

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
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SECOND NOTICE OF PROPOSED MODIFICATION TO
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Sections 1671.1, 1716.2, 1730 and 1731
of the Construction Safety Orders

Fall Protection in Residential Construction

Pursuant to Government Code section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board or Board) gives notice of the opportunity to submit written comments on the above-named standards in which modifications are being considered as a result of public comments and/or Board consideration.

On January 18, 2024, the Standards Board held a public hearing where both oral and written public comments were received on proposed revisions to title 8, sections 1671.1, 1716.2, 1730 and 1731 of the Construction Safety Orders. The proposed standard was modified as a result of these comments and Board staff consideration, and on April 5, 2024, a 15-Day Notice was issued.

This second 15-Day Notice is a result of further comments from stakeholders received at the April 18, 2024, Standards Board Meeting in Gilroy, CA. During this meeting, stakeholders brought to the Board's attention the need to amend section 1716.2 (e) to clarify that in situations like interior framing activities occurring between 6 and 15 feet, worker protection will be enhanced by requiring that certain additional measures be implemented in conjunction with the use of a fall protection plan. During the first 15-Day Notice the Standards Board also received four written comments on the proposed revisions. The standards have been specifically modified as a result of these comments and Board consideration.

Modifications are now proposed for:
Subsection 1716.2 (e) -Addition of new paragraph (e)(2).

A copy of the text of the standards as originally proposed, with the modifications clearly indicated, is attached. Anything that has been added is indicated by a bold double underline, and anything that has been removed is indicated by a double bold strikeout. In addition, a summary of the written comments received regarding the first 15-Day Notice and the Board responses is included.

Pursuant to Government Code section 11347.1, notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following documents:

ADDITIONAL DOCUMENTS RELIED UPON

1. Letter dated April 30, 2024, from Matthew Kuzemchak Area Director of the US-DOL, Fed-OSHA to the Board.
2. Letter dated May 15, 2024 from Eric Berg Deputy Chief of Health and Jason Denning Principal Safety Engineer of Cal/OSHA to the Board on Proposed Rulemaking for Fall Protection in Residential-Type Construction and Census of Fatal Occupational Injuries (CFOI) data for California.

Any written comments on these modifications and documents relied upon must be received by 5:00 p.m. on **July 15, 2024**, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or e-mailed to oshsb@dir.ca.gov. Only comments related to the modification of the text will be considered. This proposal will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection BY APPOINTMENT Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. Appointments can be scheduled via email at oshsb@dir.ca.gov or by calling (916) 274-5721.

Inquiries concerning the proposed changes may be directed to the Principal Safety Engineer, Amalia Neidhardt, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Amalia Neidhardt

Date: June 26, 2024

Amalia Neidhardt, Principal Safety Engineer

PROPOSED MODIFICATIONS
(Modifications are indicated in bold and double underline wording for new language, and bold, double strikeout for deleted language.)

Subchapter 4. Construction Safety Orders

Article 24. Fall Protection

Amend Section 1671.1 to read:

§1671.1. Fall Protection Plan.

(a) This section applies to all construction operations when it can be shown by the employer that the use of conventional fall protection is ~~impractical~~ infeasible or creates a greater hazard.

NOTE: There is a presumption that conventional fall protection is feasible and will not create a greater hazard. Accordingly, the employer has the burden of establishing that conventional fall protection is infeasible or creates a greater hazard.

(1) The fall protection plan shall be prepared by a qualified person and developed specifically for the site where the construction work is being performed and the plan must be maintained up to date. The plan shall document the identity of the qualified person. ~~Note: The employer need only develop a single site fall protection plan for sites where the construction operations are essentially identical.~~

Note: Authority cited: Section 142.3, Labor Code. Reference: 142.3, Labor Code.

Subchapter 4. Construction Safety Orders

Article 29. Erection and Construction

Amend Section 1716.2 to read:

§1716.2. Residential-type Framing Activities, Wood and Light Gage Steel Frame Construction, Residential/Light Commercial.

