

**SUPPORTING STATEMENT FOR
THE COLLECTION OF INFORMATION REQUIREMENTS CONTAINED IN
THE WALKING-WORKING SURFACES STANDARD
(29 CFR 1910, SUBPART D)**

November 2016

This supporting statement contains revisions specified in the final rule for Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

RIN: 1218-AB80

OMB Control Number: 1218-0199

A JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The main objective of the Occupational Safety and Health Act of 1970 (i.e., “OSH Act”) is to “assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651(b)). To achieve this objective, the OSH Act authorizes “the Secretary of Labor to set mandatory occupational safety and health standards” (29 U.S.C. 651(b)(3)).

Section 6(b)(7) of the OSH Act specifies that “[a]ny standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure” (29 U.S.C. 655(b)(7)). This provision goes on to state that “[t]he Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning . . . as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard” (29 U.S.C. 655(b)(7)).

With regard to recordkeeping, the OSH Act specifies that “[e]ach employer shall make, keep and preserve, and make available to the Secretary . . . such records . . . as the Secretary . . . may prescribe by regulation as necessary or appropriate for the enforcement of this Act . . .” (29 U.S.C. 657(c)(1)). The Act states further that “[t]he Secretary . . . shall prescribe such rules and regulations as [he/she] may deem necessary to carry out [his/her] responsibilities under this Act, including rules and regulations dealing with the inspection of an employer’s establishment” (29 U.S.C. 657(c)(1)).

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Under the authority granted by the OSH Act, the Occupational Safety and Health Administration (“OSHA” or “the Agency”) is publishing a single rule revising and updating both the Walking-Working Surfaces standards for general industry (29 CFR 1910, subpart D) (“final subpart D”) and the Personal Protective Equipment (29 CFR 1910, subpart I) (“final subpart I”) standards for general industry. The existing collection of information requirements contained in subpart D are approved by OMB and are assigned OMB control number 1218-0199. This ICR requests OMB approval for the new and revised collection of information requirements final subpart D contains. OSHA submitted a separate request to OMB for the revised collection of information requirement final subpart I contains.

The final rule revises and updates subpart D to provide greater worker protection from slip, trip and fall hazards; increase compliance flexibility for employers; incorporate advances in industry best practices, national consensus standards and technology since OSHA adopted the standard in 1971; and provide greater consistency between subpart D and construction standards. Items 2 and 12 below describe the specific collection requirements affected by final subpart D.¹

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

New Collections of Information Final Subpart D Contains:

Final subpart D contains the following three new collections of information:

• Final §1910.23(b)(10)—Ladders—General Requirements for All Ladders.

Final §1910.23(b)(10) requires that the employer ensure that any ladder with structural or other defects be immediately tagged with “Dangerous: Do Not Use” or with similar language in accordance with §1910.145 and removed from service until “repaired . . . or replaced.” The information will alert employers and workers that the ladder is not safe and must not be used.

• Final §1910.27(b)(1)(i)—Rope Descent Systems—Anchorages.

Final §1910.27(b)(1)(i) requires, before any rope descent system is used, that the building owner inform the employer in writing that the building owner has identified, tested, certified, and maintained each anchorage so it is capable of supporting at least 5,000 pounds (268 kg), in any direction for each employee attached. The information must be based on an annual inspection by a qualified person and certification of each anchorage by a qualified person, as necessary, and at least every 10 years. The information will assure employers and workers that the building owner has inspected, tested and certified the anchorage, which the employer may not own or have any control over, as safe to use.

¹The purpose of this Supporting Statement is to analyze and describe the burden hours and costs associated with the requested revisions to the collection of information requirements in existing subpart D. This Supporting Statement does not provide information or guidance on how to comply with, or how to enforce, the standards.

• **Final §1910.27(b)(1)(ii)—Rope Descent Systems—Anchorages.**

Final §1910.27(b)(1)(ii) requires that the employer ensure no employee uses any anchorage before the employer has obtained written information from the building owner indicating that each anchorage meets the requirements of §1910.27(b)(1)(i). The employer must keep the information for the duration of the job. The information will assure employers and workers that the anchorage, which the employer may not own or have any control over, is safe to use.

• **Final §1910.28(b)(1)(ii)-- Protection from fall hazards--Unprotected sides and edges.**

Final 1910.28(b)(1)(ii) when the employer can demonstrate that it is not feasible or creates a greater hazard to use guardrail, safety net, or personal fall protection systems on residential roofs, the employer must develop and implement a fall protection plan that meets the requirements of 29 CFR 1926.502(k) and training that meets the requirements of 29 CFR 1926.503(a) and (c).

Existing Collections of Information the Final Subpart D Removes

The final removes the following three provisions from existing subpart D that contain collections of information:

• **Existing §1910.22(d)(1)--General Requirements--Floor Loading Protection.**

Existing §1910.22(d)(1) requires that “[i]n every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.”

