



**NATIONAL FIRE  
PROTECTION ASSOCIATION**

1 Batterymarch Park | Quincy, MA 02169-7471

*James T. Pauley  
President and Chief Executive Officer*

July 19, 2024

The Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

**RE: Comments on OSHA Notice of Proposed Rulemaking, Emergency Response Standard,  
OSHA-2007-0073**

Submitted via: <https://www.federalregister.gov/documents/2024/02/05/2023-28203/emergency-response-standard>

The National Fire Protection Association (NFPA) appreciates the opportunity to comment on the Occupational Health and Safety Administration's proposed new safety and health standard, titled *Emergency Response*, to replace the existing Fire Brigades Standard. The new standard would address a broader scope of emergency responders and would include programmatic elements to protect emergency responders from a variety of occupational hazards.

NFPA, founded in 1896, is a self-funded not-for-profit organization dedicated to the elimination of death, injury, property and economic loss due to fire, electrical, and related hazards. Each of its more than 300 codes and standards are updated every 3 to 5 years using an ANSI-approved consensus process. All NFPA standards are available to be viewed online, free of charge at [www.nfpa.org/standards](http://www.nfpa.org/standards).

Our comments fall into three categories:

1. General Comments
2. Technical Comments
3. Potential Impact of Incorporation by Reference on Standards Development Organizations

**General Comments**

NFPA applauds OSHA for opening this national dialogue on how to protect first responders from a variety of occupational hazards. NFPA shares that goal and has played a significant role in advancing first responder safety over the last century. Nevertheless, it is important to note that as a general policy, NFPA does *not* request incorporation by reference of any of our codes and standards. While NFPA has been involved with OSHA over the course of many years and through several Administrations considering rulemakings, NFPA had no specific recent role in putting this Notice of Proposed Rulemaking together, and NFPA did not suggest to OSHA that it should undertake this activity.

NFPA understands that OSHA has proposed to reference NFPA's codes and standards because they are widely recognized as the best in the world and thus are widely used in the United States and elsewhere. Our technical committees, comprised of 9,000 volunteer members, consider every submitted input to prepare standards that address the latest in technology, research, and other relevant information. We are proud that our codes and standards serve the safety goal of protecting emergency responders.

The NFPA Fire & Life Safety Ecosystem (<https://www.nfpa.org/about-nfpa/nfpa-fire-and-life-safety-ecosystem>) identifies the components that must work together to minimize risk and help prevent loss, injuries, and death from fire, electrical, and other hazards. We are confident that, throughout the years, our world-class codes and standards have saved firefighters' lives, prevented injuries, and enhanced first responders' effectiveness in aiding their communities.

The development, use, and adherence to current codes and standards is a key part of the Ecosystem. The Ecosystem also relies on prepared first responders. The process of preparing first responders depends on continuous recruitment, training, and supplies of the best equipment. This is one of the reasons that NFPA strongly supported the reauthorization of the Assistance to Firefighters (AFG) and the Staffing for Adequate Fire and Emergency Response (SAFER) grants managed by the Federal Emergency Management Administration, which was recently enacted as Public Law 118-67. We continue to advocate for expanded funding for both critical grant programs.

A decision made by a government, or by a for-profit or non-profit entity, to use a particular code or standard furthers the goal of enhancing safety. In the case of this Emergency Response Standard, as in the case of so many others, the entity making the incorporation decision must consider the appropriate implementation schedule and compliance plan. We are sensitive to the concerns that many in the fire service, especially smaller volunteer fire companies, have expressed about the expense of meeting the OSHA proposal and how quickly the requirements would be mandated. At the macro level, we know that investments in safety are almost always worthwhile. We trust that OSHA will determine the appropriate implementation schedule should this proposed rule be finalized. Parallel to whatever OSHA decides, our nation must continue to invest in AFG, SAFER, and other efforts to fund our volunteer and career first responders.

## Technical Comments

Based on a review by NFPA's technical staff, we provide the following 25 technical comments. NFPA stands ready to provide additional information and understands that the ongoing consolidation of our emergency response and responder safety standards will affect appropriate references to our codes and standards.

