

BEFORE THE OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
STATE OF CALIFORNIA

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TRANSCRIPTION OF PROCEEDINGS
Phase 2 Fall Protection Advisory Committee Meeting
Wednesday, May 21, 2025

Reported by:

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Hearing Reporter

Job No.:
54419DIR-OSHSB

BEFORE THE OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
STATE OF CALIFORNIA

TRANSCRIPT OF PROCEEDINGS, taken via
in-person, commencing at 9:00 a.m. and
concluding at 3:00 p.m. on Wednesday,
May 21, 2025, reported by Christina L. Rodriguez,
Hearing Reporter.

1 Live Proceedings, Wednesday, May 21, 2025

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5 SIMONE SUMESHWAR: Good morning. Okay. The
6 meeting is being recorded, and we also have a court
7 reporter here to help with the minutes. It's being
8 recorded for the purpose of recordkeeping, so it's
9 something that's going to be posted or anything, right.

10 For those of you who don't know me, my name is
11 Simone, and I'm assigned to this project. You guys are
12 here to discuss Fall Protection and Construction Phase
13 Two; and I think many of you participated in Phase One
14 many, many years ago.

15 So we have a very packed agenda, and we are
16 running behind now. And so -- but we will still go
17 ahead and do some quick intros. And so, if you don't
18 mind just stating your name, who you're affiliated with,
19 and what you're representing -- whether it's labor,
20 manufacturers, employers -- just so we have an
21 understanding of the balance of the room. And then
22 please make sure you speak loudly and clearly. The
23 recording device is here.

24 So we'll go ahead and start this way. We'll
25 start with Marlo.

1 MARLO MIURA: Hi, everyone. My name is Marlo
2 Miura. I'm a regulatory analyst for the board, and I'm
3 here to support the meeting. So if you need anything,
4 just come over and find me, and I'll help everybody out.

5 Like Simone was saying, we're recording audio
6 recording for note taking purposes. And then we have
7 the reporter here, so we do ask if you could say your
8 names each time before you speak and try to minimize
9 cross-talking. It will really help us in the future, so
10 I will really appreciate it. Thank you.

11 ERIC BERG: My name is Eric Berg, Deputy Chief
12 for Cal/OSHA.

13 STEVE JOHNSON: Steve Johnson associated with
14 Berkeley Contractors in the Bay Area counties, and I
15 represent employers.

16 MIKE DONLON: Mike Donlon. Today I'm
17 representing Construction Employers' Association, which
18 are union contractors.

19 TRESTAN KEYS: Trestan Keys associated with
20 General Contractors of California, representing our
21 commercial contractor members.

22 RINALDO EDMONSON: Rinaldo Edmonson with
23 Marathon Petroleum representing all the contractors that
24 are in our facility.

25 CARLOS SERRANO: Carlos Serrano, I am with

1 Lamar Advertising in the billboard industry.

2 CARLOS OPFERMANN: Carlos Opfermann with the
3 Roofer and Waterproofers Local 81 here in Oakland. I
4 represent labor.

5 KYNAN WYNNE: Kynan Wynne with Diversified
6 Fall Protection.

7 ZACK WINTERS: Zack Winters, FallTech. We're
8 a manufacturer fall protection equipment down in
9 Compton, California.

10 JAKE BLAND: Jake Bland. I'm just Kevin
11 Bland's son -- future attorney in Employment Law.

12 KEVIN BLAND: Kevin Bland representing the
13 Residential Contractors Association and the California
14 Framing Contractors Association. Two of those
15 associations are signatory with the appropriate unions,
16 and one is a mixed association. I'm with Ogletree
17 Deakins.

18 PETER LANG: Morning. My name is Peter Lang.
19 I'm the business manager of Roofers and Waterproof Local
20 40 here in San Francisco and San Mateo County. I
21 represent the labor force and, also, our union
22 contractors.

23 RUTH IBARRA: Ruth Ibarra, Regulations Manager
24 for the Standards Board.

25 MILLIE BARAJAS: Millie Barajas, Executive

1 Officer for the Standards Board.

2 SPENCER PRICE: Spencer Price, Cal/OSHA Senior
3 Safety Engineer Research and Standards unit.

4 YANCY YAP: Yancy Yap, Cal/OSHA Research and
5 Standards Board.

6 CHRISTINA RODRIGUEZ: I'm Christina Rodriguez,
7 the Stenographer for today. And, also, if you guys
8 could please slow down when you talk -- there's so many
9 of you, and I want to make sure the record is clear.

10 AMALIA NEIDHARDT: And good morning, everyone.
11 I'm Amelia Neidhardt with the Standards Board.

12 Back to you, Simone.

13 SIMONE SUMESHWAR: So
14 housekeeping -- bathrooms are down this way. They're
15 supposed to be unlocked, but they're locked. There are
16 keys to the bathroom there. The emergency exit is down
17 this way as well. We'll go down to the 9th floor.
18 We're just going to keep going -- I think that's the
19 safest way to do it. And we'll just meet outside.

20 So we were going to try to take lunch at
21 11:30 -- that way you guys would be able to beat any of
22 the lunch break rush. But since we are behind, we'll go
23 ahead and take our lunch at noon.

24 If you need a break, go ahead and take one.
25 But we're not going to have a morning break because we

1 do have a presentation scheduled, and so we're not going
2 to be able to break at that point.

3 I am going to go over the staff guidelines on
4 using an advisory committee to develop a rulemaking
5 proposal. I think a lot of you guys are familiar with
6 this. This document is on our website. We have a
7 couple different things that we want to make sure that
8 we emphasize when it comes to how we manage these
9 advisory committees.

10 Advisory committees are often used to assist
11 OSHSB staff and developing rulemaking proposals that may
12 significantly impact California employers and employees.
13 The practices of most common and development are highly
14 sensitive, controversial, and complex regulations.

15 Although the use of an advisory committee is
16 not mandated, the board of division staff have been
17 using it for years of an effective method to reach
18 consensus among affected groups, but we do have some
19 rules. And so we want to make sure the interest of
20 parties are encouraged to attend committee meetings,
21 even whether or not officially asked to be a member of
22 the committee.

23 However, the individuals selected as members
24 should be the persons primarily relied on to develop a
25 consensus recommendation for staff and for

1 consideration.

2 So we put a lot of effort trying to get a
3 balance committee. We reached out to a lot of people,
4 and some of you guys ended up being observers because,
5 you know, we had the seats filled. And even though we
6 have people who didn't show up today, they are still
7 part of the committee. They are still participating
8 comments, but that doesn't mean you guys can't do the
9 same. You have the same options.

10 We'll work with the committees. We want your
11 feedback, so if it's warranted, go ahead and just raise
12 your name part up -- that's how we're going to figure
13 out who's going to speak. Make sure everyone has a name
14 card, raise it up high so we can make sure that we can
15 see it, and then we'll go in the order as you guys are
16 putting them up.

17 If significant discussion is anticipated, we
18 ask, first, the committee members to address the issues
19 before opening discussion to others. Like I said, we
20 want to make sure that the committee members get a
21 chance to discuss their concerns.

22 But anything that has come up that you have
23 comments on, we can also discuss. You can send them in
24 tonight; you can send them in during the meeting; you
25 can send them in after -- there will be a comment

1 period. I think we're going to give you guys two weeks
2 after this meeting to submit more comments; but,
3 comments, you don't have to be a committee member.
4 Anyone can submit comments. Okay.

5 Advisory committee meetings are informal, but
6 certain rules of decorum apply. So one person speaks at
7 a time. Professional courtesy and respect is required
8 of all who attend. Debates are discouraged. One person
9 or a group should not monopolize the discussion. So as
10 a chairperson, we should be prepared to stop any of this
11 conduct that is not for the purpose of the meeting.

12 It's my responsibility to lead the discussion
13 and be an example of professionalism, so I will do my
14 best to keep us on track. But I do have a team here.
15 We have my supervisor, Amelia. We have Marlo, who is
16 the analyst on this project.

17 We also have an attorney, Michelle Iorio, who
18 is not able to be here today, but she will be here
19 tomorrow -- and they will help me keep this project on
20 our agenda on our timeline. So they will also be
21 helping with feedback.

22 And then, after the advisory committee, we
23 will follow up by distributing the minutes. So, like I
24 said, we'll give you guys some time to submit some
25 comments, and we'll put the minutes together and

1 distribute it back to everyone who participated in
2 today's discussion.

3 So that was pretty much everything about
4 advisory committees. Any questions about that? Okay.
5 So does everybody have a blue folder? That's going to
6 be our paps that we're working with today.

7 And then, Amelia, do you want to go over the
8 background?

9 AMALIA NEIDHARDT: Yes. Good morning,
10 everyone.

11 So in your folder, you will have the Federal
12 OSHA letter. It's on the left side of your folder.
13 It's dated July 12th, 2024. So kind of like the Mission
14 Impossible movie thing, I'm going to tell you your
15 mission today is to address the concerns from Federal
16 OSHA.

17 Federal OSHA has already determined that we
18 are not at least as effective, and what is at risk is
19 that they can initiate adverse action to remove the
20 California State Approval Plan. So if you go into that
21 letter, you will see on page two, right, that they want
22 us to avoid reaching an adverse determination where they
23 will have to start the procedures for us to be removed
24 from the California State Plan Approval. So that is why
25 we are here.

1 We are here to address this particular
2 sections that Federal OSHA is concerned. No. 1 and No.
3 2 -- what I wanted to clarify is that determination has
4 already been made. We are already in the -- what's it
5 called -- fame report -- federal -- annual -- I already
6 forgot -- monitoring -- I think it's evaluation.
7 Anyway, it's already posted on our website.

8 We have quarterly meetings with Federal OSHA
9 where we have to keep them updated on what work we are
10 doing towards addressing their concerns. So having said
11 that, what you have and what Simone is going to go over
12 with you is a discussion draft. And she already
13 reiterated that, but I want to highlight it's a
14 discussion draft. This is for us to talk about this.
15 This is not a proposal.

16 Any questions with that? Okay. Great.

17 Continue.

18 SIMONE SUMESHWAR: And so we have our CPWR,
19 who is construction -- I think I said construction
20 safety folks -- who provide a lot of data. They were
21 going to do a presentation at 10:30 to go over
22 some -- the latest fall protection statics.

23 And then, I think we were supposed to have
24 Federal OSHA also discuss some things, but they're not
25 here today. They will be here tomorrow, I believe.

1 AMALIA NEIDHARDT: They want to stick to the
2 agenda. So if you want, review the agenda. What are
3 the items that are intended to be discussed today?
4 Thank you.

5 SIMONE SUMESHWAR: Today's going to be day
6 one. Construction Safety Orders Article 24. So behind
7 your agenda, you're going to find an eight-page
8 document. It's going to have the sections that we're
9 going to discuss both days, but it's going to start off
10 with 1669 -- (a), (b), and (c).

11 We're going to review the proposed draft text
12 for effectiveness. 1670 (a) and (g) -- also reviewing
13 proposed draft text for effectiveness; 1671 (a), update
14 the vertical distances for safety nets -- so we have a
15 small change there; 1724(f)(1), review the OAL strike
16 out of reference Article 24; and then 1724 (h)(1) will
17 be proposed language for effectiveness.

18 So those are the things that we have to get
19 done with today in order for us to be able to move
20 forward with our agenda tomorrow.

21 AMALIA NEIDHARDT: And, if I may, you also
22 have in your folder a discussion tool that I want to
23 bring to your attention, and that has four columns.

24 In the fourth column, what I want you guys to
25 be aware is that we are gathering information during

1 this discussion, right? If there is something that you
2 want to provide of how we are, for instance, providing
3 how we're keeping workers safe via specific, and we can
4 gather that information today -- whether we are
5 providing already scaffoldings, we are providing
6 harnesses, whatever -- that's information that's going
7 to be gathered today.

8 So that is a discussion draft. It was sent to
9 you guys when we were inviting you for this meeting.
10 And the most important thing is that hopefully you guys
11 did that homework and are prepared to talk and share
12 that information with us. We will be gathering it.

13 KEVIN BLAND: Quick question for
14 clarification.

15 Is what we got off the website be, like,
16 couple days ago I printed out? Is that the same as in
17 the blue folder? Nothing's changed?

18 AMALIA NEIDHARDT: Yes, nothing has changed.
19 That's basically -- you have the updated information,
20 that's what's in the folder. Yeah.

21 Any other questions? Same thing with the
22 roster. Same thing with the discussion draft that is
23 being posted there. Like Simone said, there were some
24 comments that we already received; and, I apologize, I
25 don't think we have that there.

1 So if one of you provided already written
2 comments and when we get ready to talk about that at the
3 particular discussion at the Title 8 section that you
4 want, I encourage you to raise your hand and provide
5 your comments.

6 We're headed to travel this way, so there are
7 some comments that arrive late. I just want
8 clarification -- not to insult anyone -- but we have to
9 prepare stuff in advance.

10 SIMONE SUMESHWAR: All right. So before we go
11 into the actual draft proposal stuff, we also have
12 another handout in there: Federal OSHA part number
13 1902, subpart (b). This is 1902.4. If you flip on to
14 the second page, you'll see highlights of 1902.4.

15 So going back to why we're doing this and
16 where the concerns are coming from. So in our
17 federal -- in the letters from Federal OSHA, they
18 specifically cited the section here, and they wanted to
19 make sure that we understood that the provided states
20 standards where appropriate; containing specific
21 provisions for the protection of employees from exposure
22 to hazards, by such means as containing appropriate
23 provisions for the use of suitable protective equipment
24 and for control of technological procedures with respect
25 to such hazards, including monitoring or measuring such

1 exposure.

2 So this is what they cited in their letter
3 when they were talking about us not being as least as
4 effective. So we wanted to give everyone a copy of
5 this section just so you can kind of see -- when we
6 have a state plan, we have to follow certain protocols.

7 That's part of what the purpose of that fame
8 report is -- is they come in annually and they review
9 our program to make sure that it's at least of
10 effective.

11 And they have a rhyme and rhythm to what
12 they're doing, they're looking for specific things --
13 and you can find that in subpart -- in Section 1902.
14 And this one kind of goes into what they're talking
15 about regulations being effective -- this is what
16 they're looking at; this is what they're referencing.

17 So we just provided that to you guys because
18 we know there's been a lot of questions on about what
19 does it mean when they're saying it is at least
20 effective or how does the state plan requirement --
21 how are they going to pull it, right?

22 There are things that we have to
23 meet -- criteria we have to meet in order for them to
24 allow us to have our plan. So that's why that handout
25 is there for you guys.

1 ERIC BERG: There's also requirements in the
2 California Labor Code that say pretty much the same
3 thing.

4 SIMONE SUMESHWAR: Thank you.

5 I think we were going to do all of this after
6 the presentation.

7 But do we want to start now and then break for
8 the presentation?

9 AMALIA NEIDHARDT: Yes, let's do that.

10 SIMONE SUMESHWAR: So we'll go ahead and move
11 onto our first section -- 1669.

12 So your tool, discussion tool, kind of lines
13 up with the language you're looking at. So this is
14 where, Amelia was saying, you can kind of see what, you
15 know, the thought process was as we were trying to
16 update the language -- what our goals were.

17 And then if there are current provisions that
18 we don't know about or haven't captured, we want to make
19 sure that we document that. And so that's how the tool
20 lines up with the other document that you have.

21 So we'll go to 1669. So 1669, General,
22 Section (a) -- when work is performed from thrustouts or
23 similar locations, such as trusses, beams, purlins or
24 plates of 4-inch nominal width or greater at elevations
25 exceeding used to be 15 feet -- now it's proposed to be 6

1 feet -- above ground, water surface, or floor level and
2 where temporary guardrail protection is -- used to be
3 impractical; now, proposed, infeasible -- employees
4 shall be required to use approved personal fall
5 protection system in accordance with Section 1670.

6 Yes, Mike.

7 MIKE DONLON: I would like to keep
8 "impractical" in there. According to Merriam-Webster,
9 "infeasible" means "impractical". That is their
10 definition, so that change is unnecessary.

11 But the reason I want to keep it is, when I
12 research DARS, I'll do a word search on "impractical"
13 and find every door back to 1970 that has to do with
14 practicality of fall protection systems; if I do
15 "infeasible", I get noise mixed in there, I get machine
16 guarding mixed in there. So it just makes it easier,
17 you know, and it's absolutely not necessary because they
18 literally mean the same thing.

19 AMALIA NEIDHARDT: Anyone else?

20 KEVIN BLAND: I second what Mike brought up.
21 I agree with that. Especially with the broad of
22 periphery of DARS that are out there that have looked at
23 what is impracticable and what is not. It really -- by
24 changing it, then it seems like the definition has
25 changed when the definition of the two were mirrored.

1 And so it's going to create a whole lot of confusion
2 with enforcement and compliance.

3 MIKE DONLON: And the appeals board.

4 AMALIA NEIDHARDT: I want to bring to your
5 attention. This was a specific request from Federal
6 OSHA because in Residential Fall Protection in 41661, we
7 already had to replace "impractical" with "infeasible"
8 at the request of Federal OSHA. They consider it two
9 different terms.

10 MIKE DONLON: Merriam-Webster says different.
11 We also have to meet the Administrative Procedure
12 Act -- that if it's not necessary, it's not necessary.

13 AMALIA NEIDHARDT: It is requested,
14 specifically, by Federal OSHA.

15 Go ahead, Eric.

16 ERIC BERG: Can we ask Federal OSHA tomorrow?

17 AMALIA NEIDHARDT: That is an excellent
18 question. Federal OSHA is not going to be accepting
19 questions. That's what I asked them. They're just
20 going to read a statement.

21 ERIC BERG: Okay. If Federal OSHA says we
22 have to do it.

23 PETER LANG: I was kind of in the same line
24 with Eric there -- is there any comments as far as what
25 is the change? Or why they want a change?

1 AMALIA NEIDHARDT: They want us to be
2 consistent with the language that Federal OSHA has.
3 Federal OSHA has the word "infeasible", not
4 "impractical". And that's why they specifically
5 requested that we be at least as effective. They
6 consider it two different terms.

7 So it's already going to go into effect on
8 July 1st. They're asking that we keep "infeasible".
9 They consider impractical in a totally different term.

10 Yes. Go ahead, Steve.

11 STEVE JOHNSON: My primary concern with
12 Federal OSHA is that "at least as effective as" does not
13 mean identical. And what Mike is talking about -- the
14 word "impracticable" and "infeasible" -- the dictionary
15 says they mean the same thing. I don't understand what
16 the issue is.

17 And every little change that we do in the
18 regulation does not have to mirror federal language if
19 it's at least as effective as. And I think the
20 regulation shows that if it provides equivalent safety,
21 or if it can be shown that equivalent safety at
22 different type of fall protection system, or if it's a
23 trigger height or whatever it is -- in California, we've
24 shown that it's at least as effective as, at least as
25 safe as federal.

1 And so that's where we get bogged down with
2 the identical. So if we're going to go to that level,
3 then why not just adopt the federal standard and do away
4 with Title 8 completely? I mean, that's where we're
5 headed.

6 AMALIA NEIDHARDT: Anyone else? Any other
7 comment?

8 Okay. Let's keep on going.

9 KEVIN BLAND: On the same thing as this. I
10 feel this is going to be the refrained all day is,
11 "because Fed/OSHA said so." And I know we've been down
12 this road for a while. And the issue is just because
13 they say so, doesn't mean they're right.

14 And the whole idea of this is to discuss with
15 the stakeholders as to where they're right, where they
16 may be wrong in their assessment. And this is a prime
17 example, where we have a word that's been defined.

