NRCA

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Residential Fall Protection: OSHA's New Rules

On June 16, the Occupational Safety and Health Administration (OSHA) will change its acceptable fall-protection methods for a variety of residential construction work including residential roofing work. The use of slide guards—roof brackets installed on residential roofs to prevent falls—no longer will be a readily available option for residential roofing fall protection without roofing contractors taking additional compliance steps. OSHA enforcement is expected to intensify for residential building contractors beginning June 16, and penalties may be significant.

Background

Under OSHA's construction regulations, an employer must provide fall protection when a worker is exposed to a fall hazard of 6 feet or greater from a roof or other working surface. The regulations list three types of fall-protection methods—guardrails, safety nets and personal fall-arrest systems (PFAs)—OSHA recognizes as compliant for construction fall exposures. These three options are commonly called conventional fall-protection methods. However, for more than a decade, OSHA has allowed the limited use of slide guards as an additional fall-protection method under lengthy guidelines published in an agency instruction and enforced in the same manner as regulations. (An OSHA directive may be published in the form of an "instruction," which is a directive designed to be operative for more than a year. Directives communicate agency policies and procedures to OSHA's staff and the public).

The instruction allowed for the use of slide guards on residential roofs with slopes of 8:12 or less and eave heights of 25 feet or less. It also authorized the use of a safety monitor as a fall-protection method on residential roofs with slopes of 4:12 or less and installations of tile or metal roofs with slopes of 8:12 or less subject to the 25-foot height maximum. Under the instruction, slide guards could not be used as the sole form of fall protection if the roof slope exceeded 8:12 or eave height was greater than 25 feet—a conventional fall-protection method was required. Residential construction was defined in the instruction as a building constructed using typical wood-framing methods found in single-family homes or townhomes. Solid masonry buildings did not qualify as residential under the instruction even though the roof framing may have been identical to that of a typical "stick-built" structure.

The residential fall-protection instruction was significant because it allowed roofing contractors to use a fall-protection method (slide guards or a safety monitor with tile and metal installations) that was not authorized by the regulations without having to show conventional methods of fall protection were infeasible or created a greater hazard. Previously, the regulations would have required a contractor to demonstrate infeasibility or a greater hazard and create a written fall-protection plan developed by a qualified person that was specific to the job site. Additional administratively complex plan requirements under 29 CFR §1926.502(k) were avoided by simply complying with the guidelines described in the instruction.

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New Instruction

On Dec. 16, 2010, OSHA announced the cancellation of the residential fall-protection instruction and its provisions that had been authorized by the agency for more than 15 years. (The original instruction setting out guidelines for slide guard use was published by OSHA Dec. 8, 1995.) The agency delayed enforcement of the cancellation until June 16, 2011.

On June 16, roofing contractors will be required to implement one of the three conventional fall-protection methods (guardrails, safety nets or PFAs) when workers are exposed to residential fall hazards of 6 feet or greater. Other fall-protection methods may be employed only if a contractor makes a determination that conventional fall-protection methods are infeasible or create a greater hazard for workers and the contractor develops a written fall-protection plan addressing the requirements found in 29 CFR §1926.502(k) as follows:

1. The plan must be prepared by a qualified person, kept up to date and developed specifically for the site.
2. Changes to the plan must be approved by a qualified person.
3. A copy of the plan with all changes must be maintained at the job site.
4. Implementation of the plan must be under the supervision of a competent person.
5. The plan must document the reasons conventional fall protection is infeasible or creates a greater hazard.
6. The plan must discuss other measures that will be taken to reduce or eliminate fall hazards to workers not protected by conventional fall-protection methods.
7. Locations where conventional fall protection cannot be used must be identified and classified as controlled access zones; compliance with provisions of 29 CFR 1926.502(g) relating to controlled access zones is required.
9. If no other fall-protection measure has been put in place, the employer must implement a safety monitoring system as described in 29 CFR 1926.502(h).
10. Employees designated to work in the controlled access zone established under the plan must be identified by name or other manner in the plan—no other workers may enter the controlled access zone.
11. The employer must investigate any serious falls or incidents at the site to determine whether the fall-protection plan must be revised to prevent future incidents.

However, relative to the site-specific requirement, OSHA states in the new instruction: "A written plan developed for repetitive use for a particular style/model home will be considered site-specific with respect to a particular site only if it fully addresses all issues related to fall protection at that site."

