NEVADA STATE FIREFIGHTERS’ ASSOCIATION

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**Position Paper and Formal Response to**

**The Proposed Ruling and Comment Period for the**

**OSHA Regulation derived from**

**29 CFR 1910.156**

**On this date:**

**July 20, 2024**

**As issued by**

**The Board of Directors of the Nevada State Firefighters’ Association**

In the 1980’swhen OSHA began to promulgate 29 CFR 1910.156, also known as The Fire Brigade Standard it was a much-needed effort to increase firefighter safety. There is no denying that this effort has benefited firefighter safety and health and saved lives. Equally the burden and load lifted by budgets and planners has been immense in getting the profession of fire protection to this level in 2024.

Although the Nevada State Firefighters Association fully supports safety and training standards, they must be defined, obtainable and fully funded. Benjamin Franklin organized the Union Fire Co. in Philadelphia in 1736 as the first fire department in the United States. As a volunteer department, their intent was to protect the citizens of their community. Nevada, like most states around our country, is struggling to recruit and retain volunteer firefighters as it is. Let us not take the history and dedication of these selfless individuals by implementing regulations that are either potentially impossible or financially prohibitive to attain.

It should be recognized that there are approximately 29,452 fire departments in our country. Of these, 18,873 are all volunteer, 5,335 are mostly volunteer, 2,459 are mostly career and 2,785 are fully career departments.

In January 2024, a document was circulated that proposed a re-write to 29 CFR 1910.156 and a short 90-day public comment period began with a short extension ending June, 2024. The new document, changes the requirements of the authority having jurisdiction (AHJ) in protecting their responders. The changes are immense, as is the 600 plus page document itself. The Nevada fire service struggles, however, with some of the details in the proposed document. Implementation of this proposed regulation could be catastrophic for some Nevada Emergency Service Organizations (ESO) and will be a major impact to all departments. A major part of OSHA’s directive is to formulate a standard that is economical and feasible. We have major questions and concerns that large portions of the proposed standard do not fall within those guidelines. The below offers a brief glimpse and synopsis of our concerns.

Primary Concerns

1. As is stated in the proposed ruling on numerous occasions, the application of these

changes is left up to the states, which have OSHA programs, to adopt and enforce.

Specifically at issue, and referenced, is the application to volunteers. The federal

premise is that the regulation applies only to employees. As Nevada is an OSHA Plan state, volunteer ESO’s have been viewed as employer/employee relationships and thus the standard presumably will apply. Our understanding would be that this regulation will apply to all fire departments within our state, equally. Contents of the proposed standard will have major budgetary impacts to all departments in our state, in particular volunteer and small combination departments.

2. As stated above, major financial infusions will be required in Nevada to fund

the proposed regulation as offered. Personnel simply do not exist to comply with a

number of the administrative functions as prescribed in the new regulation.

limitations on local government in the raising of taxes to fund any operation. The

application of the new costs associated with the proposed 29 CFR 1910.156 will only be able to be absorbed by the fastest growing communities, typically represented fully paid departments. This will leave the majority of ESO’s in Nevada with no effective way to fund this proposed regulation.

4. As such, an alternative will be for local government to live outside of an OSHA

regulation, knowingly; or to close the departments in question to prevent liability

and risk. The burden of this choice will be placed squarely on the local governing body and in most cases, local government/county cannot legally raise taxes to cover this cost.

5. The proposed standard specifically requires data and record keeping functions that may or may not exist in some fire departments. For instance, one

measure that may be implemented but currently not required is stated: Paragraphs

(d)(1) and (2) of the proposed rule would require the ESO to develop and implement

a written ERP that provides protection for each of its responders designated to

operate at an emergency incident. {ESO=Emergency service organizations, ERP=

emergency response plan}

An example of other types of documentation processes currently not mandated but

would be required to be updated annually are:

a. Exposure Documentation: Proposed paragraph (g)(3)(ii) would require the

ESO to document each exposure to combustion products for each responder,

for the purpose of determining the need for the medical surveillance as

specified in (g)(3)(i)(A), and for inclusion in the responder's confidential

record, as required in (g)(1)(ii).