18 And the other thing is -- that happens -- we
19 have to live with Cal/OSHA's appeal board
20 interpretations of things where, like the feds, if you
21 look at infeasibility, they look at cost. They look at
22 different things that we don't get to look at,
23 necessarily.

24 So we adopt their exact language without our
25 body of case law behind it. Do we get the benefit of

1 all their case law? No. Because it's a different
2 jurisdiction. And so I think that this bully tactic
3 from the feds keeps putting us into situations that is
4 not protecting our men and women here in California in
5 the construction industry.

6 And so I think we have to be somewhat mindful
7 of that in areas that we need to push back on -- I think
8 we need to push back on with them. Even in light of
9 their threat because their threat still has to hold
10 water, right? They still have to be able to say, "Why is
11 this infeasible?" Just because they say -- it's like,
12 "That said, so therefore it is." It may not be
13 accurate.

14 And so I think we need to keep that in our
15 minds here as we go through and try to come up with
16 something that, quote-unquote, is at least as effective.
17 But we've seen this before, where they say something is
18 less effective, and it's really more -- and we have that
19 throughout. That's why California has done such a great
20 job with its safety poll, if you look at the statistics.

21 Mike Donlon has spoken to the standards board
22 many times on our falls statistics compared to any other
23 state in the union, including the feds. And so I don't
24 want to lose sight of that. We want to do what's safe
25 and what could be enforced and what can be complied with

1 with the language we choose.

2 So that's all.

3 AMALIA NEIDHARDT: I appreciate it, Kevin.

4 Steve.

5 STEVE JOHNSON: One more comment I wanted to
6 make on the state since we are talking about 1669 here;
7 and then there's no equivalent standard for the
8 short-term duration exemption and one of the goals is
9 that -- stated goals for California is that Federal OSHA
10 does not have a short-term unlimited exposure, so why
11 are we getting rid of an option for employers?

12 Just because there's no equivalent standard,
13 is that where Title 8 can be different? Where we can
14 have a short-term duration for assessing whether or not
15 fall protection can be put into place.

16 And if the work to actually do -- the work
17 actually is completed in the amount of time that it
18 takes to set up the fall protection, then wouldn't you
19 eliminate the risk by doing the work in much time that
20 it takes to set up the fall protection -- which also
21 puts employees at risk.

22 So just because Federal OSHA doesn't have an
23 equivalent standard, doesn't mean that we have to
24 eliminate it.

25 KEVIN BLAND: Especially when it's a safer

1 option --

2 AMALIA NEIDHARDT: Hold on a second, Kevin, if
3 I may.

4 Because we're going to subsection (c), we are
5 skipping subsection (b)? Just wanted to put that -- or
6 it's already being part of both (a) and (b)?

7 SIMONE SUMESHWAR: I guess (a) and (b) could
8 be about the same word.

9 AMALIA NEIDHARDT: Okay. Thank you. Sorry.
10 Continue.

11 ERIC BERG: Just for my understanding.
12 Infeasible basically is a higher standard than
13 impractical. And there's multiple reasons to deviate
14 from the requirement -- infeasible versus feasible --
15 but I'm not an attorney, so I probably more prefer with
16 the OSHA term about that.

17 So that's my understanding -- infeasible to be
18 a higher standard.

19 SIMONE SUMESHWAR: Kevin.

20 KEVIN BLAND: Oh, I was just talking about
21 the -- if we're going to be talking about the short
22 duration in a little bit, then I'll differ.

23 SIMONE SUMESHWAR: Anything else on infeasible
24 verses impractical?

25 All right. Let's move on to (c).

1 So when it can be shown to the employer that
2 the use of fall protection is infeasible, or it creates
3 a greater hazard. The employer shall develop and
4 implement a fall protection plan which meets the
5 requirements of Sections 1671.1 and 1671.2.

6 Okay. Mike.

7 MIKE DONLON: Our existing language really
8 says the same thing but says it a little more
9 eloquently -- where we say, "When the hazards involved
10 in rigging and installing the safety devices equals or
11 exceeds the hazards in the actual construction."

12 That's very much more descriptive than
13 "creates a greater hazard." That's kind of vague, and I
14 think we just have more eloquent language that really
15 means the same thing.

16 KEVIN BLAND: I agree.

17 MIKE DONLON: Another thing I wanted to
18 mention is, you need a short duration exception to hook
19 up the fall protection. You're not going to be
20 protected while you're hooking it up, which legally
21 would fall under the logical time defense.

22 It'll be real nice to have something in
23 writing so we didn't have to go to the appeals board on
24 that. There is a defense that allows you to do that,
25 but I rather not get citations and deal with the appeals

1 board personally. Kevin would rather deal with them
2 because he makes money off it.

3 KEVIN BLAND: I was going to say -- that's a
4 full Kevin employment act.

5 SIMONE SUMESHWAR: Can you elaborate on this
6 logical time defense?

7 KEVIN BLAND: Well, it's basically -- when is
8 the logical time to do an act? The one that just really
9 will illustrate it, but doesn't make sense. We can't
10 put the guardrails until you have the floor built enough
11 to support the guardrails -- logical time.

12 MIKE DONLON: And that was the case that was
13 built on?

14 KEVIN BLAND: Yeah.

15 MIKE DONLON: I will email you the DAR on that

16 KEVIN BLAND: I think its Nicholson & Brown.

17 AMALIA NEIDHARDT: And I just want to clarify,
18 that one of the concerns that Federal OSHA had is that
19 there is no definition for "short duration."

20 Is it somewhere in the regulation?

21 KEVIN BLAND: I think it's in the DARS.

22 AMALIA NEIDHARDT: But it's not in Title 8?

23 KEVIN BLAND: Add the definition from that
24 DARS.

25 MIKE DONLON: I wasn't even talking as much

1 about the "short duration" on the first part. I just
2 like our eloquent language better than "creates a
3 greater hazard."

4 The short duration is just -- the whole thing
5 for time to set up the fall protection system so that,
6 you know -- like, say, right now, we'd have to go defend
7 it rather than having something in here saying -- you
8 know, maybe even a note -- saying the time it takes to
9 set it up. You know, you're not going to be protected.

10 That's a horrible language, but something like
11 that.

12 SPENCER PRICE: I don't know if it helps or if
13 it's useful here, but Federal OSHA has a couple of
14 letters or interpretation that are posted about these
15 definitions. I don't know if that's something that's
16 useful for this discussion.

17 I've got one up here, but I can send it, if
18 somebody wants.

19 Is that useful? Or no?

20 SIMONE SUMESHWAR: Sure. Is it about the
21 first man up and short duration?

22 SPENCER PRICE: Exactly. Yeah. Because there
23 were questions -- there were two questions that were
24 asked. I've got one here. Should I send it to
25 somebody? Or is it not useful?

1 SIMONE SUMESHWAR: You can send to myself or
2 Amelia.

3 SPENCER PRICE: Okay. Will do.

4 KYNAN WYNNE: I think that one thing to keep
5 in mind is that in one of the newer federal standards,
6 which was revised in 2017 -- the 1910 General Industry
7 Standards -- does utilize duration language in that for
8 low slope roofs.

9 So there is a precedence sentence. It's
10 showing that a newer standard -- that Federal OSHA put
11 out -- has started to utilize that concept.

12 KEVIN BLAND: It isn't, specifically, but it
13 is inferred when in the language itself defined because
14 it talks about the hazard involved in rigging and
15 installing safely equals and exceeds.

16 So you're going to look at that time element
17 to be comparison with the hazards and the comparison to
18 doing the work and the time that it takes. So it is
19 implicit in there.

20 If you can -- if it takes 10 minutes to do the
21 work and it takes 30 minutes of exposure, that's short
22 duration, right? If you're going to say 30 minutes to
23 do it. So it is implicit, but it's not explicit.

24 SIMONE SUMESHWAR: Anyone else with comments
25 on this section? Okay. So are we good with this page

1 here?

2 So we've got some logical time defense of
3 short duration -- investigation that we should look at.
4 What they mean, and what they're implying.

5 STEVE JOHNSON: Before we get off of that, I
6 just want to go on record that we're opposed to removing
7 the short-term duration exemption. Thank you.

8 SIMONE SUMESHWAR: Thank you.

9 All right. Well, lets go to page two.
10 Section 1670.

11 AMALIA NEIDHARDT: One second, Simone. We
12 also have a note on that -- page two of the -- we can
13 discuss that. I just wanted to make sure we discussed
14 it on page two.

15 SIMONE SUMESHWAR: On the discussion tool?
16 The presumption. So we did add a note. There's a
17 presumption that conventional fall protection is
18 feasible and will not create a greater hazard.
19 Accordingly, the employer has a burden of establishing
20 that conventional fall protection is infeasible and
21 creates a greater hazard.

22 Any concerns with the note?

23 STEVE JOHNSON: It just seems to me that -- my
24 understanding is -- I'm not an attorney, but my
25 understanding is that a note is not enforceable, but the

1 language in there is really, kind of, circles the drain
2 on pinning slam-dunk citation on an employer.

3 Because the presumption, being that -- well,
4 the employer -- it's presumed that it's not going to
5 create a greater hazard, so the burden is on the
6 employer. So all Cal/OSHA has to do is walk up and say,
7 "Well, it's not infeasible. You should have set up fall
8 protection."

9 And they read the citation and walk away, and
10 then you spend the next six months to two years
11 appealing that citation.

12 So that's my comment on that.

13 KEVIN BLAND: I'll add to that. We're going
14 on the issues we're dealing with on the residential fall
15 protection because the word on the streets that we keep
16 hearing is that, if you use a fall protection plan for
17 anything, you will be cited because it just shifts the
18 burden.

19 And we can fight over the burden, and if we're
20 following the law and the document that creates the plan
21 meets the burden, I would like -- if this notes stays in
22 here -- I would like some sort of language where the
23 division has some obligation to consider the plan and
24 review the plan prior to issuing the citation or
25 something to that effect so that it's clear. Because

1 it's basically trying to make the plans illegal and say,
2 "We'll cite you, and we'll figure it out later."

3 And this just kind of leaves it hanging and
4 puts an exclamation point on that -- kind of Steve's
5 point. And this has happened in the real world; we saw
6 it happen in 2001 with the controlled access zones. And
7 I do think it would be helpful. It is a note that's not
8 enforceable, but the law does say the burden shifts from
9 proving infeasibility, I'm not doubting that.

10 It's just that that doesn't mean enforcement
11 gets to ignore a plan that is well devised and
12 articulates infeasibility and then issue a citation and
13 say, "You're going to have to prove it later."

14 SIMONE SUMESHWAR: I have a question for
15 Cal/OSHA. So what do we do from an enforcement point
16 with the plan? If an employer has a plan, do we look at
17 them? You look at them, right?

18 JASON DENNING: Yeah. If the plan is being
19 used, we, of course, have to review that to make sure
20 it's according to Title 8.

21 KEVIN BLAND: To that end, we have
22 heard -- and there's been meetings with folks where it
23 has been said -- if the framing contractor who's using a
24 plan, they will be cited. And so that's what I'm trying
25 to get out here in the open and get that cleared up on

1 the record.

2 ERIC BERG: I have not heard that before.

3 KEVIN BLAND: I've heard it many times from
4 many different sources in the last few months. So
5 you're questioning that now? That isn't how you're
6 looking it at?

7 JASON DENNING: As far as I know, there's no
8 policy in the division to automatically citing for a
9 fall protection plan.

10 MIKE DONLON: I just want to go on with Kevin.
11 This is just prejudice against the employer and throws
12 the burden there and takes the burden off the division
13 to actually do their work. And, unfortunately, we have
14 people from standards here, but there are somewhat
15 removed from enforcement. And what we see -- well,
16 somewhat. I know. I know.

17 But we hear stuff from enforcement people that
18 you guys have, you know, footwear on every construction
19 cite. You've never heard of that, and people are cited
20 for it. So, you know, it is an issue that stuff happens
21 in enforcement that you guys really don't hear about,
22 and we do.

23 SPENCER PRICE: I just want to add -- I'm not
24 that far from cases, but when we go out, you collect
25 evidence. So if an employer whips out a fall protection

1 plan -- and that's evidence -- but comparing what the
2 regulations say verses the reality on the job site. So
3 we have to review that. We can't just collect it and
4 cite them.

5 Some things you look at, and you look at it,
6 and you're, like, how can they think this is going to be
7 okay. But when you "prepare your citation package, the
8 management reviews it before it goes out because we
9 can't arbitrarily issue citations.

10 So by the time we send it out, we're making
11 our best evaluation in what's in front of us and -- but
12 it's our burden to prove the feasibility of it. And
13 that's what this wording is saying, right?

14 KEVIN BLAND: To Spencer's point, if this is
15 your issue -- if they say, "Okay. You have
16 the burden of proving infeasibility on the spot, we'll
17 issue a citation, because we don't know anything about
18 infeasibility."

19 Even though your plan articulates it, and I
20 know that they review it, but that's what I want to get
21 away from -- this automatic consideration that, "Hey,
22 infeasibility is up to them. They're going to have to
23 prove that at the appeals board level because we don't
24 know." By reviewing, or what have you, and issuing the
25 citation and let them figure it out later.

1 That's what we're talking about. And, I
2 think, to Spencer's point, it goes, "Well, they don't
3 have the burden so they may have it all there. But the
4 infeasibility is their issue, not ours. We don't have
5 to consider what they've said."

6 STEVE JOHNSON: Going along with what Kevin is
7 saying there too is that, one thing that we're seeing
8 happen a lot with IIPP's is that it's just an automatic
9 citation because the plan is ineffective.

10 And so, if a written plan is reviewed by
11 Cal/OSHA, it's very easy just to automatically say the
12 plan is ineffective and give a citation and see how that
13 shakes out in the appeal. And I'm sorry if I have a
14 tainted view on that, but I've seen it in real time.

15 SPENCER PRICE: Just one last thing. Besides
16 collecting evidence -- so let's say Kevin has a fall
17 protection plan. Part of the inspection process is
18 collection of materials and interviewing
19 members -- representatives of the company management and
20 employees -- and interviewing them.

21 You say, "This is infeasible." Why do you
22 think that? So if we can't tell by reading it, we're
23 going to interview people also. So it's not just -- you
24 know, the process isn't automatically to just throw it
25 up against the wall and see what sticks. It shouldn't

1 be.

2 I can't say everything is perfect all the
3 time. But that's not a real mechanism. It doesn't
4 happen by design.

5 KEVIN BLAND: I'll go on the record and say I
6 miss Spencer being in the field. He should've never
7 gone to consultation. You got a fairshake.

8 AMALIA NEIDHARDT: Remember to say your name.
9 And before you state something, please, let's give
10 priority to whoever raises their hand. Thank you so
11 much for helping us with that.

12 MIKE DONLON: I just want to say not
13 everyone's as diligent as Spencer was in the field or
14 any of these folks because the reason these Cal/OSHA
15 people rose to the level they're at is because they're
16 the most diligent, safety engineers in Cal/OSHA. And so
17 not everyone does as well out there.

18 SIMONE SUMESHWAR: Thank you, Mike.

19 ERIC BERG: I reemphasize what Spencer said.
20 It's an in-depth process when we do investigations. We
21 don't just -- arbitrarily, we don't really cite. We
22 gather evidence and we look at the practical situation,
23 interview people. It's not just automatically a
24 citation. I'm not aware of anything happening like
25 that.

1 You might get a termination if there's a
2 hazard to employees, that's the first thing that we're
3 worried about because hazard employees needs to be
4 fixed. And only then do we issues citations.

5 (Reporter interruption.)

6 ERIC BERG: Oh, sorry. I'm agreeing with what
7 Spencer said.

8 AMALIA NEIDHARDT: And I just want to make a
9 comment that what Federal OSHA wants to make sure is
10 that the employer demonstrates that the conventional
11 fall protection is infeasible before they automatically
12 use a fall protection plan. And I think we all know
13 about that. But that's the thing -- they want us to
14 make sure that that actually takes place.

15 Okay. It looks like somebody was trying to
16 join via teams.

17 KEVIN BLAND: Just for clarification, Amalia
18 "demonstrate" would mean articulated in the plan because
19 we've had this discussion over
20 "demonstration" -- what does that mean? And I think
21 it's important for this rulemaking package to have an
22 understanding what "demonstration" means.

23 In my understanding of it, "demonstrate" means
24 you are articulated in the plan that the infeasibility
25 of conventional fall protection and the rationale for

1 not using alternative fall protection and why it is the
2 right site and method for using a fall protection
3 plan -- that's what demonstration means -- you
4 articulated rationale in the plan at the top.

5 AMALIA NEIDHARDT: I think we are both in
6 agreement. As long as it's shown. Is that what you're
7 saying? It's shown.

8 KEVIN BLAND: And "shown" means a written
9 product. Not going out and demonstrating five different
10 methods with the time to set it up because I've heard
11 that. Well, how is this demonstrative? But it's in the
12 plan. It's a demonstrative through articulation of
13 facts in your plan.

14 AMALIA NEIDHARDT: Okay. I just want to
15 clarify. As long as it's shown how they
16 wanted -- that's up to enforcement, right? We don't do
17 that.

18 KEVIN BLAND: But we're making the regulation
19 for enforcement to follow, so I want to make sure the
20 regulation is clear that gives them the guidance to
21 enforce.

22 MIKE DONLON: You just said it all. It really
23 should read something more like, "The employer must
24 articulate or demonstrate in their fall protection plan
25 that creating -- the fall protection creates a greater

1 hazard." That's what -- you just articulated to us as
2 what it means, but that's not what it says here.

3 So let's go to your language, Amalia. I like
4 it.

5 AMALIA NEIDHARDT: Actually, you can submit
6 that as a recommendation. That's why it's a discussion.
7 So if you have a language?

8 MIKE DONLON: I'll come up with something at
9 the next break or lunch.

10 AMALIA NEIDHARDT: Thank you.

11 SIMONE SUMESHWAR: Any other comments on this
12 section?

13 Looks like our presenter is ready to
14 present, so we'll make this thing work.

15 Hi, Amber. Can you hear me?

16 AMBER TRUEBLOOD: I can. Can you hear me?

17 SIMONE SUMESHWAR: Yes. I can hear you.

18 So this is Amber Trueblood. I'm going to let
19 her introduce herself. She was more than kind enough to
20 prepare an updated presentation for us on fall data
21 trends.

22 So go ahead, Amber.

23 AMBER TRUEBLOOD: Thank you for the
24 introduction. I hope your meeting is off to a good
25 start despite the technical difficulties. You can't

1 have a meeting in 2025 without some difficulty.

2 So thank you for inviting me today to present
3 on recent fall data trends. Hopefully some of you are
4 familiar with myself. At CPWR, my name is Amber
5 Trueblood. I'm CPWR's Data Center Director.

6 In about 15 minutes, I'm going to quickly go
7 through who CPWR is, some recent data
8 trends -- specifically looking at falls -- and then also
9 highlight a few of our available fall resources, which
10 are all free on our website.

11 So let's go ahead and get started. Who is
12 CPWR? So Center For Construction Research and Training
13 is our full title; however, we kind of go by CPWR.

14 If you had your coffee today, you're going,
15 "What? That doesn't actually match the name." We were
16 formally called the Center to Protect Workers' Rights;
17 however, we always focused on the construction industry,
18 and we changed our name to match that -- to the Center
19 of Construction and Training -- but kept the CPWR
20 acronym. And it's a fun little ice breaker -- little
21 unique.

22 We've been around since the 1990's. We are
23 dedicated to keeping construction workers safe and
24 healthy at work. CPWR, as an organization, has three
25 main areas.