Final §1910.22(b) sets requirements for application of loads. Final §1910.22(b)(1) and (b)(2) require, respectively, that employers “ensure that walking-working surfaces are . . . [d]esigned, constructed, and maintained to support their maximum intended load” and “[are] [n]ot loaded beyond their maximum intended load.” Final subpart D does carry forward the collections of information in existing §1910.22(d)(1).

• **Existing §1910.26(c)(2)(vii)—Portable Metal Ladders—Care of Ladders.**

Under existing §1910.26(c)(2)(vii), employers must mark portable metal ladders that have defects and take them out of service until repaired (by the maintenance department or the manufacturer). Final §1910.23(b)(10) (Ladders—General Requirements for all Ladders)

replaces that provision with the requirement that employers tag and remove all defective ladders.²

• **Existing §1910.28(e)(3)—Safety Requirements for Scaffolding.**

Existing §1910.28(e)(3) specifies employers must keep on the job a copy of the detailed drawings and specifications of outrigger scaffolds being used that shows the sizes and spacing of members. Final §1910.27(a) requires that scaffolds used in general industry shall meet the requirements for scaffolds in the construction scaffold standard (29 CFR 1926, subpart L). The construction scaffold standard does not require that employers maintain copies of drawings and specifications on the job. Therefore, final subpart D is eliminating the information collection requirement specified in existing §1910.28(e)(3).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

With the exception of final §1910.23(b)(10), employers may use automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology (e.g., electronic submission of responses), when establishing and maintaining the required records. In general, the Agency wrote the paperwork requirements of the standards in performance-oriented language, i.e., in terms of what data to collect, not how to record the data.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.

The final subpart D requirements to collect and maintain information are specific to each employer and worker involved, and no other source or agency duplicates these requirements.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The information collection requirements final subpart D specifies do not have a significant impact on a substantial number of small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Agency believes that the information collection frequencies for final subpart D requires the minimum frequencies necessary to effectively prevent employee exposure to hazards and,

² OSHA notes that final §1910.23(b)(1) replaces the existing requirement in §1910.25(d)(1)(x) that employers withdraw portable wood ladders from service (for repair or destruction) if they have defects and tag or mark them as “Dangerous, Do Not Use.” Unlike existing §1910.26(c)(2)(vii), this requirement is not a collection of information because OSHA has provided the exact language employers must use to tag/mark the portable wood ladder.

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thereby, fulfill its mandate “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651(b)).

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

No special circumstances exist that require employers to collect information using the procedures specified by this item. The information collection requirements in final subpart D are within the guidelines set forth in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to those comments. Specifically address comments received on cost and hour burdens.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that preclude consultation in a specific situation. These circumstances should be explained.

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Final subpart D contains collection of information requirements (paperwork) that are subject to review by the Office of Management and Budget (OMB). In accordance with the requirements in Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2) and 3507(d)), the proposed regulation solicited comments on the information collection (75 FR 69369 - 69371 (11/12/ 2010)). The Department also submitted an information collection request (ICR), titled “Standard on Walking and Working Surfaces (29 CFR part 1910, Subpart D),” to OMB for review. On July 26, 2010, OMB informed the Department of Labor that “the terms of the previous clearance remain in effect.”

New Collections of Information Final Subpart D Contains:

Final §1910.23(b)(10)—Ladders—General Requirements for All Ladders:

Final §1910.23(b)(10), which is almost identical to the proposed rule, requires that employers immediately tag ladders that have structural or other defects with “Dangerous: Do Not Use” or similar language in accordance with §1910.145. Final §1910.23(b)(10) retains the key signal warning word “Dangerous” from existing §1910.25(d)(1)(x). OSHA proposed to remove the word from the regulatory text and include it in guidance material. After further analysis, however, OSHA believes retaining the signal word is necessary to get workers’ attention in order to provide them with basic information that a hazard exists and they must not use the ladder. OSHA did not receive any comments on the proposed provision.

Final §1910.27(b)(1)(i)—Rope Descent Systems—Anchorages:

Final §1910.27(b)(1)(i) requires, before the employer uses any rope descent system, that the building owner inform the employer in writing that the building owner has identified, tested, certified, and maintained each permanent anchorage so it is capable of supporting at least 5,000 pounds in any direction for each worker attached. The final rule requires that the building owner base the written information on:

- An annual inspection of each anchorage by a qualified person; and
- A certification by a qualified person of each anchorage, as necessary, and at least every 10 years.

OSHA requested comment about including in the final rule additional provisions addressing the safety of anchorages. In particular, the Agency asked whether it should adopt the requirement, and information disclosure requirements, in §1910.66(c) (approved under OMB Control Number 1218-0121), which requires:

- (1) Building owners of new installations must inform the employer (in writing) before each use that the installation meets the requirements of final §1910.66(e) (1) and (f)(1) and the design criteria in final §1910.66(e) and (f);
- (2) Building owners must base the information §1910.66(c)(1) on the results of an installation field test before the anchorage is placed into service and after any

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major alteration to an existing installation and on all other relevant available information, including, but not limited to, test data, equipment specification and verification by a registered professional engineer; and

- (3) Building owners of all installations, new and existing, must inform the employer in writing that the installation has been inspected, tested and maintained in compliance with the requirements of §1910.66(g) (inspection, tests, and certification) and (h)(maintenance) and that all anchorages meet the requirements of paragraph (I)(c)(10) of appendix C [fall protection anchorages must be capable of supporting 5,000 pounds] (§1910.66(c)(1) – (c)(3)).