b. Pre-incident Plans: Paragraph (d)(4) of the proposed rule would require the

ESO, as part of the community or facility vulnerability assessment, to identify

each structure and other location where a PIP is needed. Proposed paragraph

(m) provides additional information and proposed provisions for developing

PIPs, which would be used by responders at emergency incidents as

discussed further in proposed paragraph (p). Whereas the Association

acknowledges the need for planning and its value, again; the issue has never

before been mandated and would require departments to begin a formal

program. {PIP=Pre-incident plan}

c. Risk Management Plan: Paragraph (f)(1) of this proposed rule would require

 ESOs to develop and implement a written comprehensive risk management plan based on the type and level of service(s) that would be established in proposed paragraphs (c) and (d) of the proposed rule.

d. Vulnerability assessment plan: Proposed paragraph (d)(3) would require

that the ESO conduct a community or facility vulnerability assessment of

hazards within the primary response area where the emergency service(s) it

provides is/are expected to be performed. An in-depth assessment of the

community or facility would determine specific vulnerabilities. The ESO would

be able to determine what resources are available for mitigation, both within

the ESO and from mutual aid with ESO’s, and whether the available

resources are sufficient for mitigating the identified vulnerabilities.

e. Vacant Structures: Proposed paragraphs (d)(4)(i) and (ii) would further

require that the community or facility vulnerability assessment identify each

vacant structure and location that is unsafe for responders to enter due to

conditions such as previous fire damage, damage from natural disasters, and

deterioration due to age and lack of upkeep; and would require the ESO to

provide a means for notifying responders of the vacant structures and unsafe

locations. Again, this is of value but would require the hiring of personnel to

complete the task and maintain currency.

6. The Medical and Physical requirements listed in the proposal will have a significant

impact on the fire service community. The following are a few of the major

concerns:

• Emergency Services Organizations (ESO) are to ensure that, prior to performing

emergency response duties, each team member and responder is medically

evaluated to determine fitness for duty by a physician or other licensed health

care professional (PLHCP) at no cost to the team member or responder and at a

reasonable time and place. This is going to be cost prohibitive to most small and

volunteer departments as the level of funding is not there. NFPA 1582 states that the physical, and all components required, must be provided at no cost to the member. This

includes any medical evaluations and any medical tests ordered by the

department physician. These must be conducted upon entry prior to training

which is the established baseline and annually thereafter according to NFPA

1582 Chapter 7.1.2. This is a new regulated expense.

• The specified elements that must be included in all medical evaluations (NFPA

1582), regardless of the tier or level of service the member provides will

eliminates many members who are not engaged in the initially dangerous to life

and health (IDLH) operations such as drivers and EMS providers. In staffing

strapped departments, this too will further hamper operations.

• OSHA has preliminarily determined that an action level of 15 or more exposures

per year is an appropriate threshold for triggering medical surveillance to detect

and prevent adverse health effects from combustion products. This is far more

encompassing than just emergency scenes but would include such areas as

exposure to diesel fumes in an apparatus bay. Using this formula, if a firefighter

goes to 15 fire calls in a year, they would be required to enter into further medical

surveillance, under a medical team’s care.

• The requirement to provide behavioral health and wellness resources at no cost

to the team member or responder or identify where resources are available at no

cost in their community but unfortunately impractical in Nevada. In rural

settings, this most likely is not available without substantial travel distances for

resources. The cost would include not only treatment but also travel. Most rural

departments are volunteer and would not have funding for this.

• The proposed regulation requires provision of exercise training to volunteers. As

volunteers are not on a regular, prescribed work schedule; how will this be

accomplished?

7. The proposed regulation specifically states: The scope of the proposed rule is larger,

expanding beyond employers who provide only firefighting services to include

employers that provide other emergency services, such as pre-hospital EMS and

technical search and rescue services. As such, application of this particular

standard will now encompass and open the door to many more avenues within

departments providing both fire and EMS responses. As such, further time for

review and delineation of the effects is requested.

8. Under the proposal, the ESO's procedures for use of privately owned vehicles (POV)

in these circumstances, would need to include the same elements as those for

driving department owned emergency vehicles, including requirements for wearing

seatbelts, speed limits, stopping and proceeding at traffic control devices, passing

other vehicles, and the use of warning lights and signals. And though superficially

this would sound logical; this would require all POVs that respond to have lights and

sirens. This is not current standard practice. The proposed change will be

significant due to the regulation being now applied to private / personal property. At

what level would the local governing body want to have an individual’s POV

recognized as part of the emergency response apparatus pool and thus assume the

liability for all firefighters POVs?

