



**Stakeholder Perspectives on OSHA’s Proposed Rule
to Update the Fire Brigades Standard**

Statement of

**Chief Joseph Maruca (Ret.)
Director, National Volunteer Fire Council**

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NATIONAL VOLUNTEER FIRE COUNCIL
712 H STREET, NE, SUITE 1478 • WASHINGTON, DC 20002

Good morning, Chair D’Esposito, Ranking Member Carter, and distinguished members of the subcommittee. My name is Joseph Maruca and I am a firefighter with 45 years of experience. In April, I retired as chief of the West Barnstable Fire Department on Cape Cod, Massachusetts and I served as a volunteer firefighter from 1977 until becoming chief in 2005. West Barnstable is a combination fire department with five career firefighters/paramedics and 45 volunteer firefighters.

Additionally, I represent Massachusetts as a Director of the National Volunteer Fire Council (NVFC) and I have represented the NVFC as Chair of the National Fire Protection Association’s (NFPA) 1917 Technical Committee, which is the Standard for Automotive Ambulances. During my time as a volunteer firefighter, my other career was practicing as an attorney concentrating on estate planning. On behalf of the NVFC, I’d like to thank the Subcommittee for holding this important hearing and allowing me to have the opportunity to speak about the Occupational Health and Safety Administration’s (OSHA) proposed Emergency Response Standard.

The NVFC serves as the national voice for over 670,000 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 47 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.

Position on OSHA’s Proposed Emergency Response Standard

On February 5, 2024 the OSHA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register for a proposed new “Emergency Response Standard” [Docket No. OSHA–2007–0073]. This proposed would replace the agency’s “Fire Brigades Standard” (29 CFR 1910.156). The public comment period for OSHA’s proposed Emergency Response standard is currently scheduled to conclude on July 22, 2024. The publication of this proposed standard is the latest step in a rulemaking process dating back to 2007, which has involved a request for information in 2007, a National Advisory Committee on Occupational Safety and Health (NACOSH) Emergency Responder Preparedness Subcommittee in 2015, and a Small Business Advocacy Review (SBAR) panel in 2021. The NVFC was represented on the NACOSH and SBAR panels.

The NVFC appreciates OSHA’s efforts to promote our mutual goal of ensuring firefighter safety by putting forth this proposed Emergency Response Standard. We believe the proposed standard contains many provisions that would serve the fire service well and protect the wellbeing of firefighters. However, if adopted as written, this proposed standard would be economically infeasible for volunteer fire departments to comply with and could cause many of these departments to shut down. This proposed standard could also compromise the safety and emergency response capabilities of many small communities, particularly small communities in rural areas.

In addition to its economic infeasibility, this proposed standard would be problematic due to a number of other factors including: the incorporation by reference of industry consensus standards, numerous ambiguities on how volunteers would be covered, the lack of personnel

expertise and availability to facilitate implementation, and an unrealistic proposed timeline for implementation. For these reasons, the NVFC would like OSHA to exempt volunteer firefighters from this proposed standard.

Scope of the Proposed Standard

The new Emergency Response Standard would be broader than OSHA's current Fire Brigade Standard. The NPRM for the proposed Emergency Response Standard is very unclear on which volunteer fire departments and personnel would be covered by the standard.

The NPRM contains a section that lists the SBAR panel's recommendations and OSHA's responses. Some of these recommendations include OSHA's need to clearly explain who falls within the scope of the standard and determine which states consider volunteer firefighters as employees who would be covered by the standard. OSHA responds to these recommendations, explaining that both the text of the proposed standard and the NPRM address which volunteers would be covered by the proposed standard. However, there are many variables like compensations level, department structure/funding sources and location that may impact how volunteers fall within the scope of this proposed standard that OSHA still doesn't adequately explain.

Paragraph A of the proposed Emergency Response Standard is supposed to address scope. Paragraph A does explain how emergency response organizations and the personnel of these organizations would fall within the scope of the standard but doesn't delve further into specifics and leaves many unanswered questions regarding these variables mentioned above.

