



May 24, 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 Additional Ninety-Day 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 March 12, 2024, the Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) wrote to you<sup>1</sup> and recommended that the Occupational Safety and Health Administration (OSHA) extend the public comment period for its recently proposed *Emergency Response Standard*<sup>2</sup> by ninety days in order to 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. While OSHA did grant a forty-five-day extension of the comment period until June 21, 2024,<sup>3</sup> more recent activities and outreach compel Advocacy to recommend that OSHA further extend the comment period for an additional ninety days until Friday, September 20, 2024. It appears that much of the regulated community is unaware of this proposed rule and unprepared to effectively comment on it in the timeframe currently provided by OSHA.

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<sup>1</sup> See U.S. Small Bus. Admin., Off. of Advocacy, Comment Letter on Proposed Emergency Response Standard, (Mar. 12, 2024), <https://advocacy.sba.gov/2024/03/14/advocacy-recommends-extension-of-comment-period-for-oshas-emergency-response-rule/>.

<sup>2</sup> 89 Fed. Reg. 7774 (Feb. 5, 2024).

<sup>3</sup> 89 Fed. Reg. 21468 (Mar. 28, 2024).

## Office of Advocacy

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 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),<sup>4</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.<sup>9</sup> The agency must provide a statement of factual basis that adequately supports its certification.<sup>10</sup>

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>11</sup> 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.<sup>12</sup>

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."<sup>13</sup>

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<sup>4</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

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

<sup>6</sup> 5 U.S.C. § 603.

<sup>7</sup> *Id.* § 609.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* § 605(b).

<sup>10</sup> *Id.*

<sup>11</sup> Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

<sup>12</sup> *Id.*

<sup>13</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

## **An Additional 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 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 employees who respond to emergencies as part of their regularly assigned duties and would expand the scope of protected employees 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 providing its advice and recommendations to OSHA on December 2, 2021.<sup>14</sup> The original comment period for the proposed rule was scheduled to close on May 6, 2024, but OSHA has extended the comment period until June 21, 2024.

In response to the publication of the proposed rule, Advocacy has been actively engaged in outreach efforts to small entities and various associations whose members would be directly and indirectly impacted by the proposed rule. Advocacy has participated in several webinars and hosted two small entity roundtables on the proposed rule: one on March 22, 2024, featuring an overview of the proposed rule by OSHA, and another on May 17, 2024, featuring a panel of sector experts who provided their thoughts and perspectives about the proposed rule. Each of these experts stressed the need for more time to conduct outreach, consult with members, and gather data to effectively comment on the proposed rule.

For this reason, Advocacy respectfully recommends that OSHA further extend the comment period for an additional ninety days until Friday, September 20, 2024, as much of the regulated community appears to be unaware of this proposed rule and unprepared to effectively comment on it in the timeframe provided by OSHA. The additional time would allow these small entities 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. Advocacy does not believe an additional ninety-day extension of the comment period will impair OSHA's rulemaking effort as this rulemaking has been underway for a number of years.<sup>15</sup> 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.<sup>16</sup> Advocacy also previously requested and

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<sup>14</sup> (See, [Emergency Response SBREFA on OSHA.gov](https://www.osha.gov/emergency-response/sbrefa) at <https://www.osha.gov/emergency-response/sbrefa>).

<sup>15</sup> 89 Fed. Reg. 7,776.

<sup>16</sup> *Id.* at 7,980.

reiterated its recommendation that OSHA conduct a post-comment public hearing on the proposed rule.

**Conclusion**

Advocacy reiterates its eagerness to engage the regulated community on this important rulemaking and would welcome the opportunity to co-host with OSHA additional roundtable meetings with small entities on the proposed rule. In the meantime, Advocacy recommends that OSHA extend the current comment period by an additional ninety days and conduct a post-comment public hearing on the proposed rule. Please feel free to contact Bruce Lundegren at (202) 205-6144 or [bruce.lundegren@sba.gov](mailto: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  
Office of Management and Budget