

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
Tel: (916) 274-5721 Fax: (916) 274-5743
Website address www.dir.ca.gov/oshsb



FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

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

Fall Protection in Residential Construction

UPDATED INFORMATION

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantial, non-substantial or sufficiently related modifications that are the result of public comments and/or Board staff evaluation.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE 45-DAY PUBLIC COMMENT PERIOD (December 1, 2023 - January 18, 2024)

Subsection 1671.1 (a)(1) (non-enforceable note)

A modification is proposed for 1671.1(a)(1) to delete the non-enforceable note attached to this subsection, as requested by Federal OSHA, as it appears to be inconsistent and contradictory to the Federal and California requirement that a fall protection plan be site specific. The purpose and necessity of this modification is to make clear to the employer that a fall protection plan must be site specific as required by this section. Additionally, this clarification will ensure the regulation is at least as effective as the Federal standards.

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS RESULTING FROM THE 45-DAY COMMENT PERIOD:

I. Written Comments

- 1. Bruce Wick, California Professional Association of Specialty Contractors (CALPASC) and California Framing Contractors Association, by letter dated June 7, 2019, and resubmitted via email on December 4, 2023**

Comment 1.1:

The commentors stated they are disappointed in the significant errors in the Standardized Regulatory Impact Assessment (SRIA) in that the costs presented are substantially understated or miscalculated. Commenter stated that benefits and expected savings should be reduced, the

framing and roofing costs (reflected in the original 2019 SRIA) make significant incorrect assumptions, and request that a revised SRIA/assessment be produced.

Response to Comment 1.1:

The Board is not persuaded by the commenters' arguments and respectfully disagrees with these statements. The Board hired David Roland-Holst, Samuel Evans, and Sam Heft-Neal from Berkeley Economic Advising and Research (BEAR), a reputable consulting company, to prepare the Standardized Regulatory Impact Assessment (SRIA). Furthermore, the SRIA was based on consultation with regulatory and industry experts, including the commenters. As is standard for an impact assessment, cost estimates reflect only the proposed changes to the existing standard and do not represent the full cost of complying with existing requirements. Additionally, this analysis was prepared with guidance from the Department of Finance (DOF) and utilized DOF residential projected construction growth rates. Moreover, the SRIA underwent extensive and multiple internal levels of review, including reviews from the DOF, and none of these reviewers identified the errors or flaws listed by the commenters. Nonetheless, as indicated in the Notice, the Board updated the benefits and compliance costs to account for inflation utilizing DOF's recent projections. Therefore, the Board declines the commenters' recommendation to make additional revisions to the SRIA.

Comment 1.2:

The commenters believe that the expected saving of 2.8 lives (rate of fatalities) in the SRIA should be reduced from 2.8 down to 1.8. Likewise, commenters believe that there will be many more injuries involving those who install and disassemble the fall protection and recommend that the benefits/avoided injuries estimated in the 2019 SRIA be reduced to 40% of the calculated cost.

Response to Comment 1.2:

The Board is not persuaded by the commenters' arguments and notes the consulting company that performed the 2019 SRIA based their assumptions and calculations on information originally obtained by reaching out to stakeholders, including the commenters. Commenters provide no statistical or workers' compensation data to support their recommended revisions; therefore, the Board declines to make further revisions to the SRIA. See also response to comment 1.1.

Comment 1.3:

The commenters state they disagree with the assessment that framing employees will be protected by tie-off fall protection systems and add that framing employees have nothing to tie off to, a tie-off system does not provide effective fall protection for framing employees under 15 feet, and all framing operations would be covered by 100% scaffolding (the stricter alternative).

Response to Comment 1.3:

The Board is not persuaded by the commenters' arguments. The Board relied on Fed-OSHA's February 2015 letter where OSHA notes that since the Cal/ OSHA standard (section 1716.2) was promulgated, there have been additional technological advances in the types and capability of commercially available fall protection equipment, and OSHA rarely encounters real-world situations in which conventional fall protection is truly infeasible. Likewise, the 2020 OSHA Guidance Document titled "[Fall Protection in Residential Construction](#)," the 2011 OSHA Fact Sheet titled "[Reducing Falls During Residential Construction: Installing Roof Trusses](#)," and the March 21, 2024, OSHA Directorate of Construction presentation (included as documents relied upon) list various methods that can provide suitable protection to framing employees, including but not limited to, the use of scaffolds. See also response to comment 1.2.

Comment 1.4:

The commenters state that a fall protection plan requires infeasibility of conventional fall protection and provides no physical protection for workers. They add that when section 1716.2 was developed, multiple advisory committee meetings were spent with Labor and Cal/OSHA personnel where there was agreement that this section would cover contingencies and make it extremely difficult to declare infeasibility and to use a fall protection plan. According to the commenters, they worked hard to avoid having any fall protection plans in California residential construction.

Response to Comment 1.4:

The Board acknowledges the commenters' support for providing positive means/physical protection for workers and agrees that a fall protection plan does not provide such protection. Additionally, the Board agrees with the commenters' observation that employers must be required to demonstrate that the use of conventional fall protection systems are not feasible or create a greater hazard before using a fall protection plan.

Comment 1.5:

The commenters state that the roofing costs assessment makes significant incorrect assumptions, reroofing operations would involve one- and two-story housing and would be 50% of the total housing stock per year. The commenters also reiterate their belief that: the SRIA includes errors previously discussed; the SRIA does not address the housing crisis; it does not reflect the re-roofing operations trigger height being lowered from 20 feet to 6 feet; fall protection plans be removed from the SRIA in their entirety; and CALPASC be removed as a source of information for Table 3 on page 9 of the SRIA.

Response to Comment 1.5:

The Board is not persuaded by the commenters' statements that the roofing costs assessment prepared by reputable economists makes significant incorrect assumptions because the commenters have provided no support for such statements. Further, the Board notes that the

20 feet trigger height contained in section 1730 (Roof Hazards) was not touched; rather as stated in the ISOR, the amendments proposed for this section are clarifications to inform the employer that section 1730 does not apply to residential-type roofing activities nor to how the employee's height working measurement is to be taken. In addition, the average useful life of a residential roof can last beyond the conservative assumption of 25 years used in the SRIA. Therefore, the Board disagrees with the commenters' assertions that reroofing operations costs would involve two story housing, would involve 50% of the total housing stock per year, or that the trigger height for re-roofing operations would be lowered from 20 feet to 6 feet under the proposed amendments.

Regarding the housing crisis comment, as stated in the SRIA, no significant impact on housing costs was identified and costs are expected to be passed on to consumers of residential framing and roofing services. The Board disagrees with the request to remove fall protection plans from the SRIA in their entirety, since employers who demonstrate that the use of conventional fall protection systems are not feasible or create a greater hazard can use fall protection plans in accordance with section 1671.1.

As for the request to remove CALPASC as an information source or consultant utilized for the SRIA, the commenters were verbally interviewed by the economists who prepared the SRIA and the Board acknowledges that the commenters now disagree with the information reflected therein. The Board declines to grant this request as it goes beyond the formal rulemaking process. See also responses to comments 1.1, 1.2 and 3.1.

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

2. Matthew Kuzemchak, CIH, Area Director, on behalf of U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) by letter dated December 22, 2023.

Comment 2.1:

OSHA, in an advisory opinion upon the completion of their review of the proposed amendments for Occupational Safety Standard Title 8, Construction Safety Orders, sections 1671.1, 1716.2, 1730 and 1731 for Fall Protection in Residential Construction, concluded that the changes appear to be at least as effective as the Federal standard. However, OSHA adds that the note to section 1671.1 (a)(1) appears to be contradictory to the Federal and California requirement that a fall protection plan be site specific; therefore, the standard does not appear to be at least as effective as the Federal standards.