The NPRM attempts to shed light on some of these specifics. Regarding compensation, it explains that while the Occupational Safety and Health (OSH) Act does not apply to volunteers, some workers labeled as volunteers may actually be considered employees under Federal law because they receive a certain level of compensation, which may include the direct payment of money or other types of remuneration. Therefore, any emergency responders who are referred to as volunteers but receive "significant remuneration" within the meaning of Federal law would be included within the scope of this proposed standard as employees. However, the NPRM does not define significant remuneration.

The NPRM goes on to explain that the OSH Act does not include the United States (not including the United States Postal Service) or any state or political subdivision of a state. However, there are 29 States with OSHA-approved State Plans and there is variability as to whether volunteer emergency responders are classified as employees under state law within these states.

In the states with OSHA-approved State Plans, each state determines what types of volunteer emergency responders it covers, and to what extent they are covered. This determination of coverage is based upon the state's definitions of what volunteers are considered employees and whether or not volunteer organizations are covered by state legislation relating to the OSHA-approved State Plan. Volunteers considered employees by states with OSHA-approved State Plans would be covered by this proposed Emergency Response Standard, because these states are obligated to promulgate a standard that is "at least as effective" as OSHA's proposed Emergency

Response Standard. Additionally, regardless of state law, any volunteers who receive “significant remuneration” in States with OSHA-approved State Plans would also fall within the scope of this standard due to the obligation mentioned above. The NPRM goes on to explain that 20 of the 29 States with OSHA-approved State Plans are assumed to classify volunteers as employees that would be covered by the proposed emergency response standard.

Though the NPRM explains a great deal about how volunteers may be covered by the proposed Emergency Response Standard, it leaves a lot of ambiguity. For example, OSHA says they believe that volunteer emergency responders rarely receive compensation substantial enough to render them employees under this “significant remuneration” legal test, however they do not provide a definition for “significant remuneration.” However, in 2006 the Department of Labor estimated 30 percent of all volunteer firefighters are paid a small fee for each fire call to which they respond. The NVFC is concerned about the accuracy of OSHA’s determination that the “significant remuneration” threshold would rarely be triggered without them defining what “significant remuneration” is.

While the NVFC strongly believes the best course of action would be to exempt volunteer firefighters from this proposed Emergency Response Standard, a better metric to define a volunteer based off compensation would be “20 percent rule” as defined in the Department of Labor’s August 7, 2006 opinion letter, which extends the application of the 20 percent rule to volunteer firefighters. The letter explains “generally, an amount not exceeding 20 percent of the total compensation that the employer would pay to a full-time firefighter for performing comparable services would be deemed nominal.” Due to the nature of firefighting and the difficulties faced with recruitment and retention we also suggest that this “20 percent rule” exclude the value of overnight lodging in the firehouse while on call, insurance policies that are comparable to those of career firefighters in the region, and length of service award programs (LOSAPs).

Additionally, the NPRM says states with an OSHA-approved State Plan do not define “employee” in a standard way. Therefore, determining which employees are covered is not straightforward. For example, some states may provide benefits in the form of insurance and tax benefits to volunteers that might affect whether they are considered employees. Some State Plans may also extend OSHA protections to volunteer firefighters but not to volunteer EMS providers or other non-firefighting volunteers, while other State Plans extend OSHA protections to all volunteers or to no volunteers. There are also four states and territories in which OSHA was unable to determine whether volunteers are considered employees under their State Plans.

The NPRM is also inconsistent with its estimated number of volunteers that would be covered by the proposed Emergency Response Standard. In one part of the NPRM OSHA says the “of the 1,054,611 emergency responders anticipated to fall within the scope of the proposed rule, 331,472 will be self-identified as volunteers.” Later, a chart in the NPRM says 187,621 firefighters in volunteer departments and 100,417 firefighters in combination or “mixed” departments would be impacted, a total of 288,038 firefighters in volunteer and combination fire departments.

