

SC OSHA Information Memorandum: 01 X 15
Compliance Guidelines for Residential Construction

Subject: Compliance Guidelines for Residential Construction

Effective Date: October 1, 2015

Issuance Date: May 1, 2015

Cancellation: Information Memorandum 96 X 99

Expiration Date: None

Purpose: This memorandum describes interpretation and citation policies for fall protection in residential construction.

Scope: This memorandum applies SC OSHA-wide.

References: OSHA Standard Memo STD - 03-11-002, Compliance Guidance for Residential Construction, December 16, 2010 and SC OSHA Memorandum 96 x 99, Interim Fall Protection for Residential Construction, December 30, 2008

Signature: Dorothy "Dottie" Ison, Administrator

Summary

In early December 2010, Federal OSHA rescinded its Fall Protection for Residential Construction regulation. On December 16, 2010, Federal Occupational Safety and Health Administration (OSHA) issued a Federal Program Change memorandum to rescind its interim enforcement policy on residential fall protection for certain residential construction activities, and replaced it with new compliance guidance.

South Carolina Occupational Safety and Health Administration (SC OSHA) is adopting two (2) subsections within the new compliance guidance for residential construction. Definition of Residential Construction and Citation Policy:

Definition of "residential construction."

Under OSHA STD 03-00-001, a project was considered residential construction "where the working environment, materials, methods and procedures were essentially the same as those used in building a typical single-family home or townhouse." OSHA explained that for purposes of the directive, residential construction was characterized by wood framing and wooden floor joists and roof structures and involved traditional wood frame construction techniques. A discrete part of a large commercial building, e.g., a wood frame, shingled entranceway to a mall, could fall under the definition of residential construction if the aforementioned characteristics were present. This definition was always intended to clarify the scope of the directive; it was not meant to represent OSHA's view of the scope of 1926.501(b)(13). Now that OSHA has rescinded the directive, OSHA believes that adopting a clear interpretation of "residential construction" for purposes of 1926.501(b)(13) will facilitate enforcement as well as compliance efforts.

In the 1999 Advanced Notice of Proposed Rulemaking (ANPR), OSHA requested comments on the definition of "residential construction." OSHA has considered the comments received in response to

that request (see discussion below). SC OSHA is adopting an interpretation of "residential construction" that reflects what it originally intended when it promulgated the provision specific to "residential construction" in 2003. OSHA's interpretation of "residential construction" for purposes of 1926.501(b)(13) combines two elements - both of which must be satisfied for a project to fall under that provision: (1) the end-use of the structure being built must be as a home, i.e., a dwelling; and (2) the structure being built must be constructed using traditional wood frame construction materials and methods (although the limited use of structural steel in a predominantly wood-framed home, such as a steel I-beam to help support wood framing, does not disqualify a structure from being considered residential construction).

A. Residence Requirement.

To fall within the definition of "residential construction," the end-use of the building in question must be as a home or dwelling. This comports with the plain meaning of the term "residential" in the text of 1926.501(b)(13) and is consistent with OSHA's original intent in promulgating that provision.

OSHA received several comments in response to the Advanced Notice of Proposed Rulemaking (ANPR) that recommended excluding an end-use requirement from the definition of residential construction. The National Association of Home Builders (NAHB) (Ex. 3-2453) asked OSHA not to "make an arbitrary and capricious assessment that the end-use of the structure has any correlation to the hazard to which an employee may be exposed or the type of fall protection systems that can be used." The National Roofing Contractors Association (NRCA), (OSHA-S206C-2006-0924-0189) agreed, commenting that "emphasis should be placed on the best way to protect workers, not on the building's use." Other commenters supported the positions of the NCRA and the NAHB. And in December 2009, the Advisory Committee on Construction Safety and Health (ACCSH) recommended a definition of "residential construction" that would have covered the building of non-residential structures where the environment, methods, materials and procedures used were similar to those used to build single-family residences.

OSHA has given these comments full consideration; however, the Agency has decided that an end-use requirement is necessary to comport with the plain language of 1926.501(b)(13) and OSHA's intent in promulgating that provision. In the original Subpart M rulemaking, various commenters on the proposed rule urged OSHA to establish unique fall protection requirements for "the residential/light commercial sector" or for "residential and light commercial construction." (59 FR at 40693.) For example, the Home Builders Association of Denver (HBAD) commented that "a majority of residential builders also perform some amount of light commercial work and [suggested that] the two types of construction should be categorized [and treated together] as 'light construction.'" (59 FR at 40693.) Other commenters specifically urged OSHA to distinguish light construction from heavy commercial construction. OSHA responded that evidence did not warrant having different rules for light and heavy construction. (59 FR at 40695.) And while OSHA was aware of terms like "light construction," which avoid reference to the use of the structure and instead create a category of building defined solely by materials and methods, it declined to use such terms in the text of 1926.501(b)(13) and elected to use the phrase "residential construction" instead. This approach reflected an intent by the Agency to limit the applicability of that paragraph to structures with a residential end-use, i.e., dwellings.

