



March 12, 2024

VIA 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: Recommend Extension of Comment Period for Proposed “Emergency Response Standard” (Emergency Response) Rule [Docket No. OSHA-2007-0073] (RIN 1218-AC91)

Dear Assistant Secretary Parker:

On February 5, 2024, the Occupational Safety and Health Administration (OSHA) published in the Federal Register a proposed rule entitled “*Emergency Response Standard*” (Emergency Response).¹ The comment period for the proposed rule is currently open for ninety days and is scheduled to close on May 6, 2024. Based on input from small entity representatives in the emergency response community (both public and private), the Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) respectfully recommends that OSHA extend the public comment period by an additional ninety days. The extension will give small entities more time to review the proposed rule, consult with their colleagues, associations, and government representatives, gather data, and provide more meaningful comments on this complex and technical proposed rule. Although this rulemaking has been in progress for a number of years, many small entities remain unaware of this proposed rule and its potential impact on their emergency response operations.

Advocacy Background

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within

¹ 89 Fed. Reg. 7774 (Feb. 5, 2024).

SBA that seeks to ensure small entity concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴ Additionally, section 609 of the RFA requires the Consumer Financial Protection Bureau, the Occupational Safety and Health Administration, and the Environmental Protection Agency to conduct special outreach efforts through a review panel.⁵ The panel must carefully consider the views of the impacted small entities, assess the impact of the proposed rule on small entities, and consider less burdensome alternatives for small entities.⁶ If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.⁷ The agency must provide a statement of factual basis that adequately supports its certification.⁸

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁹ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register unless the agency certifies that the public interest is not served by doing so.¹⁰

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."¹¹

An Extension of the Comment Period Will Allow Small Entities and their Representatives Needed Time to Provide Meaningful Comments on the Proposed Rule

On February 5, 2024, OSHA proposed a new rule to update existing regulations for the safety and health of firefighters and other emergency responders. OSHA's proposed rule would replace OSHA's existing Fire Brigades standard at 29 CFR 1910.156 (originally promulgated

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

³ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁴ 5 U.S.C. § 603.

⁵ *Id.* § 609.

⁶ *Id.*

⁷ *Id.* § 605(b).

⁸ *Id.*

⁹ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

¹⁰ *Id.*

¹¹ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

in 1980) and cover a broader set of present-day emergency responders beyond firefighters, including small private sector emergency responders and small public fire and rescue entities in all OSHA state plan states (including an undetermined number of volunteer fire departments). The proposed rule would require written emergency response plans, hazard vulnerability assessments, training, personal protective equipment, medical screening and behavioral health services, workplace violence control, and other requirements. The focus of the proposed rule is to provide workplace protections for workers who respond to emergencies as part of their regularly assigned duties and would expand the scope of protected workers to include emergency medical service and technical search and rescue. The proposed rule was the subject of a Small Business Advocacy Review panel (also known as a SBREFA panel) in 2021, which issued a final report containing its advice and recommendations to OSHA on December 2, 2021.¹²

In response to the publication of the proposed rule, a number of small business representatives (including small entity representatives who participated in the SBREFA panel) have contacted Advocacy and sought assistance in understanding the proposed rule and obtaining an extension of the comment period. An extension would allow these small entities needed time to fully review this complex and technical rule, consult with their colleagues, associations, and government representatives (particularly concerning small governmental budgetary and operational impacts), gather data, and provide more informed and meaningful comments. Accordingly, Advocacy recommends that OSHA extend the comment period by ninety days. Advocacy does not believe a ninety-day extension of the comment period will impair OSHA's rulemaking effort as this rulemaking has been underway for a number of years.¹³ OSHA has prepared an Initial Regulatory Flexibility Analysis recognizing that the proposed rule if promulgated, would have a significant economic impact on a substantial number of small entities.¹⁴ Advocacy also recommends that OSHA schedule a post-comment public hearing on the proposed rule.

Conclusion

Advocacy has already planned a small entity roundtable to discuss the proposed rule - and is pleased that OSHA will participate to provide a background briefing and answer questions about the proposed rule – and would welcome the opportunity to co-host additional roundtable meetings with small entities on the proposed rule. In the meantime, Advocacy recommends that OSHA extend the current comment period by ninety days and schedule a post-comment public hearing on the proposed rule.

¹² (See, [Emergency Response SBREFA on OSHA.gov](https://www.osha.gov/emergency-response/sbrefa) at <https://www.osha.gov/emergency-response/sbrefa>).

¹³ 89 Fed. Reg. 7,776.

¹⁴ *Id.* at 7,980.

Please feel free to contact Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov if you have any questions or require additional information about this recommendation.

Sincerely,

/Signed/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/Signed/

Bruce E. Lundegren
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
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