

Summary of Comments and Agency Decisions

Title: Division 3, Construction –Sub. M (Fall Protection, Slide Guards)

Administrative Order Number: 2-2016

Adopted Date: March 1, 2016

Effective Date: October 1, 2017

Background:

In November of 2015, Oregon OSHA proposed to revise the general fall protection requirements covered under Division 3 (Construction Industry), Subdivisions 3/M (Fall Protection), as requested by federal OSHA. The proposed revisions to Subdivision 3/M, include amending the 10-foot general trigger height for fall protection to 6 feet, and revoking the use of slide guard systems as a sole or primary fall protection system. Fall protection and falling object protection requirements currently under 437-003-1501(1) through (5) were removed due to redundancy or revised and renumbered for clarification as a result of this rulemaking.

This Summary of Comments and Agency Decisions pertains only to the proposed revision to Subdivision 3/M to revoke the use of slide guard systems as a sole or primary fall protection system.

Summary of Comments and Agency Decisions:

(Please note that agency decisions are conveyed in *italics*, and a list of the commenters is located on page 2.)

Five public hearings were held during January of 2016. Oregon OSHA received oral testimony in addition to written comments. Most comments received opposed the elimination of slide guard systems as an acceptable method of fall protection. Reasons for the opposing comments included, but were not limited to; the opinion that slide guards, when used properly, are as effective as conventional fall protection systems, slide guards are widely accepted and used for fall protection in Oregon; employers' who have difficulty ensuring their employees follow company policy to use personal fall protection systems; a potential increase of exposures to fall hazards for "rooftop" delivery employees who may need to install their own fall protection system rather than relying upon already installed slide guards; multiple employees concurrently engaged in roofing work while wearing ropes and harnesses can increase trip hazards; ropes can catch on and knock over stacks of material; using ropes and harnesses instead of slide guards can slow down the job; and lack of injury data that supports federal OSHA's opinion that slide guards are not as effective as conventional fall protection systems.

All comments received were considered in the context of federal OSHA's formal request and Oregon OSHA's limited discretion in this matter. As explained in the proposed rule fiscal impact statement, "the Occupational Safety and Health (OSH) Act of 1970, encourages states to develop and operate their own workplace safety and health programs and prevents state enforcement of OSHA standards unless the state has a federal OSHA-approved State Plan that meets the requirements under Section 18 (State Jurisdiction

and State Plans) of the OSH Act. Section 18 criterion for initial and continuing State Plan approval includes the promulgation and enforcement of workplace safety and health standards that federal OSHA considers "at least as effective as" their own program standards. The purpose of the Oregon Safe Employment Act includes the statement that one purpose of the state law is to "assure that Oregon assumes fullest responsibility...for the development, administration and enforcement of safety and health laws and standards in accordance with the OSH Act (ORS 654.003(6))."

Federal OSHA does not recognize slide guards as a conventional fall protection system. This may be due in part to the limited set of site-specific conditions needed to ensure that properly installed slide guard systems are a reliable means of fall protection, unlike conventional fall protections systems such as guardrails systems, personal fall arrest and restraint systems, and catch platforms and nets. Since federal OSHA's request was not based on data related to enforcement, but rather on the literal effectiveness of the rules themselves, presuming they are followed, Oregon OSHA must comply with federal OSHA's request or risk the likelihood of losing its jurisdiction in matters regarding the proposed rule change. As a result of Oregon OSHA's limited discretion under Section 18 of the OSH Act, the rules for slide guards systems under 437-003-3502 were revoked as proposed. The decision brings Oregon OSHA into uniformity with the all states that operated under federal jurisdiction or under their own OSHA-approved state plan, with the State of Kentucky being the only exception at this time.

Commenters:

- C-1 Tony Howard**
- C-2 Jared Rickenbach**
- C-3 James Watts**
- C-4 Timothy Bancke**
- C-5 Dan Cornwell**
- C-6 Jay Moffitt**
- C-7 Norm Brown**
- C-8 Seth Crabtree**
- C-9 Marshall McManus**
- C-10 Don Gray**