9. One question posed under the comment period description is as follows and is

representative of the direction and flavor for much of the document, and possibly

its derivation: (e)–1. OSHA is considering adding to both paragraphs (e)(1) and (2) a

requirement to permit employee representatives to be involved in the development

and implementation of an ERP, and to paragraph (e)(4) a requirement to allow

employee representatives to participate in walkaround inspections, along with team

members and responders, and is seeking input from stakeholders on whether

employee representative involvement should be added to paragraph (e). Nevada is a “right to work” state and as such feels this requirement is an encroachment on that right and should be deleted or further justified. The value of employer knowledge in programs is paramount, yet participation in their development is not and could be most likely outside of the scope of expertise for the employee. Train all in the safety concerns of an emergency plan, but do not require untrained persons to create the plan merely to mandate “employee

representative” status to be recognized.

10. The updating of facilities to comply with the standard will financially impact local

governments severely. Again, safety concerns are warranted, but the impact to

local, possibly volunteer systems, should be noted. For instance: Proposed

paragraph (j)(1)(ii) would require the ESO to provide facilities for decontamination,

disinfection, cleaning, and storage of PPE and equipment. This does not exist in

many fire departments today.

11.Staffing at emergency scenes as described in the proposal is vague at best and

dangerous at worst. It leaves vague the intent of enforcement on those systems

which are volunteer or that have limited paid personnel that is very prevalent in

Nevada. As stated: Operations on the incident scene would need to be limited to those that can be safely conducted by the team members or responders on the scene. Although stated to the contrary, this clearly enters the debate of minimum staffing that the Association feels is best handled by the local governing bodies having jurisdiction. And, if not, the document clearly states that: ensure that operations are limited to those that can be safely performed by the team members and responders available on the scene -thus clearly opening the door to counter guess every initial commanding officer and strategies and tactics.

NFPA Standard References

Of great concern, and new to the process, is the formal recognition of twenty-three (23)

NFPA and ANSI standards, in whole or in part, which are to be incorporated by reference into

the new proposed rule - 1910.156.

• NFPA 1001, Standard for Structural Fire Fighter Professional Qualifications, 2019 ed.

• NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications,

2017 ed.

• NFPA 1005, Standard for Professional Qualifications for Marine Fire Fighting for LandBased Fire Fighters, 2019 ed.

• NFPA 1006, Standard for Technical Rescue Personnel Professional Qualifications, 2021

ed.

• NFPA 1021, Standard for Fire Officer Professional Qualifications, 2020 ed.

• NFPA 1081, Standard for Facility Fire Brigade Member Professional Qualifications, 2018

ed.

• NFPA 1140, Standard for Wildland Fire Protec􀆟on, 2022 ed.

• NFPA 1407, Standard for Training Fire Service Rapid Intervention Crews, 2020 ed.

• NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire

Departments, 2022 ed.

• NFPA 1910, Standard for the Inspection, Maintenance, Refurbishment, Testing, and

Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels, 2024 ed.

• NFPA 1951, Standard on Protective Ensembles for Technical Rescue Incidents, 2020 ed.

• NFPA 1952, Standard on Surface Water Operations Protective Clothing and Equipment,

2021 ed.

• NFPA 1953, Standard on Protective Ensembles for Contaminated Water Diving, 2021

ed.

• NFPA 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity

Fire Fighting, 2018 ed.

• NFPA 1977, Standard on Protective Clothing and Equipment for Wildland Fire Fighting

and Urban Interface Fire Fighting, 2022 ed.

• NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for

Emergency Services, 2019 ed.

• NFPA 1982, Standard on Personal Alert Safety Systems (PASS), 2018 ed.

• NFPA 1984, Standards on Respirators for Wildland Fire-Fighting Operations and

Wildland Urban Interface Operations, 2022 ed.

• NFPA 1986, Standard on Respiratory Protec􀆟on Equipment for Tactical and Technical

Operations, 2023 ed.

• NFPA 1987, Standard on Combination Unit Respirator Systems for Tactical and

Technical Operations, 2023 ed.