Response to Comment 2.1:

The Board appreciates the commenter's support for amending these regulations to become at least as effective as the Federal standard and agrees with their comment that the note to section 1671.1 (a)(1) appears to be contradictory to the requirement that a fall protection plan be site specific.

In response to this comment, the Board has modified the proposed regulatory language to delete the non-enforceable note in section 1671.1 (a)(1). See 15-Day Notice of April 5th, 2024.

The Board thanks OSHA for their input and participation in the rulemaking process.

3. Bruce Wick, Housing Contractors of California, California Framing Contractors Association and Residential Contractors Association, by letter dated January 12, 2024, along with attachment of letter dated June 7, 2019, previously submitted as comment No. 1.

Comment 3.1:

The commentors note that the association previously named California Professional Association of Specialty Contractors (CALPASC) has rebranded its name to Housing Contractors of California. The commenters request a meeting with the person that oversees the SRIA process, reiterate their statements about factual errors and cost miscalculations in the SRIA, reattach their letter submitted under written comment No.1, and add that they have received no response to their original letter. The commenters also state that implementing this regulation will provide little to no benefit and will make the California housing crisis worse.

Response to Comment 3.1:

The Board is not persuaded by the commenters' arguments that the SRIA includes factual errors and cost miscalculations. Please see responses to comments 1.1, 1.2, 1.3, 1.4 and 1.5. Additionally, the Board notes that the commenters were asked for clarifications related to their comment letter and for any information, or statistical or workers' compensation data, available to support their comments to include in the rulemaking record; however, no data was provided by the commenters.

About responding to comment letters received, responses are not sent directly to commenters but rather, as per Government Code section 11346.9, responses are included in the rulemaking file.

The Board disagrees with the commenters' statement that this regulation will provide little to no benefit, and notes that this proposal will not only enhance worker safety but will assist in making sure California's residential fall protection regulation is at least as effective as federal OSHA, as required by Labor Code section 142.3. Further, regarding the housing crisis comment, as stated in the SRIA, no significant impact on housing costs was identified and costs are expected to be passed on to consumers of residential framing and roofing services.

The Board has separately responded to the commenters' letter dated June 7, 2019, which has been labeled as comment 1 above. Please see responses to comments 1.1, 1.2, 1.3, 1.4 and 1.5.

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

4. Eric Berg, Cal/OSHA’s Deputy Chief of Health and Jason Denning, Principal Safety Engineer Cal/OSHA Research and Standards Safety Unit by letter dated January 16, 2024.

Comment 4.1:

The commentors state that Cal/OSHA strongly supports the rulemaking proposal in that the proposal is necessary to save lives and prevent serious and disabling injuries to workers caused by falls over six feet, and confirms the change is needed to make California regulations as effective as established federal OSHA and other state regulations that have been in place for decades.

Response to Comment 4.1:

The Board acknowledges the commenters’ support for the proposed amendments.

Comment 4.2:

The commentors note that falls from heights continue to be one of the most significant hazards faced by employees in the construction industry and account for 35 to 39 percent of all fatal injuries in the U.S. from 2007 to 2018. A fall from six feet in height will accelerate a human body to approximately 28 ft./s (19 mph) at impact. The impact on the body would be approximately 2,000 pounds of force for a 200 pound person if falling onto a hard surface. At this speed and force, workers are at risk of serious injuries and death, which are not currently addressed by title 8 regulations.

Response to Comment 4.2:

The Board acknowledges and appreciates the commenters’ submission of fatality data associated with fall from heights and the impact a fall from six feet will have on the human body.

Comment 4.3:

The proposed regulation will require the use of guardrails, personal fall protection, scaffolds, or safety nets to protect workers from falls from walking/working surfaces six feet or greater in height above the ground or a lower level. Additionally, the proposed regulatory change will limit the use of fall protection plans in accordance with title 8 sections 1671.1 and 1671.2 to only when an employer can demonstrate other prescribed fall protection methods are infeasible or create a greater hazard.

Concerns that the proposed regulation will force the construction industry to utilize equipment and methods that are infeasible or create a greater hazard to workers are unfounded. For example, it was argued that the proposal would create a greater hazard for employees because ladders are not stable working platforms and create ergonomic issues for workers when lifting joists and trusses to an upper level. However, the accident data included in the commenters’ letter illustrates that fatal incidents related to the use of ladders were less than one-third of that from falls. Secondly, other mechanical means of placing joists and trusses, such as cranes or

other hoisting devices, should be used instead of employees lifting structural members on ladders. Lastly, the proposal does not mandate the use of ladders.

Concerns regarding the use of scaffolding as fall protection would create a greater hazard to employees than working from heights without fall protection is also unfounded. This concern is based on the purported time needed to install scaffolding, which allegedly could expose workers to a greater duration of unprotected fall hazards. Accident data included in the commenters' letter illustrates the number and rate of fatalities for the use of scaffolding and staging for 2011- 2018 were even less than the use of ladders and much lower than the number of fatalities from falls.

Response to Comment 4.3:

The Board acknowledges and appreciates the commenters' statements and submission of fatality data caused by the use of ladders and of scaffolding in construction.

Comment 4.4:

Concerns that this proposal would lead to the increased use of fall protection plans in the construction industry since personal fall protection is ineffective or difficult to implement at six-foot working levels are unfounded. The proposed rulemaking, in reality, will reduce the ability to use fall protection plans, which are currently permitted by title 8 regulations. The proposed changes limit the use of fall protection plans in compliance with existing title 8 sections 1671.1 and 1671.2 to when the employer demonstrates that other fall protection measures are infeasible or create a greater hazard. The current regulation is much less protective and allows fall protection plans when other fall protection methods are impractical or create a greater hazard.

Commenters note that data does not support the argument that section 1716.2 (fall protection required at heights above 15 feet for residential-type construction framing work) was a landmark regulation with advanced safety procedures that is as effective as federal OSHA requirements in reducing fall injuries. Accident data in Cal/OSHA's letter for total construction fatalities and construction fall fatalities in California by year does not show any sustained and significant reduction in fall injuries compared to fall fatality data prior to the effective date of section 1716.2 (August 6, 2004). The computed linear regression of percent of construction fatalities from falls actually shows a slight increase from 2000 to 2022 (most recent data).

In closing, Cal/OSHA supports the regulation for fall protection in residential-type construction proposed by Standards Board staff. Currently, title 8 regulations are lacking fall protection requirements for many activities in residential construction below 15 feet, the proposal will enhance worker safety and ensure that California regulations are at least as effective as federal OSHA and the other state OSHA programs that have already adopted fall protection requirements at 6 feet working heights.

Response to Comment 4.4:

The Board acknowledges the commenters' support for this proposal and appreciates the commenters' submission of the data on construction fall fatalities in California, which does not support the statement made by some stakeholders that existing section 1716.2 is as effective as federal OSHA requirements in reducing fall injuries.

5. Kevin Bland, California Framing Contractors Association, Residential Contractors Association and Housing Contractors of California by letter dated January 12, 2024.

Comment 5.1:

The commentors state they were involved with the development and implementation of the original regulation for residential construction (section 1716.2); California workers engaged in residential framing have significantly benefited from the current standard in place for over 20 years; and California has led the way in reducing falls in residential construction. They add that it is vital California put the safety of its residential framing workers above the political pressures of the Federal OSHA's attempt to undermine the safe and effective process outlined in the current section 1716.2 regulation.

Response to Comment 5.1:

The Board is not persuaded by the commenters' arguments that the proposed amendments would undermine the safe and effective process outlined in the current section 1716.2 regulation. The existing regulation (section 1716.2) adopted in 2004 instituted a uniform 15-foot trigger height as a means to improve compliance (by establishing a common trigger height for all trades working on a residential-type framing worksite) and prescribed work practices in lieu of requiring positive means of fall protection.

