

WESTERN STATES SHERIFFS' ASSOCIATION

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The Western States Sheriffs' Association is a member driven organization representing over 1100 Sheriffs across 18 western states. The mission of the WSSA is *"to assist Sheriffs and their offices with federal and state legislative issues, address policy and procedural matters, develop guidelines to promote uniformity in matters that are important to Sheriffs of the western United States and to work together to keep the Office of Sheriff strong."*

The leadership within the WSSA has reviewed RIN 1218-AC91, the proposed changes to 29 CFR 1910 which OSHA has titled Emergency Response Standard. Having reviewed the proposed changes, the WSSA appreciates the opportunity to respond to these proposed changes and hereby submits the following comments.

Of the eighteen western states that make up the membership of the WSSA, eight of them are federal OSHA plan states, meaning that this rule would, without question, apply. For the other ten states, it appears that some or all of the proposed rule would have an effect on their operations.

OSHA states:

- The rule would impact a significant number of state and local government entities. For this analysis, OSHA is assuming that State Plan states would adopt the requirements in this proposed rule as written. Another issue in determining the entities that would be affected by the proposed rule is that many emergency responders are volunteers. OSHA does not regulate volunteers, but some State Plan states, listed below, have laws that treat volunteers as employees for occupational safety and health purposes. Therefore, in those situations, State Plans would have to cover those volunteers.*

From page 13 of the proposed rule, OSHA believes that the majority of technical search and rescue job activities are performed by firefighters. While this may be true in other parts of the country, in the western United States, it is the county sheriff that is tasked with completing wilderness search and rescue (SAR) operations in their respective counties.

In the proposed rule, OSHA describes technical SAR as a service that utilizes special knowledge, skills and specialized equipment to resolve unique or complex SAR operations – such as rope rescue, vehicle rescue, trenches, and technical water rescue. It is clear from the rule, that OSHA is unsure where to draw the line between technical and less-technical rescue. Further, OSHA estimates that 80% of SAR activities are technical rescue operations, categorizing the use of an ATV as a specialized skill. It also appears that the use of rescue vehicles would be a technical rescue activity.

OSHA utilized information from the National Association of Search and Rescue and the Mountain Rescue Association to estimate the number of SAR organizations in the nation. They adjusted this estimate for the percent that use specialty skills or equipment during search and rescue. **Because there was no available data on these organizations' location or size characteristics**, OSHA distributed these groups across each state using the percent of the overall U.S. population residing in each state (U.S. Census Bureau, 2022b). Next, OSHA distributed the entities by employee class size using the Government Units Survey (GUS) data from U.S. Census Bureau (U.S. Census Bureau, 2017b) as a proxy for local government law enforcement agencies.

OSHA surmises that:

- *Since exposure cannot be eliminated due to the nature of emergency response activities, OSHA has determined that medical surveillance is necessary.*
- *Emergency responders come into contact with people who have infectious diseases.*
- *Emergency responders, particularly firefighters, are exposed to carcinogens and physically strenuous activities while wearing heavy, insulated PPE.*
- *Emergency responders encounter belligerent behaviors, (active shooter) - one study cited - firefighters.*

The reality is, for search and rescue performed by western sheriffs, exposures **can** be eliminated. Wilderness search and rescue personnel don't respond to structure fires or drug overdoses, aside from a potential to be exposed to wildfire smoke like the general public in the west, they are not exposed to carcinogens or toxic substances, they don't cut buildings open with chainsaws, they don't wear heavy insulated turnouts or SCOT air packs, and they never go to active shooter situations.

In the document, OSHA outlines the number of hours for each activity it would take to be in compliance with the proposed rule. Even for the smallest organizations, less than 25 people, the estimate is around 690 hours. This estimate does not include the hundreds of additional hours to provide training for each new hire, nor all the repeat activities that must be done annually to maintain compliance. Furthermore, most search and rescue organizations are all volunteer and they do not have people to do administrative and pre-planning activities required by this proposed rule.

The proposed rule requires ongoing physical examinations performed by a very specialized doctor that understands the requirement of NFPA 1500. Not only is there no funding for this, but this will also be impossible to accomplish in smaller jurisdictions with limited medical personnel.

OSHA proposes that organizations split up personnel into tiers, based upon the amount of training they have and duties they perform. This proposal is not realistic. The reality is that volunteers show up and are utilized based on their availability.

To justify the rule, OSHA goes on to conclude:

- *The Standard must be reasonably necessary – when a significant risk of material harm exists, and the standard would substantially reduce or eliminate the risk*
- *Standards must address significant risk - Reviewing courts have upheld the Secretary's significant risk determinations were supported by substantial evidence and "a reasoned explanation for his policy assumptions and conclusions"*

The reality is, almost no evidence in the document supports applying this new rule to wilderness search and rescue operations. OSHA cites the National Association of Search and Rescue estimates that 90 percent of the organizations are focused on wilderness search and rescue. If 90 percent of organizations

are focused on wilderness search and rescue, how can OSHA justify making them adhere to rules about firefighting, toxic exposures, medical responders, and fire house regulations like sprinklers and decontamination facilities?

There seems to be a lack of understanding or failure to delineate the differences between Urban Search and Rescue (USAR) and wilderness search and rescue. The former being more alike to those activities performed by fire departments. It is often fire departments that run and/or staff the USAR teams in the west. However wilderness search and rescue operations share very few similarities to USAR operations, yet all search and rescue activities are lumped together and subjected to the proposed rule.

The hands down majority of search and rescue operations in the western US are performed by volunteers. In western states, almost every SAR group is a public agency, which OSHA has said is not covered by the rule. Yet, they are clearly covered by this rule. OSHA also said this doesn't apply to true volunteers, yet they are included in the definition of responder.

OSHA states that:

- *Rules must be economically feasible. A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure.*
- *OSHA standards satisfy the economic feasibility criterion even if they impose significant costs on regulated industries so long as they do not cause massive economic dislocations within a particular industry or **imperil the very existence of the industry***

This would put most small Search and Rescue volunteer groups out of business, causing significant risks to public safety. There is no way to pass along costs of compliance, they must be absorbed by small public agencies that do not have the ability to do so. This imperils the very existence of wilderness SAR.

In review of the document, it is clear and even admitted that there is lack of evidence surrounding the inclusion of technical search and rescue operations. Most statistics related to death and injury are related to firefighters and EMS. Throughout the review, it was evident that OSHA utilized significant supposition to fill in the blanks and has not done significant research or involved the appropriate stakeholders to justify the addition of technical search and rescue to this rule.

Throughout the proposed rule, deaths and injuries are cited as it relates to firefighters and emergency service providers, not wilderness search and rescue organizations. Almost all the proposed rule focuses on fire and EMS, with very little covered regarding volunteer search and rescue operations.

The Western States Sheriff's Association has a long-documented history of working very effectively with our federal partners. It is disappointing that the expertise contained within the organization was not leveraged when crafting this proposed rule. WSSA strongly urges OSHA to eliminate wilderness search and rescue from the proposed rule. It is clear from the proposal that there is a definitive lack of evidence to support implementation of a rule that will effectively decimate wilderness search and rescue organizations across the western United States

Respectfully,



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Hood River County, Oregon
Co-Chair WSSA Government Affairs



Sheriff Tracy Glover
Kane County, Utah
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