(a) Scope and Application.

This section applies to work directly associated with the framing of new buildings or structures using the operations, methods, and procedures associated with residential-type and light commercial framing activities, i.e., joists or trusses resting on stud walls.

(b) Definitions.

(7) Residential-type Framing Activities. For the purposes of this section, residential-type framing activities include: installation of floor joists, floor sheathing, layout and installation of walls, hanging and nailing of shear panels, setting and bracing roof trusses and rafters, installation of starter board, roof sheathing, and fascia board; installation of windows, siding and exterior trim. The limited use of structural steel in a predominantly wood-framed home, such as steel I-beam to help support wood framing, does not disqualify a structure from being considered residential-type construction. Residential-type framing activities includes framing of commercial structures that use traditional wood frame construction materials and methods.

~~(10) Slide Guards. A 2-inch nominal cleat, on centers not to exceed 4 feet, securely fastened to the roof sheathing to provide footing on a sloped roof.~~

~~(1110) Starter Board.~~ The board-type sheathing material installed at eaves and gable ends in the plane of the sheathing and visible from the underside.

~~(1211) Stud.~~ A vertical framing member in walls and partitions, also referred to as a wall stud, attached to the horizontal sole plate below and the top plate above.

~~(1312) Top Plate.~~ Top horizontal member of a frame wall supporting ceiling joists, rafters, or other structural members.

~~(1413) Truss.~~ Prefabricated structural roof unit consisting of triangular bracing (truss webs) between the ceiling joist (bottom chord) and the roof rafter (top chord) commonly installed parallel with other trusses to create a structural support system for a roof after which sheathing

is fastened. The bottom chord often serves as a ceiling joist. Each member is usually subjected to longitudinal stress only, either tension or compression.

~~(1514)~~ Truss Support Plate. A temporary support structure erected near mid-span of an area with a large open span, such as a garage, to support trusses during installation.

(e) Work on Top Plate, Joists and Roof Structure Framing.

(1) When employees are walking/working on top plates, joists, rafters, trusses, beams or other similar structural members ~~over 6~~ 6-15 feet or more above the surrounding grade or floor level below, fall protection shall be provided by one or more of the following methods: scaffolding, guardrails, safety nets, a personal fall protection systems, or, provided the employer demonstrates that the use of conventional fall protection methods are infeasible, a fall protection plan with safety monitors and controlled access zones as described in Sections 1671.1 and 1671.2 ~~by other means prescribed by CSO Article 24, Fall Protection.~~

~~Exceptions: (A) When employees are walking/working on securely braced joists, rafters or roof trusses on center spacing not exceeding 24 inches, and more than 6 feet from an unprotected side or edge, they shall be considered protected from falls between the joists, rafters or roof trusses.~~

~~(B) When installing floor joists, employees shall be considered protected from falls up to and including 15 feet above the surrounding grade or floor level below when standing on or working from joists laid on their sides on the top plate on center spacing not exceeding 24 inches when walking/working within 24 inches of the top plate or other structural support.~~

(2) When walking/working on top plates, joists, rafters, trusses, beams or other similar structural members for interior framing activities between 6 and 15 feet above the surrounding grade or floor level below and all requirements in paragraphs (A) through (C) are met, the employer may use a fall protection plan with safety monitors and controlled access zones as described in Sections 1671.1 and 1671.2, instead of the conventional fall protection methods specified in subsection (e)(1):

(A) For structural members, they shall either be securely braced or during installation, are laid on their sides on the top plate; and,

(B) either the center spacing between structural members shall not exceed 24 inches or plywood sheathing shall be laid down to cover the spacing between structural members; and

(C) Employees are more than 6 feet from an unprotected side or edge.

