OSHA’s Revised Walking-Working Surfaces Rule

On November 18, 2017, the Occupational Safety and Health Administration (OSHA or Administration) published its “Walking-Working Surfaces and Personal Protection Equipment” final rule that amends the current standard. OSHA seeks to reduce the overall number of slips, trips and falls that occur within the workplace. ILMA members should take the time to review OSHA’s walking-working surfaces final rule. There are significant nuances and complexities to the requirements imposed upon virtually every industry sector, including ILMA members’ businesses.
I. Introduction

On November 18, the Occupational Safety and Health Administration (OSHA or Administration) published its “Walking-Working Surfaces and Personal Protection Equipment” final rule that amends the current standard. OSHA seeks to reduce the overall number of slips, trips and falls that occur within the workplace.

The final rule defines “walking-working surfaces” as any “surface on or through which an employee walks, works, or gains access to a work area or workplace location (§ 1910.21(b)). Walking-working surfaces include, but are not limited to, floors, ladders, stairways, steps, roofs, ramps, runways, aisles, scaffolds, dockboards and step bolts. Walking-working surfaces include horizontal, vertical, and inclined or angled surfaces.”

The final rule is particularly concerned with potential hazards involving elevated work surfaces that could potentially expose an employee to a significant fall. While OSHA believes the final rule will help prevent workplace injuries, it asserts that it has given employers more options to implement a compliance program tailored to their individual business by promulgating a more performance-based standard.

OSHA estimates that the rule will prevent 29 fatalities and 5,842 lost workday injuries every year. Most of the final rule became operative on January 17, 2017, except:

- Ensuring exposed workers are trained on fall hazards (6 months);
- Ensuring workers who use equipment covered by the final rule are trained (6 months);
- Inspecting and certifying permanent anchorages for rope descent systems (1 year);
- Installing personal fall arrest or ladder safety systems on new fixed ladders over 24 feet and on replacement ladders/ladder sections, including fixed ladders on outdoor advertising structures (2 years);
- Ensuring existing fixed ladders over 24 feet, including those on outdoor advertising structures, are equipped with a cage, well, personal fall arrest system, or ladder safety system (2 years); and,
- Replacing cages and wells (used as fall protection) with ladder safety or personal fall arrest systems on all fixed ladders over 24 feet (20 years).

The final rule is in excess of 500 pages and provides numerous requirements regarding the specifications for certain provisions (e.g., the spacing between rungs on a fixed ladder). As a result, this White Paper does not capture all of the nuances of the final rule and is intended to provide an overview of key provisions.

ILMA members should review the final rule in its entirety and implement effective measures to ensure compliance.

II. Rule Highlights

- OSHA says the final rule allows flexibility for many employers to choose appropriate fall protection. For example, it allows employers to implement the best fall protection for the specific circumstance by eliminating the requirement to use guardrails as the primary fall protection method.

See 29 C.F.R. 1920, Subpart D and I.
Federal Register, Vol. 81, No. 223, Friday, November 18, 2016, page 82502.
The rule codifies a 1991 OSHA memorandum that permits employers to use Rope Descent Systems (RDS), which consist of a roof anchorage, support rope, descent device, carabiners or shackles, and a chair or seatboard. These systems are widely used throughout the country to perform elevated work, such as window washing.

It implements training and re-training requirements for employees. Importantly, training must be conducted in a way that the employee is likely to understand. Therefore, training done in a foreign language may be necessary for some ILMA members.

Ladders generally must be able to support the maximum intended load and mobile ladder stands and platforms must be able to support four times their maximum intended load. Regular inspections before each work shift are required.

Currently, OSHA is not implementing mandatory protections for rolling stock and motor vehicles, although the Agency acknowledged in the final rule that it may elect to do so in the future once feasibility and cost concerns are considered.

III. Significant Section Overviews

A. §1910.22 - General Requirements

Employers must ensure that all walking-working surfaces are kept in clean and orderly condition, free of any hazards such as sharp or protruding objects, leaks, or loose boards. Additionally, each individual walking-working surface must be able to support the maximum intended load\(^3\) for that surface, and employees must have an accessible means to enter and exit to and from any walking-working surface. Finally, employers have an obligation to inspect, maintain and repair.

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B. §1910.23 - Ladders

According to OSHA, ladder accidents account for 20 percent of fatal and lost-workday injuries. As a result, the Agency has promulgated a host of requirements for use of different types of ladders. The final rule contains specific requirements for portable ladders, fixed ladders, mobile ladder stands and mobile ladder stand platforms. ILMA members should review the specific section that pertains to the specific type of ladder used in different aspects of their businesses. In general, the ladders must be able to support the maximum intended load and must be inspected before each work shift.

