

Distinguished members of Congress and honored guests, my name is David Denniston, and I am Vice President of the Association of Fire Districts of the State of New York. I also serve as a Fire Commissioner of the Virgil Fire District. Virgil is a small, rural community in Upstate NY, just south of Syracuse. We have approximately 2,500 residents with an annual household income of \$78,000 and average home value of \$162,000. The Virgil Fire Department is a 100% volunteer department with 35 active members and an annual budget of \$280,000. We are not the largest department in New York State, but we certainly are not the smallest either. We represent an average sized department in the Upstate NY region. Many of you on this committee either live or represent small, rural towns just like ours. I would ask you to consider the impact this proposed rule would have on communities you have been elected to represent. What would happen in your communities if a citizen called 911 and there was no emergency services agency to respond because they were unable to meet a federal standard?

As a Fire Commissioner, I have been reviewing the proposed Emergency Response Rule and exploring the impact it would have on Fire Districts. I am also working with Authorities having Jurisdiction across New York State with the Association of Fire Districts of the State of New York. I would be remiss if I did not share that I am not alone in my feelings that the proposed rule, would have devastating effects on our ability to operate and provide fire protection to our communities. The hardest hit will be the small rural all volunteer departments. While we wholeheartedly agree that changes and enhancements are needed to the 40 plus year old current standard, this proposed rule is neither economically nor technically feasible for our districts. These are two fundamental requirements of any OSHA rule, and the agency has fallen far short in these areas. The proposed rule is both arbitrary and capricious as both the process and logic used to support these new requirements are severely flawed. OSHA neither followed the required full negotiated rule making process nor did it include adequate representation of the volunteer fire service, which covers 65% of this country.

Just this week I met with over 40 fire chiefs from the state of Indiana. Only 8 of the 40 chiefs even knew this proposed change existed. OSHA has also failed to follow the Federal Information Quality Act, and several of the data sources cited in the proposed rule change are not representative of all departments. For example, OSHA references the Firehouse Magazine Annual Run Survey. This document is not statistically significant in any fashion, and yet has been used as a main source of data that will make it nearly impossible for small and rural fire departments to function. Based on this report, OSHA believes the average fire department budget in the United States is 1.7 million dollars. We do not have a single all-volunteer department in my county that has an annual budget of 1 million dollars, let alone an average of 1.7 million.

We compliment OSHA on trying to make first responders safer. I have dedicated my life to this effort, and currently present fire leadership and safety training courses across the U.S. in firehouses, conferences, and virtually. I have personally taught over 35,000 students on these subjects. While we have a lot more work to do, this proposed rule is not the answer. I believe that OSHA had the best of intentions in this process, it has fallen short of producing an accurate picture of the fire service in the United States. OSHA has also failed to show data or a significant risk that supports many of the changes proposed. Both fire service injuries and deaths are on a decline over the past several years, while at the same time the thresholds to be considered a line of duty injury or death have been lowered.

The largest hurdle of all is the incorporation of 22 different NFPA standards into the rule. This takes a somewhat manageable rule from 40 pages to over 3000. The 1500 plus "Shalls" and "Musts" make it overwhelming at best. Based on their incorporation, OSHA appears to be under the impression that the current NFPA standards are for being followed by agencies across the country. This is not the case. I work with thousands of departments across the U.S. and have yet to find one that comes close to meeting these standards entirely.

In our opinion, OSHA has failed to follow many of the procedures and rules it is governed by. One could argue that the door has been left wide open for legal challenges should this proposed rule be adopted as presented. This is neither our desire nor intent. We are simply asking that the process be reopened, more transparent, better communicated, and the rule be rewritten using reliable data with the assistance of equal representation by those that it will affect. By working together, we can craft a new rule that will not only be attainable but will also do a better job protecting those that risk their own lives to benefit their communities.

I would offer the following proposals:

- 1) If OSHA is truly interested in having input and working with the fire service, we need to extend the comment period deadline until at least 9/21/24. As I already stated, as have several others in their public comments, the fire service in general is just becoming aware of this process and proposed rule. It has not been communicated well to the department level. The 608-page document takes time to read and digest. I personally have hundreds of hours invested at this point and I still am trying to absorb all the details. It took OSHA several years to write this proposal, and yet they want to give only 90 days for others to communicate and understand it. The two short extensions now by OSHA are appreciated, but we simply need more time.
- 2) Remove the incorporated by reference NFPA standards and replace them with the desired and relevant wording in the rule itself. Doing so will produce an understandable, clear document that does not require hours of research, digesting, and trying to sort out where the actual rule conflicts with the incorporated standard as it has currently done.
- 3) Consider tailoring specific requirements within the standard to four segments of the fire service. This proposed rule places industry fire brigades, career departments, volunteer departments,

and EMS agencies all in the same box. We are four very different disciplines that are funded differently, respond differently, exposed to hazards at different levels, and have different resources to respond. This “one-size-fits-all” approach is extremely problematic, and in many cases tries to place a square peg in a round hole.

- 4) Give the Volunteer Fire Service a seat at the table equivalent to the 65% of the country that it represents.
- 5) Use relevant data. Much of the data cited by OSHA in the document is outdated, not statistically relevant, or not used in the manner for which it was intended leading to false assumptions.