OSHA also requested comment on whether to adopt the anchorage requirements in the ANSI/IWCA I-14.1-2001 standard (I-14.1-2001), which are similar to §1910.66. ANSI/WHCA I-14.1-2001 requires that building owners provide window cleaning contractors with the following written assurances:

- The installation or structure has been inspected, tested and maintained in compliance with the requirements of I-14.1-2001;
- All equipment dedicated to the building meets the equipment and building design requirements. With regard to anchorages, the written information must provide assurances that anchorages support a 5,000 pound load in any direction (Section 9.1.1) and that certifications and re-certifications of anchorages be conducted under the supervision of a registered professional engineer (Section 9.1.10);
- Specified load ratings, intended use and limitations to fixtures permanently dedicated to buildings; and
- Manufacturer’s instructions for installations, anchorages and fixtures permanently dedicated to the building (Section 1.6.2 (a) – (d)).

Overwhelmingly, commenters on the proposed rule supported requiring that building owners identify, test, and maintain anchorages, and inspect and certify that anchorages are capable of supporting 5,000 pounds in each direction for each attached worker.

Many commenters said the anchorage provision is necessary because the lack of “sound anchorages” was the leading cause of fatalities and incidents involving RDS (Exs. 138; 147; 163; 184; 221; 222; 243). Valcourt said:

[W]orkers that use Rope Descent Systems deserve a safe place to work. . . . There is no greater contributing factor to having a safe workplace in which to use an [RDS] than having identified and certified anchorage points in which to tie to. In its 26-year existence, Valcourt has seen both building owners and window cleaners come to a greater understanding of this fact, leading to much safer

working conditions (Ex. 147).

20/20 Window Cleaning said the new anchorage requirement would prevent accidents and save lives (Ex. 153). The International Window Cleaning Association (IWCA) noted that, without the new provision, workers using RDS would not have an equivalent level of protection as workers who use permanent powered platforms (Ex. 138).

Commenters also said the anchorage requirement is necessary because employers who use RDS do not have control over buildings and many building owners do not provide certified anchorages (Exs. 147; 163; 245; 329 (1/19/2011, pgs. 218-219)). Valcourt said about 75 percent of the buildings they service do not have certified anchorages, and LWC Services said only 5 percent of the buildings they service have them (Exs. 147; 245). LWC Services also estimated that only seven percent of mid- and high-rise buildings have certified anchorages (Ex. 245). Finally, LWC Services said their most significant problem is finding anchorage points to allow suspension of equipment, and they questioned how they could install anchorages when they only work at a particular location for a couple of days per year (Ex. 245).

Valcourt said OSHA needed to mandate that building owners certify anchorages because they will not do so if it is voluntary:

If OSHA . . . [omits] the requirement of building owners to have their roof anchorage systems initially certified . . . and inspected by a qualified person annually, many building owners will simply state that it is not a requirement of OSHA and not [do it]. This would make the marketplace more dangerous and be a regression of 20 years in window cleaning safety for both the window cleaning and building owner industries (Ex. 147; 329 (1/19/2011, pgs. 378-388)).

Mr. Terry, of Sparkling Clean, supported following OSHA's approach in §1910.66:

I agree that building owners should provide employers with the same information required by 1910.66; a certificate of inspection, testing, and maintenance of anchorages for rope access and suspended scaffolding used in building maintenance, and that an existing certificate for powered platform anchorages would suffice for the same anchorages to be used for rope access. This would allow for rope access to be utilized on buildings with systems or anchorages originally designed for suspended scaffold use without any new requirements or expenses on the building owner (Ex. 329 (1/19/2011, pgs. 224-226)).

Some commenters provided recommendations for specific language and specification the final requirement on anchorages should contain. For example, Penta Engineering said OSHA should require load testing of all anchorages and davits (Ex. 193). Martin's Window Cleaning (Martin's) said OSHA should require that employers ask for and obtain verification of anchorage certification (Ex. 65).

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Several commenters recommended specific timelines for anchorage inspection and certification. Martin's recommended inspections every year, and certifications every 10 years (Ex. 65). Penta Engineering Group agreed, and recommended that OSHA also require anchorage recertification after building owners install new roof systems (Ex. 193).

One commenter urged OSHA to require that building owners ensure qualified persons conduct the annual inspections and certifications (Ex. 204). Other commenters said that professional engineers should perform those tasks (Exs. 65; 193; 329 (1/19/2011, pgs. 378-388)). LJB Inc., noted that it may be a violation of local and state building codes to have anyone other than a professional engineer certify anchorages (Ex. 204). OSHA notes that, under the final provision and the final definition of "qualified," building owners are free to use professional engineers to inspect and certify anchorages.

