

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Website address www.dir.ca.gov/oshsb**PROPOSED PETITION DECISION
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 607)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on March 18, 2025, and again on April 14, 2025, from Kevin Bland on behalf of the Housing Contractors of California, the California Framing Association, the Residential Contractors Association, and the Western States Regional Council of Carpenters (Petitioners).¹ Petitioners request that the Board extend the effective date of the updated title 8 residential fall protection regulations in the construction industry (Updated Regulations) from July 1, 2025, to July 1, 2026, via an emergency rulemaking. In the alternative, Petitioners request that the Board add new section 1671.3 to the updated regulations with Petitioners' proposed language related to fall protection plans for residential framing construction.

The updated regulations, effective July 1, 2025, include amendments to title 8, sections 1671.1, 1716.2, 1730, and 1731. These amendments address fall protection plans, as well as fall protection in residential framing and roofing operations. Rulemaking for these regulatory amendments was initiated by Board staff in response to concerns from Federal OSHA that California title 8 regulations were not at least as effective as title 29 Code of Federal Regulations (CFR), Part 1926 Safety and Health Regulations for Construction.

Labor Code (LC) section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health. It requires the Board to consider such proposals and render a decision no later than six months following receipt. Further, as required by LC section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Cal/OSHA) must be referred to the Cal/OSHA for evaluation. Cal/OSHA has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY OF PETITION

Petitioners propose to delay the operational date of the updated regulations to July 1, 2026, to allow the Petitioners and other stakeholders time to meet with new Federal OSHA administration representatives to discuss the Petitioners' concerns

¹ The two petitions are nearly identical; only a new party, the Western States Regional council of Carpenters, was added.

regarding the updated regulations. As an alternative to a delay in the updated regulations, Petitioners propose that the Board adopt an additional new regulation, section 1671.3, for residential framing fall protection plans.

Proposed regulatory language for section 1671.3 was included in the Petitioners' application, as follows:

Subchapter 4. Construction Safety Orders
Article 24. Fall Protection

Section 1671.3. Residential Framing Fall Protection Plan

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

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

(2) Any changes to the residential framing fall protection plan shall be approved by a qualified person. The identity of the qualified person shall be documented.

(3) A copy of the fall protection plan with all approved changes shall be maintained at the job site.

(4) The implementation of the fall protection plan shall be under the supervision of a competent person. The plan shall document the identity of the competent person.

(5) The fall protection plan shall document the reasons why the use of conventional fall protection systems (guardrails, personal fall arrest systems, or safety nets) are infeasible or why their use would create a greater hazard.

(6) The fall protection plan shall include a written discussion of other measures that will be taken to reduce or eliminate the fall hazard for workers who cannot be provided with protection provided by conventional fall protection systems. For example, the employer shall discuss the extent to which scaffolds, ladders, or vehicle mounted work platforms can be used to provide a safer working surface and thereby reduce the hazard of falling.

(7) The residential framing fall protection plan shall identify each framing process and elevation where conventional fall protection methods cannot be used. These locations shall then be classified as controlled framing zones and the employer must ensure that only employees trained in the residential framing fall protection

plan are working in the framing zone. No other employees may enter controlled framing zones.

(8) In the event an employee falls, or some other related, serious incident occurs (e.g., a near miss), the employer shall investigate the circumstances of the fall or other incident to determine if the residential framing fall protection plan needs to be changed (e.g., new practices, procedures, or training) and shall implement those changes to prevent similar types of falls or incidents.

Petitioners assert that the updated regulations were approved by Board members due to pressure from Federal OSHA. Additionally, Petitioners state that the Carpenters Union and residential construction contractors oppose the updated regulations because they believe them to be less safe than the previous title 8 regulations. Petitioners also claim that no one at Federal OSHA headquarters is willing to meet with Petitioners and other California stakeholders to hear their claims about the updated regulations.

Petitioners claim that working from ladders is unsafe for residential framing activities. When working from ladders, Petitioners argue, workers must exert more energy to carry heavy lumber products overhead, and there is increased exposure to fall hazards when workers climb up and down. Petitioners further argue that work from ladders exposes framers to greater hazards from pneumatic nail guns, as they must be used at an employee's chest level rather than at their feet, and that Federal OSHA guidance in 29 CFR Part 1926 Subpart M Appendix E (Sample Fall Protection Plan - Non-Mandatory Guidelines for Complying with 1926.502(k)) advises limiting work from ladders.