1. Federal Register page # 7793, first column. "...OSHA is proposing to IBR in whole or in part." We note that many of the referenced NFPA standards will have been consolidated with new numbers and many will have new editions if and when the new OSHA standard is published. NFPA recognizes that OSHA has noted the importance of correcting these references but emphasizes the importance of doing so. Details of this ongoing effort are available at <https://www.nfpa.org/education-and-research/emergency-response/emergency-response-and-responder-safety-consolidation-project>

2. Federal Register page # 7799, third column, (f)-1. We recently released NFPA 1585, Standard for Exposure and Contamination Control, which may be useful in the preparation of risk management plans.
3. Federal Register page # 7800, first column, (g)-2. The newly released NFPA 1585, Standard for Exposure and Contamination Control, may be useful.
4. Federal Register page # 7800, first column, (j)-2. We strongly advocate for the use of sprinklers, which are proven to save lives and property. NFPA 101 requires sprinklers in all new lodging or rooming house occupancies (sleeping accommodations for 16 or fewer) and all new hotel and dormitory occupancies (sleeping accommodations for more than 16). This would also apply to ESO facilities with sleeping accommodations. Also, NFPA 1 requires sprinklers in new buildings housing emergency fire, rescue, or ambulance services irrespective of sleeping accommodations.
5. Federal Register page # 7800, second column, (p)-1. In identifying control zone boundaries, OSHA might consider the definitions found in NFPA 3000, Standard for an Active Shooter/Hostile Event Response (ASHER) Program.
6. Federal Register page # 7805, third column, Control Zone. In identifying control zone boundaries, OSHA might consider the definitions found in NFPA 3000, Standard for an Active Shooter/Hostile Event Response (ASHER) Program.
7. Federal Register page # 7808, second column, Rapid Intervention Crew (RIC). Comment: The definition for RIC in NFPA 1500 (now consolidated as NFPA 1550) now recognizes the version in NFPA 1710.
8. Federal Register page # 7821, second column, Paragraph (h) Training. Other relevant training standards include NFPA 1001, NFPA 1006, NFPA 1403, NFPA 1407, and NFPA 1410.
9. Federal Register page # 7821, third column. Proposed paragraph (h)(1)(iv). NFPA 1041, Standard for Fire and Emergency Services Instructor Professional Qualifications (scheduled to be consolidated into NFPA 1020), may be useful for instructor training.
10. Federal Register page #7822, first column, Paragraph (h)(1)(vi). NFPA 1550, NFPA 1581 (scheduled for consolidation in NFPA 1580), NFPA 1585, and other standards can be considered for risk assessment, exposure control, and PPE selection.
11. Federal Register page #7822, second column, Proposed Paragraph (h)(1)(vii). NFPA 1550 may help with the development of a Health and Safety Policy.
12. Federal Register page #7822, second column, Paragraph (h)(1)(viii). NFPA 1851 may be useful for Selection, Care, and Maintenance.
13. Federal Register page #7823, third column, Paragraph (h)(2)(iii). NFPA 1407 is not a Professional Qualifications document so therefore it does not contain Job Performance Requirements (JPRs).

