

The Institute of Hazardous Materials Management (“IHMM”) respectfully submits these comments on OSHA’s proposed rule entitled *Walking-Working Surfaces*, published at 91 Fed. Reg. 17165 (Apr. 6, 2026). As proposed, OSHA would remove the November 18, 2036 deadline in 29 C.F.R. § 1910.28(b)(9)(i)(D) requiring all fixed ladders extending more than 24 feet above a lower level to be equipped with a personal fall arrest system or ladder safety system, while retaining the existing requirements applicable to new fixed ladders and to replaced ladder sections. OSHA also requests comments on a broader alternative—whether it should repeal or revise the requirement that employers use personal fall arrest systems on all fixed ladders over 24 feet and instead continue to permit cages or wells.

IHMM’s interest in this rulemaking is direct and substantial. IHMM’s CSHM, CSMP, CHMM, and CHMP certification programs are accredited, and each of those credentials covers professionals whose work includes workplace safety management, technical safety implementation, hazardous materials compliance, and front-line hazardous materials operations. IHMM describes the CSHM as a credential for EHS professionals with knowledge and experience in safety management and regulatory compliance; the CSMP as a credential demonstrating technical safety expertise and management capability; the CHMM as a credential for professionals who handle, manage, or advise others on hazardous materials and associated compliance obligations; and the CHMP as a credential for front-line hazardous materials workers involved in handling, securing, spill response, and related operational duties.

IHMM’s position is as follows: IHMM does **not** support any final rule that would treat ladder cages or wells as a permanent equivalent substitute for personal fall arrest systems or ladder safety systems on fixed ladders over 24 feet. IHMM could support a narrower revision removing or extending the 2036 deadline **only if** OSHA preserves the existing requirements for new ladders and replaced ladder sections, expressly declines to find that cages and wells are equivalent protection on the current record, and adds practical guardrails to ensure that older ladders retained in service remain subject to documented inspection, condition assessment, and risk-based upgrade triggers.

The legal framework is straightforward. The OSH Act directs OSHA to assure safe and healthful working conditions and authorizes the Secretary to promulgate occupational safety and health standards. 29 U.S.C. § 651(b). An occupational safety and health standard must be “reasonably necessary or appropriate to provide safe or healthful employment and places of employment.” 29 U.S.C. § 652(8). Employers must comply with OSHA standards, 29 U.S.C. § 654(a)(2), and OSHA may promulgate, modify, or revoke standards through notice-and-comment rulemaking under 29 U.S.C. § 655(b). States may

operate OSHA-approved State Plans under 29 U.S.C. § 667. In addition, the APA requires the agency to provide a reasoned statement of basis and purpose for its final action. 5 U.S.C. § 553(c).

The Supreme Court has long held that OSHA must support a standard with evidence of significant risk and may not regulate on conjecture alone. *Industrial Union Dep't, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980), requires OSHA to show, on substantial evidence, that a significant risk exists before it imposes or maintains a standard. The D.C. Circuit has likewise held that OSHA need not prove that “each and every aspect” of a standard independently eliminates significant risk so long as the provision at issue is reasonably necessary and appropriate to address the significant risk identified by the standard as a whole. *Public Citizen Health Research Group v. Tyson*, 796 F.2d 1479 (D.C. Cir. 1986). And the Fifth Circuit has recognized that, once OSHA makes the general significant-risk determination, the question becomes whether the challenged provision is “reasonably related to the purpose of the standard as a whole.” *Asbestos Info. Ass'n/N. Am. v. Reich*, 117 F.3d 891, 894 (5th Cir. 1997). OSHA itself relies on those same principles in this proposal.

The feasibility cases point in the same direction. *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1981), and *American Iron & Steel Institute v. OSHA*, 939 F.2d 975 (D.C. Cir. 1991), recognize that technological and economic feasibility are judged at the industry level, not by focusing on the most marginal employer, but they also require OSHA to grapple seriously with the record and to explain its cost and feasibility judgments with enough clarity to permit judicial review. OSHA’s own proposal cites those authorities and acknowledges that the 2016 fixed-ladder requirements were found technologically feasible and that this proposal is being justified principally as a deregulatory timing change rather than a repudiation of the safety rationale behind the original rule.

