

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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ADVISORY COMMITTEE MINUTES Residential Construction Fall Protection Trigger Heights April 11, 2016 Safety Center of California Sacramento, CA

Opening Remarks

The meeting was called to order by Chairman (Chair), Michael Manieri, Principal Engineer, Occupational Safety and Health Standards Board (Board) at 9:30 a.m. The Chair was assisted by Ms. Bernie Osburn, Staff Services Analyst. Also in attendance was Board Executive Officer Ms. Marley Hart. The meeting opened with self-introductions by members and interested parties and was preceded by recognition by the Chair of representation by both Federal OSHA and the Division of Occupational Safety and Health (Division) staff.

Background

The Chair reviewed the Board's policy regarding the use of advisory committee (committee) meetings and stated that the meeting would follow the more conventional page by page discussion of the nine page proposal. The meeting is intended to provide stakeholders an opportunity to express their support, concerns, objections and recommendations with regard to the proposal.

In accordance with the agenda, the Chair presented a summary of significant events leading up to the prior November 3, 2015, advisory committee meeting and the April 11, 2016 meeting. The Chair repeated a statement by the Board made at the January 21, 2016, Board Business meeting in Costa Mesa, California where the Board stated that staff is to "...*treat with high priority and work expeditiously with stakeholder involvement, to assure California regulatory compliance with Federal Construction industry fall protection standards...*" It was further indicated that the Board is committed to providing clear, enforceable, effective standards that will safeguard employees against falls from elevation and at the same time meet the statutory obligation described by the California Labor Code to adopt standards that are at least as effective as those promulgated by Federal OSHA. The Chair also stated that at the conclusion of the discussion on the proposal there would be a cost impact discussion and follow-up action by Board staff.

The Chair reiterated that the advisory committee focus is restricted to residential construction and ensuring that California construction industry standards as contained in Sections 1716.2, 1730 and 1731 are commensurate with those of Federal OSHA contained in 29 CFR 1926.501(b)(13).

The Chair indicated awareness that Federal OSHA is ultimately looking for California to conform to a 6 foot trigger height for all of construction, but that addressing that broader issue would require a separate committee with a broad-based construction representation. The issue of trigger heights will be dealt

with in stages. Residential construction will be the first stage, with the other aspects of construction to follow. The Division as represented by Mr. Eric Berg and Mr. Larry McCune, stated that they support moving forward to a 6 foot fall protection standard for residential construction. The Federal OSHA representative stated there are a number of issues they are concerned about (e.g. slopes, exceptions, cross referencing) and stated that while this committee was focused on residential fall protection, the National Office is mindful of the need for California to amend the rest of its construction safety orders to be commensurate with Federal standards. The Chair responded that the side by side will need to be very clear on how the proposed amendments affect other portions of the Construction Safety Orders (CSO).

The Chair explained that most of the nine pages of text have not been proposed for amendment but are certainly subject to review by the committee who may elect to suggest amendments. The Chair also explained that the proposal was co-authored by Board and Division staff.

For the purpose of these advisory committee minutes, the committee's discussion will be presented and broken down according to the three sections relevant to residential construction addressed by the proposal: 1716.2, 1730 and 1731.

Section 1716.2

Regarding subsection (a), there was no disagreement among committee members over the need to create some type of extended effective date for the proposal, to permit the residential constructors and roofers the ability to ramp up to the amended requirements, acquire and implement fall protection methods at 6 feet and develop employee training for future construction projects. Federal OSHA indicated acceptance of a phase-in within reason. Board and Division staff indicated they would further amend the proposal to include a phase-in period having the amendments become enforceable approximately 18 months following adoption of the proposal by the Board.

Regarding the title of 1716.2 the committee was of the opinion that some revision was necessary for clarity and suggested rewording it to read: "Residential-type Framing Activities- Wood and Light Gage Steel Frame Construction".

There were no comments on revisions to subsection (a)(7) which essentially defines "residential-type framing activities" and includes federal language in the definition regarding the limited use of structural steel.

