

July 28, 2025

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**RE: Petition for Rulemaking Addressing Ladder Retrofit Requirements in OSHA's Walking-Working Surfaces Standard at 29 C.F.R. § 1910.28(b)(9)**

Dear Mr. Vought, Ms. Laihow, Ms. Feltz, and Mr. Levinson,

We write on behalf of the member companies of the American Fuel & Petrochemical Manufacturers (AFPM), American Chemistry Council (ACC), and American Petroleum Institute (API) to petition the Administration, through its Occupational Safety and Health Administration (OSHA), to initiate deregulatory rulemaking pursuant to 29 C.F.R. § 1910.3(a) to **revert or amend the ladder safety/personal fall arrest protection system requirement in OSHA's 2016 final amended Walking-Working Surfaces ("WWS") Standard at 29 C.F.R.**

**§ 1910.28(b)(9).**<sup>1</sup> Specifically, we request that OSHA consider **repealing the requirement that employers use personal fall arrest systems on all fixed ladders over 24 feet tall, and instead permit employers to continue to utilize ladder cages or wells, as had been standard under the WWS standard for decades before the 2016 amendment.**

Alternatively, we request that OSHA modify the WWS standard to "grandfather" fixed ladders that were installed before a certain date (for example, the date OSHA publishes an amended rule pursuant to this request), and allow employers to continue to utilize cages or wells on existing covered ladders, and provide ladder safety systems or personal fall protection systems only on new ladders constructed or modified after the operable date set by an amended rule.

The President and OMB directed agencies to identify at least 10 regulations to be repealed for each new regulation an agency proposes, importantly, to represent net cost savings. *Unleashing*

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<sup>1</sup> See *Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)*, 81 Fed. Reg. 82,494 (Nov. 18, 2016).

*Prosperity Through Deregulation*, Exec. Order No. 14192 § 3 (Jan. 31, 2025); OMB, *Memorandum: Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation,”* No. M-25-20 (Mar. 26, 2025). Indeed, the President’s executive orders and instructions from the Office of Management and Budget (OMB) specifically direct agencies to consider repealing burdensome and unjustified regulatory requirements—especially those that burden domestic energy. As illustrated in detail below, compliance with the prescriptive ladder retrofit requirement introduced in the 2016 amended WWS Standard is extraordinarily costly and does not provide a commensurate safety benefit for our employees. Repealing the ladder safety/personal fall arrest system requirements would therefore assist OSHA’s future efforts to address significant safety or health risks, and the commensurate economic savings would be measured in the hundreds of millions of dollars saved.

AFPM is the leading trade association representing petroleum refiners and makers of petrochemicals. Its members are committed to safeguarding their employees’ safety and health. For example, AFPM and AFPM’s Safety & Health Committee have participated in OSHA’s National Safety Stand-Down to Prevent Falls week. And the refining industry’s injury and illness rate is consistently among the lowest across manufacturing sectors. ACC represents more than 100 industry groups that focus on the business of chemistry and issues relevant to chemical manufacturers and downstream users. ACC’s members are committed to environmental stewardship and to workplace safety and health. Just last month, ACC announced that, during the last year, its members reported the lowest ever number of distribution incidents, the record low number of Tier 1 process safety events, and the record low rate of recordable injuries and illnesses. API represents 600+ members from all segments of America’s natural gas and oil industry, an industry that supports more than 11 million American jobs. It is proud that the industry’s rate of illnesses and injuries is consistently below that of the private sector average.

### **Background**

In 2010, OSHA proposed an amended *Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)* rule. 75 Fed. Reg. 28,862 (May 24, 2010). For fixed ladders longer than 24 feet, OSHA proposed an amendment to the WWS standard that would require employers to provide fall protection consisting of ladder safety systems, personal fall protection systems, wells, or cages. *Id.* at 28,891, 29,141. OSHA proposed to establish performance-oriented standards for cages on fixed ladders, to “allow employers the flexibility to install cages and wells that fit a particular situation, without compromising employee protection.” *Id.* at 28,898; *id.* at 29,144 (proposing that “[c]ages and wells must be designed and constructed to contain employees in the event of a fall and to direct them to a lower landing”). OSHA did not solicit comments on whether cages provide effective fall protection, did not state that it was considering prohibiting cages, and did not provide a meaningful opportunity to develop evidence on that issue. In the final rule, without notice to the regulated community, OSHA changed course and slipped in a new requirement for employers to use exclusively ladder safety systems or personal fall arrest systems, dropping the option to use cages or wells in any

circumstances. 81 Fed. Reg. 82,494. This change was based on OSHA’s unsupported conclusion that cages do not provide effective fall protection. *See id.*

Proposed Rule	Final Rule
Provide fall protection with choice of: <ul style="list-style-type: none"> <li>• Ladder safety systems</li> <li>• Personal fall protection systems</li> <li>• Cages</li> <li>• Wells</li> </ul>	Provide fall protection only with: <ul style="list-style-type: none"> <li>• Ladder safety systems</li> <li>• Personal fall protection systems</li> </ul> Cages and wells to be phased out by 2036.