1 So I'll actually start on the office side,
2 where it refers back to our service group, which
3 provides medical screening for former construction
4 workers at USDOE nuclear weapon site. It's also one of
5 the largest Cal work groups of construction workers in
6 the world.

7 And then our next group is our training, which
8 provides quality environmental, occupational safety, and
9 health training to workers annually to keep them safe on
10 job sites.

11 An then our research group, which is where I
12 am housed, we conduct research to examine emergent
13 hazards such as falls. And then we also work on finding
14 practical solutions and approaches to protect workers
15 and disseminating the research that we conduct.

16 So, in a nutshell, that's who CPWR is.
17 There's a lot of things I cannot cover; that's a whole
18 presentation within itself.

19 So now that you know a little bit about who we
20 are, let's go ahead and jump into the data. As CPWR's
21 Data Center Director, I am very into data. If you're
22 not a data person, I did try to keep this at a high
23 level today. So I promise -- high level -- we'll try
24 and stay there. If you are really into data and I
25 didn't have enough, please feel free to reach out to me,

1 and I'm happy to talk data anytime.

2 So looking at 2023(c)(4) data for
3 construction, what we find is that falls to a lower
4 level counted for 38% of all fall injuries among
5 private industry construction, and falls continue to
6 be a leading source of fatal and nonfatal injuries.

7 So when we break it out, we'll look at our
8 focus four which were the four injuries that have
9 historically been the most counted for the most
10 fatalities in construction. They were defined in the
11 90's by OSHA originally. Those are the falls, struck
12 by, electrocutions, and caught in between. We
13 continually see falls as the largest of those.

14 In a recent data bulletin -- looks
15 specifically at fall injuries to do a deep dive so we
16 can understand what was happening with falls in the
17 industry -- what could we do from a prevention effort.
18 And we did find, from 2011 to 2022, the number of fatal
19 falls increased 53% -- from 260 to 397 -- again, from
20 that 2011 to 2022 time period.

21 However, when we look at the rate, which
22 accounts for the number of workers -- and I always
23 recommend you look at both the raw number and also the
24 rate because the rate allows us to count for that
25 workforce -- the rate increased 13% from 3 to 3.4 per a

1 hundred thousand full-time workers.

2 Do you see dips here -- so this chart shows
3 you falls and falls, slips, and trips. So we did, for
4 this data bulletin, look at falls, slips, and trips and
5 falls to a lower level just to see if we saw different
6 trends. And, as you can see, they follow each other
7 almost perfectly, and that's because the majority of
8 falls, slips, and trips fall to a lower level.

9 Next, we wanted to see if we saw a
10 geographical patterns in our rate falls, slips, and
11 trips. This is, again, falls, slips, and trips -- not
12 just falls -- because of data availability.

13 And so what we see by number is Florida,
14 Texas, and California had the highest number of fatal
15 falls, slips, and trips. This does align with where we
16 know our workforce numbers are larger -- construction
17 workers in these states just by number.

18 And then once you actually account by rate,
19 the three highest states were Louisiana at 7.1; North
20 Carolina at 5.9; and then Michigan at 5.6 per a thousand
21 FTEs. And all of the dark bars here -- the dark orange
22 -- are higher than the national reentry point five per a
23 hundred thousand FTEs.

24 And this slide is actually our most requested
25 data, and it is falls by height among construction

1 workers. We get those requests at least once a month,
2 if not three times a month -- just kind of depends.

3 And so from 2011 to 2018, we see a majority of
4 our falls were 15 feet or less -- so about a
5 third -- 33.6%; and 26.5% were 16 to 20 feet; and
6 another 26% percent were 26 feet or higher.

7 Now, 2023 data -- which isn't shown -- but I
8 went ahead and pulled it since I know you guys wanted
9 real updated data. The new classification system
10 actually is a lot broader, so it doesn't allow us to get
11 these detailed categories shown on this site here.

12 But what we do see is that 4% fatal falls in
13 2023 were 6 feet or less. And, looking at this, it was
14 4.2% in 2011 to 2018 -- so pretty consistent there. And
15 then 12% of our falls in 2023 were from 30 feet or
16 higher.

17 And so when we go to our chart here, we see
18 30 feet or higher was about 17.8% -- so a little bit.
19 We've actually seen a reduction in the higher falls
20 there.

21 Next, we look at injuries by establishment
22 size. There's a lot of conversations that we believe
23 small establishments are at higher risk; however,
24 there's limited data that supports this.

25 So one of our goals, and this most recent data

1 bulletin examining falls, was to pull establishment size
2 through a special request through BLS using the restricted
3 data. And what we find is 70% of falls who had a reported
4 establishment was really important because not all
5 injuries have that reported size.

6 But of those that have that reported
7 information, 70% of them -- the falls occurred at small
8 establishments -- was less than 10 employees, and that's
9 what we consider to be small establishments. So this
10 does support that.

11 In addition, we wanted to know: Is that
12 consistent for all fatal injuries within construction?
13 And the answer is no. We do see small establishments
14 are overrepresented for all fatal injuries at 57%, but
15 it's much higher for our fatal falls at 70%.

16 This is actually from the requested sources
17 -- close, if not -- it kind of depends on, I guess, the
18 month. It's also another top request we get is -- the
19 source -- our cause of death from falls.

20 And so if a report is produced from CPWR,
21 looking at this, and so what we see -- it's available in
22 both English and Spanish -- roofs is the leading source
23 of falls at 33%; ladders is the second at about
24 25% -- well, under a quarter; and scaffold staging were
25 14% of our falls during the period examined here.

1 Next. This is going back to all fatal
2 injuries -- just because I want to get some recent data
3 in here -- and put that in perspective from the
4 infographic I just showed you.

5 So for all fatal injuries by primary source,
6 the number one primary source is structures and
7 surfaces. And just putting that into perspective, that
8 one includes our scaffold staging and roofs; and then
9 our next for all injuries are vehicles; and then, third,
10 is tools, instruments, and equipment -- and that's
11 actually where your ladders would fall into.

12 And I also wanted to present this because BLS
13 did just go from classification two to three. So there
14 are different primary sources being used. And it can
15 make comparisons with new data to historical a little
16 challenging, so I just wanted to show you that even in
17 the higher classification here, we still see scaffold
18 staging groups and ladders as leading primary sources,
19 and that's not specifically just for falls -- it's all
20 injuries.

21 Next, I want to talk about nonfatal falls,
22 slips, and trips and falls to a lower level. Falls
23 don't always result in a fatality. They do result in
24 less severe injuries that may result in days away from
25 work. And so that's what we're going to look at here.

1 So from 2011 to 2012, to 2021 to 2022 -- and
2 you'll notice that these are two-year time periods, and
3 that is to match changing, the most recent data, to
4 two-year time periods. And so we wanted to make sure
5 historical data could be comparable. So we went ahead
6 and aggregated that and then calculated here at CPWR.

7 So what we see from the first time period to
8 2021 to 2022, nonfatal falls to a lower level increased
9 2% -- so a very small increase here from 19,000 to
10 19,400. Nonfatal injuries resulted from falls to a
11 lower level.

12 While the rate actually decreased 26% from
13 15.3 to 11.4 per 10,000 FTEs -- so I would say that's a
14 good sign that we're moving in the right direction. I
15 do want to note that SOY has been known to have
16 under-reporting's -- specifically, among small
17 establishment and Hispanic workers.

18 So we do kind of take this as general trends,
19 but it may not be telling us the full picture because,
20 again, it's just for cases resulting in days away from
21 work that are reported.

22 Looking at our entree sources that were common
23 to fall, slips, and trips. We see from 2019 to 2020 to
24 the 2021 to 2022 time periods, we were really trying to
25 identify sources that really needed some sort of effort

1 that we needed to respond to to see if there were
2 decreases, increases.

3 And so the good news is that we saw a decrease
4 in floors, walkways, and ground surfaces. We saw a
5 decrease in ladders, and we saw a decrease in
6 scaffolding staging.

7 The only injury source common to falls, slips,
8 and trips that we did not see a decrease in were roofs
9 -- which result in a slight increase -- with about an
10 increase with 400 injuries from 2019 to 2020 to 2021 to
11 2022. And so that can be a good indication of something
12 that we want to look at in the future.

13 So those were all national trends. I'm in
14 California; what about California? Here at CPWR, we
15 largely focus on national trends, and we give that
16 information out. And we do split out by state, as our
17 data allows us to, because we believe geographic trends
18 are important, and we understand that every state is
19 equivalent.

20 So in 2023, using data from California found
21 439 fatal injuries and construction. 79 resulted from
22 falls, slips, and trips -- oh, I'm sorry. That's not
23 specific to construction. Those were all fatal
24 injuries.

25 And then we went down, and of the 79 falls,

1 slips, and trips, 43% were among construction workers,
2 so slightly under half of those. So that shows you that
3 one industry is responsible for 43% percent of falls,
4 slips, and trips of fatal injuries in California -- and
5 that's just a good threshold to know where does
6 construction fall.

7 So if you've hung by on that, I appreciate it.
8 I know lots of data was thrown out at you, so I
9 appreciate you hanging on. I want to highlight some
10 data center products. If you want additional data,
11 that's where you would find them, or you can reach out
12 to me directly, and we can have a call, or I can e-mail
13 you these.

14 CPWR's Data Center -- we publish, bi-monthly,
15 data bulletins and data dashboards that have interactive
16 charts that allow you to dig into data. It also -- if
17 geographic data is available, we'll also include a map
18 or some sort of filter to get to that. And I've listed
19 three datable attempts here that have just general
20 injury or falls specific data that may be of interest to
21 the group today.

22 And then the other thing that CPWR does is
23 everything we do -- again, from our research group -- is
24 to try to get it out to keep construction workers safe.
25 And so our r2p program has a ton of free resources that

1 are available on our website.

2 So year-round fall prevention resources, you
3 know we just had our stand down, but year-round, we
4 really think that fall prevention should go year-round.
5 It shouldn't just be a week, a month, a year. It really
6 needs to be conversations we're having all the time. So
7 there is an excellent list that is available in English
8 and Spanish on our website.

9 In addition, recently, we have a hazard alert
10 on preventing head injuries and head protection
11 recommendations. And so that is also available on our
12 "Preventing Injuries" web page.

13 And then I'm just going to highlight -- a lot
14 of our resources, as you probably noted I
15 said -- they're available in English and Spanish.
16 Majority of our resources now come in Spanish as well.

17 And we are working towards additional
18 languages. And so you'll see those on our website. And
19 that includes: Arabic, Haitian Creole, Japanese, Polish,
20 Portuguese, Russian, and then Traditional Chinese.

21 So those are the languages so far. If you
22 ever identify a language that you think would be really
23 important for who you work with, please feel free to let
24 us know, because we do try to assess the needs for the
25 construction industry and stakeholders.

1 And that was a lot to get through in that time
2 so appreciate you guys having me, and I'm here for any
3 questions you might have.

4 SIMONE SUMESHWAR: Thank you, Amber.

5 Do we have any questions for Amber?

6 KEVIN BLAND: Amber, is there a movement, or
7 something like that, to try to distinguish between
8 construction -- because "construction" is a very broad
9 category.

10 You have commercial construction; you have
11 residential construction; you have, like, people that
12 are doing reroofing and things on existing homes verses
13 our commercial folks -- or a production time? Is there
14 a movement to drill, because the stats are interesting
15 in that because it does get -- it's pretty broad.

16 And I notice that you did do, like, there was
17 one that talked about -- I don't know if it meant the
18 surface in which they landed on, sort to speak -- versus
19 dirt, versus sand, versus concrete, versus wood -- all
20 these things can help effectuate making the regulations
21 in a way that really drill down to the work being
22 performed.

23 And I know it's hard sometimes to
24 get -- because whatever information you get, you're kind
25 of stuck with, and some of it is not too detailed.

1 Is there are movement to try to categorize
2 some of that? Because that creates a lot of difficulty
3 sometimes in taking the stats and using it as analysis
4 in context like this.

5 AMBER TRUEBLOOD: So yes, Kevin, if I
6 understand your question -- is there a movement to try
7 to get lower-level data so we can really, truly
8 understand what is happening with the injuries, and the
9 answer is yes, absolutely.

10 In the data bulletin, where some of these
11 resources came from -- and I did narrow it down to a
12 higher level -- we do try to always break it down by
13 subsector. So major in detailed subsector when that
14 data is available to us.

15 So this specific one, we did have a major
16 subsector pull and in some detailed subsector data so we
17 can understand where we seen the highest numbers of
18 these injuries.

19 And then, in addition to, like, what is
20 actually happening with the fall -- a lot of the times
21 we're limited with structure data to what is in the
22 classification code. So they specifically code all
23 injury data, use of any exposure, primary sources that
24 may not give us the best information for prevention.

25 And that's something I've been saying for

1 about 10 years. So if you've heard me talk before, you
2 might of heard this rant before. So what I'm doing here
3 at CPWR and a lot of prevention researchers, we're now
4 moving into to look at the narratives that are provided.
5 And so we're actually in the middle of analyzing BLS
6 injury narratives to try to better understand these
7 injuries and get the information that's not in the
8 structured data. It's just a process tactic.

9 KEVIN BLAND: Thank you.

10 PETER LANG: I'm just, kind of, piggy backing
11 along with Kevin's comment. You know, I appreciate the
12 data and the analysis and, you know, I represent labor
13 and union contractors -- is there any way to determine?

14 Like, it's all up to as far as the type of
15 employer, but as far as I know, for our union
16 contractors, because we have apprenticeship programs, we
17 are strict and very proactive in our safety measures and
18 our efforts to enforce.

19 Is there any way -- because I know, maybe,
20 some of the fatalities, it'll show between, like, a --
21 where there's a union contractor and nonunion
22 contractor.

23 That's why I wanted to bring that forth as far
24 as, you know, supplying data and trying to find out
25 where a lot of these fatalities or these hazards are

1 caused.

2 So I just wanted to bring that up. Maybe just
3 another perspective, as well, too. Thank you.

4 AMBER TRUEBLOOD: Peter, that's actually a
5 really great comment and something we're really
6 interested in.

7 So BLS specifically -- so the Bureau Labor
8 Statistics -- they don't tell us if it's union or
9 nonunion. We're trying to figure out if that
10 information would be in the narratives.

11 And another data source that we're trying to
12 examine right now would be the OSHA fatality and OSHA's
13 severe injury, which does sometimes have if it was union
14 or nonunion included in that so we can better understand
15 that, because we do understand union verses nonunion,
16 there's different safety and health resources, and
17 that's a really important factor.

18 KEVIN BLAND: Quick question. I think it's on
19 your slide six -- where it talks about the injury rates
20 per state.

21 Do you know how many of those are Fed/OSHA
22 verses the state plan? I know California is a state
23 plan. I think Florida, Texas -- Michigan may be a state
24 plan -- but it looks like a lot of the ones with a
25 higher rate are actually Federal OSHA plans; is that a

1 fair statement based on the list there?

2 AMBER TRUEBLOOD: Based on the list and
3 my quick scan, I would say, yes. You know, as a data
4 person, I actually like to look at each state and firm.

5 But, yes, overall, I agree with that.

6 KEVIN BLAND: And I know that's not in your --
7 it's just ironic that the feds are on ours, and we have
8 the lowest rate. Can't let that go.

9 STEVE JOHNSON: Hi, Amber. My comment is
10 really not a question, just more of a comment.

11 One thing I've seen is that with the fatalities
12 and serious injuries is that if it states it's
13 from a roof, it's often assigned to -- it's kind of
14 presumed that it's a roofing contractor.

15 And in construction, there's the HVAC, there's
16 electrical, there's plumbing -- there's a lot of
17 different trades that we need to access the roof and get
18 up on the roof.

19 And, also, with buildings that are already
20 completed and in use, maintenance workers sometimes will
21 fall from a roof or fall to a lower level from a roof.
22 And those are -- it's kind of -- roofers kind of get
23 lumped in as the primary employer, and the assumption is
24 made.

25 I know you probably don't have any control on

1 your end on the information that comes to you, but I'm
2 hoping there's a way to kind of further clean that out
3 to get more accurate numbers.

4 AMBER TRUEBLOOD: So, Steve, that's a
5 excellent point as a lot of the data does have to make
6 decisions on occupation where researchers may not
7 necessarily agree with the industry and occupation
8 classification of someone.

9 And OSHA data, when we have narratives or
10 anything that's available -- because we also link media
11 reports. If we read, later, it was a maintenance
12 worker, we will actually manually exclude that out or
13 reclassify it if it's still within construction.

14 So we do our fatality map at CPWR and we try
15 to account for that. BLS specifically does their
16 reporting CFI comes from multiple source documents, so
17 BLS tries to do their really best at not saying someone
18 is a roofer if they're not a roofer.

19 And then, I believe, on occupation, they want
20 to have two source documents that confirm an occupation.
21 So hopefully they're doing a better job. It gets better
22 every year, hopefully.

23 And then SOY data is based on employer
24 surveys. And so that should largely be based on what
25 the employer -- and I would say -- so the nonfatal

1 federal data from BLS is probably pretty accurate unless
2 the employer is misclassifying.

3 And so we're working on it. And that's
4 actually the industry and occupation with the
5 narratives; that's one of my objectives is to
6 cross-reference -- see how much they align.

7 SIMONE SUMESHWAR: Thank you.

8 RINALDO EDMONSON: Hi, how are you. Thank
9 you, again, for this presentation. It was very, very
10 well timed to present it the way you did.

11 One of the things that stuck out to me is that
12 chart on page six that you presented us. I think it's
13 slide 12. And the decrease that happened, right?

14 So I think what really interest me about that
15 decrease is were you able to give any indication as to
16 why that decrease happened in that contract. We've seen
17 an increase only in roofs, but we've seen a decrease in
18 every other.

19 And I'm sure that would be the underlying
20 question -- what was the driver for the decrease?

21 AMBER TRUEBLOOD: So what was the driver for
22 the decrease. I wish I could answer that. I wish
23 that -- that's another -- we're trying to go through the
24 narratives to figure out if what we're seeing in
25 scaffold staging -- they mention more fall arrests

1 systems being used; ladders -- they mention more ladder
2 safety.

3 Some of that information just isn't available,
4 so we have to assume a safety effort. I don't know why
5 we would see an increase in roofs but a decrease in the
6 other sources. And that's actually something my team is
7 interested in trying to figure out -- using the
8 narratives, to figure out if there's something that's
9 being said that could say, "Oh, we're doing really good
10 with PBE on scaffold staging, but, for some reason,
11 roofs we aren't."

12 And some of that may also be that we aren't
13 going to get it from a structured data and be collective
14 but quantative like federal data; that we have to hit
15 workers and say, "What are you guys doing," and get some
16 of that qualitative feedback.

17 And it could be different, so, largely, we
18 don't know, but we want to know.

19 RINALDO EDMONSON: Appreciate you. Thank you.

20 SIMONE SUMESHWAR: Kevin.

21 KEVIN BLAND: Another thing, like, on the
22 roofing, the activity. So if you're on a 8 and 12 roof,
23 and that's where most of the things are happening,
24 that's where we need to focus our efforts versus a flat
25 roof.

1 And so it's helpful statistics to kind of get
2 a sense, overall -- but is there a way for you to drill
3 down because when we are regulating based on stats, it
4 really is important to know where is the risk. Where
5 are we seeing those as opposed to the broad basis.

6 Is there any stats or anything that you have
7 that talks about -- okay, these -- we're having 70% of
8 our falls from 6 to 8 and 12 pitch roofs verses 1% on
9 flat roofs.

