OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR — Occupational Safety and Health Administration

DIRECTIVE NUMBER: STD 03-11-001	EFFECTIVE DATE: December 16, 2010

SUBJECT: Compliance Guidance for Residential Construction
ENFORCEMENT DATE: June 16, 2011

ABSTRACT

Purpose: This Instruction cancels OSHA Instruction STD 03-00-001, the Agency's interim enforcement policy on fall protection for certain residential construction activities, and replaces it with new compliance guidance.

Scope: OSHA-wide

References: 29 CFR Part 1926 Subpart M—Fall Protection

Cancellations: OSHA Instruction STD 03-00-001, Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction, dated June 18, 1999.

State Impact: Notice of Intent and Equivalency are required. See Paragraph VII.

Action Offices: National, Regional, Area, and State Plan Offices.

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By and Under the Authority of

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Executive Summary

This Instruction cancels OSHA Instruction STD 03-00-001, the Agency's interim enforcement policy on fall protection for specified residential construction activities, and replaces it with new compliance guidance. Under the new policy, employers engaged in residential construction must comply with 29 CFR 1926.501(b)(13).

Under 29 CFR 1926.501(b)(13), workers engaged in residential construction six (6) feet or more above lower levels must be protected by conventional fall protection (i.e., guardrail systems, safety net systems, or personal fall arrest systems) or other fall protection measures allowed elsewhere in 1926.501(b). However, if an employer can demonstrate that such fall protection is infeasible or presents a greater hazard, it may implement a fall protection plan meeting the requirements of 1926.502(k). The fall protection plan's alternative measures must utilize safe work practices that eliminate or reduce the possibility of a fall. The plan must be written and be site-specific. 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.

For purposes of determining the applicability of section 1926.501(b)(13), the term "residential construction" is interpreted as covering construction work that satisfies the following two elements: (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. 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.

Significant Changes

This Instruction cancels OSHA Instruction STD 03-00-001, dated June 18, 1999, the Agency's interim enforcement policy on fall protection for specified residential construction activities, and replaces it with new compliance guidance.

Employers engaged in residential construction who wish to use alternative fall protection measures must meet the requirements in 29 CFR 1926.501(b)(13) and 1926.502(k).

Fall protection plans used to comply with 29 CFR 1926.501(b)(13) and 1926.502(k) must be written and site-specific.

This instruction interprets "residential construction" for purposes of 29 CFR 1926.501(b)(13) to include two elements: (1) a residence requirement; and (2) a wood frame construction requirement.

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I. Purpose.

A. This Instruction cancels OSHA Instruction STD 03-00-001, the Agency's interim enforcement policy on fall protection for specified residential construction activities, and replaces it with new compliance guidance.

B. This Instruction clarifies OSHA's citation policy with regard to the requirement that employers engaged in residential construction demonstrate the infeasibility of required fall protection systems, or that such systems create a greater hazard, prior to implementing alternative measures under 29 CFR 1926.501(b)(13) and 1926.502(k). This Instruction also clarifies OSHA's enforcement policy regarding the requirements in 29 CFR 1926.502(k) that fall protection plans, when used, be written and site-specific.

C. This Instruction interprets the term "residential construction" as used in 29 CFR 1926.501(b)(13).

II. Scope. This Instruction applies OSHA-wide.

III. References. 29 CFR 1926 Subpart M—Fall Protection.

IV. Cancellations. OSHA Instruction 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, is canceled. Any letters that reference the canceled directive will be revised or withdrawn, as appropriate.

V. Action Information.

A. Responsible Office. Directorate of Construction

B. Action Offices. National, Regional, Area, and State Plan Offices

C. Information Offices. Consultation Project Managers

VI. Action. Regional Administrators and Area Directors shall ensure that compliance officers are familiar with the contents of this Instruction and that the enforcement guidelines are followed.

VII. Federal Program Change. Notice of Intent and Equivalency Required. This Instruction cancels OSHA Instruction STD 03-00-001, the Agency's interim enforcement policy on fall protection for certain residential construction activities, and replaces it with new compliance guidance. Some States did not adopt, or have since rescinded, the earlier directive. States with OSHA-approved State Plans must have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program that is at least as effective as Federal

OSHA's program. State plans must adopt the interpretation of "residential construction" and the citation policy described in paragraphs IX and X of this Instruction or an at least as effective alternative interpretation and policy. Those States that adopted the policy in the December 8, 1995 STD 3.1 and/or the June 18, 1999 directive STD 03-00-001 (old directive number STD 3-0.1A), must similarly rescind those policies.