• NFPA 1990, Standard for Protective Ensembles for Hazardous Materials and CBRN

Operations, 2022 ed.

• NFPA 1999, Standard on Protective Clothing and Ensembles for Emergency Medical

Operations, 2018 ed.

ANSI/ISEA

Additionally, provisions exist in the proposed standard which draw from, or are consistent with, the

following NFPA standards, but these standards are not proposed to be incorporated by reference:

• NFPA 10, Standard for Portable Fire Extinguishers, 2022 ed.

• NFPA 600, Standard on Facility Fire Brigades, 2020 ed.

• NFPA 1201, Standard for Providing Fire and Emergency Services to the Public, 2020

ed.

• NFPA 1451, Standard for a Fire and Emergency Service Vehicle Operations Training

Program, 2018 ed.

• NFPA 1500, Standard on Fire Department Occupational Safety, Health, and Wellness

Program, 2021 ed.

• NFPA 1521, Standard for Fire Department Safety Officer Professional Qualifications,

2020 ed.

• NFPA 1561, Standard on Emergency Services Incident Management System and

Command Safety, 2020 ed.

• NFPA 1581, Standard on Fire Department Infection Control Program, 2022 ed.

• NFPA 1660, Standard for Emergency, Continuity, and Crisis Management:

Preparedness, Response, and Recovery, 2024 ed.

• NFPA 1700, Guide for Structural Fire Fighting, 2021 ed.

• NFPA 1710, Standard for the Organization and Deployment of Fire Suppression

Operations, Emergency Medical Operations, and Special Operations to the Public by

Career Fire Departments, 2020 ed.

• NFPA 1720, Standard for the Organization and Deployment of Fire Suppression

Operations, Emergency Medical Operations, and Special Operations to the Public by

Volunteer Fire Departments, 2020 ed.

• NFPA 1851, Standard on Selection, Care, and Maintenance of Protective Ensembles

for Structural Fire Fighting and Proximity Fire Fighting, 2020 ed.

• NFPA 2500, Standard for Operations and Training for Technical Search and Rescue

Incidents and Life Safety Rope and Equipment for Emergency Services, 2022 ed.

Numerous NFPA standards listed in the OSHA document are slated for consolidation of

listed standards that have not been placed into existence at this time which could mean

that these standards could and probably will change. OSHA recognizes NFPA’s ongoing efforts

to consolidate the following standards, and intends to recognize the latest status of consolidation in the final rule:

• NFPA 1001, NFPA 1002, NFPA 1003, and NFPA 1005 will become NFPA 1010, Standard

for Firefighter, Fire Apparatus Driver/Operator, Airport Firefighter, and Marine

Firefighting for Land-Based Firefighters Professional Qualifications, scheduled for 2024.

• NFPA 1021 and other standards will become NFPA 1020, Standard for Fire Officer and

Emergency Services Instructor Professional Qualifications, scheduled for 2025.

• NFPA 1407, NFPA 1451 and other standards will become NFPA 1400, Standard on Fire

Service Training, scheduled for 2026.

• NFPA 1581, NFPA 1582 and other standards will become NFPA 1580, Standard for

Emergency Responder Occupational Health and Wellness, scheduled for 2025.

• NFPA 1201, NFPA 1710, NFPA 1720, and other standards will become NFPA 1750,

Standard for the Organization and Deployment of Fire Suppression Operations,

Emergency Medical Operations, and Providing Fire and Emergency Services to the

Public, scheduled for 2026.

• NFPA 1981, NFPA 1982 and other standards will become NFPA 1970, Standard on

Protective Ensembles for Structural and Proximity Firefighting, Work Apparel and OpenCircuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services, and Personal

Alert Safety Systems (PASS), scheduled for 2024.

• NFPA 1951, NFPA 1977, and NFPA 1999 will become NFPA 1950, Standard on Protective

Clothing, Ensembles, and Equipment for Technical Rescue Incidents, Emergency Medical

Operations, and Wildland Firefighting, and Urban Interface Firefighting, scheduled for

2025.

• NFPA 1952 and NFPA 1953 will become NFPA 1955, Standard on Surface Water

Operations Protective Clothing and Equipment and Protective Ensembles for

Contaminated Water Diving, scheduled for 2025.