Petitioners contend that the use of personal fall arrest systems for working at and above 6-feet does not provide sufficient clearance when personal fall arrest occurs due to a large clearance requirement after the deployment of a personal fall arrest system. Citing subpart M Appendix E, Petitioners claim that utilizing safety nets is not an option for fall protection, suggesting that the use of personal fall protection and nets could cause walls to collapse.

Petitioners opine that only a small percentage of residential framing work may utilize mobile equipment and rolling scaffolds in lieu of fall protection due to close lot lines and sophisticated architecture that require multiple different types of framing procedures.

Petitioners also claim that more time is needed for new personnel at Federal OSHA to understand the issues related to the updated regulations. Additionally, Petitioners argue that it will take time for their newly proposed regulation under section 1671.3 to be adopted through the Administrative Procedure Act (APA).

Petitioners claim that residential construction contractors have reached out to Cal/OSHA regarding the updated regulations and were told that citations would likely be issued for using ladders, personal fall protection, and fall protection plans for residential construction activities. Work from ladders, Petitioners explain, involves continuous reaching in violation of ladder safety regulations. Personal fall protection at a nine-foot working height on unsheathed structures would require greater than nine feet of clearance and an anchorage of 5,000 pounds that the structure would likely not support.

Petitioners argue that Cal/OSHA will likely issue citations for attempting to use a fall protection plan due to the subjectivity of different Cal/OSHA inspectors and experience in the field that fall protection plans are not accepted.

Finally, Petitioners claim that the updated regulations will add substantial costs to build houses, because the added time to install fall protection will exceed the time to perform framing work. Petitioners also contend that contractors have no clear compliance options and are left with having to violate the updated regulations and set aside funds to pay citations and legal fees.

RELEVANT STANDARDS

California Regulations

Title 8, section 1671.1

Title, section 1671.2

Federal Regulations

29 CFR Part 1926, Safety and Health Regulations for Construction

29 CFR Part 1926, Subpart M - Fall Protection

Cal/OSHA EVALUATION

Cal/OSHA's evaluation report, dated July 23, 2025, does not support Petitioners' proposal to extend the effective date of the updated regulations from July 1, 2025, to July 1, 2026, nor does Cal/OSHA support Petitioners' alternative proposal for a new section, 1671.3.

Cal/OSHA emphasized that the July 1, 2025, updated regulations are the result of concerns expressed by Federal OSHA. Rulemaking for these updated regulations was initiated by Board staff in response to concerns from Federal OSHA that previous California title 8 regulations were not at least as effective as title 29 CFR, Part 1926 Safety and Health Regulations for Construction.

Cal/OSHA also stated that the Petitioners' proposal for the new section is less protective than the current title 8 regulations and is not commensurate with Federal OSHA regulations.

BOARD STAFF EVALUATION

Board staff prepared an evaluation, dated July 31, 2025, which does not support Petitioners' request to delay the effective date of the updated regulations. Board staff note that the Board's adoption of the updated regulations, which are at least as effective as the Federal standard, was a lengthy and highly contentious rulemaking process. Federal OSHA's insistence that title 8 regulations be at least as effective was brought up multiple times, and Board staff had several meetings with stakeholders on this point.

While Board staff does not oppose Petitioners or any stakeholders meeting with Federal OSHA to discuss the updated regulations and proposed modifications, delaying the effective date of the updated regulations would result in another lengthy rulemaking process further postponing the health and safety measures required by Federal OSHA.

However, Board staff believe that Petitioners' concerns-- that there are limited options for fall protection for interior framing work-- are valid and merit further discussions. Board staff sees value in clarifying the site-specific fall protection plans for interior framing activities. Board staff also believes that training requirements for fall protection programs, specifically for employees using safety monitoring systems and fall protection plans, should be reviewed for inadequacies that may affect an employee's requisite understanding or skill.

Therefore, Board staff recommends that the Petition be granted to the limited extent that Board Staff convene an advisory committee meeting to consider the following:

1. The necessity to clarify regulatory language to address interior framing activities and site-specific fall protection plans used by framers, either through possible amendments of the existing section (1671.1) or adoption of new sections 1671.3 or 1716.3.
2. The necessity to clarify or seek additional training requirements to implement site-specific fall protection plans, safety monitors, and work with Cal/OSHA on creating additional training materials or other tools to implement compliant site-specific fall protection plans.