OSHA did not receive any comments opposing an anchorage requirement. However, OSHA notes that the Building Owners and Managers Association (BOMA) did not submit any comments on the proposed rule or testify at the rulemaking hearing, but they did oppose a requirement in the 1990 proposed rule that building owners provide anchorages. OSHA notes that BOMA was a member of the ANSI/IWCA I-14.1-2001 Committee that developed and approved the national consensus standard.

OSHA agrees with many of the comments and recommendations on anchorages that stakeholders submitted, and incorporated many of them into final subpart D. For example, given that outside contractors generally perform building maintenance (such as window cleaning), and that these outside contractors usually have no control over the building anchorages and are at particular buildings for only a few days, OSHA determined that inspecting, testing, certifying, and maintaining anchorages and providing information about the anchorages must be the responsibility of building owners. Only when building owners take responsibility for anchorages and provide written information to employers and contractors, will there be adequate assurance that workers are safe when they use RDS.

Final §1910.27(b)(1)(ii)—Rope Descent Systems—Anchorages:

Final §1910.27(b)(1)(ii) is a companion to final §1910.27(b)(1)(i) and requires that employers ensure that no employee uses any anchorage before the employer obtains written information from the building owner that the anchorage meets the requirements of final §1910.27(b)(1)(i). In other words, the final rule requires that employers ensure no employee uses an RDS until the employer obtains written information from the building owner that each anchorage has been identified, tested, certified, and maintained so it is capable of supporting at least 5,000 pounds in any direction for each worker attached. The final rule also requires that the employer keep the written information from the building owner for the duration of the job.

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As mentioned, OSHA's powered platforms standard (§1910.66(c)(4)) contains a requirement similar to the final rule. The powered platforms standard requires that employers not allow workers to use the installation before the receiving assurances from the building owner that the installation meets the requirements in §1910.66 (c)(1) and (c) (3). The ANSI/IWCA I-14.1-2001 standard also requires that employers (i.e., window cleaning contractors) and building owners not allow suspended work to occur unless the building owner provides, identifies, and certifies anchorages comply with Sections 9 and 10 (Section 3.9). Section 9 requires, among other things, that anchorages be capable supporting 5,000 pounds (Section 9.1.1) and that employers report the annual inspection in the building's log book Section 9.1.9).

OSHA believes the companion requirements in final §1910.27(b)(1) will ensure that each anchorage to which workers attach an RDS meets the inspection, testing, certification, and maintenance requirements of the final rule, and therefore, is safe to use. Under the final rule, employers are not to allow workers to attach to an anchorage and begin work if they have not received written information that the anchorage has been certified as capable of supporting 5,000 pounds. Specifically, final paragraph (b)(1)(ii) prohibits employers, when there are no certified anchorages, from "making do" or attaching RDS to alternative structures and making the assumption that these structures are capable of supporting 5,000 pounds.

OSHA acknowledges that employers currently attach RDS to other structures if there are no certified anchorages available. For example, Mr. Charles Adkins, of Corporate Cleaning Services (Corporate Cleaning), explained that his company does this in the 30 to 40 percent of buildings they service that don't have certified anchorages:

They go up and they select it with the assistance of the foreman who is – we have– we've heard some mention of supervision here and we totally agree that that's a very important fact and that's why we have four salaried foremen, plus an operations manager, who focus exclusively on supervision.

They go up and select them. There are a number of alternatives. They can attach them to the permanent part of the building. They can use parapet clamps if they have a way to properly attach the tieback and the safety line to it and just about every building is different. Sometimes we can use weights to keep them from – to help hold the ropes (Ex. 329 (1/19/2011, pgs. 218-219)).

OSHA believes that the written information on anchorages that building owners must provide to employers will be helpful for employers throughout the job. Employers can use the information to keep workers continuously informed about which anchorages have proper certification, and thus, are safe to use. The information also will be helpful if there are work shift-related changes in personnel, if the employer brings new workers to the job, or if there is a change in site supervisors. Therefore, the final rule is requiring employers to retain the written information on anchorages they obtained from building owners for the duration of the job at that building.

Final §1910.28(b)(1)(ii)-- Protection from fall hazards--Unprotected sides and edges.

Final §1910.28(b)(1)(ii) when the employer can demonstrate that it is not feasible or creates a greater hazard to use guardrail, safety net, or personal fall protection systems on residential roofs, then the employer must develop and implement a fall protection plan that meets the requirements of 29 CFR 1926.502(k) and training that meets the requirements of 29 CFR 1926.503(a) and (c).

Based on comments received during the comment period, OSHA decided to synchronize the general industry requirements with the construction standard for residential roofs. OSHA agrees in general with these comments, and added to the final rule a new paragraph §1910.28(b)(1)(ii). Under this provision, employers may implement a fall protection plan meeting the requirements of the construction standard if they can demonstrate that it is not feasible or creates a greater hazard to use guardrail, safety net, or personal fall protection systems on a residential roof.