(3) Truss Support Plate. Where a truss support plate is used during the installation of trusses, it shall be constructed of a 2x6 plank laid flat, secured lineally to a 2x6 plank laid on edge, supported with 2x4 wood members (legs) spaced no more than 6 feet on center and attached to diagonal bracing adequately secured to support its intended load. All material dimensions are minimum and nominal.

(f) Work on Floors and Other Walking/Working Surfaces. When working on floors and other walking/working surfaces that are 6 feet or more above the surrounding grade or floor level below and will later be enclosed by framed exterior walls, employees directly involved with the

layout and construction of framed stud walls shall be protected from falling by one or more of the following methods: personal fall protection systems, scaffolding, safety nets, standard guardrails as specified in Section 1620 around all unprotected sides or edges, or, provided the employer demonstrates that the use of conventional fall protection methods are infeasible, a fall protection plan with safety monitors and controlled access zones as described in Sections 1671.1 and 1671.2 by other means prescribed by CSO Article 24, Fall Protection, when the floor or walking/working surface is over 15 feet above the surrounding grade or floor level below.

(1) Floor, roof, and wall opening shall be guarded as required by Section 1632.

(g) Work on Starter Board, Roof Sheathing and Fascia Board.

(1) When installing starter board, roof sheathing, and fascia board, employees shall be protected from falls when 6 feet or more above the surrounding grade or floor level below falling by one or more of the following methods: scaffolding, safety nets, guardrails, personal fall protection systems, or, provided the employer demonstrates that the use of conventional fall protection methods are infeasible, a fall protection plan with safety monitors and controlled access zones as described in Sections 1671.1 and 1671.2. other means prescribed by CSO Article 24, Fall Protection as follows:

(A) ~~For structures greater than one story in height where the fall height exceeds 15 feet above the surrounding grade or floor level below, or~~

(B) ~~When working on roofs sloped greater than 7:12.~~

~~EXCEPTION to (g)(1)(B): For roofs sloped up to 12:12, slide guards may be used as fall protection up to and including 15 feet as measured from the eaves to the surrounding grade or floor level below.~~

~~(2) Employees working inside the gable end truss or rafter shall be considered protected from falls where the gable end truss has been installed and braced to withstand a lateral force of 200 pounds and the employee installs fascia or starter board working from within the gable end truss or rafter.~~

~~(3) When work must be performed outside the gable end truss or rafter, the employee shall be protected from falling when working 6 feet or more above the surrounding grade or floor level below by one or more of the following methods: scaffolding, safety nets, guardrails, or a personal fall protection systems, or, provided the employer demonstrates that the use of conventional fall protection methods are infeasible, a fall protection plan with safety monitors and controlled access zones as described in Sections 1671.1 and 1671.2 other means prescribed by CSO Article 24.~~

~~EXCEPTION to (g)(3): When the work is of short duration and limited exposure and the hazards involved in rigging and installing the safety devices required equal or exceed the hazards involved in the actual construction, these provisions may be temporarily suspended provided the work is performed by a qualified person.~~

(i) Scaffolding.

(1) Where scaffolding is used, it shall be constructed in accordance with all applicable requirements of CSO Articles 21 and 22 (Scaffolds).

(2) Where scaffolds are installed parallel and adjacent to framed structure walls, the interior railing may be omitted for installing joists, rafters or trusses if the scaffold platform is 6-15 feet ~~or less~~ from the interior floor level below and the top plate is higher than the adjacent work platform.

(3) When a scaffold is used as an edge protection platform:

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

Subchapter 4. Construction Safety Orders Article 30. Roofing Operations and Equipment

Amend Section 1730 to read:

§1730. Roof Hazards.

(a) During roofing operations the employer shall comply with the provisions of Section 1509 and employees shall be trained and instructed in accordance with the provisions of Section 1510 of these orders. This section does not apply to residential-type roofing activities as defined in Section 1731.

