



## Volunteer Fire Service has Serious Concerns with OSHA's Proposed Emergency Response Standard

**Background:** On February 5, 2024, the Occupational Safety and Health Administration (OSHA) published its proposed Emergency Response Standard. This proposed standard imposes numerous requirements that would be infeasible for many volunteer fire departments to comply with. The initial public comment period on this proposed standard concluded on July 22, 2024. OSHA then held a virtual public hearing regarding the proposed standard from November 12 to December 4, 2024, followed by a subsequent public comment period that ended on January 17, 2025. The National Volunteer Fire Council's initial 2024 public comments on the proposed standard can be found here:

<https://www.nvfc.org/wp-content/uploads/2024/07/NVFC-OSHA-Comments-071624.pdf>.

### Volunteer Fire Service Position:

- **Appreciates OSHA's intent to pursue our mutual goal of promoting firefighter safety:** The proposed standard would do a great deal to improve firefighter safety, however, if it's adopted as written it would hinder emergency response capabilities of volunteer fire departments that serve small rural areas.
- **The proposed standard is economically infeasible:**
  - Small rural communities are almost exclusively protected by volunteer firefighters.
  - The resources available to each volunteer department are either dependent on the local tax base, or the department's capability to fundraise, which can be very restrictive and limited in rural communities.
  - OSHA estimates the annual cost for volunteer fire department to comply with this standard would be approximately \$14,000. The NVFC believes the cost of compliance would be much greater due to the expertise, time, and staffing needed to fulfill the numerous reporting requirements in this standard, mandated compliance with one size fits all industry consensus standards, among other factors.
  - The NVFC conducted a survey of our membership on department budgets. Of the 2,444 responses we received 19% said their department's budget was less than \$50,000.
  - The most important federal grant programs that assist fire departments in achieving a baseline level of readiness are the Assistance to Firefighters Grant (AFG) and Staffing for Adequate Fire and Emergency Response (SAFER). In FY24 Congress cut funding for these crucial programs by 10%.
- **The proposed standard is not scalable:** Though some parts are scalable, most of the requirements within this proposed standard would be the same for a small volunteer and a large metropolitan fire department.
- **The proposed standard would incorporate by reference 23 industry standards that are not readily available:** These standards require a monthly paid membership to print and preprinted copies cost over \$140 apiece.

### Highlights of Congressional Engagement:

- The House Homeland Security Subcommittee on Emergency Management and Technology held a hearing on OSHA's proposed Emergency Response Standard on June 4. The NVFC had a witness testify at this hearing.
- The House Education and Workforce Committee's Subcommittee on Workforce Protections held a hearing on OSHA's proposed Emergency Response Standard July 24. The NVFC had a witness testify at this hearing.
- In May Rep. Golden and Rep. Desposito co-led a letter with 40 other members of congress (29 Republicans, 13 Democrats total) asking OSHA to make the proposed standard more scalable for volunteer firefighters.
- In June Education and the Workforce Committee Chairwoman Foxx led a letter with 23 other Republican Members of Congress asking Acting Secretary Su to exempt volunteers from the emergency response standard.
- In July the Senate and House Members from the Arkansas Congressional delegation sent a letter to acting Secretary Su requesting that OSHA rescind the proposed rule.
- In August Sen. Moran and Sen. Coons led a letter with 7 other Senators (7 Republicans, 1 Democrat, 1 Independent total) asking Acting Secretary Su to exempt volunteers from the Emergency Response Standard.
- Senator Boozman sponsored an amendment that was included in the mark-up of the Senate's FY 25 Labor HHS Appropriations Bill that encourages OSHA to conduct listening sessions and outreach with stakeholders to fully understand the impact of new requirements on volunteer fire departments.

**Ask:** Please send a letter urging OSHA not to adopt an Emergency Response Standard that would damage the emergency response capabilities of volunteer fire departments. For more information or questions please contact the NVFC's Chief of Legislative and Regulatory Affairs, Ryan Woodward at [Ryan@NVFC.org](mailto:Ryan@NVFC.org)





January 16, 2025

Mr. Steven W. Hirsch  
Chair  
National Volunteer Fire Council  
712 H Street, NE, Ste. 1478  
Washington, DC 20002

The Honorable Douglas L. Parker  
Assistant Secretary of Labor for Occupational Safety and Health  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Comments: Docket ID: “Emergency Response Standard” (Emergency Response) Rule [Docket No. OSHA-2007-0073] (RIN 1218-AC91)

Dear Assistant Secretary Parker,

On behalf of the National Volunteer Fire Council (NVFC), I would like to take this opportunity to follow-up on its testimony at the public hearing and answer questions that arose during the public hearing. First, allow us to restate that the NVFC believes that all volunteer fire and EMS personnel should be exempt from the proposed emergency response rules as written.

However, the NVFC does believe that there are some significant risks that can be addressed by rewriting the proposed rule. The following provides our suggestions for how the proposed rule should be rewritten to appropriately protect volunteer firefighters without destroying most of the volunteer fire and EMS organizations in the country.

We do stress that though we are offering these suggestions for a revised proposed rule based on tiered risk, the exact details of a revised rule would be best addressed via a full negotiated rulemaking process with emergency service organization (ESO) representatives. Additionally, these post hearing comments will bolster our previous arguments regarding the proposed standard’s economic and technical infeasibility with additional budgetary data that the NVFC has collected from its members.

#### **Significant Risk – A Tiered Approach**

The NVFC suggests that OSHA adopt a population tiered system of rules for fire and EMS departments based upon the risk of injury to firefighters in the communities served.<sup>1</sup> The NVFC

---

<sup>1</sup> There is industry precedent for fire departments being organized differently and having different standards and practices. NFPA 1710, Organization and Deployment of Fire Suppression Operations, EMS, and Special Operations in Career Fire Departments, and NFPA 1720, Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Volunteer Fire Departments, do this.

believes this approach is consistent with OSHA's statutory charge to address significant risk, not every risk or injury.