The NVFC is also concerned that OSHA is unaware of the varied ways fire departments are funded and how they are organized. Funding can come in the form of local taxes, federal grants, and/or self-fundraising and the degree to which each of these funding sources make up a fire departments revenue vary greatly. The NVFC is particularly concerned about OSHA not being aware of fire departments that are organized as nonprofit organizations and are unaffiliated with any municipality or political subdivision in states without an OSHA-approved State Plan. Volunteer firefighters in these departments that are compensated in a matter that is consistent with “significant remuneration” could fall within the scope of this proposed standard regardless of the state they work in.

The NVFC is also very concerned about state level Departments of Labor being pressured into adopting this proposed standard regardless of whether the state has an OSHA-approved State Plan. The NVFC has heard from our members in states without OSHA-approved State Plans that their state Department of Labor have expressed the possibility that they could be pressured into adopting the proposed Emergency Response Standard if it is adopted by the 20-plus State Plan states. Additionally, the NVFC’s membership is very concerned that this proposed Emergency Response Standard may become the standard of compliance for the purpose of seeking municipal/department insurance or for civil litigation regardless of the state a municipality and fire department are located in.

In reviewing the NPRM for OSHA’s proposed emergency response standard, the NVFC believes OSHA does not adequately meet the SBAR panel’s recommendation of clearly explaining which volunteer departments and firefighters would be impacted by this standard. The NVFC also believes that OSHA does not have a complete understanding of how far-reaching the scope this proposed Emergency Response Standard could have on the volunteer fire service. The NVFC therefore recommends that the volunteer fire service be excluded from OSHA’s proposed Emergency Response Standard.

Economic Feasibility

All- and mostly-volunteer fire departments, protect 82 percent of the nation’s communities and 30 percent of the population. Small rural communities are almost exclusively protected by volunteers. According to the National Fire Protection Association (NFPA), most volunteer firefighters (95 percent) serve in departments that protect fewer than 25,000 people. Approximately half (48 percent) of volunteer firefighters are with small, rural departments that protect fewer than 2,500 people.

Many fire departments, especially small volunteer departments, face major obstacles such as basic staffing and equipment needs. National needs assessments of the nation’s fire service consistently show that volunteer departments have difficulty affording up-to-date equipment, training, and apparatus. This is primarily for economic reasons. Because fire protection services are funded at the local level, the resources available to each department are dependent on the local tax base, or the capability to fundraise, which can be very restrictive and limited in small, rural communities.

Additionally, some departments are entirely self-funded with fundraising efforts like pancake breakfasts, chicken dinners, and bingo nights. When a single piece of apparatus can cost \$1

million or more, these poses a tremendous challenge. These efforts are often labor intensive with low yields. The SBAR panel recommended to OSHA that they do more to take into account the economic feasibility of this proposed Emergency Response standard on departments that self-fundraise. The NVFC believes the NPRM still doesn't adequately accomplish this.

The NVFC conducted a survey of our membership and asked about department budgets. Of the 1,766 responses we received 18.5% said their department's budget was less than \$50,000, and an additional 10% said their department's budget is between \$51,000 and \$75,000.

The profile of a typical call/volunteer fire department in a Massachusetts Town of 2,500 people or less is as follows:

- 17 Call or Volunteer Firefighters on Staff
- 0 Part-Time Firefighters on Staff
- 0 Career Firefighters on Staff
- 2 Auxiliary or Support Firefighters
- 1 Junior Firefighter/Explorer
- 2 Dedicated EMS Providers (who are not firefighters)
- Has an annual budget of \$74,932
- Spends \$2926 per year on training
- Serves a community with a population of 1342 people
- Provides EMS First Response/First Aid
- Provides no Ambulance

Operating with an average annual budget of about \$75,000, these fire departments barely subsist and have no financial capacity to do anything more. These departments struggle to pay for fuel, maintain their trucks and building, and purchase basic replacement gear and supplies.

The 2021 SBAR panel recommend that OSHA make the proposed standard less prescriptive and more scalable with performance-based provisions, where practical, and where possible tailor the standard for small and volunteer fire departments. Though OSHA did make some effort to make this proposed emergency response scalable, much more needs to be done. It is infeasible to have a department similar to the one described above adhere to an Emergency Response Standard that is nearly identical to the Emergency Response Standard that a large, well-funded department such as Boston has to comply with.

