

MEMORANDUM

TO: Emergency Response Proposed Rule Hearing Participants

FROM: Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health

SUBJECT: Hearing and Post-Hearing Procedures for OSHA's Proposed Rule on Emergency Response

DATE: November 1, 2024

The Occupational Safety and Health Administration (OSHA or the agency) is setting hearing and post-hearing procedures as referenced in the notice published in the *Federal Register* on July 23, 2024 (89 FR 59712; Docket No. OSHA-2007-0073-2883). These procedures address the hearing schedule, the nature of the hearing, availability of hearing testimony, the conduct of the rulemaking hearing, and post-hearing submissions. OSHA is issuing these procedures to ensure that the hearing proceeds in a fair, orderly, and timely manner.

I. General Information

1. Authority and Nature of the Hearing. OSHA conducts its rulemaking hearings in accordance with Section 6(b)(3) of the OSH Act, 29 U.S.C. § 655(b)(3), and the Secretary of Labor's procedural regulations in 29 C.F.R. Part 1911. This OSHA rulemaking hearing is a legislative-type hearing, not an adjudicative one. It is an informal administrative proceeding intended for information gathering and clarification. The procedural rules governing the hearing are intended to facilitate the development of a clear, accurate, and complete record while assuring fairness. The rules of evidence and other procedural rules governing adjudications do not apply. These procedures are issued under the authority of 29 C.F.R. 1911.4 to expedite the hearing process.

2. Hearing Dates. The hearing will be held virtually. It will begin on Tuesday, November 12, 2024, and will continue through December 4, 2024, in accordance with the published hearing schedule (emailed to participants and available at www.osha.gov/emergency-response/rulemaking). The hearing will begin at 9:30 a.m. ET on each day (except for Thanksgiving week) and will ordinarily conclude around 4:30 p.m. ET each day; however, the exact daily schedule may be amended at the discretion of the presiding Administrative Law Judge (ALJ).

3. Availability of Docket Materials. Comments and other materials submitted to the rulemaking docket are or will be listed online at <http://www.regulations.gov>; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All submissions to the docket, including copyrighted material, are available for inspection and, where permissible, copying through the OSHA Docket Office. Please contact the OSHA Docket Office for assistance in locating docket submissions; telephone: (202) 693- 2350; email: technicaldatacenter@dol.gov.

II. Conduct of the Rulemaking Hearing

1. Schedule for Testimony. Only those individuals who filed a timely notice of intention to appear will be allowed to participate in the hearing. Prior to the hearing, OSHA will post the schedule for the hearing on OSHA's website (www.osha.gov/emergency-response/rulemaking). Each witness should plan to join the virtual hearing and be available at the start of the morning or afternoon session, as applicable, on the day they are scheduled to testify. The schedule prescribes the amount of time for each participant to testify and also allows a period of time for OSHA representatives to question the witness, as well as additional time for cross-examination when permitted by the ALJ (see Questioning of Public Witnesses below). The

ALJ shall assure that the hearing proceeds in a fair and orderly manner to facilitate development of the record.

2. Schedule for Questioning. The ALJ shall allocate the time allowed in the schedule among questioners, including OSHA. The judge may adjust this time so long as the testimony and questioning of all witnesses scheduled for each day is completed that day. OSHA representatives will be allowed sufficient time during the questioning period to ensure that the agency can develop a clear, accurate, and complete rulemaking record.

3. Form of Testimony. Comments submitted before the hearing are already part of the rulemaking record, and participants who have already submitted written comments are encouraged to use their oral presentation to summarize and clarify their written submissions. OSHA discourages witnesses from submitting a statement and then also reading the statement verbatim so that it appears twice in the record. Those participants who wish to use a PowerPoint presentation should provide the slides, with no embedded audio, video, or animations, via email to OSHA.Emergency.Response@dol.gov with the subject line “Presentation for Emergency Response Hearing” by 5:00 p.m. ET on November 6, 2024. The PowerPoint file should be named with the participant’s name and the date of their testimony in the following format: Name_11.14.24. OSHA will display and control the PowerPoint during the participant’s testimony.

All participants who testify, or who participate in a panel of testifying witnesses, will be expected to respond to questions following their presentations.

4. Questioning of Public Witnesses. Representatives of OSHA may question witnesses. The ALJ is empowered to allow other hearing participants an opportunity for cross-examination on crucial issues when required for fairness and the cross-examination can be

carried out with expedition and without unduly impeding or protracting the hearing. Individuals who did not file timely notices of intention to appear may not question witnesses.

Questions must be as brief as possible and should be designed to clarify a presentation or elicit information that is within the competence or expertise of the witness. Participants may not ask questions that are outside the scope of the matters addressed by this rulemaking. OSHA recommends that participants ask their most important questions first. The ALJ has authority to limit the time for questioning and to disallow participants from using the question periods as a forum for debate or legal argument, or to present their own testimony and views on issues. Moreover, the ALJ has authority to cut off duplicative, argumentative, or irrelevant questions. Participants having similar interests are encouraged to designate one representative who can conduct the questioning on their behalf.

Participants may only direct questions to witnesses with whom they have no organizational affiliation. In this regard, a witness can most efficiently enter information into the record through testimony rather than through a question-and-answer exchange between the witness and their affiliates, which constitutes an improper extension of the time scheduled for the witness's testimony. When an organization is represented by more than one person, only one person from the organization may question each witness or witness panel.

After all questioners have had an opportunity to question a witness or witness panel, if a questioner still has important relevant questions that have not been asked, the questioner may submit those questions to the docket during the post-hearing comment period or request permission from the ALJ to ask additional questions. The ALJ may allow a participant such additional time for questioning as is necessary and reasonable for OSHA to develop a clear, accurate, and complete record; the ALJ may allocate such questioning to the end of the scheduled

testimony. Permission to extend the questioning period will depend in part on the witness schedule and the time available; the ALJ will not grant an extension if doing so would cause the hearing to be extended to any additional day. If the ALJ does allow such extended questioning, the ALJ may place additional limits on questioning, or require participants to consolidate their questions.

III. Post-Hearing Procedures

At the close of the hearing, subject to the discretion of the ALJ, there will be a post-hearing comment period that will end on January 17, 2025. During this time, members of the public can file additional evidence and data relevant to the proceeding and to file final written briefs.

After the hearing concludes, a transcript of the hearing will be made available in the docket. After the post-hearing comment period, the hearing record will be closed and certified by the ALJ to the Assistant Secretary of Labor for Occupational Safety and Health.

IV. Contact Information

General information and press inquiries: Francis Meilinger, OSHAComms@dol.gov

WebEx inquiries: Public_Hearing@abtassoc.com

Hearing inquiries: OSHA.Emergency.Response@dol.gov