14. Federal Register page #7824, first column, Paragraph (h)(2)(iv). NFPA 1010, Standard on Professional Qualifications for Firefighters identifies the minimum job performance requirements (JPRs) for emergency response personnel who drive and operate fire apparatus.
15. Federal Register page #7825, first column, Proposed Paragraph (i)(1)(ii). NFPA 1585 Standard for Exposure and Contamination Control may be helpful.
16. Federal Register page #7826, third column, Proposed paragraph (j)(2)(ii). We strongly advocate the use of sprinklers, which are proven to save lives and property. NFPA 101 requires sprinklers in all new lodging or rooming house occupancies (sleeping accommodations for 16 or fewer) and all new hotel and dormitory occupancies (sleeping accommodations for more than 16). This would also apply to ESO facilities with sleeping accommodations. Also, NFPA 1 requires sprinklers in new buildings housing emergency fire, rescue, or ambulance services irrespective of sleeping accommodations.
17. Federal Register page #7829, second column, Paragraph (k)(3)(i). Exposure and contamination control measures that may be useful are outlined in NFPA 1585.
18. Federal Register page #7834, bottom of third column. There are no 2024 editions of NFPA 1500 or NFPA 1561. These standards were consolidated into NFPA 1550.
19. Federal Register page #7836, first column. Definitions in NFPA 3000 may be useful.
20. Federal Register page #7843, second column, Paragraph (i). The standard that addresses these issues is NFPA 1960, Standard for Fire Hose Connections, Spray Nozzles, Manufacturer's Design of Fire Department Ground Ladders, Fire Hose, and Powered Rescue Tools.
21. Federal Register page #7843, third column, Paragraph (j)(2). The correct reference would be NFPA 1580.
22. Federal Register page # 7883, first column, (vi) Training, second paragraph. NFPA does not currently approve programs or products.
23. Federal Register page #7892, second column, Paragraph (i), Medical and Physical Requirements. For many firefighters and for many members of Workplace Emergency Response Teams, EMS is an important part of the job role.
24. Federal Register page #7960, first column, second paragraph. The correct acronym is NFPA.
25. Federal Register page #8010, second column, (44). Tentative Interim Amendments that may be relevant have been considered for NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments. The latest information is available at <https://www.nfpa.org/codes-and-standards/nfpa-1582-standard-development/1582>

### **Potential Impact of Incorporation by Reference on Standards Development Organizations**

OSHA's proposed rule incorporates by reference many of NFPA's standards in whole or in part. In prior rulemakings, OSHA has incorporated by reference a number of other NFPA standards. See 29 C.F.R.

§ 1910.6(t). NFPA is proud that OSHA recognizes the value of NFPA standards in protecting emergency responders from occupational hazards. NFPA also appreciates that, in this rulemaking, OSHA is “seeking input on the potential impacts of incorporating by reference of various NFPA standards, and how equivalency or consistency could be achieved if the NFPA standards were not incorporated by reference.” 89 Fed. Reg. 7,774, 7,801 (Feb. 5, 2024).

However, recent legal developments create a risk that OSHA’s continued use of incorporation by reference could frustrate NFPA’s ability to continue developing world-class safety standards. NFPA therefore requests (1) that OSHA refrain from incorporating NFPA’s standards by reference in the proposed rule and that OSHA instead provide in the text of the rule that NFPA’s standards are a benchmark for gauging compliance with the regulations and do not impose any binding legal obligations; (2) that OSHA explicitly acknowledges, in the rule, NFPA’s copyright interests, knowing those interests also serve the agency and the public by ensuring the independence and sustainability of standards development; and (3) ensure through the rule that the public knows that NFPA posts its standards online for free read-only access.

NFPA, like other private standards development organizations (“SDOs”), holds copyrights in its standards that give NFPA exclusive rights to reproduce and distribute them. These copyrights are important. NFPA relies on revenue from selling and licensing its copyrighted standards to fund its robust process for creating and updating standards, which in turn safeguards the accuracy and quality of its standards on which agencies like OSHA and the public rely. That widely recognized model—which makes NFPA’s copyrights critically important—is now in jeopardy.

Last year, the D.C. Circuit held that it is fair use for a specific non-profit organization, Public.Resource.Org (“PRO”), to disseminate the standards at issue in that litigation that had been incorporated by reference into statute or regulation. See *Am. Soc’y for Testing & Materials v. Public.Resource.Org, Inc.*, 82 F.4th 1262 (D.C. Cir. 2023). This poses a threat to NFPA and other SDOs because PRO posts unauthorized and sometimes error-ridden copies of NFPA’s (and other SDOs’) standards online for unrestricted and uncompensated distribution. The same professionals who would otherwise visit NFPA’s website—for free read-only access, purchase, or subscription access to the standards—may instead seek to obtain the standards from PRO. But PRO pays nothing to NFPA to help contribute to the substantial costs of standards creation and does not follow NFPA’s rigorous processes to keep the standards updated and ensure their accuracy.

If PRO’s conduct—or conduct by copycats following PRO’s lead—expands and further siphons potential customers and revenue from NFPA, NFPA may be unable to raise sufficient revenue to fund its standards development process. Although NFPA believes that the law is clear that incorporation by reference does not affect its copyrights, the threat posed to NFPA’s long-term sustainability by the D.C. Circuit’s decision, and attempts to expand it, requires a shift in how governments use NFPA’s standards.

