



February 16, 2001

Mr. Robert Harrell  
President, Safety Management Services  
4012 Santa Nella Place  
San Diego, CA 92130-2291

Dear Mr. Harrell:

This is in response to your letter dated July 7, 2000, in which you requested our response to several questions or issues regarding wooden planks used in scaffold platforms. Your questions are restated and responded to as follows:

**Question (1):**

**Which lumber grading agencies will OSHA accept as a qualified grading agency for inspecting and stamping scaffold grade lumber?**

**Response:**

OSHA does not require that scaffold planks be graded and stamped by a qualified grading agency. However, employers must ensure that scaffolds are designed, erected, used and maintained in compliance with the provisions of Part 1926 Subpart L?Scaffolds. This includes selecting wooden planking that will meet the design specifications of the scaffold and loads imposed on it.

Appendix A to Subpart L is a non-mandatory guide that may be used to help select lumber for scaffold planks. Under this appendix, when calculating lumber strength for purposes of complying with Subpart L, the qualified person may base his/her calculations using the grading rules established by a recognized lumber grading association, or an independent lumber grading inspection agency, and certified by the Board of Review, American Lumber Standard Committee, as set forth in the American Softwood Lumber Standard (ASLS) of the U.S. Department of Commerce. For your convenience, the current list of certified agencies is enclosed.

**Question (2):**

**Why doesn't OSHA require a grading stamp on the scaffold plank?**

**Response:**

This issue was considered during the rulemaking process (Federal Register / Vol. 61, No. 170 / Friday, August 30, 1996, pages 46035 - 46038) for Subpart L. Some respondents expressed the view that a marking requirement would be impractical for manufacturers and that the costs would be burdensome to the consumer. Also, commenters expressed concern that the markings would create a false sense of security or safety, and that maintaining the markings would be neither feasible nor economical.

As you pointed out in your letter, the marking of planks does not, in itself, ensure a safe platform.

**Question (3):**

**Do OSHA Compliance Officers and Consultation individuals have the ability to recognize a scaffold grade plank based on slope of grain and annual growth rings?**

**Response:**

Compliance officers and consultation personnel are not trained by OSHA to have that type of expertise. Instead, they are trained to investigate whether the employer has taken the steps necessary to comply with the requirements of the standard.

Typically, the Compliance Safety and Health Officer (CSHO) will use several methods in order to determine whether or not an employer meets the requirements of Subpart L. For example, the CSHO will attempt to determine the extent of knowledge possessed by the qualified person. The qualified person who designed the scaffold system would be expected to be well informed as to the technical aspects associated with planking, including those that pertain to the strength and structural integrity of individual scaffold components.

**Question (4):**

**What can OSHA do to stop a company from selling lumber as scaffold plank when the lumber does not meet the lumber grading requirements?**

**Response:**

This office is also concerned about stamped scaffold planks not meeting the lumber grading requirements identified by the grade stamp, thereby creating a potentially hazardous condition. If you were to forward specific information regarding such companies, OSHA would evaluate it to determine if it is appropriate to issue a Hazard Information Bulletin (HIB).

**Question (5):**

**If an employer is found to be using questionable planks as scaffold grade lumber, will OSHA issue the employer a notice of violation and fine for not having a qualified or competent person?**

**Response:**

There is no requirement in subpart L that scaffold grade lumber be used. However, if a qualified person makes strength calculations based on lumber being scaffold grade when the lumber is not of that grade, that would raise questions about whether that person meets the definition of a qualified person. Use of an individual as a qualified or competent person who did not meet the terms of the definition would be a violation of §1926.450(b): Qualified means "one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work or the project." Competent person means "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." In short, where an employee serving in the capacity of either a qualified or competent person does not have the necessary knowledge to carry out those responsibilities, a notice of violation may be issued.

**Question (6):**

**A general contractor hires a lumber grading person to inspect the planks on a scaffold to ensure that they are safe for use by a masonry subcontractor. Does hiring the lumber grader, by itself, make the general contractor a "controlling employer" under OSHA's multi-employer policy?**

**Response:**

OSHA's multi-employer policy is explained in OSHA Directive CPL 02-00-124 [formerly CPL 2-0.124] "Multi-Employer Citation Policy". Under that policy, a "controlling employer" has safety and health obligations with respect to a subcontractor's employees in certain circumstances. We defined a controlling employer as one "who has general supervisory authority over the work-site, including the power to correct safety and health violations itself or require others to correct them." If the general contractor has this kind of authority, then it would be considered a controlling employer. The act of hiring a grading specialist

would not, by itself, make an employer a controlling employer. It may, however, be indicative of general supervisory authority or the ability to detect and correct safety problems at the site.

Remember that, to be citable as a controlling employer, the employer must have sufficient control and must have failed to exercise reasonable care in preventing, discovering or correcting the hazard. Hiring an experienced lumber grader would contribute to a showing of reasonable care.

**Question (7):**

**Assume that the general contractor in the previous question not only hired a lumber grader, but also has a job site superintendent and safety officer who have had scaffold safety training by a qualified instructor. Would those actions affect whether a scaffold citation against the general contractor under the multi-employer policy (for violations by a subcontractor) would be classified as serious or willful?**

**Response:**

A violation is classified as serious where substantial probability exists that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A willful violation is one that the employer intentionally and knowingly commits or a violation that the employer commits with plain indifference to the law. In general, violations are not classified as willful where the employer has made good faith efforts to comply with OSHA requirements.

Assigning a site superintendent and/or a safety officer who have been trained to identify scaffold hazards to conduct periodic inspections (and to take corrective action regarding safety and health hazards), along with assigning a lumber grader, would normally be considered indicative of good faith by a controlling employer to comply with the scaffold requirements. Whether those actions would, by themselves, be sufficient to justify a classification of serious rather than willful in a particular case would depend on a number of factors. Examples of such factors include the frequency of the inspections and whether efforts are made to get hazards corrected.

If you require further assistance, please do not hesitate to contact us again by writing to: U. S. Department of Labor (OSHA), Office of Construction Standards and Compliance Assistance, Room N3468, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Sincerely,

Russell B. Swanson, Director  
Directorate of Construction