### **Risk-Based Population Tiers**

A review of data from the National Fire Protection Association (NFPA) for 2022 shows the following data regarding the frequency and risk of injury to firefighters based upon the population served by their department.<sup>2</sup> The 2023 NFPA data follows the same trends.

Population	Average Number of Fireground Injuries Per Year	Fireground Injuries Per 100 Fires	Fireground Injuries Per 100 Firefighters
500,000 or More <sup>3</sup>	69.6	1.5	4.5
250,000 to 499,999	24.6	1.6	5.0
100,000 to 249,999	7.0	1.1	2.9
50,000 to 99,999	3.4	1.4	3.0
25,000 to 49,999	2.0	1.7	3.2
10,000 to 24,999	0.9	1.2	2.1
5,000 to 9,999	0.5	1.0	1.5
2,500 to 4,999	0.3	0.9	1.0
Under 2,500	0.1	0.8	0.5

The data shows that risk of injury increases significantly as the size of the community or population served increases. Note that the difference between the Fireground Injury Rate Per 100 Firefighters increases from 0.5 per 100 firefighters to 4.5 per 100 firefighters as you move from small communities of fewer than 2,500 people to urban communities of 500,000 people or more. This is a ninefold increase in injuries.

---

<sup>2</sup> The population served by a department should be the permanent population within the legal jurisdiction that governs the department. This should be consistent with the area and population used by the Insurance Services Organization (ISO), as well as Federal Emergency Management Agency (FEMA) grants and the NFPA, for determining the department's population service area. It should not include areas served under mutual aid or automatic aid agreements or other voluntary associations. OSHA must not discourage voluntary aid agreements.

<sup>3</sup> Fire Department of New York is not included in this NFPA data.

The difference in the injury rate is in some cases directly rated to the population served because the greater the population, the greater the frequency of emergency calls, a larger population means more people living in the same structure, and it means a greater diversity of incidents.

In very small towns, such as Alford, Massachusetts, a town of 481 people over 12 square miles, the volunteer fire department (10 members) goes to one emergency call per week and annually sees no more than one or two building fires in lower risk single family homes or outbuildings such as barns and sheds.

Compare this to an urban department, such as the Baltimore City Fire Department with 1,600 career firefighters. The Baltimore City Fire Department responds to about 181,000 emergency calls each year. About every three hours, the Baltimore City Fire Department handles the same number of emergencies that the Alford Volunteer Fire Department handles in a year.

The Alford Volunteer Fire Department has an annual budget of \$40,000. The Baltimore City Fire Department has an annual budget of \$282 million.

The risk of fire in Alford is very different than the risk of fire in Baltimore. The risk of injury to firefighters in Baltimore is much greater than the risk of injury to firefighters in Alford. The needs for training, equipment, and complex organizational structures are much greater in Baltimore than in Alford. OSHA's regulation must take this difference in risk into account and revise its proposal accordingly.

Additionally, there are significant differences in risk between small population communities and larger populations that are not directly related to the population but show up as a strong correlation between population and risk of injury. These are factors related to the size of buildings, the density of buildings, the height of the buildings, the uses of buildings, the type of building construction, and street congestion. As populations increase, the fire department tends to encounter higher risk buildings that are close together or physically abutting each other. As populations increase, fire departments tend to encounter taller and taller buildings. As populations increase congestion increases, requiring fire stations closer together. All of these factors result in a much more hazardous firefighting environment and higher risk emergency operations.

Small towns tend to be dominated by lower-risk structures and uses. Small towns are overwhelmingly made up of low-risk single family homes of no more than 2 ½ stories in height. These homes are on larger parcels that make extinguishing fires in them less risky as the fire cannot easily spread to multiple buildings.

Returning to the NFPA Injury Data, the NVFC believes that the data indicates that there are at least three tiers of risk based upon the population of the community served, and maybe a fourth. Here is the risk data chart again but with three tiers of risk color coded:

Population	Average Number of Fireground Injuries Per Year	Fireground Injuries Per 100 Fires	Fireground Injuries Per 100 Firefighters	Proposed Risk Tier
------------	--	-----------------------------------	--	--------------------

500,000 or More	69.6	1.5	4.5	Highest
250,000 to 499,999	24.6	1.6	5.0	Highest
100,000 to 249,999	7.0	1.1	2.9	Highest
50,000 to 99,999	3.4	1.4	3.0	Moderate
25,000 to 49,999	2.0	1.7	3.2	Moderate
10,000 to 24,999	0.9	1.2	2.1	Lowest
5,000 to 9,999	0.5	1.0	1.5	Lowest
2,500 to 4,999	0.3	0.9	1.0	Lowest
Under 2,500	0.1	0.8	0.5	Lowest

The three levels of risk are as follows:

Tier 1 – Red – HIGHEST RISK

Tier 2 – Yellow – MODERATE RISK

Tier 3 – Green – LOWEST RISK

The Under 2,500 population communities have enough difference in risk between them and the next largest grouping (2,500 to 4,999 population) that they could be considered an even lower risk than the rest of the “Lowest Risk” tier. These departments are averaging only about one significant injury every 10 years. Their per 100 firefighter injury rate is ½ firefighter per year, half as much as the next population group above them.

### Lowest Risk Tier

The NVFC believes that those fire and EMS departments serving communities in the Lowest Risk Tier, those with populations under 25,000 people, should be exempt from the proposed OSHA rules as written and instead have a separate rule that addresses the following risks:

- **Death & Injury in Vehicle Collisions:** All firefighters and EMS responders should be seated and wear seat belts at all times, except to the extent necessary for EMS providers to remove their seat belt in order to provide medical treatment to patients.<sup>4</sup>

Data indicates that injuries and deaths in motor vehicle crashes may be a significant risk at all levels within the fire and EMS services. The data appears to indicate that seat belt use will result in meaningful and measurable decline in firefighter and EMS provider deaths. See Appendix A for additional data.

<sup>4</sup> Also, being seated and belted should not be a requirement for parades, funeral processions, and other low-speed events under controlled conditions.

