act of 1995, S. 1, 104<sup>th</sup> Cong. (1995-96), <https://www.congress.gov/bill/104th-congress/senate-bill/1>; and Environmental Protection Agency, Summary of the Unfunded Mandates Reform Act, EPA, <https://www.epa.gov/laws-regulations/summary-unfunded-mandates-reform-act>

While OSHA's projections provide a baseline for understanding the financial impact of the proposed rule on fire departments, they likely fall short of capturing the full spectrum of costs associated with compliance. Given the potential for underestimation of both direct and indirect costs, the actual financial burden on local governments and EROs, particularly smaller and volunteer-based ones, could be considerably more significant than anticipated. This necessitates a thorough reevaluation of the proposed rule's cost implications, with a view to developing more comprehensive support mechanisms for affected entities to ensure that public safety is not compromised.

Below are some additional suggested items that should be considered when evaluating the actual economic impact to local government and EROs.

- **Administrative Overhead:** According to the National Fire Protection Association (NFPA), administrative tasks in fire departments can consume between 10% to 20% of the total budget, depending on the size and complexity of the department. Implementing new standards would increase these tasks, potentially adding to the cost.
- **Training Expenses:** Data from the U.S. Fire Administration indicate that specialized training costs can range from \$2,500 to \$5,000 per firefighter, depending on the type of training required. With OSHA's new rules possibly requiring new types of specialized training, the average costs provided might underestimate the complexity and depth of training required to comply with the new standards. Advanced training modules, especially those involving sophisticated equipment or specialized medical procedures, could necessitate bringing in external experts, thereby increasing the costs. Additionally, compliance verification and ongoing monitoring to ensure adherence to the new rules will likely require more administrative work than anticipated, further escalating expenses.
- **Equipment and PPE Inflation:** The Bureau of Labor Statistics (BLS) reports that the price index for specialized equipment and PPE has seen an annual increase of approximately 3.5% over the past five years. This rate of inflation could render OSHA's current cost projections, based on today's dollars, underestimated in the long term.
- **Medical Examinations and Specialized Procedures:** Under the new OSHA rules, the scope of medical examinations will broaden significantly. Beyond the traditional physical assessments, these could now include advanced screenings for cardiovascular health, respiratory function tests, cancer screenings, and mental health evaluations to address the comprehensive health risks faced by firefighters and emergency response personnel. While this holistic approach to health monitoring is critical given the exposure to hazardous materials, extreme physical demands, and psychological stress inherent in emergency response work, the costs associated with expanding the scope of medical examinations can be significant.

- **Basic Physical Examination:** The cost for a comprehensive physical examination can range from \$150 to \$300 per person, depending on the healthcare provider and the geographic location.
- **Cardiovascular Health Screenings:** Advanced cardiovascular tests such as echocardiograms can cost between \$1,000 and \$2,000, while stress tests may range from \$500 to \$1,200 per examination.
- **Cancer Screenings:** The cost for specialized cancer screenings can vary significantly. For example, a low-dose CT scan for lung cancer screening might cost between \$100 and \$250, while blood tests for cancer markers can range from \$50 to \$200 each.
- **Mental Health Evaluations:** Initial psychological assessments can cost between \$200 and \$500 per session, with ongoing mental health support or counseling services ranging from \$100 to \$250 per hour.
- **Wellness Programs:** Implementing a wellness program can involve initial setup costs of \$2,000 to \$10,000, depending on the complexity and scope of the program, with ongoing costs potentially reaching \$50 to \$150 per participant annually for educational materials, wellness activities, and support services.
- **Health Monitoring Systems:** The cost of establishing health monitoring databases and systems can range from \$5,000 to \$20,000 for software solutions, plus additional costs for hardware and administrative support, potentially adding thousands of dollars annually.
- **Training and Certification for Medical Evaluators:** Training for medical evaluators specific to emergency responder health risks can cost between \$500 and \$1,500 per medical professional, excluding the costs of certification or recertification exams, which can add an additional \$200 to \$400 per exam.
- **Economic Impact on Small and Volunteer Departments:** Small and volunteer fire departments might spend an estimated 5% to 10% of their annual budget on health and safety compliance under the new OSHA rules, a significant increase given their often-limited financial resources.
- **Healthcare Inflation:** Healthcare costs have historically risen at rates exceeding general inflation, with an average annual increase of about 4.6% over the last decade. Given this trend, the estimated \$46 million annualized costs for medical and physical requirements may be significantly understated.
- **Financial Vulnerability of Volunteer Departments:** Research from the Volunteer Firefighters Alliance suggests that more than 70% of volunteer fire departments are operating with budgets that have not increased proportionally to operational costs over the past decade. This indicates that even minor increases in costs could have significant impacts, far exceeding OSHA's estimation.
- **Fixed Budget Constraints:** Analysis from the Government Finance Officers Association (GFOA) shows that many local governments have faced stagnant or decreasing budgets due to economic downturns, with emergency services often