B. Wood Frame Construction Requirement.

To fall within the definition of "residential construction," the building in question must be constructed using traditional wood frame construction materials and methods. All of the

comments received during the original Subpart M rulemaking that suggested feasibility problems with conventional fall protection dealt with wood framing work. (59 FR at 40693-40695.) Therefore, the term "residential construction" in 1926.501(b)(13) was designed to apply only to the construction of homes using traditional wood frame construction materials and methods. This includes the construction of otherwise covered residences if there is limited use of structural steel in a predominantly wood-framed home, such as a steel I-beam to support wood framing.

Recently it has become more common to use metal studs for framing in residential construction rather than wood. Some commenters to the ANPR believed that the use of metal studs for framing should be included in the definition of residential construction. (See, e.g., NAHB (Ex. 3-2453); NRCA (OSHA-S206C-2006-0924-0189).) Furthermore, at its December 2009 meeting, ACCSH recommended a definition of residential construction that listed metal studs, along with wood, as materials used for framing. (See OSHA-2009-0030-0024.) OSHA agrees with the commenter's and ACCSH on this point. The same feasibility concerns that apply to wood framing apply to framing done using metal studs. Accordingly, OSHA will consider it within the bounds of "traditional wood frame construction materials and methods" to use cold-formed sheet metal studs in framing.

And finally, OSHA is aware that many homes and townhouses have been built using traditional wood frame construction throughout the structure except for the exterior walls, which are often built with masonry brick or block. In a March 27, 2006, letter, the National Association of Home Builders (NAHB) advocated for masonry block construction to be treated as wood frame construction because "masonry block wall construction has the equivalent strength of traditional wood frame, stick-built walls." Because the same fall protection methods are likely to be used in the construction of homes built with wood framed and masonry brick or block exterior walls, OSHA has decided that it is consistent with the original purpose of 1926.501(b)(13) to treat the construction of residences with masonry brick or block in the exterior walls as residential construction.

In accordance with the discussion above, and for purposes of the interpretation of "residential construction" adopted herein, "traditional wood frame construction materials and methods" will be characterized by:

Framing materials: Wood (or equivalent cold-formed sheet metal stud) framing, not steel or concrete; wooden floor joists and roof structures.

Exterior wall structure: Wood (or equivalent cold-formed sheet metal stud) framing or masonry brick or block.

Methods: Traditional wood frame construction techniques.

C. Nursing homes, hotels, and similar facilities.

As noted above, to fall within the definition of "residential construction," the end use of the building must be as a home or dwelling and the building must be constructed using traditional wood frame construction materials and methods. Construction of nursing homes, hotels, and similar facilities typically involves the use of the following materials in the framework of the structure: precast concrete, steel I-beams (beyond the limited use of steel I-beams in conjunction with wood framing, described above), rebar, and/or poured concrete. These materials are not used in traditional wood frame construction, and buildings constructed using these materials will not be considered "residential construction" for purposes of 1926.501(b)(13). For this reason, OSHA expects that in the vast majority of cases the Compliance Safety and Health Officer (CSHO) will be able to readily ascertain that the building of structures such as hotels, motels, and nursing homes is not "residential construction," as that term is interpreted in this directive. However, if a CSHO encounters an

unusual situation in which a project such as a hotel, motel, or nursing home is being constructed using traditional wood frame construction materials and methods, he or she should contact the Compliance Manager.

Citation Policy.

- A. If an employer is engaged in residential construction, but does not provide guardrail systems, safety net systems, personal fall arrest systems, or other fall protection allowed under 1926.501(b), a citation for violating 1926.501(b)(13) should be issued unless the employer can demonstrate the infeasibility of these protective measures or the existence of a greater hazard. If the employer demonstrates infeasibility or a greater hazard, the CSHO must determine if the employer has implemented a fall protection plan meeting the requirements of 1926.502(k). Part of that determination will be based on whether the employer has instituted alternative measures to reduce or eliminate fall hazards.

- B. Under SC OSHA Memorandum 96 X 99, the employer was not required to have a fall protection plan that was written and site-specific. With the cancellation of SC OSHA Memorandum 96 X 99, fall protection plans under 1926.502(k) must be written and site-specific. If the fall protection plan is not written, site-specific, or otherwise fails to meet the requirements of 1926.502(k), the violation should be cited as a grouped citation of 1926.501(b)(13) and 1926.502(k). 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.

Actions

- 1. The Administrator or authorized representative shall ensure compliance with this memorandum.
- 2. Compliance and Consultation supervisors shall ensure that this memorandum is reviewed with all Compliance Safety and Health Officers (CSHOs).
- 3. It is strongly recommended that CSHOs consult with their supervisor before accepting the use of a fall protection plan.