**Questionable Safety Benefit of Ladder Fall Protection Systems**

The evidence does not provide adequate support for OSHA’s conclusion. One study OSHA cited was a Health and Safety Executive report. 81 Fed. Reg. at 82,602-82,603 (quoting Ex. 392). OSHA quoted from the executive summary, but did not discuss the parts of the report that stated “that the fall-arresting performance of ladder cages is unknown” and that other studies that stated that “[p]riority shall be given to the choice of the cage, as it is a collective means which is always present and the actual level of safety does not depend on the activity of the operator.” Ex. 392, at 30. Another comment supporting OSHA’s about-face recommended against using ladder safety devices *inside ladder cages*, but did not address standalone cages. *See* Comment from J. Nigel Ellis, Ellis Fall Safety Solutions LLC, Comment No. OSHA-2007-0072-0155. The Oregon Department of Transportation, which OSHA also cited actually concluded that “[t]here may be appropriate applications for cages and wells,” especially where employees are protected by guardrails at the upper level, and actually “recommend[ed] that existing, compliant cages and wells continue to be used.” Comment from Stephen G. Brown, Oregon Department of Transportation, Comment ID OSHA-2007-0072-0113, at 1-2. Although certain comments supported OSHA’s approach, many were self-serving, coming from manufacturers of (or organizations that represent manufacturers of) personal protective equipment—precisely the equipment they urged OSHA to mandate. *See* Comment from Tom Wolner, Capital Safety Group, Comment ID OSHA-2007-0072-0198; Comment from Daniel Glucksman on behalf of Daniel K. Shipp, International Safety Equipment Association (ISEA), Comment No. OSHA-2007-0072-0185.

The balance of information and data available to OSHA during the rulemaking supports providing employers with more flexibility to choose the best fall protection for their workplaces. For example comments from the International Liquid Terminals Association stated its “members utilize a variety of fall protection equipment and administrative procedures to protect workers from the hazards of falling,” including fall arrest systems when appropriate *or* cages. Comment from R. Peter Weaver, Director of Regulatory Compliance and Safety; International Liquid Terminals Association (ILTA), Comment ID OSHA-2007-0072-0169, at 2. Another commenter disagreed with OSHA’s proposal to exempt ladders used in outdoor advertising from certain requirements and noted, without disapproval, OSHA’s proposal to allow “a ladder safety system or a cage/well[.]” Comment from Darryl C. Hill, American Society

of Safety Engineers, Comment ID OSHA-2007-0072-0127, at 4-5. OSHA did not address this evidence in its discussion of its surprising change on the fixed ladder fall protection requirement. *See generally* 81 Fed. Reg. 82,494. It is arbitrary and capricious for an agency to “offer[] an explanation for its decision that runs counter to the evidence before the agency[.]” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

It is AFPM, ACC, and API’s experience that cages and wells provide effective fall protection. Just within the petroleum refining sector alone, members’ facilities have tens of thousands of ladders affected by this requirement, and they have more 1.5 million employees and contractors working at their facilities. In at least the last ten years, they have experienced very few injuries and zero fatalities resulting from falls from affected ladders. This impressive safety record—which our members have achieved using cages/wells—shows that cages/wells keep employees safe. Imposing the ladder safety/personal fall arrest system requirement will not, and given the already low injury rates, *could* not result in a significantly increased safety factor. In fact, it has the real potential to make employees less safe, as discussed below.