Fed OSHA has been pointing out for many years (see the February 4, 2015, letter from Fed OSHA)¹ that the existing regulation includes many exceptions to the general requirements for requiring fall protection, which leave California employees exposed to fall hazards where employees covered by OSHA's standard would be protected. For instance, employees are allowed to walk on the top plate and/or work on 4 inch or wider structural members without the use of fall protection. Similarly, an exception in section 1716.2 (e)(1) considers employees protected from falls between rafters or roof trusses when they are walking/working on securely braced rafters or roof trusses on center spacing not exceeding 24 inches when more than 6 feet from an unprotected side or edge. Yet, the standard does not specify the configuration of the members, meaning that they could be laid on their sides or vertical as these members are typically installed, leaving gaps between the members where an employee can step into or fall through. Furthermore, the standard does not address what it means by securely braced - it is

¹ Letter dated February 4, 2015 from Mr. Ken Nishiyama Atha of the US-DOL, Fed-OSHA to the Board.
<https://www.dir.ca.gov/oshsb/documents/Federal-Fall-Protection-Trigger-Heights-for-Residential-Construction-ACLetter-2-4-2015.pdf>.

unclear if that means nailed down or otherwise braced - nor what the criteria for “secure” is. See also comment and response 11.1.

Additionally, the Board notes that the commenters have provided no data to support their statements that California has led the way in reducing falls in residential construction, whereas the comment letter submitted by Cal/OSHA includes construction fall fatalities data showing there is no sustained or significant reduction in fall injuries compared to fall fatality data prior to the effective date of section 1716.2 (August 6, 2004). Anecdotal statements are not sufficient to demonstrate that existing section 1716.2 is as effective as federal OSHA requirements in reducing fall injuries in residential construction. (See also response and comment 4.4).

Moreover, the January 24, 2024, letter submitted by Fed OSHA states, “OSHA’s indices of effectiveness require that State Plans standards contain specific provisions for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure.” (29 CFR 1902.4(b)(2)(vii)). As currently written, the California standards do not require employers engaged in residential construction activities to provide fall protection from 6 to 15 feet. Thus, as noted in the ISOR, the proposed amendments are required to ensure that section 1716.2 is commensurate with Fed OSHA standards, as required by Labor Code section 142.3.

Comment 5.2:

The commenters state the rulemaking proposal has been noticed as a “Residential Fall Protection Proposal” and the draft contains a substantial change to title 8 section 1671.1, which the commenters believe applies to all construction. The commenters note there has been no effort to include or provide notice to any other trades or contractors affected by the proposed change; therefore, requests this section be stricken from the proposal along with the note.

Commenters further add that Appendix E to Subpart M of Part 1926 of the Federal regulation provides a sample plan for use in residential construction that recognizes the hazards and infeasibility associated with residential framing activities, which OSHA and Cal/OSHA seem to ignore all the evidence presented that conventional fall protection is infeasible, not practical and will create a greater hazard. Additionally, commenters reference CFR Section 1926.502(k) (fall protection plans) and state it does not incorporate any reference to the note or the presumption in section 1671.1(a). Commenters request the proposed changes to section 1671.1 be stricken from the proposed draft along with the note.

Response to Comment 5.2:

The Board is not persuaded by the commenters’ arguments that there has been no effort to include or provide notice to any other trades or contractors affected by the proposed change. This regulatory proposal was published in the California Regulatory Notice Register, posted on the OSHSB’s website and the Notice of Proposed Regulatory Action, which includes the public hearing date, was sent via email to those persons who have requested notice of regulatory actions. Further, as stated in the initial statement of reasons (ISOR), the amendments proposed

for section 1671.1 are necessary to address Fed-OSHA's concerns about the use of the term "impractical" and to make sure the employer demonstrates infeasibility or how conventional methods contribute to a greater hazard to ensure section 1671.1 is commensurate with Fed-OSHA standards as required by Labor Code section 142.3.

Concerning the commenters' arguments expressed in the video shown by the commenters during the December 14, 2023, Board meeting in Folsom, CA, please see response to oral comment 7.1.

Regarding the statement related to Appendix E to Subpart M of Part 1926 of the Federal regulation, the Board notes these are Non-Mandatory Guidelines. While we agree with the commenter that Appendix E provides a sample plan for use in residential construction, OSHA specifies that "Employers engaged in leading edge work, precast concrete construction work and residential construction work who can demonstrate that it is infeasible or creates a greater hazard to use conventional fall protection systems must develop and follow a fall protection plan." The commenters are encouraged to share the evidence they refer to with residential construction employers, who in turn can determine whether or not it applies to their construction site and could be used to show the use of conventional fall protection is infeasible or will create a greater hazard as required by section 1671.1.

Regarding the note proposed for section 1671.1 (a), the Board notes this language appears verbatim in Fed-OSHA 1926.501(b)(13). As stated in the ISOR, this clarification is necessary to ensure California standards are commensurate with those of Fed-OSHA. Therefore, the Board declines the request to delete the amendments proposed for section 1671.1.

Comment 5.3:

Commenters state the main and overriding purpose of the original 1716.2 regulation was to all but eliminate the use of fall protection plans in residential framing by detailing each task in the process of framing utilizing the safest methods and procedures and add their members have experienced almost zero falls using the 1716.2 methods over the last 20 years. They further state it has been demonstrated time and time again that on the first floor framing conventional fall protection does not work, and in fact, creates a greater hazard in most, if not all of the framing processes at that level. They state this is evidenced by the video provided to and shown to the Board during the public comment section of the Board meeting on December 14, 2023, in Folsom. Additionally, they request this video, in its entirety, be incorporated herein by reference and be made part of the official rulemaking record for this proposal.

Response to Comment 5.3:

The Board is not persuaded by the commenters' arguments and notes clarifications related to this comment letter were sought by the Board, including requesting any report or information detailing the framing tasks or methods evaluated, or new statistical or workers' compensation data to include in the rulemaking record. No data was provided. The Board agrees with the commenter that fall protection plans do not offer positive means of protecting workers against falls and emphasizes that prior to using a site-specific fall protection plan, employers need to

show the use of conventional fall protection systems is infeasible or creates a greater hazard. See also response and comment 2.1.

Anecdotal statements, like the one stated by the commenters that their members have experienced almost zero falls, are not sufficient to demonstrate the current language of section 1716.2 is as effective as federal OSHA regulations. Particularly when construction fall fatalities data, provided in the January 16, 2024, comment letter submitted by Cal/OSHA, shows there is no sustained or significant reduction in fall injuries compared to fall fatality data prior to the effective date of section 1716.2 (August 6, 2004). (See response and comment 4.4).

Furthermore, as stated in the letter received on February 4, 2015, from Mr. Ken Nishiyama Atha of Fed-OSHA by the Board and in the letter received on January 24, 2024, from James Wulff of Fed OSHA, “In the Federal standards, injury and illness rates are not a consideration in the Assistant Secretary’s determination of indices of effectiveness for elements of State plan program.”

Regarding the argument that conventional fall protection does not work on the first floor in residential framing operations, see response and comment 1.3. Regarding the belief that prescribed work practices or a common trigger height provide equivalent safety as the provision of fall protection, see response to comment 5.1. Furthermore, the Board is not persuaded by the commenters’ arguments expressed in the video shown by the commenters to the Board during the public comment section of the Board meeting on December 14, 2023, in Folsom. See response to comment 7.1. By responding to the comments in the video, the video is now part of the rulemaking record.

As explained in the ISOR, the proposed amendments are necessary to raise awareness among employers that they are required to use a method of positive fall protection, and to ensure California’s framing standards are commensurate with comparable Fed-OSHA standards.

