



**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:
April 17, 2024**

**As issued by
The Executive Committee
of the
South Carolina State Firefighters' Association**

Background and Introduction

The danger of performing firefighting tasks has increased immensely over the past several decades. Not only due to the post 9/11 modernization demands brought on by domestic terrorism, but equally, the advent of lightweight open floor plan construction, have brought on operational changes and hazards requiring greater attention to safety and giving rise to ever increasing avenues needing strict organizational attention. Having in place current modern safety regulations cannot be diminished or belittled.

The 1980's brought on the advent of these federally offered and (in the case of South Carolina) state adopted and enforced regulations. For South Carolina firefighters, this changed everything and became a focal point of kitchen table conversations as well as council chamber financial discussions. For those of that generation, we well remember when OSHA began to promulgate 29 CFR 1910.156, also known as The Fire Brigade Standard. 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, in part by the presence of this standard. 40 years of safety cannot be reduced to a footnote but taken in the huge context of change which it represents and requires.

In January 2024, the results of what was stated in the document as a 17 year re-write to 29 CFR 1910.156 were published and a mere 90-day public comment period began with a short extension ending June, 2024. The new, first published, document dramatically 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. There are significant valid concerns that have arisen as those affected by the regulation contemplate and begin to think of implementation of this document. In the preamble component of the

proposed regulation, OSHA has done an outstanding job in documenting the need for change. The South Carolina fire service struggles, however, with some of the details in the proposed document. Implementation of this proposed regulation could be catastrophic for some SC fire service delivery systems 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. In South Carolina, over the past 40 years, volunteer delivery systems have been viewed as employer/employee relationships and thus the standard presumably will apply. On this principle, our understanding would be that this regulation will apply to all fire departments within our state, equally. As such, contents of the proposed standard, unaltered, will have major budgetary impacts to all departments in our state. Those of the political arena need to be aware of this fact in advance as the standard will require South Carolina fire departments to hire employees and/or contractors to comply. A purely volunteer system covering a modern developed area, will not be able to meet the proposed regulation with current staffing models.
2. As stated above, major financial infusions will be required in South Carolina 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.
 - As a data point of reference, as of 4/17/2024; SC has:
 - 15,353 firefighters
 - 8,717 paid personnel
 - 9,470 volunteer personnel
 - 443 fire departments
 - 45 fully paid personnel departments
 - 185 combination paid and volunteer departments
 - 213 fully volunteer departments
3. SC Code of Laws section 6-1-320, better known as Act 388 of 2006; places severe 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 by the paid departments numbered above. This will leave, conservatively; 90% of the departments South Carolina 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 delivery systems in question to prevent liability and risk. Again, using the numbers above in item 2; conservatively half of the departments in South Carolina will face this decision. The burden of this choice will be placed squarely on the local governing body. For instance, one county department within one hour of the state capital of South Carolina operates its stations on \$4,400 dollars per year. A conservative estimate to that system would be hiring at least a dozen persons to fully comply with the standard as written would add annual cost for that one county department of \$671,000 (average state firefighter wage plus benefits). As stated in the above bullet point number 2, the county in the given example cannot legally raise taxes to cover this cost.
5. The proposed standard specifically requires data and record keeping functions that currently do not exist in most South Carolina 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. **Preincident 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=Preincident plan}
- c. **Risk Management Plan:** *Paragraph (f)(1) of this proposed rule would require WEREs and 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.* {WERE=industrial fire brigaderesponse team}
- 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 WERTs and ESOs, 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 in communities where exists a 501C3 organization which is running the organization off of fund-raising activities and not a guaranteed tax base. 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 South Carolina. 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 affects 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).* South Carolina 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 most South Carolina 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 South Carolina. 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 their deployment models and estimations.

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 Land-Based 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 Protection, 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 Protection 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 Open-Circuit 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 Protection 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 South Carolina 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 South Carolina State Firefighters' Association (SCSFA) 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 SCSFA 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 SCSFA 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 SCSFA 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 SCSFA 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 South Carolina much differently than one in another part of the United States.
7. The SCSFA 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 SCSFA struggles however with some of the details in the proposed standard and the impact these will have on the communities especially in rural America, and South Carolina; 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 South Carolina 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.