Against that legal backdrop, IHMM believes the **broader rollback option should be rejected** on the present record. In 2016, OSHA adopted a 20-year phaseout of cages and wells because it concluded that ladder safety systems and personal fall arrest systems were the more protective modern approach and that twenty years would generally align with the normal replacement cycle and useful life of fixed ladders, cages, and wells. OSHA stated at the time that employers would have “ample time” to plan and carry out the transition through normal business and replacement cycles rather than by retrofitting functioning ladders.

The current proposal does not establish that cages and wells are equivalent to personal fall arrest systems or ladder safety systems. To the contrary, OSHA expressly asks for evidence

on whether cages and wells provide equivalent safety outcomes across industries and ladder configurations, which confirms that the agency does **not** presently have such a finding in hand. OSHA also acknowledges that it is unable to determine whether some of the fatalities or injuries avoided by the 2016 rule would occur in the affected subset of ladders if the 2036 deadline is removed. That admission matters. It may be enough to justify a narrower timing revision if OSHA believes the affected subset is small, but it is not enough to justify a categorical return to cages and wells as if they were proven equals.

IHMM therefore recommends that OSHA **decline** to repeal the requirement that fixed ladders over 24 feet ultimately move to personal fall arrest systems or ladder safety systems. Falls remain a major occupational hazard. BLS reports that in 2024, falls, slips, and trips caused 844 worker deaths nationwide, making them the second-deadliest event category that year. OSHA's own 2016 materials likewise describe falls as among the leading causes of serious injuries and deaths and estimate that the walking-working surfaces final rule would prevent substantial fatalities and lost-workday injuries. A rulemaking that softens the transition to more protective ladder systems should not be read as diminishing the seriousness of fall hazards.

That said, IHMM recognizes that OSHA may lawfully revisit the **timing** of compliance if the 2016 assumption about service life and replacement cycles was materially wrong. The proposal states that industry petitioners contend the retrofit costs are much greater than OSHA estimated, including claimed costs exceeding \$1.2 billion to address more than 22,000 ladders in parts of the refining and chemical sectors, and OSHA estimates that cost savings in those sectors could exceed \$3.6 billion if the deadline is removed. IHMM does not endorse those figures as established fact; OSHA itself says it seeks more evidence. But those cost concerns are serious enough to justify consideration of a narrower, conditional modification to the deadline.

If OSHA proceeds with the narrower approach, IHMM urges the agency to **pair any removal of the 2036 deadline with enforceable safeguards**. At minimum, OSHA should:

- (1) retain 29 C.F.R. § 1910.28(b)(9)(i)(B) and (C) unchanged for new ladders and replaced sections;
- (2) define with greater clarity when a “repair” becomes a “replacement” that triggers installation of a personal fall arrest system or ladder safety system;
- (3) require employers that keep pre-November 19, 2018 fixed ladders over 24 feet in service with cages or wells beyond 2036 to perform and document periodic condition and service-life assessments by a qualified person, using the existing qualified-person concept already embedded in 29 C.F.R. § 1910.22(d)(3);

- (4) require employers to prioritize retrofit where ladders are exposed to corrosive environments, frequent use, emergency use, difficult rescue conditions, or access to hazardous process equipment; and
- (5) require re-evaluation after any fall incident, near miss, significant corrosion finding, process change, or structural alteration.

Those guardrails are not regulatory overreach; they are a practical way to harmonize the proposal with OSHA's existing subpart D framework. Section 1910.22 already requires safe loads, safe access and egress, regular inspection, maintenance, and repair. Section 1910.23 sets detailed fixed-ladder design and clearance requirements. Section 1910.30 requires training before employees are exposed to fall hazards, including recognition of fall hazards and proper procedures for the systems they use. If OSHA removes the hard deadline but leaves older ladders in service longer, it is entirely appropriate to strengthen the documentation and decision-making around those preexisting duties.

