

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
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KRISTEN JURAS
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July 22, 2024

James S. Frederick
Deputy Assistant Secretary,
Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

RE: Occupational Safety and Health (OSHA) Emergency Response Standard Proposed
Rulemaking Comment Response (Docket No. OSHA-2007-0073)

Deputy Assistant Secretary Frederick:

As governor of the State of Montana, I write today to express my deep concerns about OSHA's notice of proposed rulemaking for a new Emergency Response standard which would replace the existing Fire Brigade Standard. I urge you to rescind the new proposed rule to replace these existing standards.

Montana is in the middle of wildfire season. Each year, the State relies upon public, private, and volunteer firefighters to protect Montanans, their property, and our lands from seasonal wildfire.

That's why, despite the good intentions of OSHA's proposed new rule which purportedly aims to promote firefighter health and safety, the State of Montana and our firefighters are concerned about the unintended consequences presented by this rule.

First, OSHA's proposed rule appears to be a case of bureaucratic creep. The National Wildfire Coordinating Group (NWCG) sets wildland fire safety standards and training expectations. Members of NWCG include bureaus of the U.S. Department of the Interior and the U.S. Department of Agriculture, two of the chief departments responsible for wildland fire response. OSHA is not a member of NWCG, and it does not have the wildland firefighting expertise of NWCG members. And yet, OSHA seeks to insert itself into wildland firefighting, likely at the cost of effective wildland firefighting. I remain concerned OSHA is stretching its long arms into something with which it has no historical experience and expertise.

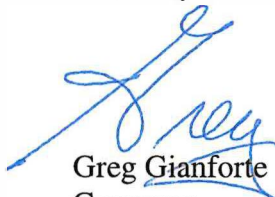
Second, I recently met with a group of volunteer firefighters in rural Montana, and the topic of OSHA's proposed rule dominated the conversation. Those volunteer public servants are concerned, as am I, about the impact the proposed rule could have on them and their continued

viability in their community. While there are certain benefits of OSHA's proposed rule, elements of it, particularly the steep costs of the mandates, could be catastrophic for the volunteer firefighters on which our rural and smaller communities depend. According to OSHA's own notice of proposed rulemaking, the proposed rule could cost a volunteer fire department more than \$14,000 per year. That's a price tag too many of our volunteer fire departments cannot afford to bear, and I fear, facing those high costs of compliance, they may not be able to operate fully and serve their community.

To more fully outline the concerns of the State of Montana, I attach to this letter comments from Montana's Department of Natural Resources and Conservation (DNRC) and Department of Labor & Industry.

I appreciate your attention to this matter and again request that OSHA not move forward with the proposed rulemaking. As firefighters working to combat active wildfires across our state and respond to the needs of their communities, we must ensure we continue to have the necessary resources to protect and serve Montanans and their communities.

Sincerely,



Greg Gianforte
Governor

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION



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Comment Response (Docket No. OSHA-2007-0073)

Deputy Assistant Secretary Frederick:

On behalf of the Montana Department of Natural Resources and Conservation (DNRC), we offer the following comments regarding OSHA's notice of proposed rulemaking to issue a new safety and health standard, titled Emergency Response, which would replace the existing Fire Brigades Standard.

The DNRC and its Fire Protection Bureau have a unique responsibility under state law (MCA § 76-13-104) to carry out a unified fire protection program that spans the State of Montana. This is guided by a mission that emphasizes protecting lives, property, and natural resources from wildfire by "...providing safe and effective services to Montana's citizens as well as leadership, coordination and resources to the State's wildfire organizations."¹ A total of 50,265,678 acres of state and private land are to be protected by the DNRC. This is achieved through two notable ways:

- Direct Protection of 5.2 million acres; 3.5 million acres of state and private lands and 1.7 million acres of federal public lands.
- County Cooperative Fire Protection on roughly 50 million acres statewide, 5.2 million are interspersed within the direct protection program. The remaining 45 million acres are protected by a network of 400 fire departments statewide. Additionally, the Volunteer Fire Assistance (VFA) Program provides grants to county fire agencies for equipment, training, and fire prevention materials. The VFA Program is funded by the U.S. Forest Service.

With such an amazing responsibility also comes an expectation that interagency cooperation and coordination among local, state, and federal agencies must occur to respond to all wildfires in a resourceful and efficient manner. This is where the value of partners truly becomes apparent. Our reliance on a myriad of resources and support allows us to meet our statutory obligations to

¹ DNRC Fire Protection Strategic Plan, 2019-2025.

“minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort.” Simply put, not one entity can fight fire alone, but together, we can pool resources to respond aggressively, safely, and tactfully to each incident we face.²

To be clear, the safety and health of our wildland firefighting workforce has been and continues to be our top priority.³ Our concerns with your proposed rulemaking pertain to the unintended and far-reaching consequences this type of unfunded mandate has, particularly on states across the west who are in the midst of an active fire season. Unfortunately, this is yet another example of a one-size-fits-all approach coming from Washington, D.C., that fails to contemplate the impact that increased costs, requirements, and regulations will have on already burdened emergency responders.

