 

**North Carolina Fire / Rescue and Emergency Medical Services Organizations Response to**

**Proposed Rule by Federal OSHA to Revise 1910.156, Occupational Safety and Health Administration Safety Emergency Response Standard**



TO: All NC Fire and Rescue Departments and Squads

FROM: The NC State Firefighters’ Association (NCSFA); The NC

Association of Fire Chiefs (NCAFC); The NC Association of

Rescue and EMS (NCAREMS); The NC Office of State Fire

Marshal (NCOSFM), NC Office of Emergency Medical Services (NCOEMS)

REFERENCE: Background Information on the Proposed Rule by Federal OSHA to Revise 1910.156,

Occupational Safety and Health Administration Safety

Emergency Response Standard (ERO’s)

Emergency Response Organizations in North Carolina, which include all Fire

Departments, Rescue Squads, and Emergency Medical Response Departments are facing

the potential for a new mandatory standard that could have significant impact on funding

and response. The Occupational Safety and Health Administration (OSHA) is proposing

an extensive new safety and health standard, titled “Emergency Response,” to

replace the existing “Fire Brigades Standard”. The Proposed Rule was published in

the Federal Register on February 5 and the deadline for comments is June 21st of this year.

This proposed updated standard would issue hundreds of new requirements that may be

very burdensome, and in some cases impossible for departments to completely comply. It

combines revised language for OSHA 1910.156, and includes numerous NFPA Standards

for equipment, response, personnel training and medical monitoring. The combined

State Associations listed above encourage departments, counties, and cities to

submit comments on this proposed rule as to the effect it would have on them,

specifically financial, and we have attached a guide to make it easy for each

department to submit comments. IT IS CRITICAL THAT AS MANY

DEPARTMENTS AS POSSIBLE SUBMIT COMMENTS ON THE IMPACT TO

THEIR DEPARTMENTS FOLLOWING THE GUIDE AT THE END OF THIS

MEMO!

While the Proposed Rule indicates that public agencies are exempt, in North Carolina

they are not, since we have our own State OSHA Program which requires compliance to

the standard by public agencies, State, and local governments. In addition, it implies that

volunteers are exempt, which may or may not be the case based on individual

departmental circumstances.

HISTORY

In 1983 OSHA released 1910.156, Standard for Fire Brigades, which included many

safety requirements not previously required for fire and rescue departments. In 1985, the

NC General Assembly passed legislation that exempted volunteer fire personnel from the

OSHA standard and required the Fire and Rescue Commission to implement Voluntary

Occupational Safety and Health Standards for fire and rescue departments (NCGS 95-

148). In the early 1990’s the Commission released this standard which included parallel

NFPA Standards, Standard SOG’s, and a Safety and Health Planning Document.

Departments who adopted and worked toward this standard are leagues ahead of those

who may not have adopted it, but the critical issue to remember is that this standard was

voluntary, while the one being proposed will be mandatory for those required to be

compliant.

The NC exemption for volunteer fire personnel passed in 1985 (NCGS 95-148) will

provide relief for some volunteer fire departments, but rulings by the NC Attorney

General in 1993 suggest that substantial compensation or control by local government

may mean that exemption does not exist, and each case must be ruled on a case-by-case

basis. Combination departments who employ career personnel in addition to volunteers

may find the need to be fully compliant. Even with the volunteer exemption, each

department in NC should submit comments as to the Rules effect on their department.

Questions to Ask yourself if you aren’t interested in submitting public comments!

- Do you currently have a Community Risk and Vulnerability Assessment of your

entire response district?

- Do you have emergency response guidelines written based on this assessment for

all hazards and responses?

- Have you developed tiers of response capability for each of your personnel?

- Are all of your first-out or front-line apparatus under 15 years of age and meet

NFPA guidelines?

- Have you replaced NFPA compliant gear based on years of service required by

NFPA standards?

- Are your apparatus tires under 6 years of age?

- Do you provide NFPA 1582 compliant physicals, have written minimum medical

requirements for personnel, a medical evaluation program, initial fit for duty

medical exam, do additional cardiac examinations, or NFPA 1582 medical

surveillance after 15 exposures to combustion products or Immediately Dangerous

to Life and Health Environments (IDLH)?

- Do you do baseline medical evaluations every two years, documentation of each

responder’s exposure to combustion materials and subsequent medical

surveillance?

- Do you provide mental health and wellness resources at no cost to responder or

identify where free resources are available in the community, annual evaluation of

physical ability to perform each job position, periodic fitness assessments no more

than every 3 years, exercise and fitness training available to all responders during

working hours, health promotion education and counseling, or have you

established a fitness program and designate an individual to oversee it?

These are just a few of the issues that the new standard addresses, not including training,

staffing, and numerous other areas that are now determined based on your response area

and budget!

This is a significant Proposed Federal Rule that will impact all of us. Please take the time

to submit comments specific to your department or squad as to the effect, financial

burden, or capability to meet the new Rule. We have provided a submittal cover sheet, a formatted letter that you can select based on your department type (volunteer, combination, fully paid fire or rescue department or squad and an EMS agency letter. Also, a simple to use financial calculator that will help you figure your costs to insert into each of the form letters is also provided.

Remember! OSHA must prove that this rule is economically and strategically feasible before they can adopt it.

FEDERAL RULE MAKING REQUIRES AGENCIES TO ALLOW

COMMENTS ON ANY PROPOSED RULES. IF WE ALL DON’T

TAKE THE TIME NOW TO COMMENT, WE’VE GIVEN UP

OUR ABILITY TO IMPACT THE RESULTS!!