experiencing budget cuts. This fixed or shrinking budget scenario makes it difficult for fire departments to absorb new costs without impacting services.

### ***Non-Compliance Penalties***

When local governments, including EROs, fail to comply with OSHA regulations, they can face a range of penalties for non-compliance. These penalties are not only financial but can also have broader implications for the local government entity. NLC and NACo are concerned that these penalties can significantly impact local government budgets, operations and public trust. The proposed rules do not clearly address the potential penalties local governments will face if they are unable to comply. However, we are concerned that some potential ramifications of non-compliance penalties for local governments could include:

- **Direct Fines:** OSHA can impose fines for violations of its standards. These fines can vary widely depending on the severity of the violation, whether the violation is deemed "serious," "willful," "repeated," or a "failure to abate" past violations. For severe violations, fines can reach up to tens or even hundreds of thousands of dollars per violation. For local governments operating under tight budgets, such fines can be a significant financial burden.
- **Cumulative Fines:** In cases where multiple violations are found, fines can be levied for each individual violation, leading to cumulative penalties that substantially increase the financial burden on the local government.
- **Increased Insurance Premiums:** Following violations and the imposition of fines, local governments may also face increased premiums for liability and workers' compensation insurance, adding long-term costs beyond the immediate penalties. Additionally, local governments risk insurance rates may increase drastically due to the greater risk of litigation and violation of more numerous and stringent standards.
- **Resource Allocation:** Payment of fines and increased insurance premiums may require reallocation of resources away from essential services or planned investments. This reallocation can affect the local government's ability to serve its community effectively and achieve strategic objectives.
- **Compliance Investments:** Beyond the fines, local governments might need to make substantial investments to bring their operations into compliance. These investments might include upgrading equipment, improving training programs, or hiring additional staff, which could impose further financial strains.
- **Public Trust and Image:** Violations of OSHA regulations and the resulting penalties can damage the public image of the local government and its fire department. Loss of trust can affect community support and engagement, making it more challenging to operate effectively and secure funding for future projects.
- **Employee Morale:** Non-compliance and the associated penalties can also impact the morale and trust of emergency responders and other employees. Concerns about workplace safety and the organization's commitment to employee well-being

can lead to decreased job satisfaction and increased turnover, impacting the department's effectiveness and efficiency.

- **Increased Scrutiny:** A history of non-compliance can lead to increased scrutiny from OSHA and other regulatory bodies, resulting in more frequent inspections and oversight. This increased scrutiny can strain resources and further highlight compliance gaps.
- **Litigation Risk:** Non-compliance with OSHA regulations increases the risk of litigation from employees or third parties injured as a result of the violation. Legal actions can result in additional financial liabilities and further damage the reputation of the local government.
- **Workers' Compensation Claims:** An increase in workers' compensation claims may arise from responders injured on the job, leading to higher insurance premiums and financial strain on local government resources.

### ***Volunteer Workers Classification and Implications***

The potential categorization of volunteer workers as employees under federal legislation could lead to significant administrative and financial challenges for local governments, especially in areas without state-specific plans. EROs in areas governed by federal OSHA, regulations often depend on volunteers. These volunteers, who receive benefits as compensation, might face reclassification, escalating the costs and complexities associated with providing vital services.

