

**BEFORE PROCEEDING TO THE TEMPLATE WHICH STARTS ON PAGE 3, IT IS IMPORTANT TO REVIEW THE FOLLOWING AND THE 3 SIGNITURES AT BOTTOM OF PAGE 2.**

To the Missouri Fire Service (*This was finalized 7-1-24*),

Most of you have probably seen local news interviews and social media posts or possibly heard rumors about OSHA's pending update to their 29 CFR 1910.156 Fire Brigade regulations. The update will include many sweeping changes aligned with NFPA standards that will likely impact a large number of emergency services organizations across the nation. Unfortunately, misinformation has raised concerns about the potential for crippled budgets and layoffs within area fire service agencies. However, the pending OSHA 29 CFR 1910.156 update will NOT apply to Missouri fire service agencies because Federal OSHA has no authority to enforce their regulations on public entities in Missouri. In fact, Missouri is one of the few states that has never adopted an OSHA approved state plan requiring public entities to follow OSHA regulations.

The following excerpts were copied from the documentation for the proposed updates to 29 CRF 1910.156:

III. Entities Not Covered by the Proposed Rule

As noted above, Federal OSHA does not cover public ESOs in States without OSHA-approved State Plans. Therefore, for the PEA, public ESOs and responders in States without OSHA-approved State Plans are excluded from the analysis.

IV. Affected WEREs, ESOs, and Responders

Not all fire departments and responders included in Table VII-B-5 would be covered by the proposed rule. OSHA does not estimate costs or impacts for fire departments reporting zero responders \31\ and the non-firefighting personnel included in the USFA (2022) registry data. Further, the analysis excludes public fire departments in non-State Plan states, volunteers in State Plan states where volunteers are not covered by the State Plan, and all-volunteer fire departments in State Plan states that do not cover volunteers. OSHA thus limits the fire department profile to include all private fire departments, all public fire departments in State Plan states that cover volunteers, all public fire departments in State Plan states that do not cover volunteers except those departments that are 100 percent volunteer, and all Federal fire departments.

To be clear, the proposed updates to OSHA 29 CFR 1910.156 will not apply to or mandate compliance by public fire service agencies in Missouri.

Concerns have been raised regarding potential exposure to third-party lawsuits due to non-compliance with the updated standard. Missouri fire service agencies and their employees are protected from most liability lawsuits by sovereign and official immunity referenced in Missouri revised statutes. RSMo 537.600 details the limited exceptions to a Missouri public agency's sovereign immunity such as injuries resulting from negligence arising from motor vehicle accidents or injuries caused by dangerous conditions found on a public entity's property. Additional concerns have been voiced over references to NFPA standards in the update to 29 CFR 1910.156 as we use

## Comment Template if getting involved with Proposed OSHA Rule > 29 CFR 1910.156

content from many of the NFPA standards in operations, training, and purchasing decisions. While the addition of these NFPA standards may impact some states, they do not necessarily represent increased liability to the Missouri fire service. At this point, concerns about potential lawsuits are speculative and not supported by Missouri case law.

OSHA is accepting feedback on the proposed update to 29 CFR 1910.156 until 5:00 pm EST on July 22, 2024. If you have concerns about the impact this update will have on your agency or the fire service in general, it is highly recommended that you submit your concerns to OSHA in a thoughtful and substantiated format before the feedback deadline. Please note the following links:

Website to view the proposed update:

[https://www.federalregister.gov/documents/2024/02/05/2023-28203/emergency-response-standard?utm\\_campaign=subscription+mailing+list&utm\\_medium=email&utm\\_source=federalregister.gov](https://www.federalregister.gov/documents/2024/02/05/2023-28203/emergency-response-standard?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov)

Website to submit comments:

This landing page already has the key identification Docket No. (OSHA-2007-0073-0118). You may cut & paste your comments or upload a file (suggest PDF). Then use the drop-down box to select "Proposed Rules". An email is required, and you also get a few other options.