Step 1-

Choose the letter that best fits your department or squad type.

Step 2-

Determine your costs using the calculator included in this document

Step 3-

Insert the correct information, dollar amounts, and other comments into the provided form letter

Step 4-

Once the form letter is completed, copy, and paste it into a new document with just the portion that you completed for your department or squad and make sure to place the cover sheet on the next page as the first page in your new document.

Step 5-

Use the link below to submit your comments.

PASTE IT AS YOUR RESPONSE AT THE FOLLOWING WEBSITE UNDER THE

GREEN TAB “SUBMIT A FORMAL COMMENT”

<https://www.federalregister.gov/documents/2024/02/05/2023-28203/emergency-response-standard>

**Cover Sheet**

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

Dear Assistant Secretary Parker,

Comments: Docket ID: “Emergency Response Standard” (Emergency Response) Rule

[Docket No. OSHA-2007-0073] (RIN 1218-AC91)

OSHA Proposed Rule Changes to 1910.156

Document Type:

Proposed Rule

Document Citation:

89 FR 7774

Page: 7774-8023 (250 pages)

CFR:

29 CFR 1910

Agency/Docket Number:

Docket No. OSHA-2007-0073

NC is an OSHA State with its own OSHA program, meaning public employees would be

covered under this Proposed Rule. While NC Law exempts volunteer firefighters, the benefits

that are provided as well as employee and employer relationships due to control bring into

question whether any of the volunteers are truly exempt (NC Attorney General Advisory

Opinion, November 17, 1993)

**TO: All NC Fire and Rescue Departments and Squads**

**FROM: The NC State Firefighters’ Association (NCSFA); The NC Association of Fire Chiefs (NCAFC); The NC Association of Rescue and EMS (NCAREMS); The NC Office of State Fire Marshal (NCOSFM); The NC Office of EMS (NCOEMS)**

**REFERENCE: Proposed Rule by Federal OSHA to Revise 1910.156, Occupational Safety and Health Administration Safety Emergency Response Standard (ERO’s)**

**DATE: May 24, 2024**

Please select the appropriate comment guide for your organization and copy-paste the content into a new Microsoft Word document:

* Fully Volunteer Fire / Rescue Departments (pages 8 – 14);
* Combination/Career Fire / Rescue Departments (pages 15 – 20); or
* Emergency Medical Services (pages 21 – 26).

Carefully review the appropriate comment and pay particular attention to any text that is **[bold and in brackets]**. The bracketed bold text indicates that you must insert the appropriate words/numbers, depending on the context. Please also consider adding any additional language that you feel appropriately represents the position of your department to address any concern you have with OSHA’s proposed rule that this comment guide does not already contain. If you disagree with any of the content in this comment guide, you should delete the portion with which you disagree before submitting your comment.

If you have any questions regarding any of the content of this comment guide, please reach out to Kyle Heuser, Assistant General Counsel at the Office of State Fire Marshal at kyle.heuser@ncdoi.gov or (919) 647-0100.

**FULLY VOLUNTEER FIRE / RESCUE DEPARTMENTS**

TO: Occupational Safety and Health Administration

FROM: **[Your name], [Your fire department’s name]**

RE: Comment on Proposed New-Revised Rule on Emergency Response; Docket No. OSHA-2007-0073; 29 CFR 1910; 18 FR 7774, Pages 7774-8023

DATE: **[Date]**

My name is **[Name]** and I am the **[Position/Title]** of **[Fire Department Name]**. I am submitting this comment on behalf of my department to address the most significant concerns we have with OSHA’s proposed Emergency Response rule (the “Rule”). While I strongly agree that the health and safety of first responders is of paramount importance, I believe the Rule will have a negative impact on the fire service in my state and across the country if it is promulgated as it is currently written.

**[Fire Department Name]** provides fire and rescue services to **[municipality/service area name]**, which has a population of approximately **[population of service area]**. My department is fully volunteer with a staff of **[number]** volunteer responders. My department responds to approximately **[number]** of calls per year and operates on an annual budget of $**[number]**. Our funding comes from **[describe source of funding]**. It is already extremely challenging to efficiently allocate our budget to pay for all the necessary equipment (including inspections, maintenance, repair, and replacements), training, and medical expenses for our volunteers.

1. **COST ANALYSIS**

Because North Carolina is a state with an OSHA-approved State Plan that does not regulate volunteers as employees, the Rule would presumptively not apply to my department. However, I am deeply concerned that the legal ambiguity regarding the “significant remuneration” standard prevents my department from having clarity on whether the Rule would apply to my department and our volunteers. Our volunteers receive **[describe all benefits granted to volunteer responders – including stipend/pay per call, workers’ compensation coverage, retirement benefits, disability/death benefits, etc.]**. These benefits, in my opinion, are not “significant remuneration” as OSHA explains that term in the notice of proposed rulemaking, but the Rule does not provide any assurance that my state’s Department of Labor will always agree with that interpretation. Accordingly, OSHA must consider the impact the Rule would have on departments like mine before promulgating a rule that imposes such significant costs of compliance. Listed below are just some of the compliance costs that I was able to estimate for my department.

29 CFR 1910.156(h) - Training

Estimated cost: $\_\_\_\_\_\_\_

The estimated cost of training for my fire department was calculated by compiling a list of the NFPA standards incorporated by reference in subsection (h) of the Rule that would apply to the responders in my department, then multiplying the number of responders by the number of hours required to obtain the relevant certifications and the hourly rate of the cost of that training (or, where applicable, multiplying the number of responders by the flat rate the department pays responders to obtain the relevant certification).