Massachusetts fire departments cannot grow much beyond 2.5% per year because state law caps municipal tax levy increases to 2.5% per year, unless the town votes at an election to increase the levy beyond 2.5%. Many other states have similar caps. This means that the typical Massachusetts department sees its budget increase no more than about \$1,875 per year. Department budgets are not keeping up with inflation.

To make up the difference between income and expenses, these departments often have to fundraise or apply for grant funding. This becomes increasingly difficult when a department of this size has to purchase additional equipment or an apparatus like a fire truck which can add thousands to millions of dollars in expense to a department budget.

The Colorado Fire Service recently estimated that the average cost to equip a single firefighter with bunker coat, bunker pants and boots is \$4,600 and this rises to \$16,500 when you include self-contained breathing apparatus (SCBA). This financial squeeze on small departments has only been made worse by increasing prices. Between 2018 and 2023 the average cost of turnout gear increased by approximately 35-40%, while the cost of SCBA increased by 32%.

Some of the specific challenges revealed in the most recent NFPA Needs Assessment of the U.S. Fire Service include major issues providing firefighters with personal protective clothing (PPC) and personal protective equipment (PPE). In fact, more than half of all fire departments cannot equip all personnel with SCBAs. Departments protecting less than 10,000 people have the highest rates of unmet need for necessary and life-saving SCBA equipment. When it comes to PPC availability in the smallest departments, 75% have at least some PPC that is older than the 10-year lifespan recommended by the NFPA and 57% of all fire departments cannot afford to equip all their responders with wildland fire PPC.

Volunteer fire departments also face major challenges with staffing, recruitment, and retention. Between 2010 and 2020 the number of volunteer firefighters nationwide dropped 12%. Since 2000, the percentage of firefighters over the age of 50 serving in communities with populations of 2,500 or fewer residents has surged from 18.9 percent to 34 percent. In some areas around the country, there are communities where the entire volunteer fire department is over 50 years old. Understaffed departments do not have the human resources needed to implement broad-sweeping requirements such as those outlined in the proposed standard. Doing so would further increase the time burden placed on volunteers and exacerbate the recruitment and retention problem.

Some of the largest factors impacting retention and recruitment of firefighters are the transformation taking place across rural America, along with increased mental and physical fatigue. As jobs leave small towns and young people move to the cities and suburbs in search of work, there are fewer people available to volunteer as emergency responders. As call volumes have risen and the amount of training required to serve as a firefighter has increased, it is increasingly difficult to convince people to volunteer. Additionally, the COVID-19 pandemic, increased hazmat incidents caused by lithium-ion batteries, increasing wildland fires, and other factors have all made being a firefighter more taxing and the need for additional firefighters more pressing.

Federal grants and national organizations like the NVFC have done a great deal to assist volunteer departments in receiving the resources they need, but as seen in the data provided above there is still a large, unfulfilled need for these resources. 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's (FEMA). AFG and SAFER are competitive grant programs that provide funds to fire departments to help them reach a baseline level of preparedness. 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 for 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, 10% of AFG funding is used for Fire Prevention and Safety grants, and approximately \$2.8 billion in SAFER funding applications for only \$360 million in available funding.

Additionally, Congress has allowed the authorizations of AFG and SAFER lapse as of the end of FY 2023 and still hasn't passed reauthorization legislation with the September 30th statutory sunset date for these programs less than 4 months away. Regardless of whether this standard is adopted as written, the NVFC urges Congress to pass the reauthorization of AFG and SAFER grants without delay and to increase funding for each of these critically important grant programs.

The NPRM estimates the average cost of OSHA's proposed Emergency Response Standard to be an average approximately \$14,000 for each volunteer department. Absent a dramatic increase in AFG and SAFER funding, volunteer departments would not be able to comply with its proposed standard.

