



August 13, 2021

Craig Blackwood
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Division of Occupational Safety and Health
Washington Department of Labor and Industries

Mr. Blackwood:

This letter is in response to Washington's adoption of the unified fall protection rule (Chapter 296-880 WAC Safety Standards for Fall Protection) on June 2, 2020, effective October 1, 2020. The adoption of the Washington rule was a state initiated change and the State Plan provided a comparison document on December 2, 2020. OSHA finds that some provisions of the rule are not at least as effective (ALAE) as OSHA general industry and construction standards.

Background:

In December of 2010, OSHA resumed enforcement of the fall protection requirements found in 29 CFR 1926 for residential construction, which requires the use of fall protection at heights of six feet or higher. State Plans must enforce standards that are at least as effective as OSHA's, including the six-foot trigger height. A review of the Washington code and discussion with Washington's Division of Occupational Safety and Health (DOSH) resulted in a written request for DOSH to update its existing fall protection requirements for construction in a letter dated [October 2, 2015](#). DOSH initiated rulemaking in [March of 2016](#), by drafting an updated rule and holding stakeholder meetings, through the summer of 2017. DOSH received feedback from stakeholders that a unified rule combining all DOSH fall protection standards in all industries under one standard would be "[easier to implement and help protect workers from fall hazards](#)". As a result, DOSH held more stakeholder meetings in 2018 and 2019 and then rescinded rulemaking specific to fall protection in construction and [formally initiated rulemaking](#) for the unified fall protection standard on February 19, 2019.

During DOSH's rulemaking activity, OSHA reiterated its concerns during quarterly meetings, in the Federal Annual Monitoring Evaluation (FAME) Report, through discussion of the FAME corrective action plan, and during stakeholder meetings. DOSH provided the first draft of its unified fall protection rule to OSHA and OSHA responded on August 19, 2019, with an opinion letter that identified a list of specific provisions that OSHA was concerned were not at least as effective as federal OSHA's requirements. DOSH responded to that letter on October 18, 2019, and agreed to update some areas of the rule but did not agree that other areas were less effective than the federal requirements. OSHA reiterated its concerns with the proposed DOSH rule in another letter on February 26, 2020. DOSH requested additional time to respond to that letter. DOSH [formally adopted](#) the unified fall protection rule (Chapter 296-880 WAC Safety Standards for Fall Protection) on June 2, 2020.

On June 17, 2020, after adopting the rule, DOSH responded to OSHA's February 26, 2020, letter regarding OSHA's concerns with the then-proposed DOSH rule as it pertained to the construction industry. In DOSH's response, Alan Lundeen stated that:

OSHA has yet to fully define the criteria necessary to establish whether State Plan Standards are “*at least as effective*” by any means, other than evaluating if the state rules are “*the same as*” (which state plans are not required to meet). In order to measure “*at least as effective as*”, you have to include the results of the implementation of the policies and standards.

And went on to state:

We are confident that our current and newly adopted Unified Fall Protection requirements (that apply to all employers in Washington State under our jurisdiction) are more effective than the comparable Fall Protection Standards enforced by OSHA.

OSHA disagrees with this assessment. OSHA identified the concerns raised in the February 26, 2020, letter by comparing the proposed state standards to OSHA's standards on a provision-by-provision basis to determine effectiveness. As we have stated in prior correspondence, State Plans must provide standards with respect to specific issues that will be at least as effective as the standards promulgated by OSHA relating to the same issues (29 CFR 1902.4(b)(2)). Furthermore, OSHA's indices of effectiveness in its regulations require that State Plan standards must be "at least as effective" in containing "specific provision[s] for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure" (29 CFR 1902(b)(2)(vii)).

Specific Concerns:

OSHA reviewed the adopted Washington unified fall protection rule and found that the following provisions are not at least as effective as OSHA standards for fall protection in construction:

Trigger Heights

1. WAC 296-880-30005(1)(a) requires fall protection at ten feet or more for employees engaged in roofing work on a low pitched roof.