DISCUSSION

Petitioners' request to delay the effective date of the updated regulations would unreasonably postpone the health and safety measures required by federal law. Petitioners' alternative request to adopt new section 1671.3 would provide less safety than the current title 8 regulations. Either proposal could trigger Federal OSHA enforcement authority, and the proposals include claims that are generally unsupported by data. Finally, Petitioners' requests do not meet the criteria for an emergency rulemaking.

A. California Must Adopt Regulations That Are At Least As Effective as Federal Regulations

Both 29 CFR subsection 1902.1(b) and California LC subsection 143.2(a)(2) require the state OSHA program to adopt regulations that are as at least as effective as federal regulations. The updated regulations were based on the Federal OSHA opinion that the previous versions of the title 8 regulations were not at least as effective as the federal regulations. If the State of California failed to comply with 29 CFR subsection 1902.1(b), it could result in Federal OSHA taking enforcement authority over those activities for the regulations that are not considered commensurate. Such a scenario could result in the enforcement of Federal OSHA regulations, which are substantially similar to the

updated regulations and require fall protection in residential construction at a working height of six feet.

Contrary to Petitioners' assertions, there are no improper threats or pressure from Federal OSHA beyond its rightful authority to ensure that a state program like California comply with the at least as effective as requirement.

B. Petitioners Were Actively Involved in the Development of the Updated Regulations and Had Sufficient Time to Comply

On December 16, 2010, Federal OSHA published Compliance Directive STD 03-11-002 *Compliance Guideline for Residential Construction*, with an enforcement date of June 16, 2011. This directive requires workers engaged in residential construction six feet or more above lower levels to be protected from falls by conventional fall protection. During this time, Federal OSHA began reviewing all corresponding state plan standards to ensure conformance with the six feet trigger height.

On May 28, 2013, Federal OSHA communicated to the Board that California's residential fall protection standards were not commensurate to federal standards. In a letter dated February 4, 2015, Federal OSHA identified the following key areas where title 8 standards differ significantly from federal standards:

- 1) A trigger height for all fall protection in residential construction greater than six feet;
- 2) An allowance for a fall protection plan when conventional fall protection is "impractical" as opposed to "infeasible";
- 3) An exemption for fall protection when work is of "short duration" and "limited exposure" regardless of height;
- 4) An allowance for the use of slide guards² in lieu of fall protection;
- 5) Ambiguities or unclear language, such as "any other means prescribed by CSO Article 24".

Board staff convened an advisory committee on April 11, 2016. The meeting was intended to provide stakeholders with an opportunity to express their support, concerns, objections, and recommendations regarding whether title 8 construction standards for residential framing require amendment to render California commensurate with Federal OSHA, particularly with respect to fall protection trigger heights. Minutes from the April 11, 2016, meeting confirmed the committee's focus on fall protection in residential construction and the goal of ensuring California's standards are consistent with Federal OSHA regulations.

During the public hearing held on January 18, 2024, some stakeholders, including the Petitioners, voiced concerns about proposed changes to framing construction.³

² Slide guards are 2-inch nominal cleats fastened to the roof sheathing to provide a footing on sloped roofs.

³ <https://www.dir.ca.gov/oshsb/documents/Fall-Protection-in-Residential-Construction-FSOR-Revised.pdf>

On July 12, 2024, the Board received a letter from Federal OSHA with concerns over some of the proposed changes to California's residential fall protection plan, namely any language that would allow employers other options in lieu of the requirements to prove infeasibility.⁴

The updated regulations ultimately reflect the committee's consensus and address the central issue of reducing the fall protection trigger heights for residential construction and residential roofing from their present trigger heights to six feet, consistent with the Federal OSHA standard. Federal OSHA submitted a formal response to this petition [607] on April 14, 2025, stating that the revisions to Construction Safety Orders (CSO), Sections 1671.1, 1716.2, 1730 and 1731 (Updated regulations) have been determined to be at least as effective as the federal standard.

The updated regulations are the result of concerns expressed by Federal OSHA and a lengthy rule-making effort by the Board, beginning in 2016. This nine-year period provided ample time for the regulated public to prepare and transition to the updated regulations and provide training to employees.

