

SMRCA Roving Roofer

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SBA Releases Rule Regarding Paycheck Protection Program

On Aug. 24, the Small Business Administration released an [additional interim final rule](#) that provides guidance regarding treatment of owners and forgiveness of certain nonpayroll costs for those who participate in the Paycheck Protection Program.

This new rule amends a previous interim final rule released April 2 regarding implementation of Sections 1102 and 1106 of the CARES Act. Specifically, the new rule states owner-employees with less than a 5% ownership stake in a C or S corporation are not subject to the owner-employee compensation rule. It also clarifies the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, for home-based businesses, household expenses. However, under some circumstances, rent payments remain eligible for loan forgiveness.

The new interim final rule is expected to be published in the *Federal Register* soon.

Employers who received a PPP loan and want to apply for forgiveness can submit one of two forms to their lender. [View the primary revised PPP forgiveness application for borrowers.](#)

For more information about the PPP loan forgiveness application, it is recommended you contact the lender that made the loan. For more general information about the PPP, visit the [COVID-19 Resources for Roofing Contractors](#) section of NRCA's website or [visit SBA's website](#) or [Treasury.gov/CARES](#).

NRCA COVID-19 Toolbox Talks are available

In response to the ongoing COVID-19 crisis, safety software firm Harness has launched a free toolbox talk app that enables construction employers to easily disseminate COVID-19 information to their remote workforces and help document employee meetings.

Available throughout North America, the app features content from the Centers for Disease Control and Prevention, National Institutes of Health and World Health Organization. All information is organized into short toolbox talks that emphasize content relevant to construction workers, and all materials are available in English and Spanish. The app automatically is updated with the latest information. Employers can use the app to capture names and signatures from toolbox talk attendees, and records of each meeting can be emailed to employers' offices. The app works on all mobile devices and is available at www.harnessup.com/covid-19.

In addition, NRCA has made available Coronavirus Disease 2019 (COVID-19) Awareness, a toolbox talk intended to help employers prepare for changes in the way work is normally performed. The toolbox talk is available in English and Spanish at www.nrca.net/covid-19-resources-for-roofing-contractors.

NRCA Technical Dictionary—English to Spanish

NRCA's Technical Dictionary is available translated into Spanish. The translations are available in three formats: the Spanish version, the English-to-Spanish version and the Spanish-to-English version. Click below to download the PDF documents.

[NRCA's Technical Dictionary—Spanish version](#) (PDF)

[NRCA's Technical Dictionary—English to Spanish](#) (PDF)

[NRCA's Technical Dictionary—Spanish to English](#) (PDF)

In addition, NRCA offers several publications translated into Spanish. [Click here to visit the Spanish-language programs section of NRCA's Bookstore.](#)

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Employment Policies Regarding a COVID-19 Vaccine

While neither the Equal Employment Opportunity Commission (EEOC) nor the Occupational Safety and Health Administration (OSHA) have taken a position regarding COVID-19 vaccine policies, their response to the 2009 H1N1 (swine flu) pandemic offers guidance to employers who are considering a mandatory vaccine requirement.



In 2009, OSHA took the official [position](#) that employers may require employees to get a vaccine but emphasized that the employee must first be “properly informed of the benefits of the vaccinations.” But an employer’s ability to require a vaccine as a condition of employment is not absolute. OSHA further explained that “an employee who refuses vaccination because of a reasonable belief that he or she has a medical condition that created a real danger of serious illness or death may be protected under Section 11(c) of the Occupational Safety and Health Act of 1970 pertaining to whistleblower rights.” On March 21, 2020, the EEOC updated its 2009 publication “Pandemic Preparedness in the Workplace and the ADA” to address current issues employers face during the COVID-19 pandemic. In its [updated publication](#), the EEOC made clear that employers cannot compel all employees to receive a vaccine regardless of their pre-existing medical conditions or religious beliefs. Certain employees may be entitled to an exemption from a mandatory vaccination policy under the ADA or Title VII of the Civil Rights Act of 1964, while others may be entitled to object under their collective bargaining or employment agreement.

The most common objection to a mandatory vaccination policy is for medical reasons. Under the ADA it is unlawful for an employer to discriminate against a qualified individual on the basis of disability. Thus, an employee who objects to a vaccine policy based on a recognized ADA disability must be offered a reasonable accommodation unless doing so would cause an undue hardship for the employer resulting in significant difficulty or expense. Furthermore, an employee may object to a mandatory vaccination policy Under Title VII based on a sincerely held religious belief, practice, or observance. Similar to an ADA objection, once an employer receives notice that an employee’s sincerely held religious belief prevents them from taking the vaccine, the employer must provide a reasonable accommodation unless doing so would pose an undue hardship as defined by Title VII (more than de minimis cost to the employer’s business).