In the following subsections, NFPA first explains its resource-intensive process for creating and updating standards and the business model that funds that process without cost to taxpayer or risk to NFPA’s independence. NFPA then explains why copyright is critical to the sustainability of its business model and why OSHA should take action to protect NFPA’s rights. Finally, NFPA details its requests, including its request for OSHA to provide in the proposed rule that its standards set a benchmark to gauge compliance with the regulations, rather than incorporating the standards by reference.

### NFPA's Standards Development Model

NFPA develops quality standards designed to eliminate death, injury, and other loss from fire, electrical, and related hazards. To ensure that its standards remain on the cutting edge of scientific advancements and improvements in technology, NFPA updates its standards every three to five years. This is a costly process but it is also the critical reason why NFPA standards are widely used and referenced.

NFPA's process of creating and updating its standards requires tremendous investments of time and effort. NFPA follows the requirements of the American National Standards Institute ("ANSI"), which accredits and coordinates standards development. ANSI's requirements aim to allow "any person...with a direct and material interest" to participate in standards development by "expressing a position and its basis," "having that position considered," and "having the right to appeal." See ANSI Essential Requirements § 1.0 (Jan. 2024), <https://ansi.org/american-national-standards/ansi-introduction/essential-requirements>. To comply with ANSI's requirements, NFPA must not impose any "undue financial barriers to participation," not condition voting on membership, not allow "any single interest category" to "dominate[]" standards development, and ensure that standards are the product of "consensus." *Id.* §§ 1.1-1.2, 1.7.

NFPA's process is designed to achieve high-quality standards with consensus support. NFPA begins by posting a public notice online soliciting input from interested parties, which informs NFPA of potential ways to improve upon a standard. After NFPA receives public input, one of its Technical Committees—which consists of a balanced selection of highly qualified members chosen for their technical expertise, professional standing, commitment to public safety, and ability to represent interested stakeholders—holds a public meeting to consider and respond to that input. The Committee creates a draft standard through a consensus process that NFPA posts to its website for additional public input on ways to further improve the standard. The Technical Committee then creates a revised draft, again through a consensus process, which it submits to the NFPA Standards Council, along with any appeals. During this process, Technical Committees can receive statistical reports, special studies, and research reports that help the Committees keep standards current with the latest knowledge and technology. Ultimately, the Council decides appeals and, if appropriate, issues the standard.

Carrying out this process—which ensures high-quality standards, their independence, and the consensus they embody—requires NFPA to expend significant sums of dollars. NFPA must pay for salaries and benefits for administrative and editorial staff who oversee the standards development process and assemble drafts of the standards. It must also pay for expert staff who give technical support to Technical Committees during the process. In some cases, NFPA must finance scientific research supporting its standards. NFPA additionally pays for office and meeting space for multi-day meetings that may be attended by hundreds of participants. And NFPA pays for miscellaneous expenses, such as maintaining technology for collecting public input, coordinating outreach and education, and publishing standards. In 2018, NFPA spent more than \$11 million on Technical Committee operations alone, which is just a fraction of the overall cost of producing the standards.

NFPA itself funds the process of creating and updating standards, largely by selling copies of its standards, as well as selling related products and services. Its customers are typically professionals and businesses for whom the cost of standards and codes are part of their business. NFPA's self-funded model is critical to ensuring (1) that its standards are independent and the product of the

balanced input of a wide range of interested parties and reflect a consensus of Technical Committee members, who themselves represent diverse interest groups; and (2) are updated to address and respond to new information and technology.

If NFPA were to instead rely on funding from the industries that use its standard, that would jeopardize the independence of its process. Even if the industry committed to the same values of consensus, an industry-funded process risks standards that reflect the funding parties' interests rather than the collective interests of the standard's thousands of users.

If NFPA were instead to rely on government funding, it would impose a massive tax burden on individuals. Not only that, but because NFPA would need to rely on grants or allocation of funds from OSHA or the federal government (or any state or local government, for that matter), NFPA might not be able to respond as quickly to new information and would be at risk of losing funding if the political priorities changed.