29 CFR 1910.156(l) – Vehicle Replacement/Maintenance

Estimated cost for vehicle replacement: $\_\_\_\_\_\_\_\_\_

Estimated cost for tire replacement: $\_\_\_\_\_\_\_\_

I understand that subsection (l) of the Rule does not fully incorporate NFPA 1910. However, the Rule does mandate that vehicles be inspected, maintained, and repaired as specified by the manufacturer. *See* 29 CFR 1910.156(l)(1)(i), 89 Fed. Reg. 8019. The amounts listed above estimate the cost of replacement for (1) vehicles (engines, tankers, rescue vehicles, ambulances, and/or any other vehicles) that will be 15 years old within the next three years; and (2) tires that are currently older than seven years.

29 CFR 1910.156(g) – Responder Medical Evaluations

Estimated cost for biennial physicals: $\_\_\_\_\_\_\_\_\_

Estimated cost for enhanced physicals based on exposures to combustion products: $\_\_\_\_\_\_\_\_\_\_

The estimated cost for biennial physicals was calculated as the number of responders at my department multiplied by the approximate cost of the physicals ($450 per responder). The estimated cost for the physicals required by 29 CFR 1910.156(g)(3)(A) for responders exposed to combustion products 15 times or more a year was calculated as the estimated number of eligible responders multiplied by the approximate cost of those physicals ($550 per responder). Approximately **[number]** of the responders at my department, which is **[#]**% of all our responders, would likely require this more advanced medical monitoring.

29 CFR 1910.156(k) – PPE and SCBA Replacement

Estimated cost for replacement of PPE turnout gear: $\_\_\_\_\_\_\_

Estimated cost for replacement of SCBA pursuant to NFPA 1981: $\_\_\_\_\_\_\_\_\_

The estimated cost for replacement of PPE turnout gear was calculated as the number of coats/pants, helmets, and boots that are older than ten years and will need to be replaced multiplied the estimated cost of replacement (coats/pants are estimated to cost $3,400 per set; helmets are estimated to cost $350; and boots are estimated to cost $400 per pair). The estimated cost for replacement of self-contained breathing apparatuses (“SCBA”) was calculated as the number of SCBAs my department owns that are 15 years old multiplied by the estimated cost of replacement ($9,000 per SCBA).

Total estimated costs of compliance: $\_\_\_\_\_\_\_\_\_\_\_\_\_

As noted above, these estimates are only a portion of the total costs of compliance with the Rule. Operating on an annual budget of $**[number]** per year, these costs represent an amount that is simply not economically feasible for my department.

I understand that OSHA’s economic feasibility analysis included an in-depth study of the costs of compliance for different types of fire departments. Unfortunately, I believe that analysis significantly underestimated the true costs of compliance. Moreover, OSHA’s insistence that the proper measure of economic feasibility is the cost of compliance compared to the revenue for the entire locality, rather than my department’s actual budget, is misplaced. The practical reality is that localities like **[municipality/county/fire service area name]** cannot afford to dramatically increase my department’s budget in the amounts necessary to achieve compliance with the Rule on the timetable proposed in OSHA’s notice of proposed rulemaking. Instead, OSHA should consider our actual budgets before promulgating a rule that threatens the long-term existence of so many fire departments.

1. **SCOPE OF THE RULE**

As it is currently written, the Rule will have unintended consequences that decrease public safety for the citizens of my state. For example, I know that some fully volunteer fire departments are currently considering hiring a single paid responder to enhance their ability to respond quickly and effectively to emergency incidents. However, the Rule has caused these departments to reconsider because hiring even a single paid responder would require the entire department to comply with many of the provisions of the Rule that would be most challenging for small volunteer/combination departments (e.g., the administrative burden of drafting/designing an emergency response program, risk management plan, medical monitoring program, pre-incident plans, and standard operating procedures as well as the financial burden of fully complying with the numerous NFPA standards incorporated by reference in subsection (k) of the Rule).

I understand that OSHA’s notice of proposed rulemaking acknowledges that the Rule could impose “negative financial impacts on volunteer emergency response entities” that “could have undesirable public safety implications” and solicits input on “what [OSHA] could do in the final rule to reduce undesirable impacts on volunteer organizations.” *See* 89 Fed. Reg. 7799. I further understand that OSHA was “unable to determine any appropriate exclusions in light of the agency’s obligation to ameliorate significant risks to employees where economically feasible.” *Id.*

Without an appropriate exclusion for fire departments with a small number of paid responders, the Rule will not ameliorate any risks to those employees because small fire departments will be forced to eliminate those paid positions or refrain from hiring any paid responders at all. The purpose of the Rule – enhancing emergency responder safety and saving lives – is not served by promulgating a rule that eliminates the jobs of the responders it seeks to protect and thereby interfering with responders’ ability to safeguard their communities.