Besides potential objections under the ADA and Title VII, employers should also consider how to implement a mandatory vaccination policy with unionized or contracted employees. Under the National Labor Relations Act, employers with a unionized workforce will likely need to negotiate the implementation of a mandatory vaccination program. Courts in certain jurisdictions have held that hospitals cannot unilaterally impose a vaccine mandate without bargaining with the nurses’ union as required by the parties’ collective bargaining agreement. Additionally, an employee who is not “at-will” could argue that the vaccination requirement imposes an additional condition that is not a part of their employment agreement.

Even though mandatory vaccination requirements in the workplace are legal, employees are likely to be skeptical when implementing such a policy. In recognition of this skepticism the EEOC concluded that even in the height of a pandemic, generally, ADA-covered employers should consider simply encouraging employees to get a vaccine rather than requiring them to take it. Despite the EEOC’s guidance, it still may be worthwhile for some employers to consider implementing a mandatory vaccination policy when a COVID-19 vaccine becomes available to the public. Employers might ultimately be forced to accommodate disability or religious-based objections and negotiate with unions or contracted employees, but establishing and implementing clear policies that acknowledge and anticipate these potential objections before the release of a vaccine will significantly reduce risk to employers as they continue to navigate these uncertain times.

If you have any questions relating to employment or benefit matters, please contact a [Kerr Russell attorney](#).

134th Annual Convention and International Roofing Expo 2021—Date Change

—Save the Date—

The 134th Annual Convention and International Roofing Expo will now be held April 14-16, 2021 at Mandalay Bay Convention Center, Las Vegas, NV.

Paycheck Protection Program FAQ's

The SBA has a Paycheck Protection Program FAQ page which was updated on August 11th.

<https://www.sba.gov/sites/default/files/2020-08/PPP%20--%20Loan%20Forgiveness%20FAQs%20%28August%2011%2C%202020%29-508.pdf>

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Another Round—Testing of polymer-modified bitumen sheet products shows some product improvement

Earlier this year, NRCA conducted limited testing of polymer-modified bitumen sheet products, which serves as a follow-up to similar testing NRCA conducted during 2011 and 2015. The purpose of the testing is to determine whether polymer-modified bitumen sheet products are being manufactured in compliance with applicable product standards and whether compliance has improved since the previous testing.

Previous testing

In 2011, NRCA tested 16 polymer-modified bitumen sheet products and found 10 of the products did not comply with one or more of the physical property requirements provided for in the applicable product standards. Low-temperature flexibility and granule loss were the physical properties where noncompliance was identified.

In 2015, NRCA tested 13 polymer-modified bitumen sheet products and found four of the products did not comply with one or more of the physical property requirements provided for in the application product standards. Again, low-temperature flexibility and granule loss were the physical properties where noncompliance findings were of specific concern.

Latest testing

NRCA obtained full rolls of 18 new (uninstalled) polymer-modified bitumen sheet products from 10 manufacturers; 11 products were SBS polymer-modified bitumen, and seven were APP polymer-modified bitumen. The samples were obtained from NRCA contractor members and members of the Midwest Roofing Contractors Association’s Technical and Research Committee from material stock they had on hand.

Product specimens were tested as received for low-temperature flexibility and granule loss according to the application ASTM International test methods. Test results are shown in the figure.

The ASTM International product standards for polymer-modified bitumen sheet products provide for a maximum allowable low-temperature flexibility of 0 F for SBS products and 32 F for APP products. All the SBS products tested and five of the seven APP products tested complied with ASTM International’s low-temperature flexibility requirements.

ASTM International’s product standards also provide for a maximum allowable granule loss of 2 grams for SBS and APP products. All but one of the granule-surfaced SBS products tested and all the granule-surfaced products tested complied with ASTM International’s granule loss requirement.

Recommendations

NRCA recognizes the single-roll testing of multiple products used in this limited testing program may not be statistically representative of all polymer-modified bitumen sheet products being manufactured, but the latest test results show a notable overall improvement in compliance.

However, the tested low-temperature flexibility values for Samples 7-A and 7-B are particularly concerning given the magnitude of the differences between ASTM International’s maximum allowable values and both of these samples; though they are different products, they are from the same manufacturer. There are several reasons why specific products may not achieve adequate low-temperature flexibility values, including inadequate polymer content and dispersion during manufacturing. Variability in or a lack of adequate quality control during manufacturing likely are exacerbating factors.