Existing Collections of Information that Final Subpart D Removes

• **Existing §1910.22(d)(1)--General Requirements--Floor Loading Protection.**

Final §1910.22(b) requires that employers “ensure that each walking-working surface can support the maximum intended loads for that surface.” The final rule replaces the specification requirements in existing §1910.22(d)(1) with performance-based language. The existing rule specifies that the loads the building official approves for a specific walking-working surface “shall be marked on plates of approved design . . . and securely affixed . . . in a conspicuous place in the space to which they relate” (existing §1910.22(d)(1)). The proposed rule would have required that employers ensure that walking-working surfaces are “[d]esigned, constructed, and maintained to support their maximum intended load” (proposed §1910.22(b)(1)), and “[n]ot loaded beyond their maximum intended load” (proposed §1910.22(b)(2)).

In the preamble to the proposed and final rules, OSHA said the existing specification requirements were not necessary for two reasons: (1) load-limit information is available in building plans, and (2) engineers take maximum loads into consideration when they design industrial surfaces.

OSHA received three comments on the proposal, none of which supported retaining the existing requirement. AFSCME recommended requiring that employers ensure all walking and working surfaces have the “structural integrity” to support the workers, their tools and equipment. OSHA believes that requiring employers to ensure each surface is capable of supporting the maximum intended load, as defined in final §1910.22(b), achieves the result AFSCME advocates. The definition of “maximum intended load” in final §1910.21(b) includes the total weight of all employees, equipment, machines,

vehicles, tools, materials, and loads that the employer reasonably anticipates may be applied to the walking-working surface.

Charles Lankford objected to the proposed language that employers ensure walking-working surfaces are “designed and constructed” to support their maximum intended load (proposed §1910.22(b)(1)):

[E]mployers will be unable in most cases to ensure positively that existing or newly purchased walking and working surfaces were “designed and constructed” (perhaps decades earlier) to comply with this standard.

Employers will for practical purposes be limited to relying on third party certification, testing, listing, and/or labeling of platforms and surfaces such as scaffold planks, floors of crane cabs, runways, etc. However, OSHA did not state in the proposed rule that reliance on third party certifications would be a method of compliance or could be a valid defense from citations (Ex. 368; see also Ex. 329(1/20/2011, p. 295)).

In response to Mr. Lankford’s comment, OSHA simplified the language in final §1910.22(b) to focus on the performance objective of the requirement – ensuring that walking-working surfaces are capable of supporting the maximum intended load at all times.

Mr. Lankford is correct that the proposed rule, as well as the final rule, does not state specifically how employers must obtain information about load limits for a walking-working surface. The existing rule makes it easy for employers to be certain that walking-working surfaces in an existing building or structure can support the maximum intended loads employers anticipate placing on that surface. That is because the existing rule requires load limits for buildings and structures used for mercantile, business, industrial, or storage purposes: (1) be approved by the building official; and (2) be posted in the area of the walking-working surface. Under the final rule, employers can obtain information about existing walking-working surfaces from plates posted in accordance with the existing rule. For new buildings and structures, employers can obtain information on maximum load limits from building plans, local codes or conduct their own evaluation. OSHA believes there also are other ways employers can obtain such information. Mr. Lankford provided examples of several methods employers may use, including third party certification; and testing or evaluating walking-working surfaces. Instead of codifying the methods Mr. Lankford mentioned, OSHA has used performance-based language in the final rule to give employers greater flexibility in selecting the method they want to use to identify whether the walking-working surface can support the maximum intended load employers will place on it.

Finally, the National Chimney Sweep Guild (NCSG) contended the requirement that employers ensure each walking-working surface can support the maximum intended load

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they will apply to it is not feasible (Exs. 150; 240; 365; 329 (1/18/2011, p. 254-348)). NCSG said that chimney sweeps are not able to determine the “maximum intended load” for a roof:

The sweep would have no practical means of determining the maximum intended load for a roof, and no way of determining whether the roof was designed, constructed, and maintained to support the unknown maximum intended load. Only when a job would require a significant load on a roof or under other highly unusual circumstances would a sweep attempt to access the attic below a roof to check the structural integrity of the roof. We doubt most trades would be able to determine whether a roof could safely support its maximum intended load (as established by the builder and/or local code) (Ex. 150).

The final rule, like the construction fall protection standard, specifies that employers are responsible for taking the steps necessary to ensure that each walking-working surface employees access has the strength and structural integrity to safely support the maximum intended load employers will place on the surface. NCSG appears to agree:

We recognize that the employer of a sweep must implement reasonable measures designed to determine whether a roof or other walking-working surface can be safely utilized by the employee to perform the pre-assigned task and any additional tasks that may be identified after the sweep arrives at the site (Ex. 150).

