

It is Time to Move Forward with a Workable OSHA 1910.156 Revision

1st Vice President David Denniston, AFDSNY

As the process to update OSHA 1910.156 continues, it is important that we understand where we have been, and options for the process moving forward. Since the proposed rule was published for review 18 months ago, there has been a significant amount of input and feedback from stakeholders addressing possible concerns about the economic and technical feasibility of the proposal. Stakeholders from across the country participated in the process and offered suggestions. One of the early possible solutions suggested was to simply exempt volunteers, and other parties, from the proposed rule as written. The mindset was that if it didn't affect "us" it was not our problem. While this concept appeared to be a quick solution, it fell short of addressing the true needs or problems.

The real issue at hand is that the proposed rule as written had challenges for everyone and you would be hard pressed to find any department, career, combination, or volunteer, that could meet the intent of the standard. The proposed standard also took a one-size-fits-all approach. We know that the emergency service agencies across this country are very different. They have different resources, different exposures, different concerns, and different levels of risk. It is true that emergencies, fires, and hazards are the same regardless of the type of responder. What is different is the likeliness that a particular event will occur in any jurisdiction. Local jurisdictions must be required, and empowered, to address significant risk, and the needs of a community, at a local and state level with just enough federal oversight to give it teeth and ensure safety for all of our responders. The bottom line is that the current 1910.156 is outdated and needs significant revision to address the needs and safety concerns of today's first responders. The proposed standard, as written, went too far in trying to address these needs. What we need is a middle ground solution that is designed to relieve significant risk and does so at a level that is economically and technically feasible for local communities, organizations, and the municipalities that govern and fund them.

Some are asking why simply exempting the volunteers is not in the best interest of volunteers across the country. First, by exempting the volunteers, we are failing to address the growing concerns and exposures facing this group of responders. Second, the largest growth area for most of our local fire departments is a move toward combination and career departments. How would it be possible to have one set of rules apply to part of an organization and not the other? Does it make sense to have volunteer responders face one set of rules, while career responders on the same truck follow another? Are we not all responding to the same emergencies with the same exposures? The approach of exempting volunteers would add both confusion and resentment moving forward. The third part of the issue is that the standard, as written, is just as problematic for the communities that have career departments as it is for those that only have volunteers. We need a standard that brings us all together, not one that drives us further apart.

So, what do the solutions look like? Where should OSHA and the Department of Labor go from here? After pouring through the thousands of comments brought forth during the process, an opportunity is right in front of us. There were a multitude of comments throughout the process that carried common themes. By using logical outgrowth of the process, OSHA now has the opportunity to massage the rule into one that we all can live with, and provide the level of safety they are tasked to provide the workers of this country.

It is now in OSHA's hands to finalize the rule as proposed, make logical changes, scrap it, or go back to the drawing board. During the process, OSHA continuously asked for proposed solutions, and many excellent solutions were entered into the record from those that participated. We would suggest that OSHA and the Department of Labor use the extensive input from the process to make necessary changes to the document and work to finalize the rule. A rule that meets the intent of reducing significant risk in a manner that is reasonable and responsible for our first responders and communities.

Using logical outgrowth, OSHA now has the opportunity to remove the incorporated NFPA standards. Many of the participants and the NFPA itself asked for this to be done in their comments. The incorporation of those standards brought many of the pain points organizations were concerned about. The NFPA standards instead should be used as a tool for compliance, not a weapon of enforcement. By removing the incorporation of dozens of NFPA standards, the rule would also become far less confusing and economically infeasible. The next step is to transfer as much of the obligation of providing safety down to the local jurisdiction and state levels as possible. These are the people that know the nuances of the local responders and hazards in any given area. This, too, was supported by the comments throughout the process. The third opportunity is rather than exempting anyone, to build a baseline standard that applies and protects everyone, and then increase the requirements where the data shows increased exposure and risks. All of these changes are supported by the logical outgrowth requirements and would alleviate most of the pain points addressed by the participants of the process.

Regardless of the solution, we would be remiss if we failed to realize there will be opposition to any action taken moving forward. We also need to realize that any solution, or even no solution at all, will have pain points for some that it will affect. It has often been said that firefighters hate two things, change and the way things currently are. Hopefully, we realize that we are at a historic time, with an amazing opportunity to get this right. This process has been fair and offered plenty of opportunities for those interested in participating to make their opinions and feelings known. It is time to move the ball over the goal line and continue to work together for the betterment of emergency services in this country.

I encourage you to speak to your local elected officials. Let them know there is a workable solution right in front of us, and ask them to encourage the Department of Labor and OSHA to continue this opportunity and finalize a reasonable OSHA 1910.156 that applies to all fire departments, regardless of the composition of their staff.

About the Author:

Commissioner David Denniston has been involved with educating and advocating for firefighters and governing bodies for the past several years through the OSHA 1910.156 process. When the proposed rule was published in early 2024, he convened a group of New York state fire service leaders, and then took the concerns to the national level becoming chair of the NVFC OSHA Task Force. These groups have worked tirelessly to educate emergency services of the impact of the proposed rule and work on solutions that would be feasible for all. Deniston has testified in front of a Congressional sub-committee on the subject and been invited to meetings in the Capitol with high-ranking government officials and leaders to discuss responder concerns. He continues to monitor the situation and offer input towards a resolution. Questions may be directed to Denniston here.

ddenniston@afdsny.org