Federal OSHA stated concern over the wording in subsection (e)(1) and its cross reference to Article 24 which prescribes a 7.5 foot trigger height. The Chair and Division explained that the wording in (e)(1) merely references the fall protection methods as described in Article 24 not the 7.5 foot trigger height.

The Chair clarified that (e)(1) and (f) are independent of each other. Subsection (e)(1) specifies a reduced trigger height of 6 feet and the need for the employer to implement one of the fall protection methods described in CSO Article 24. To maintain consistency with subsection (e), subsection (f) would be amended to address a 6 foot trigger height for work on floors and walking and working surfaces and require guardrails be erected along all unprotected sides and edges along the perimeter of the floor.

There was some discussion over whether “perimeter” is the right term to be added in subsection (f). The Division stated that although this issue has been the subject of past Appeals Board disputes between the Division and employers, it is indeed the right term and should be left as worded in subsection (f). However, it was also pointed out that Section 1632 addresses another construction circumstance in which there is no trigger height for work around floor, roof or wall openings. The Division pointed out that floor openings and holes present a greater danger of falling than falling from the perimeter, consequently there is no trigger height prescribed by Section 1632.

The committee suggested adding a Note after subsection (f), cross-referring the reader to CSO Section 1632 for clarity on this issue. The Division stated that with the addition of the clear cross referential Note they could accept deletion of the words “all unprotected sides and edges” in subsection (f) with replacement by the term “perimeter” to fully read “perimeter of the floor”.

A Federal OSHA representative opined in favor of leaving the language in (f) as is, meaning the phrase unprotected sides and edges should stay. He added, unprotected sides and edges is clearer, more familiar language and is used in the Federal regulations (29CFR 1926.501(b) (1)).

Ms. Laura Boatman stated that from a training perspective, the phrase “unprotected sides and edges” is widely understood by employers and their employees and easier to explain to new workers and employers. The Chair stated that he would review this wording one more time after the advisory meeting and may reconsider staying with the phrase unprotected sides and edges which seems to be more widely understood in the existing language. It is consistent with Federal language and should not “raise eyebrows” in terms of being judged commensurate as opposed to the phrase perimeter of the floor.

The committee considered proposed amendments to: subsection (g)(1), (A) and (B), deletion of the Exception following (B), (g)(3) and deletion of the Exception to (g)(1)(B)(3). The committee agreed with the proposed amendments that struck out all references to the current 15 foot trigger height and references to roofs of various slopes. There was consensus on amendment of paragraph (g)(3) which pertains to work done outside the gable end truss or rafter to specify a 6 foot trigger height and that fall protection be provided as described by CSO Article 24.

There was discussion about the proposed deletion of the short duration Exception to (g)(3) for which Federal OSHA expressed renewed concern. Kevin Bland asked about situations where out-lookers are being installed before the diaphragm is installed, prior to fascia board and large rafter installation, conventional fall protection cannot be installed. He stated that it is during these times where there are short durations when the exposure that would be created to set up fall protection actually exposes the worker to a greater fall risk. There was no agreement on how best to address the exception although many in the industry argued that some form of exception should remain in the standard. In the final analysis, given the historic opposition by Federal OSHA over the short duration exception, the Chairman with support of the Division elected to delete the exception to subsection (g)(3).

Federal OSHA called the Chair’s attention to subsection (g)(2) and expressed concern over the current standard allowing workers to forgo conventional fall protection when working from within the gable end truss or rafter and they are protected by the gable truss ends installed and braced to withstand a lateral force of 200 pounds during fascia or starter board installation. It was explained to Federal OSHA how the scenario typically unfolds and the worker would be protected by a secure truss acting as a standard

guardrail. Mr. Wulff, Federal OSHA stated they would be looking at (g)(2) when they review the entire proposal.

Mr. Richard Harris asked whether California employers would still have the fall protection plan option to use in cases such as trussing, joisting floors, and sheathing where conventional fall protection methods are clearly infeasible, to which Mr. Wulff replied that under Federal OSHA standards, if the employer can demonstrate infeasibility or how conventional methods contribute to a greater hazard, that employer can use a fall protection plan. Federal OSHA speculated the same criteria should be true in California. Federal OSHA also noted that California uses the term impractical instead of infeasible and Federal OSHA is concerned about use of that term.