Volunteers still step up to the plate every day to stretch every dollar, by paying for gear and training out of their own pocket and providing maintenance on trucks just to get them out the door. The NVFC has also done its best to assist volunteer departments in receiving the resources they need with protective PPE and helmet giveaways, small grant programs made possible by our corporate partners, a Mental Health Helpline, free training, and numerous guides and resources. Through a SAFER grant, the NVFC also established the Make Me a Firefighter program (MMAF), the first and only national recruitment and retention campaign to help departments maintain or increase staffing levels. However, like the federal funding available, the need for these resources is greater than what can be provided.

With our understanding of the nation's volunteer fire service and the data provided above, the NVFC strongly believes that many volunteer fire departments throughout the country will not be able to comply with OSHA's proposed emergency response standard. This lack of compliance will not be due to inconvenience or a lack of desire. The staffing and funding needed to do this just doesn't exist. This standard would not meet its goal of improving firefighter safety if it sets impossible standards for departments to meet.

Additionally, the small departments referenced above are often the only emergency responders within miles and sometimes hours of response time away. More firefighters and communities will be placed at risk if they are required to comply with this prohibitively difficult standard in order to operate as department resources would be stretched even thinner, and some departments would be forced to close.

The NPRM also argues that this proposed rule is not an unfunded mandate on state or local government because the agency's standards do not apply directly to state and local governments.

To make this argument OSHA says that it is only states with voluntarily adopted an OSHA-approved State Plan that must adopt a standard at least as effective as the Federal standard that applies to state and local government agencies. However, it is unrealistic to assume that states would be easily able opt out of their OSHA-approved State Plans because of this proposed rule. Therefore, the NVFC believes this proposed rule would effectively be an unfunded mandate.

The NPRM does concede that OSHA is concerned with the potential “downstream” economic impact the proposed rule may have on emergency response organizations with volunteer responders. Through the NPRM, OSHA encourages stakeholders to engage with local and state officials about reducing potential impacts of the proposed Emergency Response Standard.

In the NPRM, OSHA says it understands that negative financial impacts on volunteer emergency response entities could have undesirable public safety implications. OSHA also says that they considered the possibility of excluding certain categories of emergency response organizations from certain provisions of the proposed rule based on organization size, funding source, and/or the number of emergencies responded to each year. However, OSHA said they decided not to because it was unable to determine any appropriate exclusions in light of their obligation to ameliorate significant risks to employees where economically feasible. The NVFC believes the data expressed above about the economic infeasibility of this proposed standard should make a sufficient argument for volunteer firefighters to be excluded from the proposed standard.

Particularly Burdensome Requirements Contained in the Proposed Standard:

As mentioned previously in this testimony, the proposed Emergency Response Standard contains numerous requirements that would be prohibitive and economically infeasible for volunteer departments to comply with. Particularly problematic would be the incorporation by reference of over 20 NFPA and American National Standards Institute (ANSI) industry consensus standards. The incorporation of these standards by reference would pose a number of issues.

First, most of these standards are updated every three to five years and if a current standard is incorporated by reference into the proposed standard, it will remain fixed and require a Federal Register notice to be updated within the Emergency Response Standard. Second, NFPA is in the process of consolidating many of its standards and it is not clear how these standards would be impacted if they’re incorporated by reference and are consolidated into other standards afterwards. Third, is the lack of access to these standards. NFPA standards are available to view for free online, but printed copies of these standards are not free. This limited access of NFPA standards is particularly problematic since many volunteer fire departments in rural areas lack reliable internet access.

Finally, the NVFC believes these industry consensus standards are excellent as best practice that departments should strive to comply with as much as resources permit them to do so. The NVFC also has great respect for the process through which these standards are produced and has representatives on over 20 NFPA technical committees that inform the content of these standards. However, many volunteer fire departments do not have the economic, staffing and administrative resources to comply with these standards and the NVFC strongly believes they should not become law by being completely or partially incorporated by reference into OSHA’s proposed emergency response standard.