OSHA acknowledges the role of emergency responders, such as firefighters and EMTs, often considered "volunteers." The Occupational Safety and Health (OSH) Act pertains to entities with employees and generally excludes genuine volunteers. Nonetheless, individuals labeled as volunteers might sometimes be deemed employees under federal law if they receive compensation, whether monetary or otherwise. Emergency responders who are "volunteers" but receive "significant remuneration" under federal law definitions would thus be considered employees within the scope of proposed regulations. OSHA anticipates that few volunteer emergency responders receive enough compensation to be classified as employees and expects no change in their current status under the OSH Act due to this rulemaking.

Despite OSHA's belief that volunteer emergency responders seldom receive substantial compensation to be deemed employees, the proposed regulations do not explicitly exclude volunteers. Instead, the regulations aim to gather more information on volunteer workers that can be used to assess possible reclassification as employees.

- **Benefit-Based Classification:** The draft regulation solicits details on volunteers receiving significant benefits, which may lead to their reclassification as employees. This change could fundamentally transform the emergency services volunteer framework, compelling local governments to navigate intricate labor laws



and potentially face increased expenses in salaries, benefits, and workers' compensation.

- **Recruitment and Retention Impact:** Volunteer roles are appealing due to their mix of community service and modest benefits. Altering this balance could deter individuals from volunteering, affecting the recruitment and retention of emergency service volunteers.
- **Financial Impact:** Adjusting to the reclassification of volunteers as employees would likely impose considerable financial strain on local governments, encompassing higher payroll and benefits costs, along with administrative expenses, possibly diverting resources from essential emergency services.
- **Administrative Challenges:** Transitioning to manage a significantly larger workforce of reclassified employees would demand expanded administrative capabilities, from payroll processing to adhering to labor laws. This added complexity would place additional operational pressures on emergency services, particularly for smaller or rural departments with limited administrative resources.

### ***Volunteer Fire Services in State without OSHA Approved Plans***

According to the rulemaking, “Federal OSHA rules do not cover public Emergency Service Organizations in states without OSHA-approved State Plans.” NLC and NACo urge OSHA to be explicit in exempting volunteer fire departments located in states without an approved State Plan. In doing so, we ask that OSHA clarify that all volunteer fire departments, regardless of their appointment or managing body (public, nonprofit, private) are exempt from the provisions of the Proposed Rule. This clarification is necessary as the Proposed Rule fails to clearly state how all the different formats of volunteer fire departments are impacted by the update. Regardless of operating structure (including by method of appointment or managing body), volunteer fire departments would be disproportionately impacted if this rule applies to them, as it is highly unlikely they have proper resources through the usage of volunteers to update their practices, policies and procedures and ensure compliance with the recommended standards set forth in the rule.

As stated above, we have significant concerns about how OSHA will determine whether a nonprofit volunteer fire department would be considered a “State or political subdivision of a State” under the proposed rules. According to the rulemaking:

“Under OSHA's regulations, an entity is a “State or political subdivision of a State” if (1) it has been “created directly by the State, so as to constitute a department or administrative arm of the government,” or (2) it is “administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate” ([29 CFR 1975.5\(b\)](#); cf. *N.L.R.B. v. Natural Gas Util. Dist. of Hawkins County, Tenn.*, 402 U.S. 600 (1971)). Any such entity shall be deemed outside the

Act's definition of employer, and, consequently, not subject to the Act as an employer ([29 CFR 1975.5\(b\)](#)).”<sup>4</sup>

Such entities are not considered "employers" under the Act, meaning they aren't subject to certain regulations.

