

Summary of Comments and Agency Decisions

Title: Division 3, Construction – Sub. E (Personal Protective Equipment, Fall Protection) and Sub. M (Fall Protection, General Trigger Height)

Administrative Order Number: 1-2016

Adopted Date: March 1, 2016

Effective Date: January 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 guards 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. The proposed revisions to Subdivision 3/E, include repealing 437-003-0134(5)(a), which has a 10-foot general fall protection trigger height requirement, due to redundancy, and revises and renumbers 437-003-0134(5)(b) for clarification.

This Summary of Comments and Agency Decisions pertains only to the proposed revisions to Subdivision 3/M, general trigger height and falling object protection, and Subdivision 3/E, fall protection.

Summary of Comments and Agency Decisions:

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

Five public hearings were held during January of 2016. Oregon OSHA received oral testimony in addition to written comments. Several comments received opposed lowering the 10-foot general trigger height for fall protection to 6 feet. Reasons for the opposing comments included, but were not limited to; the belief that the hazard associated with a 6-foot fall is not an “extreme difference” than that of a 10-foot fall and that compliance would make construction more difficult while offering no benefit to safety; employers’ current difficulty of ensuring employees follow company policy to use personal fall protection systems on unprotected walking/working surfaces that are 10 feet or more; additional costs incurred by employers and homeowners for increase use of fall protection systems that can slow down the job; the proposed revocation of allowing slide guard systems to be used as a sole or primary fall protection system; lack of data that supports the need to lower the current 10-foot trigger height to 6 feet. No comments were received regarding the proposed changes to falling objects protection or revoking the fall protection rule in Subdivision 3/E.

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))."

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 were adopted as proposed.

One commenter asked if the exclusions to the proposed 6-foot general trigger height rule include Division 3, Subdivisions V and X, while another commenter stated that the lower trigger height would require the use of fall protection on scaffold systems between 6 – 10 feet.

The adopted rule changes do not effect the fall protection requirements currently under Division 3/X (Stairways and Ladders) and Division 3/RR (Electrical Power Generation, Transmission, and Distribution) which replaced Division 3/V when it went into effect on January 1, 2016. In addition, fall protection requirements covered under Subdivisions 3/L (Scaffolding), 3/R (Steel Erection), 3/S (Underground Construction), 3/CC (Cranes and Derricks in Construction); Division 2 (General Occupational Safety and Health Rules); Division 4 (Agriculture); and Division 7 (Forest Activities), are unaffected by the adopted rules. As such, the trigger heights for scaffold systems still remain at 10 feet or more, or any height above dangerous equipment.

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**