



**BRIAN TAYLOR**  
STATE FIRE MARSHAL

July 19, 2024

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: Comments on Docket ID: “Emergency Response Standard” [Docket No. OSHA-2007-0073] (RIN 1218-AC91)

Dear Assistant Secretary Parker,

I write this letter to outline the concerns of the North Carolina Office of State Fire Marshal (“OSFM”) regarding the Occupational Safety and Health Administration’s (“OSHA”) notice of proposed rulemaking titled Emergency Response Standard (the “Rule”). As the State Fire Marshal of North Carolina, I am deeply appreciative of OSHA’s efforts to strengthen federal regulations that promote the health and safety of firefighters and other emergency responders. However, if the Rule is promulgated as written, it would create numerous unintended consequences that will undermine firefighter safety and reduce the safety of many communities in North Carolina. These consequences can be avoided if the provisions of the Rule that render it economically infeasible for so many fire and rescue departments in North Carolina are amended to include evidence-based requirements that do not arbitrarily force departments to discard equipment and vehicles that are in good working order. Additionally, the inclusion of specific carve-outs for small fire and rescue departments would limit the scope of the Rule to those departments that have the resources necessary to comply with the Rule’s requirements.

As multiple public comments submitted to OSHA have pointed out (*see, e.g.*, Public Comment submitted by the North Carolina State Firefighters’ Association, Document ID 0876, p. 13; *see also* Public Comment submitted by Springwater Wayland EMS, Document ID 1905, p. 1), OSHA relied on flawed data to form its baseline assumptions about the budgets of fire departments across the country. *See* 89 Fed. Reg. 7872. The North Carolina State Firefighters’ Association (“NCSFA”) comment makes clear that data sourced from Firehouse Magazine’s various national surveys, which are voluntary surveys of a statistically insignificant number of fire and rescue departments, are no substitute for the exact figures maintained by the appropriate state agencies, including the offices of state fire marshals in every state. OSFM stands ready to provide OSHA

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with more accurate figures regarding the budgets of North Carolina fire and rescue departments, and I urge OSHA to request this data from similarly situated state agencies across the country. Fire departments in North Carolina – many hundreds of which serve small rural communities – cannot afford for OSHA to proceed with rulemaking that is founded upon unreliable data and inaccurate assumptions about their ability to afford the significant costs of compliance with the Rule.

OSHA's notice of proposed rulemaking also makes clear that OSHA has severely underestimated those compliance costs. To illustrate this point, OSFM and North Carolina associations representing firefighters, fire chiefs, and emergency responders asked fire and rescue departments across the state to submit public comments that include estimates of the cost of complying with the Rule's provisions regarding (1) training, (2) vehicle replacement/maintenance, (3) responder medical evaluations, and (4) PPE and SCBA replacement. As these comments repeatedly showed, the costs of compliance for all types and sizes of fire and rescue departments far exceed the amounts estimated in OSHA's notice of proposed rulemaking. *See, e.g.*, Public Comment submitted by Kevin Mote, Stovall Volunteer Fire Department, Document ID 0118; Public Comment submitted by Derrick Barcombe, Davidson County Rescue Squad, Inc., Document ID 2367; Public Comment submitted by Daniel Mitchell, Hiddentite Fire Department, Document ID 2227. In particular, the cost of vehicle and PPE replacement – necessitated by the specifications published by the manufacturers of those vehicles and PPE – threaten to overwhelm the budgets of a large percentage of North Carolina's fire and rescue departments. The Rule's requirements in paragraphs (l) and (k) that these vehicles and equipment be repaired according to manufacturer specifications that set retirement age limits on those vehicles and equipment is not evidence-based and fails to account for (1) the relatively low mileage of many emergency response vehicles that are older than manufacturer-recommended replacement age and (2) the existence of methods of testing the functionality and reliability of equipment, such as hydrostatic testing for SCBA cylinders.