Also, according to the rulemaking, to determine if an organization meets these criteria, OSHA will assess the following factors:

1. Whether the organization's leaders are appointed by public officials or elected by the public, the specifics of their appointment and dismissal, and who has the authority to dismiss them. For instance, if all board members of an organization are appointed and can be removed by a public authority, it is likely considered a political subdivision.
2. Conversely, **if a board is mostly independent from public officials in its appointment and removal, the organization does not meet the criteria.**

This, however, is not clear in how this will impact volunteer fire departments that are independent and are not appointed by local governing bodies or accountable to local government officials and public voters. Although a volunteer fire department may have been created by a local government, some fire departments may be managed independently of local government control. In some instances, they may be considered a “nonprofit” independent of a local government. In those cases, it is not clear if these organizations would be subject to the new regulations.

Leaving this matter unaddressed results in a rule that is ambiguous in this area. This could have potential impacts that are not the intention of OSHA. If OSHA does not intend to consider volunteer fire departments in states without an approved State Plan as impacted by this rule, a court of law or adjudicating authority may determine they are considered under the scope of the Proposed Rule because of the ambiguity. NLC and NACo strongly request that OSHA exempt all volunteer fire departments not within states with an approved State Plan from the provisions of the Proposed Rule, regardless of the appointment authority and managing body of the department.

### ***Search and Rescue Services***

The decision to include or exclude specific types of search and rescue (SAR) services has profound implications for the functional breadth of EROs. SAR operations are a crucial component of emergency response, particularly in scenarios involving natural disasters such as earthquakes, floods and hurricanes, or human-made disasters like building collapses and industrial accidents. Technical search and rescue operations, which are indispensable during such crises, necessitate specialized training, expertise, and equipment to navigate complex and hazardous environments safely and efficiently.

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<sup>4</sup> <https://www.federalregister.gov/d/2023-28203/p-226>

Inclusion of these specialized SAR services within the regulatory framework would mandate that EROs maintain the readiness and capability to deploy these critical resources promptly. This entails acquiring and maintaining specialized equipment and continuous training and certification of personnel in advanced rescue techniques. For example, urban search and rescue (USAR) teams must be adept in locating and extricating victims trapped under rubble, requiring skills in structural engineering, emergency medicine and heavy equipment operation.

- **Training and Certification:** Clarifying which search and rescue services are covered under the rule would necessitate adjustments in training programs and certification requirements for personnel. Ensuring that responders are adequately trained for the specific operations deemed within the rule's purview could strain existing training resources and budgets.
- **Equipment and Technology:** The proposed rule may necessitate investments in specialized equipment and technology, particularly for technical search and rescue operations. Local governments might face challenges in securing funding for these resources, affecting readiness and response capabilities.
- **Inter-agency Collaboration:** Many search and rescue operations involve collaboration between multiple agencies and jurisdictions. The rule should facilitate, rather than hinder, these collaborative efforts by ensuring compatibility and interoperability of standards and practices.

### ***Disaster Site Clean-up***

The rule for workers involved in disaster site clean-up could provide clarity and ensure that these workers are adequately protected, though it should be crafted to not impose undue burdens on local governments tasked with disaster response and recovery.

- **Volunteer Safety:** Volunteers often play a crucial role in disaster site clean-up efforts. Ensuring their safety through appropriate training, personal protective equipment (PPE) and health monitoring without discouraging their participation is a delicate balance that the rule must address.
- **Liability Concerns:** Engaging volunteers in disaster clean-up raises questions about liability and workers' compensation in the event of injury. The proposed rule should provide guidance on how to navigate these issues to protect both volunteers and the organizations they serve.
- **Regulatory Clarity:** Given the complexity of disaster site clean-up operations, which can involve hazardous materials, structural hazards and long-term health risks, the rule must offer clear guidance on safety protocols, PPE requirements and health surveillance to ensure that workers and volunteers are protected.

