**U.S. DEPARTMENT OF LABOR**

Occupational Safety and Health Administration
300 Fifth Avenue, Suite 1280
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October 2, 2015

Joel Sacks, Director
Department of Labor and Industries
Division of Occupational Safety and Health
P. O. Box 44001
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Mr. Sacks:

Thank you for your letter in response to our request for a detailed analysis and comparison between Washington's fall protection standards and enforcement policies that apply to residential construction and the Occupational Safety and Health Administration's (OSHA) Compliance Guidance for Residential Construction (STD 03-1-002) and Subpart M of 29 CFR 1926. We have completed our review of the Washington Division of Occupational Safety and Health (DOSH) State-Initiated Amendments to Chapter 296-155 WAC, Part C-1, Fall Protection Requirements for Construction (AO 06-08) and the associated comparative analysis. As you are aware, OSHA reinstated its original residential fall protection requirements in December 2010. Based on this review, Washington's fall protection requirements cannot be considered at least as effective as OSHA's requirements. The specific areas of concern in which the State Plan's standard differs significantly from OSHA's policy and standard include Washington's system of trigger heights for requiring conventional fall protection; alternatives to conventional fall protection, such as the safety watch system and catch platforms; Washington's warning line criteria; and certain language in Washington's standard which may make the requirement to use fall protection ambiguous.

**Trigger Height:**

Washington's ten-foot trigger height for requiring conventional fall protection at WAC 296-155-24611 is not at least as effective as OSHA's general six-foot trigger height in construction. OSHA acknowledges that Washington's general four-foot trigger height for most walking/working surfaces in WAC 296-155-24609 may be more protective than OSHA's six-foot rule. However, there are situations in which OSHA imposes a six-foot trigger height while Washington allows for a trigger height of ten feet, such as roofing work on low pitched roofs, leading edge work, or work on surfaces not meeting Washington's definition of a walking/working surface. While Washington's ten-foot trigger height is limited in application, it leaves Washington workers exposed to fall hazards where workers covered by OSHA's standards would be protected. OSHA also would like to discuss the Washington definition of "Walking/working surface," so we can better understand how Washington addresses fall hazards on surfaces which are less than forty five inches in all directions.

**Alternatives to Conventional Fall Protection:**

Washington's fall protection requirements permit two alternatives to conventional fall protection that OSHA does not consider to be at least as effective as the federal standard. First, Washington's requirements appear to allow an exemption from conventional fall protection for certain short-term work (conducting repair work or servicing equipment) on low-sloped roofs if employers use a "safety watch system." OSHA's standard permits a safety monitor system in lieu of conventional fall protection for roofing work on low-sloped roofs 50 feet or less in width (29 CFR 1926.501(b)(10)). However, for roofing work on low-sloped roofs greater than 50 feet wide, a warning line must be used in addition to a safety monitor system under the federal standard. OSHA also requires conventional fall protection for non-roofing activities on a low-sloped roof unless this work is performed behind a warning line at least 15 feet from the edge. As such, OSHA does not consider Washington's "safety watch system" requirement to be at least as effective as the federal standard.

Secondly, the Washington standard permits "catch platforms" as an alternative to conventional fall protection for leading edge work. The OSHA standard does not explicitly permit catch platforms. However, OSHA has issued interpretations that do permit catch platforms as long as they comply with the scaffolding requirements in 29 CFR Subpart L, including requirements related to strength and stability, such as the 4:1 strength safety factor requirement in 29 CFR 1926.451(a)(1) (see, e.g., OSHA's April 10, 2001 letter to Dennis Vance and January 5, 2009 Letter # 20080910-8622, available at www.osha.gov). Although Washington's standard at WAC 296-155-23613(3) requires catch platforms to be at least 45 inches wide and equipped with standard guardrails, it is unclear to OSHA whether Washington has established minimum requirements for catch platform strength or stability.

**Warning Line Criteria:**

Like OSHA, Washington permits employers to rely on a warning line system in certain circumstances, such as for low-sloped roofing, provided that the warning line is at least six feet from the edge and meets other minimum criteria. However, OSHA's standard further requires employers who rely on a warning line system for low-sloped roofing work to *also* use a safety monitor (29 CFR 1926.501(b)(10)). In addition, the Washington standard differs from OSHA's in that it requires a warning line to have a minimum tensile strength of 200 pounds, while OSHA requires the warning rope, wire, or chain to have a minimum tensile strength of 500 pounds.

**Ambiguous Language:**

OSHA is concerned that conditional or ambiguous language in certain provisions of the Washington standard may make the requirement to use fall protection more subjective, or make the standard more difficult to enforce. For example, under WAC 296-15-24609(4)(d) for skylight requirements, protection is only required "whenever there is a danger of falling through." Similarly, under WAC 296-15-24609(5)(a)(i) for wall openings, fall protection is only required "when the height and placement . . . is such that either a standard rail or intermediate rail will effectively reduce the danger of falling." Under WAC 296-16-24607(2) floor holes "into which persons can accidentally walk" must be guarded. OSHA is concerned that this

language may have the effect of placing the burden on the compliance officer to establish that an unguarded fall hazard presents a danger.

In the interest of providing Washington workers the same, or greater, level of protection as afforded under OSHA's program, we ask that you work with us in a timely manner to fully address the key issues highlighted above and any other issues that may come to light in the course of further discussions. OSHA supports Washington's efforts to take this matter to its regulated community. As you know, this issue has been under discussion for several years. While we recognize that the rulemaking process in Washington can be lengthy, we ask the state to initiate this process at its earliest opportunity.

If you have any questions regarding this matter, please do not hesitate to contact Jacob Ewer, Acting Bellevue Area Director at 425-450-5483, or A.J. Reid, State Programs Manager at 206-757-6692. If you would like to discuss this matter further with me, I may be reached at 206-757-6700.

Thank you for your continued cooperation in working to ensure the safety and health of workers in Washington.

Sincerely,

KEN NISHIYAMA ATHA
Regional Administrator

cc: Galen Blanton, Deputy Regional Administrator
Dave Baker, Assistant Regional Administrator for Cooperative and State Programs
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