States are required to notify OSHA within 60 days whether they intend to adopt a change in policies and procedures identical to this Instruction or adopt or maintain different inspection policies and procedures for fall protection in residential construction. If a State adopts or maintains policies and instructions that differ from Federal OSHA's, the State must identify the differences in its policies and either post its different policies on its State Plan website and provide the link to OSHA or provide an electronic copy to OSHA with information on how the public may obtain a copy from the State If the State adopts identical policies and procedures, it must provide the date of adoption to OSHA. State adoption must be accomplished within 6 months, with posting or submission of documentation within 60 days of adoption. OSHA will provide summary information on the State responses to this Instruction on its website.

VIII. Background. The fall protection requirements for residential construction are set out in Subpart M at 29 CFR 1926.501(b)(13), which requires fall protection (usually conventional fall protection, i.e., guardrail systems, safety net systems, or personal fall arrest systems) for work 6 feet or more above lower levels, except where employers can demonstrate that such fall protection systems are infeasible or would create a greater hazard. Although the standard does not mention personal fall restraint systems, OSHA has previously stated that it accepts a properly utilized fall restraint system in lieu of a personal fall arrest system when the restraint system is rigged in such a way that the worker cannot get to the fall hazard. (See, e.g., Gilmore letter 11/2/95.) (OSHA notes that fall protection requirements for residential construction work performed on scaffolds, ladders, and aerial lifts are in Subpart L, Subpart X, and 29 CFR 1926.453 respectively, not 29 CFR 1926.501(b)(13).)

Under 1926.501(b)(13), the employer need not use conventional fall protection if it can demonstrate that doing so is infeasible or would pose a greater hazard. Instead, in that situation, the employer must develop and implement a written, site-specific fall protection plan meeting the requirements of 29 CFR 1926.502(k). A note to 1926.501(b)(13) explains that "[t]here is a presumption that it is feasible and will not create a greater hazard to implement at least one of the . . . [required] fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan . . . in lieu of implementing any of those systems."

OSHA included flexible language in 1926.501(b)(13) because of concerns expressed by some commenters during the Subpart M rulemaking about the feasibility and safety of using conventional fall protection for residential construction. After OSHA promulgated 1926.501(b)(13), however, representatives of the residential construction industry argued that they needed even more compliance flexibility than the standard allowed. As a result, OSHA issued Instruction STD 3.1 on December 8, 1995. STD 3.1 set out an interim

compliance policy that permitted employers engaged in certain residential construction activities to use specified alternative procedures instead of conventional fall protection. These alternative procedures could be used without a prior showing of infeasibility or greater hazard and without a written, site-specific fall protection plan. The Agency never intended STD 3.1 to be a permanent policy; in issuing the Instruction, OSHA stated that the guidance provided therein would "remain in effect until further notice or until completion of a new formal rulemaking effort addressing these concerns."

For purposes of STD 3.1, "residential construction" was defined to cover the building of "structures where the working environment, and the construction materials, methods, and procedures employed [we]re essentially the same as those used for typical house (single-family dwelling) and townhouse construction." OSHA stated that "[d]iscrete parts of a large commercial structure . . . [could] come within the scope of th[e] directive (for example, a shingled entranceway to a mall), but . . . [that] d[id] not mean that the entire structure thereby c[ame] within the terms of th[e] directive."

On June 18, 1999, the Agency issued STD 3-0.1A (subsequently re-designated STD 03-00-001), which was a plain language replacement for STD 3.1. OSHA continued to describe its guidance on fall protection for residential construction as an "interim enforcement policy." The Agency stated that it would "solicit public comment on fall protection issues in residential construction in an Advance Notice of Proposed Rulemaking . . . and [a]fter analyzing those comments . . . [would] re-evaluate" the interim policy.

In STD 03-00-001, OSHA clarified that for purposes of the interim guidance, "residential construction" was characterized by certain materials, i.e., "wood framing (not steel or concrete) [and] wooden floor joists and roof structures," and certain methods, i.e., "[t]raditional wood frame construction techniques."