To address this concern, NRCA suggests designers, specifiers and purchasers of polymer-modified bitumen sheet products seek out manufacturers and products with third-party certifications are common among asphalt shingle products. A UL product certification is one example of a third-party certification of compliance. Also, products recognized by ICC-ES or Miami-Dade County typically incorporate third-party certifications of compliance.

Polymer-modified bitumen sheet product manufacturers having third-party certifications of compliance typically will make these certifications readily known and accessible. NRCA encourages other manufacturers to do so.

Additional information about polymer-modified bitumen sheet products is provided in Chapter 5-Roof Membranes of [The NRCA Roofing Manual: Membrane Roof Systems—2019](#).

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Polymer-modified bitumen test results		
Sample (Manufacturer and product)	Low-temperature flexibility (F) (as received)	Granule loss (g) (as received)
SBS products		
1-A	-13	0.56
3-A	-27	NA
3-B	-15	0.48
4-A	-16	1.13
5-A	-15	2.05
6-A	-13	0.34
6-B	-13	0.53
6-C	-9	0.55
8-A	-20	0.09
9-A	-8	0.53
10-A	Less than -40	1.16
ASTM specification	0 (maximum)	2.0 (maximum)
APP products		
2-A	21	0.95
2-B	10	NA
2-C	14	0.60
2-D	10	0.65
2-E	9	NA
7-A	Greater than 41	0.10
7-B	Greater than 41	0.88
ASTM specification	32 (maximum)	2.0 (maximum)

Notes:
 NA = Not applicable. Granule loss testing does not apply to smooth-surfaced sheet products. Shaded values denote those outside of ASTM International specification values.

Congressional COVID-19 pandemic response. With little progress being made between House Democrats and President Trump regarding a COVID-19 relief package, Senate Republicans released legislation Sept. 8—the Delivering Immediate Relief to America’s Families, Schools and Small Businesses Act. This proposal provides about \$500 billion in direct federal spending and loans, and is being dubbed a “skinny” bill compared with the HEALS Act, which was introduced by Senate Republican leaders in July and contained \$1 trillion in COVID-19 assistance. The latest proposal includes liability protection for businesses and healthcare providers; a second round of Paycheck Protection Program loans; an extension of federal unemployment benefits at \$300 per week; and funding for schools, the U.S. Postal Service, COVID-19 testing and a vaccine. On Sept. 4, the Department of Labor announced the unemployment rate dropped to 8.4%, which is by far the lowest since the pandemic shutdown began in March and could weigh on lawmakers deciding whether another COVID-19 package is necessary. As the November elections draw near, it is possible any relief package that is agreed to could be coupled with a continuing resolution needed to fund the government past Sept. 30—the end of fiscal year 2020—in the absence of Congress passing appropriations legislation.

Funding for career and technical education. NRCA continues to advocate for increased funding for Perkins Career and Technical Education Act State Grants, which are distributed to every state, to fund CTE programs important to addressing the roofing industry’s workforce needs. In 2018, Congress approved legislation supported by NRCA to reform and expand CTE programs under the federal Perkins Act. This new law—which took effect in 2019—is designed to provide new strategies at the state and local levels to help employers address future workforce development. NRCA is pleased the House approved appropriations legislation (H.R. 7617) that will provide an additional \$18 million over the previous year for Perkins CTE State Grants in fiscal year 2021, bringing the total funding to more than \$1.3 billion annually. The Senate has not taken action on this legislation, so NRCA members are urged to contact their senators in support of increased funding for Perkins CTE programs via the NRCA Action Alert, which can be found at the NRCA Grassroots Advocacy Network by [clicking here](#).

Paycheck Protection Program loan forgiveness. On Aug. 10, the Small Business Administration opened its portal for lenders to submit their decisions regarding PPP loan forgiveness applications, as borrowers began to submit their materials to meet the requirement to file within 10 months of the completion of the covered period. However, many businesses are waiting for additional SBA guidance before doing so, as well as whether Congress will ensure expenses

covered by forgiven loans will be tax deductible. On Aug. 24, SBA released an [additional interim final rule](#) that offers guidance regarding treatment of owners and forgiveness of certain nonpayroll costs for companies that received loans. This new rule amends a previous interim final rule released April 2 regarding implementation of Sections 1102 and 1106 of the CARES Act. Specifically, the new rule states owner-employees with less than a 5% ownership stake in a C or S corporation are not subject to the owner-employee compensation rule. It also clarifies the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower or—for home-based businesses—household expenses. However, under some circumstances, rent payments remain eligible for loan forgiveness.