## ***Living Areas for Workers***

The requirement to include living areas for team members within the regulatory framework could necessitate significant upgrades to existing facilities or the construction of new facilities to meet specified standards. Many local governments operate under tight budget constraints and such requirements could impose financial burdens that are not feasible without federal assistance or grants.<sup>5</sup>

- **Operational Challenges:** Managing living areas for workers, especially within volunteer or smaller emergency services organizations, introduces operational complexities. These include maintaining compliance with health and safety standards, providing adequate amenities and ensuring these areas meet the specific needs of emergency responders who may spend extended periods away from their homes during crises.
- **Varying Needs and Capacities:** The needs of emergency response organizations vary widely depending on their size, location and the nature of the emergencies they typically handle. A one-size-fits-all approach to standards for living areas could be impractical and may not serve the best interests of all workers or their organizations.
- **Implementation Timeframe:** Implementing changes to accommodate living areas for workers would require a reasonable timeframe, allowing for planning, funding acquisition, design and construction, all of which could be prolonged processes depending on the scope of required changes.

## ***Medical Evaluations, Surveillance, and Fitness Requirements***

The proposed requirements for medical evaluations, surveillance and fitness for duty represent important steps towards safeguarding emergency responders' health. Nonetheless, the feasibility and financial impact of these requirements on local governments, especially those with limited resources, should be carefully evaluated to avoid unintended consequences such as staffing shortages or reduced emergency response capabilities.

- **Cost Burden:** The introduction of comprehensive medical evaluations and ongoing medical surveillance for emergency responders can lead to significant costs for local governments. These expenses include the initial evaluations and the ongoing

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<sup>5</sup> A 2019 report by the National Fire Protection Association (NFPA), drawing on data from a survey conducted in 2015, uncovered that between \$70 to \$100 billion is needed for infrastructure projects, pointing to significant challenges that persist, primarily due to the lack of targeted funding for new construction. This report also revealed that approximately 44 percent of fire stations in the U.S. are more than 40 years old, with this issue being more prevalent in smaller fire departments. Furthermore, it was found that half of the fire stations serving populations of 2,500 or less are without backup power, a sharp discrepancy when compared to those serving larger communities. In addition, 56 percent of all fire stations are without exhaust emission controls, a figure that escalates to 82 percent among the smallest departments. Additionally, more than half of the fire stations do not have gender-separate facilities, a problem that is especially common in smaller departments.

monitoring and documentation required to comply with the rule. Many local governments, especially smaller towns and rural areas, operate with limited budgets, making it challenging to absorb these additional costs without impacting other essential services.

- **Insurance and Liability:** Expanded medical evaluations and surveillance could also affect liability insurance premiums for municipalities. As health issues or fitness levels of emergency responders become more rigorously documented, the potential for liability claims may increase, subsequently raising insurance costs.
- **Resource Allocation:** Implementing and maintaining a comprehensive health surveillance program requires dedicated resources, including trained medical personnel, administrative support, and appropriate IT infrastructure for record-keeping. Allocating these resources effectively while maintaining the operational readiness of emergency services could present logistical challenges.
- **Privacy and Confidentiality:** Ensuring the privacy and confidentiality of medical records for emergency responders is paramount. The proposed rule must clearly outline how personal health information will be protected, complicating compliance and operational practices for local governments.
- **Diversity of Roles and Responsibilities:** Emergency responders encompass a wide range of roles, each with different physical demands. Creating fitness requirements that are both fair and appropriately tailored to the specific needs of these various roles without being overly burdensome or exclusionary poses a significant challenge.
- **Volunteer Participation:** Many emergency response organizations, particularly in less urbanized areas, rely heavily on volunteers. Stringent fitness requirements could deter volunteer participation, exacerbating staffing shortages and impacting the ability of these organizations to serve their communities effectively.
- **Consistency in Evaluation:** Establishing consistent, objective criteria for fitness evaluations across different jurisdictions and types of emergency response organizations is crucial. Without clear standards, there is a risk of uneven application and potential disputes regarding compliance.
- **Periodicity and Flexibility:** The proposed re-evaluation frequency (every three years) may not be appropriate for all emergency responders, depending on their roles, age and the physical demands of their duties. Flexibility in the frequency and type of fitness evaluations could help accommodate the diverse needs of emergency responders while still ensuring their readiness and capability.