C. The Updated Regulations Allow for Various Options to Protect Workers Against Fall Hazards Without Incurring Cal/OSHA Citations

The updated regulations provide various fall protection options for construction workers at fall heights from six to 15 feet. Also, the Federal OSHA Guidance Document, titled "Fall Protection in Residential Construction", describes various stages of residential construction work with options to protect workers against fall hazards. Additionally, Federal OSHA Directive STD 03-11-002 Compliance Guidance for Residential Construction outlines various types of conventional fall protection and other methods that can be used to protect against falls at various stages, which include the use of guardrails, various scaffold types, personnel lifts, telescoping and articulating boom lifts, safety nets, fall arrest, and fall restraints. Finally, section 1671.1 provides the option of a fall protection plan whenever conventional fall protection is infeasible or creates a greater hazard. These means of fall protection and alternatives, as well as the requirement that they be implemented at six feet, have been included in Federal OSHA regulations since 1994 and enforced in states within Federal OSHA jurisdiction since 2011.

Petitioners claim that residential construction general contractors have been informed by representatives of Cal/OSHA that they would receive citations based solely on the use of ladders, attaching fall protection to unsheathed nine-foot residential structures, and use of fall protection plans. However, Petitioners have not provided support for this claim. Citations from the Cal/OSHA Enforcement Unit may only be issued if a violation of title 8 regulations is established. None of the scenarios described by the Petitioners represents prima facie violations of title 8 regulations. Although citations could be issued if Cal/OSHA established that a violation existed when using a ladder, fall protection, or a fall protection plan, citations could not be issued simply for the use of such methods.

⁴ <https://www.dir.ca.gov/oshsb/documents/Fall-Protection-in-Residential-Construction-FSOR-Revised.pdf>

D. Petitioners' Proposal of New Section 1671.3 is Less Protective than Current Title 8 Regulations and is Not Commensurate with Federal OSHA Regulations

Petitioners' proposal for section 1671.3 is based on the current title 8 regulatory language under section 1671.1 with various proposed additions and deletions. The following text illustrates the Petitioners' proposal as changes to the current language under 1671.1 in underline strikethrough format to provide a clear understanding of how the proposal compares to existing regulation.

Section 1671.3 Residential Framing Fall Protection Plan

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

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

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

(2) Any changes to the residential framing fall protection plan shall be approved by a qualified person. The identity of the qualified person shall be documented.

(3) A copy of the fall protection plan with all approved changes shall be maintained at the job site.

(4) The implementation of the fall protection plan shall be under the supervision of a competent person. The plan shall document the identity of the competent person.

(5) The fall protection plan shall document the reasons why the use of conventional fall protection systems (guardrails, personal fall arrest systems, or safety nets) are infeasible or why their use would create a greater hazard.

(6) The fall protection plan shall include a written discussion of other measures that will be taken to reduce or eliminate the fall hazard for workers who cannot be provided with protection provided by conventional fall protection systems. For example, the employer shall discuss the extent to which scaffolds, ladders, or vehicle mounted work platforms can be used to provide a safer working surface and thereby reduce the hazard of falling.

(7) The residential framing fall protection plan shall identify each ~~location~~ framing process and elevation where conventional fall protection methods cannot be used. These locations shall then be classified as controlled access framing zones and the employer must ~~comply with the criteria in Section 1671.2(a).~~ ensure that only employees trained in the residential framing fall protection plan are working in the framing zone. No other employees may enter controlled framing zones.

(8) ~~Where no other alternative measure (i.e. scaffolds, ladders, vehicle mounted work platforms, etc.) has been implemented, the employer shall implement a safety monitoring system in conformance with Section 1671.2(b).~~

(9) ~~The fall protection plan must include a statement which provides the name or other method of identification for each employee (i.e., job title) who is designated to work in controlled access zones. No other employees may enter controlled access zones.~~

(10) In the event an employee falls, or some other related, serious incident occurs (e.g., a near miss), the employer shall investigate the circumstances of the fall or other incident to determine if the fall protection plan needs to be changed (e.g., new practices, procedures, or training) and shall implement those changes to prevent similar types of falls or incidents.

As indicated in the above text, the Petitioners' proposal is less protective than current title 8 regulations, as it removes four key requirements. The first of these is the requirement to establish fall protection plans for each specific work site. Petitioners' proposed language within subsection 1671.1(a) to allow for a single fall protection plan for framing construction sites that are essentially identical was drafted nearly verbatim from a note to subsection 1671.1(a) that was included prior to the current regulation. This note was deleted by Board staff from the updated regulations to address Federal OSHA objections that the note allowed for fall protection plans that were not site specific.

