

## ***Navigating the NIMS Training Requirements in Kansas***

(These recommendations are ONLY for the field disaster or field emergency operations – for those individuals responsible for making life safety decisions! These recommendations DO NOT apply to EOC operations and EOC personnel.)

The Kansas Department of Emergency Management Homeland Security has received many inquiries during the past months regarding the levels of training required for NIMS compliance. Many questions focus on how best to determine who should attend which level of training to be compliant. In this article we are going to focus solely on the training issues associated with the NIMS program guidance and not any of the other NIMS compliance objectives.

NIMS compliance and NIMS training are not law. The Kansas Department of Emergency Management and Homeland Security does not require NIMS compliance from any Kansas public safety agency. The NIMS compliance requirements come from the federal level and are enforced through grant funding qualifying standards, and through adoption of performance standards such as those established by OSHA, NFA, or EMAP.

### ***Background***

We should first look at the legal issues associated with NIMS compliance. USDHS Homeland Security Presidential Directive 5 (2-28-2003) set the direction for the nationwide implementation of NIMS for the federal government. Federal Occupational Safety and Health Administration (OSHA) requirements under 29CFR 1910.120 and compliance directive CPL: 02-02-073, dated 8-27-2007, have established the requirement that the Incident Command System be used during incidents covered by these directives be NIMS compliant. These directives also apply to EMS personnel, First Receivers in emergency medical care agencies, emergency communications, and each of the categories of first responders as defined in NIMS documents. Governor Sebelius has directed first responder and state agency compliance to NIMS in Executive Order 05-03. It is important to note that while local agencies are not *legally* bound to comply with NIMS metrics, it is a requirement to receive federal or state public safety related funding. Even though Kansas is “not an OSHA state” with the adoption of NIMS compliant Incident Command procedures by OSHA, it is highly recommended that local governments, agencies, and departments consult their legal advisor about any potential liability that may be incurred by failing to become NIMS compliant and properly implementing the approved Incident Command System.

Federal Fiscal Year 2006 grant requirements called for states and local jurisdictions to adopt NIMS by executive order, proclamation, resolution, or legislation. During that period, the State of Kansas and every Kansas county agreed through some type of formal documentation that they have complied with this requirement. The FFY2007 NIMS compliance included the completion of IS-700, ICS-100 and ICS 200 as a compliance requirement for the appropriate level of personnel specified in the guidance.

These requirements were defined as “Tier 1” or required for compliance. Tier 1 metrics and questions were deemed critical to measuring FFY07 compliance. The Tier 1 metrics are derived from previously established NIMS requirements and are fundamental to the success of NIMS implementation. The NIMS five year training plan (based on the latest NIMS Alert Bulletin, 12-3-07), published by the NIMS Integration Center, shows that the completion of ICS-300 is scheduled to be Tier 1 requirements for FFY2008. ICS 400 is now a FFY2009 requirement. This changes the previously published information that required both to have been completed by the end of this fiscal year. Remember that the guidance indicates that ICS-300 is required for middle and upper management and ICS-400 for those serving in disaster/emergency field Command and General Staff positions, ***not for everyone in your jurisdiction, agency or organization***. These recommendations are **ONLY for the field disaster personnel** or field emergency operations – for those individuals responsible for making life safety decisions! These recommendations **DO NOT apply to EOC operations and personnel**.

### ***Recommendations for Kansas***

KSEM & HS has the following suggestions for local jurisdictions, agencies and departments as they address NIMS compliance training issues:

- Each jurisdiction, agency, department has the responsibility to ***self-select, self-certify, and self-regulate*** which of their personnel attends which training. Much like OSHA compliance, NIMS compliance and justification is the responsibility of the employer. The employer has the responsibility and potential liability for identifying which staff member needs to complete which level of training, and be able to justify those decisions if challenged by OSHA, DHS, FEMA, or a court of law.
  
