

29224, 29227–28, July 18, 1990). OSHA raised this issue after IWCA and small window cleaning companies told OSHA that quite often there were no anchorage points on rooftops for attaching their lines. Since they did not own the building, they had no control over the presence or location of anchorage points. They urged OSHA to require building owners to install anchor points on rooftops or designate existing structural members that would be strong enough to serve as anchor points to attach scaffolds, control descent devices and safety lines (Docket S–041; Exs. 3–407, Tr. 9/11/90 pp. 311, 313, 330–31; Tr. 9/12/90 pp. 483–84, 503, 543–44, 565–66, 596–97, 629–30).

Building Owners and Managers Association International (BOMA), however, objected to requiring building owners to provide anchor points, stating that window cleaners were generally able to find supports on which to tie off (Docket S–041, Tr. 9/14/90 p. 1443). BOMA did agree that new buildings completed two to five years after the effective date of the final rule should be equipped with anchor points (Docket S–041, Ex. 75).

IWCA and BOMA participated on the ANSI committee that developed the new national consensus standard addressing safety in window cleaning operations discussed earlier (ANSI I–14.1–2001—Window Cleaning Safety) (Docket S–029, Ex. 1–13). The ANSI standard directs building owners to provide, identify, certify, inspect annually and maintain anchorages for window washing activities. The standard also states that its provisions should be implemented within five years of publication of the standard, which was October 25, 2001 (ANSI I–14.1–2001, Appendix A, section b).

OSHA believes that anchorage points are necessary to ensure that scaffolding and other equipment can be safely tied back for any type of suspended work, not just window cleaning. This will prevent an employee from being injured or killed due to sudden movement of the scaffold. The ideal solution is for anchorages to be installed and maintained as part of the regular schedule for renovating and inspecting commercial buildings (e.g., rooftops). However, OSHA recognizes that many buildings may not currently have anchorages installed. Accordingly, the Agency seeks information on the following questions:

40. How many or what percentage of buildings are already equipped with anchorages to secure scaffolds, personal fall protection systems and controlled descent devices? What types of anchorages are present? Are there

specific types of buildings that do not generally have anchorages installed? Please explain.

41. Where anchorages are present, are they available for use with all suspended work or only for window cleaning? Are building owners inspecting and maintaining the anchorages? Please explain. What coordination takes place between building owners and employers who need anchorages for their employees? Can employers consult with building owners and install their own anchorages on buildings to protect their employees?

42. How should OSHA ensure that needed anchorage points are present and adequately maintained on buildings where suspended work is performed? Should OSHA require employers to obtain information from the building owner about available anchorages that have been tested, inspected, and maintained consistent with this subpart? Should OSHA require employers to prohibit employees from doing any suspended work until they receive assurance from the building owner that such anchorages are present? Please explain.

43. How frequently are the exteriors of commercial buildings such as rooftops renovated?

44. What would be a reasonable phase-in time or delayed effective date for ensuring that employees involved with suspended work are protected by anchorages that comply with subpart D? Should this timeframe be different for newly constructed buildings than for existing buildings? Please explain.

45. What are the estimated per building costs to install, inspect and maintain anchors for suspended work? Please explain how the estimated costs were derived.

#### *B. Subpart I—Personal Protective Equipment for Fall Protection*

##### *1. General Fall Protection Requirement*

The proposal for subpart I sets forth design and performance criteria for personal fall protection equipment generally as well as for specific types of equipment (§§ 1910.128–131, 55 FR 13435–38). Proposed § 1910.128(a)(1) stated that these criteria would apply where personal fall protection is required by or referenced in another standard (e.g., § 1910.67 Vehicle-mounted elevating and platform; § 1910.179 Overhead and gantry cranes; § 1910.128(a)(1), 55 FR 13425).

Questions were raised about whether the language in paragraph (a)(1) of proposed § 1910.128 was intended to supersede the general requirement in subpart I for employers to provide

personal protective equipment, including personal fall protection systems, to their employees “whenever it is necessary by reason of hazards of processes or environment \* \* \* encountered in a manner capable of causing injury or impairment in function” (§ 1910.132(a)(1)).

OSHA has cited § 1910.132(a)(1) to enforce the use of personal fall protection equipment. This enforcement action has been upheld by the Occupational Safety and Health Review Commission. See, e.g., *Secretary of Labor v. Peavey Co.*, 16 O.S.H. Cas. (BNA) 2022 (Rev. Comm’n 1994); *Secretary of Labor v. Hackney*, 16 O.S.H. Cas. (BNA) 1806 (Rev. Comm’n. 1994). In addition, OSHA has applied the general duty clause, section 5(a)(1) of the Act, to enforce the use of personal fall protection where appropriate.

OSHA did not intend for § 1910.128 to supersede § 1910.132(a)(1) in any way. The Agency also did not intend for proposed § 1910.128 to supersede the fall protection provisions in other standards, requiring employers to use a different type of fall protection than those standards specify; for example, to require employers to use personal fall arrest systems when the standard requires guardrails. Instead, OSHA’s intention was to tell employers that if a standard specifies or refers to a particular type of personal fall protection equipment, that equipment would now have to meet the design and performance criteria of subpart I.

OSHA is considering ways to resolve any confusion the proposed language may have inadvertently created. For example, OSHA is considering adding language to subpart I to emphasize that § 1910.128’s general requirement for employers to provide personal protective equipment to protect employees against hazards includes protection against fall hazards. This is the approach used in the other specific PPE standards in subpart I. The standards on eye, face, head, respiratory and foot protection all contain language requiring their use when applicable hazards are present (§ 1910.133(a)(1), § 1910.134(a)(1), § 1910.135(a)(1), § 1910.136(a)(1)). A provision addressing fall protection, for instance, could require its use when applicable fall hazards are present, or, more specifically, when employees are exposed to fall hazards of 4 feet (1.2m) or more.

As an alternative, OSHA is considering adding language to subpart D (§ 1910.22, General requirements) that reinforces the employer’s duty to provide employees with fall protection. Such a provision could cover all types