Cages have advantages over ladder safety/personal fall arrest systems because they provide passive protection to all employees who climb ladders and do not depend on individual employees’ judgment, decision-making, and compliance with administrative requirements. OSHA has long taken the position that personal protective equipment (PPE) is the least effective control in the hierarchy of controls because of the difficulty for employers to supervise every employee’s consistent and compliant use of PPE, like personal fall arrest equipment. Having to rely on ladder safety/personal fall arrest systems for fall protection could also expose employees to hazards if they or their would-be rescuers need to use ladders in an emergency and do not have access to PPE (i.e., delayed response to emergencies on elevated equipment due to the need to don harnesses/connect to fall protection system and delayed ability to evacuate, due to the need to disconnect from the fall protection system). Additionally, employees reported negative feedback about the discomfort of and additional exertion required by certain systems and, therefore, may be less likely to use them when they think they can do so without their supervisors’ knowledge

Ladder safety/personal fall arrest systems pose their own safety risks. Many employees’ daily work involves climbing affected ladders, so they will need to wear PPE at virtually all times, increasing the risk of heat stress and the risk of the harness becoming caught in the cage, injuring employees. Lifelines installed near the rungs create tripping hazards, increasing the risk of a fall. The components of these systems above ground level increase the risk of dropped objects. These systems also require detailed inspections, which increases the time spent on ladders and increases the likelihood of other, non-fall-related ladder injuries.

Some of the greatest fall risks occur at the transition point between ladder and platform, but ladder safety systems offer no protection during this moment, and in fact exacerbate the risks. For example, employees must disconnect while still on the ladder, requiring them to release a hand from the rung and operate a multi-action attachment point—significantly increasing their fall risk. Likewise, step-through/walk-through ladders do not allow the lifeline to extend above the top platform, so employees must stop near the top and disconnect before completing the

climb. Similarly, employees using side-step ladders must disconnect while still on the ladder before stepping onto the platform.

AFPM, ACC, and API, and their members are also concerned about the hazards arising from the actual process of reconfiguring, replacing, and/or retrofitting ladders as required by the 2016 amended WWS standard, including:

- Working at heights from manlifts, ropes, scaffolding, and/or fixed platforms
- Cutting, burning, and welding on, or in proximity to, live processing units and equipment, like reactors, distillation columns, and furnaces, which contain flammable liquids and vapors; explosive liquids and vapors; cryogenic liquids; toxic liquids, vapors, and solids; or corrosive liquids, vapors, and solids
- Complex crane work over potentially hazardous processing activities
- Working with heavy machinery (including flatbed trucks, forklifts, man lifts, and cranes) in proximity to potentially hazardous processing activities
- Exposure to falls while removing grating and handrails to access platforms and ladder connections to vessels
- Exposure to falls while adding platforms, if the employer opts to add platforms to bring ladder runs under the 24-foot threshold

This work is more likely to result in a recordable injury than working from a ladder equipped with a cage. And based on the number of ladders that must be replaced or retrofitted, this process will take many years. For example, one company estimates that 1,870,530 working hours will be spent implementing OSHA's requirement. AFPM, ACC, API, and their members do not want to expose employees to these other installation-related hazards for extended periods, especially with very little, if any, safety enhancement after the replacement work is completed.

#### **Extraordinary Costs of Compliance Yield Little If Any Safety Benefit**

Reconsideration of this ladder requirement is especially important because the costs to replace existing ladders are wildly disproportionate to any limited safety benefits for a high-performing sector. Our members have incurred significant costs before the physical work of retrofitting has begun. One company has spent thousands of hours over the last two years conducting fixed ladder assessments in anticipation of the work. This company spent \$1.2 million just to identify which ladders are affected. Another company estimates that it will spend \$5 million to do the same.

If forced to comply with the ladder safety/personal fall arrest system requirements, specific cost estimates from members indicate that **compliance with this requirement will affect more than 22,000 ladders and cost more than \$1.2 billion. This data comes from a survey that represents just over one-third of the petroleum refineries in the country and a tiny fraction of other chemical manufacturing facilities. Just among the petroleum refineries, we could extrapolate a cost of more than \$3 billion across the refining industry in the United States. The cost in time is also enormous.** It will take years, and millions of working hours, to perform the work necessary to come into compliance with the ladder safety/personal

fall arrest protection requirements, detracting from our members' ability to deliver the energy needed to power our nation.

Employers will also have to shoulder a large increase in their obligations and associated costs to inspect and maintain equipment installed to comply with the ladder safety/personal fall arrest protection requirements. Equipment will be subject to weather and use wear and tear that may deteriorate its condition and compromise its effectiveness, so it may need to be frequently replaced. Employers will also have to train employees and contractors on how to use the particular ladder safety systems and climbing devices used at each facility. One company estimates that these activities will cost more than \$2 million per year. And if our members must implement the ladder safety/personal fall arrest system requirements, their resources available to address more urgent safety projects—including those that produce a clear safety benefit—may be reduced.