- Agency heads must be aware of the types of incidents their personnel are trained to handle and be prepared to require the hand off of command at incidents they are not trained to handle. Just as EMS protocol requires that a responder hand off patient care to someone with a higher level of training and capability, (i.e., an EMT turns over patient care to a Paramedic), an Incident Commander should turn over command authority to one more qualified when they arrive on scene if, and when, the circumstances of the incident dictate the need for a more highly trained and qualified Incident Commander. The Incident Commander also has the responsibility to call in properly trained personnel if the incident exceeds the level of training and capability of those on scene..

Incidents have been classified under NIMS typing as follows :

- ***Type 5*** – Under one operational period, minimum resources, the only ICS position staffed is the Incident Commander (i.e., single vehicle crash, car fire, missing person search, limited HazMat spill)
  - The Incident Commander is required to have ICS-100, 200, 300, 400 and

- IS-700 (if no other ICS positions are filled, then ICS 100, 200, and IS-700 are adequate)
  - All “first responders and disaster workers” must have ICS-100, 200 and IS-700
  - All “first line supervisors” must have ICS-100, ICS-200, and IS-700, unless they fill a Command & General Staff position.
- **Type 4** – Limited to one operational period, command and general staff positions activated as needed (i.e., structure fire, protest rally, barricaded suspect, multi-agency response incidents)
  - The Incident Commander and any Command & General Staff positions filled are required to have ICS-100, 200, 300, 400 and IS-700.
  - All “first responders and disaster workers” must have ICS-100, 200 and IS-700
- **Type 3** – May extend into multiple operational periods, some/all command and general staff positions activated (i.e., large industrial fire, tornado, hostage stand-off).
  - ICS-100, ICS-200, ICS-300, ICS-400, IS-800 and IS-700 requirements apply to the Incident Commander and to those filling Command and General Staff positions.
  - All “first responders and disaster workers” must have ICS-100, 200 and IS-700
- **Type 2** – Multiple operational periods, many command and general staff positions filled, state, regional and/or national resources brought in (i.e., devastating flood or earthquake).
  - ICS-100, ICS-200, ICS-300, ICS-400, IS-800 and IS-700 *will apply to the Incident Commander and to those filling Command and General Staff positions.*
  - All “first responders and disaster workers” must have ICS-100, 200 and IS-700
- **Type 1** – Expected to go into multiple operational periods, event of national significance (i.e., major terrorist attack like 9/11 or Katrina level disaster).
  - ICS-100, ICS-200, ICS-300, ICS-400, IS-800 and IS-700 requirements apply to the Incident Commander and to those filling Command and General Staff positions
  - All “first responders and disaster workers” must have ICS-100, 200 and IS-700

## Risk Management

Those who serve in positions of leadership in public safety have an obligation to give due diligence to the reduction of risk to their subordinates' safety and the potential exposure to liability for their department and governmental entity. According to Wikipedia, “Risk management is the human activity which integrates recognition of risk,

risk assessment, developing strategies to manage it, and mitigation of risk using managerial resources. The strategies include transferring the risk to another party, avoiding the risk, reducing the negative effect of the risk, and accepting some or all of the consequences of a particular risk. Some traditional risk managements are focused on risks stemming from physical or legal causes (e.g. natural disasters or fires, accidents, death and lawsuits)..."

Application of risk management principles to our navigation of the Incident Command System and the requisite training associated seem to lead us to these conclusions:

- If an Incident Commander does not hand off command when **not** qualified to handle an incident, the Incident Commander could impair response efforts and could expose their agency, and governmental entity to liability for things that go wrong or other failures (such as being fined by OSHA or even being subject to a civil lawsuit).
- If a department does not have anyone trained to the ICS-300 and ICS-400 level, then they are not qualified to manage a Type 4 if any Command and General Staff positions are activated, Type 3, Type 2, or Type 1 incident under the NIMS guidelines. The department could manage a Type 5 incident and some Type 4 incidents but, if during a Type 4, any command and general staff positions are activated then they are again not qualified to run the incident and would need to hand over command to a qualified person from another agency or to a qualified incident management team

These views appear to be supported in OSHA Compliance Directive CPL:02-02-073 (August 27, 2007). Jurisdictions, departments, agencies should research news articles regarding the fines imposed by OSHA, such as in connection with the Charleston, SC June 18, 2007 firefighter tragedy. In South Carolina OSHA imposed the maximum fine allowed under South Carolina law against the City of Charleston for failing to have an adequate command system to protect firefighters.