The negative public safety implications that will result from OSHA’s failure to include an appropriate exclusion are clear. Therefore, I propose that OSHA consider implementing an appropriate exclusion based on existing federal law. The Fair Labor Standards Act (“FLSA”), through its enterprise coverage mechanism, applies to firms with two or more employees that have an annual gross volume of sales made or business done of $500,000 or more. *See* 29 U.S.C. § 203(s)(1). If OSHA were to include a two-employee requirement in the scope of the Rule, much of the potential for negative financial impacts and undesirable public safety implications would be addressed. For example, the small volunteer fire departments in my state that want to hire a single paid responder would be able to do so without incurring a legal obligation to comply with the Rule. Alternatively, implementing a reasonable minimum revenue threshold to limit the scope of the Rule – such as fire departments with budgets of $100,000 or more – would also largely avoid the negative financial impacts on small fire departments that will inevitably lead to undesirable public safety outcomes. An exclusion based on the enterprise coverage mechanism in the FLSA would allow smaller fire departments to continue their service to their communities while ensuring that larger fire departments serving metropolitan areas that have multiple career responders and larger budgets would remain subject to the Rule.

1. **RESPONSES TO SELECTED ISSUES AND QUESTIONS**

OSHA’s notice of proposed rulemaking includes an “Issues and Questions” section that solicits input from ESOs on a number of the Rule’s requirements. Listed below is my fire department’s response to the issues and questions that we think are most problematic and in need of revision before the final text of the Rule is promulgated.

Section IV(C)(g)-1 and (g)-2, 89 Fed. Reg. 7799-7800

In this section, OSHA requested input on whether the Rule’s requirements for medical evaluations are feasible and whether an action level of 15 exposures to combustion products within a year is an appropriate threshold. I strongly support the enhanced medical monitoring component of the Rule because I believe that it has the potential to save responders’ lives, far too many of whom are diagnosed with cancer and other diseases related to our exposure to combustion products. Accordingly, I fully support the 15-exposure threshold as an appropriate measure to monitor responders’ health and hope that it will lead to early medical interventions that make a profound difference in the number of responders who die from illnesses related to our work.

However, the Rule fails to provide an actionable definition of “exposure” as that term is used in 29 CFR 1910.156(g)(3)(A). What level of involvement with a structure fire constitutes an “exposure” to the combustion products – (1) only the responders who enter the structure; (2) all responders that operate within 100 feet of the fire; (3) every responder that arrives at the scene of the incident, even if they are acting only in a command or other support role; or (4) some other threshold? OSHA must provide a clear definition of “exposure” to assist fire departments with the necessary tracking of exposures for their responders. Additionally, a responder may enter a “burn building” or fire training structure multiple times in a single day during training. Does this count as one exposure for the day of training, or does it count as multiple exposures for each time the responder enters the fire training structure?

Furthermore, the notice of proposed rulemaking does not make clear the level of data-sharing and coordination that the enhanced medical monitoring provision will require. It is very common for paid responders who are full-time employees at one fire department to volunteer their time and work as a volunteer responder at another fire department. That same firefighter will also be exposed to combustion products when he participates in training exercises. Consequently, there must be some data-sharing arrangement whereby each firefighter’s exposures to combustion products are shared with each fire department for whom he works – as a paid responder or as a volunteer – and those departments must rely on each firefighter to accurately count their exposures during a day of training. The Rule should clarify the obligations that each department has to share data and provide clear guidance to ESOs so that they can have confidence they are complying with the Rule.

Section IV(C)(k)-1, 89 Fed. Reg. 7800

In this section, OSHA requested input on whether it should specify retirement age(s) for PPE. Minimum age standards are well-intentioned, but do not accurately reflect the useability of my department’s equipment. Instead, OSHA should direct industry vendors to provide ways to test the condition and reliability of equipment rather than impose mandatory retirement ages. These types of test already exist for many types of equipment (e.g., NFPA 1981 allows extension of an SCBA’s composite cylinder past 15 years if it passes a hydrostatic test). These types of tests should be the standard according to which equipment is put out of service and replaced rather than unyielding retirement ages that will likely result in good, useable equipment being discarded.

Section IV(D) – NFPA Consensus Standards, 89 Fed. Reg. 7801

In this section, OSHA solicited input on the potential impacts of incorporating various NFPA standards by reference. The “voluntary consensus standard” nature of the NFPA standards are an integral part of what makes them effective and valuable to the industry. Rather than seeking to establish minimum standards of care, the NFPA standards establish best practices that ESOs aspire to adhere to within the practical constraints imposed by the budgets our departments are assigned. My department aspires to reach compliance with as many NFPA standards as we can afford, and we use them to guide our 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.

Moreover, the NFPA standards are developed by committees that include vendors and manufacturers of the equipment that those standards mandate ESOs purchase. While vendor/manufacturer input is valuable for developing voluntary consensus standards, it is not appropriate for those vendors and manufacturers to have such a significant impact on the development of federal law. I understand that even the NFPA has recently indicated that it does not support the manner in which OSHA incorporated so many of their standards by reference. 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 ESOs exactly what they must do to remain in compliance with federal law.

Section IV(D) – Timeline for Compliance, 89 Fed. Reg. 7801

In this section, OSHA sought input on what reasonable implementation periods would be for specific provisions. The issue with the proposed timeline for compliance included in this section is that it is likely very reasonable for many departments but unreasonably short for others. The required community risk assessment alone is an entirely different undertaking for a rural fire department than it is for a suburban or urban fire department because these departments will have a wide variety of locations/types of incidents for which they need to prepare pre-incident plans. The wide variety of budgets between types/sizes of ESOs also have a highly significant impact on the time it will take them to reach compliance with the Rule. Therefore, OSHA should consider developing different compliance schedules based on ESO revenue or the number of locations in the ESO’s service area that will require pre-incident plans.