Secondly, the proposed text completely removes all references to subsection 1671.2(b) requirements for safety monitors within a controlled access zone. Deletion of these references would allow employees to work at unprotected edges of structures with nothing more than a control line demarcating unprotected and leading edges. Control lines are utilized only as a warning indicator of an unprotected edge and do not have the capacity to prevent falls. The purpose of a safety monitor is to provide an additional layer of protection, as this competent person can identify and warn an employee who may be exposed to a fall hazard. This is an important element of the regulation, as an employee may be distracted by their work tasks and not realize they are encroaching upon a control line or an unprotected edge. The Petitioners proposed no equivalent requirement, and the deletion of this requirement would reduce the effectiveness of title 8 and worker safety.

Petitioners also propose removing the requirement in the fall protection plan for the employer to identify those employees who are designated to work within a controlled

access zone. The purpose of this requirement is to ensure that only those employees who are aware of and have been properly trained to work within a controlled access zone are permitted to work in the zone. No equivalent language was included by the Petitioners for this requirement nor any argument as to why this deletion provides equal safety. Cal/OSHA believes that this proposal significantly diminishes worker safety.

Finally, the Petitioners' proposal is not commensurate with Federal OSHA regulations. Title 8 sections 1671.1 and 1671.2 include requirements for fall protection plans, controlled access zones, and safety monitors that are nearly identical to Federal OSHA regulations under 29 CFR subsections 1926.502(g), 1926.502(h), and 1926.502(k). Therefore, Petitioners' proposal for new title 8 section 1671.3 would certainly fall under the same scrutiny from Federal OSHA which initiated the updated regulations and would not be considered at least as effective as federal regulations pursuant to 29 CFR subsection 1902.1(b) and California Labor Code subsection 143.2(a)(2).

E. Petitioners' Claims that the Updated Regulations Will Result in More Injuries to Workers and Higher Costs for Housing Are Unsupported

Petitioners' assertion that the updated regulations will result in more injuries to workers and higher costs for housing appears to be based on opinion only. No data, studies, or cost assessments were provided by Petitioners to substantiate this claim. Based on the sustained residential construction industry in the United States outside of California, it would appear that cost for implementing fall protection at six feet is not an issue as regulations substantially similar to the updated regulations have been in effect in many other states since 2011. Finally, new technology and cost-effective innovation within the industry as well as a potential reduction in costly workers' compensation claims from falls should also be considered in such an analysis.

F. Petitioners' Requests Do Not Meet the Requirements for An Emergency Rulemaking

According to statute, "Emergency' means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." Gov. Code § 11342.545. To adopt an emergency regulation, an agency must make a finding that the regulatory action is "necessary to address an emergency." Gov. Code § 11346.1(b)(1). This finding of emergency (FOE) must describe "the specific facts demonstrating the existence of an emergency and the need for immediate action" and must be supported by "substantial evidence." Gov. Code § 11346.1(b)(2).

An "FOE based only upon expediency, convenience, best interest, general public need, or speculation shall not be adequate to demonstrate the existence of an emergency." Gov. Code § 11346.1(b)(2). If the situation identified in the FOE existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations adopted in accordance with the APA rulemaking provisions, the FOE shall include facts explaining the failure to address the situation through nonemergency regulations. *Id.*

Based on the speculative nature of Petitioners' claims and the sufficient time for these concerns to be addressed through nonemergency regulations, the Board has the discretion to consider the requested rulemaking on a standard basis. See *Western Growers Ass'n v. Occupational Safety & Health Standards Bd.* (2021) 73 CA5th 916, 932-935.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition submitted by Kevin Bland on behalf of the Housing Contractors of California, the California Framing Association, the Residential Contractors Association, and the Western States Regional Council of Carpenters to extend the effective date of the Residential Fall Protection regulations from July 1, 2025, to July 1, 2026, or in the alternative, to add a new section (1671.3) regarding fall protection plans for interior work in framing activities.

For reasons stated in the preceding discussion and considering testimony received today, Petition 607 is hereby GRANTED to the limited extent that an advisory committee be convened to (1) consider the need for possible clarifications to the existing site-specific fall protection plan to address the interior work framing activities, and (2) consider additional training requirements to implement compliant site-specific fall protection plans.