A recent Indiana OSHA action against an Indiana fire department imposed a fine for a violation citing "...firefighter training was not conducted often enough to ensure that firefighters perform interior fire suppression with adequate manpower, personal protective equipment and adequate incident command procedures."

### ***Kansas Training Opportunities***

KSEM & HS has been supporting NIMS compliant ICS training for over three years and continues to support ICS related training in a variety of ways. The Training Division offer at least one ICS-300 and one ICS-400 class in each homeland security region each year. There are currently more than 147 state recognized trainers (these are people who have completed the train-the-trainer course authorized by DHS) who are qualified to teach ICS-100 through ICS-400. Additionally, ICS courses are available through KS Law Enforcement Training Center and KU Fire & Rescue Training Institute, as well as numerous training vendors.

The Center for Domestic Preparedness, Emergency Management Institute, and National Fire Academy all offer training in ICS courses and train-the-trainer programs at their training sites. They provide the travel, training, lodging, and meals to state and local organizations free of charge. There are also other trainers around the state who meet the instructor qualifications of the NIMS Integration Center but are not authorized to instruct for KSEM & HS and do not receive support or recognition from KSEM & HS. These entities may conduct the training, but must retain their own training records and other required documentation to support a federal audit or legal challenge.

The KS EM & HS Training Calendar lists many available ICS training opportunities. Go to the web site at <http://www.kansas.gov/kdem/> and click on the Training to check out course availability in your area. Of course, ICS-100, ICS-200, IS-700 and IS-800 are still available for free on-line through the [www.fema.gov](http://www.fema.gov) web site.

The Training Division's plan for conducting NIMS/ICS training is to offer the latest courses as soon as they are released to us by DHS/FEMA. At this time sufficient local instructors are available to instruct the ICS courses so KS EM & HS is limiting the number of ICS100 – 400, and IS 700, 800 offerings, with the exception of new ICS courses as they are released.

In conclusion, every public safety agency or department in the State of Kansas is responsible for first responder training based on their risk analysis, their capabilities, and the duties their responders will be assigned during an emergency. Response personnel should not perform any emergency response operation unless they have been trained to the level required by their job function or responsibility and have been determined by their department as having completed the necessary training. Failure to train is an often used legal challenge used against public safety agencies when incidents are not handled properly and fines from regulatory agencies are levied for inadequate training or improper actions.

Each department head should be aware of the different types of incidents and identify to which type of incidents they and their agency are prepared to respond. If the expectations are only respond to Type 5 incidents, there is less need to have a person(s) trained in ICS-300 and ICS-400. However, the agency head/employer should be aware that if a Type 4, Type 3, Type 2, or Type 1 incident does occur in their jurisdiction, they will be expected to hand over the command of the incident to another Incident Commander who is qualified to handle it. Otherwise, the chief and department could face consequences from the judicial system or other regulatory agency for non-compliance.

For more information, go to the NIMS Integration Center at <http://www.fema.gov/emergency/nims/index.shtm> .

## **References**

USDHS Homeland Security Presidential Directive 5

29CFR 1910.120

NFPA 1500 and 1561

OSHA Compliance Directive CPL: 02-02-073, 8-27-2007 (Pp. 12, 20-21, 29-30, 61, Checklist C-7, C-11 and D-2)

Governor Sebelius Executive Order 05-03

Fire Report Blasts City by Ron Menchaca and Glenn Smith, The Post and Courier. 9-21-2007, [www.Charleston.net](http://www.Charleston.net)

Law May Hold Departments & ICs Liable for Firefighter Deaths by Larry Bennett, Esquire, [www.firechief.com](http://www.firechief.com)

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## **Training *Recommendations* for EOC Personnel:**

Minimum for all EOC personnel: IS 700, IS 800

- EOC ESF personnel: minimum plus ICS 100, 200
- EOC Managers, Supervisors: minimum plus EOC/ICS Interface, Multi-Agency Coordination Center Operations, EOC Operations & Management