

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-384 and 731-TA-806-808 (Review)]

### Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

#### Determination

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty and countervailing duty orders on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan, and termination of the suspended antidumping duty investigation on imports of certain hot-rolled flat-rolled carbon-quality steel products from Russia, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

#### Background

The Commission instituted these reviews on May 3, 2004 (69 FR 24189), and determined on August 6, 2004, that it would conduct full reviews (69 FR 52525, August 26, 2004). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 9, 2004 (69 FR 54701). The hearing was held in Washington, DC, on March 2, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on April 28, 2005. The views of the Commission are contained in USITC Publication 3767 (April 2005), entitled Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and Russia (Inv. Nos. 701-TA-384 and 731-TA-806-808 (Review)).

By order of the Commission.

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissenting.

Issued: April 28, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-8969 Filed 5-4-05; 8:45 am]

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## 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>. 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

In response to the promulgation of the federal fall protection standard for construction at 29 CFR 1926.500–503 and appendices (1926 Subpart M), as published in the **Federal Register** (59 FR 40672) on August 9, 1994, with amendments on January 26, 1995 (60 FR 5131), August 2, 1995 (60 FR 39254) and January 18, 2001 (66 FR 5317), Oregon adopted OAR–003–1926.400 (Division 3/M) under Administrative Order 6–1995, on April 18, 1995, with amendments made on September 15, 1997, February 8, 2000, February 5, 2001, April 15, 2002, and July 19, 2002, under Administrative Orders 7–1997, 3–2000, 3–2001, 3–2002 and 6–2002.

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 can 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.<sup>1</sup> 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 logging operations standard and Oregon's forest activities 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 and effective on July 19, 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.

<sup>1</sup> The state adopted a 10 foot trigger height for those working surfaces and activities where guardrail systems are normally impractical and personal fall arrest systems are most often the only reasonable alternative. The state deems the higher trigger height necessary for circumstances where personal fall arrest systems require at least 10 feet of height to be effective in preventing an employee from striking a lower level in a fall situation.

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 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/osharules>. 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>.

This notice is issued pursuant to section 18 of the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 STAT 1608 (29 U.S.C. 667).

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.

**FOR FURTHER INFORMATION CONTACT:** Rein Abel, Office of Federal Procurement Policy, (202) 395-3254.

David H. Safavian,  
*Administrator.*

Memorandum for the Heads of Executive Departments and Agencies

*Subject:* 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.

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)