~~Note: (g)~~ For purposes of Section 1730, the height measurement shall be determined by measuring the vertical distance from the employee's walking/working surface ~~lowest edge of the roof or eaves~~ to the ground or level below. The height of parapets shall not be included in the roof height measurements.

~~Exception to Section 1730: Section 1731 applies instead of Section 1730 for roofing work on new production-type residential construction with roof slopes 3:12 or greater.~~

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

Subchapter 4. Construction Safety Orders
Article 30. Roofing Operations and Equipment

Amend Section 1731 to read:

§1731. ~~Roof Hazards New Production Type Residential Construction~~ Residential-type Roofing Activities.

(a) Scope and Application.

~~(1) This section shall apply only to residential-type roofing activities roofing work on new production type residential construction with roof slopes 3:12 or greater.~~

~~(2) This section does not apply to custom built homes, re-roofing operations, roofing replacements or additions on existing residential dwelling units.~~

~~Note: For other roofing operations and slopes less than 3:12, see Section 1730.~~

(b) Definitions.

~~Custom-Built home. A single detached housing unit built under a single contract.~~

~~Eaves. The lowest edge of a sloped roof.~~

~~Production type residential construction. Any new residential housing unit that is not a custom built home.~~

Residential-type roofing activities. Roofing work consists of roofing and re-roofing work, including roof removal performed on single-family homes, townhouses, duplexes and other structures covered by Section 1716.2. Roofing work also includes loading and installation of roofing materials, including related insulation, sheet metal that is integral to the roofing system, and vapor barrier work, but does not include the construction of the roof deck.

Roof. The exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

Roof slope. For the purposes of this section, the incline angle of a roof surface, given as a ratio of the vertical rise to the horizontal run. For example, a 4:12 roof has 4 feet of vertical rise for 12 feet of horizontal run.

~~Roof work. The loading and installation of roofing materials, including related insulation, sheet metal that is integral to the roofing system, and vapor barrier work, but not including the construction of the roof deck.~~

(c) Fall Protection for Roofing Work.

(1) Roof slopes 0:12 up to and including 7:12. Employees shall be protected from falling when on a roof surface where the employee fall distance is 6 feet or more above the grade or level below by use of one or more of the following methods: personal fall protection systems, scaffolding, safety nets, guardrails, or, provided the employer demonstrates that the use of conventional fall protection methods are infeasible, a fall protection plan with safety monitors and controlled access zones as described in Sections 1671.1 and 1671.2.

~~(1) Roof Slopes 3:12 through 7:12: Employees shall be protected from falling when on a roof surface where the eave height exceeds 15 feet above the grade or level below by use of one or any combination of the following methods:~~

~~(A) Personal Fall Protection (Section 1670).~~

~~(B) Catch Platforms [Section 1724(c)].~~

~~(C) Scaffold Platforms [Section 1724(d)].~~

~~(D) Eave Barriers [Section 1724(e)].~~

~~(E) Standard Railings and Toeboards (Article 16).~~

~~(F) Roof Jack Systems [Section 1724(a)].~~

(2) Roof Slopes ~~steeper~~ greater than 7:12: Employees shall be protected from falling by methods prescribed in Subsections (c)(1)(A), (B), (C), or (E) regardless of height.

(e) For the purposes of this section, the employee's fall height measurement shall be determined by measuring the vertical distance from the employee's walking/working surface to the ground or level below. The height of parapets shall not be included in the roof height measurement.

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS
RESULTING FROM THE FIRST 15-DAY COMMENT PERIOD

I. Written Comments

1. Lawrence Halprin, Keller and Heckman LLP, by email dated April 7, 2024.

Comment 1.1:

The commentator states that they submit their comment as a public service and acknowledges that they have not researched the issue to determine whether a distinction is made between reroofing a roof versus replacing broken or missing shingles on a roof or when the number of shingles being replaced might cross over the line between a general industry maintenance/repair activity and a construction activity. The commentator states that they represented the National Chimney Sweep Guild in a challenge to the November 18, 2016 Final Rule amending OSHA’s walking surfaces rule for General Industry and attached a settlement agreement they reached with OSHA that does not address compliance with any other OSHA requirements.