A. <u>Advanced Notice of Proposed Rulemaking (ANPR)</u>.

Shortly after issuing STD 03-00-001, OSHA published the Advanced Notice of Proposed Rulemaking (ANPR). (64 FR 38077 (Docket S-206C) (July 14, 1999).) The Agency noted that publication of that notice marked the "begin[ing] [of its] . . . evaluation . . . of" STD 03-00-001." (64 FR at 38078.) OSHA explained the ANPR as follows:

> OSHA emphasizes that the extensive rulemaking process completed in 1994 established that the fall protection requirements in the rule are reasonably necessary and appropriate to protect employees from the significant risks of fall hazards. Providing such protection was demonstrated to be both technologically and economically feasible. . . . However, because of . . . concerns raised by employers engaged in . . . [certain residential construction] operations . . . we are seeking additional information.

(64 FR at 38078.) In the ANPR, the Agency noted that there had been "advances in the

types and capability of commercially available fall protection equipment" since the promulgation of 1926.501(b)(13) (64 FR at 38080), and stated that it "intend[ed] to rescind . . . [STD 03-00-001] unless persuasive evidence . . . [was] submitted . . . demonstrating that for most residential construction employers complying with . . . [1926.501(b)(13)] is infeasible or presents significant safety hazards." (64 FR at 38078.) The Agency also sought comments on the definition of "residential construction."

B. Comments and Information Received in Response to the ANPR.

OSHA received comments in response to the ANPR from unions, members of the residential construction industry (including contractors, manufacturers, trade associations, and consultants), and other interested parties. The commenters were divided on the planned rescission of STD 03-00-001. Some supported the planned withdrawal. For example, the United Steelworkers of America (OSHA-S206C-2006-0924-1429) "strongly urge[d]" OSHA to withdraw the directive and commented that it did "not believe that the alternative procedures [in the directive] provide any positive protection for residential construction workers." And Web-Tech Safety Products (OSHA-S206C-2006-0924-0039) commented that "the scale of exemption from fall protection provided under STD 3.1/3-0.1A is no longer necessary." Others, however, expressed ongoing concerns about the feasibility of conventional fall protection for certain types of residential construction work and urged OSHA to retain the interim guidance. For example, the Residential Construction Employers Council (RCEC) (OSHA-S206C-2006-0924-0172) argued in favor of the "[c]ontinued use of the Interim Fall Protection Standard," and the National Roofing Contractors Association (NRCA) (OSHA-S206C-2006-0924-0189) "strongly encourage[d] OSHA to keep Directive STD 3-0.1A in effect."

The commenters who opposed the planned withdrawal of the directive focused primarily on concerns about the feasibility of personal fall arrest systems. For example, the National Association of Home Builders (NAHB) (Ex. 3-2453)[1] was concerned about a lack of proper attachment points for personal fall arrest equipment during some types of work, asserting that before the completion of a roof system "there is no attachment point for an anchor that meets . . . [OSHA] requirements." (As noted below, however, the NAHB has subsequently changed its position on STD-03-00-001.) The RCEC (OSHA-S206C-2006-0924-0172) suggested that personal fall arrest cannot be used for the installation of roof sheathing because "multiple anchor points would be required for repositioning and it would create a swing fall hazard due to the amount of rope needed to adequately traverse the roof[.]" And the NRCA (OSHA-S206C-2006-0924-0189) commented that the use of personal fall arrest systems for roofing work exposed workers to fall hazards for a longer period of time and created other hazards, such as tripping and burning.

Other commenters argued that personal fall arrest systems can be used for residential construction work, particularly with respect to work done after the roof is fully sheathed.

[1] This exhibit has not been posted in Docket OSHA-S206C-2006-0924 at www.regulations.gov. Please contact the OSHA Docket Office at (202) 693-2350 to access this record.

For example, the Safety Equipment Association (OSHA-S206C-2006-0924-0167), which represents the leading manufacturers of personal fall protection systems and components, commented that "[t]emporary and permanent roof anchorage connectors designed to provide a fall arrest attachment point at the roof peak or along the structural members of the roof surface are available from many manufacturers." And the Steelworkers union (OSHA-S206C-2006-0924-1429) commented that "roof anchors used in conjunction with fall arrest systems . . . are feasible" for roofing work.

