

Advocacy Recommends That OSHA Address Small Business Concerns with its Proposed Walking-Working Surfaces Rule

On August 19, 2010, the U.S. Small Business Administration's Office of Advocacy (Advocacy) submitted comments to the Occupational Safety and Health Administration (OSHA) on OSHA's *Proposed Walking-Working Surface and PPE Rule*. [75 Fed. Reg. 28862 (May 24, 2010)]. Walking-working surfaces include everything from floors (where slips, trips, and falls are unlikely to result in major injuries) to ladders, scaffolds, rooftops, and towers (where slips, trips, and falls can cause serious injury or death). Since 1971, OSHA has gone through multiple rulemakings on walking-working surfaces in an attempt to provide greater protections to workers and to keep pace with national consensus standards. OSHA's proposed rule is intended to reduce the number of fall-related employee injuries and fatalities by requiring new technology (such as personal fall protection systems) and methods, reorganizing the rule in a clearer, more logical manner, providing greater compliance flexibility, and increasing the consistency between the general industry, construction, and maritime standards.

Advocacy hosted a small business roundtable on August 10, 2010 for small business representatives to discuss the proposed rule. While participants supported much of the proposed rule, they did express concerns with several provisions. A complete copy of Advocacy's letter to OSHA is available at www.sba.gov/advo/laws/comments/.

- Small business representatives were concerned that OSHA is proposing overly broad, "general duty clause" type requirements on employers that could leave employers vulnerable to OSHA citations based on the subjective assessment of OSHA inspectors. Advocacy recommended that OSHA carefully consider the language in the proposed rule to be sure that hazards are well defined and employer's responsibilities are sufficiently clear.
- Small business representatives were concerned that OSHA's proposed rule does not go far enough to synchronize the general industry and construction standards. Advocacy recommended that OSHA's Directorates of Standards and Guidance and Directorate of Construction work together to synchronize any final rule, while maintaining flexibility where compliance would be infeasible or would create a greater risk to the employee.
- Small business representatives expressed opposition to OSHA regulating combustible dust under the proposed rule. Advocacy recommended that OSHA clarify whether combustible dust is intended to be included under this proposed rule, and how this standard would interact with any specific combustible dust standard in the future.
- Small business representatives were opposed to OSHA including commercial motor vehicles in the proposed rule. Advocacy recommended that OSHA carefully consider and resolve any jurisdictional and technical feasibility concerns before proceeding.

For more information about OSHA's *Proposed Walking-Working Surfaces and PPE Rule*, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 or bruce.lundegren@sba.gov.