The additional requirements are very specific. For example, in addition to ensuring that ladder rungs and steps are parallel and uniform, each individual rung, step, and cleat must be spaced not less than 10 inches (25 cm) or more than 14 inches (36 cm) from one another (measured between the centerlines) under the general requirements for all ladders.

\(^3\)Maximum intended load means the total load (weight and force) of all employees, equipment, vehicles, tools, materials, and other loads the employer reasonably anticipates to be applied to a walking-working surface at any one time.
Further, any wooden ladders may not be coated with anything that could potentially obscure structural defects and metal ladders should be made with corrosion-resistant materials. Portable ladders also have several additional requirements.

C. §1910.24 - Step Bolts and Manhole Steps

The updated rule also has additional requirements for step bolts and manhole steps. As defined by OSHA, step bolts “means a bolt or rung attached at intervals along a structural member used for foot placement and as a handhold when climbing or standing” and manhole steps “means steps that are individually attached to, or set into, the wall of a manhole structure.”

Each step bolt installed after January 17, 2017 must be protected against corrosion, must be designed and maintained to prevent an employee’s feet from slipping, must be uniformly spaced (not more than 18 inches), have a minimum clear width of 4.5 inches (11 cm), must be able to support its maximum intended load (if installed before January 17, 2017), must be able to support four times its maximum intended load (if installed after January 17, 2017), and must be inspected before each work shift.

For manhole steps, the employer must ensure that each step is capable of supporting its maximum intended load. For those manhole steps installed subsequent to January 17, 2017, employers must implement a corrugated, dimpled, or other type of surface that minimizes potential issues with employee’s feet slipping, must be protected against corrosion, must have a minimum clear step width of 10 inches, must be uniformly spaced no more than 16 inches (41 cm) and must be regularly inspected before each work shift.

D. §1910.25 - Stairways

OSHA imposes a number of requirements and specifications for stairways. For example, it mandates handrails and guardrails and outlines that each stairway landing and platform must be at least the width of the stair and at least 30 inches in depth. Additionally, each stair must be able to hold five times the anticipated load (but it must be able to handle at least 1,000 lbs. applied to any specific point.) Further specifications are outlined if a door or gate opens into a stairway. Finally, spiral, ship, or alternating tread-type stairs\(^4\) are used only when the employer can demonstrate that it is not feasible to provide standard stairs. Stairways also have the following additional requirements as outlined in the text of the rule:

(see chart on following page)

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\(^4\) Alternating tread-type stair means a type of stairway consisting of a series of treads that usually are attached to a center support in an alternating manner such that an employee typically does not have both feet on the same level while using the stairway
The White Paper
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January 26, 2017

<table>
<thead>
<tr>
<th>Stair Width</th>
<th>Enclosed</th>
<th>One Open Side</th>
<th>Two Open Sides</th>
<th>With Earth Built Up On Both Sides</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 44 inches (1.1 m)</td>
<td>At least one handrail</td>
<td>One stair rail system with handrail on open side</td>
<td>One stair rail system on each open side</td>
<td></td>
</tr>
<tr>
<td>44 inches (1.1 m) to 88 inches (2.2 m)</td>
<td>One handrail on each enclosed side</td>
<td>One stair rail system with handrail on open side and one handrail on enclosed side</td>
<td>One stair rail system with handrail on each open side</td>
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<tr>
<td></td>
<td>One handrail on each enclosed side and one intermediate handrail located in the middle of the stair</td>
<td>One stair rail system with handrail on open side, one handrail on enclosed side and one intermediate handrail located in the middle of the stair</td>
<td>One stair rail system with handrail on each open side and one intermediate handrail located in the middle of the stair</td>
<td></td>
</tr>
<tr>
<td>Exterior stairs less than 44 inches (1.1 m)</td>
<td></td>
<td></td>
<td></td>
<td>One handrail on at least one side</td>
</tr>
</tbody>
</table>

E. §1910.26 - Dockboards

As defined in the final rule, dockboard “means a portable or fixed device that spans a gap or compensates for a difference in elevation between a loading platform and a transport vehicle.” Dockboards include, but are not limited to, bridge plates, dock plates, and dock levelers. Each dockboard must be capable of supporting the maximum intended load. For portable dockboards, employers must secure them by anchoring, utilize wheel chokes and sand shoes, and portable dockboards must have handholds or another mechanism for safe usage.

F. §1910.28 - Duty to have fall protection and falling object protection.

The final rule imposes an affirmative obligation upon employers to provide fall or falling object hazard protection for each employee. If any employee is exposed to a surface with a side or edge that is 4 feet (1.2 m) or more above a lower level, the employer must implement a guardrail system, safety net system, or personal fall protection system (e.g., person-
personal fall protection system (e.g., personal fall arrest, travel restraint, or positioning systems.)