10 You know, is there stuff like that? And it
11 goes across the boarder, I just used roofs as an
12 example.

13 AMBER TRUEBLOOD: So unfortunately, there's
14 not national data that gives us this. And new BLS data
15 disclosure -- they changed in 2019 -- so all updated
16 data. We actually can't stratify that. If we know it's
17 6 feet or less, where was it and being able to go drill
18 down. But their new rules actually do not allow us from
19 a data release perspective, so that's my limitation.

20 To get around that, another -- I keep talking
21 more about advanced data -- is doing some text mining
22 with the narrative to try and figure out what's in
23 there.

24 Another thing we're working on to bypass this
25 because they won't give us raw frequencies, is we want

1 to actually do a fall and regression model which would
2 give us some odd ratios so we can understand some of the
3 factors and we can put them together so we can say,
4 "fall 6 feet or less; the odds of a fatal injury;
5 increase." You know, for these specific locations are
6 these specific activities.

7 So that's something we're working on. It just
8 takes some time, unfortunately. I wish I had the answer
9 today.

10 KEVIN BLAND: Thank you.

11 SIMONE SUMESHWAR: Any more questions for
12 Amber?

13 Thank you, Amber, so much for being here
14 today.

15 AMBER TRUEBLOOD: Anyone think of questions
16 that would help or if you need sata that doesn't exist
17 please feel free to email me directly at
18 atrueblood@cpwr.com, its on the slides I provided. I
19 do keep a running list and am on several data advisory
20 committees tha ttalk about reclassifying our standing
21 data collection I often voice just what the industry
22 in a whole needs.

23 AMALIA NEIDHARDT: Thank you very much.

24 AMBER TRUEBLOOD: Thank you. You guys enjoy
25 the rest of your day.

1 SIMONE SUMESHWAR: Do you guys want to do a
2 lunch 11:15-12:15?

3 We'll do a 10-minute break.

4 (Break.)

5 SIMONE SUMESHWAR: So we're going to go ahead
6 and start back up. We're going to actually go back to
7 1669. And, just a quick reminder, we have to talk
8 slowly, and everyone has to say their name before they
9 speak. Even if I call your name, you must repeat your
10 name before you speak.

11 So we're going back to 1669 -- the note. So
12 thank you, Mr. Donlon, Mr. Bland. You guys threw
13 together some language that we can go ahead and look at.
14 So I think you guys put these two words --

15 MIKE DONLON: One or the other. I don't know
16 which is better.

17 KEVIN BLAND: I think I prefer "articulate,"
18 because we had so much confusion on "demonstrate."

19 SIMONE SUMESHWAR: Spencer.

20 SPENCER PRICE: Yeah. That second sentence
21 is -- I guess I'm reiterating when I said it's just not
22 necessary because that's already the job in the
23 division.

24 That's like saying we have to go on-site to do
25 an inspection -- of course you have to do that.

1 KEVIN BLAND: To Spencer's point -- so does
2 the employer, but the note is to give guidance.

3 SPENCER PRICE: Okay.

4 KEVIN BLAND: There should also be an "or"
5 between the -- where it says "the FPP" because you got
6 to demonstrate one or the other, right? You have to
7 articulate one or the other. It could be based on a
8 greater hazard or infeasibility or impracticable issue,
9 so it doesn't have to be both.

10 You can choose to do both. But, I think, the
11 law says -- the regulation says, "If it is infeasible or
12 impracticable or creates a greater hazard," so we don't
13 want to lose that "or" in there.

14 It should be an "or" before the T-H-E, before
15 "the" because that way -- because you're saying the
16 first thing is a greater hazard issue. Second sentence
17 is the -- yeah.

18 AMALIA NEIDHARDT: Please, remember to say
19 your name and make a statement. Don't make comments
20 because all of that is in. Thank you.

21 JASON DENNING: Couple of points. The
22 articulate language -- I don't think "articulate" really
23 captures what is really -- I mean, can't say "required"
24 if it's a note -- but if you articulate something, that
25 means you are -- you communicated properly, and you get

1 your point across.

2 That's not the same as "show." That's not the
3 same as "demonstrated." It's a different word. I can
4 be very articulate and not tell you a thing. I can be
5 an articulate and give you a bogus argument and be very
6 articulate doing it; but it doesn't mean the same thing.

7 So I think we should use language similar to
8 this. And if we do that, it seems like the note is just
9 now repeating what is already in the law now. Seems
10 like the original note was more, "Just to let you know,
11 there's a presumption that the prevention fall
12 protection is feasible."

13 Now it's basically restating (c). So it isn't
14 even necessary anymore.

15 MIKE DONLON: Mike Donlon --

16 AMALIA NEIDHARDT: Eric -- one second, Mike.
17 Sorry. Eric had raised his hand already. I just want
18 to make sure.

19 Go ahead, Eric.

20 ERIC BERG: Thank you, Amalia.

21 The norm is not to use "must" or "shall" in a
22 note. It's not enforceable. So those terms aren't
23 getting acceptable in a note -- the terms "shall" or
24 "must."

25 MIKE DONLON: To Jason's point. The whole

1 point of changing this note is to not just have that
2 automatic presumption to show what the employer must
3 prove to meet their burden.

4 KEVIN BLAND: So, I mean, to help Jason with
5 his thing is, we could put -- leave the sentence in to
6 meet its burden -- the employer's burden, it should
7 demonstrate the hazards involved in rigging and
8 installing an actual plan and what it says.

9 So that can be clarified language in there
10 because that's what we're trying to say is -- what does
11 it mean for the regulated employer, that isn't in this
12 room and knows all this stuff, to be able to go to it
13 and say okay, "Here's what I need to do to meet the
14 burden."

15 They can't just put a plan together without
16 demonstrating that or identifying that. Because
17 "demonstrate" -- we get into this issue of, okay, you
18 got to show us -- well, we really got to identify it.
19 And maybe "articulate" -- I won't disagree with you. It
20 may not be the best term.

21 "Demonstrate" has proven to be this confusing
22 thing because no one knows exactly what it means. But,
23 maybe -- "identify that the hazards involved in the
24 rigging or installing," or something like that.

25 JASON DENNING: I forgot to mention to the

1 first point -- I think Spencer mentioned it.

2 I disagree with the last sentence too because
3 that's really a policy statement, and it doesn't belong
4 in the regulation anyway. I think the attorneys,
5 probably within the board, would have a problem with
6 that. It's basically the policy of the division.

7 YANCY YAP: In the first sentence, it says,
8 "hazards involved with the rigging and installing of
9 fall protection," I think that narrows the scope of fall
10 protection.

11 Our fall protection -- conventional fall
12 protection -- includes restraints, fall arrests,
13 positioning devices, and guardrails that would lead the
14 reader to presume that it's only a fall arrest type
15 of -- or installing guardrail.

16 So I would prefer to leave the previous
17 language where it said "conventional fall protection."

18 SPENCER PRICE: This is (c) we're looking at,
19 right? Subsection (c); is that correct?

20 SIMONE SUMESHWAR: Yeah. 1669 -- the note on
21 the bottom.

22 SPENCER PRICE: Okay. So question for the
23 board -- the board staff. Is it one of the -- so
24 there's six principles of rulemaking, one is
25 non-duplication.

1 So if it says, "One can be shown by the
2 employer," why do we have to say "the employer should
3 show"?

4 And then, secondly, on there -- the second
5 time -- that second thing -- is why don't we say that
6 "the division shall" for every regulation?

7 That's our job and much easier said as policy.
8 That would be another example of duplication every time
9 we said that -- wouldn't it?

10 AMALIA NEIDHARDT: So you're right, but now
11 the way the employer should be shown -- you're repeating
12 (c), whereas, initially, the note says there is a
13 presumption. That was a clarification that Federal OSHA
14 had asked -- that there is a presumption that
15 conventional fall protection is feasible -- we're moving
16 away from that. I agree. But I wanted to bring this up
17 so you guys can see what are the issues.

18 KEVIN BLAND: Two points.

19 One, I had suggested to fix that issue of
20 presumption to say -- to meet the presumption -- the
21 employer shall or should. So add the -- at the
22 beginning of the sentence -- so it gets a "presumption"
23 in there.

24 And then, number two -- issue with this thing
25 that the division is nervous of having to be -- lets

1 see -- this note here on theirs. This isn't new ground.
2 We looked at the 41 BYs (phonetic) and the regulation
3 there. It says that they must "review and consider."

4 So this isn't new ground. This isn't new
5 policy. And it's just reiterating -- as a note -- it's
6 not regulatory language, it's a note.

7 And so it's not new ground, and it's a note.
8 It's not regulatory language. It's a guidance, and
9 that's the whole idea. And I think, if you're right, we
10 can put something on every single regulation, but we
11 don't.

12 We do have notes and other regulations that
13 give guidance. It's -- the guidance should be as
14 beneficial for the employers as it does for the
15 division. Especially with a lot of the new inspectors
16 out there. If they look at this, they may say, "Oh,
17 okay. This is what I needed to do."

18 And if it was in the PMP, that would be great.
19 But we don't have control over draft in the PMP. We
20 have control over putting notes in regulations that the
21 standards board adopts.

22 AMALIA NEIDHARDT: I need to make a
23 clarification.

24 So that would be administrative, that's not
25 our jurisdiction. It's not the jurisdiction of the

1 board to administrate the Cal/OSHA program or in that
2 sense. So I want to make sure that -- we cannot tell
3 them that the division has this.

4 KEVIN BLAND: No, it's a note.

5 AMALIA NEIDHARDT: So we need to strike that
6 one.

7 Even if it's a note. We are not getting into
8 that.

9 But, Marlo, who was next?

10 MARLO MIURA: It was Mike Donlon, then it was
11 Eric.

12 MIKE DONLON: I mean, the reason we started
13 this discussion on the note is because you said the feds
14 asked that we be sure the employer meets their burden of
15 proof of showing that the fall protection is infeasible.

16 I mean, that's what you said, and the other
17 gentlemen kind of agreed on it. That's the whole basis
18 of rewriting this note -- came out of that.

19 AMALIA NEIDHARDT: Thank you, Mike. But I
20 want to clarify, I was referring to where it says,
21 "where it can be shown."

22 So, basically, they are saying there is a
23 presumption that conventional fall protection is
24 feasible. So that's why the duty to be able to show
25 that if it's not feasible, right? So they are

1 connected.

2 But, yes, let's strike that. Let's strike the
3 whole last sentence because we're not going to be
4 putting anything like that for the division. That's
5 administrative; that's for their perview.

6 And then, I think -- Marlo, you said who was
7 next? Sorry.

8 MARLO MIURA: If Eric and Jason don't have
9 anything to say, then Kevin.

10 ERIC BERG: Yeah. Amelia just took care of
11 it.

12 KEVIN BLAND: So it's my understanding -- and
13 Amelia, you have power over everything that we have to
14 say or suggested in here rather than let the APA and the
15 Office of Administrative Law tell us that something is
16 wrong. Because that's what you just did.

17 AMALIA NEIDHARDT: Thank you, Kevin. I want
18 to clarify. I am here to ensure that we are guiding in
19 the areas that we do have jurisdiction over, right?

20 So, Cal/OSHA, whereas they're administrative
21 regulations, those are not brought to the board for
22 about. So I needed to clarify that, and that's why
23 that's administrative -- how they're going to enforce
24 the regulation.

25 So I don't want somebody to walk away thinking

1 we have a say how they're going to do that. This is not
2 the forum to do that.

3 KEVIN BLAND: To your point, though, we have
4 it in other regulations. And we have it in the
5 regulation that governs the administration of the
6 ClBY -- and I understand that's an administrative
7 regulation, which is slightly different. But in this
8 whole thing -- guide -- why is the division afraid of
9 a note that would just say, "Hey, reminder. Consider
10 this."

11 Why are they afraid of having to do their job?
12 I'm just curious.

13 JASON DENNING: No. It's really not about
14 being afraid of doing our job; it's not appropriate
15 within the title of regulations.

16 So what you're referring to is a labor code
17 regarding ClBY --

18 KEVIN BLAND: Which turns into a regulation
19 too.

20 JASON DENNING: Yeah but it's -- that is in
21 a -- that is not in a -- that's under administrative
22 regulation, though.

23 KEVIN BLAND: Which I said.

24 JASON DENNING: That's a whole different set
25 of regulations. We're talking here about safety

1 compliance for, you know, complying with safety
2 regulations with an employer. And a statement like that
3 you won't find in other Title 8 regulations, that I know
4 of, outside of the administrative. It's like a separate
5 entity. It's not we're afraid to do our jobs -- we're
6 supposed to be doing it anyway. It's just not
7 appropriate here.

8 KEVIN BLAND: I think it would be helpful, and
9 I think you guys are afraid of something you shouldn't
10 be afraid of.

11 JASON DENNING: I don't care if it's in the
12 note.

13 KEVIN BLAND: It's in the note.

14 JASON DENNING: It's just inappropriate here.

15 SPENCER PRICE: I would just say, it could go
16 both ways. It's not a fear. It's just that -- I'm
17 sorry I lost my train of thought. It can go both ways.
18 It's the job that we already have to do. So if people
19 aren't doing that for some reason. I don't want Mike --
20 I know what he's trying to say, and I know what Kevin is
21 trying to say -- then they could just as well not do it
22 with the note. I don't see that it gains any ground.

23 AMALIA NEIDHARDT: That's not helpful for the
24 conversation. Let's focus on 1669 (c). I just wanted
25 to clarify we are not going to touch anything

1 administrative. That's not our jurisdiction. Let's
2 focus on the stuff we can work on.

3 But, having said that -- Mike, if you think
4 there is another way to say "there is a
5 presumption" -- that conventional fall protection can be
6 addressed. I think that "the employer should identify"
7 is not the same as "there is a presumption." That's
8 moving away from "there is a presumption."

9 MIKE DONLON: Okay. I'll take another shot at
10 it, with that in mind.

11 KEVIN BLAND: I've said four times -- I said
12 start the sentence with the presumption language and put
13 that in front of this, and then that explains how it
14 guides the employer how to do it.

15 MIKE DONLON: So just adding that, "There is a
16 presumption that --" I think is what we're talking
17 about.

18 JASON DENNING: I disagree.

19 KEVIN BLAND: I think --

20 AMALIA NEIDHARDT: Hold on a second, Kevin.
21 Let Marlo say who's next, Kevin, so we won't feel like
22 you're the only one speaking. I just want to make sure
23 everybody has an opportunity.

24 Raise your name tag so Marlo can tell who's
25 next.

1 KEVIN BLAND: I think, Mike, what the issue
2 is -- Fed OSHA wants that note to include, "There is a
3 presumption of infeasibility for conventional fall
4 protection."

5 So if we just add that first sentence: "There
6 is a presumption that conventional fall protection is
7 feasible." Period.

8 Then it goes on: "The employer should
9 identify --" blah, blah, blah.

10 Is that what you're saying, Amalia?

11 AMALIA NEIDHARDT: Yes. Thank you.

12 KEVIN BLAND: I like that, infeasible. I
13 prefer infeasible.

14 AMALIA NEIDHARDT: I have a concern. Like
15 Yancy said -- he has a point. I don't want it to be
16 narrow, and what we are doing is narrowing it now to
17 rigging and installing. One.

18 And, two -- the other concern is -- I kind of
19 feel like "should" contradicts "there is a presumption."

20 KEVIN BLAND: You just have to add the word
21 "conventional" under -- after "installing of the," put
22 the word "conventional fall protection."

23 Then that identifies what we're talking about
24 here.

25 And it's really -- and I think one thing to

1 add on to that -- it wouldn't be -- that's with the
2 hazards. Remember? It dealt with the hazards, which
3 is different than just conventional fall versus
4 protection being infeasible -- we're talking about two
5 different things.

6 So if we look at what it says, I think it
7 talks about the hazards of installing and rigging
8 conventional fall protection as one
9 element -- possibility.

10 And then the other "or" is the actual
11 "conventional fall protection is infeasible."

12 So you can have infeasibility of the
13 conventional fall protection, or you can say, "It may
14 be feasible, but the installing and rigging of it
15 creates a greater hazard than the work being
16 performed."

17 Am I getting that right, Mike?

18 MIKE DONLON: To Yancy's concern. I mean, we
19 can certainly eliminate the word "system" and just say,
20 "conventional fall protection" because that would -- I
21 think it is a fall protection system, but I think that
22 does, kind of, gets peoples' mind in the wrong place so
23 I think if we just get rid of the word "system" that
24 probably broadens that and addresses Yancy's concern.

25 JASON DENNING: Just want to throw it out as

1 a recommendation for this.

2 Why don't we just use the same language as
3 above? The use of conventional fall protection. Isn't
4 that simpler? I mean, you're basically saying the same
5 thing, but you're breaking it up.

6 Or if you want to put the rigging in --

7 AMALIA NEIDHARDT: Jason, for clarification --
8 so where it says, "The employer should identify --" use
9 there "the use of"? Or start at the very beginning?

10 JASON DENNING: Well, you can say, "The
11 hazards involved, with the use of conventional fall
12 protection, creates a greater hazard."

13 SIMONE SUMESHWAR: I think it's because the
14 hazard might be with installation; but once it's
15 installed, it's safer. But the hazard associated with
16 the installing and rigging of the system -- which is
17 more dangerous than the -- I think that's kind of the
18 thought process.

19 JASON DENNING: I thought in just using it was
20 all encompassing. If you use it you have to install it.
21 It just seems like it should match (c) if you were
22 basically saying the same thing, both should match. Then
23 you should probably put "install" in(c) as well. It's
24 basically the same statement.

25 ZACK WINTERS: I would agree with what you're

1 saying. I think the other part that we're all ignoring
2 here is after the work is completed, you have to take
3 the equipment down. That is a secondary opportunity for
4 hazards in which someone could be exposed.

5 I think the -- the first thing -- the two
6 sentences in the note originally drafted -- I think,
7 really, what the discussion is adding on to that is just
8 clearly stating that the employer can demonstrate,
9 identify, show, document -- whatever word you want to
10 use -- in the fall protection plan and why the
11 conventional fall protection applications are not
12 feasible here.

13 And that note is allowing the employers to
14 say, "Hey. This is where, in our plan, we can't do what
15 is conventionally done." And at the same time does not
16 impede on the enforcement aspects of it.

17 So something along the lines of just adding a
18 sentence to the previously drafted language that the
19 employer can identify in their fall protection plan.

20 "The hazards that deem conventional fall
21 protection to be infeasible and/or creates a greater
22 hazard."

23 I do think "and/or" should be used here,
24 because there could be situations where one or both
25 things are happening -- that is, greater hazards are

1 created or it's completely infeasible. Both could be
2 true.

3 This is my attempt to try to simplify
4 everything that's on that picture.

5 AMALIA NEIDHARDT: Give us a moment so she can
6 type what he was recommending.

7 Can you repeat what you were saying?

8 ZACK WINTERS: The employer should identify in
9 the fall protection plan the hazards that deem
10 conventional fall protection to be infeasible and/or
11 creates a greater hazard.

12 KEVIN BLAND: I think what the language that I
13 gave you is going to capture pretty close to what Zack
14 said.

15 SPENCER PRICE: I think that fragments of
16 things that are all adding to one -- I don't know if
17 Jason said the same thing. But both the regulation and
18 the note should talk about the use and rigging and
19 installation -- both the reg and the note.

20 And I think he said -- the other gentlemen, I
21 didn't catch his name -- he talked about the opposite of
22 installing.

23 So maybe we should have a third-word removal.
24 If that's, to the extent, that could be -- use, rigging,
25 installing, and removing -- captures the whole span of

1 the system.

2 RINALDO EDMONSON: I agree with Zack. One
3 note. I think it's installation, rigging, and removing.
4 Right? Just to be clear on how the end users are going
5 to see that.