1. **CONCLUSION**

On behalf of my fire department, I commend OSHA for undertaking to protect the health and safety of first responders and modernize regulation of our industry. There are many aspects of the Rule that I strongly believe will save lives and meaningfully contribute to enhancing public safety. However, as it is currently drafted, the Rule will also have severe unintended consequences that detract from the Rule’s purpose. Many of these negative consequences can be avoided if OSHA agrees to make the following revisions to the Rule:

* Limit the scope of the Rule through a minimum paid responder threshold or a revenue threshold, similar to the enterprise coverage mechanism in the FLSA;
* Remove incorporation of NFPA standards by reference and instead place all requirements in the language of the Rule itself;
* Require or develop methods to test equipment and vehicles for useability rather than imposing mandatory replacement after reaching set age limits; and
* Modify the timelines for compliance with the Rule to account for the wide variety of hazards within different service areas and budgets assigned to ESOs.

OSHA should also consider granting another extension of time to submit comments to the Rule because so many ESOs are still attempting to understand the complexity of the Rule and its comprehensive overhaul of the regulatory framework of our industry. Thank you for taking my comment on the Rule into consideration.

Sincerely,

**[Name]**

**[Title]**

**COMBINATION & CAREER FIRE / RESCUE DEPARTMENTS**

TO: Occupational Safety and Health Administration

FROM: **[Your name], [Your fire department’s name]**

RE: Comment on Proposed New-Revised Rule on Emergency Response; Docket No. OSHA-2007-0073; 29 CFR 1910; 18 FR 7774, Pages 7774-8023

DATE: **[Date]**

My name is **[Name]** and I am the **[Position/Title]** of **[Fire Department Name]**. I am submitting this comment on behalf of my department to address the most significant concerns we have with OSHA’s proposed Emergency Response rule (the “Rule”). While I strongly agree that the health and safety of first responders is of paramount importance, I believe the Rule will have a negative impact on the fire service in my state and across the country if it is promulgated as it is currently written.

**[Fire Department Name]** provides fire and rescue services to **[municipality/service area name]**, which has a population of approximately **[population of service area]**. My department has a staff of **[number]** volunteer responders and **[number]** paid responders. My department responds to approximately **[number]** of calls per year and operates on an annual budget of $**[number]**. Our funding comes from **[describe source of funding]**. It is already extremely challenging to efficiently allocate our budget to pay for all the necessary equipment (including inspections, maintenance, repair, and replacements), training, and medical expenses for our responders.

1. **COST ANALYSIS**

I understand that OSHA’s economic feasibility analysis included an in-depth study of the costs of compliance for different types of fire departments. Unfortunately, I believe that analysis significantly underestimated the true costs of compliance. Moreover, OSHA’s insistence that the proper measure of economic feasibility is the cost of compliance compared to the revenue for the entire locality, rather than my department’s actual budget, is misplaced. The practical reality is that localities like **[municipality/county/fire service area name]** cannot afford to dramatically increase my department’s budget in the amounts necessary to achieve compliance with the Rule on the timetable proposed in OSHA’s notice of proposed rulemaking. Instead, OSHA should consider our actual budgets before promulgating a rule that imposes such significant costs of compliance. Listed below are just some of the compliance costs that I was able to estimate for my department.

29 CFR 1910.156(h) - Training

Estimated cost: $\_\_\_\_\_\_\_

The estimated cost of training for my fire department was calculated by compiling a list of the NFPA standards incorporated by reference in subsection (h) of the Rule that would apply to the responders in my department, then multiplying the number of responders by the number of hours required to obtain the relevant certifications and the hourly rate of the cost of that training (or, where applicable, multiplying the number of responders by the flat rate the department pays responders to obtain the relevant certification).

29 CFR 1910.156(l) – Vehicle Replacement/Maintenance

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Estimated cost for tire replacement: $\_\_\_\_\_\_\_\_

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Total estimated costs of compliance: $\_\_\_\_\_\_\_\_\_\_\_\_\_

As noted above, these estimates are only a portion of the total costs of compliance with the Rule. Operating on an annual budget of $**[number]** per year, these costs represent an amount that will have a significant impact on my department’s operations. While I agree that many of the costs associated with the estimates I compiled above will be money well-spent, I am concerned that so much of our budget will be consumed by compliance with the Rule that I will not be able to allocate appropriate funding to other necessary expenses.

1. **SCOPE OF THE RULE**

As it is currently written, the Rule will have unintended consequences that decrease public safety for the citizens of my state. For example, I know that some fully volunteer fire departments are currently considering hiring a single paid responder to enhance their ability to respond quickly and effectively to emergency incidents. However, the Rule has caused these departments to reconsider because hiring even a single paid responder would require the entire department to comply with many of the provisions of the Rule that would be most challenging for small volunteer/combination departments (e.g., the administrative burden of drafting/designing an emergency response program, risk management plan, medical monitoring program, pre-incident plans, and standard operating procedures as well as the financial burden of fully complying with the numerous NFPA standards incorporated by reference in subsection (k) of the Rule).