### ***Personal Protective Equipment (PPE)***

Ensuring that all emergency responders have access to appropriate, up-to-date PPE could represent a significant financial burden for local governments, particularly smaller municipalities or those with limited budgets. The requirement for continuous updating and replacement, especially considering the proposed specification for retirement ages of PPE, could strain already limited resources.

- **Training and Maintenance:** Beyond acquisition costs, there's the added expense of training personnel on proper PPE usage, maintenance and decontamination procedures. This requirement involves direct costs and operational impacts due to the time taken away from other duties.
- **Exposure Risks:** The effectiveness of PPE in protecting workers from hazardous exposures is paramount. Concerns arise regarding the ability of all emergency response organizations to meet the highest standards of protection, particularly when dealing with unknown substances or in the chaotic environments of disaster sites.

## ***Decontamination***

Establishing and maintaining facilities for the decontamination of Personal Protective Equipment (PPE) and other essential equipment presents a complex and financially demanding challenge for local governments and emergency response organizations. This challenge encompasses several dimensions:

- **Infrastructure Requirements:** The creation of decontamination facilities demands significant initial and ongoing investment in physical infrastructure. This includes not only the space needed to safely and effectively carry out decontamination processes but also the installation of specialized equipment designed to remove contaminants from PPE and other gear without damaging them. This equipment must handle various types of contaminants, from biological agents to hazardous chemicals.
- **Procurement of Decontamination Materials:** In addition to the physical space and equipment, emergency response organizations must secure a consistent supply of decontamination materials. These materials must be selected carefully to ensure they are effective against the specific contaminants that personnel are likely to encounter, while also being safe for use on the equipment being cleaned.
- **Development of Protocols:** Crafting decontamination protocols that are both effective in removing contaminants and efficient to implement is a substantial undertaking. These protocols must be based on the latest scientific research and best practices in the field of decontamination. They need to address a wide range of potential scenarios and types of contamination, ensuring that all equipment and PPE can be thoroughly cleaned and returned to service as quickly as possible.
- **Training and Education:** Implementing these decontamination protocols requires that all relevant personnel receive comprehensive training. This training must cover the steps of the decontamination process and the underlying principles of contamination and decontamination. It should equip personnel with the knowledge to understand why certain procedures are necessary and how to adapt them if faced with new or unusual types of contamination.
- **Ongoing Investment in Personnel and Process Improvement:** Maintaining effective decontamination facilities and protocols is not a one-time effort. It requires continuous investment in both the personnel involved in decontamination

and the processes they use. This might include ongoing education and training opportunities, regular reviews and updates of decontamination protocols and investments in new equipment and technologies as they become available.

- **Compliance and Safety:** In addition to operational challenges, there are regulatory compliance and safety considerations. Decontamination facilities and protocols must meet all relevant health and safety regulations, which can vary by jurisdiction. Ensuring compliance requires regular audits and potentially modifications to facilities or practices to meet new or changing standards.

### ***Excerpts from Other Stakeholders Filings on OSHA Proposed Regulations***

- **Lost River Fire Management Service Inc., Merrill, OR** - Lost River Fire Management Service Inc. provided a detailed response highlighting significant financial burdens and operational challenges associated with the proposed standards. The commenter emphasized the need for OSHA to consider the financial and operational impact on wildfire suppression capabilities before finalizing regulations. Their well-constructed argument reflects a broader concern shared by similar entities within the industry. Several other organizations echoed the concerns raised by Lost River Fire Management Service Inc.:
  - Timberline Medics LLC, Bend, OR
  - Cooper Contracting Inc., Monument, OR
  - Wildfire Services Inc., Yakima, WA
  - Swedberg Contracting Corporation, Nine Miles Falls, WAThese entities highlighted the undue financial and operational strains the proposed regulations would impose, particularly stressing the need for OSHA to reevaluate the burdensome requirements.
- **Central New York Firefighters Association, New York Mills, NY** - The Central New York Firefighters Association strongly opposes the proposed OSHA Emergency Response Standard, citing it as an unfunded mandate that could lead to significant financial burdens. The association has requested a forty-five-day extension to the comment period and the organization of public hearings to discuss the potential impacts further.
- **The Board of Fire Commissioners of East Brunswick Fire District 1, East Brunswick, NJ** - This board raised concerns about the broad application of the proposed regulations, which they believe do not consider the specific needs and challenges faced by volunteer fire departments. They pointed out the difficulty in abiding by the regulations and the potential decrease in volunteer participation.
- **Gerton Volunteer Fire Department, Gerton, NC** - Gerton Volunteer Fire Department detailed the devastating impacts the proposed regulations could have on their operational capabilities, particularly emphasizing the financial burdens and

