**DATE:** March 2,2022

**TO:** Phylmar Regulatory Roundtable (PRR), OSH Forum

**FROM:** Helen Cleary

**RE:** FedOSHA NPRM: Powered Industrial Trucks Design Standard Update - 29 CFR 1910 (General Industry) and 1926 (Construction)

On February 16, 2022 the U.S. Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA/FedOSHA) published a Notice of Proposed Rulemaking ([NPRM](https://www.federalregister.gov/documents/2022/02/16/2022-01155/powered-industrial-trucks-design-standard-update)) to update its Powered Industrial Trucks Design Standard for General Industry ([§1910.178](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.178)) and Construction ([§1926.602(c)).](https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.602)

## Background

OSHA’s Powered Industrial Trucks standard was adopted in 1971; it was one of the first standards OSHA adopted under Section 6(a) of the OSH Act. The rule still references design and construction requirements established in the **1969** edition of the American National Standard for Powered Industrial Trucks, Part II, ANSI B56.1. Since OSHA adopted the standard, ANSI’s B56.1 consensus standard has been revised twelve (12) times.

**Overview of Proposed Updates**

OSHA’s proposal to the design and construction requirements of the powered industrial trucks standards for general industry and construction include the following:

1. Updated references to the design and construction requirements to include the latest editions of ANSI B56:
	* ANSI B56.1 – 2020, Safety Standards for Low Lift and High Lift Trucks
	* ANSI B56.5 – 2019, Safety Standards for Driverless, Automatic Guided Industrial Vehicles and Automated Functions of Manned Industrial Vehicles
	* ANSI B56.6 – 2021, Safety Standards for Rough Terrain Forklift Trucks
2. References to ANSI B56.1-1969 for *trucks manufactured prior to the effective date of the final rule* will be maintained. The final rule will go into effect 30 days after the publication.
3. An alternative method of compliance for employers using *trucks that are not manufactured in accordance with the referenced consensus standards*.
	* Employers will need to demonstrate that the design and construction of the truck is at least as protective as those designed in accordance with the ANSI B56.1-1969 standard or the updated ANSI standards in the final rule.
	* This provision will allow employers using trucks manufactured after 1969 and before the effective date of the final rule to be in compliance with the design and construction requirements. For example, a truck designed and constructed in accordance with an earlier version of the ANSI standard referenced in the final rule would be compliant.
	* This provision will also allow employers to use trucks designed and constructed in accordance with a non-ANSI standard.
4. An alternative method of compliance for employers using *trucks manufactured after the effective date of the final rule*.
	* Employers will need to demonstrate that the design and construction is at least as protective as those designed in accordance with the applicable ANSI B56 standard.
	* This alternative method will allow employers to use trucks designed and constructed in accordance with future ANSI, or non-ANSI, standards not referenced in the rule.
	* To assist employers OSHA may issue guidance confirming new national consensus standard’s protectiveness. This may include issuing responses to ANSI or interpretation requests.
5. The requirement for approved trucks to bear a label or identifying mark indicating approval by a testing laboratory will be maintained but the references will be updated to include the latest ANSI provisions.
6. A minor change in construction provisions aimed to align specific requirements for overhead guards with general design and construction requirements is also being proposed.

*The updates are specific to the design and construction requirements; provisions in the current rule that do not relate to design and construction will continue to reference the 1969 edition of ANSI B56.1.*

**Additional Information**

OSHA has preliminarily determined that this proposal will impose no new costs on employers and will not add a compliance burden.

**Request for Comment**

**OSHA is requesting public comment on any aspect of the rule by May 17, 2022**. The Agency is particularly interested in receiving comments on the following:

* “Allowing trucks manufactured on or after the effective date of the final rule to satisfy the design and construction requirements of OSHA's powered industrial trucks standards if they are manufactured according to a future ANSI B56 standard or future non-ANSI consensus standard, provided that the employer can demonstrate that the design and construction of such trucks are at least as protective as the applicable ANSI standard in table 1 to §§ 1910.178(a)(2) and 1926.602(c)(1)(vi).
* Alternatively, should OSHA only require compliance with the design and construction requirements of the incorporated by reference of the applicable ANSI standard in table 1 and only allow for compliance with future consensus standards by incorporating by reference those new consensus standards through notice and comment rulemaking on an ongoing basis as they become available?”
* Should any additional conditions [] be required for an employer to make an equivalency showing for purposes of meeting the proposed alternative method of compliance. What should an employer be required to do to demonstrate that a truck is at least as protective as the design and construction requirements applicable ANSI standard in table 1? For example, would it be sufficient for an employer to rely on the truck manufacturer's certification that the truck is at least as protective as the applicable ANSI standard?
* What, if any, action should OSHA take to confirm a consensus standard's protectiveness in relation to the design and construction requirements of the relevant ANSI standard in table 1?
* Relatedly, the agency welcomes comments on whether employers that rely on a future consensus standard should be required to demonstrate that the design and construction requirements of that consensus standard are at least as protective as the design and construction requirements in the applicable ANSI standard in table 1, or whether OSHA should bear the burden of establishing, as part of its prima facie case against an employer, that a powered industrial truck designed and constructed in accordance with a future national consensus standard provides less protection than a truck designed and constructed in accordance with the applicable ANSI standard in table 1.”

**Next Steps**

**PRR members should contact Helen Cleary by Wednesday March 16, 2022, if they would like PRR to convene a Task Force to discuss and possibly draft written comments for submission to OSHA.**