• NFPA 1984 and NFPA 1989 will become NFPA 1985, Standard on Breathing Air Quality

for Emergency Services Respiratory Protec􀆟on and Respirators for Wildland Firefighting

and Wildland Urban Interface Operations, scheduled for 2026.

The new regulation fully recognizes that many of these NFPA standards are changing, and

part of the concern, and thus this detailed listing, is the fact that these consensus

standards will forever change. That is good for currency but difficult for planning and

education. The costs of simply keeping up, and the greater need now to fully participate in

the standards development, will also require greater attention and funding. Much

conversation should occur before regulation adoption as to the direction of standards on

items such as personal protective clothing (PPE), which are driven by manufacturers and

how that new direction will impact budgetary planning and department risk in meeting the

new regulation.

Formal Request to the Proposed Standard

We respectfully request that OSHA consider the below items, and allow representatives from Nevada a seat at the table as various national delivery systems collectively work in collaboration on a solid plan that will improve emergency responder safety in both an economical and technical fashion.

1. Extend the public comment period until the below items are addressed and

managed. The 608-page document released is extensive and requires time to

unpack and digest.

2. The Nevada State Firefighters’ Association (NSFFA) is requesting the launch

of a blue-ribbon panel of industry stakeholders that could further digest the

proposed standard and offer input on the plan. The proposed plan itself requires

ESOs to include the rank-and-file responders as part of the planning process.

Shouldn’t those same responders have representation in the process that will

dictate how they do business?

3. The NSFA is requesting, prior to adoption, the allowance of the nine (9) major Fire

Service Organizations, previously utilized in the Assistance to Fire Act Grants

process; have a seat at the table in an in-person public hearing to explain face-to-face the impacts and challenges both operationally and economically that may be

faced by their respective members and organizations represented.

4. The NSFA is requesting that prior to adoption, the creation of a summit to allow

one (1) designated Fire Service Representative from all 50 states to be a part of the

discussion group for the revision of this standard. Too little has been heard from

affected states as to the contents and implementation of the regulation.

5. The NSFA requests to remove the 23, included by reference, NFPA standards and

instead bring the intended specific requirements into the standard itself. The

current model of incorporation by reference (IBR) has several concerns.

a. Using the IBR model, an AHJ is forced to purchase information to comply

with the standard. The NFPA standards are available for free viewing, but to

be able to understand them, an agency needs to be able to digest them,

mark them up, and distribute to others within the organization for

collaboration. This could not be done without using backdoor methods or

paying for each referenced standard at around $100 a piece or a subscription

that could cost up to $1700 per year.

b. There are over 1500 “shalls” and “musts” in these documents. The pure

volume of understanding those and analyzing if your AHJ meets the intent is

staggering.

c. Some of the NFPA standards that are IBR to fire departments covered by the

rule, are not meant for all responders when you look at the standard’s scope

or purpose. For example, NFPA 1002’s scope and purpose is for the operation

of fire apparatus. EMS and many specialized response agencies are not fire

departments and do not have any “fire apparatus” but still drive response

vehicles. Either the rule requires some first responders to comply with a

standard that in its first chapter says it does not apply to them, or it creates a

capricious double standard within the proposed rule.

6. The NSFA is requesting that federal OSHA revisit the definitions of volunteer and

employee and help all affected agencies understand who is covered and to what

level. An emergency does not become any more dangerous in various locations and

yet this standard treats a first responder in Nevada much differently than one

in another part of the United States.

7. The NSFA request that prior to adoption, federal OSHA formulate greater state

OSHA system flexibility within the federal regulation; for the adoption and

implementation process within each state.

Summary

OSHA has done an outstanding job in documenting the need for change. The NSFA has

great concern with some of the details in the proposed standard and the impact these

will have on the communities especially in rural America, and Nevada as it has the

potential to see our volunteer departments be pushed into non-existence due to an

unachievable regulation which will impact the economy of the United States and the

quality of life in those communities. It would be the hope of the Nevada State

Firefighters’ Association that OSHA would institute further review and allow greater

stakeholder participation in the process. At the very least, the federal regulation should

openly and clearly state the flexibility that state OSHA programs can have and will be

allowed in the adoption of this ruling when final.

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