DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OREGON STATE PLAN: APPROVAL OF OREGON STATE STANDARDS

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Oregon State standards for fall protection, forest activities and steel erection.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is approving three standards: fall protection, forest activities and steel erection, promulgated by the Oregon Department of Consumer and Business Services pursuant to its OSHA-approved state plan. These standards differ from the equivalent federal standards but have been determined to be “at least as effective” as the federal standards.

On August 9, 2004, OSHA published a Federal Register notice (69 FR 48253) requesting public comment on whether the Oregon standards met both the “at least as effective” criterion and product clause tests of Section 18(c)(2) of the Occupational Safety and Health Act. This notice invited interested persons to submit by September 8, 2004, written comments and views regarding the Oregon state standards and whether they should be approved by the Regional Administrator. OSHA received two comments in response to the fall protection standard.

DATES: Effective Date: May 5, 2005.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2244. You may access Oregon’s standards on the state’s Web page at http://www.cbs.state.or.us/external/osha/standards/standards.html. You may also access electronic copies of this Federal Register notice, as well as federal OSHA standards, on OSHA’s Web page at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The requirements for adoption and enforcement of safety and health standards by a state with a state plan approved under Section 18(b) of the Act (29 U.S.C. 667) are set forth in Section 18(c)(2) of the Act and in 29 CFR 1902, 1952.7, 1953.4, 1953.5 and 1953.6. OSHA regulations require that states respond to the adoption of new or revised permanent federal standards by state promulgation of comparable standards within six months of OSHA publication in the Federal Register (29 CFR 1953.5(a)). Independent state standards must be submitted for OSHA review and approval. Newly adopted state standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR part 1953, but are enforceable by the state upon adoption and prior to Federal review and approval.

Section 18(c)(2) of the Act provides that if state standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the “product clause”).

On December 28, 1972, notice was published in the Federal Register (37 FR 286228) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision and a description of the state’s plan. The Oregon plan provides for the adoption of state standards that are “at least as effective” as comparable federal standards promulgated under Section 6 of the Act. The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services, is empowered to create, adopt, modify, and repeal rules and regulations governing occupational safety and health standards following public notice and a hearing in conformance with the state’s Administrative Procedures Act. Public notice describing the subject matter of the proposed rule, and where and when the hearing will occur, must be published in the state newspapers at least 30 days in advance of the hearing. The Administrator considers all recommendations by any member of the public in the promulgation process. Whenever the Administrator adopts a standard, the effective date is usually 30 days after signing.
B. Standards Approved

1. Fall Protection


The federal provisions at 29 CFR 1926.501(b)(1) through (b)(15) generally require employers to use conventional fall protection to protect employees from fall hazards at heights of six feet or more, though for many work activities employers may use alternative measures in lieu of conventional fall protection. The Oregon standard, in contrast, requires employers to use conventional fall protection to protect employees from fall hazards at heights of 10 feet or more [per OAR 437–003–1501], but generally does not permit the use of the alternative measures allowed under the federal standard.\(^1\) In addition, Oregon retains the six-foot requirement for holes, wall openings, established floors, mezzanines, balconies, walkways and excavations. Oregon has also retained the federal standard for protecting employees from falling into or onto dangerous equipment from heights below six feet. (For a more complete list of differences between the federal fall protection standard and Oregon’s fall protection program see OSHA’s August 9, 2004 Federal Register notice requesting public comment (69 FR 48253), available on OSHA’s Web site at http://www.osha.gov.)

The Oregon standard for fall protection in residential construction has been in effect since June 1, 1995, and the state’s standard for fall protection in general construction has been in effect since July 19, 2002. During that time, OSHA has received no indication of significant objection to the state’s different standard as to its effectiveness in comparison to the federal standard.

