

# A Fall Protection Rule for General Industry: Proposed Subparts D & I Update



Fall protection is an issue of highly significant applicability and concern for employers and employees alike, addressed by regulations set forth by the Occupational Safety and Health Administration (OSHA) for construction industry workers. A quick look at statistics reinforces that falls from heights account for a significant yearly number of disabling injuries and fatalities. In fact, the issue is of such significance that for two years running, the agency has promoted a National Stand-Down to Prevent Falls in the construction industry in order to bring further light to an incident type that has accounted for the largest segment of worksite worker deaths covered by Part 1926 of the Code of Federal Regulations. In its words,

*"The purpose of the National Fall Prevention Stand-Down [PFAS] is to raise awareness of preventing fall hazards in construction. Fatalities caused by falls from elevation continue to be a leading cause of death for construction workers, accounting for 291 of the 828 construction fatalities recorded in 2013. Those deaths were preventable. Fall prevention safety standards were among the top 10 most frequently cited OSHA standards, during fiscal year 2014."*<sup>1</sup>

But the issue of falls from heights and need for fall protection is not one that affects only construction workers. The very same issue, likewise often hits home for workers covered by OSHA's 1910 General Industry rules, albeit often within different types of work situations. And although OSHA has clearly attempted to bring the issue to the forefront within the construction industry, both in a 1994 Final Rule entitled Subpart M: Fall Protection, as well as in the aforementioned Stand-Down, OSHA's stance concerning fall protection for general industry workers has long been more difficult to ascertain for affected employers.

## The History

OSHA does in fact, currently provide rules that apply to general industry in regard to fall protection. Specifically, Subpart D: Walking-Working Surfaces is the current applicable rule concerning this topic. Of great concern is that at best, the standard can be called limited and more aptly, outdated when closely examined. Whereas the standard does provide general activation height of four feet where fall protection requirements begin, measures that the 1970s-era rule provided to employers to protect workers are quite basic. Per 1910.23(c) (1)(i-iii),

*"Every open-sided floor or platform four feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toe board wherever, beneath the open sides, [p]ersons can pass, [t]here is moving machinery, or [t]here is equipment with which falling materials could create a hazard."*

And there, briefly, is the entirety that the official, promulgated horizontal rule has been given to general industry employers to use for compliance with the four-foot mandate: use guardrails. Unlike its construction industry sister regulation where many fall protection options are offered for varied situations in what serves as an entire chapter on the topic within its broader scope of regulations, 1910 continues to reflect the notion that all workers can be feasibly protected through this means alone, when in reality, more flexibility is needed. Consider for example, the maintenance person who must climb atop machinery built long ago that has no work platform, let alone guardrails. And while maintenance workers would often agree that their companies are making strides to build safer work environments/equipment from which they can labor in a more ergonomic and protected fashion, their tasks often take them to places where such is far from reality.

So, the question arises as to where employers should turn for guidance concerning additional forms of fall protection. At first glance, many employers might assume that they may merely consult regulations in which other options have already been addressed, such as Subpart M from Part 1926. But unless indicated otherwise by OSHA, borrowing of rules meant for another sector is not what OSHA directs employers to do. In fact, to deal with the acknowledged deficiency, OSHA has worked for many years to provide employers with options through other means available: directives, letters of interpretation and proposed rules.

## PFAS for Non-Routine Work

OSHA indicated in a 1984 Directive for General Industry that use of personal protective equipment for fall protection (the personal fall arrest system) would be permitted for use on surfaces where workers were exposed to a fall hazard greater than four feet, in situations where work takes place on something other than a predictable and regular basis, defined as work done (1) at least once every two weeks, or (2) for a total of four man-hours or more during any sequential four-week period.<sup>2</sup> Thus, PFAS use in these non-predictable / non-regular situations became permissible.

## A New Set of Rules for General Industry

The next significant step for a general industry fall protection update occurred in 1990, when OSHA issued a Proposed Rule to update Subparts D and its PPE rule, Subpart I, to provide further protection options to employers, including use within predictable and regular situations. This rule sat idle until 2003 when it was reopened for review. Then in 2005, the rule was determined to be out of date and thus redrafted due to fall arrest technology and fall prevention technique updates since its original release, resulting in a May 2010 version that is under consideration today.