This differs from the regulation's strict requirement that the written fall-protection plan be "developed specifically for the site" and authorizes repetitive-use plans that could, apparently, be based on similar characteristics of a job site such as single-story; multi-story; multi-level; low-slope; steep-slope; or tile, metal, slate or cedar shake installations. A determination of infeasibility or greater hazard in the use of a conventional fall-protection method still would be required.

If a structure does not meet OSHA's definition of "residential construction," the fall-protection plan option under the regulations may not be used to implement fall- protection methods other than the three conventional methods. OSHA revised its definition of "residential construction" in the new instruction to allow exterior wall structures of solid masonry and framing materials of cold-formed metal studs to be included in the definition.

A larger number of structures conceivably may qualify as residential because of that change. However, the agency has limited the definition to include an "end-use" requirement that the building must be used as a dwelling. For example, work on a home that has been converted exclusively to an office, though it retains its original wood framing, is not considered residential construction under the new instruction, and a roofing contractor would not be permitted to develop a fall-protection plan to use means of fall protection other than the three conventional methods at that job site.

Compliance Issues

OSHA's focus in deciding to cancel the original instruction centers on fall-protection hazards and controls almost exclusively related to new residential construction applications. OSHA and supporters of the cancellation, including the National Association of Home Builders (NAHB), argued that new developments in conventional fall-protection equipment make the fall-protection options under the original instruction, as they apply to roofing, inappropriate. No statistics, research or empirical evidence has been presented by supporters of the cancellation to prove slide guards are not as effective as PFAs. Industry safety concerns with respect to residential reroofing and roof repair projects essentially have been disregarded by OSHA in developing the new instruction and publication of guidance documents to assist employer compliance with the new rule.

OSHA's solutions to infeasibility issues related to conventional fall-protection methods involve scaffolds and personnel lifts as alternatives—equipment that may be suitable in new construction but is not practical in most instances for fully landscaped, occupied residences. Unique safety issues related to installation procedures for tile and metal roof systems specifically addressed by procedures under the original instruction are ignored under this revision. Lifeline tripping hazards faced by multiple workers on a roof using PFAs are perfunctorily solved by OSHA through use of self-retracting lifelines. Fall-protection issues faced by repair personnel have not been addressed, let alone mentioned, in the current instruction.

In contrast, California OSHA logically has met this issue with regulatory provisions detailing procedures to follow when exposure times are brief. Because OSHA and supporters of the original instruction's cancellation primarily are concerned with new construction, fall-protection issues related to 80 percent of residential roofing activity have been neglected by this agency action despite the roofing industry and NRCA's pleadings.

Conclusion

Roofing contractors should review the requirements under Subpart M of OSHA's construction regulations for implementation of the three conventional fall-protection methods to make certain the equipment, procedures and training they have in place for each system are compliant with agency regulations. The new OSHA instruction limits the fall-protection options a roofing contractor can use absent compliance with relatively complex administrative requirements for written fall-protection plans. Remember that to be compliant, a fall-protection plan a roofing contractor develops for a particular residential job site must discuss reasons conventional methods are infeasible or create a greater hazard. The roofing contractor's qualified person who develops the plan must be thorough in assessing and describing those reasons and must discuss other measures that will be implemented to reduce or eliminate fall hazards.

NRCA and NAHB, along with a number of members of Congress, have sent letters to OSHA requesting a six-month delay in the enforcement of this new directive. As of June 6, OSHA has not responded. It is important you plan to implement and comply with these changes in your on-site safety procedures by June 16, 2011. If, however, OSHA extends the deadline, NRCA will inform members immediately.

One reason NRCA has asked for a delay in enforcement is time is necessary to first understand how to comply with the directive—OSHA has not yet been responsive to our questions in any meaningfully way—and to develop training materials, such as video programs, to assist members in their training efforts. We also will let you know when these answers and materials are available.

In the meantime, please do not hesitate to contact Tom Shanahan at tshanahan@nrca.net or (847) 493-7538 or Harry Dietz at hdietz@nrca.net or (847) 493-7502 with any compliance questions you may have or to share your experiences—good or bad—with implementing these OSHA requirements. And there still is political action you can take if you believe the OSHA cancellation described in this *Special Report* will not keep workers involved with residential roofing safe. Contact Duane Musser at dmusser@nrca.net or (202) 400-2592 in NRCA's Washington, D.C., office to express your concerns and learn more about what steps you can take as a safety-conscious roofing contractor.