2. Forest Activities

In response to the promulgation of the federal logging operations standard, 29 CFR 1910.266, as published in the Federal Register (59 FR 51672) on October 12, 1994, with amendments on September 8, 1995 (60 FR 47022) and March 7, 1996 (61 FR 9228), Oregon determined that its existing logging standard in OAR Chapter 437, Division 6, was as effective and asked that the standard be approved. This standard was adopted on September 27, 1991, under OR–OSHA Administrative Order 12–1991. After discussion with OSHA, however, the standard was repealed on June 2, 2003, and a new OAR Chapter 437, Division 7 Forest Activities standard (OAR 437–007–0001 through 1405) was adopted under OR–OSHA Administrative Order 5–2003, and amended on June 7, 2004, under OR–OSHA Administrative Order 3–2004.

The scope of the Oregon standard is broader and covers all forest activity operations, while the federal standard applies only to logging operations. Oregon’s standard contains many different requirements relating to head protection, working within contact of another employee, falling object protective structures (FOPS), rollover protective structures (ROPS), other protective structures for machines, standards for machine cabs, and first aid and CPR training. Oregon’s forest activities standard also includes numerous additional requirements. (For a more complete list of differences between the federal steel erection standard and Oregon’s steel erection standard, see OSHA’s August 9, 2004 Federal Register notice requesting public comment (69 FR 48253), available on OSHA’s Web site at http://www.osha.gov/.)

3. Steel Erection

In response to the promulgation of the federal Steel Erection standard, 29 CFR 1926.750–761 and appendices (Subpart R), as published in the Federal Register (66 FR 5317) on January 18, 2001, with a delay in the effective date published on July 17, 2001 (66 FR 37137), Oregon adopted its standard at OAR 437–003–1926.750 through 761 and appendices (OAR 437 Division 3/R) on April 15, 2002, effective April 18, 2002, under Administrative Order 3–2002. Changes to the state’s standards at Subdivisions R (steel erection) and M (fall protection) were adopted on OAR 437–003–1926.750 through 761 and appendices (OAR 437 Division 3/R) on July 18, 2002, under Administrative Order 6–2002. These amendments required a 10 foot fall protection trigger height for all construction trades in Oregon (including steel erection) except for 6 feet for holes, wall openings, established floors, mezzanines, balconies, walkways, excavations, and working over dangerous equipment. The 2003 Oregon State Legislature’s House Bill 3010 directed OR–OSHA to revise the steel erection standard to parallel the federal requirements and not require the use of fall protection by workers engaged in steel erection at heights lower than the heights at which fall protection relating to steel erection is required by federal regulations. The federal steel erection standard requires fall protection at 15 feet in general, and at 30 feet for connectors and employees working in controlled decking zones. Accordingly, the state adopted amendments to its steel erection standard on December 30, 2003, effective January 1, 2004, under Administrative Order 8–2003. The state standard is now almost identical to the comparable federal standard. The differences or additional requirements relate to written site-specific erection plans, written notifications to the controlling contractor, tag lines, large roof and floor openings, written certifications of training records, and definition of the term “opening”. (For a more complete list of differences between the federal steel erection standard and Oregon’s steel erection standard, see OSHA’s August 9, 2004 Federal Register notice requesting public comment (69 FR 48253), available on OSHA’s Web site at http://www.osha.gov/.)

II. Public Participation

On August 9, 2004, OSHA published a Federal Register notice (69 FR 48253) requesting public comment on whether the Oregon standards for fall protection, forest activities and steel erection meet both the “at least as effective” criterion and the product clause test of Section 18(c)(2) of the Act. This notice invited interested persons to submit by September 8, 2004, written comments and views regarding these Oregon standards and whether they should be approved by the Regional Administrator. In response to this notice, two comments were received concerning Oregon’s fall protection standard. No comments were received regarding the state’s forest activities and steel erection standards. One comment, from Michelle Johnson, Safety and Health Supervisor, Chelan County Public Utilities District, Washington, was a request for information on the Washington state fall protection standard. The second comment, from J.
Nigel Ellis of Ellis Safety Solutions, Wilmington, Delaware, claimed that Oregon’s 10-foot trigger height for certain fall protection requirements renders the state’s standard less effective than the federal standard. The commenter suggested that Oregon adopt an across-the-board trigger height of 6 feet to be consistent with the federal standard. OSHA has reviewed the Oregon fall protection standard for overall effectiveness and in light of the comments received. OSHA has also reviewed a letter from Oregon OSHA dated November 16, 2004, responding to the comments and providing clarifications and assurances regarding its interpretation of the standard and intended enforcement policies. OSHA’s findings are as follows:

For many work activities Oregon’s fall protection standards mirror the federal standard and require employers to provide fall protection for employees working at heights of 6 feet and higher. OAR 437–003–1501(1)–(4). For some tasks, however, Oregon OSHA has a 10-foot trigger height for fall protection requirements. OAR 437–003–1501. But while the federal standard often permits employers to utilize alternative measures, e.g., a controlled access zone with a safety monitor, at heights of 10 feet and above, OR–OSHA regularly requires the use of conventional fall protection at those more dangerous heights. Oregon has represented to federal OSHA that employers in that state virtually never raise infeasibility as a basis or defense for not providing conventional fall protection, and that infeasibility has not been a successful argument in a contested case or recognized in settlement agreements. Therefore, OSHA has determined that the Oregon standards are as strict or stricter than the federal standard with respect to those activities for which the state maintains a 6-foot trigger height and for all work done at heights of 10 feet or higher. With respect to those few fall hazards between 6 and 10 feet that are not otherwise covered by Oregon’s fall protection standard, the state has assured OSHA that it will consider the issuance of citations or orders to correct under its general duty clause (ORS 654.010, 654.015), or the posting of red warning notices (ORS 654.082). Accordingly, OSHA believes that Oregon’s fall protection program is at least as effective as the federal program.

III. Decision

Having reviewed the state submissions and public comments submitted in response to the August 9, 2004, Federal Register notice, OSHA has determined that:

1) The state standards meet the “at least as effective” criteria of Section 18(c)(2) of the Act.

2) The record on these standards includes no persuasive evidence, developed by or submitted to OSHA, that the standards are not in compliance with the product clause test of Section 18(c)(2) of the Act. There is no evidence that the standards pose an undue burden upon interstate commerce or are not based upon compelling local conditions. Therefore the standards are presumed to be in compliance with Section 18(c)(2) of the Act.

OSHA therefore approves these standards; however, OSHA reserves the right to reconsider this approval should substantial objections be submitted to the Assistant Secretary.

IV. Location of Basic State Plan Documentation

Copies of basic state plan documentation are maintained at the following locations; specific documents are available upon request, including a copy of these state standards, the submitted comparisons to the equivalent federal standards, and public comments received. Oregon’s standards, program directives, and other documents may be accessed on the state’s Web page at http://www.cbs.state.or.us/external/osha/rules. Contact the Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212, (206) 553–5930, fax (206) 553–6499; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, 350 Winter Street, Room 430, Salem, Oregon 97301–3882, (503) 378–3272, fax (503) 7461; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2244, fax (202) 693–1671. An electronic copy of this Federal Register notice, as well as referenced federal OSHA standards, may be obtained from the OSHA home page, http://www.osha.gov.


Signed at Seattle, Washington, this 9th day of March 2005.

Richard S. Terrill,
Regional Administrator.

[FR Doc. 05–8918 Filed 5–4–05; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Determination of Executive Compensation Benchmark Amount Pursuant to Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as Amended

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to the heads of executive departments and agencies concerning the determination of the maximum “benchmark” compensation amount that will be allowable under government contracts during contractors’ FY 2005—$473,318. This determination is required under Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. The benchmark compensation amount applies equally to both defense and civilian procurement agencies.


David H. Safavian, Administrator.

Memorandum for the Heads of Executive Departments and Agencies


This memorandum sets forth the “benchmark compensation amount” as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the benchmark compensation amount is “the median amount of the compensation provided for all senior executives of benchmark corporations for the most recent year for which data is available.” The benchmark compensation amount established by Section 39 limits the allowability of compensation costs under government contracts. The benchmark compensation amount does not limit the compensation that an executive may otherwise receive. This amount is based on data from commercially available surveys of executive compensation that analyze the relevant data made available by the Securities and Exchange Commission. More specifically, as required by Section 39 of the OFPP Act, the data used is the median (50th percentile)