The final rule does allow for employers to implement an alternative method other than those outlined above if it is not feasible to implement OSHA’s preferred methods. However, the final rules expressly notes that there is a presumption of feasibility so employers must be able to demonstrate why it is not feasible.

There are additional exceptions and alternative mechanisms for compliance to the general rule for hoist areas, holes, dockboards, runways and walkways, dangerous equipment, and openings.

Additionally, the new rule implements personal fall projection requirements for fixed ladders that are 24 feet (7.3 m) or more. By 2036, all existing ladders must have equipped with a personal fall arrest system or ladder safety system.

G. 1910.30 - Training Requirements

In addition to ensuring that walking-working surfaces are appropriately free from hazards, the final rule requires that employers provide employees with training. An employer must provide training for each employee before he or she is exposed to a fall hazard on or before May 17, 2017. The training must be conducted by a qualified individual\(^5\), & employees must be trained on the nature of fall hazards and how to recognize them, the correct procedures for inspecting, maintaining, and dissembling fall protecting, and the correct use of personal fall protection. Additional training must given to employees for equipment hazards.

Importantly, the regulation specifically states that the training must be conducted in such a manner that each individual employee is able to understand. While this is certainly open to interpretation, this could mean that employers are required to provide training in different languages if employees primarily speak a language other than English.

IV. OSHA’s New Inspection Protocol and Fines

OSHA also recently released a new facility inspection enforcement metric that will likely alter the manner in which it conducts compliance inspections. OSHA has traditionally used the volume of inspections as the metric to measure overall enforcement activity under the theory that more inspections ensure compliance and worker safety. As a result, Compliance Safety and Health Officers (CSHOs) were incentivized, to a degree, to engage in less complex inspections that could be quickly completed. The new enforcement system could potentially result in more detailed inspections of facilities.

The new enforcement weighting system assigns values to specific categories or types of inspections known as

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\(^5\)Qualified describes a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project.
“Enforcement Units” (EUs). All inspections, no matter how involved, receive at least one EU. The following receive additional credits:

- Federal Agency Inspections - 2 EUs
- Process Safety Management Inspections - 7 EUs
- Combustible Dust Inspections - 2 EUs
- Ergonomic Hazard Inspections - 5 EUs
- Heat Hazard Inspections - 4 EUs
- Non-PEL Exposure Hazard Inspections - 3 EUs
- Workplace Violence Hazard Inspections - 3 EUs
- Fatality / Catastrophe Inspections - 3 EUs
- Personal Sampling Inspections - 2 EUs
- Significant Cases - 8 EUs
- Non-formal Complaint Investigations - 1/9 EU
- Rapid Response Investigations - 1/9EU

As the allocation of EUs shows, OSHA has determined that some inspections are more complex and CSHOs should be credited for those enforcement efforts. Instead of the traditional volume metric, those EUs will then be tabulated at the end of the year to compare overall enforcement to previous years.

In addition, OSHA’s penalties for non-compliance increased significantly on August 2, 2016. On November 2, 2015, President Obama signed the Bipartisan Budget Act of 2015, and a provision of that law directed OSHA to take into account inflation and adjust its penalties. While other federal agencies, including the Environmental Protection Agency, were required to adjust their penalties every four years, OSHA previously was not allowed to do so and had not done so. As a result, OSHA’s penalties had not increased in over 20 years⁶. OSHA’s maximum fines for the most severe citations (willful or repeated) went to $124,709 from $70,000, while fines for other serious violations and failure to abate increased to $12,471 from $7,000.

ILMA members should review their internal procedures to ensure an “uneventful” inspection if a CSHO arrives at their facilities. Because OSHA’s performance metric is no longer predicated upon volume, ILMA members should anticipate a longer and more in-depth compliance assessment, if their facility is chosen for inspection. An inspection after January 17, 2017 may specifically examine compliance with the update to the walking-working surfaces rule.

⁶Additionally, OSHA-approved state plans will similarly be required to adjust their penalties although there has been some resistance to doing so from some states.
VII. Next Steps

ILMA members should take the time to review OSHA’s walking-working surfaces final rule. There are significant nuances and complexities to the requirements imposed upon virtually every industry sector, including ILMA members’ businesses. Members can conduct a self-audit of their operations to ensure that all ladders, manholes, fall protection systems, and the like meets the requirements of the final rule. We recommend the following steps:

- Identify fall operation systems and ascertain if all of them meet the strength and performance requirements.
- Once a system is in place, outline a schedule to regularly inspect walking-working surfaces.
- Outline a training program that fits the culture of the company, but that still conveys essential information to employees that addresses fall hazards, and proper use of personal fall protection systems.
- Regularly engage employees about the final rule.

As outlined above, the financial impact of a citation is now significantly greater than it was just a few months ago; therefore, compliance with all of the final rule’s requirements is even more paramount.

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