6 The other thing -- I don't know if we're
7 allowed to do this, but I think we should clear up a
8 whole bunch in what the previous confusion is.

9 If we identify what "demonstrate" means -- if
10 we add that into the definition of what we're really
11 talking about into what we're doing. Because, to me,
12 people have that same confusion. We have that word
13 "demonstrate" throughout the document. Why would we not
14 define that?

15 ERIC BERG: Cal/OSHA supports what Zack was
16 saying.

17 Basically leaving the note for exactly as
18 it is here and adding that one sentence, and then also to
19 leave Subsection (c) as is.

20 KEVIN BLAND: I don't mind what -- the only
21 thing is, we have to -- we can't just identify the
22 hazards for infeasibility. There may be things that
23 aren't even hazards, and that's why I choose the
24 language I have.

25 "The employer should identify in the fall

1 protection methods considered" -- because that's part of
2 it, right? What are you guys looking at, and then
3 provide the rationale that establishes that those
4 methods of conventional fall protection are infeasible
5 or creates a greater hazard. They have to have that in
6 the plan -- and I think we need to add "in the plan."

7 Because that's what we're trying to educate
8 and make sure the employers understand and also, even
9 though we're not allowed to educate the division, when
10 they look at this, they say, okay. Here's what should
11 be in the plan. Here's what we're looking at."

12 So add the word "after" or "greater" hazard in
13 the -- and put "in the plan" after the word "hazard" and
14 the fall protection -- and one other thing, after
15 identifying, put "conventional fall protection."

16 YANCY YAP: With the consideration for
17 inserting -- with the removal of the fall protection --
18 I don't think that's necessary because here, we're
19 considering whether to have fall protection installed
20 first before doing the work or not. Once the work is
21 done, you can have other means of anchoring fall
22 protection too.

23 So the removal of conventional fall protection
24 in the beginning is not necessary because once you have
25 joists and floors, then you have anchor points for the

1 removal of fall protection if you indeed decided to use
2 it.

3 ZACK WINTERS: I recommend we just stick to
4 conventional fall protection and not get into really
5 specifics on conditions because then that leaves it open
6 to interpretation.

7 But to address Kevin's point, in the second
8 sentence there, we could change "hazards" to "reasons"
9 which then makes it more broad. So that may appease the
10 room as well.

11 Thank you.

12 MIKE DONLON: I kind of almost think this note
13 isn't needed because -- hear me out.

14 In 1671.1(a)(5): "The fall protection plan
15 shall document the reasons why the use of conventional
16 fall protection systems -- guardrails, personal fall
17 arrest systems, or safety nets -- are infeasible or why
18 their use would create a greater hazard."

19 Which is identical to the language as 1926
20 502(k)(5). So we're at least as effective as the feds.
21 We don't need this note to be as effective as the feds.
22 It's there.

23 AMALIA NEIDHARDT: We'll note that, and we'll
24 take all of these into consideration and check with our
25 legal. Thank you. You might be on to something. Thank

1 you.

2 So I think -- before we go to the next
3 section -- I wanted to ask for clarification. In my
4 notes, Mike, I had a question for you. I think you had
5 mentioned that something was vague. And, I'm sorry, I
6 was trying to write notes.

7 Did you meant it was vague -- Subsection (c)?
8 I think the note. I just wanted to clarify. I don't
9 want to ignore the thing that you said.

10 MIKE DONLON: In my last statement?

11 SIMONE SUMESHWAR: Before the presentation.

12 AMALIA NEIDHARDT: Before the presentation,
13 you had something -- and then we started the
14 presentation -- that you believe something was vague. I
15 just want to make sure. So that's why we were talking
16 about the note. I didn't want to miss that statement.

17 MIKE DONLON: My thing with the note was
18 getting that there was a presumption. Because if they
19 don't have that in their language anywhere, and we have
20 the exact same language as theirs on what that fall
21 protection plan has to have.

22 In fact, all our language on fall protection
23 plans are identical to the feds, so we're definitely at
24 least as effective as on that issue.

25 You can have them side-by-side and compare

1 them, but I got them right here.

2 AMALIA NEIDHARDT: I wanted to make sure I
3 didn't ignore it -- that comment that you said was
4 vague.

5 MIKE DONLON: Another thing I like about the
6 note is the presumption.

7 AMALIA NEIDHARDT: Got it. Thank you.

8 SIMONE SUMESHWAR: Was it about, maybe, the
9 short duration?

10 MIKE DONLON: Well, I did say I liked our old
11 language better than that new language. I thought it
12 was more articulate.

13 AMALIA NEIDHARDT: Thank you. Thank you.

14 SIMONE SUMESHWAR: Well -- so it's 11:45. We
15 can do lunch now, and everybody comes back at 12:45.
16 And then we'll start on the rest and get it done today.

17 (Lunch recess.)

18 SIMONE SUMESHWAR: So we did have a little bit
19 of discussion about the note again during the break, but
20 we're not going to go back over it again just because we
21 want to try to keep things moving -- try to stay with
22 our agenda.

23 So we're going to go ahead and move to Section
24 1670, which is page two of your handout and page three
25 of your discussion tool.

1 So, here, we had in Section (a) and
2 Section (g) -- we had trigger heights that were at 7 1/2
3 feet that have been changed to 6.

4 MIKE DONLON: No comment.

5 SIMONE SUMESHWAR: No comment?

6 Any comments, any concerns, any feedback? No?
7 I love it.

8 Next one.

9 AMALIA NEIDHARDT: One second.

10 If you see anything else that needs to be
11 updated, let us know.

12 Sorry. Continue now.

13 SIMONE SUMESHWAR: Yeah. Anything else in
14 there that we have to change. So we'll go ahead and
15 move on to the next one.

16 Now, the next one -- this one was -- I needed
17 some clarification. And I think, you, Mr. Mike Donlon,
18 for the safety net information. So this one was just a
19 minor change.

20 AMALIA NEIDHARDT: Sorry. Are we still on
21 1670 but now on (g)? (a) and (g)? Because they're two
22 different things. I just want to be sure. 1670,
23 because there's two different things I just want to
24 make sure.

25 KEVIN BLAND: 1671 was my thought where we're

1 at.

2 AMALIA NEIDHARDT: Okay. 1670(a) and (g),
3 nothing on both of them? (a) and (g), we are good?

4 Okay. Continue. I needed that clarification.

5 SIMONE SUMESHWAR: And then on 1671, I just
6 wanted to confirm. We thought, maybe, we had to change
7 this more than 10 feet but not to exceed -- is there 30
8 to 25 feet?

9 It sounds like maybe we have a different
10 section to reference to.

11 MIKE DONLON: Yeah. The number three in the
12 regs is Section 1926.502(c), and that's where it says it
13 can't be more than 30 feet lower, which is what we have
14 on our table, they have in their language.

15 SIMONE SUMESHWAR: Okay.

16 ERIC BERG: Jason and I met to look at the
17 Cal/OSHA safety nets. Here, it starts with "elevation
18 is 25 feet."

19 Well, we've seen them at the actual working
20 level that people would work on. So you just fall
21 basically -- just "they're working on."

22 And, maybe it's not for this rulemaking, but
23 it'd be nice to make that clear of it. Safety nets
24 don't -- you don't have to be over 25 feet to use a
25 safety net. You can use it at lower heights as well.

1 AMALIA NEIDHARDT: So you do propose that we
2 do touch, then, the 25 feet? That we lower it?

3 ERIC BERG: Yeah. We can provide you some
4 language, if you'd like, later on.

5 AMALIA NEIDHARDT: Yeah. For this --

6 ERIC BERG: It'd be nice because they do
7 provide good fall protection to the interior where it's
8 practical. And we've seen it in places where they're
9 already using nets. Just be nice.

10 AMALIA NEIDHARDT: Yeah. Because this is
11 specifically to fall protection and safety nets, right?

12 ERIC BERG: Yeah, these are safety nets.

13 AMALIA NEIDHARDT: So then we do possibly need
14 to touch it.

15 ERIC BERG: We were looking at a warehouse,
16 and they already had a net over the entire surface of
17 the floor that they were working on. So if they fall,
18 they fall on the net.

19 AMALIA NEIDHARDT: So Cal/OSHA -- so meaning
20 recommendation to do -- reduce the 25 feet to --

21 ERIC BERG: 6 feet, I guess. We would have to
22 think about it.

23 KEVIN BLAND: I am oppose to lowering the
24 trigger height on this because it's not something that
25 is going to work well. And there's nothing in here that

1 says you can't use it lower. But to require it is a
2 whole different story.

3 And, if you want to put a note, it can be used
4 below 25 feet or any level. Because I know when I was
5 iron working, we were would use it lower, but it wasn't
6 a requirement because there was a method, and you don't
7 have to go through and do that whole analysis.

8 So that's why I'm not crazy about lowering the
9 trigger because that's a whole new thing that wasn't
10 noticed -- was lowering that trigger.

11 AMALIA NEIDHARDT: Can I ask for a
12 clarification? Where did you say it is understood that
13 it can be used lower? In here, or in another Title 8
14 section?

15 KEVIN BLAND: In here. It doesn't prohibit
16 it, it just says "when it's required." It doesn't say
17 that it cannot be used, so it's just saying when it is a
18 requirement for the use of a net verses when -- there's
19 nothing in here that says "shall not be used less than
20 25 feet" it just says here's when it comes in, and it's
21 a requirement.

22 But if we reduce that requirement, that's a
23 whole another thing. That's changing it completely
24 outside -- and this is already -- the established law is
25 consistent with the feds. And this was not ever noticed

1 that we were going to try and lower this. There's
2 probably people not in this room that use these things.

3 If you want to put a note that says it can be
4 used any height that is safe. I mean, that's not a
5 problem. It's the requirement. If we put the
6 requirement at 6 feet, that means you're required to be
7 used at 6 feet and all these conditions met.

8 AMALIA NEIDHARDT: Okay. Something to
9 evaluate. But I do have to do a clarification, Kevin,
10 just a notice. This is a not a proposal. This is a
11 discussion draft.

12 KEVIN BLAND: I understand that --

13 AMALIA NEIDHARDT: So I just want to clarify
14 that, and we can still discuss that if it has to be
15 lower.

16 KEVIN BLAND: What I'm saying is, whenever
17 folks that were looking at this and was talking about
18 what we were changing and what we were considering, was
19 the Fed OSHA equivalency.

20 So when people get a notice of what the
21 rulemaking is about, we can't be going off on these
22 tangents of things that folks aren't aware of that may
23 have had interest to be here. That's what I'm saying.

24 I'm not saying the law says you can't. You
25 can do whatever you want, Amalia. I'm just saying it's

1 not fair to constituents that didn't even come because
2 maybe they're net users or they have that. And then
3 they're saying "okay." This is just making it
4 equivalent to the feds. This is then going beyond that.

5 That's what I'm saying.

6 AMALIA NEIDHARDT: So I want to clarify that
7 it's not noticed because it's formal rulemaking. Thank
8 you.

9 KEVIN BLAND: So why bother inviting people
10 and telling them what we're going to be talking about if
11 it's not noticed of what we're going to talk about?

12 AMALIA NEIDHARDT: It's still listed what
13 Title 8 section we have to address, and you have the
14 Federal OSHA letter. Just wanted to clarify that.

15 KEVIN BLAND: And the Federal OSHA letter says
16 you're making it equivalent to the Fed OSHA, right? So
17 that's what we were on notice of the instructions on
18 these sections.

19 ERIC BERG: I apologize. I didn't mean to
20 make it amended. Let me make it clear that you can use
21 them and lower them.

22 KEVIN BLAND: I agree with that, Eric,
23 completely. Some way to say it can be used -- or
24 note -- or something.

25 ERIC BERG: It incorporates an ANSI standard

1 I haven't read it like 15 years. But it might say you
2 can use it a different heights. We'd have to look at it.
3 It's really old. So we'll take it look at it and let some
4 comments around. But, yeah, we didn't want to mandate it.
5 We just want to say employers can have this option if they
6 might need that.

7 MIKE DONLON: Yeah. My comment about the
8 numbers was in the table -- that 30 feet is the correct
9 number, not the 25. I wasn't looking at the one above.

10 SIMONE SUMESHWAR: Thank you. So,
11 technically, there is no change in this proposal?

12 Any other comments on the safety nets?

13 So, Eric, you'll get us something?

14 ERIC BERG: Yeah. Yeah. Some ideas.

15 SIMONE SUMESHWAR: I do agree. I think you're
16 right. The ISO standard covers netsd you can use at
17 different levels but they don't meet any ISDO standard, I
18 just got the specs from the manufacturer and they are
19 doing their own internal testing but they're not going
20 thru any type of ANSI certification right now.

21 ERIC BERG: Okay. We will do some research
22 further

23 SIMONE SUMESHWAR: Thank you. Onto page
24 four.

25 1724 Section (h): ramps and runways.

1 So changing the elevations for ramps and
2 runways erected and used exclusively for the purpose of
3 loading or unloading materials at elevations above
4 ground, or other level below, not exceeding -- it was 20
5 feet, now changing to 6 feet -- in height shall be at
6 least 40 inches in width. At those elevations exceeding
7 6 feet in height, standard guardrails shall be installed
8 and maintained on both sides of the ramp or runway.

9 Any comments? Any concerns? Any questions?

10 No. So we'll all good with this one here?

11 STEVE JOHNSON: So just -- as like -- going
12 back to when -- this is the discussion tool, so we are
13 talking about Phase Two, right? So this is -- this is
14 isn't going in effect July 1st? This is beyond
15 July -- this is, like, Phase Two?

16 SIMONE SUMESHWAR: This one is Phase Two.

17 STEVE JOHNSON: Okay. Thank you for that
18 clarification.

19 AMALIA NEIDHARDT: Seems like everyone is in
20 agreement with this. Yes?

21 PETER LANG: Just on that note -- it brought
22 it up -- I'm still kind of new to this. Is there any
23 way -- or indication that this is this -- whatever
24 section we're covering -- it is Phase Two? And which
25 one's are Phase One?

1 I'm sorry if I'm taking everyone back.

2 AMALIA NEIDHARDT: What you guys have in here,
3 this is all Phase Two. Nothing is being discussed on
4 Phase One. Phase One is already a different package
5 that took place. They already voted on that. So
6 nothing on that.

7 PETER LANG: All right. Thank you.

8 AMALIA NEIDHARDT: Thank you.

9 But with one exception. At the very, very
10 end, that's tomorrow.

11 SIMONE SUMESHWAR: All right.

12 So on to page five. Section 1730.
13 Discussion tool page 8.

14 So there is language in here that has been
15 updated during Phase One that goes into effect July 1st.
16 I think this was part of your question, Peter, was
17 there's parts of this that have already been done and
18 they go into effect. And then we have parts that were
19 not touched, and that's what's here. That's what we're
20 going to be looking at.

21 So going to (a).

22 AMALIA NEIDHARDT: Not (a), it's (b).

23 SIMONE SUMESHWAR: So (b): Slopes 0:12 to
24 4:12 single-unit monolithic roof coverings

25 (1): Employee shall be protected from falls

1 from roofs of a height of more than -- used to be
2 20 feet, now it's 6 feet -- by use of one or a
3 combination of the methods in this section. Whenever
4 felt laying machines or other equipment that is pulled
5 by an operator who walks backwards is being used, this
6 provision shall apply regardless of the height.

7 So (b) (1) .

8 STEVE JOHNSON: So this is kind of where it
9 gets fuzzy for me because my I understanding was that
10 for Phase One that there weren't going to be any changes
11 to 1730, but were going to be changes to 1731.

12 And the definition -- I don't know if we're
13 going to get to that in a minute -- but the language --
14 the definition is supposed to clarify that 1731 is
15 production type housing -- new production type housing;
16 and 1730 is roof hazards for normal working operations.
17 Roofing, new construction, and reroofing of things that
18 were not production type housing.

19 AMALIA NEIDHARDT: That is not residential.
20 1730 is not residential.

21 STEVE JOHNSON: So 1730 is any kind of
22 roofing. 1731, currently, 1731 is production type
23 housing.

24 So that's where I need to -- and the reason
25 that I submitted my petition -- the petition 600 that

1 was withdrawn -- was because I need a clear line
2 clarification between 1730 and 1731 in the definitions.

3 AMALIA NEIDHARDT: So, Steve, what we did --
4 that's a good question -- what we did is we copied
5 1730(a) because that was part of Phase One. And if you
6 can see in 1730 (a), right, we are saying what is
7 currently going to go into effect on July 1st. Right?

8 This section does not -- it says Section 1731
9 applies to residential type roofing activities. For
10 clarification that that's what's going to separate.

11 JASON DENNING: I think the way it's written
12 here, it could be a little more clear because it says
13 that says 1731 applies for residential roofing, but it
14 doesn't say that 1730 does not.

15 You see what I mean? I think you should -- I
16 think that we could rewrite it to say that residential
17 roofing activity shall comply with, you know, or not the
18 standard or something to that effect. If you want to
19 put that in there.

20 Because the way it is right now, 1730 could
21 still apply, technically, because it says -- 1731
22 applies but it doesn't say this doesn't.

23 AMALIA NEIDHARDT: So that's on 1730(a) where
24 it says Section 1731 applies to -- you would like us to
25 start with residential type roofing activities?

1 JASON DENNING: Yeah. I think you should
2 probably say, "Residential type roofing activities shall
3 comply with Section 1731."

4 And as I understood -- kind of goes to your
5 question -- 1730 no longer applies to residential
6 roofing at all. All residential roofings -- reroofing,
7 new roofing, all roofing -- doesn't matter if it's
8 residential -- it's now 1731. 1730 is other than
9 residential.

10 STEVE JOHNSON: Just in response to that
11 question. That is what the focus of my petition
12 was -- to separate 1730 and 1731 because it's fuzzy.
13 Because the definition for 1731 -- in my petition that I
14 withdrew -- I specified "new" construction.

15 So new production type housing. Because if
16 you go back to 2015 when -- I think it was 2015 -- when
17 all the changes were made to framing; roofing, the
18 trigger height was lowered to 15 feet to match
19 production type housing.

20 So the very specific area of roofing that
21 relates to production type housing and the intent was to
22 lower the trigger height in roofing to match framing to
23 15 feet in new production type housing; but reroofing
24 operations and new construction that's not residential
25 type housing is separate in 1730.

1 And that is the reason that I wanted to bring
2 my petition forth was all this stuff for Phase Two -- we
3 should be talking about -- is now Phase One is getting
4 lumped into it and it becomes effective July 1st.

5 AMALIA NEIDHARDT: So let's write what Jason
6 was saying -- if we can right here.

7 And then, what you are saying is, you want the
8 word added "new"?

9 STEVE JOHNSON: For 1731.

10 AMALIA NEIDHARDT: Why only "new"? Why limit
11 it to "new"?

12 STEVE JOHNSON: Because 1731 deals -- is
13 supposed to deal with new construction type housing.

14 AMALIA NEIDHARDT: It's all residential.

15 KEVIN BLAND: No, it isn't.

16 AMALIA NEIDHARDT: Okay. Can you
17 type -- before we move forward, I want to make sure that
18 everybody sees everybody's suggestions.

19 So, what I'm understanding -- Jason, you were
20 saying start the sentence right there where it says,
21 "Section 1731," start the sentence with "residential
22 type roofing activities"?

23 JASON DENNING: Correct. As defined in
24 Section -- well, you got Section '31 twice. I don't
25 know if you want to put that twice.

1 But it will be: "Residential type roofing
2 activities shall comply with Section 1731."

3 I don't know if you want to continue with "as
4 defined" in Section '31. And you have Section '31,
5 like, right next to each other.