If OSHA wishes to avoid the most serious unintended consequences of the Rule, it must amend paragraphs (l) and (k) to remove the implied retirement-age thresholds for vehicles and equipment. OSHA could accomplish this by simply deleting subparagraph (k)(1)(iii)(B) from the Rule – this would allow fire and rescue departments to continue using equipment that is still in safe working order (*see* 89 Fed. Reg. 8018, 29 CFR 1910.156(k)(1)(iii)(C)) without having to replace a large percentage of the department's equipment.

Similarly, OSHA could amend subparagraph (l)(1)(i) of the Rule to simply require that vehicles operated by team members and responders be inspected, repaired, and maintained such that they are in safe working order. This provision, in conjunction with subparagraph (l)(1)(ii)'s requirement that vehicles with safety-related deficiencies are immediately removed from service, would be sufficient to ensure that the vehicles used by fire and rescue departments are kept in good condition for safe use by responders. As a practical matter, it would be impossible for fire and rescue departments to reach compliance with paragraph (l) of the Rule, as it is currently written,



on the timeline provided in OSHA's notice of proposed rulemaking because most departments are forced to wait anywhere from 18 months to three years for delivery of the fire trucks they have already purchased. The Rule would exacerbate this issue – as well as increase the cost of the vehicles – because fire and rescue departments across the country will be forced to purchase additional vehicles as demand for these vehicles increases dramatically without a commensurate increase in supply.

More fundamentally, OSHA must reconsider its incorporation by reference of the 22 NFPA Standards cited in the Rule. NFPA standards are profoundly important to the fire service across the country precisely because they are voluntary consensus standards that serve as guidelines and best practices for enhancing firefighter safety and effectiveness. Rather than seeking to establish minimum standards of care, NFPA Standards establish best practices that ESOs aspire to adhere to within the practical constraints imposed by their budgets. Fire and rescue departments in North Carolina aspire to reach compliance with as many NFPA Standards as they can afford, and they use them to guide their budgetary discretion with respect to selecting which equipment should be replaced and what training to prioritize. Transforming these voluntary consensus standards into federal law misunderstands the point of the NFPA Standards and undermines their ability to function as best practice guidelines.

Additionally, incorporating these NFPA Standards – even if they are incorporated in part and not in their entirety – may have the unintended consequence of establishing a new standard of care in the context of civil liability that will be applied against all fire and rescue departments, regardless of whether that department falls within the scope of the Rule. In fact, OSHA's incorporation of many of these standards “in part” rather than in their entirety increases the complexity of the Rule and makes it very difficult for fire chiefs and responders to understand their legal obligations under the Rule. Therefore, OSHA should revise the Rule by directly importing any language from the relevant NFPA Standards that it considers essential to accomplishing the goals of the Rule. This would greatly improve the readability of the Rule and make it clear to the regulated public exactly what they must do to remain in compliance with federal law.

Finally, OSHA must limit the scope of the Rule to clearly exempt volunteer fire and rescue departments and small combination departments with few career firefighters. I understand that OSHA indicated in its notice of proposed rulemaking that it was “unable to determine any appropriate exclusions in light of the agency's obligation to ameliorate significant risks to employees **where economically feasible.**” 89 Fed. Reg. 7799 (emphasis added). For the reasons explained above, OSHA's failure to include a limitation on the scope of the Rule will inevitably result in many small combination departments having to shut down because it is not economically feasible for them to comply with the Rule. This will in turn lead to longer response times and overworked firefighters who must respond to additional incidents – decreasing both the service the public receives and the safety of our responders.

As North Carolina's State Fire Marshal, I am deeply grateful that OSHA has invested so much of its time and resources into updating the safety standards applicable to firefighters and emergency



responders in our state. There are many aspects of the Rule that I strongly believe will save lives and meaningfully contribute to enhancing public safety. However, OSHA must revise those provisions in the Rule that are most likely to lead to unintended consequences and require economically infeasible compliance. Thank you for your consideration of this comment and all the comments submitted by emergency response organizations in North Carolina.

Respectfully,

*BRIAN TAYLOR*

Brian Taylor  
State Fire Marshal