OSHA believes that personal fall arrest systems generally can be used safely and effectively in residential construction, including for roofing work. The use of adjustable and retractable lanyards can greatly minimize the tripping or entanglement hazards that the NRCA was concerned about. Such hazards can also be controlled using safe work practices, such as coordinating the movements of workers on the roof. And the Agency is not persuaded by the RCEC's suggestion that the use of personal fall arrest systems during the installation of roof sheathing exposes workers to swing hazards. If a fall occurs in an established work zone, a properly engineered fall arrest system and safe work practices will prevent the worker from being subjected to a swing hazard. Horizontal lifelines that allow the anchorage point to move along with the worker can also address swing hazards. Finally, based on enforcement experience, OSHA is convinced that fall arrest systems can be used with commercially-available anchors that can be installed without increasing the duration of exposures to fall hazards or impeding production schedules. Web-Tech Safety Products Inc. (OSHA-S206C-2006-0924-0039) explained that their strap anchor "does not interfere with productivity, because of the speed, simplicity and location of its installation," and that "[i]t takes about ten seconds to install . . . [a strap anchor]."

OSHA notes that employers in residential construction will often be able to use personal fall restraint systems in situations in which it might be problematic to use personal fall arrest systems. Fall restraint systems can be used effectively to prevent falls by tethering workers to structural members, such as braced trusses and studs. In addition, on sheathed floor and roof trusses, personal fall restraint systems can prevent workers from reaching an unprotected side or edge. Because fall restraint systems are designed to prevent a worker from falling (as opposed to arresting a fall once it occurs), OSHA does not require anchors for restraint systems to meet the 5,000 pound strength requirement that applies to anchors for personal fall arrest systems.[2] (See 29 CFR 1926.502(d)(15); see also 64 FR at 38081 ("[t]he anchor for [a fall restraint] system is not called on to withstand the forces of an arrested fall").) Therefore, using a fall restraint system may be a viable way for employers to provide fall protection in situations in which they have concerns about the adequacy of available anchorage points for fall arrest equipment.

In any event, even if there are some isolated residential construction tasks for which it is

[2] OSHA suggests that, at a minimum, fall restraint systems have the capacity to withstand at least three thousand (3,000) pounds of force or twice the maximum expected force that is needed to restrain the person from exposure to the fall hazard. In determining this force, consideration should be given to site-specific factors such as the force generated by a person walking, leaning, or sliding down the work surface. (See, e.g., Gilmore letter 11/2/95.)

infeasible or creates greater hazards to use personal fall arrest systems, that does not end the Agency's inquiry into whether "for most residential construction employers complying with . . . [1926.501(b)(13)] is infeasible or presents significant safety hazards." Personal fall arrest is just one type of conventional fall protection that can be used to comply with 29 CFR 1926.501(b)(13). Employers can also use guardrail systems or safety net systems. And, as mentioned previously, employers can have their personnel work from ladders, scaffolds, or aerial lifts in lieu of complying with 1926.501(b)(13). (And see below for a discussion of more recent advances in the use of personal fall arrest equipment.)

OSHA received a few comments suggesting that employers may have problems using guardrail systems, safety net systems, or non-Subpart M protective measures for some residential construction activities. For example, the NRCA (OSHA-S206C-2006-0924-0189) commented that "guardrails and safety net systems are . . . not a practicable option for most residential structures." Safety Research, Inc. (OSHA-S206C-2006-0924-0028) stated that "[g]uardrails and nets are not feasible for some exposures in the residential construction industry." The NAHB (Ex. 3-2453) commented that guardrail systems are infeasible for some residential construction activities because there are no suitable attachment points for them. The NAHB also suggested that the use of guardrail systems may increase the amount of time workers are exposed to falls. And the National Frame Builders Association (OSHA-S206C-2006-0924-0074) commented that safety net systems "are not practical" and that "guardrails will not work on post frame construction." The Frame Builders also commented that "standard scaffolds are . . . difficult to use because of non-graded worksites . . . and . . . large roof overhangs."