The ladder safety/personal fall arrest protection system requirements will also affect our members' operations in other costly ways. For example, ladders associated with a pressure vessel may require their own engineering studies, as each vessel has piping, nozzles, tubing, and safety instrumentation already in place that may have to be moved to accommodate new ladders and ladder safety systems. Any changes to ladders associated with pressure vessels could require those vessels to be rerated. Modifications to ladders may also affect the configuration of process equipment (e.g., tower manways and instrumentation), which will require engineering modifications. Again, we would not be making this request if these requirements and costs yielded appreciable safety improvements. The fact is they create at least as much risk as they purport to mitigate.

### **Achieving President Trump's Executive Orders**

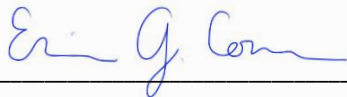
The President has established that “the policy of the executive branch” is “to alleviate unnecessary regulatory burdens placed on the American people.” Exec. Order No. 14192 § 2. OSHA's ladder safety/personal fall arrest system requirements impose significant burdens on the makers and refiners of petrochemicals—a cornerstone of the President's agenda to promote American energy—without the safety benefits to justify them. Repealing or replacing the ladder safety/personal fall arrest system requirements, or amending it to provide a grandfather clause, would, therefore, be consistent with the President's executive orders and OMB's directives implementing them. The President directed agencies to “review all existing regulations ... to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources—with particular attention to oil [and] natural gas ....” *Unleashing American Energy*, Exec. Order No. 14154 (Jan. 20, 2025). The President also directed agencies to identify “regulations that impose significant costs upon private parties that are not outweighed by public benefits” and “regulations that harm the national interest by significantly and unjustifiably impeding ... economic development [and] energy production.” *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, Exec. Order No. 14219 (Feb. 19, 2025). AFPM, ACC, API, and their members are engaged in making and refining petrochemicals, and in educating the public about their utility—precisely the sort of domestic energy work that the President seeks to

advance. As outlined above, the ladder safety/personal fall arrest system requirements will impose enormous costs and burdens on this industry, without delivering significant safety benefits. That conflicts with the approach the President has ordered agencies to take.

Similarly, OMB directed agencies to consider these cost and safety benefit concerns “when identifying regulations for repeal[.]” OMB, *Memorandum: Guidance Implementing the President’s Memorandum Directing the Repeal of Unlawful Regulations*, No. M-25-28 at 2 (May 7, 2025). Specifically, agencies must consider “[w]hether the costs imposed by a regulation are not justified by the public benefits,” potentially in violation of *Michigan v. EPA*, 576 U.S. 743 (2015), and “[w]hether a regulation does not sufficiently account for the costs it imposes,” potentially in violation of *Ohio v. EPA*, 603 U.S. 279 (2024). OMB Memo No. M-25-28 at 2-3. OSHA’s cost-benefit determinations about the ladder safety/personal fall arrest system requirements do not support continuing to impose this regulatory burden on employers. *See* OMB Memo No. M-25-28 at 3. OSHA estimated that *total* annual costs of compliance with 29 C.F.R. § 1910.28—which includes many requirements other than the ladder safety/personal fall arrest system requirements—would be \$55.9 million. 81 Fed. Reg. at 82,674. OSHA under-estimated costs these costs by a wide margin. As outlined above, the cost to AFPM’s, ACC’s, and API’s members to comply with *only* the ladder safety/personal fall arrest system requirements for 24’+ ladders, far exceeds that amount. Labor costs and the potential costs of downtime to allow for retrofitting will make those costs even greater. And it is not clear that the ladder safety/personal fall arrest system requirements have any safety benefits, let alone sufficient benefits to justify the cost. *See* OMB Memo No. M-25-28 at 2. As outlined above, AFPM, ACC, and API’s members already have very low injury rates and no fatal falls in at least the last 10 years from affected ladders. And requiring employees to spend years working to retrofit or replace ladders will expose them to additional hazards—a safety-defeating result.

AFPM, ACC, and API appreciate your consideration of this request and would welcome the opportunity to discuss it with you further and to engage cooperatively in a rulemaking initiated in response to the petition made pursuant to 29 C.F.R. § 1910.3(a) to implement this change.

Sincerely,



Eric J. Conn

*Counsel for AFPM, ACC, and API*