- **Cancer:** The use of all tobacco products should be prohibited at stations, incident scenes, on apparatus, at training, and generally throughout the fire and EMS workplace.<sup>5</sup> The science and data indicating a strong link between cancer and tobacco use is well studied, and it is more likely than not that tobacco use and firefighting together result in increased occupational cancer for firefighters. While there are few studies on cancer for firefighters in small towns (where the number of fires is low and firefighters have more limited exposures to toxic smoke), tobacco use alone is enough to warrant action until more science and data is available to adequately judge the risk of other cancers in small departments with a low frequency of fires.
- **Cardiac Death:** Cardiac screening should be provided to all fire and EMS providers upon entry into the service, and periodically throughout their service. The periodic period should be no less than every three to five years.

Cardiac death is the largest killer of firefighters at all levels. Many cardiac deaths could be prevented by periodic screening that leads to treatment. See Appendix B for additional data.

While the NFPA recommended medical exam (NFPA 1582) is certainly comprehensive, it covers many medical areas that are not resulting in deaths or injuries to firefighters and EMS providers in small towns. It addresses many areas that do not rise to the level of a significant risk requiring OSHA intervention. For example, the NVFC cannot find data indicating firefighter deaths as a result of hearing loss or eyesight, two exams that would be required annually if the NFPA exam was required by OSHA.

- **Overweight Apparatus:** Apparatus that are overweight should not be allowed and should be removed from service.

While the data tends to show that the problem of overweight apparatus has lessened in recent years, it may still be an issue. A rule that requires trucks to be within their rated weight seems appropriate. Rules requiring the annual weighing of every truck are excessive and unnecessary to solve this problem. Weighing every truck every year, as the current proposal would require, is an extremely expensive approach since the vast majority of trucks are within their rated weight.

- **Water Tank Baffles:** Vehicles carrying more than 999 gallons of water that are not equipped with baffled tanks and antilock brakes shall not be operated in emergency mode within 10-years of this standard being adopted.

There appears to be sufficient crash data indicating that older tankers/tenders and other types of trucks converted to tankers/tenders, that do not have proper baffling of their

---

<sup>5</sup> Many fire stations, especially in small communities, are co-located in town halls, community buildings, community function halls, court houses, and other diverse community use buildings. The smoking rules for the fire station workplace should not extend to the other uses (allowing them to be regulated by state and local laws consistent with their use).



water tanks, or that lack antilock brakes, are involved in a greater number of crashes and more severe crashes.

- **Truck Inspections:** All vehicles shall undergo an in-house, monthly basic safety check using a written checklist. The specifics of which should be decided via a full negotiated rulemaking process with ESO representatives.
- **Stop At Intersections:** All emergency vehicles shall come to a stop at negative right-of-way intersections (stop sign or red light) and may proceed through the intersection only when it is safe to do so.

A review of emergency vehicle crashes indicates that intersection accidents is the leading cause of these crashes. This would rise to the level of a significant enough risk to warrant OSHA action.

- **Training:** The fire and EMS departments shall provide training and education for all members commensurate with those duties and functions that the members are expected to perform. Personnel should not engage in activities for which they have not had training. Additionally, due to strains on their time, particularly in the volunteer space, personnel should not be unnecessarily trained for activities their roles within the department would not require them to perform.

The employer shall ensure that training and education is conducted frequently enough so that each member of the organization is able to perform the member's assigned duties and functions satisfactorily and in a safe manner. Due to the diversity of roles and risks faced by departments, the Authority Having Jurisdiction (AHJ) should have discretion on frequency and type of training needed, provided they follow a baseline criterion that would be established in a full negotiated rulemaking with ESO representatives.

- **Firefighting Equipment Inspection:** The employer shall maintain and inspect, at least annually, firefighting equipment, including personal protective equipment (PPE), to assure the safe operational condition of the equipment. Portable fire extinguishers and self-contained breathing apparatus (SCBA) shall be inspected at least monthly, along with annual fit testing. Firefighting equipment that is in damaged or unserviceable condition shall be removed from service and replaced. Firefighting equipment used at a major incident shall be inspected for damage prior to placing it back in service.

While it was stated in the NVFC's written comments and testimony at the public hearing on this proposed standard, it should be reiterated here that the overwhelming majority of the fire departments in this Lowest Risk Tier have little or no administrative capacity that would allow them to engage in the analysis and writing of detailed policies, procedures, or plans. Most of these departments have no full-time staff of any kind. Additionally, if they are affiliated with a municipality, particularly in a rural area, many of the municipalities they serve don't have full-time administrative staff. Any new rules must be easy to adopt at a low cost and without the need for extensive technical or administrative support.

### **Moderate Risk Tier**

The NVFC further believes that fire and EMS departments in the Moderate Risk Tier should be exempt from the proposed rule as written, but should adopt the rules suggested above for the Lowest Risk departments as well as the following:

- **Policies & Procedures:** Each AHJ over fire and emergency response shall adopt a risk-based approach to promulgating rules, regulations, policies and/or procedures that protect the health, wellness, and safety of responders within its jurisdiction. The specifics of which should be established in a full negotiated rulemaking with ESO representatives. Such an approach shall include, but not be limited to, an analysis of the following:
  - Call type(s) and volume(s)
  - The presence of known or potential hazards as identified by using an adopted Threat Hazard Identification and Risk Assessment Model (THIRA) as provided by the U.S. Department of Homeland Security, FEMA, or other AHJ.
    - Presence of hazardous materials or waste
    - Critical infrastructure protected
    - Building construction type(s)
    - Special occupancies, i.e. schools, hospitals, nursing homes, etc.
    - Transportation modes within the response area, i.e. highway, rail, water, pipeline, etc.
    - Responder training to address the known or potential hazard(s) present in the community.
    - Responder training to ensure that the responders are properly trained, capable, and competent to fulfill their assigned operational role, responsibility, and duties on an emergency incident. Due to the diversity of roles and risks faced by departments, the AHJ should have discretion on frequency and type of training needed.
    - Command, officer, and leadership training based upon the community's risk and the structure and complexity of the department and intended to meet the National Response Framework of the National Incident Management System (NIMS). NIMS is a federally mandated incident management system and any reference to the acceptance of any other management system should be removed from the rule.
- **Annual Skills Testing:** All members shall be provided with critical skill refresher training at least annually and members shall demonstrate they are proficient in the required skills. This training should be based upon the type and frequency of incidents common to the community.
- **Special Operations:** Departments that routinely, not rarely, engage in special operations such as maritime firefighting, aircraft crash rescue, and technical rescue, or that maintain special operations teams, must provide the appropriate training and equipment to any department members who are expected to participate in these activities. The specifics of which should be established in a full negotiated rulemaking with ESO representatives.



