

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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August 16, 2013

David Shiraishi, Area Director
U.S. Department of Labor, Occupational Safety and Health Administration
Oakland Area Office
1301 Clay Street, Suite 1080N
Oakland, CA 94612

Subject: California Residential Fall Protection Standards

Dear Mr. Shiraishi:

The Board is responding to your May 28, 2013, inquiry to DOSH Chief Widess regarding the effectiveness of California's residential fall protection standards as compared to federal 29 CFR 1926.501(b)(13).

We note that according to an OSHA notice of a public meeting that was scheduled for June 25, 2012, "Establishing Indicators to Determine Whether State Plan Operations are at Least as Effective as Federal OSHA: Stakeholder Meeting,"¹ "State plans are not required to mirror OSHA's Plans, but must include the goal of reducing workplace injuries, illnesses and fatalities." [Emphasis added]

California shares these goals and maintains that the state program provides a higher level of oversight (number of inspections conducted) than is generally provided in federal states. California is of the opinion that residential fall protection is enhanced by standards that are clear, understandable, and that facilitate oversight. We note that California is not alone in establishing a trigger that is a clear dividing line between single and multi-story construction, making non-compliance easier to spot from the street in most cases.

The federal OSHA website² states that "in 2010, there were 264 fall fatalities (255 falls to lower level) out of 774 total fatalities in construction." These statistics appear to include all construction activities, and the portion related to residential construction is unclear. Protecting employees from falls is a matter we take seriously in California, and statistical evidence appears to indicate that the fatal injury rate in construction in California is less than the national rate, based on information available from the Bureau of Labor Statistics (BLS), see Attachment #1. This statistical evidence demonstrates that California's standards are "at least as effective as" as federal standards.

¹ https://www.osha.gov/dcsp/osp/stakeholder_meeting.html

² <https://www.osha.gov/stopfalls/index.html>

OSHA has noted differences between state and federal fall protection trigger heights and other differences due to formatting. Other than framing and leading-edge work, most other California fall protection standards are "horizontal"; i.e. they apply to all construction activities with like hazards. California employs residential fall protection standards that were developed by an advisory committee³ that opined that task-oriented standards provide clearer guidance to stakeholders and employees as to what fall protection means and methods are appropriate and acceptable. We are aware that some other state plans also use this methodology or variations thereof.

The Area Office requested California to compare state standards for residential fall protection with federal 29 CFR 1926, Subpart M, and OSHA's Compliance Guideline for Residential Construction (STD 03-11-002). The Board notes that the "Agreement under Section 19(e) of the Occupational Safety and Health Act of 1970," signed by the state on October 3, 1989 (Attachment #2), requires the state to provide safety equivalent to federal standards, but no mention is made of guidelines. The Board believes that a letter dated September 27, 2011, from the California Framing Contractors Association (CFCA) to Jordan Barab, Deputy Assistant Secretary, OSHA (Attachment #3), explains the rationale for existing California standards. Please note that the CFCA letter was written subsequent to cancellation of STD 3-0.1A (also known as OSHA Directive No. STD 03-00-001) and therefore does not rely on those guidelines for its rationale.

The side-by-side comparison requested by OSHA assumes that equivalent verbiage equals equivalent safety. As noted earlier, state plans are not required to mirror OSHA's plans. Because of differences in formatting and methodology, California would request that equivalency be based on other measures, such as end-results.

California acknowledges that some advances in fall protection technology may have occurred since our residential fall protection standards were developed in 2002-2004. Furthermore, we note that some neighboring states have recently updated their standards. Therefore, the Board is willing to meet with stakeholders to determine whether any changes, updates or enhancements to the California residential fall protection standards might be appropriate.

Sincerely,



Marley Hart
Executive Officer

³ The committee included labor, management, safety professionals, interested parties, manufacturers and Cal-OSHA.

Attachments (3)

cc: Standards Board Members
Christine Baker, Director, DIR
Ellen Widess, Chief, DOSH

Attachment 1

Fatal Work Injury Rates – Construction Industry

Year	CA ¹	US ²
2011	6.5	9.1
2010	5.2	9.8
2009	6.1	9.9
2008	5.4	9.7
2007	Not available	10.8

¹ U.S.BLS State Occupational Injuries, Illnesses, and Fatalities for CA

<http://www.bls.gov/iif/oshstate.htm>

<http://www.bls.gov/iif/oshwc/foi/rate2011ca.pdf>

<http://www.bls.gov/iif/oshwc/foi/rate2010ca.pdf>

<http://www.bls.gov/iif/oshwc/foi/rate2009ca.pdf>

<http://www.bls.gov/iif/oshwc/foi/rate2008ca.pdf>

² U.S BLS Census of Fatal Occupational injuries (CFOI) - Current and Revised Data / Fatal injury rates

<http://www.bls.gov/iif/oshcfoi1.htm>

http://www.bls.gov/iif/oshwc/foi/cfoi_rates_2011hb.pdf

http://www.bls.gov/iif/oshwc/foi/cfoi_rates_2010hb.pdf

http://www.bls.gov/iif/oshwc/foi/cfoi_rates_2009hb.pdf

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