Comment 5.4:

Commentors believe there is substantial evidence the hazards involved in installing scaffolds, guardrails, and "tie-off" systems for the first-floor framing processes are greater than the actual framing activities involved. They request the proposed draft include a definitive option to utilize Appendix E to Subpart M of Part 1926 of the Federal regulation for all first-floor framing activities and recommend this appendix be adopted into the Draft Regulation as Appendix A. Commenters attach proposed Appendix A language, which they state is a verbatim copy of the applicable parts of Appendix E and applies specifically to residential framing construction.

Response to Comment 5.4:

The Board is not persuaded by the commenters’ arguments and declines to include such an appendix. First, Appendix E to Subpart M of Part 1926 of the Federal regulation are nonmandatory guidelines and as such cannot be enforced by Cal/OSHA. Additionally, Appendix E (or the Appendix A proposed by the commenters) include statements that are not consistent with existing title 8 requirements. These inconsistencies can cause confusion or

mislead employers into believing they are in compliance with title 8 regulations when they are not. Inconsistencies observed include not specifying the fall protection plan must be prepared by a qualified person as required by section 1671.1, not including requirement for control lines as per section 1671.2(a), and not including requirements for the safety monitor as per section 1671.2(b), among others. Thus, the Board believes the recommendation to develop a template or guideline would be best left for Cal/OSHA to do as part of outreach and/or educational materials.

The Board also does not agree with the commenters' statement that the use of conventional fall protection presents a greater hazard than the actual framing operations. Rather, it demonstrates the importance of planning ahead of time and ensuring fall protection is planned into the work process. Furthermore, any fall protection for "short duration" and "limited exposure" exemptions currently allowed by the existing regulations are deficiencies Fed OSHA has enumerated as areas where employees are not being afforded the same coverage or protections afforded by OSHA's standards. Please see response to comments 5.1, 5.3 and 11.1.

Comment 5.5:

Commentors state if the Board decides perimeter fall protections must still be installed, then commenters provide the following language:

(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 ±5 feet or more above the surrounding grade or floor level below, fall protection shall be provided by one or more of the following methods around the perimeter of the structure: scaffolding, guardrails, safety nets, personal fall protection systems. For work on the interior of the structure, a fall protection plan consistent with Appendix A shall be used.

(f) Work on Floors and Other Walking/Working Surfaces. When working on floors and other walking/working surfaces that are 6 ±5 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 around the perimeter of the structure: personal fall protection systems, scaffolding, safety nets, standard guardrails as specified in Section 1620 around all unprotected sides or edges. For work on the interior of the structure, a fall protection plan consistent with Appendix A shall be used.

(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 ±5 feet or more above the structure's exterior surrounding grade or floor level below by one or more of the following methods: scaffolding, safety nets, guardrails, personal fall protection

systems. For work on the interior of the structure, a fall protection plan consistent with Appendix A shall be used.

Response to Comment 5.5:

The Board is not persuaded by the commenters' arguments and declines to adopt the proposed modifications. The term "the interior of the structure" is not a clear or well defined term and could be easily misconstrued by the regulated community resulting in appeals or incorrect citations, ultimately making this a non-enforceable regulation. OSHSB is charged with promulgating reasonable and enforceable standards. Regarding the recommendation to use Appendix A see response to comment 5.4.

The Board is also not persuaded by the commenters' arguments that fall protection should be limited to the perimeter of the structure. The Board is relying on the 2020 OSHA Guidance Document titled "[Fall Protection in Residential Construction](#)", the 2011 OSHA Fact Sheet titled "[Reducing Falls During Residential Construction: Installing Roof Trusses](#)" and the March 21, 2024, OSHA Directorate of Construction presentation to remind employers there are fall protection methods that can be used. Ultimately, if the employer demonstrates the use of conventional fall protection systems is infeasible or creates a greater hazard, the employer can use a fall protection plan in accordance with sections 1671.1 and 1671.2.

Comment 5.6:

Commentors state the bids and contracts for construction are very competitive and if conventional fall protection is required on all first floors of residential structures, they will need time to develop fall protection programs, as well as purchase supplies. Commenters also state the reroofing industry is being moved from a 20 foot trigger height. Commenters request should the Board adopt a new regulation that the effective enforcement date of a proposed regulation be delayed for 12 months past the adoption date. Lastly, commenters state they continue to oppose the imposition of the less safe Federal regulation on California workers.

Response to Comment 5.6:

The Board understands the commenters' concern about the need for residential construction companies to plan for bids and contracts, and as such the Board is willing to consider requesting that OAL delay the effective date of the proposed amendments.

The Board disagrees with the commenters' statement that the trigger height for re-roofing operations would be lowered from 20 feet to 6 feet under the proposed amendments. Please see response to comment 1.5.

The Board further disagrees with the commenters' statement that the proposed amendments would be less safe than the current regulation. Please see response to comments 4.1, 4.2, 4.3, 4.4, 5.1, 5.3 and 5.4.

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

II. Oral Comments

Oral comments received at the December 14th, 2023, Standards Board Monthly Meeting during the Public Meeting in Folsom, California

6. Bruce Wick, Housing Contractors Association (Intro to Presentation on Fall Protection with Kevin Bland, California Framing Contractors Association, Residential Contractors Association and Housing Contractors of California)

Comment 6.1:

Commenter thanks the Board for the opportunity to present a video on fall protection they believe will give the Board an introduction to what will be discussed during the public testimony next month. Commenter previously submitted written comments to the Board on June 7, 2019, stating that they found major errors in the SRIA and requesting that a revised SRIA/assessment be produced. Commenter believes the numbers were revised, but only adjusted for inflation, so the SRIA is still incorrect. Commenter asked the Board to ask DIR or Cal/OSHA to reach out to the commenter to help get it done "right".

Response to Comment 6.1:

For comments related to the video, see response to comment 7.1. For comments related to the SRIA, see responses to comments 1.1, 1.2, 1.3, 1.4, 1.5 and 3.1.

Comment 6.2:

Commenter believes that the reroofing industry is being impacted by the proposed changes to the regulation. The commenter states that they only wear fall protection when working 3 stories and up. Commenter also believes that potentially 2,000 roofing contractors who have never had to fall-protect first or second story structures have never done fall protection and would be affected by this proposed regulation. Commenter urges board to identify who represents this industry by reaching out to consultation and communications and engage them in this rulemaking process.

Response to Comment 6.2:

Please see responses to comments 1.5 and 5.2.

Comment 6.3:

Commenter also requests that the Board consider a delay in the implementation of the proposed regulation for probably a year, stating that they will need time to get people on board and also get the equipment that will be needed.

Response to Comment 6.3:

See response to comment 5.6.

Comment 6.4:

Commenter explains the process they participated in to develop section 1716.2 in 2001 and states that many contractors got it and implemented it right away. Commenter states that it has been frustrating because they invited Fed OSHA to come out to California to show them how federal standard was developed, but Fed OSHA responded that 15 feet is not 6 feet.

Response to Comment 6.4:

Please see responses to comments 5.1, 5.3, 5.4 and 5.5. The Board thanks the commenters for their input and participation in the Board's rulemaking process.

7. Video on Fall Protection Presented by Bruce Wick, Housing Contractors Association and Kevin Bland, California Framing Contractors Association, Residential Contractors Association and Housing Contractors of California. Filmed at California Union Local 714 in Buena Park, California.

Comment 7.1:

The commenters shared a video that shows workers involved in framing activities. The commenters stated that the video demonstrates how the existing regulation is as effective as Fed OSHA regulations and how unsafe it would be to adopt Fed OSHA regulations. The video shows how a tie-off system at the first story does not work. The commenters use a dummy tied off at the feet and working off the edge to demonstrate how being 9 feet above the ground and tied-off at the feet does not work. Additionally, commenters state that Fed OSHA also says buy more ladders and work off ladders, which is unsafe.

