



ASSOCIATION OF FIRE DISTRICTS OF THE STATE OF NEW YORK

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To Whom It May Concern:

In 1730, a ship fire spread to a wharf and burned down all the buildings, including a few houses. Benjamin Franklin saw the need to organize a group of citizens to protect their community and their neighbors' houses when a fire occurred. On December 7, 1736, Franklin co-founded the Union Fire Company in Philadelphia, which was also known as the "Bucket Brigade". This first Fire Brigade was formed by 26 volunteers. Each with a bucket, with the sole purpose of protecting others' property. A lot has changed since the early days of the first fire brigade, but unfortunately, the dangers of performing this task have not. With modern building construction, technological advances, and the scope of what is expected of the local emergency services responders, one could argue that the danger of performing these tasks has increased immensely.

In the 1980's, OSHA promulgated 29 CFR 1910.156, also known as The Fire Brigade Standard. This was an effort to help protect first responders and address concerns about the high rates of injuries and deaths among those trying to protect their neighbors and communities. The basis of the standard was for the Authority Having Jurisdiction (AHJ) to train firefighters against hazards they could face doing their job. Following the horrific events of September 11, 2001, Congress tasked OSHA with enhancing the safety of the national response efforts to terrorist attacks and major incidents. As part of this effort, OSHA began updating 29 CFR 1910.156. In January 2024, the results of this effort were published, and a 90-day public comment period began. The new document dramatically changes the requirements of the AHJ in protecting their responders. No one can argue that many of these updates are long overdue and necessary to protect our responders. There are, however, some valid concerns that have arisen as we digest this document. OSHA has done an outstanding job in documenting the need for change. However, we struggle with some of the details in the proposed standard. A major part of OSHA's directive is to formulate a standard that is economically and technically feasible. We have significant questions as to whether the entire proposed standard falls within those guidelines. We respectfully request that OSHA provide us with consideration and allow us a seat at the table as we collectively work on a solid plan that will improve emergency responder safety in both an economical and technical fashion. We are asking for the following considerations:

- 1) Please extend the public comment period for an additional 90 days. The 608-page document released is extensive and requires additional time to unpack and digest. The



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additional 90 days would be a first step in understanding the proposal and allow adequate time to respond and offer valid comments on the impact.

- 2) We are requesting an in-person public hearing. There are several industry leaders and stakeholders that would like to explain face-to-face the impacts and challenges that the proposed standard poses for their organizations.
- 3) We are requesting the formation 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? While we appreciate the National Advisory Committee on Occupational Safety and Health subcommittee of Subject Matter Experts efforts, we have serious concerns that the majority of the fire service being small entities, and volunteer departments did not have proper representation and voice during the process.
- 4) We are requesting removal of the 23 Incorporated NFPA standards and instead bring the bulleted requirements into the standard itself. The current model of IBR has several concerns:
 - a. Using the IBR model, an AHJ is forced to purchase information to comply with the standard. Yes, the NFPA standards are available for free viewing, but to be able to understand them, an agency needs to be able to review 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 per standard 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 the strict requirements and analyzing if your AHJ meets the intent is staggering.
 - c. Some of the NFPA standards that are IBR within the proposed 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 are 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



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chapter, says it does not apply to them, or it creates a capricious double standard within the proposed rule.

- 5) We are requesting that you revisit the definitions of *volunteer* and *employee* and help us 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 Kearney, Nebraska differently than one in Virgil, NY. Is life more valuable in Virgil, NY or do those emergency responders need different protections?
- 6) We are asking that a formal negotiated rulemaking process be opened to discuss this matter. We believe that the quasi-negotiation OSHA conducted through NACOSH was limited to a select group of committee members and arguably violated the Negotiated Rulemaking Act and requirements under FACA.
- 7) We are not asking to “water this down” in any way shape or form. In fact, there are many NFPA Standards and Operating Procedures that should be included that would have very little effort or zero cost to the AHJ that would save lives almost overnight. Why are we not going after that low hanging fruit first?

None of this is about the fines, citations, or the lack of desire to change. Yes, some people would rather stick their head in the sand and do nothing, but this is no longer an option. The major concern is that, as written, this proposed standard opens the door for major lawsuits and litigation when, God forbid, a tragedy occurs. With today’s social inflation and world of staggering awards and payouts, this alone will stifle our ability to protect our communities like our great Ben Franklin intended. We are simply asking for a seat at the table to roll up our sleeves and work with you to modify an excellent start into a framework that will serve our Emergency Responders for years to come. We have at least 26 responders ready, willing, and able to jump in. Please let us help.

Thank you for hearing our concerns.

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