NFPA's current standards development process benefits everyone. It benefits public safety through the creation of high-quality, consensus-oriented standards that respond quickly to technological change and new safety information. It also benefits taxpayers, who do not have to pay the substantial cost for high-quality standards that serve public goals, such as reducing fire hazards.

#### The Importance of Copyright to NFPA's Sustainability

NFPA's copyright in its standards is essential to its ability to self-fund the standards development process. With intellectual property protection, NFPA can generate revenue from selling, licensing, and otherwise distributing copyrighted standards to users of those standards. About two-thirds of NFPA's revenue comes from the sale of copyrighted material. If copyright did not protect NFPA's standards, others would be free to exploit and sell or give away the works that NFPA created and licensed, which could drain NFPA of its primary source of revenue.

Maintaining copyright is therefore vital to OSHA's (and other agencies') ability to use the best-in-class, consensus standards developed by NFPA (and other similar organizations). Copyright protection is necessary for NFPA to continue creating and updating standards, and it is therefore also necessary for OSHA to be able to rely on NFPA's standards. Put simply, if NFPA cannot self-fund its work through copyright in that work, NFPA will not be able to develop standards for OSHA to use in its regulations.

Given how critical copyright is in supporting agencies' ability to rely on standards developed by NFPA and other organizations, there is every reason to think that Congress did not intend to strip standards of copyright protection when they are incorporated by reference into federal statute or regulation. Nevertheless, a recent decision from the D.C. Circuit held that PRO's "non-commercial dissemination" of certain NFPA and other SDO standards incorporated by reference was "fair use and thus cannot support liability for copyright infringement." *Am. Soc'y for Testing & Materials v. Public.Resource.Org, Inc.*, 82 F.4th 1262, 1265 (D.C. Cir. 2023). For-profit companies are currently arguing that they should be able to copy and distribute SDOs' copyrighted standards and codes that have been incorporated by reference without contributing any funding to the organizations that develop them. Serious consequences will result if this erroneous view of incorporation by reference is accepted more broadly, and that is why NFPA is seeking OSHA's help. The erosion of copyright protection could result in NFPA

losing the revenue it has historically earned from the sale and licensing of its standards, and as a result keep NFPA from further developing standards.

Other results could be that NFPA is forced to reduce the rigor of its standards development process. That could take many forms, including updating the standards less frequently, fewer experts and other staff to assist the process, less scientific research, and less robust discussion and review.

NFPA could also be required to scale back the scope of subjects covered by its standards. NFPA relies on a handful of widely used standards to generate most of its revenue, which effectively subsidizes its development of standards that are used less often and therefore do not generate enough revenue to cover the costs of creating and updating them. Standards that generate little revenue still serve important purposes. For example, many of our critical emergency response and responder safety standards operate at a significant loss including NFPA 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting; NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services; NFPA 1001, Standard for Fire Fighter Professional Qualifications; and NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications. If NFPA's revenues decreased, it might no longer be able to dedicate significant resources to these lesser used standards. NFPA might not be able to update those standards on a regular basis to ensure they reflect the most recent research and knowledge on how to improve safety.

As a result, NFPA would be far less likely to create new, innovative standards that address emerging issues. Examples include NFPA 56, Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Piping Systems, and NFPA 401, Recommended Practice for the Prevention of Fires and Uncontrolled Chemical Reactions Associated with the Handling of Hazardous Waste. NFPA is unlikely to ever recoup its investment in either of these two standards but has been able to fund this project through revenues from other standards. Without such revenues, cutting-edge standards that would respond to current and pressing safety issues may never come into existence.

It has been suggested that NFPA should simply charge everyone to participate in the standards process to make up for revenue lost due to not having copyright protection. Not only would this be in direct opposition to the requirements of accreditation by ANSI, it would also reduce participation to only those with the large purse strings and eliminate the hallmarks of consensus and lack of dominance that is necessary in standards development. At the same time, regulated industries could gain more influence over the contents of standards. NFPA does not rely on any funding from industry or the government. If NFPA had no choice but to turn to such funding sources, that result could seriously compromise the independence of the standards development process and affect the quality of the standards.