In contrast, other commenters described ways in which conventional fall protection and non-Subpart M work methods <u>can</u> be used at various stages of residential construction. Philip Colleran (OSHA-S206C-2006-0924-1438), a Certified Safety Professional with more than 25 years of experience in construction safety, commented that "[c]onventional fall protection . . . [is] available to all trades that follow framing and can be used in the same manner as the rest of the construction industry." Roof-Rail Company, Inc. (OSHA-S206C-2006-0924-0126) provided OSHA with evidence of a guardrail system that can be used for "a very large proportion of residential structures" and could "provid[e] effective primary fall protection for nearly everyone working on or above the top plate." The Steelworkers union (OSHA-S206C-2006-0924-1429) explained that "there are ways to protect [residential construction workers] . . . from falls by the use of scaffolds, personal lifts, scissor jacklifts etc." and, even with respect to the sheathing of roofs, that "scaffolds[] or personal lifts can be used to protect workers." Vince Gallagher of Safety Research Inc. (OSHA-S206C-2006-0924-0028), with more than two decades of experience as a safety professional and expertise in controlling fall hazards, commented that feasible means of protecting workers from falls in residential construction include "scissors lifts, telescoping and articulating boom lifts, a wide variety of personnel lifts, [and] rolling scaffolds." Mr. Gallagher also noted that catch platforms can be feasible for residential construction work performed at elevations of six feet or higher. (A catch platform set adjacent to an elevated work position limits the fall distance from that position to less than 6 feet and the catch platform's guardrails protect workers from

falling from the platform to lower levels.)

At most, the ANPR record suggests that in some circumstances it may be infeasible or unsafe to use guardrail systems, safety net systems, or non-Subpart M work methods for isolated residential construction tasks. But OSHA is not persuaded that there are significant safety or feasibility problems with the use of such equipment for the vast majority of residential construction activities.

The NRCA (OSHA-S206C-2006-0924-0189) asked OSHA to revisit the economic feasibility findings it made for the roofing industry in the Subpart M rulemaking. The roofers suggested that OSHA underestimated costs for their industry and argued that "mandating . . . the use of . . . [conventional fall protection] systems for virtually all residential (steep-slope) roofing work will effect a substantial competitive realignment within the industry." The NRCA did not, however, present any data or concrete evidence to support its assertions, so OSHA has not been persuaded that there is a need to disturb the economic feasibility findings made with respect to the roofers in the 1994 rulemaking.

Overall, the comments to the ANPR did not persuade OSHA that "most residential construction employers" would be unable to find a safe and feasible means of protecting workers from falls in accord with 29 CFR 1926.501(b)(13). When OSHA promulgated Subpart M in 1994, it concluded that it was generally feasible for employers to provide conventional fall protection for residential construction work, and OSHA has concluded that the ANPR record, considered as a whole, does not demand a different finding.

C. Recent Events.

ACCSH Meetings and Recommendations

In September 2000, OSHA's Advisory Committee on Construction Safety and Health (ACCSH) voted six to two in favor of recommending that OSHA rescind STD 03-00-001.[3] Since then, a number of home builders and fall protection equipment manufacturers have made presentations to ACCSH's Residential Fall Protection Work Group describing new ways of using fall protection – including guardrail systems, personal fall arrest systems, and personal fall restraint systems – safely and effectively in residential construction. The Work Group has even received information about methods currently being used to provide conventional fall protection during wood truss installation – one of the tasks OSHA identified as having a potential feasibility problem when it promulgated 1926.501(b)(13) in 1994. (See 59 FR 40672, 40693 (Aug. 9, 1994).) For more information about the presentations that have been made to the ACCSH Work Group over the years see, e.g., OSHA-2009-0030-0025 (transcript of Dec. 10, 2009 ACCSH meeting);

[3] The meeting minutes for the September 2000 ACCSH meeting can be found on OSHA's website at https://www.osha.gov/doc/accsh/meetingminutes/accsh_000915.html

OSHA-2009-0030-0015 (Dec. 8, 2009 Work Group report); OSHA-2009-0030-0015.3 (presentation by LeBlanc Building Co.); OSHA-2009-0020-0004 (transcript of July 31, 2009 ACCSH meeting); OSHA-2008-0013-0003 (May 14, 2008 Work Group report); OSHA-2008-0013-0002 (minutes from Jan. 2008 ACCSH meeting); OSHA-2007-0082-0013 (Jan. 23, 2008 Work Group report).

