

total would have been significantly higher had data from all the states been included in the study. In 1984 and 1985, BLS reported that more than 300 workers died in fall-related accidents, which represented nine percent of all workplace deaths (Docket S-041; Ex. 2-19).

More recent publicly available data also confirm the need for revising subparts D and I. BLS data for 1999 show that employee falls resulted in 721 fatalities and 297,499 injuries involving lost workdays, and a fatality rate of 0.08 per 10,000 employees. BLS data for 2000 shows a slight increase in employee fall fatalities (734), also with a fatality rate of 0.08 per 10,000 employees. This represents a slight increase from the 1992 fatality rate of 0.06 derived from BLS data. A 2002 study by the Liberty Mutual Insurance Company found that falls to a lower level were the fourth leading cause of all workplace injuries, accounting for 9.2% of all workplace injuries and \$3.7 billion in direct costs annually (Docket S-029; Ex. 1-17).

OSHA believes that revising the standards for subpart D and adding design and performance requirements for personal fall protection equipment in subpart I will substantially reduce the number of fatalities and injuries resulting from slip, trip and fall hazards.

#### IV. Request for Comments, Data and Information

Since publication of the proposed revisions to subparts D and I, many of the resource documents OSHA used to develop the proposed rules have been updated and industry practices and equipment design and performance have improved. OSHA believes that incorporating information and data about these changes and improvements into the revisions of subparts D and I will make the revised subparts more effective in protecting employees from the hazards of slips, trip and falls. Therefore, OSHA is reopening the rulemaking record to add this information and provide the public with an opportunity to review and comment on it.

At the same time, OSHA invites comment on a range of specific issues that are related to the proposed revisions. OSHA is particularly interested in receiving comments on the questions listed below. OSHA will carefully review and evaluate data, information and comments received in response to this notice in revising proposed subparts D and I.

As previously discussed, OSHA is using this limited reopening to supplement and update the existing

rulemaking record for subparts D and I. There is a substantial public record on the proposed standards, including comments, public hearing proceedings, and post-hearing comments. This limited reopening will allow the public to update the record on a few key issues in the proposed rules, as well as to provide input for a revised economic analysis. When this revised analysis is completed, OSHA will reopen the record again to allow the public to comment on the revised analysis and the issues raised by proposed subparts D and I in light of the revised analysis. After that public comment period, OSHA will determine if any other steps are necessary, including issuance of a revised NPRM, before the Agency moves ahead with a final rule for these proposals.

To facilitate stakeholders responding to questions in this limited reopening regarding issues referencing the 1990 proposed rule, the regulatory text and appendices as proposed in 1990 have been included as an appendix to this reopening document.

##### A. Subpart D

##### 1. Rolling Stock and Self Propelled, Motorized Mobile Equipment

OSHA is requesting additional comment on whether rolling stock and self-propelled, motorized mobile equipment should be covered or excluded from subpart D. Self-propelled, motorized mobile equipment includes tractor trailer trucks, tank trucks, hopper trucks and buses while rolling stock includes covered and uncovered rail cars, hopper cars, tank cars, and trailers.

Existing subpart D does not exclude such equipment from coverage and OSHA has issued citations for self-propelled, motorized mobile equipment under this subpart. In the proposed revision of subpart D, however, OSHA proposed to exclude surfaces that were an integral part of "self-propelled, motorized mobile equipment" other than platforms lifted by powered industrial trucks (§ 1910.21(a)(1), 55 FR 13396). In the preamble, OSHA said that employee exposure to these types of surfaces was usually brief and sporadic, such as performing periodic maintenance. In addition, there was concern that the surfaces did not contain anchorage points for attaching fall protection equipment.

The preamble also included examples of equipment that OSHA intended to exclude from coverage, but did not specify whether rolling stock were included in those examples (55 FR 13365). OSHA received comments

saying that all rolling stock should be excluded from coverage (Docket S-041; Ex. 3-46).

An OSHA memorandum issued to its Regional Administrators on October 18, 1996, interpreted the proposal as excluding rolling stock from subpart D (Docket S-029; Ex. 1-16-2). In anticipation of a final revised rule, the memorandum directed OSHA inspectors not to cite rolling stock under subpart D. The memorandum also said it would not be appropriate to use the PPE standard (29 CFR 1910.132 (d)) to cite employee exposure to fall hazards on the tops of rolling stock, unless the rolling stock was positioned inside of or contiguous to a building or other structure where the installation of fall protection is feasible. The Agency is asking for additional comment on the following issues that relate to the appropriate scope of subpart D:

1. In your establishment and/or industry, how many or what percentage of employees working on top of rolling stock and/or self-propelled, motorized mobile equipment are exposed to fall hazards? How are these employees protected from fall hazards while working on such equipment? If fall protection equipment is used, please provide detailed information on the types and costs of the fall protection used on mobile equipment and please explain how it is used. If fall protection equipment is not used, please explain what technological and/or economic obstacles may be involved. Are there alternative means to protect employees from fall hazards while working on mobile equipment, including rolling stock? Please explain.

2. What is your safety experience with fall hazards on rolling stock and self-propelled, motorized mobile equipment?

3. Should OSHA exclude rolling stock and self-propelled motorized mobile equipment from coverage under subpart D? Please explain and provide data and information to support your comments.

##### 2. Qualified Climbers

OSHA proposed to add a provision to subpart D that would allow employers to use "qualified climbers," in certain limited situations, to climb fixed ladders that are not equipped with fall protection devices (*i.e.*, cages, wells or ladder safety devices) (§ 1910.23(a)(2), 55 FR 13398). The proposed provision would be an alternative to the existing subpart D requirement that fixed ladders more than 20 feet (6.1 m) high be equipped with such fall protection devices (§ 1910.27(d)). The proposed provision would allow qualified climbers to climb a ladder without fall