Larry McCune stated: there have been a wide variety of interpretations over what was and was not feasible in terms of the employer being able to provide fall protection. The current standard in 1716.2 was developed to eliminate that uncertainty and create safe methods for joisting, sheathing and trussing. Currently, Section 1716.2 spells out for the employer and the Division what is expected in terms of the employer's duty to provide fall protection. Mr. McCune also stated that rather than follow the federal system of having the employer provide a fall protection plan for gable end work and provide no fall protection, the work would be arranged in California to provide some physical form of fall protection via the language in (g)(2) and the use of a substantial gable end truss able to withstand a lateral force of 200 pounds.

The Chair pointed out that the proposal addresses both inside and outside gable end work as evidenced by subsections (g)(2) and (3).

Mr. Raymer stated that based on what is being proposed, California will be going back to a time 14 years hence when the use of the fall protection plan was extensive. He also stated that he cannot tell his membership what compliance is going to look like in the future nor can he determine cost impact without knowing what the standard will require.

Section 1730.

The Chair explained the proposed amendment to state that Section 1730 does not apply to residential type roofing activities as described in Section 1731.

A Federal OSHA representative stated that definitions for residential type roofing and residential type framing as mentioned in Section 1716.2 need to be consistent with each other. The Chair stated that there is a definition for residential type roofing operations in Section 1731. There were no other comments relative to Section 1730.

Section 1731.

With regard to Section 1731, Mr. Bill Callahan stated that to do this without the least amount of disruption, confusion and ambiguity, we should keep the general notion that residential means steep slope, means single family homes, and means townhome, which is also consistent with the Federal residential concept. A boundary line between commercial and residential roofing as determined by roof slope needs to be established if we get rid of the 3:12 slope. He suggested the 3:12 boundary line and greater be maintained, and bring the Note back that is proposed for deletion. There would be no

distinction between new construction and re-roofing. This would leave Section 1730 requirements with a 20 foot trigger height which the Division believes is unsafe judging from the number of accidents they investigate each year.

The committee reached consensus on a number of revisions to language proposed by the Chair beginning with revising the Section 1731 title for simplicity to read: "Residential-type Roofing Activities". The committee further suggested subsection (a)(1) be revised to clearly indicate that Section 1731 would apply to residential-type roofing activities and that the reference to 3:12 slope designation for residential construction be deleted along with the definitions of production-type residential construction, to ensure that the proposed amendments address work on custom home construction and to ensure the State standard is commensurate with Federal Standards; as far as protecting workers who load and install roofing materials including sheet metal, and vapor barrier work. The committee suggested the definition of roof work be relocated and combined under the definition of Residential-type Roofing Activities for clarity.

The committee agreed that the definition for residential-type roofing activities be modeled after the residential-type framing definition in Section 1716.2. The residential-type roofing definition would include single family homes and townhouses and other residential structures. At the meeting the Division stated that the definition needs to simply and directly state that it applies to all roofing on structures covered by Section 1716.2 and that the definition of roof work be consolidated into a new definition to read:

Residential-type Roofing Activities. Roof work consists of roofing and reroofing work including roof removal performed on structures covered by Section 1716.2. Roof work also includes loading and installation of roofing materials, including related insulation, sheet metal that is integral to the roofing system, and vapor barrier work, but not including the construction of the roof deck.

However, upon further consideration of stakeholder and Division concerns the committee elected to revise the above definition for clarity by adding references to single family homes, townhomes, duplexes and including other structures covered by Section 1716.2.

Post advisory committee, the Chairman reflected on the fact that Section 1716.2 currently applies to residential and light commercial operations. The amended title to Section 1716.2 renders that section applicable to residential-type framing activities and is not exclusive to residential construction. The reference to residential-type construction in the proposed roofing definition is in effect a cross reference to Section 1716.2 and maintains the continuity of enforcing the requirements of Section 1716.2 to residential structures and other structures (light commercial) when the construction methods described in the residential-type construction definition are utilized.