I understand that OSHA’s notice of proposed rulemaking acknowledges that the Rule could impose “negative financial impacts on volunteer emergency response entities” that “could have undesirable public safety implications” and solicits input on “what [OSHA] could do in the final rule to reduce undesirable impacts on volunteer organizations.” *See* 89 Fed. Reg. 7799. I further understand that OSHA was “unable to determine any appropriate exclusions in light of the agency’s obligation to ameliorate significant risks to employees where economically feasible.” *Id.*

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The negative public safety implications that will result from OSHA’s failure to include an appropriate exclusion are clear. Therefore, I propose that OSHA consider implementing an appropriate exclusion based on existing federal law. The Fair Labor Standards Act (“FLSA”), through its enterprise coverage mechanism, applies to firms with two or more employees that have an annual gross volume of sales made or business done of $500,000 or more. *See* 29 U.S.C. § 203(s)(1). If OSHA were to include a two-employee requirement in the scope of the Rule, much of the potential for negative financial impacts and undesirable public safety implications would be addressed. For example, the small volunteer fire departments in my state that want to hire a single paid responder would be able to do so without incurring a legal obligation to comply with the Rule. Alternatively, implementing a reasonable minimum revenue threshold to limit the scope of the Rule – such as fire departments with budgets of $100,000 or more – would also largely avoid the negative financial impacts on small fire departments that will inevitably lead to undesirable public safety outcomes. An exclusion based on the enterprise coverage mechanism in the FLSA would allow smaller fire departments to continue their service to their communities while ensuring that larger fire departments serving metropolitan areas that have multiple career responders and larger budgets would remain subject to the Rule.

1. **RESPONSES TO SELECTED ISSUES AND QUESTIONS**

OSHA’s notice of proposed rulemaking includes an “Issues and Questions” section that solicits input from ESOs on several of the Rule’s requirements. Listed below is my fire department’s response to the issues and questions that we think are most problematic and in need of revision before the final text of the Rule is promulgated.

Section IV(C)(g)-1 and (g)-2, 89 Fed. Reg. 7799-7800

In this section, OSHA requested input on whether the Rule’s requirements for medical evaluations are feasible and whether an action level of 15 exposures to combustion products within a year is an appropriate threshold. I strongly support the enhanced medical monitoring component of the Rule because I believe that it has the potential to save responders’ lives, far too many of whom are diagnosed with cancer and other diseases related to our exposure to combustion products. Accordingly, I fully support the 15-exposure threshold as an appropriate measure to monitor responders’ health and hope that it will lead to early medical interventions that make a profound difference in the number of responders who die from illnesses related to our work.

However, the Rule fails to provide an actionable definition of “exposure” as that term is used in 29 CFR 1910.156(g)(3)(A). What level of involvement with a structure fire constitutes an “exposure” to the combustion products – (1) only the responders who enter the structure; (2) all responders that operate within 100 feet of the fire; (3) every responder that arrives at the scene of the incident, even if they are acting only in a command or other support role; or (4) some other threshold? OSHA must provide a clear definition of “exposure” to assist fire departments with the necessary tracking of exposures for their responders. Additionally, a responder may enter a “burn building” or fire training structure multiple times in a single day during training. Does this count as one exposure for the day of training, or does it count as multiple exposures for each time the responder enters the fire training structure?

Furthermore, the notice of proposed rulemaking does not make clear the level of data-sharing and coordination that the enhanced medical monitoring provision will require. It is very common for paid responders who are full-time employees at one fire department to volunteer their time and work as a volunteer responder at another fire department. That same firefighter will also be exposed to combustion products when he participates in training exercises. Consequently, there must be some data-sharing arrangement whereby each firefighter’s exposures to combustion products are shared with each fire department for whom he works – as a paid responder or as a volunteer – and those departments must rely on each firefighter to accurately count their exposures during a day of training. The Rule should clarify the obligations that each department has to share data and provide clear guidance to ESOs so that they can have confidence they are complying with the Rule.

Section IV(C)(k)-1, 89 Fed. Reg. 7800

In this section, OSHA requested input on whether it should specify retirement age(s) for PPE. Minimum age standards are well-intentioned, but do not accurately reflect the useability of my department’s equipment. Instead, OSHA should direct industry vendors to provide ways to test the condition and reliability of equipment rather than impose mandatory retirement ages. These types of test already exist for many types of equipment (e.g., NFPA 1981 allows extension of an SCBA’s composite cylinder past 15 years if it passes a hydrostatic test). These types of tests should be the standard according to which equipment is put out of service and replaced rather than unyielding retirement ages that will likely result in good, useable equipment being discarded.

Section IV(D) – NFPA Consensus Standards, 89 Fed. Reg. 7801

In this section, OSHA solicited input on the potential impacts of incorporating various NFPA standards by reference. The “voluntary consensus standard” nature of the NFPA standards are an integral part of what makes them effective and valuable to the industry. Rather than seeking to establish minimum standards of care, the NFPA standards establish best practices that ESOs aspire to adhere to within the practical constraints imposed by the budgets our departments are assigned. My department aspires to reach compliance with as many NFPA standards as we can afford, and we use them to guide our 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.

Moreover, the NFPA standards are developed by committees that include vendors and manufacturers of the equipment that those standards mandate ESOs purchase. While vendor/manufacturer input is valuable for developing voluntary consensus standards, it is not appropriate for those vendors and manufacturers to have such a significant impact on the development of federal law. I understand that even the NFPA has recently indicated that it does not support the manner in which OSHA incorporated so many of their standards by reference. 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 ESOs exactly what they must do to remain in compliance with federal law.