Where workers perform single-person jobs, which NCSG said are the majority of jobs their members perform, employers are responsible for ensuring that workers know how to assess and determine whether the walking-working surface they will access will support the loads reasonably anticipated to be placed on it. For example, employers must ensure that their employees (e.g., chimney sweeps) know how to visually inspect or examine the roof for possible damage, decay, and other problems and look in attics to assess the strength and structural integrity of the roof. Employers also must ensure that workers actually do such assessments before they access a surface or perform a job. Finally, if there is a potential problem with the roof or if workers cannot determine whether the roof is safe for use, employers must ensure that workers know they must not step onto it. Although NCSG contends that it is infeasible for workers to determine if roof will support the loads they will place on it, their comments indicate that member companies and their workers already are doing this:

Once we actually get to the job, we are making a hazard assessment . . . of . . . electrical lines, the slope of the roof, the condition of the roof, is there adequate places for our ladders, can we safely access the roof with ladders, is the roof wet, ice covered, snow covered, and ultimately we use all of that information to formulate a go or no go roof decision, whether [we] are actually going to access the roof (Ex. 329 (1/18/2011, p. 276-303)).

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In addition, NCSG said member employers also periodically go to jobs sites to discuss and observe workers performing tasks, further indicating that assessments and determinations of the strength and structural of roofs are being done (Ex. 150). Finally, not only did NCSG say it is not feasible for its members to comply with final paragraph (b), they also said:

We doubt most trades would be able to determine whether a roof could safely support its maximum intended load (as established by the builder and/or local code) (Ex. 150).

OSHA notes that since 1994, the current construction fall protection standard has required employers in the construction industry, including roofing companies, to “determine if the walking-working surfaces on which its employees are to work have the strength and structural integrity to support employees safely” (§1926.501(a)(2)). OSHA has not received any reports that construction employers have experienced any difficulty complying with this requirement. Since NCSG characterizes the activities of member companies to be “more akin to short construction jobs . . . rather than to maintenance work” (Ex. 150), OSHA believes NCSG members, like roofing companies, will be able to comply with the final rule. For all these reasons, OSHA does not find NCSG’s infeasibility contention to be convincing.

• Existing §1910.26(c)(2)(vii)—Portable Metal Ladders—Care of Ladders.

Final §1910.23(b)(10), which requires that employers tag all defective ladders (portable, fixed, metal) and remove them from service, is a performance-based consolidation of the existing portable wood and metal ladder requirements (§§1910.25(d)(1)(iii), (d)(1)(x), and (d)(2)(viii); 1910.26(c)(2)(vii)). Some of these requirements are similar to the final rule, while other standards specify particular ladder defects that necessitate removing the ladder from service. The final rule simplifies the existing requirements by specifying that employers tag defective all ladders (i.e., portable, wood, metal, fixed) that have “structural or other defects” and remove them from service until repaired or replaced. OSHA believes this approach will make the final rule easier to understand and follow. OSHA notes the defects listed in the existing rules (§§1910.25(d)(2)(viii) and 1910.26(c)(2)(vii)) continue to warrant removal of the ladder from service.

• Existing §1910.28(e)(3)— Safety Requirements for Scaffolding.

Final §1910.27(a), like the proposed rule, replaces the existing general industry scaffold standards (§§1910.28 and 1910.29) with the requirement that employers ensure scaffolds meet the requirements in the construction scaffolds standards (29 CFR 1926, subpart L). Unlike the existing general industry scaffold standard (existing §1910.28), the construction scaffold standard does not contain any collection of information requirements. The existing general industry scaffold standard requires that employers keep a copy of detailed drawings and specifications of outrigger scaffolds used on a job

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(§1910.28(e)(3)).

Commenters supported making OSHA’s general industry and construction standards consistent. For example, Mr. Bill Kojola, with the AFL-CIO, said: “We believe that it is important to have consistent standards that address scaffolds so that all workers, regardless of the industry in which they work, have equal or equivalent protection from the hazards that are associated with scaffolds” (Ex. 172).

Submission to OMB

Currently, the collection of information for Walking Working Surfaces has been approved by OMB under OMB Control Number 1218-0199 and will expire on August 31, 2019. In accordance with the PRA-95 (44 U.S.C. 3507), OSHA has submitted a revised ICR for the Walking Working Surfaces Standard in conjunction with the Final Rule for approval. A copy of the ICR is available at <http://www.reginfo.gov>. The Department of Labor notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the PRA-95, and displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

9. Explain any decision to provide any payments or gift to respondents, other than remuneration of contractors or grantees.

The Agency will not provide payments or gifts to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The paperwork requirements specified by final subpart D do not involve confidential information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None of the provisions in Final subpart D contain sensitive information.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated**

hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

The following sections summarize the burden hour and cost determinations for the information collection requirements specified in final subpart D. The data for these determinations are based upon the final economic analysis (FEA) for final subpart D, and OSHA's estimate of the time it would take a worker to perform the required information collection procedures.³

Final subpart D removes the following collection of information requirements from the existing ICR:

- §1910.22(d)(1)—General Requirements—Floor Loading Protection.
- §1910.26(c)(2)(vii)—Portable Metal Ladders—Care of Ladders.
- §1910.28(e)(3)—Safety Requirements for Scaffolding.

Burden Hour and Cost Determinations:

To make cost determinations, OSHA used the most recent wage-rate data for the average production worker from *Employer Costs for Employee Compensation, March 2014*, Bureau of Labor Statistics, U.S. Department of Labor.⁴ The specific rate of hourly compensation for each occupation, including fringe benefits, is as follows:

Management and Professional:	\$52.30
Office and Administrative Support:	\$23.71

According to the FEA, the scope of final subpart D covers 6,855,903 establishments and 112 million workers.

