

protection, provided that (1) the employer shows that the process of installing ladder safety devices, cages or wells on the fixed ladder would pose a greater hazard, and (2) the fixed ladder is climbed no more than twice per year (§ 1910.23(a)(2), 55 FR 13398). Once qualified climbers reach their work location, however, they must use fall protection.

In the proposal, OSHA defined as a qualified climber as “[a]n employee who, by virtue of physical capabilities, training, work experience and job assignment, is authorized by the employer to routinely climb fixed ladders, step bolts or similar climbing devices attached to structures” (§ 1910.21(b), 55 FR 13397).

OSHA recognizes that accidents involving ladders account for a significant number of workplace injuries and deaths. Indeed, OSHA estimated in its preliminary economic analysis that annually more than 10 percent of work surface injuries (11,025 injuries) and 19 percent of work surface deaths (25 deaths) involved ladders (55 FR 13390). Nonetheless, OSHA proposed the qualified climber alternative, in part, because the Agency believed that hundreds of thousands of fixed ladders were not equipped with the devices subpart D requires and were being climbed without fall protection of any kind. In the proposal, the Agency estimated that the cost of retrofitting all of these ladders to comply with subpart D could exceed \$1.5 billion (55 FR 13360).

OSHA also proposed the qualified climber concept because the Agency believed that the process of installing, inspecting and maintaining cages, wells or ladder safety devices could, in some cases, substantially increase the period of employee exposure to fall hazards, as compared to the amount of time that qualified climbers would spend actually climbing ladders that did not have such devices.

OSHA is seeking comment on several issues concerning qualified climbers:

- The number of times a fixed ladder that is not equipped with fall protection (*i.e.*, personal fall protection systems, ladder safety devices, cages, or wells) should be allowed to be climbed in a year,
- Any environmental conditions in which qualified climbers should not be allowed to climb without using fall protection,
- Whether employers should be required to provide climbers with personal fall protection systems during training, and

- The use of other work practices and devices to protect qualified climbers from falling while climbing.

Current industry practice. As mentioned, the proposal for subpart D would allow qualified climbers to climb fixed ladders that are not equipped with fall protection on an infrequent basis. OSHA stated in the preamble that permitting employers to use qualified climbers who are physically fit and specially trained, would be an effective way to reduce the number of falls from these fixed ladders (55 FR 13388–89). OSHA issued a compliance directive, which explained the *de minimus* policy (OSHA Instruction CPL 2.103) (Docket S–029; Ex. 1–16). Under this policy, it would be considered a *de minimus* violation when an employer complied with a proposed standard rather than the standard in effect at the time of the inspection and the employer’s actions clearly provided equal or greater employee protection. Employers who followed the proposed requirements in subpart D for qualified climbers would not be subject to citation under existing subpart D.

OSHA is interested in receiving comment on the extent to which fixed ladders are equipped with fall protection and the extent to which employers use qualified climbers.

4. In your establishment and/or industry, how many or what percentage of fixed ladders exceeding 20 feet (6.1 m) are equipped with ladder safety devices, cages, or wells? What technological and/or economic obstacles may be involved in equipping fixed ladders with cages, wells, or ladder safety devices?

5. In what percentage of climbs on fixed ladders are personal fall protection systems used? Where personal fall protection systems are used, how do climbers “tie off” to these ladders?

6. In your establishment and/or industry, to what extent (*e.g.*, what percentage) are climbs performed by qualified climbers, as defined above? How many or what percentage of their climbs are performed on fixed ladders that are not equipped with ladder safety devices, cages or wells? How many or what percentage of their climbs are performed without personal fall protection systems? What has been the safety experience in your establishment and/or industry using qualified climbers?

7. In your establishment and/or industry, what are the factors and/or rationale involved in the decision to use a qualified climber? Please explain and provide comment on both the risk-related and economic factors involved in this decision. Also, please comment

on the extent to which any of the following factors are involved in this decision: height of ladder, frequency of climb, cost of installing and maintaining fall protection equipment, and cost of training qualified climbers.

8. If you use qualified climbers, has this practice resulted in safety or productivity benefits? Please explain and provide data and information about those benefits.

Number of climbs. The proposal for subpart D would allow employers to use qualified climbers, in lieu of equipping fixed ladders with fall protection, provided the ladder is climbed very infrequently (1910.23(a)(2); 55 FR 13398). OSHA proposed that employers be allowed to do so where the ladder is climbed no more than twice a year. In the preamble OSHA notes that some industries (*e.g.*, outdoor advertising) allowed those ladders to be climbed more frequently and OSHA said it was considering permitting those ladders to be climbed by qualified climbers up to 12 times year before employers would be required to equip the ladders with fall protection devices (55 FR 13364)). OSHA requested comment on whether the Agency should increase the number of climbs ladders that were not equipped with fall protection could be climbed by a qualified climber. Several commenters requested that OSHA allow ladders to be climbed up to six times per year before employers would be required to equip them with fall protection (Docket S–041, Exs. 3–412, 3–432, 10–6). They said six climbs would be in line with telecommunication industry practice. OSHA notes that the Electric Power Generation, Transmission and Distribution standard (Electric Power Generation standard), which was finalized after the proposal for subpart D was published, does not place a limit on the number of times that a structure can be climbed by a qualified climber without using fall protection (§ 1910.269(g)). Instead, the standard limits climbing without fall protection based on whether certain conditions such as ice, high winds, structure design, or contaminants are present that could cause employees to lose their grip or footing (59 FR 4320, 4373; Jan. 31, 1994).

In a related issue, some commenters urged OSHA to adopt a broader definition of what constitutes one “climb.” One commenter, for example, suggested defining one “job” as constituting one “climb” (Docket S–041, Tr. 9/17/90 pp. 1745–46). One job, however, could take days or weeks to complete and involve a large number of climbs. OSHA is considering whether to