Section IV(D) – Timeline for Compliance, 89 Fed. Reg. 7801

In this section, OSHA sought input on what reasonable implementation periods would be for specific provisions. The issue with the proposed timeline for compliance included in this section is that it is likely very reasonable for many departments but unreasonably short for others. The required community risk assessment alone is an entirely different undertaking for a rural fire department than it is for a suburban or urban fire department because these departments will have a wide variety of locations/types of incidents for which they need to prepare pre-incident plans. The wide variety of budgets between types/sizes of ESOs also have a highly significant impact on the time it will take them to reach compliance with the Rule. Therefore, OSHA should consider developing different compliance schedules based on ESO revenue or the number of locations in the ESO’s service area that will require pre-incident plans.

1. **CONCLUSION**

On behalf of my fire department, I commend OSHA for undertaking to protect the health and safety of first responders and modernize regulation of our industry. There are many aspects of the Rule that I strongly believe will save lives and meaningfully contribute to enhancing public safety. However, as it is currently drafted, the Rule will also have severe unintended consequences that detract from the Rule’s purpose. Many of these negative consequences can be avoided if OSHA agrees to make the following revisions to the Rule:

* Limit the scope of the Rule through a minimum paid responder threshold or a revenue threshold, similar to the enterprise coverage mechanism in the FLSA;
* Remove incorporation of NFPA standards by reference and instead place all requirements in the language of the Rule itself;
* Require or develop methods to test equipment and vehicles for useability rather than imposing mandatory replacement after reaching set age limits; and
* Modify the timelines for compliance with the Rule to account for the wide variety of hazards within different service areas and budgets assigned to ESOs.

OSHA should also consider granting another extension of time to submit comments to the Rule because so many ESOs are still attempting to understand the complexity of the Rule and its comprehensive overhaul of the regulatory framework of our industry. Thank you for taking my comment on the Rule into consideration.

Sincerely,

**[Name]**

**[Title]**

**EMERGENCY MEDICAL SERVICES**

TO: Occupational Safety and Health Administration

FROM: **[Your name], [Your fire department’s name]**

RE: Comment on Proposed New-Revised Rule on Emergency Response; Docket No. OSHA-2007-0073; 29 CFR 1910; 18 FR 7774, Pages 7774-8023

DATE: **[Date]**

My name is **[Name]** and I am the **[Position/Title]** of **[Rescue Squad/EMS Organization Name]**. I am submitting this comment on behalf of my Emergency Service Organization (“ESO”) to address the most significant concerns we have with OSHA’s proposed Emergency Response rule (the “Rule”). While I strongly agree that the health and safety of first responders is of paramount importance, I believe the Rule will have a negative impact on the emergency medical service (“EMS”) responders in my state and across the country if it is promulgated as it is currently written.

**[Rescue Squad/EMS Organization Name]** provides rescue and/or emergency medical services to **[municipality/service area name]**, which has a population of approximately **[population of service area]**. My ESO has a staff of **[number]** volunteer responders and **[number]** paid responders. My ESO responds to approximately **[number]** of calls per year and operates on an annual budget of $**[number]**. Our funding comes from **[describe source of funding]**. It is already extremely challenging to efficiently allocate our budget to pay for all the necessary equipment (including inspections, maintenance, repair, and replacements), training, and medical expenses for our staff.

1. **COST ANALYSIS**

I understand that OSHA’s economic feasibility analysis included an in-depth study of the costs of compliance for different types of fire departments. Unfortunately, I believe that analysis significantly underestimated the true costs of compliance. Moreover, OSHA’s insistence that the proper measure of economic feasibility is the cost of compliance compared to the revenue for the entire locality, rather than my department’s actual budget, is misplaced. The practical reality is that localities like **[municipality/county/fire service area name]** cannot afford to dramatically increase my department’s budget in the amounts necessary to achieve compliance with the Rule on the timetable proposed in OSHA’s notice of proposed rulemaking. Instead, OSHA should consider our actual budgets before promulgating a rule that imposes such significant costs of compliance. Listed below are just some of the compliance costs that I was able to estimate for my ESO.

29 CFR 1910.156(h) - Training

Estimated cost: $\_\_\_\_\_\_\_

The estimated cost of training for my ESO was calculated by compiling a list of the NFPA standards incorporated by reference in subsection (h) of the Rule that would apply to the responders in my ESO, then multiplying the number of responders by the number of hours required to obtain the relevant certifications and the hourly rate of the cost of that training (or, where applicable, multiplying the number of responders by the flat rate the department pays responders to obtain the relevant certification).

29 CFR 1910.156(l) – Vehicle Replacement/Maintenance

Estimated cost for vehicle replacement: $\_\_\_\_\_\_\_\_\_

Estimated cost for tire replacement: $\_\_\_\_\_\_\_\_

I understand that subsection (l) of the Rule does not fully incorporate NFPA 1910. However, the Rule does mandate that vehicles be inspected, maintained, and repaired as specified by the manufacturer. *See* 29 CFR 1910.156(l)(1)(i), 89 Fed. Reg. 8019. The amounts listed above estimate the cost of replacement for (1) vehicles (engines, tankers, rescue vehicles, ambulances, and/or any other vehicles) that will be 15 years old within the next three years; and (2) tires that are currently older than seven years.

29 CFR 1910.156(g) – Responder Medical Evaluations

Estimated cost for biennial physicals: $\_\_\_\_\_\_\_\_\_

Estimated cost for enhanced physicals based on exposures to combustion products: $\_\_\_\_\_\_\_\_\_\_

The estimated cost for biennial physicals was calculated as the number of responders at my department multiplied by the approximate cost of the physicals ($450 per responder). The estimated cost for the physicals required by 29 CFR 1910.156(g)(3)(A) for responders exposed to combustion products 15 times or more a year was calculated as the estimated number of eligible responders multiplied by the approximate cost of those physicals ($550 per responder). Approximately **[number]** of the responders at my department, which is **[#]**% of all our responders, would likely require this more advanced medical monitoring.