29 CFR 1926.501(b)(10) requires fall protection when employees engaged roofing activities on low-slope roofs are exposed to a fall hazard of six feet or more.

2. WAC 296-880-30005(1)(b) requires fall protection at ten feet or more for employees constructing a leading edge.

29 CFR 1926.501(b)(2) requires fall protection when employees constructing a leading edge are exposed to a fall hazard of six feet or more.

Warning Line Systems

3. **For leading edge work on a low pitched roof**, WAC 296-880-40040(1)(b) appears to permit a warning line to be used in conjunction with a safety monitoring system to protect employees

constructing the leading edge on a roof, as well as other employees working behind the warning line, without any other form of fall protection. However, WAC 296-880-30005(1)(b) requires a “fall arrest system, fall restraint system, or positioning device system” when employees work ten feet or more above a lower level constructing a leading edge. When these two provisions are read together, OSHA’s understanding is that Washington would require workers constructing a leading edge at ten feet or more to use a fall arrest system, fall restraining system, or positioning device system, but workers constructing a leading edge between six and ten feet could work in front of a warning line with only a safety monitor as fall protection. In addition, it is unclear whether employees working behind the warning line would need other fall protection. By contrast, under 29 CFR 1926.501(b)(2), employees constructing the leading edge must use conventional fall protection (meaning guardrail systems, safety net systems, or personal fall arrest systems) unless the employer can demonstrate that it is infeasible or presents a greater hazard and implements a fall protection plan meeting the requirements of section 1926.502(k), and other employees on a surface where a leading edge is under construction must use conventional fall protection unless a controlled access zone has been implemented. OSHA is also unclear on how WAC 296-880-30005(1)(b) and WAC 296-880-40040(1)(b) work together, and requests clarification.

4. **For low pitched roofing work**, WAC 296-880-40040(1)(a) permits a warning line to be used without any other form of fall protection when employees are more than six feet from the edge of the roof. However, WAC 296-880-30005(1)(b) requires a “fall arrest system, fall restraint system, or positioning device system” when employees perform low-slope roofing work ten feet or more above a lower level. Under 29 CFR 1926.501(b)(10), OSHA permits warning line systems to be used on low-slope roofs when employees engaged in roofing activities are also protected from falling by conventional fall protection or a safety monitoring system. If an employer chooses to use a warning line system without using conventional fall protection, then a safety monitoring system must be used to protect all of the employees working on the low-slope roof. Therefore, at potential fall heights between six and ten feet, Washington’s low pitched roofing requirements are not at least as effective as OSHA’s requirements. Also, as with regard to leading edge requirements, OSHA is unclear on how WAC 296-880-30005(1)(b) and WAC 296-880-40040(1)(b) low-slope roofing requirements work together, and requests clarification .

The following provision is not at least as effective as OSHA standards for fall protection in general industry:

Ski Area Facilities and Operations

5. WAC 296-880-30055 (a) requires that personal fall arrest systems or personal fall restraint systems must be provided and used whenever employees are working in locations which expose them to a fall hazard of more than ten feet.

29 CFR 1910.28(b)(1)(i) states, except as provided elsewhere in this section, that the employer must ensure that each employee on a walking-working surface with an unprotected side or edge that is 4 feet (1.2 m) or more above a lower level is protected from falling by one or more of the following: guardrail systems; safety net systems; or personal fall protection systems, such as

personal fall arrest, travel restraint, or positioning systems.

Additional Areas of Potential Concern/Requests for Clarification:

Safety Watch System

6. WAC 296-880-20005(8) states that when one employee is conducting repair work or servicing equipment on a low pitch roof four feet or more above a lower level, employers are allowed to use a safety watch system in accordance with WAC 296-880-40050.