6 KEVIN BLAND: Before we get too far --

7 AMALIA NEIDHARDT: One second, Kevin.

8 Let's have a visual. And then that
9 way -- because we still want to make sure I don't miss
10 what Steve Johnson was saying. Give me a moment.

11 Now, from here, Steve, I think what you said
12 is, where it says "residential type roofing," your
13 recommendation will be to say "new" only?

14 STEVE JOHNSON: Okay. I want to hear what
15 Kevin has to say first, and I'll go.

16 KEVIN BLAND: So, in the packet, we have 1731.
17 It says, "This regulation will be updated July
18 1st. The changes can be found."

19 I would like to pull that up to make sure
20 because, I think, what Steve's confusion has been -- and
21 our whole industry's confusion -- is we went from new
22 production type in 1731.

23 And now, is the new terms defined now
24 all-encompassing of "new"? So that's what we have to
25 drive from, and that would help clarify this whole

1 issue.

2 JASON DENNING: The answer is yes.

3 KEVIN BLAND: Yeah, but I'd like to see it.

4 JASON DENNING: Yeah. I see what you're
5 talking about they don't have that defining line.

6 STEVE JOHNSON: What I'm trying to focus on
7 here is what is going to be enforceable on July 1st.
8 That's what I'm trying to focus on.

9 KEVIN BLAND: Okay. Here's where it is,
10 Steve.

11 This section should apply only to residential
12 type roofing activities, July first. So that is the new
13 reference here, and that is encompassing reroofing on
14 residential, custom homes now -- everything went to 6
15 foot on all residential.

16 So it's basically now we have a residential
17 standard and a commercial standard -- really.

18 And then, 1730 needs to make a it specific.
19 Residential in 1731 and this section does not apply to
20 residential construction under 1730 -- 1 -- or whatever.

21 See, it got screwed up whenever they encompass
22 and got rid of the new production type framing. And
23 that's where the confusion lies in this. Probably could
24 be articulated better back then, Steve. Because I think
25 that's the issue we've been grappling with in the

1 industry -- of when is it commercial, and when is it
2 residential.

3 AMALIA NEIDHARDT: So one second.

4 So if we can go back to the language that
5 Jason had said.

6 So what you're saying is that -- you were
7 saying residential type activities shall comply -- you
8 were saying, Kevin, what? Word it in a different way?

9 KEVIN BLAND: No, I wasn't saying that. I'm
10 trying to clarify because I think Steve's point is valid
11 in the confusion that's come into this because we
12 changed -- by changing 1731 -- we changed 60% of 1730
13 without addressing 1730. And it's confusing for the
14 roofing industry.

15 Okay, what is residential? We didn't find the
16 difference in residential and commercial, and so it's
17 just a big glod of goock. Am I saying that right?

18 STEVE JOHNSON: Yeah. Glob of goop is a good
19 one.

20 MIKE DONLON: If you go back to the Phase One
21 and scroll down a little further to 1731(b), it gives a
22 definition of "residential type roofing". And I think
23 that's where we need to clarify this.

24 STEVE JOHNSON: So if you go back to the
25 petition -- the petition that I withdrew -- basically,

1 it labeled "residential type roofing activities" as "new
2 construction." Not reroofing.

3 So the reason I'm bringing this up is that
4 there was a clear line between production type housing
5 and residential reroofing -- that whole area. Because
6 the issue that we have as union residential roofing
7 contractors is that the market is disappearing for union
8 roofing contractors to do residential roofing.

9 And what happens is, you know, we lower the
10 trigger height to 6 feet, and now suddenly, the good
11 roofing contractors that are trying to comply are no
12 longer competitive, and no longer -- or basically losing
13 out to roofing contractors who aren't concerned about
14 safety.

15 And that's where Cal/OSHA just doesn't make
16 that connection is because -- just -- everybody should
17 comply, and the world will be a better place, and
18 workers will be safer.

19 Well, we're on board with that too. But when
20 our roofers can't go to work, we're not on board with
21 that.

22 PETER LANG: Just to tag along with that. Not
23 only that -- it's also -- gosh, I just lost my train of
24 thought now.

25 As far as the -- like, say, the new work and

1 this and that -- because our union contractors as
2 well -- oh, gosh. I totally lost it. I apologize.

3 I was thinking of three other things, now I'm
4 kind of lost.

5 SIMONE SUMESHWAR: It's okay. We can come
6 back.

7 PETER LANG: I apologize. I'm going to have
8 to come back to you. I totally lost it. I think I was
9 trying ride along with Steve Johnson's
10 comments -- because it was the good contractors who try
11 to -- oh.

12 Compliance. So to enhance our rules and
13 standards without strengthening the compliance, the
14 enforcement, I think that's another thing that will just
15 throw us off balance for our contractors that are trying
16 their best out there.

17 If we can raise the level of enforcement out
18 there, to dwell along with the new rules, you know, I
19 think that will help. I don't know if we got to the
20 enforcement part yet, but I just wanted to bring that
21 up.

22 MIKE DONLON: I'm a little confused because
23 both 1730 and 1731 are going to go to 6 feet so no
24 matter what you're doing in roofing, you're going to
25 have a trigger height of 6 feet. So that boat is

1 sailed.

2 KEVIN BLAND: So I'm going to complicate this
3 even further. Because when you look at the July 1st,
4 1731, it defines residential type roofing activities.
5 Gives a laundry list of structures covered by
6 Section 1716.2.

7 So then when we go to the scope of 1716.2, it
8 reads this section applies to work directly associated
9 with the framing of new buildings or structures using
10 operation methods in procedure. They used the term
11 "new". So we have this chasm now.

12 So whenever -- you have to read this again.
13 If a lawyer reads it, they're going to come out and say,
14 "Well if it's reroofing, there's no regulation that
15 applies." Because you've already exempted reroofing out
16 of the new by including 1716.2 scope of this.

17 And so I think that's where the "new" and the
18 existing is colliding and causing this unintended
19 consequence and loophole in this. Because once you
20 reference 1716.2 in the definitions of 1731, and you go
21 to 1716.2 and read the scope, it talks about new
22 building or structures.

23 Hence, that's why Steve is, like, "What the
24 heck is going on here."

25 SIMONE SUMESHWAR: So we are passing out

1 copies of 1730, 1731, and 1716.2 -- the current
2 language.

3 What's on the screen right now is what goes
4 into effect in July -- the change from Phase One, but
5 you're getting the original; what's currently --

6 KEVIN BLAND: What we have, the list is
7 changing in about two months. But this here is what --
8 July -- that's what we're comparing to, right? So this
9 is the old language?

10 SIMONE SUMESHWAR: That's the old language.

11 KEVIN BLAND: But it is current, technically,
12 until July 1st?

13 SIMONE SUMESHWAR: Correct. Yeah.

14 KEVIN BLAND: But July 1st is when this chasm
15 is going to --

16 SIMONE SUMESHWAR: When these all come in.
17 Yeah.

18 MIKE DONLON: The error that you're talking
19 about is wholly in Phase One. It's been voted on,
20 approved. That's going to have to be -- probably go
21 back and fix that. Because it is -- right in that one
22 definition, you were saying reroofing, but then you're
23 referring to 1716.2, which references new construction.
24 So that's a separate problem that we're going to have to
25 fix at some point.

1 AMALIA NEIDHARDT: And the way to fix it will
2 be deleting Section 1716.2?

3 ERIC BERG: You can just change it to
4 "and/or".

5 I think it works with "and," but "or" is
6 clearer. Because anything included in that is covered.

7 And that was the intent of the definition,
8 they just didn't notice that minor thing.

9 AMALIA NEIDHARDT: A typo like that. Yeah.

10 KEVIN BLAND: In fairness, we did all notice
11 it and kept preaching to the board that that was an
12 issue.

13 AMALIA NEIDHARDT: And I think in subsection
14 (b), and the definitions.

15 KEVIN BLAND: And this is kind of a question
16 for my folks across the table.

17 Phase Two coming in, we don't even need 1716.
18 So what the proposal could be is strike 1731 in it's
19 entirety, and now we have one roofing standard again so
20 then it takes all of that confusion of bouncing back and
21 forth and trying to figure out which one applies back.
22 I just want to make sure it's not a bad idea before I
23 propose that. I mean, because, really, all we did was
24 1731 which changed 20 to 15 back in the day. Everything
25 else was pretty much a mirror, right? Is there anything

1 else in there?

2 STEVE JOHNSON: So with the definition in
3 1731, that's what dragged all of roofing operations into
4 it. So that was the whole reason for my petition last
5 fall -- was to not have this become effective July 1st --
6 to be able to talk about it and have a separation between
7 new production type housing.

8 And then Phase Two. We, you know, talked
9 about roofing operations in general. So at least -- so
10 now, as of July 1, our roofing contractors in the
11 association who are doing reroofing work, you know, any
12 kind of roofing work competing with contractors who were
13 nonunion. That deadline just moves up a good, possibly,
14 a year.

15 AMALIA NEIDHARDT: So there's one
16 clarification I need to make, Steve.

17 So when you say you submitted a petition but
18 it was withdrawn, right? It was to allow an opportunity
19 for this discussion to be held here.

20 So there is no petition. I want to clarify
21 that, right?

22 STEVE JOHNSON: It was withdrawn. But the
23 problem is that --

24 AMALIA NEIDHARDT: That you can discuss this
25 here. And so what I want to clarify is that if the

1 committee would like to propose deleting 1731, that's
2 something we haven't talked about.

3 So I want them to really -- Cal/OSHA to look
4 into that. And then we will have our attorneys look
5 into that before we actually make a commitment that
6 we're going to be even considering deleting 1731.

7 I just want to clarify that. I don't want
8 people to think that it's something we can propose at
9 this moment because our attorney is not here.

10 STEVE JOHNSON: So if you -- I know I sent the
11 petition that, you know, the proposed petition. So
12 rather than trying to remember what I said, it's there.

13 SIMONE SUMESHWAR: I have it.

14 AMALIA NEIDHARDT: I just want to clarify. It
15 was withdrawn, so it's not posted on our website. It's
16 not -- I want to make it clear. I don't want to make it
17 sound like there is something physical in our website or
18 everybody can relate to. It's for us to discuss right
19 here, so you need to bring it out.

20 STEVE JOHNSON: I agree to withdraw it on the
21 promise that I will get some discussion and some
22 consideration in this advisory committee. That's why it
23 was withdrawn.

24 YANCY YAP: I was just going to say to
25 consider deleting 1731 because it was specific to new

1 residential type roofing (unintelligible).

2 THE REPORTER: What did you say?

3 YANCY YAP: I was just saying that, you know,
4 like what Amelia suggested, maybe considering deleting
5 1731 because it -- now we have one roofing standard.

6 ERIC BERG: Just going on with Yancy and
7 Kevin was saying -- delete 1731. We would need to
8 research and review that first and then get back to
9 you -- but everyone. Probably all parties want to do
10 that actually.

11 But if it looks like it would make sense, it's
12 something we can talk about.

13 MIKE DONLON: Now, when were doing the
14 rulemaking on 1731, the real purpose was to make it
15 easier for roofers to bid new construction. So they
16 knew they needed fall protection on a two-story and
17 didn't need it on a one-story -- and that was really all
18 it was.

19 So they could've just went in and bid that and
20 not worry if it was a 15 feet to the eave or 21 feet to
21 the eave, because every house could be different on a
22 track.

23 And so that's where the 15 foot came from.
24 And if everything is going to 6 foot -- yeah, I don't
25 know. I don't think any of this is going to fix your

1 problem with roofers who cheat. I don't know how to fix
2 that.

3 KEVIN BLAND: I just wanted to clarify. It's
4 not a firm request yet. I want to -- like you guys -- I
5 want to look and see. I think they're mirrored. And if
6 they are mirrored, then I would be in full. Then it
7 makes it easier for the regulated community to have one
8 roofing section to go to. I just want to make sure that
9 they're mirrored. Because we can't change the July 1st
10 issue, but at least we can clarify it once this package
11 goes to rulemaking and gets confirmed.

12 PETER LANG: I was thinking along the lines
13 too. Since it is going in the plan July 1st, is there
14 any way we can comment or suggest kind of a balanced,
15 phased-out approach as far as a timeline that will help
16 some of contractors to -- you know -- especially our
17 contractors, now that they have to relook at some of
18 their bids that are already in line and also trying to
19 have it phase out for some of our residential
20 contractors?

21 AMALIA NEIDHARDT: The board voted to adopt
22 this regulation in August of last year, and it will go
23 into effect in July of this year -- that we have no
24 control over.

25 What we can consider is fixing language for

1 the next -- in Phase Two -- possibly look at making
2 changes, if we need to, to fix something.

3 But if I understood everyone, everyone is
4 going to do homework and look at 1731 before they can
5 look into that.

6 ERIC BERG: Yeah, that makes sense.

7 AMALIA NEIDHARDT: That way, it gives us an
8 opportunity. But if we are looking additional to that,
9 no. It was already voted on August of last year, and it
10 will go effect July 1st.

11 MIKE DONLON: The one thing that I'm really,
12 quickly noting is 1731 goes from roof slopes -- 3 and 12
13 to 7 and 12 -- were the cut off. And 1730 is 4 and 12.

14 So that's -- I don't know if that's really a
15 big issue as far as this goes. But yeah.

16 STEVE JOHNSON: So the -- you know, the less
17 than 4 and 12 -- that is typically for commercial
18 roofing.

19 So that's really not where the issue is,
20 because the majority of our contractors are on
21 construction sites where a general contractor -- a lot
22 of times -- is already enforcing a 6-foot rule. So
23 they're signing a subcontract saying that they'll follow
24 a 6-foot rule in commercial roofing.

25 That's typically -- that hasn't been an issue

1 for a long time; where the issue comes in, and why I
2 wanted a distinction in the definition in 1731 because
3 for new production-type housing, the regulation was
4 designed to match the framers.

5 So if everything is going to 6 feet July 1,
6 then there still should be a carve out to talk about in
7 Phase Two for other types of roofing -- not
8 production-type housing. Because that was initially
9 what was supposed to go along with the framers -- was
10 the trigger height being lowered to 15 feet to match the
11 framers.

12 So Phase Two, if we can talk about lowering
13 the trigger height, that would give, primarily
14 residential roofers, more time to make adjustments to do
15 what they need to do to try to remain competitive, and
16 not have this July 1 deadline.

17 So that's the reason -- that in 1731 -- for
18 definitions -- that I submitted my petition. And the
19 language was very simple. It just said "new
20 construction" and struck out "reroofing" -- because it
21 was supposed to be a definition for 1731.

22 But when you muddy the waters and you make it
23 1730 -- well, now we're talking about all of roofing
24 operations, and I might as well leave right now.

25 AMALIA NEIDHARDT: Thank you. Any other

1 comments?

2 So, basically, for 1731, everyone is going to
3 take a look at that before we move with any
4 recommendations. But before we go there -- one second.

5 So even though we're going to
6 delete -- there's a possibility -- we'll potentially
7 propose to delete 1731; in the meantime, are there any
8 other recommendations in Subsection (a)?

9 In the event the committee says we don't need
10 to delete 1731, I want to make sure that we spend time
11 here.

12 STEVE JOHNSON: So Phase Two has already been
13 decided, but those clarifications are really what's
14 needed to start talking about Phase Two for normal
15 roofing operations -- with all the trigger heights being
16 lowered to 6 feet. So that's the whole reason I'm here.

17 AMALIA NEIDHARDT: Steve, if I'm not mistaken,
18 you actually had the concern with the note that was made
19 into a regulation in Subsection (g) in 1730.

20 STEVE JOHNSON: I'm sorry, say that again.

21 AMALIA NEIDHARDT: So this is the note.
22 Previously, something that we'll -- let me back up.

23 What will go into effect July 1st will be the
24 note that we had previously -- the unenforceable note --
25 now will be in Subsection (g). And I thought that was

1 your concern in 1730.

2 STEVE JOHNSON: That's one of my concerns.
3 Because when you talk about walking, working surface on
4 a sloped roof -- you were talking about when you get to
5 20 feet -- you might as well just grab a chalk line
6 and -- okay, once you're above the 20 foot line --
7 because the way the language is, "the lowest edge of the
8 roof or eaves to the ground or level below."

9 So that makes sense to roofers because on a
10 pitched roof, that changes -- the walking, working roof
11 height -- changes.

12 So this is all in reference to a 20-foot
13 trigger height. If we're talking about a 6-foot trigger
14 height, it doesn't matter. Because -- unless you have
15 basement housing everywhere -- there's not a roof height
16 out there -- a roof eave -- that isn't below 6 feet.

17 So I hope that clarifies.

18 AMALIA NEIDHARDT: No. Sorry. I'm just
19 trying to figure out -- so what page are we -- I know
20 I'm jumping (b). I just want to clarify that. I
21 skipped 1730(b), right? I don't want people to feel
22 like I'm not going to talk about that.

23 What I recall from one of the concerns that
24 you have, Steve, was that -- what page are we in in the
25 tool. I am sorry, I lost --

1 SIMONE SUMESHWAR: 1731?

2 AMALIA NEIDHARDT: 1730. I think it was --

3 SIMONE SUMESHWAR: Page --

4 MARLO MIURA: 1730 starts on page eight, but
5 if we're going to (g), that starts on page nine.

6 AMALIA NEIDHARDT: So if I compare nine with
7 the handout that they gave us of the existing regulation
8 for the note of 1730 -- I just want to make sure I
9 understood, right?

10 So what you're saying -- if I understand it
11 correctly -- what you're saying now, you're no longer
12 concerned with that particular area that was the concern
13 that you had brought up before?

14 STEVE JOHNSON: So my concern is the
15 separation between 1730 and 1731. So the changes to the
16 rulemaking in Phase One were based on 17 -- or targeting
17 1731.

18 So, Phase Two, my understanding was that all
19 of roofing operations are going to be looked at, which
20 we're going to be beaten into submission to go to fix
21 the trigger height. So there's no point even debating
22 it if that's just the way it's going to be -- that we
23 don't have any say in it. We're just going to comply
24 with Federal OSHA.

25 So at least until Phase Two is decided -- that

1 the roofing operations in general has a 20-foot trigger
2 height and that new production-type housing has a 6-foot
3 trigger height -- that's what I would like to see in
4 this rulemaking.

5 AMALIA NEIDHARDT: Anyone else with comments
6 on this? Okay.

7 So let's go back to subsection -- the one I
8 jumped.

9 You were proposing changes to Subsection (b)
10 on 1730?

11 SIMONE SUMESHWAR: 1730(b)(1). Employees
12 shall be protected from falls from roofs of a height of
13 more than 6 feet.

14 Any comments?

15 AMALIA NEIDHARDT: Any comments? Any
16 concerns? Any issues with the slopes?

17 STEVE JOHNSON: So this is Phase Two we're
18 discussing now, right?

19 AMALIA NEIDHARDT: Correct.

20 STEVE JOHNSON: Okay. No comments.

21 SIMONE SUMESHWAR: All right. So (c), same
22 thing. 6 feet.

23 AMALIA NEIDHARDT: But this would be for
24 slopes greater than --

25 SIMONE SUMESHWAR: Greater than 4:12.

1 Subsection (e). Slopes for 0:12 through
2 5:12 -- multiple-unit roof coverings. Employees shall
3 be protected from falls from roofs that are of a height
4 of more than 6 feet.

5 No? Okay.

6 (f). Slopes greater than
7 5:12 -- multiple-unit roof coverings.