the potential for decreased volunteer participation due to stringent physical requirements.

- **Pattersonville Volunteer Fire Department, Pattersonville, NY** - Pattersonville's response highlighted the crippling financial implications and increased administrative burdens that the proposed regulations would impose on small and volunteer fire departments. They stressed the negative impact on member retention and recruitment, further exacerbating existing challenges.
- **Massachusetts Department of Fire Services, Stow, MA** - The Massachusetts Department of Fire Services provided a nuanced view on the management burdens the proposed standards could introduce. They advocated for a more targeted approach that balances safety with practical operational concerns, especially during training scenarios.
- **Odenton Volunteer Fire Company, Odenton, MD** - Odenton Volunteer Fire Company discussed the challenges related to NFPA standards and the financial impossibility of meeting equipment and apparatus replacement cycles. They emphasized the need for a more flexible approach to training and equipment standards to accommodate small departments.
- **Western Berks Ambulance, Reading, PA** - Western Berks Ambulance raised issues concerning the increased administrative burden and resource constraints that the new OSHA regulations would impose on EMS agencies. They called for a reassessment of the regulations to prevent service cutbacks and to maintain quality and timeliness of emergency services.

## ***Conclusion***

In summary, we strongly believe that OSHA's proposed emergency response rule will impose a significant unfunded mandate on local governments, fire departments and emergency services. Unless OSHA can identify adequate federal funding, resources and support in the rulemaking process, local governments will face significant financial and administrative obstacles to comply with the proposed rules.

We encourage OSHA to acknowledge the wide-ranging characteristics and operational modes of emergency response organizations throughout the United States. This diversity necessitates a tailored approach to safety standards, one that respects the unique needs and capacities of different locales. To this end, we advocate for a cooperative relationship between OSHA and local governments. The aim is to foster the voluntary adoption of already established safety standards, rather than the imposition of new, potentially burdensome regulations.



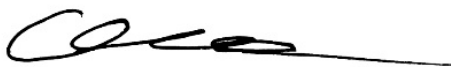
Such an approach acknowledges the critical role local governments play in providing essential services to their communities. It seeks to enhance safety measures in an effective and sustainable way, avoiding additional financial strain, complex legal obligations, or increased liability risks on these entities. By promoting the voluntary adoption of proven safety standards, OSHA can help ensure that emergency services are delivered safely, efficiently, and effectively across the country.

Moreover, NLC and NACo suggest that OSHA provide resources, guidance and support to assist local governments in implementing these safety standards. This could include training programs, technical assistance and financial grants to help offset any costs associated with adopting these measures. By working collaboratively, OSHA and local governments can create a safety culture that not only meets national standards but also addresses the specific needs of each community, ensuring that emergency responders are well-protected while carrying out their vital roles.

The goal should be to build a partnership that prioritizes the well-being of emergency service personnel and the communities they serve, fostering a safer environment for all without overburdening local governments with new regulations. This approach ensures that safety enhancements are achievable, practical, and tailored to the diverse landscape of emergency response organizations across the country.

In closing, thank you for considering the perspective of cities and counties as you move forward in this rulemaking process. If you have any questions, please reach out to our staff: Yucel Ors (NLC) at [ors@nlc.org](mailto:ors@nlc.org) or 202-626-3124; or Brett Mattson at [BMattson@naco.org](mailto:BMattson@naco.org) or 202-942-4234.

Sincerely,



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