The manner in which OSHA is attempting to implement these proposed rules will cause massive ripples throughout the firefighting sector, especially as there is no timeframe for compliance or listed exemptions. Further, while this rule would not be applicable to the State of Montana as we have no OSHA interest in public sector safety, we are incredibly concerned about the impact this will have on our robust contracted wildfire workforce, who make up a considerable component of our response efforts. During periods of peak activity, we are reliant on contracted fire forces to add capacity to successfully and safely suppress wildfires. Increasing the regulatory burden on these entities could potentially result in a decrease in the number of resources available to assist us in our response efforts. Additionally, confusing standards could be created by those administered through OSHA, and National Fire Protection Association (NFPA) and states without OSHA interest resulting in logistical and operational issues.

More importantly, existing wildland fire safety standards and training expectations are currently established by the National Wildfire Coordinating Group (NWCG). They should continue to be the entity that sets these standards. Introducing the NFPA requirements into the wildfire response sector creates confusion, will be duplicative, and fosters uncertainty, which ultimately translates to increased costs for all operations with questionable increase in safety. The distinction between NWCG and NFPA is imperative to make, as NWCG is specifically intended to “enable interoperable wildland fire operations among federal, state, local, Tribal, and territorial partners.” This is achieved by establishing standards that are created by subject matter experts on wildfire and comprised of requirements, guidelines, procedures, processes, best practices, specifications, techniques, and methods. NFPA’s standards are not applicable to wildland firefighting settings and more often than not would prove nearly impossible to comply with during field operations. Wildland fire is different and cannot be lumped in with other emergency response.

We reiterate our continued commitment to firefighter safety; however, OSHA’s rulemaking is duplicative of existing safety standards and training from the NWCG that far better align with the unique dynamics and intricacies of wildland firefighting. As such, OSHA should rescind its rulemaking.

² State Fire Policy (MCA § 76-13-115).

³ To further emphasize this point, it is worth noting that a component of the State Fire Policy (MCA § 76-13-115), which was codified in 2007, states that: “The safety of the public and of firefighters is paramount in all wildfire suppression activities.”

If you have any additional questions, please contact Shawn Thomas, DNRC's Forestry and Trust Lands Division Administrator and State Forester, at stthomas@mt.gov or (406) 444-4978.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Kaster". The signature is fluid and cursive, with the first name "Amanda" being more prominent than the last name "Kaster".

Amanda Kaster
Director, Department of Natural Resources and Conservation



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Rulemaking Comment Response (Docket No. OSHA-2007-0073)

Deputy Assistant Secretary Frederick:

We are writing to express concerns and opposition regarding the proposed updates to the “Fire Brigade Standard”. While we understand and appreciate OSHA's commitment to improving safety and health regulations, we believe the proposed changes could have unintended consequences that may undermine the effectiveness of fire and emergency management services.

The existing standards have provided a robust framework for ensuring the safety and effectiveness of fire brigades for many years. Altering these standards may lead to several challenges, including:

1. **Increased Costs and Resource Strain:** Implementing new regulations often requires significant investment in training, equipment, and compliance measures. For many organizations, especially smaller ones, these costs can be prohibitive and divert resources away from other critical safety initiatives.
2. **Reduced Volunteer Participation:** Fire services, particularly in rural and smaller communities, rely heavily on volunteer firefighters. Stricter regulations and more demanding compliance requirements may deter individuals from volunteering, thus diminishing the capacity and readiness of these essential services.
3. **Operational Disruption and Inefficiency:** Changes in procedures and protocols necessitate time for adaptation and familiarization. During this transitional period, fire services may experience operational inefficiencies and disruptions that could potentially compromise their response capabilities in emergency situations.
4. **Inconsistency of Application:** Many rural fire districts, volunteer and paid, do not fall under the purview of OSHA. Montana does not intend to adopt these same standards and will continue to allow fire districts to implement appropriate safety standards based upon



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their unique environments and budgets. There are, however, times when cross-jurisdictional fire response teams work together. If operating from different standards, this could potentially cause confusion and disrupt those coordinated activities.

We urge OSHA to reconsider these updates and engage in further consultations with stakeholders, including fire brigade professionals, safety experts, and community representatives, to explore alternative approaches that enhance safety without imposing undue burdens. Maintaining the balance between rigorous safety standards and practical, feasible implementation is essential. We believe that with more collaborative efforts, OSHA can achieve its goal of improving workplace safety without compromising the effectiveness and sustainability of fire brigades.

Best Regards,

Sarah Swanson

Commissioner

Montana Department of Labor and Industry