There is no comparable system in OSHA's standards. For general industry, under 29 CFR 1910.28(b)(13), when performing work that is infrequent and temporary between six and fifteen feet from the unprotected side or edge of a low slope roof, employers may use a "designated area" in lieu of implementing conventional fall protection. If work takes place fifteen or more feet back from the unprotected side or edge of a low-slope roof, then the employer may use traditional fall protection or a designated area for all types of work, and, for work that is both infrequent and temporary, no fall protection is required, although the employer must implement and enforce a work rule prohibiting employees from going within fifteen feet of the roof edge. *Designated area* means a distinct portion of a walking-working surface delineated by a warning line in which employees may perform work without additional fall protection (29 CFR 1910.21(b)). Although Washington's allowance and OSHA's exception may cover overlapping scenarios, OSHA is concerned that Washington's allowance for repair work and servicing equipment could be implemented more broadly than OSHA's allowance for work that is infrequent and temporary and requests clarification on this.

In addition, some repairs can constitute construction work under OSHA standards. In these instances, OSHA's construction standards would apply and employers performing such repair work would be required to use conventional fall protection (29 CFR 1926.501(b)(1)). OSHA does not believe that Washington's safety watch system is at least as effective as conventional fall protection. OSHA is unsure whether "repair work" in Washington's standard could include work that is deemed construction under federal standards and requests further clarification from Washington on the intended scope of these provisions.

Low pitched roofs when roofing work is performed:

7. The WAC codes mentions roofing work performed on a low pitch roof in three different sections which seem potentially contradictory. As noted previously, it is not clear to OSHA how these rules apply together. Specifically the construction work code, WAC 296-880-30005(1), clearly states that the only fall protection options for roofing work on a low pitched roof when employees are exposed to fall hazards 10 feet or more to the lower level are a fall arrest system, fall restraint system, or positioning device system. However, the WAC codes for safety monitor systems (WAC 296-880-40045(1)) and warning lines (WAC 296-880-40040(1)) state that the safety monitor system, combined or without a warning line system, is also an option for low pitched roofing work and do not suggest a trigger height limitation for employers to rely on these options, in lieu of conventional fall protection. OSHA requests that Washington clarify how

these standards apply together and consider updating the WAC codes to clarify the relationship between the three sections referenced above.

Warning Line Systems for work other than roofing and leading edge work:

8. In addition to the warning line concerns noted above, WAC 296-880-20005(1)(f), WAC 296-880-20005(7)(d) and WAC 296-880-40040 allow a warning line system to be used as a method of fall protection on low pitched roofs for employees engaged in work other than roofing work or leading edge work. The warning lines must be erected not less than fifteen feet from the unprotected sides or edges of the open sided surface. As noted above, OSHA's general industry fall protection requirements provide a similar allowance for low-sloped work on roofs (29 CFR 1910.28(b)(13)). However, for non-roofing construction work, OSHA requires employers to provide guardrail systems, safety net systems, or personal fall arrest systems in accordance with 29 CFR 1926.501(b)(1). Although OSHA notes that Washington's standard is not at least as effective as OSHA's rule, OSHA has determined that Washington's rule is at least as effective as OSHA's current enforcement policy, expressed in OSHA's May 12, 2000, [letter of interpretation](#) to Barry Cole, which considers the use of a warning line fifteen feet back from an unprotected side or edge to be a "de minimis" violation of OSHA's construction fall protection standards. If OSHA were to rescind the Cole letter in the future, these sections of the WAC code would need to be reconsidered.

Conclusion:

Please address our concerns and provide a plan of action for updating your code by September 13, 2021. If you wish to discuss this review further, you may contact me by email at Tipton.Cecil@dol.gov or at 503-231-2112. If you do not agree to update the unified fall protection rule, we will initiate the standards disapproval procedures outlined in the State Plan Policies and Procedures Manual, [CSP 01-00-005](#), dated May 6, 2020.

Sincerely,



Cecil Tipton
Acting Area Director