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

For more information, templates, pain points and NFVC supporting documents, FFAM has an OSHA landing page you may reach at:

<https://www.ffam.org/2024/05/17/oshas-proposed-emergency-response-rule/>

To avoid misunderstandings or confusion, it is recommended that Missouri fire service agencies consider crafting their internal and external communications regarding the proposed update to 29 CFR 1910.156 based on the available facts and not speculation. Organizations such as the Fire Fighters Association of Missouri (FFAM), Missouri Association of Fire Chiefs (MOCHIEFS), and the Missouri Association of Fire Protection Districts (MAFPD) are closely monitoring the update process and will share information as available. As always, consider conferring with legal counsel for any specific questions related to your agency.

Respectfully,

Larry W. Jennings, President, FFAM

Mike Snider, President, MOCHIEFS

Kevin Pratt, President, MAFPD

## Comment Template if getting involved with Proposed OSHA Rule > 29 CFR 1910.156

### Disclaimer:

The following template is not being proposed as the best possible option available in responding to the proposed OSHA Rule regarding 29 CFR 1910.156 "Fire Brigade" standard. The intent is to offer some possible reasons to get involved now with a possible guide to assist with your investigation of some key operational areas which may negatively impact your organization. This is by no means an all-inclusive or fully evaluated summary of all elements in this proposed rule change. With that said, there are 3 key areas of importance (not the entire list) which are being used for this template. They are Financial, Time and 3<sup>rd</sup> Party Liability but will also outline some indirect concerns in the future before moving on to the starting point with "Central Theme".

### Indirect Concerns in the Long Term

Could future SAFER Grants be overwhelmingly graded toward the 29 OSHA States because they will have a ton of additional administrative requirements and specific crew staffing. Those type of Federal Mandated needs would logically elevate those grant requests to a high priority because it would be fact and strongly register with the reviewer.

Apply the same question to AFG. Could the remaining 21 Non-OSHA States be largely left out because the need is MUCH GREATER in the other 29. Again, the need is obvious and easier to frame that need in writing.

With regard to Capitol Hill representation, the OSHA States would have the majority of the Senate 58, of 100 Senators in their corner. Interestingly, it is razor thin and nearly even within the house going just 1-2 either side of the 435 when looking at that representation. My concern on this was the forming a collation or a new congressional caucus working in favor the OSHA States if it comes to pass leaving the Non-OSHA States just short of majority influence. From their view, they would have to see this as unfair to their state and do all within their power for supporting remedies.

Firetrucks! Anyone need a new rig? Unless OSHA provides a significant exception to what is currently proposed in the OSHA States, I would be very concerned about a future order. Getting a new truck right now takes 2-3 years. If the 29 OSHA States start dropping hundreds if not thousands of new orders, those trying to get trucks in the Non-OSHA States will be faced with greater backlogs especially if departments in the OSHA States can make a case of "Greater Need" which they could have a good argument.

Used Trucks > if you are in the market, you just hit the lottery of what would be for sale in 29 other states. If you are trying to sell, your market collapses, because your marketplace becomes less than half of what it was before.

Mutual Aid to surrounding OSHA States > Currently these are largely IA & IL with some mileage along the western sides of Kentucky and Tennessee. This may present potential OSHA and legal exposures as soon as you cross the State Line. You may no longer be protected by your Missouri immunity, just like being subject to all of the unique laws in individual state, unless you can get a waiver in writing. There is also information from a very trusted source that the Secretary of Labor in one of our western adjoining Non-OSHA States is concerned they may have to accept the new standard once it is finalized anyway. This would add one more state with a potential board crossing issue. I digress and moving on.

## Comment Template if getting involved with Proposed OSHA Rule > 29 CFR 1910.156

### Central Theme in all responses:

We all fully agree on the importance of Firefighter Safety. We must continue working toward those goals and always have room for continued improvement providing it is scalable with budgets and managed time. The Fire Service has been making important strides in many areas regarding this effort and support these as continued improvement. Comments must address the specific negative impact that is uniquely yours and accurately define/detail that cost in money, time and negative liability. If you can comply, but just do not want to make the effort or spend the money > that does not work or will it be accepted as a valid argument against the proposed rule during review.

