

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 4, Article 30, Section 1730 and proposed new Section 1731
of the Construction Safety Orders

Roof Hazards - New Production-Type Residential Construction**SUMMARY**

This proposed rulemaking is the result of a petition (OSHSB Petition File No. 462) by Mr. Bruce Wick, on behalf of the California Professional Association of Specialty Contractors (Cal PASC). On November 18, 2004, the Standards Board granted the petition to the extent that it directed staff to convene an advisory committee to consider the Petitioner's recommended revisions to the Construction Safety Orders.

The current fall protection trigger height for roofing operations is 20 feet. The Petitioner is requesting that the trigger height be reduced to 15 feet for new, production-type residential roofing operations only.

The Petitioner listed three concerns as the basis for the petition.

1. *Worker safety.* The Petitioner noted that, although it has been problematic in the past to provide fall protection for roofers on new, two-story production housing, most problems have been solved by significant advances in fall protection devices that are now available.
2. *Insurance costs.* The Petitioner states that minimizing accidents and the related injury costs will benefit both employers and employees.
3. *Bidding issues.* The existing 20-foot trigger height clearly involved dwellings three-stories or higher. However, due to the trend toward higher ceiling heights in California, it is no longer uncommon for two-story dwellings to have a 20-foot height from eave line to the ground level below. Furthermore, a much higher percentage of residential construction today is two-story due to cost and limited availability of land in California. This is problematic for bidding because contractors often may not know until well into construction if the 20-foot roofing trigger height will apply.

Existing Section 1730, Roof Hazards, prescribes a trigger height of 20 feet for all roofing operations. This proposal would create an exception to Section 1730 which would direct the public to proposed new Section 1731 for roofing work on new production-type residential construction with roof slopes 3:12 or greater. New Section 1731 is proposed to apply only to

new production-type (i.e., tract-type) housing, condominium structures and apartment buildings. It is not proposed to apply to custom-built homes, re-roofing operations or additions to existing residential dwelling units.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1730, Roof Hazards.

A new exception is proposed to be added at the end of Section 1730. The exception would refer the regulated public to Section 1731 for roofing work on new production-type residential construction with roof slopes 3:12 or greater. The purpose and necessity of this exception is to clarify that provisions for roofing work on new, production-type residential construction are covered by a vertical (industry-specific) standard.

Section 1731 – Roof Hazards - New Production-Type Residential Construction.

This proposed new section is added to harmonize the fall protection trigger height for roofing work on production-type residential roofing with the trigger height for residential-type framing activities which are covered in Section 1716.2. The purpose and necessity for this new section is to provide a single uniform 15-foot trigger height for the majority of work performed during the early phases of production-type residential construction work; i.e., during framing and roofing operations, thereby simplifying and improving compliance.

Subsection (a), Scope and Application.

This proposed new subsection identifies the scope and application of this section. It would apply only to roofing work on new production-type residential construction with roof slopes 3:12 or greater. It would not apply to custom-built homes, re-roofing operations, roofing replacements or additions on existing residential dwelling units. A note directs the regulated public to Section 1730 for other roofing operations not covered by this section. The purpose and necessity of this subsection is to identify the scope and application of Section 1731.

Subsection (b), Definitions.

This proposed new subsection defines the terms: “custom-built home,” “eaves,” “production-type residential construction,” “roof,” “roof slope,” and “roofing work.” The purpose and necessity of these definitions is to describe the terms used in the application of Section 1731 in order to facilitate compliance.

Subsection (c), Fall Protection for Roofing Work.

This proposed new subsection prescribes fall protection requirements for construction: (1) where the roof slope is between 3:12 and 7:12, and (2) where the roof slope is 7:12 or greater. The purpose and necessity for these provisions is to provide fall protection that is at least as effective as that required by Federal OSHA Instruction STD 3-0.1A, Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction, Section XII, Alternative procedures for Group 4: Roofing Work (Removal, repair, or installation of weatherproofing roofing materials such as shingles, tile and tar paper). Therefore, these provisions would improve worker safety.

Subsection (d), Training.

A new subsection (e) entitled “Training” is proposed that would supplement the Illness and Injury Prevention Programs prescribed in CSO Section 1509 and GISO Section 3203 by specifying industry-specific hazards in new production-type residential roofing activities for affected employees to receive training. The purpose of this subsection is to ensure that employees engaged in new production-type residential roofing operations receive training to provide specific awareness of the fall hazards associated with that type of work. The necessity is to improve worker safety by increasing specific awareness of the fall hazards associated with the roofing work the employee would be performing.

DOCUMENTS RELIED UPON

1. Petition No. 462, dated July 15, 2004, submitted by Bruce Wick, Wick Risk Management on behalf of the California Professional Association of Specialty Contractors, to the Occupational Safety and Health Standards Board.
2. Occupational Safety and Health Standards Board Decision dated November 18, 2004, in the matter of Petition File No. 462 by Bruce Wick, Wick Risk Management on behalf of the California Professional Association of Specialty Contractors.
3. OSHA Instruction, Directive Number: STD 03-00-001 – STD 3-0.1A, “Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction,” dated June 18, 1999, U.S. Department of Labor, Occupational Safety and Health Administration.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact on private persons or businesses. Costs that may be incurred for the incremental reduction in trigger height from 20 to 15 feet cannot be accurately determined; however, the Petitioner (Cal PASC) indicates that their experience to-date has shown that incremental costs are equaled or exceeded by savings resulting from reduced workers compensation and liability insurance costs.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes

unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal. App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed standards may affect small businesses; however, no significant economic impact is anticipated.

ASSESSMENT

The adoption of the proposed standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.