Response to Comment 1.1:

This comment is outside the scope of the 15-Day Notice. The Board thanks the commentator for their input and participation in the Board’s rulemaking process.

2. Kevin Bland, California Framing Contractors Association, Residential Contractors Association and Housing Contractors of California by letter dated April 17, 2024.

Comment 2.1:

The commentator states that the both the 45-day and 15-day changes applies to ‘all construction’ which is inappropriate and thus should be stricken. The commentators repeated requests submitted during the 45-Day comment period including that the proposed changes for section 1671.1 be stricken, that their framing video be incorporated by reference, that the proposed draft include an option to utilize Appendix E to Subpart M of Part 1926 of the Federal regulation, that their proposed changes for sections 1716.2 (e)(1), (f) and (g)(1) be accepted, and that the effective enforcement date of a proposed regulation be delayed for 12 months past the adoption date.

Response to Comment 2.1:

The Board declines to strike the proposed amendments to section 1671.1 and refers the commentator to the 45-day response to his similar comment 5.2. After further discussion and consideration, the Board is proposing to add a clarification within subsection 1716.2 (e) to enhance worker protections by requiring that certain additional measures be implemented in conjunction with the use of a fall protection plan. The Board declines the recommendation to add a non-mandatory template into the regulatory language, as guidelines, templates or model programs are best left for

Cal/OSHA to develop as part of outreach and/or educational materials. The other comments about the rest of the original proposal are outside the scope of the 15-Day Notice.

Comment 2.2:

The commentors state that they conducted a survey of 5 years of OSHA 300 logs from 11 of its members and that the 11 member companies report no fatal injuries from residential framing work since the implementation of California's title 8 section 1716.2 (20 years ago). The commentors also include numbers of reportable "serious" injuries they expect under the proposed regulation.

Response to Comment 2.2:

These comments are outside the scope of the 15-Day Notice. The Board appreciates the commenters' information but notes that injury data from 11 members of the California Framing Contractors Association, likely from exemplary employers, cannot be used as a true representation of each and every framing employer in the state of California, including non-compliant employers. The Board directs the commentor's attention to the March 2024 CPWR bulletin data (DataBulletin-March2024.pdf (cpwr.com)) included as an Additional Document Relied Upon # 7 in the first 15-Day Notice to see accurate data from fatal and non-fatal falls and the researchers' findings that falls are preventable and the importance to "PLAN ahead to prevent falls on the job," since many decisions, such as access equipment, work organization or methods and personal protective equipment (PPE) selection and purchase, are made before the job begins¹. The Board is also relying on Cal/OSHA's Residential-Type Construction and Census of Fatal Occupational Injuries (CFOI) data (see additional document relied upon #2 of this 2nd-15 Day Notice) which supports the need for this proposed rulemaking to address fatal falls in the construction industry, as many fatalities are going unaddressed with the current regulations (Title 8 sections 1671.1, 1716.2, 1730, and 1731). Thus, as stated in the ISOR, these amendments are necessary to achieve consistency and conformity with the Fed-OSHA standards, as required by Labor Code section 142.3. See also response to comment 4.2.

Comment 2.3:

The commentors submitted explanations of why each Photo Example given by Federal OSHA during the March 21, 2024 Standards Board Meeting in San Diego is infeasible and request that the Board carefully review the photos and the commentors responses related to each of these photos.

Response to Comment 2.3:

These comments are outside the scope of the 15-Day Notice.

Comment 2.4:

¹ William Harris, MS, Raina D. Brooks, MPH, Amber Brooke Trueblood, DrPH, Thomas Yohannes, MPH, Jessica Bunting, MPH [March 2024]. Fatal and Nonfatal Falls in the U.S Construction Industry, 2011-2022. <https://www.cpwr.com/wp-content/uploads/DataBulletin-March2024.pdf>.