### A key “DO NOT” in using this template:

Thanks to current technology and AI, OSHA will be able to electronically filter all responses for similar algorithms and very accurately determine cut/pasted templates plus fairly accurately identify similar structured responses. If that is the best one can do vs. not responding at all, please respond but know this >> those comments identified in such algorithms will go to the bottom of the comments received and potentially dismissed outright as none contributing to process. Please do respond and please make your summary uniquely your own.

### Responding:

You must respond by the close of business **(5:00 pm EST) on July 22**. The following link is long, but saves some steps in getting you to the right place. This landing page already has the key identification Docket No. (OSHA-2007-0073-0118). You may cut & paste your comments or upload a file (suggest PDF) and the drop-down box should select “Proposed Rules”. They require an email address, and you also get a few other options.

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

### Getting Started:

VERY Briefly, tell YOUR story. This is one of the best ways to minimize a quick ejection of your comment through their algorithm search engine. Everyone should be somewhat unique in this first step. The outline below SHOULD NOT be used exactly as is >> change the order of the lined responses, name those lines used by words you would use and do not feel the need to use them all. Pick those that work for you. For example, you may not opt for revealing your annual budget, but rather list your budget by income group percentage.

Introduce yourself with department name and state. At some point early in the introduction indicate if you are Volunteer, Combination or Career while giving staffing numbers in each.

- Respond to an average of XXX emergency calls each year.
- Serving a community (city, county – both?) with a population of XXXX people.
- Responsible for an area of XXX square miles.
- Annual budget of \$\$\$\$\$\$.
- If you provide ambulance service, operate XX (BLS or ALS) ambulances.

## Comment Template if getting involved with Proposed OSHA Rule > 29 CFR 1910.156

- (If appropriate) - administrative staff.
- (If appropriate) - Fire chief is volunteer/career.
- (If appropriate) – volunteer, paid on call, steepens, ??
- (ADD YOUR OWN ADDITIONAL INFORMATION)
- 

If you would rather use % of budget vs. \$\$, the following is a guide:

- Tax Dollars 0%
- Fundraising 0%
- Grants 0%
- Subscriptions 0%
- EMS Billing 0%

If completion of the above looks very similar to the above, you should reorganize and edit your work. It must not look similar to the above template.

### Financial Impact or Time Impact or BOTH > Source, NVFC Pain Points:

Time is also financial in tasking career staff for additional projects.

**OSHA's Proposed Rule:** All Emergency Service Organizations shall conduct a community or facility vulnerability and risk assessment for its service area, for the purpose of establishing its standards of response and determining the ability to match the community or facility's risks with available resources.

**The Pain Point:** Does your fire department conduct hazard assessments (or pre-plans) to all commercial businesses? Does your department conduct hazard assessments to all vacant structures? Does your department pre-plan facilities that are subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA)? Does your department have an incident plan for each of the hazard assessments for an emergency incident? If not, then you will not be compliant with the OSHA Proposed Ruling.

**Response >** Is this something you can absorb and complete with existing staff? If not, how will you find the time or will you have to hire (financial) or contract (financial) to get this done. Let OSHA know what the estimated cost would be to add one or more employees to be able to comply with conducting the yearly assessments. Be blunt – tell them you have no administrative staff to do this.

**OSHA's Proposed Rule:** OSHA's inclusion of NFPA 1582: Standard on Comprehensive Occupational Medical Program for Fire Departments, which requires annual medical evaluations proving fit for duty.

**The Pain Point:** The pain point comes in finding a doctor who can perform and meet the requirements of the standard, the cost to the fire and emergency services department, extra time requirements for a volunteer, and the administrative burden of scheduling and tracking exams.

