

To the Missouri Fire Service,

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.

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The following excerpts were copied from the documentation for the proposed updates to 29 CFR 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 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

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