Finally, there is no guarantee that any shifts in NFPA's business practices would be sufficient to sustain the costly process of creating and updating standards, given the severe shortfall in revenue that the loss of copyright protection could produce.

If the system of private standards development by NFPA and others collapsed due to the loss of copyright protection, there is no viable replacement. For decades, governmental bodies like OSHA have relied on NFPA and other organizations to develop detailed standards that inform industry best practices. If NFPA and other organizations cease to exist, governmental bodies might attempt to fill



the void. But that would strain their limited resources and ultimately burden taxpayers. Again, NFPA spends millions annually on standards development—money that, without copyright protection for NFPA's standards, might need to come from OSHA's and other agencies' budgets. Further, a system in which every governmental body at every level (federal, state, and local) developed standards would create massive disuniformity and inefficiency across a wide range of commercial activity. Multiple jurisdictions would develop rules for a particular field. They would duplicate efforts in the development process, and regulated industries would then have to meet varying requirements. And while NFPA and other organizations solicit input from a wide cross-section of interests, an individual jurisdiction would be less likely to receive the same intensity or diversity of views, leading to a worse end product. Finally, governmental bodies are less nimble than NFPA and other organizations and would be slower to respond to a need to revise standards or create new ones in light of changed circumstances.

#### NFPA's Recommendation for the Proposed Rule

The recent court decision, and the importance of NFPA's copyrights to OSHA's work, necessitate a different approach to OSHA's use of NFPA's standards. NFPA requests that OSHA not incorporate by reference its standards in the proposed rule. Instead, NFPA requests that OSHA refer to its standards in the text of the proposed rule as one benchmark of compliance with the regulations and expressly provide in the rule that NFPA's standards are guidance and not binding.

OSHA already has a longstanding model for this approach in its treatment of NFPA 70E, Standard for Electrical Safety in the Workplace. NFPA 70E contains specifications to protect personnel by reducing their exposure to major electrical hazards. OSHA views NFPA 70E as relevant to its enforcement of Section 5(a)(1) of the Occupational Safety and Health Act, 29 U.S.C. § 654(a)(1). A violation of this provision occurs if: "(1) an activity or condition in the employer's workplace presented a hazard to an employee, (2) either the employer or the industry recognized the condition or activity as a hazard, (3) the hazard was likely to or actually caused death or serious physical harm, and (4) a feasible means to eliminate or materially reduce the hazard existed." *BHC Nw. Psychiatric Hosp., LLC v. Sec'y of Labor*, 951 F.3d 558, 563 (D.C. Cir. 2020). OSHA has explained that "industry consensus standards," which would include NFPA 70E, "may be evidence that a hazard is 'recognized' and that there is a feasible means of correcting such a hazard."<sup>1</sup>

Similarly, 29 C.F.R. § 1910.132(d)(1) requires employers to "assess the workplace to determine if hazards are present, which necessitate the use of personal protective equipment." OSHA has explained that "industry consensus standards, such as NFPA 70E, can be used by OSHA and employers as guides in making hazard analyses."<sup>2</sup> To take just one more example: 29 C.F.R. § 1910.335 contains general requirements for personal protective equipment. NFPA 70E recommends that employees wear certain levels of equipment depending on how close they are to electrical equipment. OSHA has explained that it may "consult[] NFPA 70E's Flash Hazard Boundary when

---

<sup>1</sup> OSHA Letter, Relevance of NFPA 70E industry consensus standard to OSHA requirements; whether OSHA requirements apply to owners (July 25, 2003), <https://www.osha.gov/laws-regs/standardinterpretations/2003-07-25>.