Trump administration engages private firms to review the Paycheck Protection Program. Recently, the Government Accountability Office announced a plan to have a contractor use an automated review system to find potentially problematic PPP loans exceeding \$2 million and then manually check flagged loans. The Small Business Administration would complete the reviews, and a separate contractor would conduct a “quality assurance review” on a subset of the loans. Treasury Secretary Steven Mnuchin and SBA Administrator Jovita Carranza have pledged to scrutinize large loans and are working together to finalize detailed review procedures, which should be released soon. NRCA will provide more information as it becomes available.

Presidential memorandum and guidance regarding payroll tax deferment. On Aug. 28, the Treasury Department and IRS [released guidance](#) regarding President Trump’s Aug. 8 [memorandum](#) allowing the deferment of certain payroll taxes from Sept. 1 through the remainder of 2020. The guidance allows employers to defer withholding and paying an employee’s portion of the Social Security payroll tax until April 2021 if the employee’s wages generally are less than \$4,000 during any biweekly pay period, calculated on a pre-tax basis, which amounts to about \$104,000 annually. There is much uncertainty surrounding implementation, including what employers can do if employees leave before the end of the year and how they could legally recoup that cost. Additionally, under this guidance, employees will face a smaller paycheck for the first four months of 2021—when payroll taxes must be taken out of their paychecks twice—and may fail to plan for such an adjustment. President Trump has said he will urge Congress to repeal the payroll taxes being deferred, which would eliminate the need for repayment next year; however, it is uncertain whether Congress will pass legislation to repeal the taxes.

Presidential memorandum and guidance regarding unemployment insurance. On Aug. 17, the Department of

Labor [issued guidance](#) regarding President Trump's Aug. 8 [presidential memorandum](#) that provides Americans up to \$400 per week additional unemployment insurance benefits funded by the Federal Emergency Management Agency through a joint federal-state agreement. For the \$400 per week benefit, states must contribute 25%(\$100) and the federal government will cover 75%of the cost (\$300). This is different than the \$600 per week funding provided in the CARES Act that expired July 31 after Congress failed to reach an agreement regarding another round of COVID-19-related assistance. These funds will be available until funding in the Disaster Relief Fund reduces to \$25 billion, which ensures the Federal Government can pay for unexpected costs during hurricane season and other needs, and therefore, it is uncertain how long these benefits will last. NRCA will continue to monitor how these benefits affect the roofing industry's workforce.

Guidance for parents using the Families First Coronavirus Response Act leave. On Aug. 27, the Department of Labor Wage and Hour Division released new FAQs explaining whether a parent is eligible for leave under the FFCRA. The FFCRA, which Congress passed in March, allows certain employees to take up to two weeks of paid sick leave and up to 12 weeks of expanded family and medical leave, 10 of which are paid, for specified reasons related to COVID-19. Under the [new FAQs](#) (see Return to School), a parent may qualify for paid leave under FFCRA if the child's school is requiring some mix of remote learning; the parent will be supervising the child at home; and there is no other person available to do so. However, if the school gives the parent the choice of remote learning or in-person school, and the parent chooses to keep the child at home, the parent is not eligible for FFCRA leave. In addition, on Aug. 3, a federal judge in New York struck down several provisions in the FFCRA regulations implementing the paid leave benefits on the grounds the regulations are too restrictive and have resulted in too many employees not being eligible for the paid leave benefits. Questions remain about the effect of the court decision with respect to the scope of where this ruling applies; what will happen in the interim as DOL likely appeals the decision; and whether additional regulations may be issued to address the ruling.

Guidance regarding tracking telework hours. On Aug. 24, the Department of Labor Wage and Hour Division issued a [new field assistance bulletin](#), which offers guidance regarding employers' obligation to track the number of compensable hours worked by employees who are teleworking. In a remote work arrangement, the question of the employer's obligation to track hours *actually worked* for which the employee was not scheduled may often arise. This bulletin reaffirms an employer must pay its employees for all hours worked, including work not requested but allowed and work performed at home. Confusion regarding when an employer "has reason to believe that work is being

performed" may be intensified by the surge of telework and remote work arrangements since DOL last issued an interpretation of these rules in 1961.

