



**NATIONAL ROOFING
CONTRACTORS ASSOCIATION**

**Statement of Pete Korellis
President, Korellis Roofing, Hammond, Ind.**

**On behalf of the
National Roofing Contractors Association**

Hearing on “Workplace Safety: Ensuring a Responsible Regulatory Environment

**Subcommittee on Workforce Protections
U.S. House of Representatives**

October 5, 2011

Mr. Chairman and members of the subcommittee:

My name is Pete Korellis and I am president of Korellis Roofing Company in Hammond, Indiana. I am testifying on behalf of the National Roofing Contractors Association, which was founded in 1886 and is the voice of professional roofing contractors nationwide. NRCA has approximately 4,000 members in all 50 states that are typically small businesses, with our average member having 45 employees and annual sales of \$4.5 million. Our company was founded in 1960 and employs approximately 120 people. Even with a severe downturn in the housing industry, our company has managed to grow our residential business and employ additional craftsmen. We are successful because we thoroughly understand our industry; we are committed to the people who work for us; and our #1 goal is to send all of them home safely every day. No job is so important that we cannot take the time to do it safely.

I am here today, Mr. Chairman, because I have deep concerns that new rules issued by the Occupational Safety and Health Administration – OSHA – will put my workers at much greater risk of injury and also make it much more difficult for me to operate my company.

The issue in question is fall protection for people working on roofs. We are all too aware that one fall from a roof is one too many, and my company is committed to providing a safe workplace for my employees. For the last 15 years, we have been following a rule that was negotiated by OSHA and roofing industry representatives. The rule allowed us to use a variety of options for fall protection on residential dwellings, based on what we believed was the best solution for a given project. For example, on metal and tile roofs, we could use individuals as

safety monitors for fall protection, because tile and metal is usually stacked in multiple piles all over the roof before the work is begun, and introducing ropes on the roof would make it extremely difficult to maneuver around the roof to complete the work.

Also, we were allowed to use what OSHA calls “slide guards” on moderately sloped roofs; usually these are 2x6 wooden boards (figure 1) that are secured upright around the perimeter of the roof utilizing metal roof brackets (figure 2) anchored to the roof joists, and then spaced up the roof a maximum of 8’ apart so that if a worker slips, the slide guard will catch him. Moderately sloped roofs, for the purpose of the old directive, are those with slopes greater than 4:12 up to 8:12, meaning the roofs rise more than 4 vertical inches for every 12 horizontal inches (figure 3) up to those rising 8 vertical inches for every 12 horizontal inches.

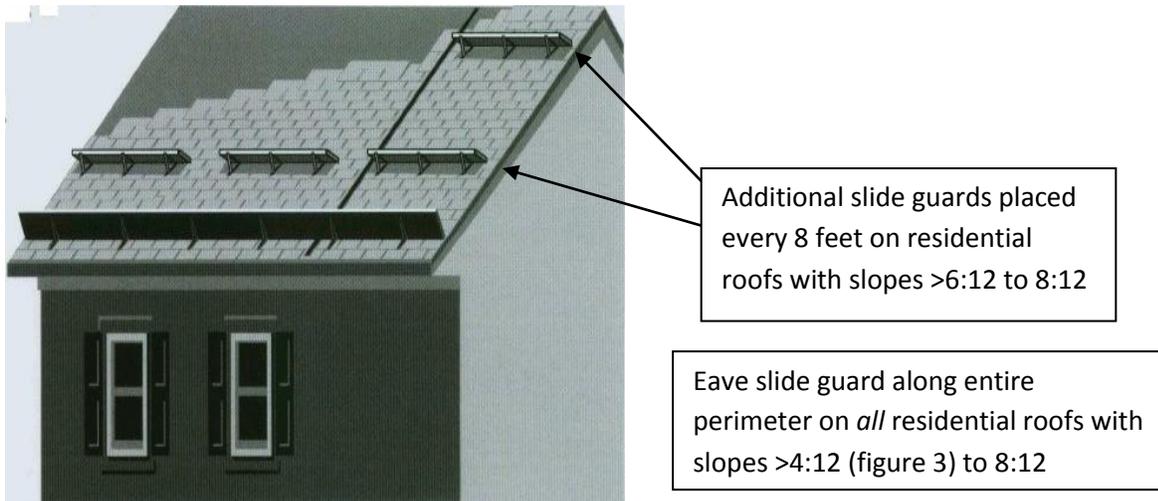


Figure 1: Slide guard installation



Figure 1. Typical slide guard bracket.



Figure 3. Garage with 4:12 pitched roof.

We acknowledge, Mr. Chairman, that like all things in life, safety monitors and slide guards are not fool-proof. But in those 15 years, my company has worked on thousands of homes and we have not had a single serious accident or injury resulting from a fall.