At the January 2008 ACCSH meeting, the Residential Fall Protection Work Group took the position that STD 03-00-001 "creates confusion" and "allows some to not follow Subpart M even if it could be feasible." (OSHA-2008-0013-0002.) And at an ACCSH meeting on May 15, 2008, a representative of the Work Group stated that the group had concerns about the directive's assumption that there are no feasible means of providing conventional fall protection for the specified residential construction activities. The Work Group representative explained:

> It makes the assumption that there's nothing [available] . . . and the committee, I think as a whole, felt . . . that something should compel an employer to look again in 2008 and see i[f] there [is] something now available that could . . . provide conventional or full, genuine fall protection . . . .

(OSHA-2008-0013-0023.) At that same meeting in May 2008, ACCSH voted six to two to recommend, for a second time, that OSHA rescind STD 03-00-001. (OSHA-2008-0013-0023.)

At the December 2009 ACCSH meeting, a representative of the NRCA presented a motion to have the Committee recommend that OSHA leave STD 03-00-001 in place with respect to roofing work until ACCSH could deliberate on roofing-specific issues at its next meeting. The motion failed to carry enough votes to pass. And at the same meeting the NRCA representative all but conceded that there are now safe and feasible means of providing conventional fall protection for roofing work, stating that it is currently "very tough" to establish that conventional fall protection is infeasible or creates a greater hazard "given all the things we have been seeing lately and what we know." (OSHA-2009-0030-0026.)

With feasibility no longer the roofers' primary stated concern, the NRCA representative argued that the directive should continue to apply to roofers because many employers in that industry would chose to provide no fall protection instead of incurring the burden of using conventional fall protection or establishing infeasibility or a greater hazard and writing a compliant fall protection plan. According to this argument, the slide guards the roofers are using in compliance with the directive, while admittedly not "the best method," are preferable to no fall protection at all. (OSHA-2009-0030-0026.) But OSHA does not consider it good policy or in the interest of worker health and safety to set compliance obligations based on what employers in a given industry are willing to

do, as opposed to what they are capable of doing. *Cf. Faultless Div., Bliss & Laughlin Indus., Inc. v. Secretary of Labor*, 674 F.2d 1177, 1187 n. 18 (7th Cir. 1982) (noting that "unwarranted reliance on industry practice and custom may reduce government regulation under the OSH Act to unintended industry self-regulation"); *Secretary of Labor v. State Sheet Metal Co., Inc.*, 16 BNA OSHC 1155 (OSHRC Apr. 27, 1993) ("[E]ven if everyone else were leaving their employees unprotected, the fact that State's conduct may have been consistent with the normal practice in its industry is irrelevant if the standard specifically requires a different course of action. . . . . [A]n employer cannot be excused from noncompliance on the assumption that everyone else will ignore the law.").

NAHB Letter

In an April 11, 2008, letter to OSHA, the NAHB indicated that it has changed its position on STD 03-00-001 and now favors withdrawal of the directive. The NAHB explained the change in its position as follows:

> The National Association of Home Builders . . . recognizes that falls continue to be the leading cause of injuries and fatalities in the home building industry and we are concerned that there is too much confusion in the residential construction industry as to what fall protection standards must be complied with and what methods must be used to prevent fall-related accidents. Therefore, NAHB requests that . . . OSHA consider withdrawing the directive *OSHA 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*, which sets out the Agency's interim enforcement policy on fall protection for certain residential construction activities.
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> ***
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> We believe that OSHA STD 03-00-001 is a further source for uncertainty surrounding fall protection for the residential construction industry. This directive has created confusion as to what fall protection standards must be complied with by the residential construction industry. Although previously supportive of OSHA STD 03-00-001, now that it has been implemented for nearly 13 years, NAHB is concerned that this OSHA directive has created confusion in the residential construction industry as to what fall protection methods and systems must be used to comply with OSHA standards.
>
> We believe the confusion stems from the variety of sources of fall protection compliance information that builders and trade contractors need to find, read, understand, and then follow. NAHB

> believes that following § 29 CFR Subpart M – Fall Protection would eliminate confusion in the residential construction industry as to what fall protection methods and systems must be used and would make compliance with OSHA fall protection requirements for the home building industry much simpler and easier to understand, as well as put into practice.