IHMM also urges OSHA to address the **special context of hazardous materials and process-risk facilities**. By OSHA's own account, the petition driving this rulemaking came from the refining and chemical sectors, and the agency specifically requests data regarding petroleum refineries, chemical manufacturing, and other industries. In IHMM's view, ladders in those settings deserve closer scrutiny because a fall may coincide with corrosive exposure, elevated process hazards, emergency isolation needs, difficult rescue, or the risk of a secondary hazardous-material release. For that reason, if OSHA removes the deadline, the final rule or preamble should expressly encourage risk-based prioritization of retrofits in refineries, chemical plants, tank farms, terminals, treatment and disposal facilities, and similar operations where the consequences of a fall can extend beyond the individual climber.

The proposal also has important implications for IHMM credential holders. **CSHMs**—whom IHMM identifies as safety leaders with expertise in safety management, business principles, and regulatory compliance—will be the professionals asked to translate any final rule into enterprise-level policy: ladder inventories, capital planning, inspection frequency, contractor oversight, multi-state compliance, and internal audit criteria. If OSHA finalizes a less prescriptive deadline without guardrails, the result will be greater uncertainty and inconsistent risk judgments across employers. Clear triggers and documentation requirements would make the rule more administrable and more defensible for CSHMs.

CSMPs—whose credential emphasizes technical safety expertise and management capability—will often bear the operational burden of implementation. They will need to

decide, in real workplaces, whether a given activity is a repair or replacement, whether corrosion or structural degradation requires upgrade, whether training remains adequate, and whether a retained cage-or-well ladder is still reasonably safe under current conditions. OSHA should draft the final rule with those front-line compliance judgments in mind, not assume that generalized flexibility will administer itself.

CHMMs are also materially affected. IHMM describes the CHMM as a professional who handles, manages, or advises others on hazardous materials and related compliance duties in fields including environmental protection, safety, hazardous materials transportation, and security. By reasonable inference from those roles, CHMMs frequently advise facilities where fixed ladders are used to access tanks, process vessels, emissions control equipment, loading racks, containment areas, and hazardous-material storage or treatment infrastructure. In those settings, a ladder fall is not merely a fall hazard; it can compromise emergency response, process integrity, and environmental protection. OSHA should therefore avoid a final rule that encourages indefinite reliance on legacy systems without documented risk review.

CHMPs are similarly affected, and in some respects more directly. IHMM describes the CHMP as a front-line hazardous materials practitioner experienced in handling hazardous materials, securing hazardous articles, responding to spills, and cleaning contaminated sites. Those are precisely the sorts of roles in which employees may be required to climb fixed ladders in time-sensitive, high-consequence circumstances. For CHMPs, the difference between a modern ladder safety system and a legacy cage-or-well ladder may carry both fall-protection implications and secondary chemical-exposure implications. OSHA should take care not to normalize a lower level of protection for front-line hazardous-materials practitioners working in already complex environments.

Finally, IHMM notes OSHA's statement that State Plans would not be required to adopt this deregulatory change because it does not impose additional or more stringent requirements. That may be legally correct, but it underscores the need for clarity in the federal rule. If some State Plans retain the current deadline while federal OSHA removes it, multi-state employers and the CSHM, CSMP, CHMM, and CHMP professionals advising them will face a patchwork of standards. OSHA should minimize that confusion by making plain in the preamble that employers remain free—and in many higher-risk cases should be expected—to prioritize earlier retrofits as a matter of sound risk management even where a federal fixed date is removed.

For these reasons, IHMM respectfully requests that OSHA finalize **only a limited, conditional revision** to § 1910.28(b)(9)(i)(D), if at all, and expressly reject any broader

rollback that would treat cages or wells as equivalent fall protection on the current record. OSHA should preserve the modern endpoint for new and replaced ladders, add condition-assessment and risk-trigger safeguards for legacy ladders retained in service, and recognize the heightened consequences of falls in hazardous-materials and process-risk settings. That approach would remain consistent with the OSH Act, the governing case law, and the practical compliance realities faced by IHMM's credential holders.

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