For example, while every community might experience an airplane crash, not every community needs aircraft crash rescue training and equipment. Only those with responsibility for an airport, where the risk is reasonably expected to be more than a rare random event, should be required to have aircraft crash rescue training. Likewise, the presence of large marine facilities like ports and main thoroughfares of water-based commerce should necessitate maritime fire training. The existence of a small recreational marina or private docks shouldn't require maritime fire training.

- **Cancer:** Departments should have policies, procedures, training, and equipment to substantially comply with the eleven actions set forth in the NVFC and International Association of Fire Chiefs Volunteer and Combination Officer Section's Lavender Ribbon Report of 2018.<sup>6</sup> This report is available as an exhibit submitted with these comments.
- **Mental Health:** The AHJ shall provide its responders with resources to educate and assist responders to reduce the risk of mental health illness or injuries. The AHJ shall provide awareness level training on responder mental health concerns and available programs, such as the NVFC's First Responder Helpline employee assistance program and Share the Load Program™. Additional information on the NVFC's First Responder Helpline and Share the Load Program can be found in Appendix C.

### **Highest Risk Tier**

The NVFC takes no position or makes no suggestions regarding OSHA regulation and rules for departments in the Highest Risk Tier (population of 100,000 or more), as these departments are almost exclusively career fire departments.

### **Population Isn't Perfect**

The NVFC acknowledges that population isn't the perfect tool by which to regulate fire and EMS departments, but it hasn't found a better way. One example where population doesn't work is in a few areas of the country where fire protection now falls under a county jurisdiction for administrative purposes but the fire departments themselves are somewhat independent and act as individual agencies. In these cases, the population numbers look higher than the individual fire companies are actually operating. Therefore, it is important to discuss why we believe population is the most appropriate metric to use in formulating a tiered approach in regulating fire departments safety when compared to a few commonly suggested alternatives.

- **Budget:** It is sometimes suggested that the budget might be a better way to measure a department's ability to comply with OSHA's proposed rules. And to some extent this is true, which is why we have made the case of economic infeasibility before and will

---

<sup>6</sup> The Lavender Ribbon Report does not specify a specific medical exam. The NFPA 1582 medical exam is one option but is not the only option that is or should be available. Departments should be able to choose options based upon local circumstances including, but not limited to, risk and exposures, availability, distance to medical facilities, and funding.

continue to do so later in these comments. It is often correct to assume that the more money a department or community has, the more resources it can allocate to OSHA compliance. However, there are significant reasons to avoid budget as a measuring tool.

If budget is used as a metric for compliance, then OSHA would create a disincentive to communities increasing funding to their fire and EMS departments. For instance, if compliance was set at departments with budgets of more than \$100,000 per year, lots of departments will have budgets stuck at \$99,000/year because the next \$1,000 of spending will trigger outsized compliance costs.

Budgets are different in how they are designed and what they include (and exclude) from place to place. For instance, some fire departments pay for the heat for their fire station from the fire department budget, but in other communities, the heat for all public buildings is lumped together in a municipal building account. The same is true for utilities, maintenance, and repairs. Many departments get their fuel from a Department of Public Works gas pump and others have to go to a local gas station and pay for it out of the fire department budget.

Additionally, some budgets may look very large at face value, but they can often be obligated to long-term financing of a million-dollar apparatus or fire station construction project/upgrade. Budgets are too complex to unwind in a way that makes for a fair comparison tool.

Similarly, the use of revenue sources, such as municipal budget versus fundraising, has been suggested. The concept being that if the budget is funded from fundraising, it has less stability and is harder to increase. This is true, but it doesn't make a good measuring tool because there are so many different structures and because it is unstable. Using this would create a disincentive for towns to provide municipal funds.

- **Career to Volunteer Ratio:** It may be suggested that departments that are 25% career or more than 50% career should have different rules. These kinds of ratios would be too easy to manipulate by keeping inactive people on the roster or even getting rid of a few volunteers to increase the career percentage.
- **Call Volume or Type:** There is something to be said for call volume or the mix of call types being a good indicator of a department's level of risk. However, the NVFC hasn't found a formula that works. There isn't sufficient data to be able to say how many calls and what mix of call types results in higher or lower risk.

While the smallest departments (those serving communities under 2,500 people generally) that respond to 20 or 80 or 100 emergency calls per year, and only encounter one or two building fires a year, are good candidates for an exemption or lesser rules than busier departments, it has been difficult to define this beyond the two extremes of low volume and high volume.

- **Density:** There are big wide-open spaces in the middle of the country with very low population density where the proposed OSHA rules would be impracticable or result in no fire or EMS protection. The distances involved means there is no central operation, and these places have no resources. On the other side of the coin, density in cities is clearly a factor as to why they have higher risks. However, using population seems to cover these same factors.

Ultimately, population is the best of the imperfect options. Population is not easy to manipulate. Population is determined by the federal census, whose mission is so much more complex than determining OSHA compliance for fire and EMS departments that this won't be a consideration in how the system counts.

### **Combination Fire Departments**

The NVFC believes that career, volunteer, and paid-on-call firefighters and EMS providers working for the same department should be subject to the same OSHA rules, with a couple of specific exceptions. To have different rules for volunteer and career staff would be a management nightmare and would result in poor morale and unnecessary friction between career and volunteer staff.

When the NVFC refers to a "combination fire department," it is referring to any fire or EMS provider that uses career/full-time responders in combination with volunteer, paid-on-call, part-time, per-diem, or auxiliary responders.