OSHSPA

In a letter dated October 22, 2008, the Occupational Safety and Health State Plan Association (OSHSPA), the organization of States that operate OSHA-approved State Plans, notified OSHA that on October 7, 2008, its membership unanimously passed a motion recommending rescission of STD 03-00-001. The letter explained that "OSHSPA membership feels that the interim fall protection guidelines are unnecessary . . . [because] residential construction activities performed at heights six feet or more above floor or ground level can be performed in a safe manner utilizing common building practices and conventional personal protective equipment . . . [and because] STD 03-00-001 has led to confusion in the regulated construction industry and potentially places employees . . . at unnecessary risk."

D. Conclusion to Rescind STD 03-00-001.

There continue to be high numbers of fall-related fatalities in residential construction. As stated above, OSHA considered the comments received in response to the 1999 ANPR and concluded that it did not receive "persuasive evidence" to "demonstrate[e] that for most residential construction employers complying with the rule is infeasible or presents significant safety hazards." (64 FR at 38078.) The recommendations from ACCSH, the NAHB, and OSHSPA, as well as the evidence presented to the ACCSH Residential Fall Protection Work Group showing that conventional fall protection is available and can be used for almost all residential construction operations, provide a separate and independent grounds for OSHA's decision to withdraw STD 03-00-001.

OSHA acknowledges that there may be isolated situations in which it is infeasible or creates a greater hazard to use conventional fall protection in residential construction, but the Agency believes that 29 CFR 1926.501(13) provides sufficient flexibility to accommodate employers in those situations. Any employer doing residential construction that can demonstrate that the use of conventional fall protection is infeasible or creates a greater hazard may use a fall protection plan and alternative fall protection measures in accord with 29 CFR 1926.502(k). Employers also have the option of having workers work from scaffolds (in compliance with Subpart L), ladders (in compliance with Subpart X) or aerial lifts (in compliance with 29 CFR 1926.453) instead of complying with 1926.501(b)(13).

The Agency has decided not to pursue rulemaking regarding fall protection in residential

construction at the present time. OSHA believes that rescinding STD 03-00-001 and relying on the original intent of subpart M to regulate fall protection in residential construction will provide adequate protection for workers and sufficient compliance flexibility for employers.

For these reasons, the Agency is hereby rescinding STD 03-00-001.

IX. Definition of "residential construction."

Under STD 03-00-001, a project was considered residential construction "where the working environment, materials, methods and procedures [we]re 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 is rescinding the directive, the Agency 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 ANPR, OSHA requested comments on the definition of "residential construction." OSHA has considered the comments received in response to that request (see discussion below). The Agency is adopting an interpretation of "residential construction" that reflects what it originally intended when it promulgated the provision specific to "residential construction" in 1994. The Agency'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 ANPR that recommended excluding an end-use requirement from the definition of residential construction. The 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 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, 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-2009-0030-0024.)

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. <u>Wood Frame Construction Requirement</u>.

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 commenters 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, especially in the southern and southwestern regions of the country, have usually 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 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, the Agency 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 accord 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. <u>Nursing homes, hotels, and similar facilities</u>.

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 Directorate of Construction, Office of Construction Standards and Guidance, at the address listed above, by telephone at (202)693-2020, or by facsimile at (202)693-1689, for assistance.

X. 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 STD 03-00-001, the employer was not required to have a fall protection plan that was written and site-specific. With the cancellation of STD 03-00-001, 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.

C. See CPL 02-00-111, Citation Policy for Paperwork and Written Program Requirement Violations, November 27, 1995, for additional guidance when citing violations of the requirement for a written fall protection plan in 1926.501(b)(13) and 1926.502(k).

XI. Outreach.

OSHA will begin enforcement activities on or after June 16, 2011. OSHA will publish a notice in the Federal Register giving notice that STD 03-00-001 has been rescinded and new compliance guidance has been issued. Prior to the effective date, OSHA will undertake various outreach efforts. A press release from the Office of Communications will also be published to notify the public of this policy change. OSHA will also present a webinar explaining the change in policy contained in this directive. Using the information from webinar, regional and area offices will conduct appropriate outreach efforts.