8 KEVIN BLAND: Just real quick.

9 Just because we don't have any comments
10 doesn't mean we're excited to go 6 feet from 20. We
11 feel like it should stay 20, and the feds should leave
12 this alone.

13 I just want to make sure that was clear, but
14 we understood the political headwinds we're at so.

15 SIMONE SUMESHWAR: Thank you. I realized
16 that.

17 AMALIA NEIDHARDT: And, for clarification, I
18 want to make sure. If there is something, for instance,
19 of the slopes are anything that needs to be modified at
20 this time, that's what I want to make sure that people
21 bring it out.

22 SIMONE SUMESHWAR: Okay. So nothing for
23 slopes greater than 5:12; and we're back to (g) here.

24 This was section --

25 AMALIA NEIDHARDT: So to interrupt. So Steve

1 Phase Two then, you're no longer concerned with -- you
2 don't have a concern with that? Subsection (g)?

3 STEVE JOHNSON: I got a lot of concerns, but
4 that's not one of them -- if we're talking about a a
5 trigger height at six feet. It's irrelevant.

6 AMALIA NEIDHARDT: Okay. Now, before we move
7 with 1730 -- if I may, Simone.

8 What were the other items that you wanted to
9 discuss here with the committee on 1730? So we have
10 Subsection (a) and Subsection (g).

11 STEVE JOHNSON: So the main concern, I think I
12 already voiced, was this separation between 1730 and
13 1731. That 1730 is -- this discussion for Phase Two --
14 1731.

15 That clarification in the definition, saying
16 that 1731 is new production-type housing at least until
17 Phase Two is completed.

18 That was what I was trying to get at.

19 MIKE DONLON: I think what Steve is really
20 trying to say here is he would like -- reroofing
21 moved back to 1730 to give his members a chance to
22 adapt on those reroofing projects.

23 Because that -- new roofing -- it's pretty
24 easy to install fall protection. Reroofing is much more
25 difficult to install fall protection, and it's going to

1 be a huge learning curve.

2 And if there's that extra time -- if that one
3 goes back to 1730 -- and doesn't get done for another
4 six months or something, it gives his members a chance
5 to figure it out. And they really try to do the right
6 thing.

7 But just like some of the framing staff, we're
8 pulling out our hair trying to figure out what to do.

9 AMALIA NEIDHARDT: So if we look at -- and,
10 again, with that clarification -- that caveat -- we're
11 going to look at 1731.

12 But let's say if we were to look at 1730 -- if
13 everybody reviews 1731 and they say we're probably going
14 to delete it -- do we need to add a subsection here or
15 something to address that this distinction of existing
16 roofing -- sorry.

17 Go ahead, Steve.

18 STEVE JOHNSON: So if nothing changes in 1730
19 for now -- for Phase One -- then for Phase Two, there's
20 no need for 1731. Because after Phase Two, everything
21 is going to be at 6 feet.

22 MIKE DONLON: I think the way to fix -- the
23 way I understand what Steve is saying -- is to rewrite
24 the definition of "residential-type roofing," to remove
25 "reroofing," the stuff that refers to reroofing, and put

1 1731 back to where it just covers new construction,
2 which was always the intent of it -- rather than having
3 a residential and roofing, it was for a general-working
4 standard and a new-residential standard; those were the
5 two.

6 And so, I think, the fix he's looking for is
7 taking that "reroofing" out of the definition of
8 residential roofing activities.

9 STEVE JOHNSON: Yes.

10 KEVIN BLAND: Just to comment.

11 1716.2 says "new" because they defined it, and
12 they can't fix it.

13 MIKE DONLON: I mean is there any huge
14 objections for removing reroofing and putting in back to
15 1730? mean, want to hear the division on that.

16 ERIC BERG: If we are going to delete 1731,
17 it's going to be a moot point --

18 MIKE DONLON: What if we don't delete 1731,
19 would you have heartburn moving it back?

20 ERIC BERG: I guess we'd have to look at it.

21 KEVIN BLAND: Timing is an issue.

22 AMALIA NEIDHARDT: So it looks like we have to
23 do homework to be able to determine on that -- 1731.

24 SIMONE SUMESHWAR: So that was 1730, so we
25 have homework for 1730.

1 AMALIA NEIDHARDT: Yeah, we'll have homework.
2 And then for 1731, it looks like, right now, we're talking
3 about different options, right? Options that we've
4 taken a look at 1731 -- whether or not, maybe the
5 division might say might be deleted -- if not, then
6 looking at the definition.

7 If I understood it correctly, fixing the "and"
8 and putting it back to "or".

9 STEVE JOHNSON: So just the proposed language
10 that you have, that's -- that's what I want. Yeah
11 that's I want. Thank you.

12 AMALIA NEIDHARDT: But you will have to show
13 it to everyone because there's no actual official
14 petition.

15 SIMONE SUMESHWAR: I know.

16 AMALIA NEIDHARDT: Okay.

17 SIMONE SUMESHWAR: I mean, this is just the
18 letter.

19 AMALIA NEIDHARDT: So that's why I wanted to
20 make sure that it got shared with everyone.

21 SIMONE SUMESHWAR: I mean, I can bring a copy
22 of this tomorrow, if you want.

23 AMALIA NEIDHARDT: Yeah.

24 MIKE DONLON: We're coming back tomorrow?
25 We're almost done.

1 SIMONE SUMESHWAR: Oh, we're coming back
2 tomorrow.

3 AMALIA NEIDHARDT: We told our attorney
4 because she was in a hearing today. Said she will be
5 here tomorrow.

6 MIKE DONLON: Just one thought on 1731 is, we
7 survived a lot of years without it, so I can't see doing
8 away with it is going to really cause -- you know -- we
9 just go back to a standard roofing standard that worked
10 for several decades.

11 I don't know. I know that doesn't solve any
12 of your problems, but I think it clarifies.

13 KEVIN BLAND: Basically, I'm going to sum
14 this up.

15 If we can't fix 1731 to have it fixed before
16 July 1st or within the next few months, and we're a year
17 and a half from now, and it's still unresolved, then we
18 just have to delete it.

19 Because we have two regulations for roofing
20 that say exactly the same thing for two different scopes
21 that when you merge them, it's all roofing.

22 So, I mean, I think that's Steve's heartburn.
23 We need to fix it now. And I don't know if,
24 mechanically, we can do that or not. But that's what he
25 needs.

1 SIMONE SUMESHWAR: I think Amalia -- I
2 think -- we can't do anything before July. That's for
3 sure.

4 So then we have just these two paragraphs for
5 1731, and then that's the end of our day today.

6 Do we want to talk about this, or do we want
7 to push it off.

8 AMALIA NEIDHARDT: So if you want to look at
9 that as well in the event 1731 doesn't get deleted. If
10 you have suggestions for that.

11 Go ahead, Steve.

12 STEVE JOHNSON: So really, if you look at
13 roofing operations, 1723 to 1730, that was written
14 entirely by the bulk of -- that language in there was a
15 collaboration with the roofing association, union
16 roofing contractors putting their heads together,
17 deciding how to best regulated the roofing industry.

18 And that's one of the reasons that the
19 associations executive director at the time, John
20 Bannister, that's his language. And just -- so a little
21 history here -- that it's worked very effectively over
22 the years since the beginning of Cal/OSHA, since Title 8
23 came into effect.

24 1723 to 1730 was written by John Bannister.
25 And so it's worked very well for our association. I've

1 done extensive training with our contractors in the
2 association. They understood the regulations -- the way
3 they're written -- and that's one of the reasons that I
4 get uptight about it -- about things changing and things
5 just going away that have worked for years and years and
6 years.

7 And I don't care what Fed OSHA says. I don't
8 care how much pressure Fed OSHA is putting on Cal/OSHA.
9 At least as effective as doesn't mean identical. And
10 when we got industry rates that show California has the
11 lowest injury and fatalities from fall protection, you
12 can't tell me that we should change to federal standard
13 just because the feds want us to.

14 AMALIA NEIDHARDT: I just want to clarify one
15 thing, Steve. It's been noted what you said.

16 If you look at the fall protection for
17 residential -- fall protection fall committee in 2015,
18 2016, you will see that at that time you guys discussed
19 changing the title from 1731. And you can see that that
20 proposal is out there at the advisory committee meeting.
21 I just want to clarify that that's how long ago you guys
22 discussed that language.

23 STEVE JOHNSON: Okay. So what I was referring
24 to was 1723 to 1730. So in 2007, that's when the
25 trigger height was lowered for new production-type

1 housing, so it was a very clear distinction that it was
2 meant to match framers with the 15-foot trigger height.
3 That was the whole point of it.

4 So if that's what you're referring to, then,
5 yes, 1731 was created because the framers wanted a good
6 enforceable, safe trigger height. And the roofers
7 compromised and made that trigger height 15 feet to
8 match the framers.

9 So with new production housing, there was just
10 one simple height -- 15 feet. The roofers, framers,
11 everyone knew, hey, 15 feet. You got to do something
12 about fall protection because that's where things get
13 dangerous.

14 Now, we've got a convoluted mess that Kevin
15 and Bruce and framing industry -- and now roofing -- is
16 just trying to make some logical sense about how this
17 moves forward.

18 SIMONE SUMESHWAR: Any comments? Circling
19 back to this.

20 AMALIA NEIDHARDT: Yeah. I will say -- let's
21 discuss this because in the event we do not delete 1731,
22 everybody is going to do a homework on note. I just
23 want to make sure. If the concerns are where the
24 definition of residential-type roofing activities,
25 putting an "or" instead of "and".

1 And then, I think, also, we have here, the
2 note similar to 1730. It's a different subsection,
3 right? Right there, (e). That was another concern.

4 SIMONE SUMESHWAR: Any comments on that? On
5 (e)?

6 MIKE DONLON: And this is just a thought.
7 Doesn't matter one way or the other really, but it seems
8 like the notes on measuring both in 1730 (g) and '31 (e)
9 were just a mute point at this point and I don't know if
10 they're necessary because 6 foot to high roofs is so
11 rare.

12 AMALIA NEIDHARDT: Eric -- do you guys want to
13 -- is it necessary still? Or not necessary? You guys
14 want to make a comment on that?

15 ERIC BERG: We're fine with the language in
16 Phase One. It's going to effect.

17 MIKE DONLON: Was this in Phase One? I'm
18 getting confused.

19 Then I'm fine with that. I don't care.

20 AMALIA NEIDHARDT: Okay. So you're fine.

21 And, one second, before we go into what you
22 were saying. I'm looking at the advisory committee
23 meeting held on fall protection back in 2015, 2016, and
24 I know that that's when they deleted the word "new",
25 Steve, just to make that point.

1 KEVIN BLAND: Just for the record. The "they"
2 in that was not us in agreeing. That was the feds
3 coming in -- walking in -- and dictating, and walked out
4 half way through the meeting. And so that wasn't -- it
5 may have been changed in that meeting, but there wasn't
6 anything that we changed as a consensus in the room so.

7 AMALIA NEIDHARDT: Yeah. So I'm looking at
8 the advisory committee -- what you guys received -- back
9 in 2016 and that's when they deleted the word "new".

10 It just says residential-type roofing
11 activities back in 2016. That was the proposal that the
12 advisory committee was notified. That's when the word
13 "new" was deleted -- just wanted to make a note of that.

14 STEVE JOHNSON: So I was on a seven-year
15 wandering working sabbatical from the association
16 between late 2014 and 2022, so I wasn't involved in
17 those advisory committees. I wasn't employed by the
18 roofing association, but I'm back now in 2022.

19 So the gap kind of -- in a weird way -- I
20 wasn't involved then, but now I'm back with the
21 association, and I'm involved now. So just some
22 timeline clarification for me personally.

23 So hopefully it gives a better understanding
24 on why I wasn't jumping up and down then, and now I'm
25 jumping up and down now.

1 KEVIN BLAND: There was jumping up and down
2 then too. Trust me.

3 AMALIA NEIDHARDT: Okay. So if Subsection
4 1731 does not get deleted, how can we address the issue
5 without putting the word "new"? Because I feel like
6 it's going to be difficult to just -- and the title.

7 First of all, the title is not enforceable, so
8 it won't make any difference.

9 But what you're saying is that in the
10 definition somehow only say "new" instead of
11 "reroofing". That's the thing. Maybe I misunderstood.

12 MIKE DONLON: Yeah. It will just be rewriting
13 that title to take out anything associated with
14 reroofing.

15 AMALIA NEIDHARDT: But a title is not
16 enforceable, Mike.

17 MIKE DONLON: Not the title. The --

18 SIMONE SUMESHWAR: The definition.

19 MIKE DONLON: The definitions and just taking
20 out anything -- you know.

21 STEVE JOHNSON: So where it says -- basically,
22 just take it back to the old language. And that's what
23 I have in my petition -- my withdrawn petition -- that
24 was the language I used. And just to include "new
25 construction" because new construction would be

1 residential-type housing.

2 So at least that would keep the definition
3 from becoming muddy. Because the definition is in 1731.
4 The definition is not in 1730. So that was the concern
5 I had was that it muddied up the definition in 1731 to
6 include all roofing operations.

7 So I think the language -- I think the wording
8 is "new construction"; and, basically, put it back the
9 way it was. That's all I'm asking.

10 MIKE DONLON: So what I would say is if we
11 just deleted the reference to reroofing. So if you see
12 residential-type roofing activities, roof work on new
13 single-family, town homes, duplexes, and other
14 structures covered by 1716.2 and then -- so it'll just
15 be taking out that one part of it.

16 So take out everything after roof -- right on
17 the top line where it says "roofing work," take out
18 "consist of" all the way down to performed. We're going
19 to leave roofing work in there.

20 STEVE JOHNSON: So if it could just say,
21 "roofing work performed on new construction and
22 single-family homes, town houses, and duplexes." That
23 would cover everything in 1731.

24 So it takes out reroofing -- takes out roof
25 removal -- because those are covered in roofing

1 operations.

2 And then in Phase Two, we're going to cover
3 all that. We're going to talk about lowering the
4 trigger height. We're going to talk all those other
5 things that are happening with 1731.

6 AMALIA NEIDHARDT: If I'm not mistaken, we
7 deleted the word "custom homes"; is that in Section 1730
8 or 1731? I'm trying to find out -- sorry.

9 STEVE JOHNSON: That language comes from
10 1731 -- when it talks about custom homes.

11 AMALIA NEIDHARDT: Okay. Are we referring --
12 when we say -- are other structures covered by 1716.2 --
13 well, let me ask it this way.

14 What are we referring to? What do we mean
15 when we say, "and other structures covered by Section
16 1716.2" when we were talking about residential-type
17 housing? Can someone explain that to me.

18 STEVE JOHNSON: So that would have been going
19 along with framing, new production-type housing.

20 ERIC BERG: Like, commercial? Because 1716.2
21 also covers -- like anything framing techniques.

22 AMALIA NEIDHARDT: You have a point, Eric.
23 So if we do not delete Section 1731, we still
24 need to include here, like, construction?

25 ERIC BERG: Or other structures.

1 AMALIA NEIDHARDT: So keep "other structures"
2 covered by 1716.2?

3 JASON DENNING: There's some structures that
4 are not -- that you can call strictly residential -- but
5 are the same type of construction.

6 Like mixed use, it's not a house, but it's
7 residential and constructions.

8 KEVIN BLAND: It's included right there. It
9 says "and other structures" covered in 1716.2. That
10 encompasses the commercial, the mixed use.

11 JASON DENNING: Yeah, I was just explaining to
12 Amalia what we're talking about; there are some things
13 that aren't what you would characterize normally as
14 residential but are part of 1716.

15 AMALIA NEIDHARDT: Pardon me.

16 What I was saying is what Steve Johnson was
17 recommending. What you had in blue -- I think you were
18 copying something. What I meant is to also make sure
19 that we say "then" or "other" right?

20 So we keep that single-family homes,
21 townhouses, duplexes, or other structures.

22 Okay. I thought we were deleting it.

23 JASON DENNING: And I don't think that was the
24 issue. The issue was really more about the reroofing as
25 opposed to new operations, new roofing.

1 AMALIA NEIDHARDT: So if we don't delete 1731,
2 right? Then we will delete that last new subsection
3 that we are proposing for Section 1730; that way we keep
4 it as is?

5 STEVE JOHNSON: Right. Separate 1731 and
6 1730.

7 AMALIA NEIDHARDT: So maybe we put in the
8 caveat in on the -- if we do not propose to delete 1731,
9 then, possibly, that's another option -- don't refer
10 1730 to 1731 for reroofing? Or is it all something else
11 that we need to include there as as well?

12 STEVE JOHNSON: It's in my withdrawn petition,
13 so -- if you have it. So that's the language I'm
14 suggesting. Because now I'm -- if I deviate from that
15 -- I mean, I thought about that a long time, so if I
16 deviate from that, I'm going to screw it up.

17 So just go back to that withdrawn petition,
18 that's the language I would like in 1731 definitions.

19 AMALIA NEIDHARDT: What I want to make sure is
20 that everybody knows what that language is because,
21 again, this is a petition that was withdrawn -- so
22 everybody can see it and provide comment.

23 SIMONE SUMESHWAR: That's it right there.

24 KEVIN BLAND: We're looking at it, I think.

25 AMALIA NEIDHARDT: Okay. So then, we are not

1 touching anything about 1730 -- that last sentence -- on
2 this 1730(a)? If we do not propose to delete 1731 -- I
3 want to make sure we are on the same page -- if we do
4 not propose to delete 1731, then we need to revisit
5 1730 -- that part on (a) -- where we are referring to
6 1731, right?

7 STEVE JOHNSON: Correct.

8 SIMONE SUMESHWAR: Yes.

9 AMALIA NEIDHARDT: Okay. That's what I'm
10 saying. So let's say -- again, because everybody is
11 going to do homework on Section 1731, right? Are there
12 some proposed language in this one that the committee
13 wants to consider -- if we do not propose to delete 1731
14 for Phase Two.

15 Does that make sense what I'm saying?

16 KEVIN BLAND: Yes.

17 MIKE DONLON: I think at the beginning of the
18 blue section, you necessarily don't have to say -- if
19 we're going to change 1731, like we're talking about,
20 you'd have to change that to "new residential-type
21 roofing activities." We're going to change the
22 definition of residential roofing activities.

23 AMALIA NEIDHARDT: So then that way we'll be
24 understood that reroofing stays on 1730; correct?

25 STEVE JOHNSON: Yes.

1 AMALIA NEIDHARDT: Okay. So if we are going to
2 consider this, then we would have to delete the one that
3 is going to go into effect on July 1st. What do we have
4 for Subsection (a)? I'm probably confusing everybody
5 again.

6 Unfortunately, we have quarterly meetings with
7 Federal OSHA, and they want an update every quarter.
8 And then they're going to do another evaluation -- this
9 is Amalia's words -- I think that they're going to do
10 another evaluation in September about getting an update.

11 That's why I was trying to demonstrate good
12 faith that we are having a discussion.

13 Okay. So this is what's going into effect:
14 The section does apply to residential-type roofing
15 activities as defined in Section 1731.

16 So the one that we are proposing right now,
17 we'll take care of that. I think, if I recall, in that
18 letter that you guys have in July, for some reason the
19 feds read this part that says the section does not apply
20 to residential-type roofing activities as if we were not
21 applying the IIPP.

22 JASON DENNING: I don't understand why it was
23 changed to begin with.

24 AMALIA NEIDHARDT: Yeah. It's in your July
25 12th letter, does everybody have that?

1 Basically, I'm going to put it this way, we
2 need your assistance to be able to respond on that item.
3 So in your letter for July 12th, you will say, in
4 addition, Section 1730(a), roof hazards states that doing
5 roofing operations, the employer shall comply with the
6 provisions of Section 1509 with an exception that this
7 does not apply to residential-type roofing activities as
8 defined in Section 1731.