<sup>2</sup> OSHA Letter (Nov. 14, 2006), <https://www.osha.gov/laws-regs/standardinterpretations/2006-11-14#text2>.

considering citations for personal protective equipment under 1910.335.”<sup>3</sup> In other words, “OSHA does not enforce NFPA 70E. OSHA enforces its own standards that relate to electrical hazards”—but may “use NFPA 70E to support citations for violations relating to certain OSHA standards.”<sup>4</sup>

The approach OSHA has taken for NFPA 70E has worked well. With respect to regulations, OSHA has promulgated rules that are formulated in more general language. OSHA has looked to NFPA 70E as one way to gauge an employer’s compliance with the regulations, but an employer may comply with the regulations in ways other than following NFPA 70E to the letter. Due to the high quality of NFPA 70E and the importance of the safety precautions it recommends, many employers utilize the standard, even though they have no direct legal obligation to follow that standard. This arrangement benefits everyone. It enables OSHA to further its mission of ensuring safe working conditions. It protects NFPA’s copyright in NFPA 70E, which in turn allows NFPA to generate revenue to further its mission of developing lifesaving standards—including the standards OSHA proposes to rely on in this rulemaking. It gives employers both guidance and flexibility as to how to comply with general rules. For instance, employers have flexibility to use the most up-to-date version of NFPA 70E, instead of turning to an out-of-date version because it was the version that was incorporated. And, most importantly, it helps employers and employees avoid workplace injuries and fatalities from electrical hazards.

Because this approach works, OSHA has also relied on it with respect to standards other than NFPA 70E. For example, OSHA promulgated a regulation that stated: “Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.” 57 Fed. Reg. 6,356, 6,390 (Feb. 24, 1992). OSHA did not “incorporate by reference” standards “published by [various] consensus groups.” *Id.* Instead, OSHA explained in the preamble to the regulation that compliance with the regulation could be achieved through “appropriate internal standards of a facility, as well as codes and standards published by NFPA, ASTM, ANSI,” and others. *Id.*

NFPA requests that OSHA use a similar approach for the NFPA standards it currently proposes to incorporate by reference in its rule. For example, the proposed rule incorporates by reference NFPA 1910, Standard for the Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels. The proposed rule requires organizations and employers to “[i]nspect, maintain, and service test aerial devices on vehicles, to ensure they are safe for use, as specified by the manufacturer, or to a standard at least as equivalent to NFPA 1910 (incorporated by reference see § 1910.6).” 89 Fed. Reg. at 8,019. OSHA could instead draft this rule to require that there be inspection, maintenance, and servicing of the devices “to ensure they are safe for use.” OSHA should then further expressly provide in the text of the rule that NFPA 1910 is one way of ensuring safe use of test aerial devices on vehicles but does not create any binding obligations. This approach would ensure safety, while preserving NFPA’s copyright in NFPA 1910. For each standard that OSHA’s proposed rule incorporates by reference, NFPA would welcome the opportunity to work with OSHA on ways to ensure that the rule achieves the agency’s safety objectives without using incorporation by reference.

NFPA is confident that such a solution exists for each standard incorporated by reference in OSHA’s proposed rule. That is especially so because NFPA does not have a monopoly on developing

---

<sup>3</sup> OSHA Letter (Nov. 4, 2004), <https://www.osha.gov/laws-regs/standardinterpretations/2004-11-04-0>.

<sup>4</sup> *Id.*

The Occupational Safety and Health Administration  
U.S. Department of Labor  
RE: Comments on OSHA Notice of Proposed Rulemaking,  
Emergency Response Standard, OSHA-2007-0073  
July 19, 2024

Page 11

standards on reducing occupational hazards. For instance, as OSHA has acknowledged, other organizations “develop standards applicable to their member organizations” that address occupational hazards. 89 Fed. Reg. at 7,801.

Further, and in all events, NFPA requests that in the text of the proposed rule OSHA expressly acknowledges NFPA’s copyrights and states that nothing in the rule is intended to divest the copyright. *See, e.g.*, 65 Fed. Reg. 50,312, 50,324 (2000) (“[N]othing in this final rule, including the Secretary’s designation of standards, implementation specifications, or code sets is intended to divest any copyright holders of their copyrights in any work referenced in this final rule.”). OSHA should also include a statement in the rule’s text that NFPA standards referenced in the rule are accessible for free through NFPA’s Free Access online portal. Presently, the proposed rule directs the public to NFPA’s website, but does not explain that any member of the public can access NFPA standards incorporated by reference for free online.

NFPA stands ready to provide any additional information that would be useful and appreciates consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Jim Pauley". The signature is written in a cursive, flowing style.

Jim Pauley  
President and Chief Executive Officer