Response to Comment 7.1:

The Board is not persuaded by the commenters' arguments expressed in the video shown by the commenters to the Board during the public comment section of the Board meeting on December 14, 2023, in Folsom. The concerns that the proposed regulation will force the construction industry to utilize equipment and methods that are infeasible or create a greater hazard to workers and/or that the proposal would require the use of ladders in lieu of walking on top of a structure's top plate or other structural members to install floor joists and roof trusses are unfounded. Likewise, the concerns that the use of scaffolding as fall protection would create a greater hazard to employees than working from heights without fall protection or that the purported time needed to install scaffolding could expose workers to a greater duration of unprotected fall hazards are also unfounded. As stated by Fed OSHA in their February 4, 2015 letter to OSHSB, since the Cal/OSHA standard was promulgated, there have been additional technological advances in the types and capability of commercially available fall protection equipment, and OSHA rarely encounters real-world situations in which conventional fall

protection is truly infeasible. This video actually demonstrates the need for planning ahead, providing the right equipment and training everyone to use the equipment safely, to get the job done safely. See also response and comments 1.3, 1.4, 3.1, 4.3, 4.4, 5.1, 5.4, 5.5 and 11.1.

8. Kevin Bland, California Framing Contractors Association and Residential Contractors Association.

Comment 8.1:

Commenter mentions he worked on this regulation since its inception and emphasizes the work that they did in the early 2000's. Commenter states that the regulation really changed the industry by making it safer than it was before. Commenter provides examples from his experience as an ironworker stating doing what is on paper is not always safe. Commenter acknowledges that this requirement is coming from Fed OSHA and asserts that the Board can push back on this issue because commenter believes the existing California regulations are at least as effective as Fed OSHA's regulations. Commenter also added that he traveled to other states to see how current regulations are implemented and described several fall protection systems and the potential hazards he saw associated with their use. Commenter notes that a possible solution would be to have a standardize fall protection plan, maybe as an appendix, that tells how the interior would be done and with a predetermined infeasibility. Commenter acknowledges that we need change, but they need to keep Californians safe.

Response to Comment 8.1:

Please see responses to comments 1.3, 5.1, 5.3, 5.4, 5.5 and 11.1. The Board thanks the commenters for their input and participation in the Board's rulemaking process.

Oral comments received at the January 18th, 2024, Standards Board Monthly Meeting during the Public Meeting in Sacramento, California.

9. Bruce Wick, Housing Contractors Association

Comment 9.1:

Commenter reiterates comments from last Board meeting, stating the video presentation shown last month emphasizes that what looks safer on paper in federal regulations is not always as safe and is less safe in reality. Commenter explains that Fed OSHA doesn't see issues with feasibility because they encourage people to work off ladders and tie off at feet level, which is less safe than the way it is done in California. Commenter states that Kevin Bland will talk about proposed amendments that they believe comport with Federal OSHA and requests to meet with staff to mitigate the damage. Commenter believes this cannot be made as safe as it is in California but can come close and stated that California leads the nation in the best fall protection regulations for residential construction on a reality basis and not paper basis.

Response to Comment 9.1:

Please see comments 4.1, 4.2, 4.3, 4.4 from Cal/OSHA, as well as responses to comments 1.3, 5.4, 7.1 and 8.1.

Comment 9.2:

The commenter also reiterates comments previously made on the errors in the SRIA and asked for the SRIA to be revised quoting parts of the commenter's letter submitted to the Board in 2019 and 2023.

Response to Comment 9.2:

Please see responses to comments 1.1, 3.1 and 6.1. The Board thanks the commenters for their input and participation in the Board's rulemaking process.

10. Chris Cetin, Safety Manager, Laurence-Hovenier, Inc.

Comment 10.1:

Commenter provides examples of types of carpentry work his company has performed over the last 45 years without any serious injuries or fatalities from falls. Commenter states that safety training provided by the Southwest Carpenters Apprenticeship union program in conjunction with field training on the current fall protection standard (section 1716.2) has been taught for over 20 years because it works. Commenter states that the current regulation, section 1716.2, has created a reduction in falls because it requires fall protection at the uniform height of 15 feet and it created a clear boundary between one story work, which would not require the use of scaffold, guardrails or fall protection versus the second-floor work which does require it. Workers have been taught not to tie off at their feet, and commenter believes the training goes over best practices. Commenter referred to the video presentation from the last Board meeting, stating that it emphasized the challenges of residential construction. Commenter believes that no changes should be made to the current regulation.

Response to Comment 10.1:

Please see responses to comments 3.1, 5.1, 5.3, 5.4, 7.1 and 9.1.

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

11. Matthew Kuzemchak, CIH, Area Director, on behalf of U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

Comment 11.1:

The commenter has submitted written comments and reiterated that the OSHA position continues to be that the current Title 8 regulations are not at least as effective as the Federal program.

Current Construction Safety Orders Fall Protection in Residential Construction do not contain specific provisions for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, as required by Federal OSHA standards. Standards requiring fall protection from 6 feet up in construction activities are in place across the nation with California being the last to permit unprotected work above the 6 feet trigger height.

Commenter provided injury statistics based on fall heights and stated that a worker is nine times more likely to die in a fall from 6 to 15 feet rather than a fall from 6 feet. As written, the current California title 8 standards do not require that an employer take any specific action to protect workers engaged in residential construction activities up to the height of 15 feet. The commenter urges the board to adopt and implement this regulation without any haste to better prevent worker injury in the state.

Response to Comment 11.1:

The Board appreciates OSHA's support for amending these regulations.

12. Tom Rhodes, TWR Enterprises Inc.

Comment 12.1:

The commenter supports and echoes the comments that Bruce Wick and Chris Cetin already stated. Commenter states that the proposed rule ignores the safe processes and procedures that were born out of many advisory committees that were held in developing section 1716.2. The commenter believes that California experiences more injuries as a result from falls off ladders than falls off the 2nd floor. The commenter hopes that the Board stands firm on safety and amends the proposed regulation to address the issues which were brought out during this hearing.

Response to Comment 12.1:

Please see responses to comments 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

13. Maria L. Santiago

Comment 13.1:

The commenter submitted comments in Spanish which once translated state that there wouldn't be that many accidents if workers were to follow the safety instructions. The commenter asked whether it would be better if workers received more training and instruction, were more committed and more conscientious of their work. The commenter believes that workers that do not follow the safety rules should be sanctioned, so there would be less accidents.

Response to Comment 13.1:

The Board notes that providing worker training and/or safety instruction does not replace the requirement for employers to provide physical means to protect workers against falls from less than 15 feet. The Board does not agree that workers should be sanctioned; rather, instances where workers do not follow safety rules should be carefully looked at by employers to determine whether it is due to the presence of language barriers, the lack of relevant work experience, lack of more specific training or the lack of access to the necessary equipment to complete the job safely. As stated in the ISOR, these amendments are proposed to make these regulations at least as effective as the Federal standards.

The Board thanks the commenter for their input and participation in the rulemaking process.

14. Sid Montgomery, United Production Framing

Comment 14.1:

Commenter is concerned about the employee's safety when tying off at their feet, working from ladders and hitting the floor before any of the safety restraint systems would protect them. The commenter emphasized his commitment to employee's safety. However, the commenter states these changes create a dangerous situation and this affects him personally as he has a son in the industry. Commentor is hopeful the Board reconsiders this and can help them out.

Response to Comment 14.1:

Please see responses to comments 3.1, 5.1, 5.3, 5.4, 7.1, 9.1 and 10.1.

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

15. Mark Dally, Circle M Contractors

Comment 15.1:

Commenter has been in the industry since 1976. Commenter believes the regulations are working as they are and these changes will create a hazard that will result in more injuries. Commentor states he has worked all over the US and has not seen anyone do fall protection the way California does, and he challenges the Board to travel around the nation and see for themselves. Commenter suggests the stakeholders should come together to discuss the regulation again as well as the costs associated with implementing the proposed regulation.