29 CFR 1910.156(k) – PPE and SCBA Replacement

Estimated cost for replacement of PPE turnout gear: $\_\_\_\_\_\_\_

Estimated cost for replacement of SCBA pursuant to NFPA 1981: $\_\_\_\_\_\_\_\_\_

The estimated cost for replacement of PPE turnout gear was calculated as the number of coats/pants, helmets, and boots that are older than ten years and will need to be replaced multiplied the estimated cost of replacement (coats/pants are estimated to cost $3,400 per set; helmets are estimated to cost $350; and boots are estimated to cost $400 per pair). The estimated cost for replacement of self-contained breathing apparatuses (“SCBA”) was calculated as the number of SCBAs my department owns that are 15 years old multiplied by the estimated cost of replacement ($9,000 per SCBA).

Total estimated costs of compliance: $\_\_\_\_\_\_\_\_\_\_\_\_\_

As noted above, these estimates are only a portion of the total costs of compliance with the Rule. Operating on an annual budget of $**[number]** per year, these costs represent an amount that will have a significant impact on my department’s operations. While I agree that many of the costs associated with the estimates I compiled above will be money well-spent, I am concerned that so much of our budget will be consumed by compliance with the Rule that I will not be able to allocate appropriate funding to other necessary expenses.

1. **SCOPE OF THE RULE**

As it is currently written, the Rule will have unintended consequences that decrease public safety for the citizens of my state. For example, I know that some fully volunteer rescue squads are currently considering hiring a single paid responder to enhance their ability to respond quickly and effectively to emergency incidents. However, the Rule has caused these rescue squads to reconsider because hiring even a single paid responder would require the entire organization to comply with many of the provisions of the Rule that would be most challenging for small rescue operations (e.g., the administrative burden of drafting/designing an emergency response program, risk management plan, medical monitoring program, pre-incident plans, and standard operating procedures as well as the financial burden of fully complying with the numerous NFPA standards incorporated by reference in subsection (k) of the Rule).

I understand that OSHA’s notice of proposed rulemaking acknowledges that the Rule could impose “negative financial impacts on volunteer emergency response entities” that “could have undesirable public safety implications” and solicits input on “what [OSHA] could do in the final rule to reduce undesirable impacts on volunteer organizations.” *See* 89 Fed. Reg. 7799. I further understand that OSHA was “unable to determine any appropriate exclusions in light of the agency’s obligation to ameliorate significant risks to employees where economically feasible.” *Id.*

Without an appropriate exclusion for ESOs with a small number of paid responders, the Rule will not ameliorate any risks to those employees because small rescue squads will be forced to eliminate those paid positions or refrain from hiring any paid responders at all. The purpose of the Rule – enhancing emergency responder safety and saving lives – is not served by promulgating a rule that eliminates the jobs of the responders it seeks to protect and thereby interfering with responders’ ability to safeguard their communities.

The negative public safety implications that will result from OSHA’s failure to include an appropriate exclusion are clear. Therefore, I propose that OSHA consider implementing an appropriate exclusion based on existing federal law. The Fair Labor Standards Act (“FLSA”), through its enterprise coverage mechanism, applies to firms with two or more employees that have an annual gross volume of sales made or business done of $500,000 or more. *See* 29 U.S.C. § 203(s)(1). If OSHA were to include a two-employee requirement in the scope of the Rule, much of the potential for negative financial impacts and undesirable public safety implications would be addressed. For example, the small rescue squads in my state that want to hire a single paid responder would be able to do so without incurring a legal obligation to comply with the Rule. Alternatively, implementing a reasonable minimum revenue threshold to limit the scope of the Rule – such as fire departments with budgets of $100,000 or more – would also largely avoid the negative financial impacts on small ESOs that will inevitably lead to undesirable public safety outcomes. An exclusion based on the enterprise coverage mechanism in the FLSA would allow smaller ESOs to continue their service to their communities while ensuring that departments serving metropolitan areas that have multiple career responders and larger budgets would remain subject to the Rule.

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However, the Rule fails to provide an actionable definition of “exposure” as that term is used in 29 CFR 1910.156(g)(3)(A). What level of involvement with a structure fire constitutes an “exposure” to the combustion products for EMS responders? Does responding to the scene of a fire and providing medical treatment to the victims – without ever entering the structure – count as an exposure? If yes, how close does an EMS responder have to be to the fire for it to count as an exposure? OSHA must answer these questions and provide clearer guidance in the Rule so that ESOs like mine can have confidence that we are in compliance with the Rule.

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Moreover, the NFPA standards are developed by committees that include vendors and manufacturers of the equipment that those standards mandate ESOs purchase. While vendor/manufacturer input is valuable for developing voluntary consensus standards, it is not appropriate for those vendors and manufacturers to have such a significant impact on the development of federal law. I understand that even the NFPA has recently indicated that it does not support the manner in which OSHA incorporated so many of their standards by reference.

Additionally, as an EMS responder, I am less familiar with the NFPA standards than my firefighter counterparts. Thus, the Rule imposes an additional burden on EMS responders who would become obligated to learn and understand numerous lengthy and involved NFPA standards that mostly relate to firefighting. 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 ESOs exactly what we must do to remain in compliance with federal law.

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Sincerely,

**[Name]**

**[Title]**