The NVFC does not include within the definition of a combination fire department any department where the only full-time or career staff are chief officers, inspectors, fire marshals, or administrative staff. A volunteer department with a full-time chief is not a combination fire department.

The NVFC believes that if a combination fire department falls within the Lowest Risk Tier (Green), as outlined above, all its members need the same OSHA rules for the Lowest Risk Tier. The same is true of combination departments that fall within the Moderate Risk (Yellow) and Highest Risk (Red) Tiers.

The NVFC's observation is that most of the combination fire departments that find themselves in the Lowest Risk Tier, with a population served of less than 25,000 people, are primarily volunteer departments with two to five career firefighters. In this Lowest Risk Tier, volunteer firefighters outnumber career firefighters by at least 7 to 1. A typical combination department with three career firefighters will have 21 or more volunteers in the organization.

The biggest mixing of career and volunteer firefighters and EMS providers comes in the Moderate Risk Tier. Here we find the greatest number of combination departments with a ratio of volunteer to career members to be closer to one to one or about even. It is not uncommon in this population group to find departments with about half their staff career and half their staff volunteer or paid-on-call. However, entirely career and entirely volunteer departments are also common in this tier.

Combination fire departments appear to be the fastest growing segment of our industry and are by far the most difficult to manage and sustain. How OSHA regulates them will have a significant impact on their success or failure. That is why this tiered approach is key and why specific details of the regulation of combination departments, particularly those in the Moderate Risk Tier, should be discussed via a full negotiated rulemaking.

### **Economic Infeasibility of the Proposed Standard**

To support the NVFC's conclusion that the proposed Emergency Response Standard would be economically infeasible for many volunteer departments across the country, we have submitted as an exhibit accompanying these comments data from a budgetary survey the NVFC conducted of its over 30,000 members in mid-2024. This survey received 2,598 responses from 49 states. The data shows each respondent's state, department type (combination, volunteer, other), and budgetary data within certain windows (less than \$10,000; \$10-25,000; \$25-50,000; \$50-100,000; \$250-500,000; \$500,000-1 million; \$1-3 million; \$3-5 million; greater than \$5 million). The chart below summarizes the budgetary data received in the 2,444 respondents that provided their budget.<sup>7</sup>

Budget Window	Number of Responses	Number of Combination Departments	Percentage of Responses
Less than \$10,000	60	3	2.45%
\$10-25,000	142	3	5.81%
\$25-50,000	265	4	10.84%
\$50-75,000	242	3	9.90%
\$75,000-100,000	313	16	12.81%
\$100,000-250,000	534	61	21.85%
\$250-500,000	327	115	13.38%
\$500,000-1 million	216	124	8.84%
\$1-3 million	241	162	9.86%
\$3-5 million	62	42	2.54%
Greater than \$5 million	42	37	1.72%

As stated in the notice of proposed rulemaking (NPRM) for the proposed rule, OSHA generally considers a rule to be economically feasible for an affected industry when the annualized costs of compliance are less than one percent of annual revenues for an average firm in that industry. As the NVFC has previously stated, we believe OSHA's estimated annual cost of approximately \$14,000 for implementing the proposed Emergency Response Standard is significantly underestimated, due to the true cost of the physicals and administrative requirements that would be required by the proposed standard. Even if the \$14,000 estimate is correct, the NVFC's budget survey, with over 2,400 responses, shows that, at minimum, the proposed standard would be economically infeasible for approximately 86% of respondents.

Additionally, as the NVFC has previously stated in our comments and testimony on the proposed rule, it is the smallest volunteer departments that are the most difficult to reach and access

---

<sup>7</sup> Of the 2,598 responses the NVFC received, 154 said they didn't know their budget or preferred not to answer.



information on due to their rural locations, lack of reliable internet connections, and administrative capacity. We therefore believe that the number of responses we received from small departments reflects a much smaller percentage than their actual presence in the fire service.

OSHA estimates in the NPRM that public volunteer fire departments are the only emergency response service group with costs as a percent of revenues estimated to exceed the one percent revenue test, at an estimated 4.99%. The NPRM goes on to say that costs as a percent of locality revenues for public organizations generally range from less than 0.01 percent to 0.16 percent, and in most situations, OSHA expects that the affected community would be able to allocate the very small additional share of the locality revenues necessary to permit the fire department to comply with the standard.

The NVFC will again say that this assumption is extremely flawed. The 4.99% assumption is significantly underestimated, and many volunteer fire departments are 501(c) nonprofits that are not affiliated with municipalities. Additionally, for those departments that are affiliated with municipalities, as OSHA has heard in both written and oral comments and testimonies, leaders of these departments must fight with their municipal leaders to fund essential PPE or to replace a decades-old apparatus. There are also many states with caps on how much department/local budgets can be raised.

As the NVFC has also stated, many municipalities, particularly rural ones, lack the tax base to provide such funding. This is supported by the National League of Cities and National Association of Counties' written comments when they stated among other thing that the "Analysis from the Government Finance Officers Association (GFOA) shows that many local governments have faced stagnant or decreasing budgets due to economic downturns, with emergency services often experiencing budget cuts. This fixed or shrinking budget scenario makes it difficult for fire departments to absorb new costs without impacting services."

In addition to challenges faced with local funding, there is a substantial lack of federal funding to support fire and EMS. Funding fire and EMS is seen as a local responsibility without much needed assistance from the federal and state governments. While state assistance varies a great deal, the overall picture is still one with very limited funding for local fire departments.

As the NVFC has previously stated, the most important federal grant programs that assist fire departments in achieving a baseline level of readiness are the Assistance to Firefighters Grant (AFG) and Staffing for Adequate Fire and Emergency Response (SAFER) grants which are managed by the Federal Emergency Management Agency (FEMA). Through AFG, local departments receive funding to purchase training, equipment, and apparatus as well as pay for health and safety programs. Through SAFER funds, local departments can pay for hiring career firefighters or for recruiting and retaining volunteer firefighters.