The commentors provided concerns related to multiple responses provided by the Board to comments received during the original 45-Day comment period and state that they continue to oppose the imposition of the less safe Federal regulation on California workers.

Response to Comment 2.4:

These comments are outside the scope of the 15-Day Notice.

The Board thanks the commentors for their input and participation in the Board's rulemaking process.

3. Dave Smith, Dave Smith and Company, by letter dated April 19, 2024.

Comment 3.1:

The commentor states that their consulting company worked with wood framing contractors before and after the adoption of 1716.2 and that these procedures solved many problems of implementation and effectively reduced elevated fall exposures. The commentor adds that the use of personal fall protection doesn't work as there is nothing to attach to (no anchorage).

Response to Comment 3.1:

This comment is outside the scope of the 15-Day Notice.

Comment 3.2:

The commentor states that the Fed OSHA and the Chimney Sweeps Guild settlement agreement reads like a Fall Protection Plan, that aerial lifts are not always feasible due to access and space constraints and that most existing hazard controls as explained by Fed OSHA do not work for joists or roof trusses.

Response to Comment 3.2:

This comment is outside the scope of the 15-Day Notice.

Comment 3.3:

The commentor states that an increased use of ladders increases fall risk and agrees with the many carpenters and framers that they will see more ladder use because all of the other methods are not feasible or practical.

Response to Comment 3.3:

This comment is outside the scope of the 15-Day Notice.

Comment 3.4:

The commentator urges the Board to reconsider the effort to rewrite what are more effective and feasible standards for specific work operations, or include as Appendices the existing 1716.1 and 1716.2 as authorized Fall Protection Plans.

Response to Comment 3.4:

This comment is outside the scope of the 15-Day Notice.

The Board thanks the commentators for their input and participation in the Board's rulemaking process.

4. Michael Donlon, MD Safety Service LLC, by letter dated April 22, 2024.

Comment 4.1:

The commentator states that this rulemaking is unnecessary because California's fall protection regulations are more effective than OSHA's and that California targets the regulation at the hazard and OSHA implements an arbitrary 6-foot rule.

Response to Comment 4.1:

This comment is outside the scope of the 15-Day Notice.

Comment 4.2:

The commentator submitted their own calculations to support their belief that states that are under OSHA jurisdiction and follow the 6-foot rule, have fewer construction workers but more deaths from falls than California. The commentator states that the effectiveness of regulations must be measured in lives not lost, not in feet and believes that the philosophy of getting input from the workers and creating safe work practices is better than picking an arbitrary number.

Response to Comment 4.2:

These comments are outside the scope of the 15-Day Notice. The Board appreciates the commentator's interest in obtaining fatality data and notes that the March 2024 CPWR bulletin data ([DataBulletin-March2024.pdf \(cpwr.com\)](#)) included as an Additional Document Relied Upon # 7 in the first 15-Day Notice has similar numbers to the one the commentator provided but more accurate. Additionally, the Board is relying on Cal/OSHA's Residential-Type Construction and Census of Fatal Occupational Injuries (CFOI) data (see additional document relied upon #2 of this 2nd-15 Day Notice) which supports the need for this proposed rulemaking to address fatal falls in the construction industry, as many fatalities are going unaddressed with the current regulations (Title 8 sections 1671.1, 1716.2, 1730, and 1731). Furthermore, as previously stated by Fed OSHA, their decision is not based on statistics, rather the measures of efficacy are based on OSHA standard 29

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CFR 1902. This OSHA standard requires positive protection for specific hazards which is what is missing from existing California regulations. Therefore, as stated in the ISOR, these amendments are necessary to achieve consistency and conformity with the Fed-OSHA standards, as required by Labor Code section 142.3. See also response to comment 2.2.

The Board thanks the commentors for their input and participation in the Board's rulemaking process.