**Response >** Is this economically infeasible. Tell OSHA what your budget is and if you don't have administrative staff to schedule and track medical exams. Tell OSHA if you are in a rural area with poor

## **Comment Template if getting involved with Proposed OSHA Rule > 29 CFR 1910.156**

access to occupational medical care or are unable to find a doctor who can perform all the requirements found in NFPA 1582 or that are willing to sign off. Tell OSHA about volunteer firefighters traveling hours out of their way to get the physicals or the added costs of having an organization come to the department to perform the physicals. The cost of a NFPA 1582 physical for each member can range from several hundred to several thousand dollars. Tell OSHA what this would cost your department. Tell OSHA about the time constraints with NFPA-compliant physicals – are they only available during the workday when volunteers are working their primary jobs?

**OSHA's Proposed Rule:** OSHA is seeking guidance on whether an action level of 15 exposures to combustion products within a year trigger medical surveillance consistent with NFPA 1582 is too high, too low, or an appropriate threshold.

**The Pain Point:** After each incident, in addition to an incident report, do you record what level of smoke or exposure to combustion products is experienced by every firefighter or officer who responded? If the number per year exceeds 15, or whatever number OSHA determines, are you prepared or capable of placing them under medical monitoring against a baseline physical also required meeting NFPA 1582?

**Response >** Tell OSHA there is defined number of exposures (they just picked a number) that are determined to be the right number, so just as requiring annual exams is arbitrary and not based on science, so is the number of exposures. Tell OSHA that “exposure to combustion products” is not defined. Ask OSHA does it mean any smoke, such as from a brush fire or burnt bacon on the stove, or does it have to be an IDLH atmosphere?

**OSHA's Proposed Rule:** OSHA's Proposed Rule is seeking input on whether the proposed rule should specify retirement ages for personal protective equipment (PPE). Current NFPA standards call for 10 years.

**The Pain Point:** Are all your firefighters using gear under 10 years of age? Can you afford to replace gear older than 10 years of age?

**Response >** While 10 years seems reasonable for firefighters actively engaged in structural firefighting, do we rule out or discard gear 11 years of age even though it shows minimal signs of wear? How about others who perform support functions, or extrication, etc.? Some firefighters wear the same structural fire helmet for their entire career spanning 20 – 30 years. Is there statistical evidence by OSHA that helmets over 10 years of age are causing head injuries or burns? Gear that is used to run 85 calls per year doesn't have the same wear and tear as gear that is used to run 600 calls per year unless it has chemical damage.

**OSHA's Proposed Rule:** If approved, the new OSHA rules would require your fire department to conduct annual fitness for duty testing, essentially an annual physical ability test that includes dragging dummies, hitting targets with axes, and forcing a door or breaching a wall.

**The Pain Point:** Most small fire departments have no training props. They have no facility for conducting a fitness for duty test, especially one that meets many legal requirements of consistency and fairness for all participants. This means hiring vendors to do the test or having firefighters drive hours to a test.

## **Comment Template if getting involved with Proposed OSHA Rule > 29 CFR 1910.156**

**Response** > Can your fire department can conduct a physical ability test each year. Tell them how far away the nearest facility for a test is. Tell them what props or facilities you have and don't have. Tell them your budget and what this will cost.

Some other topics, but less template structured are:

Truck Check Training: Only personnel with Department of Transportation training and chassis inspection training will be able to do annual and quarterly truck checks. Do members of your department have this expertise and is this training readily available to you or will you need to contract that out for each vehicle. The hourly rate for one Emergency Vehicle Service Company in Missouri is \$148.00 per hour.

Brake Testing: You will be required to set up and conduct an annual brake test for all of your trucks. Do you have access to such a testing facility? Can you take your apparatus offline for such annual testing?

### **Third Party Impact:**

There is nothing more to do with this key area as heading off the severity of the proposed standard "AS IS" directly impacts Third Party Liability. In other words, the work on this should be done with how well you explained the Financial and Time impact to your organization.

For more information, discussion points, templates, key pain points and NFVC supporting documents, FFAM has a recently updated OSHA landing page you may reach at:

<https://www.ffam.org/2024/05/17/oshas-proposed-emergency-response-rule/>

You may also contact me direct at 314 709 0760 or [keith.smith@warrenton-fire.org](mailto:keith.smith@warrenton-fire.org)