While AFG and SAFER grants have been very successful, there is not nearly enough funding available through these programs to adequately address the fire service's need for equipment, training, and staffing. Since FY 2011, funding for both AFG and SAFER has fallen by \$81

million for each program, going from \$405 million to \$324 million. In FY 2024 alone, each program was cut by \$36 million.

In FY 2022, FEMA received approximately \$2.4 billion in AFG grant applications for only \$324 million in available funding, and approximately \$2.8 billion in SAFER funding applications for only \$360 million in available funding. That represents *\$4.5 billion* in unmet need. The NVFC understands that the FY 23 unmet need for these grants was even worse than FY 22, and like FY 22 this amount is understated due to the number of volunteer departments, particularly the smallest departments, who lack the personnel time and expertise to apply for these grants. Other federal grant programs for small departments, like the Volunteer Fire Assistance (VFA) grant program, only have \$21 million in FY 24 funding for the whole country and a cap of \$4,000 per department.

The NVFC and MSA Safety also have a small PPE grant program for volunteer fire departments. In 2024, the NVFC received 735 applications for PPE grants and was only able to fund 52 sets of gear and 52 helmets. All the grant applications are from departments where firefighters are without PPE, have damaged PPE, or have old PPE. This demonstrates the economic problem for the small fire departments, more than half the industry. They have no access to funding for most basic safety equipment.

#### **Small, Economically-Challenged Departments Represent Most of the Fire Service**

The overwhelming majority of fire and EMS departments in the United States, and that OSHA proposes to regulate, are in small towns with the lowest risk of injury and death.

Metro/urban fire departments, serving populations of more 100,000 people, make up only about two percent (2%) of the organizations that would come within OSHA's proposed rule.

Ninety-two percent (92%) of fire departments in the United States serve communities with populations of fewer than 25,000 residents. These are the departments, especially the approximately forty-nine percent (49%) of departments serving communities with fewer than 2,500 residents, that lack the economic and administrative ability to comply with the OSHA proposal as written. In addition, these departments have a significantly lower injury rate than their urban counterparts, and thus less need for OSHA to regulate a significant risk. The chart below explains this further.

Population	Average Number of Fireground Injuries Per Year	Fireground Injuries Per 100 Fires	Fireground Injuries Per 100 Firefighters	Estimated Number of Departments	Percentage Industry Representation (Approximate)
500,000 or More	69.6	1.5	4.5	56	1/4%
250,000 to 499,999	24.6	1.6	5.0	61	1/4%

100,000 to 249,999	7.0	1.1	2.9	250	1%
50,000 to 99,999	3.4	1.4	3.0	483	2%
25,000 to 49,999	2.0	1.7	3.2	1103	4%
10,000 to 24,999	0.9	1.2	2.1	2960	11%
5,000 to 9,999	0.5	1.0	1.5	3703	14%
2,500 to 4,999	0.3	0.9	1.0	4773	18%
Under 2,500	0.1	0.8	0.5	12,933	49%

Tier 1 = 92% of the Fire Departments in the Country (Lowest Risk)

Tier 2 = 6% of the Fire Departments in the Country (Moderate Risk)

Tier 3 = 2% of the Fire Departments in the Country (Highest Risk)

When OSHA regulates an industry, there is typically a small subset of that industry that is unable to comply with OSHA's rules, primarily for economic reasons. The NVFC understands that OSHA's requirement that its rules are economically feasible doesn't mean that every organization affected has the economic ability to comply. However, in the case of the fire service the proposed rules result in an upside-down economic impact: it is only a small subset of the industry that can economically comply with the proposed rules.

### **Conclusion**

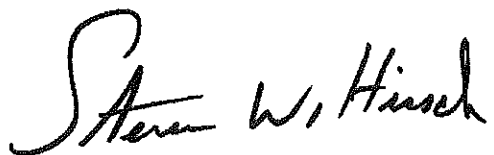
The NVFC appreciates OSHA's attempt to help keep emergency responders safe. At the same time, we are deeply concerned with the one size fits all standard that has been proposed. The current proposal, while well-meaning and maybe appropriate for the largest 10% of the fire and EMS service, shows that OSHA didn't truly understand the small town and volunteer fire and EMS service and the barriers we face, particularly economic and administrative barriers.

Small town fire and EMS departments aren't simply smaller versions of metro/urban fire departments. They are very different organizations with different levels of risk, much fewer resources, different fire problems, and different community expectations. What works for the urban/metro, and even large suburban, fire departments doesn't work for small departments that make up more than half our industry.

The NVFC believes that this tiered approach based on population ranges is a solid one that more accurately reflects needs of significant risk and provides a framework for an economically and technically feasible solution. We strongly advocate that a full negotiated rulemaking process with ESO representatives be employed moving forward to produce a final document that addresses the overwhelming concerns expressed in both the written comments and testimony given during

this rule making process. The NVFC is ready, willing, and able to provide subject matter experts to aid in this process.

Sincerely,



Steven W. Hirsch  
Chair, National Volunteer Fire Council

# **APPENDIX A:**

## **Firefighter Deaths – Vehicle Crashes 2014 to 2022**

### **For Analysis of Proposed OSHA Rules**

Data From U.S. Fire Administration Reports (2022 from NFPA)

	Total Deaths	Unknown Reason for Fire Truck Crash	Fire Truck Crash – Not Mechanical	Personal Vehicle Crash	<b>Crash Due to Mechanical Failure</b>	Other
2022	14					1 in Helicopter Crash
2021	12	2	3	4	0	2 in Aircraft Crash 1 in UTV Crash
2020	15	2	3	4	0	6 in Aircraft Crashes
2019	6	0	3	2	0	1 in Helicopter Crash
2018	12	0	5	6	0	1 Bulldozer Rollover
2017 Messy Math	10	1	5	3	0	1 Struck by Fire Truck
2016	19	1	4	4	3	1 Bulldozer Rollover



			(One was Texting & Driving)		Two Tire Failures.	2 Struck by Fire Truck 1 Jet Ski
2015	5	0	3	0	0	2 in Helicopter Crash
2014	9	0	6	0	1*	2 in Aircraft Crashes
2013	9	?	3?	5	?	1 in ATV Crash
Totals	97	6	35	28	4	21
Percentage	100%	6%	35%	28%	4%	21%