Some standards incorporated by reference that would be particularly burdensome include NFPA 1582. NFPA 1582 contains provisions for an occupational medical program that is designed to reduce risks and provide for the health, safety, and effectiveness of firefighters while performing emergency operations. For AFG grant award purposes, the estimated cost an NFPA 1582 medical exam between \$1200 and \$1400, however many NVFC members have been quoted much higher costs for these physical exams for firefighters and per the economic data above, would be overwhelming for many departments. Incorporation of this standard is an example of where OSHA tried to make the proposed Emergency Response Standard scalable, only requiring a full NFPA 1582 medical exam after a firefighter is exposed to 15 combustion products exposure events per year. However, the NVFC would like more clarity on what the definition of a combustion products exposure event.

Another burdensome standard partially incorporated by reference into this proposed standard would be NFPA 1910. NFPA 1910 contains requirements for establishing an inspection, maintenance, refurbishment, and testing program for emergency service vehicles and marine firefighting vessels and provides the minimum job performance requirements including the requisite knowledge and skills for emergency vehicle technicians. Incorporating this standard by reference would require all fire apparatus to be inspected weekly or within 24 hours of responding to an emergency. Inspections would have to be conducted by staff who are trained in chassis inspection. This would also require periodic comprehensive, diagnostic inspections of up to 70 components within an apparatus. This could be prohibitive for small departments that have a single apparatus and lack the staffing and expertise to conduct such an inspection.

NFPA 1021 would also be incorporated by reference into the proposed Emergency Response Standard. This is the standard for fire officer professional qualifications and contains the minimum job performance requirements including the requisite knowledge and skills to perform fire officer duties through four progressive levels of qualification. Level 1 is a tier for an entry level/first-line supervisor, company officer, or team leader. Level 4 is the top level or top tier for the chief. Incorporation of this standard by reference would again fall into the burdensome one-size-fits-all approach of this Emergency Response Standard.

These courses require hours of training in addition to the hundreds of hours of training volunteers have to go through while balancing career and family obligations. Additional training requirements can severely impact recruitment and retention efforts, therefore much care needs to be taken in evaluating what training is essential for officers in small volunteer departments. In many cases, the NFPA 1021 courses provide training that are not essential to officers in these departments. Additionally, availability of training is a particularly large obstacle many volunteers face, specifically those in rural areas. In speaking with NVFC members and other fire service stakeholders, the NVFC has learned that NFPA 1021 Fire Officer 3 training is only offered in 26 states. Unfortunately, this lack of availability is not unique to Fire Officer 3.

The NFPA standards mentioned above only address a small portion of the burdens small volunteer departments would be faced with if over 20 industry consensus standards are completely or partially incorporated by reference into OSHA's notice of proposed Emergency Response Standard. There are also other requirements outside these standards included in

OSHA's proposed rule that would be extremely burdensome to volunteer departments. These include a number of written planning requirements and procedures that require administrative staff and expertise that small volunteer departments lack. Additionally, such expertise may not be available in rural areas and may require expensive outside consultants. There would also be a number of on-scene requirements like identifying and clearly labeling control zones that again would require time and personnel that many small volunteer departments would not have when arriving on scene.

Finally, the implementation timeline for the proposed standard ranges from 2 months to 2 years depending on the paragraph. Volunteer departments, particularly small departments in rural areas would not be able to comply with this timeline. As previously mentioned, many of these departments would not be able to comply with certain provisions in this standard at all, while other provisions would require at least a decade for volunteer departments to comply with.

Conclusion

The NVFC again thanks the Subcommittee on Emergency Management and Technology for holding this important hearing and for the opportunity to testify. We also thank Chair or Commissioner D'Esposito for his years of service as a volunteer firefighter and his leadership in ensuring volunteer firefighters can safely perform the duties, while not compromising their ability to serve their communities.

While we appreciate OSHA's commitment to firefighter safety, for the reasons explained in this testimony, the NVFC urges OSHA to exempt the volunteer fire service from their proposed Emergency Response Standard. The NVFC looks forward to working with OSHA on ways we can promote firefighter safety without compromising emergency response in communities served by volunteer fire departments.