Mr. Joel Foss asked whether the slope designation 3:12 was going to be removed from the regulatory text in Section 1731. He asserted that constructing an apartment building with a low slope roof (3:12), creates a situation in which all the CSO standards that apply to such construction are contained in Section 1730.

Eric Berg responded that the Division proposes to relocate the methods for low sloped roofs contained in Section 1730(b) for incorporation into Section 1731(c) along with the appropriate fall protection methods. The Division proposed a new Section 1731(c)(1) to address roof slopes from 0:12 up to and

including roofs with 4:12 slopes. It would further stipulate that employees shall be protected from falls when the roof eaves exceed 6 feet in height. The employer would have to protect the employee from a fall by using any of the methods, or combination thereof specified in Section 1730(b).

Mr. Berg went on to say that a new (c)(2) would address roof slopes greater than 4:12 and up to and including 7:12, and state that those employees be protected from falling when the eave height exceeds 6 feet by any one or any combination of fall protection methods such as personal fall protection, catch platforms, scaffold platforms, eave barriers, standard railing and toe boards. With deference to Federal OSHA, roof jack systems would be allowed, but not as a sole means of fall protection.

Finally, roof slopes greater (not steeper- that term is proposed to be stricken throughout for consistency) than 7:12 are to be protected from falls regardless of height (0 trigger height).

The committee discussed the Division's proposed realignment of roof slopes and reacted positively. There was consensus to revise the proposal based on the Division's proposed language revisions. The committee recommended that Section 1731 be revised accordingly by staff. Federal OSHA did not express any concerns or objections to the aforementioned revisions.

Conclusions:

The Chair stated that Board and Division staff would develop language that would provide an 18-month fall protection phase in based on a 6 foot trigger height. Representatives from the building industry cited the need for a phase-in period to allow them time to convert their employee fall protection program from one based on the 15 foot trigger to the 6 foot. Residential contractor representatives also stated a phase-in or delayed effective date period was needed due to contracts that are already in place and for which materials and equipment have already been ordered and delivered for use at the jobsite. The Chair also indicated that the phase-in period would be structured so that prior to July 1, 2018 (or whatever prospective date is chosen) the current trigger height (15 feet) would be enforced in residential construction and residential-type roofing as defined in the proposal.

A Federal OSHA representative stated that the National Office will scrutinize any prospective phase-in the state might propose in terms of reasonableness and acceptability to Federal OSHA.

At this point, the Chair reviewed the entire amended proposal with the committee who did not express any particular concern or objection over the regulatory text. The Chair explained the next steps in the regulatory process by stating that there would not be a need for another meeting. The Chair stated that the revised proposal will be reevaluated by Board staff and Division staff and there may be some deviation from the committee's consensus recommendations. A letter to the advisory committee would be mailed out with the revised proposal, the attendance roster and updated committee roster. A brief informal comment period following receipt of the post advisory committee mailout will be provided to permit the committee another opportunity to comment further on the language. The Chairman stated that at the discretion of Board staff, these comments may result in further revision of the proposal.

The Chair added that following receipt of informal comments, the creation of the rulemaking documents would begin. This process would include a very detailed cost impact analysis which will be reviewed by the Department of Industrial Relations and Agency staff, prior to the Board staff being able to officially notice the proposal for future Public Hearing. Ms. Hart stated that Board staff will be heavily reliant on

stakeholder input to formulate an accurate cost impact statement which for the first time will include a statement regarding the impact of the proposal upon California housing costs. Mr. Bland and Mr. Raymer offered to provide relevant cost impact data.

One committee member asked for staff's estimate of when the standard might be operative and enforceable in California; Ms. Hart again responded that assuming all goes smoothly it could take at least 18 months before the standard passed through the entire rulemaking process, cost impact scrutiny and evaluation by the Office of Administrative Law (OAL), and became codified in Title 8, perhaps sometime in 2018.

The Chair thanked the stakeholders, the Division and Federal OSHA for their participation. There being no further comments, the committee meeting was adjourned at approximately, 1:30 p.m.