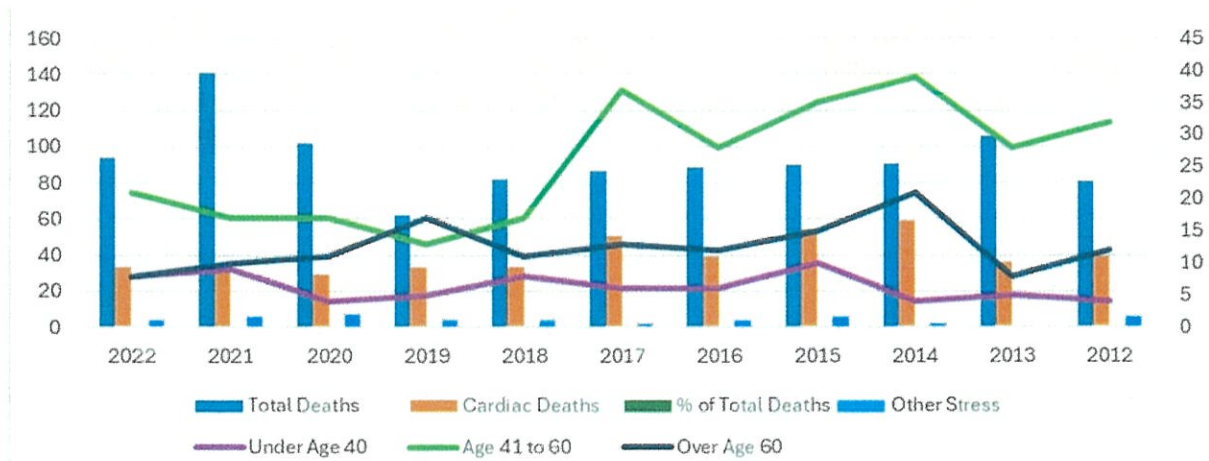
The data indicates that in the 74 crashes where seatbelt use is relevant, that at least 24 of the firefighters killed were NOT wearing seat belts. This represents 32% of the deaths involving fire apparatus and privately owned vehicles. The NVFC feels this indicates a significant risk to the health and safety of firefighters and EMS providers, and that a workplace rule requiring seat belt use is appropriate.

#### **Appendix B:**

##### **Firefighter Cardiac Deaths 2012 to 2022 For Analysis of Proposed OSHA Rules**

Year	Total Firefighter Deaths	Total Stress Deaths	Cardiac Deaths	Other Stress Deaths	% of Deaths Cardiac	Deaths Under Age 40	Deaths Age 41 to 60	Deaths Over Age 60
2022	94	37	33	4	35%	8	21	8
2021	141	39	33	6	24%	9	17	10
2020	102	36	29	7	29%	4	17	11
2019	62	37	33	4	52%	5	13	17
2018	82	37	33	4	40%	8	17	11
2017	87	52	50	2	58%	6	37	13
2016	89	43	39	4	44%	6	28	12
2015	90	60	54	6	60%	10	35	15
2014	91	61	59	2	65%	4	39	21
2013	106	37	36	1	34%	5	28	8
2012	81	45	39	6	48%	4	32	12
Average	93	44	40	4	43%	6	26	13

Below is a chart and graph of the firefighter deaths from 2013 to 2022 resulting from stress or overexertion. Overwhelmingly, these were cardiac-related deaths.



The NFPA's 2020 U.S. Fire Department Profile indicates that the age distribution of the 1,041,000 firefighters in the United States is:

- 16 to 19      3%
- 20 to 29      20%
- 30 to 39      27%
- 40 to 49      23%
- 50 to 59      17%
- 60 +          10%

Regrouping the NFPA Age Data match the firefighter death data above for 2020, indicates:

- The Over 60 Age Group represents 10% of all firefighters (104,120 firefighters +/-) and 30% of cardiac deaths (11 deaths)
- The 41 to 60 Age Group represents 40% of all firefighters (416,480 firefighters +/-) and 59% of cardiac deaths (17 deaths)
- The Under 40 Age Group represents 50% of all firefighters (520,500 firefighters +/-) and 14% of cardiac deaths (4 deaths)

The data shows that the risk of a cardiac death increases as firefighters age. This was not an unexpected result because medical studies and authorities all agree that the risk of heart attacks and cardiac death increases with age for all populations. The American Heart Association (AHA) states that the average age of a person having a first heart attack is 65.5 years for men and 72 years for women.

According to the CDC, the overall death rate for Americans from heart disease is 161.5 people per 100,000 (2019 Data).

**Notes:**

“Other Stress” includes cerebral vascular accident (CVA aka “stroke”), heat exhaustion, and aneurysms. CVAs made up an overwhelming majority of these incidents. The data tended to show that heart attacks and CVAs caused about two-thirds of deaths in the age 51 and over category.

Data was compiled from U.S. Fire Administration and NFPA reports. The two organizations report the data in slightly different ranges and formats, and this results in small differences in the data and minor overlapping data sets. These differences and rounding result in some columns and rows not adding up to 100%.

**Appendix C:**

- **NVFC First Responder Helpline**

The NVFC’s First Responder Helpline provides confidential, 24/7 assistance to help NVFC members better cope with the unique stressors of emergency responders, like high levels of risk, unpredictability, and the juggling of fire service responsibilities with full time jobs and family commitments that volunteer firefighters face.

This assistance program provides NVFC members and their household family members with immediate assistance in a crisis moment as well as confidential counseling, resources, and referrals to assistance for a range of issues, including:

- Stress management
- Family conflict
- Anxiety/depression
- Relationships
- Financial or legal concerns
- Addictions/gambling problems
- Grief or loss
- Child or elder care

As needed, First Responder Helpline counselors can provide referrals related to insurance benefits and community resources. For additional information on the NVFC First Responder Helpline please visit: <https://www.nvfc.org/helpline/>

- **NVFC Share the Load Program™**

NVFC’s Share the Load™ program provides access to critical resources and information to help first responders and their families manage and overcome personal and work-related problems. This includes the Directory of Behavioral Health Professionals as a resource to find local assistance for behavioral health issues. For additional information on the NVFC’s Share the Load™ visit [www.nvfc.org/help](http://www.nvfc.org/help).