• **§1910.23(b)(10) Ladders—General Requirements for All Ladders.**

Final §1910.23(b)(10) requires that the employer ensure that “[a]ny ladder with structural or other defects is immediately tagged “Dangerous: Do Not Use” or with similar language in accordance with §1910.145 and removed from service until repaired or replaced.”

³These determinations do not include the provisions of existing subpart D that contain information collections because these provisions are removed under the final rule (see Table 1 below for details).

⁴ The source is Table 9, all workers in private industry, \$52.30 for Management and Professional and \$23.71 for Office and Administrative Support: http://www.bls.gov/news.release/archives/eccec_06112014.pdf.

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The Agency assumes that, on average, each of the 6,855,903 establishments in final subpart D covered has at least three ladders ($6,855,903 \times 3 = 20,567,709$). According to the FEA, 20% of those establishments (1,371,181) will buy a new ladders (1,371,181) every 5 years, which means that there will be 19,196,528 ($20,567,709 - 1,371,181$) ladders that will be in use or in need of servicing (i.e., tagged ladders) at any time. OSHA estimates that only three percent of the ladders in use (575,896) ($19,196,528 \times 3\%$) will become defective during any given year, and need to be tagged and removed from service. Of that percentage, the Agency estimates that only 10 percent (57,590) of the defective ladders will be tagged with a sign that contains language other than "Dangerous: Do Not Use⁵." The Agency estimates that it will take 3 minutes (.05 hours) for a worker to construct a sign using other language, and to attach it to the ladder.

Burden hours: 57,590 ladders x .05 hours = 2,880 hours

Cost: 2,880 hours x \$23.71 = \$68,285

• **§1910.27(b)(1)(i) and (ii) Rope Descent System—Anchorages.**

Final §1910.27(b)(1)(i) requires before any rope descent system is used, the building owner must inform the employer, in writing that the building owner has identified, tested, certified, and maintained each anchorage so it is capable of supporting at least 5,000 pounds (268 kg), in any direction, for each employee attached. The information must be based on an annual inspection of each anchorage and certification of each anchorage as necessary and at least every 10 years. A qualified person must perform both the inspection and certification.

According to the FEA, there are approximately 750,000 buildings that have windows cleaned annually. Recognizing that in some smaller markets, anchor certification may not be as widespread or frequent, OSHA applied a baseline level of 35 percent for anchor certification and inspection in estimating costs for this requirement. Therefore, 65 percent of the approximately 750,000 buildings that have windows cleaned each year must now comply with the final inspection and certification requirement. OSHA estimates that 487,500 buildings will require annual inspections and decennial certifications. The Agency further assumes that a production supervisor will perform the annual inspections, and that it will take this supervisor one hour to perform the inspection.

Burden hours: 487,500 inspections x 1 hour = 487,500 hours

Cost: 487,500 hours x \$52.30 = \$25,496,250

Final §1910.27(b)(1)(ii) requires that the employer keep the written information from the building owner for the duration of the job. OSHA estimates that it will take 1 minute (0.017 hour) for an office and administrative support worker to file and maintain the written information.

⁵ When the government provides language to employers to use on signs or labels it is considered "public disclosure." According to 5 CFR 1320.5 (c)(2)." The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition (collection of information).

Burden hours: 487,500 inspections x 0.017 hour = 8,288 hours
Cost: 8,288 hours x \$23.71 = \$196,508

Final §1910.28(b)(1)(ii)-- Protection from fall hazards--Unprotected sides and edges.

Final §1910.28(b)(1) (ii) when the employer can demonstrate that it is not feasible or creates a greater hazard to use guardrail, safety net, or personal fall protection systems on residential roofs, the employer must develop and implement a fall protection plan that meets the requirements of 29 CFR 1926.502(k) and training that meets the requirements of 29 CFR 1926.503(a) and (c).

According to the FEA, there are 6,000 establishments that are affected by this rule. OSHA estimates that at the baseline, 10 percent (600 establishments) are in compliance with the final rule, through the use of engineering controls, work practices, personal protective equipment, and administrative controls including the use of training and a fall protection plan, while the remaining 90 percent (5,400 establishments) are currently not in compliance with the final rule and will need to implement a combination of the controls listed above to achieve compliance. Of the 5,400 establishments, OSHA estimates that on an annual basis, 5 percent (270 establishments) will at any one time encounter work conditions on a residential roof where the use of conventional fall protection is infeasible or creates a greater hazard and consequently will develop a fall protection plan addressing the unique conditions for that type of roofing work. OSHA estimates that it will take 30 minutes (0.5 hours) to write a plan.