9 California employers are required to
10 establish, implement, and maintain an injury prevention
11 program. It is not clear why employers engage in
12 roofing operations do not need to follow Section 1731
13 and raises ALIE questions when compared to 29.

14 So for some reason they thought we were saying
15 they don't have to comply with Section 3203 or in
16 construction 1509.

17 JASON DENNING: Where did they get that? I
18 don't understand that.

19 AMALIA NEIDHARDT: So if we can go back to
20 what the blue language -- sorry, Simone -- to send you
21 back to the blue language being proposed for Subsection
22 (a).

23 I think if we do not propose to delete for
24 Phase Two, Section 1731 -- I want to make that clear --
25 then that will address both items; correct? It will

1 address clarification for new roofing -- or new
2 construction. And they will address that no where are
3 we saying the IIPP doesn't apply.

4 STEVE JOHNSON: Yes.

5 AMALIA NEIDHARDT: Okay. Anyone else?
6 Comments? Concerns on this subsection? On this
7 section -- or subsection? Okay.

8 And then anything else in Section 1731 if we
9 don't delete -- propose to delete that one. I think
10 that -- and I might be recalling incorrectly -- there
11 was an issue on custom-made homes? Because we are
12 proposing to delete -- that's already going to go into
13 effect deleted. That's not needed at all.

14 Am I getting an agreement on that one?

15 STEVE JOHNSON: So custom-type homes were in
16 1731. They were part of the 1731. It excluded
17 custom-type homes in 1731. It was only, specifically,
18 like, big-tract housing projects to match the framers
19 with the 15-foot trigger height.

20 So reroofing custom homes went back to
21 1730 -- roofing operations.

22 AMALIA NEIDHARDT: But if we do not delete
23 Section 1731, custom homes will stay in 1731?

24 KEVIN BLAND: Or 1730 but they're going to be
25 the same.

1 AMALIA NEIDHARDT: Or is it going to be 6
2 feet?

3 STEVE JOHNSON: So with new custom -- I mean,
4 if new-custom homes is excluded -- I mean, it is new
5 construction. And there are, like, typically easier
6 ways to set up fall protection, fall-protection anchor
7 points -- a little different than reroofing. So I think
8 we can live with that.

9 AMALIA NEIDHARDT: You answered my question,
10 Steve. Thank you. Just wanted to make sure we needed
11 to revisit that. So that's all.

12 Anyone else? Anything else?

13 SIMONE SUMESHWAR: So we will cover 1716.2
14 tomorrow. And then that will be it.

15 AMALIA NEIDHARDT: Yes. We're going to cover
16 1716.2 -- I'm repeating what Simone is saying.

17 But, Simone, we also want to tell them about
18 the deadline, right? If they want to submit comments.
19 If it's something like when you're driving back, you
20 realize you forgot something.

21 SIMONE SUMESHWAR: June 6th, I think. Yup.

22 So all comments for this June 6th.

23 AMALIA NEIDHARDT: And we'll be here tomorrow
24 too -- the item that we have pending.

25 KEVIN BLAND: I don't think it's going to take

1 that long on this. We can finish now. Bruce won't have
2 to fly up to fill up my space. You got people flying
3 out for one sentence tomorrow? Just -- I don't know why
4 we can't just finish this and be done.

5 So you're going to have all these people fly
6 out for about 15 minutes of conversation -- or maybe 30
7 -- from the way this goes, maybe an hour -- but the
8 attorney is only gonna hear 10% of what everything is.
9 So I don't understand. Is that necessary? We finish --

10 AMALIA NEIDHARDT: It's necessary --

11 KEVIN BLAND: Because?

12 AMALIA NEIDHARDT: From Amalia's perspective
13 because Federal OSHA wants to come and read a letter
14 specific to 1716.2 -- the concerns that they had.

15 MILLIE BARAJAS: Could we think about that
16 differently? Could Fed OSHA provide that comment at a
17 later time to the committee? I mean, I've heard you say
18 this is for discussion, so can we have the discussion
19 today?

20 AMALIA NEIDHARDT: I don't have the letter
21 that the feds are going to send. They were going to
22 send it and wanted to read it into the record. That's
23 what they told me.

24 MILLIE BARAJAS: Okay. I thought comments
25 that were set in by the end of -- whatever -- today or

1 tomorrow -- will be all added to the record. I thought
2 we've said that a couple times.

3 So couldn't Fed OSHA -- I'm just
4 asking -- couldn't Fed OSHA's letter be read into the
5 record? Just like anyone else that wants to submit
6 something.

7 ERIC BERG: They're not taking questions.

8 AMALIA NEIDHARDT: They're not taking
9 questions. They want to read the comments.

10 Let's take a five-minute break. Thank you.

11 (Break.)

12 AMALIA NEIDHARDT: Federal OSHA haven't
13 responded back yet, so we'll just go ahead and resume
14 the additional items on the agenda.

15 Alright. So discussion of alternatives.

16 AMALIA NEIDHARDT: Oh, sorry. We still have
17 to talk about -- you wanted talk alternatives before we
18 do 1716.2?

19 Oh. I didn't see you were flipping them
20 around. Sorry, Simone. Yeah, that's a good call.

21 SIMONE SUMESHWAR: So we're just going to wait
22 on 1716.2 while we're waiting to figure out with those
23 guys because their comments are in regards to 1716.2.
24 So just give them a few more minutes.

25 But we'll go ahead and talk about discussion

1 for alternatives for the other stuff that we talked
2 about today. So I don't know what type of alternatives
3 were discussed during phase one.

4 KEVIN BLAND: The only alternatives we have
5 are two petitions and one computation with the
6 carpenter's union to either revise the fall protection
7 and create a fall protection plan specific for
8 residential construction or go back to old 1716.2.

9 And then we also have an emergency petition to
10 extend the date, which may help Steve's issue.

11 AMALIA NEIDHARDT: Kevin, for
12 clarification -- for the alternatives -- we need to say,
13 instead of 6 feet, if there is a possible other
14 alternative to be at least as effective as the feds or
15 if there's other alternatives with regards to, you know,
16 like, similar to phase one where we did in residential
17 fall protection that we said instead of certain
18 percentage of people using fall arrest, and certain
19 percentages scaffold, 100% scaffold or something like
20 that.

21 That's why we're looking for alternatives
22 because we need to prepare that for the Department of
23 Finance. So we're asking for suggestions,
24 recommendations, or clarifications.

25 KEVIN BLAND: I don't see many alternatives

1 than what's been presented.

2 SIMONE SUMESHWAR: So maybe just take that as
3 one of the homework items if you guys think of anything
4 in the next two weeks, send that over with your
5 comments.

6 And then that leads into the discussion of
7 economic and fiscal impact. So identifying the fall
8 protection required to be in compliance and the cost of
9 these systems.

10 KEVIN BLAND: I think the cost impact on this
11 is going to be severe, because now we're
12 basically -- every building that we were doing before
13 without fall protection -- is going to have fall
14 protection - and the cost of that and the training of
15 that. We did the math on the residential framing, and
16 I want to say, we were -- I mean -- it's over a
17 150 million.

18 I don't know. I'll leave it up to the
19 group -- because this is more affecting the roofers on
20 this. And, also, when Trestan gets back, what would be
21 the cost of that. Because now your looking at more
22 industries, we were just the cost impact on just the
23 minor residential-type fall protection.

24 AMALIA NEIDHARDT: So just to make sure I
25 understood you. We're talking about cost in general,

1 and then you said training. I've noted training. But
2 for the cost in general, can you be a little bit more
3 specific or give me more details?

4 KEVIN BLAND: The cost of purchase and rental
5 of new equipment; cost of installation and disassembly
6 of that equipment on every building; and then cost of
7 training folks on the new procedures.

8 STEVE JOHNSON: Yeah. And I will just double
9 that with roofing. It's just everything that is going
10 to have to be done for framers is going to be done for
11 roofing.

12 RINALDO EDMONSON: I'd just like to make sure
13 that we're not separating the cost of training of any of
14 this.

15 KEVIN BLAND: No, it's all one --

16 STEVE JOHNSON: Training is included in that.

17 RINALDO EDMONSON: You said it right. That's
18 why I was -- when you mentioned something about separating
19 it, I wanted to make sure that that's not what you're doing.

20 AMALIA NEIDHARDT: No. No. I did no cost of
21 training, but I wanted to get the other one he just
22 talked broadly. So I wanted to get the details.

23 KEVIN BLAND: The cost I gave you encompasses
24 equipment, labor, and training.

25 AMALIA NEIDHARDT: And then someone said

1 revising new procedures? Did I understand that?

2 STEVE JOHNSON: That would definitely go in if
3 the --

4 KEVIN BLAND: It's an administrative cost.
5 We'll call that administrative cost of revising the fall
6 protection schemes.

7 MIKE DONLON: It's also going to increase cost
8 of managing all of that fall protection equipment once
9 you require it -- because manager for inspection
10 purposes, and -- you know.

11 SIMONE SUMESHWAR: Did you guys provide
12 numbers during phase one?

13 KEVIN BLAND: We did.

14 MIKE DONLON: Other than the roofing
15 stuff -- I don't know if this is going to be as
16 traumatic -- the costly of phase one because you're
17 going from 7 1/2 to 6 and not 15 to 6 -- except for the
18 roofing. I think that's where the huge cost impact is
19 going to be is in the roofing.

20 STEVE JOHNSON: For phase two.

21 MIKE DONLON: For phase two, yeah.

22 KEVIN BLAND: Basically, Mike, anyone that was
23 at 7 1/2 foot, there is no real cost impact going in
24 that -- where they're already at 7 1/2 to 6 minimum.

25 MIKE DONLON: Not a whole lot/

1 JASON DENNING: Trigger heights are so close.

2 MIKE DONLON: A lot of contractors are
3 comfortable, other states are already doing the 6 feet.

4 AMALIA NEIDHARDT: For the phase one, you guys
5 provided data how much housing you estimated it was
6 going to be built. And like that -- in this case for
7 roofing -- do you have databases or anything like that
8 that you can assist with?

9 STEVE JOHNSON: Not right at the moment.

10 AMALIA NEIDHARDT: Right. I'm assuming
11 there's an existence.

12 STEVE JOHNSON: I don't have a go to database
13 for roofing operations as far as -- I would have to
14 piggy back off the estimates for the cost for the
15 framers for fall protection and probably be in that
16 ballpark of numbers because we're facing the same issues
17 with phase two for lowering the trigger height to 6 feet
18 for roofing. But I would imagine it will be similar
19 numbers.

20 MIKE DONLON: It will probably be higher
21 because it's going to be all your commercial roofing too
22 and just everything.

23 AMALIA NEIDHARDT: So is there something that
24 you can provide to Simone and assist her with the stuff
25 of cost for all of you guys involved?

1 KEVIN BLAND: Bruce and I can be up on a call
2 and kind of tell you how we did it. It may help.

3 STEVE JOHNSON: Yeah, that'd be helpful.
4 Thank you.

5 AMALIA NEIDHARDT: And, Trestan, if you have
6 any information of how much construction you
7 anticipate -- that when this will be impacted -- that
8 will be great, if we can look at costs. Lowering from
9 20 feet down to 6 feet, or anything like that, to
10 estimate what amount of new construction that's likely
11 to be affected. And I think in roofing, it will not be
12 just new construction, but also reroofing activities,
13 right?

14 STEVE JOHNSON: And keep in mind too
15 that -- so we're a regional union association with 25
16 contractors. There's a Southern California union
17 working association, and we make up about 10% -- union
18 labor represents about 10% of roofing in California. So
19 that's a small percentage of, you know, union roofing
20 labor.

21 AMALIA NEIDHARDT: Anything else that we might
22 not be thinking of on cost?

23 KEVIN BLAND: I think you got the buckets.

24 AMALIA NEIDHARDT: Okay. Just want to make
25 sure.

1 SIMONE SUMESHWAR: We'll go back to our
2 packet. Last page. 1716.2. Residential-type framing
3 activities, wood and frame construction. So we have
4 some changes here in (2). When walking/working on top
5 of plates, joists, rafters, trusses, beams or other
6 similar structural members for interior framing
7 activities between 6 and 15 feet above the surrounding
8 grade or floor level below and all requirements in
9 paragraph (A) through (C) are met, the employer --
10 changing from may to shall -- use a fall protection plan
11 with safety monitors and controlled access zones as
12 described in Sections 1671.1 and 1671.2 unless fall
13 protection is determined to be infeasible.

14 ERIC BERG: Cal/OSHA recommends to go back to
15 the original phase one language and do these draft
16 changes.

17 KEVIN BLAND: We don't have an issue with
18 either. The new language is fine for us. The old
19 language is as good as we can get.

20 MIKE DONLON: I think the new language is fine
21 over the old language but not a huge improvement.

22 ZACK WINTERS: Is the word "unless" incorrect
23 there and should be "if"? If you do what Eric was
24 saying and go back to the crossed-out language, it
25 resolves the issue. But I think "unless" is incorrect

1 there because you're saying the employer shall use a
2 plan unless fall protection is infeasible.

3 KEVIN BLAND: My understanding of this
4 language is where we have these three criteria, but if
5 we do prove infeasibility, then we just follow 1671.2.
6 Because that's whenever you proven infeasibility of fall
7 protection -- where this was negotiated in the context
8 of interior framing activities -- and that's why we had
9 (A), (B), and (C) to counter that.

10 And I think that's what I understood this was
11 cleaning up.

12 ERIC BERG: Yeah. Zack is correct because,
13 right now, it says if fall protection is determined to
14 be infeasible, you can't use fall protection plan, which
15 doesn't make any sense.

16 KEVIN BLAND: It doesn't say you can't. It
17 says you shall use a fall protection unless it's
18 infeasible -- but it says you can use a protection plan
19 for those activities if you follow the bottom three
20 things.

21 That's what it says.

22 ERIC BERG: The new language says you don't
23 use the fall protection plan if the fall protection
24 plan --

25 KEVIN BLAND: No, it doesn't. It says the

1 employer shall -- you got to read the front part
2 too -- in all requirements in paragraph (A) through (C)
3 are met, the employer shall use the fall protection plan
4 with safety monitors and controlled access zones as
5 described in 1671.1 and 1671.2, unless fall protection
6 is determined to be infeasible.

7 If it's confirmed to be infeasible, those
8 three items go away, and then you're just using --
9 following the regulation.

10 ERIC BERG: Okay. I just didn't understand
11 that. Thank you.

12 KEVIN BLAND: That's my understanding. That's
13 the only way it would make sense.

14 ERIC BERG: Then I misread it. I read it as
15 employer shall use a fall protection plan with safety
16 monitors and controlled access zones unless fall
17 protection is determine to be infeasible.

18 So that would say you can't use the fall
19 protection if the fall protection plan is infeasible.

20 KEVIN BLAND: If we didn't have (A) through
21 (C) as the modifier.

22 ERIC BERG: So that's saying that you don't
23 have to do (A) through (C)?

24 KEVIN BLAND: If we do (A) through (C), we can
25 use the fall protection plan in compliance with that.

1 If you prove infeasibility, then you're going -- it
2 doesn't matter about (A) through (C) -- you got to
3 follow 1671.1 and 2 -- is what would be the reasonable
4 reading of that because the idea was, hey, on the
5 interior, follow these steps in there for the interior
6 and use a fall protection plan and a monitor that's in
7 compliance with those two.

8 If you're proving infeasibility across the
9 board, then you don't have to stay 6 feet because you're
10 under a fall protection plan because you've proven
11 infeasibility.

12 ERIC BERG: Okay. I think I misread it then.

13 KEVIN BLAND: That's my understanding of that
14 language.

15 ERIC BERG: I still prefer one language
16 it's not -- at least to me -- it's not clear.

17 AMALIA NEIDHARDT: If it can be made clearer,
18 you know, that's where we want input. But, if not, we
19 can also go back to the phase one.

20 KEVIN BLAND: Where did this come from? This
21 change?

22 AMALIA NEIDHARDT: It's on me. I was trying
23 to address that letter that you guys have -- 17 -- I
24 don't know why I said 17 -- the July 12th letter, right?
25 They specifically call out this subsection. The first

1 page -- July 12, 2024 -- Federal OSHA is specifically
2 calling out this subsection.

3 You can see that it's the third paragraph in
4 that letter.

5 ERIC BERG: My understanding is that they were
6 not happy with this, the FEDS.

7 AMALIA NEIDHART: You can go back to the
8 original if it's poorly written or not clear. Definitely
9 we want to fix it.

10 SIMONE SUMESHWAR: They didn't have an issue
11 with the old language?

12 AMALIA NEIDHARDT: I think they had more
13 issues with this than the original phase one.

14 ERIC BERG: Yeah, that's my understanding.
15 Will they be here tomorrow?

16 AMALIA NEIDHARDT: Well, that's why I'm trying
17 to send them an e-mail and say they can send the comment
18 letter to us. But if it can be made better, definitely;
19 if not, we can go back, like you said. It looks like
20 everybody's okay also we go back to the existing.

21 So let's make a note of that. It looks like
22 there's an agreement -- let's keep it as the phase one.
23 No need to have a heartburn.

24 MIKE DONLON: I think it depends on what the
25 feds say.

1 AMALIA NEIDHARDT: I think the feds were
2 concerned that we we're making it worse with this
3 particular thing. So let's go back to the original one
4 then. And if there's an agreement on that, that's even
5 better.

6 KEVIN BLAND: And the feds ignored the fact
7 that in theirs, they have a appendix (e) that doesn't
8 even require safety monitor that they allow for this
9 type of framing activity.

10 AMALIA NEIDHARDT: Oh, wow. This is the
11 fastest one. Okay. Leave as is, don't touch.

12 SIMONE SUMESHWAR: Any other comments?

13 KEVIN BLAND: Is the court adjourned?

14 SIMONE SUMESHWAR: No, not yet. Hold on.
15 Are we done?

16 AMALIA NEIDHARDT: Great job, Simone. Just
17 remind them about the date for comments, right? And
18 then we will share with you guys the letter that the
19 feds will send, right? I'm basically telling them we'll
20 submit the letter to you guys -- share it with you
21 guys -- since they weren't here to read it.

22 I think we are done on that.

23 For the committee, I'm just asking two favors.
24 One, Simone is going to need a lot of assistance with
25 cost. So anything related to cost, if you can assist

1 her with that -- or Simone or Marlo -- I want to give
2 credit -- and the other one, if you can please help me
3 give a round of applause to Simone's first advisory
4 committee, and Marlo's assistance.

5 (The proceeding concluded at 3:00 p.m.)
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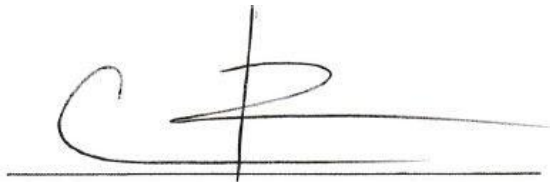
1 HEARING REPORTER'S CERTIFICATE

2
3 I, Christina L. Rodriguez, Hearing Reporter in
4 and for the State of California, do hereby certify:

5 That the foregoing transcript of proceedings
6 was taken before me at the time and place set forth,
7 that the testimony and proceedings were reported
8 stenographically by me and later transcribed by
9 computer-aided transcription under my direction and
10 supervision, that the foregoing is a true record of the
11 testimony and proceedings taken at that time.

12 I further certify that I am in no way
13 interested in the outcome of said action.

14 I have hereunto subscribed my name this 11th
15 day of June.

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18 Hearing Reporter
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