January 17, 2025

The Honorable Douglas L. Parker  
Assistant Secretary of Labor for Occupational Safety and Health  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Legal Comments: Docket ID: “Emergency Response Standard” (Emergency Response) Rule  
[Docket No. OSHA-2007-0073] (RIN 1218-AC91)

Dear Assistant Secretary Parker,

On behalf of the National Volunteer Fire Council (NVFC) and the Center for Individual Rights (CIR) we offer the following legal comments regarding the proposed rule the Occupational Safety and Health Administration (OSHA) published in the Federal Register entitled “Emergency Response Standard.” As both of our organizations have stated in previous comments we believe there are a number of issues within the proposed standard that leave it open to legal challenges. Among these issues are economic infeasibility and the incorporation by reference of industry consensus standards.

The NVFC serves as the national voice for the over 676,000 volunteer firefighters comprising 65% of the nation’s fire service. The NVFC formulates this national voice via our Board of Directors, which are appointed by state firefighter associations from 48 states. Since 1976, the NVFC has been the leading nonprofit membership association representing the interests of the volunteer fire, EMS, and rescue services. The NVFC provides critical resources, programs, education, and advocacy to support the interests of volunteer first responders across the nation.

CIR is a national nonprofit public interest law firm that litigates to defend constitutional protections for individual rights. To that end, CIR represents individuals *pro bono* in courts throughout the United States. CIR has seven appearances and five victories in the Supreme Court of the United States and numerous victories in other courts throughout the United States. CIR focuses on constitutional guarantees for civil liberties that protect individual rights and promote human flourishing. Those guarantees come in part from structural limits on government, such as the separation of powers and federalism.

#### **Economic Infeasibility**

As we have stated in previous public comments on this proposed standard, both CIR and NVFC find the proposed standard economically infeasible for many small and volunteer fire departments to comply with and could result in some shutting down. This economic infeasibility results from the proposed standard’s substantial burdens of documentation, training, time,



equipment, and medical requirements for individual firefighters, as well as increased risks of civil liability for fire departments.

As stated in the notice of proposed rulemaking (NPRM) for the proposed rule, OSHA generally considers a rule to be economically feasible for an affected industry when the annualized costs of compliance are less than one percent of annual revenues for an average firm in that industry. As the NVFC has previously stated, we believe OSHA's estimated annual cost of approximately \$14,000 for implementing the proposed Emergency Response Standard is significantly underestimated, due to the true cost of the physicals and administrative requirements that would be required by the proposed standard. The NVFC conducted a budget survey of their members and received 2,400 responses. 86% of respondents indicated their budget was less than \$1 million. This means even if the \$14,000 annual cost estimate is correct, the proposed standard would be economically infeasible for at least 86% of the respondents to the NVFC's budget survey.

OSHA's assumption that the localities associated with volunteer fire departments could alleviate the economic burden of this proposed standard is fundamentally flawed. Many volunteer fire departments are 501(c) nonprofits that are not affiliated with municipalities. Additionally, for those departments that are affiliated with municipalities, as OSHA has heard in both written and oral comments and testimonies, leaders of these departments already struggle to get their municipal leaders to fund essential PPE or to replace a decades-old apparatus. There are also many states with caps on how much department /local budgets can be raised.

#### **Incorporation By Reference of Industry Consensus Standards**

The incorporation by reference of numerous private industry consensus standards that are not practically available violates both statutory and constitutional protections. CIR and The NVFC also agree with the Small Business Administration's (SBA) Office of Advocacy's comments stating: "While the materials do reflect "consensus," that consensus is only among those who participated in the standard development process, which were generally large, well-funded organizations (who are able to voluntarily follow them) and others with an interest in the outcome. They do not reflect what most small entities can do, and most small entities were not included in the process."

As CIR previously stated in their comments on the proposed standard, incorporation of industry consensus standards violates the Freedom of Information Act (FOIA). Both the NVFC and CIR agree that the proposed rule violates both the letter and spirit of the statute. Here, OSHA has locked up legal obligations behind nearly two-dozen individual consensus standards (themselves incorporating many more standards), each at a significant cost to the regulated public.

It requires first responders, including volunteer organizations on which large numbers of rural populations depend for vital public services, to pay for the privilege of complying with legal mandates. And even if some, but not all, can be viewed online in a read-only format, it can hardly be said that they are "reasonably available" to emergency services workers, who lack the administrative capacity to pore over complex technical requirements in dozens of voluminous sources. Additionally, many rural fire departments lack access to reliable internet to access these

standards in a read-only format. Congress designed the Code of Federal Regulations and the related FOIA provisions to avoid precisely this outcome.

The NVFC also agrees with CIR's analysis and conclusion in their previous comments on the proposed Emergency Response Standard that this standard would force emergency responders and the public to pay for the law and it is therefore unconstitutional. We agree that if OSHA adopts the Emergency Response Standard without addressing these problems, it will be vulnerable to a challenge under the Administrative Procedures Act. 5 U. S. C. §706(2)(A). A regulation is arbitrary or capricious within the meaning of the APA if it is not "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U. S. 414, 423 (2021). such as reliance on private standards inaccessible to the regulated public. In short, the proposed rule should be withdrawn.

### **Conclusion**

The proposed standard is economic infeasible, arbitrary, capricious and incorporates by reference limitedly available industry consensus standards. For these reasons, among other legal and feasibility related matters raised in these and other comments filed by the CIR and NVFC in this docket, we urge OSHA to withdraw the proposed Emergency Response Standard as written.

Sincerely,

/s/ Steven W. Hirsch

/s/ Caleb Kruckenberg

Steven W. Hirsch  
Chair, National Volunteer Fire Council

Caleb Kruckenberg  
Litigation Director, Center for Individual Rights