Response to Comment 15.1:

Please see responses to comments 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

16. Jason Cetin, Union Carpenter, Laurence-Hovenier, Inc.

Comment 16.1:

Commenter is a 4th generation carpenter currently working with his father. Commenter describes the training program he completed through the union and emphasizes the importance of safety training, which was included in the apprenticeship program. Commenter notes he worked on the fall protection video presented at the last meeting and states that on a wooden structure there is nothing overhead to tie-off to. Commenter states installing guardrails can be hazardous in itself, takes longer than the time the actual operation takes and puts workers at greater risk of injury. Commenter lists different hazards that could be present when working off ladders. Commenter concludes his statement by asking the Board to take into consideration these issues and not to expose workers to these hazards.

Response to Comment 16.1:

Please see responses to comments 7.1, 9.1, 9.2, 10.1 and 13.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

17. Brent Kisgen, Safety Coordinator, United Production Framing

Comment 17.1:

Commenter is a 3rd generation carpenter, who is now a safety director. Commenter states the concern is about family and keeping their employees safe. Commenter talks about the different risks that come with working off ladders. Commenter states there are ergonomics concerns as well as puncture concerns from having a nail gun too close to their face. Commenter shares about his father losing an eye and the struggles afterwards. Commenter emphasizes concern for family members.

Response to Comment 17.1:

Please see responses to comments 7.1, 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

18. Alex Mercier, Vice President Risk Management, Circle M Contractors

Comment 18.1:

Commenter is proud California is the last state to comply with Fed OSHA and believes the current regulation is working and doesn't need to be changed. Commenter believes operations will be less safe if changed and agrees with previous comments about injuries with nail guns and working from ladders. Commenter recommends the Board leave the regulation the way that it is.

Response to Comment 18.1:

Please see responses to comments 7.1, 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

19. Juan Ayzlz, Carpenters Union

Comment 19.1:

Commenter has worked as a carpenter for a few years and can say with confidence they have successfully implemented the current section 1716.2 standard. Commenter would like to voice their support for the testimony provided by Kevin Bland and Bruck Wick.

Response to Comment 19.1:

Please see responses to comments 9.1, 9.2, 10.1 and 23.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

20. Tony Guzman, Carpenters Union

Comment 20.1:

Commenter has been a carpenter for over 10 years. Commenter would like to testify in opposition to the proposed regulation. Commenter states his current employer has been able to successfully implement section 1716.2. Commenter believes the proposed draft regulation will increase close calls, trip hazards and injuries. Commenter refers to the fall protection video from the last Board meeting and states it is not feasible to use fall protection equipment currently available for their type of work. Commenter urges the board to take a step back and meet with stakeholders in regard to these matters.

Response to Comment 20.1:

Please see responses to comments 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

21. Israel Santiago, United Production Framing

Comment 21.1:

Commenter states they started in the industry as a laborer and worked as a carpenter in the field for 7 years. Commenter moved into the safety department a few years ago, and emphasized the importance of safety, the challenges of using ladders and concerns about heat illness. Commenter believes that current section 1716.2 does not need fixing.

Response to Comment 21.1:

Please see responses to comments 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

22. Jim Henderson, Vice President of Operations, Davis Development Company

Comment 22.1:

Commenter employs about 1,500 carpenters in California. Commenter believes the new standards will make work less safe. Commenter reiterates employee concerns about tying off at the feet, recommends the board go back and reevaluate the changes and try to make it more user friendly for employees. Commenter asserts Federal regulations are not being followed consistently in at least 7 other states he has worked in. Commenter states the current regulation has worked fine for the last 20 years and the direction California is moving in is dangerous.

Response to Comment 22.1:

Please see responses to comments 9.1, 9.2 and 10.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

23. Kevin Bland California Framing Contractors Association and Residential Contractors Association

Comment 23.1:

Commenter reiterates their concern is for the safety of employees and refers to the comment letter they submitted, which includes changes and suggestions they would like considered. Commenter asserts Fed OSHA's regulation does not provide the same level of safety as section 1716.2. Commenter believes the Fed OSHA definition of at least as effective doesn't take into consideration whether we have less falls or injuries. Commenter states a recent article stated Federal citations and falls have increased while California is down. Commenter also states new technology available in fall protection is not feasible in residential construction, contrary to what Fed OSHA has stated, and there isn't a need to prove this every single time because the process is the same for every house. Commenter urges the Board to push back on Fed OSHA's interpretation that California's current regulation is not at least as effective as the federal standard.

Response to Comment 23.1:

Please see responses and comments 1.3, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 7.1 and 11.1. In regard to the requirement to have a site-specific fall protection plan, see comment and response 2.1. The Board thanks the commenter for their input and participation in the rulemaking process.

Comment 23.2:

The commenter made the following comments in response to a Board Member’s clarification that the proposal offers options for providing fall protection and does not require work from ladders.

Commenter notes in other States working off ladders is an option utilized many times by employers to avoid having to show conventional fall protection systems are infeasible or prepare site-specific fall protection plans. Commenter states prime contractors from other States have shared they comply with federal requirements by forcing work from ladders even when workers believe it is unsafe. Workers in other jurisdictions have stated Fed OSHA allows work from ladders and they still have falls.

Response to Comment 23.2:

The Board is not persuaded by these arguments. The proposal provides options and does not mandate employees work off ladders. Furthermore, as stated in the 2020 OSHA Guidance Document titled “Fall Protection in Residential Construction”, the 2011 OSHA Fact Sheet titled “Reducing Falls During Residential Construction: Installing Roof Trusses” and the March 21, 2024, OSHA Directorate of Construction presentation to the Board, there are various fall protection methods that can provide suitable protection to framing employees including but not limited to the use of scaffolds. Please see responses and comments 4.2, 4.3, 5.1, 5.3, 5.4, and 11.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

24. Cassie Hilaski, Nibbi Brothers

Comment 24.1:

Commenter agrees with Mr. Bland in regard to the regulation being flawed. Commenter states workers in other states do not implement fall protection systems by merely stating they are infeasible, and that the regulation that Cal/OSHA implemented 20 years ago resulted in an effective fall protection plan for all contractors. Commenter asks the Board to direct the Division to look at Kevin Bland’s and Bruce Wick’s comments and suggestions and engage in a conversation with the stakeholders to talk about how to comply with the Federal Regulation but in a safer way. Commenter states that California’s current regulations for fall protection are safer and protect their workers better than any other place in the country.

Response to Comment 24.1:

Please see responses to comments 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 6.1, 6.2, 6.2, 6.4, 6.5, 6.6, 7.1, 9.1 and 11.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

25. Kevin Bland California Framing Contractors Association and Residential Contractors Association

Comment 25.1:

The commenter made the following comments in response to a Board Member's questions about the meaning of "infeasible" versus "impractical" and how employers are currently providing protection to workers engaged in framing activities.

The commenter states workers are protected by following a prescribed process of laying down joists giving workers a platform to stand on and by telling the workers if they are going to walk on them, the joists must be supported structurally. Commenter states this alternative fall protection process is laid out in section 1716.2 and they created this regulation because conventional fall protection is not a feasible option. Commenter states on the exterior of the second floor of a two story home it makes sense to put scaffold or bracket scaffold around the top.

Response to Comment 25.1:

The Board notes existing section 1671.1 allows a fall protection plan when it can be shown that the use of conventional fall protection is impractical or creates a greater hazard. As stated in the ISOR, the amendments proposed for section 1671.1 will replace "impractical" with "infeasible" to be at least as effective as Fed OSHA regulations. Proposed amendments also include a note that clarifies the employer has the burden of establishing that conventional fall protection is infeasible or creates a greater hazard. This is important because while there might be framing tasks in which the use of conventional fall protection is infeasible, there are other framing activities where it is feasible. Likewise, the site where the construction work is being performed is not the same across the State. This is why existing section 1671.1 requires a fall protection plan be developed and evaluated on a site-by-site basis.