The goal of new revisions is to bring current regulation into the 21st century and to update requirements, not only technology-wise to reflect changes that have been developed during the past 15 years,

but also to more closely harmonize with that addressed in Construction's Subpart M. As opposed to the rigid system that permits PFAS use only under non-routine circumstances, the proposed rule offers employers options instead of simply dictating a single means. Proposed Subpart D provides for a range of options for workers exposed to falls from unprotected sides and edges under 1910.28(b), including:

- Guardrails.
- Designated areas.
- Safety net systems.
- Travel restraint systems.
- Personal fall arrest systems.

Coupled with this goal, Amended Subpart I acquires significant importance due to inclusion of a section entitled Personal Fall Protection Systems, in which completely new PFAS requirements are held to "provide criteria on the proper use of personal fall protection systems when used by the employer."<sup>3</sup> Appearing to be strikingly similar to text provided within 1926.502(d)/(e), it becomes clear where the basis for much of the proposed additions has originated and emphasizes OSHA's desire to more closely harmonize standards set out in different industries for the same hazard type.

That said, the proposed rule is meant for general industry; for example, the proposed rule does not include provisions that are not applicable within non-construction environments, including lack of reference to protective setups such as controlled access zones and safety monitors, two very common systems employed by workers engaged in very specialized construction work, in addition to eliminating scaffolding requirements that now direct employers to 1926 regulations, as scaffold use is primarily conducted during activities covered by that Part. Also, it is an updated rule that includes very useful practices not even discussed within the construction industry standard, such as *designated areas* (known as *warning lines* in 1926, but only applicable to roofers doing "roofing work"), as well as travel restraint systems that keep workers from ever reaching a fall hazard in the first place. And as both concepts are permissible via other avenues in the construction industry to most workers at heights, the proposed rule is the only one of the two to include practices within the body of the main standard itself.

<sup>1</sup> Occupational Safety and Health Administration. "National Safety Stand-Down to Prevent Falls in Construction." Web page. <https://www.osha.gov/StopFallsStandDown/>. 19 July 2015.

<sup>2</sup> Occupational Safety and Health Administration. "Fall Protection in General Industry 29 CFR 1910.23(c)(1), (c)(3) and 29 CFR 1910.132(a)." Directive Number: STD 01-01-013. 16 April 1984.

<sup>3</sup> Occupational Safety and Health Administration. "Fact Sheet: Notice of Proposed Rulemaking for Subparts D and I." Web page. <https://www.osha.gov/as/opa/proposed-rulemaking-factsheet.html>. Spring 2010.

<sup>4</sup> Occupational Safety and Health Administration. "Fall Protection Requirements in the Construction Standard." Letter of Interpretation to Susan R. Geir. [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=22332](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22332). 16 January 1997.

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## The Road Ahead

Although the proposed rule again sat idle for some time, on July 2, 2015, OSHA sent the proposed rule to the White House Office of Management and Budget (OMB) for final review, where it may be reviewed for 90 days. Originally, this timeframe meant that as of mid-to late October, general industry facilities would finally very well have a robust, promulgated fall protection rule which to date has likely remained off the radar for many employers, due to subpart titles within which it is found. However, delays in the OMB have pushed the estimated release date back to January 2016 at best, and as late as April 2016 by other estimates. Between now and then, the rule may change in appearance, as has occurred with a recent construction industry confined space rule issued this year, after having existed in proposed form for some time. However, it is important for general industry employers not only to know where they should turn for fall protection solutions, but also to be prepared for what is to come.

According to the aforementioned Fact Sheet on the topic,

***"OSHA estimates the proposed rule would prevent 20 workplace fatalities per year, and over 3,700 injuries per year that are serious enough to result in days away from work."***

No longer should general industry employers fall prey to looking towards Subpart M for guidance as to their fall protection solutions. As was addressed in a January 16, 1997 Letter of Interpretation on the topic,

***"The Subpart M fall protection requirements under 29 CFR 1926 Construction standards may not be used to meet the provision of fall protection equivalent to guardrails under paragraph 1910.23(c)(1). The Occupational Safety and Health Administration intended that the Notices of Proposed Rulemaking on Walking and Working Surfaces and Personal Protective Equipment (Fall Protection Systems), which were published in Volume 55, Number 69 of the Federal Register (FR) on Tuesday, April 10, 1990 to be used."***

Although new rules often incur criticism due to employer concerns as to feasibility prior to and upon promulgation, this is a rule that should be welcomed, due to new avenues opened for compliance even prior to official publication.

The rule, for reference purposes, can be found on OSHA's Web site by searching the A to Z Index at the top of the home page, selecting Fall Protection from the list and finally, clicking on Non-Construction Standards/Policy. The proposed rule is located in a link partway down the page under the header OSHA Federal Registers.

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