Burden hours: 270 fall protection plans x 0.5 hour = 135 hours
Cost: 135 hours x \$52.30 = \$7,061

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondent (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Cost of Inspection and Certification:

OSHA estimates that most building owners may likely hire a professional engineer to perform the decennial certification to ensure that each anchorage is capable of supporting 5,000 pounds (268 kg) in any direction. The cost for an inspector to inspect and certify that each anchorage is \$1,122.00. The building owner must inspect the anchorages annually and certify the anchorages can support 5,000 pounds as necessary and at least every 10 years.

$$487,500 \text{ certifications/ 10 years} \times \$1,122 = \$54,697,500$$

14. Provide estimates of the annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

There are no costs to the Federal government.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Final subpart D will result in a program change increase of 492,678 hours, from 6,125 hours to 498,803 hours, and a new cost of \$54,697,500. Both increases in burden hours and costs are mainly due to the final rule requiring building owners to inform the employers in writing that the building owner has identified, tested, certified, and maintained each anchorage as capable of supporting at least 5,000 pounds (268 kg), in any direction, for each employee attached and for the maintenance of this information for the duration of the job. Building owners will hire a contractor to inspect and certify each anchorage and to prepare the decennial certifications. Table 1 below describes each of the requested burden hour program changes.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

OSHA will not publish the information collected under final subpart D.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

OSHA lists current valid control numbers in §§1910.8, 1915.8, 1917.4, 1918.4, and 1926.5 and publishes the expiration date in the Federal Register notice announcing OMB approval of the

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information collection requirement (See 5 CFR 1320.3(f)(3)). OSHA believes that this is the most appropriate and accurate mechanism to inform interested parties of these expiration dates.

18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-I.

OSHA is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The supporting statement does not contain any collection of information requirements that employ statistical methods.

Table 1
Subpart D – Walking-Working Surfaces for General Industry
Summary of Burden Hour and Cost

	Collection of Information Requirements	Current Burden Hours	Revised Burden Hours	Program Change	Cost Under Item 12	Responses	Rationale for Program Change
1	Final §1910.23 (b)(10)—Ladders with structural or other defects immediately must be tagged "Dangerous: Do Not Use" or with similar language in accordance with §1910.145 and be removed from service until repaired in accordance with §1910.22(d), or replaced.	0	2,880	2,880	\$68,285	57,590	Final §1910.23(b)(1) prevents workers from being killed or injured using defective ladders.
2	Final 1910.27(b)(1)(i) Rope Descent Systems (RDS)—Anchorages -Before any rope descent system is used, the building owner must inform the employer, in writing that the building owner has identified, tested, certified, and maintained each anchorage so it is capable of supporting at least 5,000 pounds (268 kg), in any direction, for each employee attached.	0	487,500	487,500	\$25,496,250	487,500	Final §1910.27(b)(1)(i) is a new requirement. It protects workers from fall hazards on the job.

	Collection of Information Requirements	Current Burden Hours	Revised Burden Hours	Program Change	Cost Under Item 12	Responses	Rationale for Program Change
3	Final 1910.27(b)(1)(ii) Rope Descent Systems—Anchorages – The employer must ensure that no employee uses any anchorage before the employer has obtained written information from the building owner that each anchorage meets the requirements of paragraph (b)(1)(i) of this section. The employer must keep the information for the duration of the job.	0	8,288	8,288	\$196,508	487,500	Final §1910.27(b)(1)(ii) is a new requirement. It protects workers from fall hazards on the job.
4	Final §1910.28(b)(1) (ii) when the employer can demonstrate that it is not feasible or creates a greater hazard to use guardrail, safety net, or personal fall protection systems on residential roofs, the employer must develop and implement a fall protection plan that meets the requirements of 29 CFR 1926.502(k) and training that meets the requirements of 29 CFR 1926.503(a) and (c).	0	135	135	\$7,061	270	Final §1910.28(b)(1)(ii) is a new requirement. It protects workers from fall hazards on the job.

	Collection of Information Requirements	Current Burden Hours	Revised Burden Hours	Program Change	Cost Under Item 12	Responses	Rationale for Program Change
5	Existing §1910.22(d)(1)—In every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates lost, removed, or defaced, shall be replaced by the owner or his agent.	2,775	0	-2,775	0	0	This provision is removed from final subpart D.
6	Existing §1910.26(c)(2)(vii)—Portable metal ladders - Ladders having defects are to be marked and taken out of service until repaired by either the maintenance department or the manufacturer.	3,350	0	-3,350	0	0	This provision is removed from final subpart D.
7	Existing §1910.28(e)(3)—Unless outrigger scaffolds are designed by a licensed professional engineer, they shall be constructed and erected in accordance with table D-16. Outrigger scaffolds designed by a registered professional engineer shall be constructed and erected in accordance with such design. A copy of the detailed drawings and specifications showing the sizes and spacing of members shall be kept on the job.	0	0	0	0	0	Final §1910.27(a) requires employers to comply with the construction scaffold standards (29 CFR 1926, subpart L). The construction standards do not specify that employers maintain copies of drawings and specifications of outrigger scaffolds used on a job.

	Collection of Information Requirements	Current Burden Hours	Revised Burden Hours	Program Change	Cost Under Item 12	Responses	Rationale for Program Change
	Total	6,125	498,803	492,678	\$25,768,104	1,032,860	