Department of Labor issues PRO Good Guidance rule. On Aug.21, the Department of Labor issued a final rule restricting the use of guidance documents from DOL and agencies such as the Occupational Safety and Health Administration. The Promoting Regulatory Openness through Good Guidance Rule implements President Trump's Executive Order 13891, which bans enforcement actions on "mere compliance with guidance documents" while requiring "significant" guidance be subject to notice-and-comment requirements. Order 13891 was issued in October 2019 and is designed to get a handle on agency guidance documents sometimes referred to as "stealth regulations." The Office of Management and Budget executed the Order by first requiring each agency or agency component to establish a searchable database containing all guidance documents in effect within its jurisdiction, and DOL launched its public database in February. OMB also required agencies to finalize rules regarding procedures for guidance documents—hence the PRO Good Guidance Rule—which did not require public comment based on the determination that "policies and requirements surrounding guidance are purely internal matters." The PRO Good Guidance Rule could affect how OSHA approaches COVID-19 and other enforcement matters, and a legal challenge could come from certain groups citing no public comment period under the Administrative Procedure Act. [Click here](#) to view more information, including a fact sheet and the final rule.

Join NRCA's ROOFPAC for a virtual happy hour! NRCA will hold its first ever virtual Happy Hour to benefit ROOFPAC, NRCA's political action committee, Wednesday, Sept. 23, at 7 p.m. EDT. Grab your favorite bottle of wine and join your fellow NRCA colleagues, Kent and Jane Schwickert of Schwickert's Tecta America, Mankato, Minn., for a behind-the-scenes look at Chankaska Creek Ranch and Winery and to hear its unique story. In addition, NRCA's CEO Reid Ribble will discuss his outlook regarding the political landscape. A \$175 personal contribution to ROOFPAC is requested, which includes the Zoom video link and a package including fun wine accessories and light snacks that will be delivered to all participants in advance. Please sign up as soon as possible because space is limited. For more information or to participate, please contact Teri Dorn, NRCA's director of political affairs, at (202) 400-2590 or tdorn@nrca.net.

If you have any questions or would like more information regarding any of the issues discussed here, please contact NRCA's Washington, D.C., office at 800-338-5765.



Birthday Wishes

Bret Pienkosz
T.F. Beck Company
 August 5

Jason Emery
Schreiber Corporation
 September 4

Heather Hadley
SMRCA
 September 21

Anthony Schena
Schena Roofing & Sheet Metal Company
 October 7

Pat Fritsch
Roofing Products of Michigan, Inc.
 October 16

Stacy Foley
Crane Roofing, Inc.
 October 20

Joe Bieszki
Architectural Building Specialties Inc.
 October 26

George Schena
Lifetime Member
 November 13

Jim Coppens
Mid Michigan Roofing
 November 15

Brian Moore
Schreiber Corporation
 November 29

Roger LaDuke
LaDuke Roofing & Sheet Metal
 December 13

Kathy LaDuke
LaDuke Roofing & Sheet Metal
 December 21

Happy Anniversary



Joe & Allison Bieszki
Architectural Building Specialties, Inc.
 September 21

Mary Jo Casey & Ken Dietrich
T.F. Beck Company
 September 26

Anthony & Kristy Schena
Schena Roofing & Sheet Metal Company
 October 12

Chuck & Dee Rosa
Lifetime Member
 October 16

Steve & Lisa Yontz
Roofing Products of Michigan, Inc.
 October 17

Tara & Jay Kakias
T.F. Beck Company
 December 31

2021 SMRCA Golf Outing —Save the Date—

SAVE THE DATE for the
 2021 SMRCA Annual Golf Outing to be held at
 Twin Lakes Golf Club
 on
 Monday, May 24, 2021



2021 MiRCA Convention —Save the Date—

SAVE THE DATE for the
 2021 MiRCA Annual Convention to be held at
 Crystal Mountain—July 22-25, 2021



Upcoming Industry Trade Shows 2020 - 2021

- Dec. 6-8 Best of Success 2020
 Frisco, TX
www.bestofsuccessconference.com
- April 14-16 International Roofing Expo 2021
 Las Vegas, NV
www.theroofingexpo.com
- May 4-6 NERCA Convention & Trade Show 2021
 Atlantic City, NJ
www.nerca.org
- June 7-9 Western Roofing Expo 2021
 Las Vegas, NV
www.westernroofingexpo.com
- June 16-18 RCAT 45th Annual Texas Roofing Conference 2021
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www.roofingcontractors-texas.com
- July 21-23 99th Annual Convention and the Florida Roofing & Sheet Metal Expo 2021
 Kissimmee, FL
www.floridarroof.com
- Oct. 6-8 METALCON 2021
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- Nov. 9-11 MRCA Conference & Expo 2021
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