The process described by the commenter of laying down joists or other structural members gives workers a platform to stand on, it also leaves gaps between the members where an employee can step into or fall through. Likewise, telling the worker if they are going to walk on the structural members they have to be securely braced, does not guarantee it will actually happen; thus, increasing the risk of workers falling. The standard does not address what it means by securely braced, meaning it is unclear if that means nailed down or otherwise braced.

Regarding the belief that prescribed work practices, or a common trigger height is an alternative to providing fall protection, see response to comment 5.1. With regard to the belief that fall protection should be limited to the perimeter of the structure, please see response to comment 5.5.

With regard to the statement that existing section 1716.2 is at least as effective as Fed OSHA regulations, please see comments and responses to comments 4.1, 4.2, 4.3, 4.4, 5.1, 5.3, 5.4 and 11.1.

The Board thanks the commenter for their input and participation in the rulemaking process.

26. Matthew Kuzemchak, CIH, Area Director, on behalf of U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

Comment 26.1:

The commenter made the following comments in response to a Board Member's questions about whether the statistics provided by Fed OSHA were Nationwide or California-specific:

Commenter clarifies the statistics were based on a study across the nation that had known heights of falls. This study specifically excluded falls that did not have a known height. The way California collects statistics does not break it down in that manner.

Response to Comment 26.1:

The Board notes that construction fall fatalities data provided in the January 16, 2024, comment letter submitted by Cal/OSHA indicates that there have been no sustained or significant reductions in fall injuries when compared to fall fatality data prior to the effective date of section 1716.2 (August 6, 2004). Please see also comments by Cal/OSHA 4.1, 4.2, 4.3, and 4.4.

Comment 26.2:

Fed OSHA added that their decision is not based on statistics, rather the measures of efficacy are based on OSHA standards (29 CFR 1902). This OSHA standard requires positive protection for specific hazards which is what is missing from existing California regulations. There is an identified hazard from 6 to 15 feet that is not positively protected. The commenter states that Fed OSHA can assume jurisdiction over any matters including the construction industry in the State of California for enforcement purposes until such standard is adopted. Furthermore, OSHA's regulation was adopted many years ago; they published their reasons in the Federal Register and these reasons were a matter of public record. These reasons haven't changed. Fed OSHA is of the belief that residential fall protection at 15 feet is not as protective as at 6 feet.

Response to Comment 26.2:

The Board notes that these amendments are being proposed to ensure that sections 1671.1, 1716.2, 1730 and 1731 of the Construction Safety Orders are at least as effective as Fed-OSHA standards, as required by Labor Code section 142.3.

Comment 26.3:

Fed OSHA acknowledges concerns that their agency has not listened to stakeholders and states they have held conversations with some stakeholders but clarified the outcome is still likely to be the same.

Response to Comment 26.3

The Board notes that it requested an update from Fed OSHA regarding the effectiveness of California's residential fall protection standards as compared to Federal standards. In a letter to the Board received on January 23, 2024, OSHA stated California's system of trigger heights for requiring conventional fall protection in construction is not at least as effective as OSHA's general six-foot trigger height in residential construction. Federal OSHA's response to this question has not changed since February 2015. This letter also clarified that OSHA standards do not require a State plan establish identical standards, procedures, criteria and rules, however they do require that the standards contain specific provisions for the protection of employees from exposure to a hazard. The California standards as currently written do not require that employers engaged in residential construction activities provide fall protection from 6 to 15 feet. Please also see response to comment 26.2.

The Board thanks OSHA for their input and participation in the rulemaking process.

27. Eric Berg, Deputy Chief of Health, Cal/OSHA.

Comment 27.1:

Cal/OSHA clarifies they have fatality (CFOID) data but it does not provide the height from which the injured employee fell. Construction deaths from falls is one of the most frequent deaths in the construction industry.

Response to Comment 27.1:

The Board acknowledges there is no statistical data available to demonstrate that existing section 1716.2 is as effective as federal OSHA requirements in reducing fall injuries in residential construction. Likewise, the Board concurs with Cal/OSHA that falls are the leading cause of death in construction. See new documents relied upon including the 2022 CPWR Fatality Map- Did You Know that Falls Are the Leading Cause of Death in Construction?

Please see also comments and responses to comments 4.1, 4.2, 4.3, 4.4, 5.1, 5.3, 5.4 and 11.1.

The Board thanks Cal/OSHA for their input and participation in the rulemaking process.

**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM THE
FIRST 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

Following the first 15-Day public comment period from April 5, 2024, to April 22, 2024, the proposed amendment to section 1716.2 was modified as follows, as the result of public comments and/or Board staff evaluation.

Subsection 1716.2 (e)(2) -Addition of new paragraph (e)(2).

A new paragraph (e)(2) is proposed to be added to subsection 1716.2 (e), to incorporate the concerns and feedback received from stakeholders that fall protection plans can be augmented with some of the steps and safe practices detailed in Appendix E to Subpart M of OSHA's 1926 regulations. The purpose and necessity of this modification is to raise awareness that employers can implement additional steps in conjunction with the use of a fall protection plan to enhance worker protection.

**SUMMARY AND RESPONSE TO COMMENTS RESULTING FROM
THE FIRST 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

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 commenter 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. Regarding the request that the regulation be delayed for 12 months, please see response to comment 5.6 from the 45-Day Comment Period. 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 begins². 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.

² 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>.

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. Regarding the concern about the need for residential construction companies to plan for bids and contracts, please response to comment 2.1 from this letter.

Comment 2.4:

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. Please see also response to comment 2.1 of the first 15-Day Notice and 7.1, 8.1, 9.1, 9.2, 10.1 and 23.1 from the 45-Day Comment Period.

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 commentator 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 commentator 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 commentator 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 commentator 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 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 sections 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 commenter'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 commenter 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 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.

**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM
THE SECOND 15-DAY NOTICE OF PROPOSED FURTHER MODIFICATIONS**

There were no modifications to the second 15-Day Notice of Proposed Modifications mailed on June 24, 2024.

**SUMMARY AND RESPONSE TO COMMENTS RESULTING FROM
THE SECOND 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

I. Written Comments

1. Mark Donald, Assistant Area Director, on behalf of U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) by letter dated July 12, 2024.

Comment 1.1:

Section 1716.2(e)(2) Residential-type Framing Activities, Work on Top Plate, Joists and Roof Structure Framing provides an alternative to a fall protection plan. Section 1671.1 now contains a presumption that conventional fall protection is feasible and will not create a greater hazard. However, the proposed language allows for employers to follow (A) through (C) in lieu of the requirement to prove infeasibility. This alternative, which applies only to framing work, adds a degree of ambiguity and broad interpretation to render ineffective the general requirement for conventional fall protection.

Response to Comment 1.1:

The Board respectfully disagrees that proposed paragraph (e)(2) adds ambiguity or renders ineffective the general requirement for conventional fall protection. The entire section 1716.2 applies to framing work and the modifications proposed in the second 15-Day Notice do not affect each and every framing activity, rather it is limited in scope. New paragraph (e)(2) is confined to interior framing activities between 6 and 15 feet where employees are walking/working on top plates, joists, rafters, trusses, or beams. This amendment was proposed to incorporate the concerns and feedback received from stakeholders that fall protection plans can be augmented with some of the safe practices and steps detailed in Appendix E to Subpart M of OSHA's 1926 regulations. Therefore, the Board believes that the new paragraph for subsection 1716.2 (e)(2), although similar but not identical to federal OSHA language, provides equivalent safety along with sections 1671.1, 1730 (a) and (g), 1731 and the rest of section 1716.2.

For several years the Board has been working towards amending the Construction Safety Orders to ensure they are at least as effective as federal OSHA standards. As previously communicated to Fed OSHA, this regulatory proposal, focused on residential construction activities, is part of Phase I and amendments to sections 1671.1, 1716.2, 1730 and 1731 are being actively pursued in accordance with the Administrative Procedure Act (APA) which establishes rulemaking procedures and standards for state agencies in California. Phase I is near its completion and will be soon presented to the Board for consideration and adoption. Once Phase I is completed, Board staff will focus on Phase II and will seek stakeholder input prior to proposing amendments for sections 1669, 1670, 1671, 1724 and any additional sections if necessary. If OSHA has any additional concerns, these can be revisited during Phase II, where the Board will continue to work towards ensuring that California's title 8 Construction Safety Orders are at least as effective as Fed OSHA regulations.

Comment 1.2:

In addition, section 1730(a) Roof Hazards states that during roofing operations the employer shall comply with the provisions of Section 1509 with an exception that this does not apply to residential-type roofing activities as defined in section 1731. California employers are required to establish, implement, and maintain an Injury Illness Prevention Program, and it is not clear why employers engaged in roofing operations do not need to follow Section 1731 and raises ALAE questions when compared to 29 Code of Federal Register 1926.20 and 1926.21.

Response to Comment 1.2:

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

Comment 1.3:

OSHA recognizes that State Plans have varied procedures for adopting occupational safety and health standards and regulations. However, OSHA-approved State Plans must have and enforce standards in a manner that is ALAE as OSHA, as required by section 18(c)(2) of the

Occupational Safety and Health Act of 1970 (“OSH Act”), 29 U.S.C. § 667(c)(2). This has been a long-standing issue and California must have the ability to adopt required standards and regulations within the regulatory timeframe permitted by OSHA, which is generally six months. In the interest of providing California workers the same, or higher, level of protection under OSHA’s program, the requirements must be described in a manner which makes clear to residential construction employers what requirements apply to residential construction activities. Therefore, we respectfully request that these concerns be addressed in an expeditious manner in addition to the other related California standards (sections 1669, 1670, 1671 and 1724) to avoid reaching an adverse ALAE determination with respect to the California State Plan.

Response to Comment 1.3:

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

The Board thanks the commentor 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 (received via email July 15, 2024).

Comment 2.1:

The commentors request that in addition to the changes made to section 1716.2 (e)(2), the employer be allowed to use the Appendix A fall protection plan they submitted (a portion of the Appendix E to Subpart M of OSHA’s 1926 regulations that is related to residential fall protection) to ensure consistent safety, enforcement, and compliance for the working men and women in residential framing construction in California. The commentors also request that the word “exterior” be inserted into proposed section 1716.2 (e)(2)(C) to clarify clearly what side or edge that this is in reference to for this section. The commentors believe that without this revision the section for interior framing is rendered useless because not all structural members such as joists and trusses span the entire distance from perimeter wall to perimeter wall. In addition, the commentors seek clarification regarding their understanding that a fall protection plan can be used without further burdens beyond meeting the requirements of subsections (A), (B), and (C), if the framing is “interior” and those three subsections are complied with. Commenters add that this is acceptable as long as revisions are made to include both the Federal OSHA’s Appendix E as 1716.2 Appendix A and the addition of the word “exterior” in subsection (2)(C).

Response to Comment 2.1:

The Board has previously considered and discussed the commenter’s suggested changes with the commentors on February 8, 2024, May 23, 2024, and June 17, 2024. The Board relied on the paragraph commentors provided along with the aforementioned discussions that took place to draft the proposed language for section 1716.2 (e)(2). Additionally, numerous discussions and emails have taken place on the request related to the portion of the Appendix E to Subpart M of

OSHA's 1926 regulation submitted by the commenters as Appendix A. To extract just a portion of the OSHA non-mandatory guidelines and/or to create an appendix that would apply only to a narrow group of employers or very narrow application of framing activities (interior framing activities between 6 and 15 feet), will cause confusion and will not aid in ensuring consistency in safety, enforcement or compliance among the regulated community. See also responses to the commenter's written comments 5.2 and 5.4.

On the request to insert the word "exterior" to section 1716.2 (e)(2)(C), the Board respectfully disagrees that section 1716.2 (e)(2) will be rendered useless. Currently, several title 8 regulations as well as Fed OSHA regulations use the term leading edge(s) without any distinction of exterior versus interior and the Board is not aware of any instance where the term has caused confusion or is unclear. Additionally, as the job evolves, it is sometimes hard to distinguish exterior from interior. Regarding the request for clarification, please see response to the 2nd 15-day comment 1.1.

Comment 2.2:

The commentors restate previously submitted comments that the amendments proposed for Title 8 Section 1671.1 were improperly noticed.

Response to Comment 2.2:

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

Comment 2.3:

The commentator restates that the cost of housing in California is skyrocketing. The bids and contracts for construction are very competitive, additional equipment must be purchased and the labor costs must be accounted for in bidding and contracts. Therefore, if the Board adopts a new regulation, they request that the effective enforcement date be delayed for 12 months past the adoption date.

Response to Comment 2.3:

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

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

ADDITIONAL DOCUMENTS RELIED UPON

Pursuant to Government Code section 11347.1, the Board gave notice of the opportunity to submit comments concerning additional documents relied upon. The additional documents were added to the rulemaking file on April 5, 2024, with modifications to the proposal and no comments on the documents were received during the 15-day comment period from April 5, 2024, to April 22, 2024.

1. Letter dated December 22, 2023, from Matthew Kuzemchak Area Director of the US-DOL, Fed-OSHA to the Board.
2. Letter dated January 24, 2024, from James D. Wulff Regional Administrator of the US-DOL, Fed-OSHA to the Board.
3. Letter dated January 16, 2024, from Eric Berg Deputy Chief of Health and Jason Denning Principal Safety Engineer of Cal/OSHA to the Board.
4. OSHA Fact Sheet, Reducing Falls During Residential Construction: Installing Roof Trusses. DOC FS-3477 9-16-2011. <https://www.osha.gov/sites/default/files/publications/reducing-falls-installing-roof-trusses-factsheet.pdf>
5. Presentation by Vernon Preston and Damon Bonneau, Directorate of Construction-Occupational Safety and Health Administration (OSHA). Residential Fall Protection in Construction Presented at the March 21, 2024 Occupational Safety and Health Standards Board Meeting— San Diego, California.
6. CPWR-The Center for Construction Research and Training. [2024]. Falls, Slips, and Trips in Construction [dashboard]. <https://www.cpwr.com/research/data-center/data-dashboards/falls-slips-and-trips-in-construction/>
7. 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](https://www.cpwr.com/wp-content/uploads/DataBulletin-March2024.pdf).
8. CDC and CPWR Deaths in Construction-2022 Fatality Map. Did You Know that Falls Are the Leading Cause of Death in Construction? [2022]. [2022-Fatality-Map.jpg \(2048×1582\) \(cdc.gov\)](https://www.cdc.gov/2022-Fatality-Map.jpg)
9. CPWR-Data and Charts. Presentation on Fatal and Nonfatal Falls in the U.S. Construction Industry, 2011-2022 [March 2024].

Pursuant to Government Code section 11347.1, the Board gave notice of the opportunity to submit comments concerning additional documents relied upon. The additional documents were added to the rulemaking file on June 26, 2024, with modifications to the proposal and no comments on the documents were received during the 15-day comment period from June 26, 2024, to July 15, 2024.

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.

These documents are available for review BY APPOINTMENT Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Drive, Suite

350, Sacramento, California. Appointments can be scheduled via email at oshsb@dir.ca.gov or by calling (916) 274-5721.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the adopted action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.