The new OSHA rules, which were issued last December and became effective on Sept. 16, require us to use what OSHA calls “conventional fall protection” methods. Mr. Chairman, there is nothing conventional about them. My choices are to install scaffolding and/or guardrails around every home my workers are on, or to install a safety net around the perimeter of the house, or to put my workers in harnesses with lanyards – what OSHA calls “personal fall arrest systems” – that have to be secured to an anchor point, usually at the roof’s ridge. Of the three options we have to choose from, the first two, guardrails or safety nets, are completely impractical to use on an existing dwelling for a number of reasons. Necessary structural attachment points, readily accessible on a home under construction, are covered by finished trim details like soffit, fascia and gutters on an existing dwelling. Guardrails and safety nets also obstruct the tear off procedure as debris has to be lifted over them for disposal. In addition, most of this equipment is required to be secured directly through the roofing materials we will be removing during the course of the project. This safety equipment will need to be removed and reinstalled at several phases of roof tear-off, dry-in and new material application, increasing worker fall exposures during the numerous times we will need to set up and break down this equipment.

In my company, I want to minimize the time my employees spend in dangerous situations. That means, among other things, I don’t want them working near the edge of the roof unless and until they have to in order to finish the job. Now, if I am supposed to install guardrails or a safety net around the perimeter of a home, my first question is: How am I supposed to protect the people installing the guardrails and safety nets? And would OSHA really want me to expose even more of my workers, for an even longer period of time, to the hazards associated with working near the roof’s edge?

The most practical of the three options, personal fall arrest systems, do not take into account that most dwellings were not designed to accept an anchor point that can withstand a 5,000 pound load. Personal fall arrest systems are not fool-proof either. My company works on all kinds of existing residential structures, and we are not qualified to determine if the rafters we're attaching the anchor to will bear 5,000 pounds of weight. Also, my employees move around on the roof a lot while they are working – that's the nature of reroofing and service work. With ropes all over the roof, they are much more likely to trip and fall. And falling off a roof, even with a harness properly secured to resist a 5,000 pound load, is something we really want to avoid.

We also know that OSHA has more reports of fatal falls when personal fall arrest systems are used than when slide guards are used. And we know that the use of personal fall arrest systems introduces a whole host of greater hazards, most notably those resulting from tripping over ropes on the roof. On roofs 4:12 to 8:12 the ropes lay on the roof under your feet and are practically out of sight -- especially if the workers are carrying materials. However, once workers are on a roof with a slope greater than 8:12 the ropes now lay in front of the workers because of the roof's pitch (figure 5). So the slope is an important variable and why we agree that on these very steep roofs tying off is appropriate.



Figure 5. Workers in PFAs on a 10:12 pitched roof.

Importantly, there is a big difference in new construction roofing activities and the repair, maintenance or replacement of an existing residential roof. New construction activities are coordinated with many other trades' activities and can make effective use of guardrails, safety nets and personal fall arrest systems and even scaffolding because of ease of access (Figure 6) versus typical repair, reroof and maintenance activities in established neighborhoods (Figure 7).



Figure 6. A typical new, residential construction work site.



Figure 7. Site issues on a typical residential reroofing project.

Here's an example: We recently completed a very common type roof replacement on a ranch style house. Due to the existing landscaping, the only access for our dump truck was in the driveway, which is common when we are replacing a roof. We had to carry the shingle tear-off from the rear of the home up over the roof peak to the front of the home where our dump truck was located. As you can probably imagine with a five man crew, the ropes became

tangled and were catching on everything on the roof including the workers; not to mention the fact that we still weren't compliant due to the amount of slack needed in the ropes to travel the long distance to our dump truck from the rear of the home to the front of the home. The excess "traveling slack" needed in the ropes would not have restrained my employees from falling off the roof. In order to comply, we would have had to screw anchor points (that resist a 5,000 pound load) to the roof deck at intervals in the direction of our dump truck, and then hire someone to constantly switch the ropes from anchor point to anchor point. This is unreasonable and just one example of problems that we have run across so far.

In addition, my employees think personal fall arrest systems are cumbersome and I'm concerned they will not use them properly if they think they are either creating greater dangers or merely providing a false sense of security. The reports of fatal falls in OSHA's files – when personal fall protection was used – indicate that either the anchor points failed to resist 5,000 pounds of resistance, the anchors weren't attached, or the ropes weren't attached to the employee's harness. The point is: We can provide equipment to our employees, we can train them, but we can't always make sure they follow our instructions. I'd much prefer to be able to assess each job we do, and find the fall protection solution that makes the most sense for that job. In fact, Mr. Chairman, that is exactly the kind of approach OSHA is advocating in its Injury and Illness Prevention Program.

Now, OSHA officials will tell you that if I think the use of "conventional fall protection" methods is either infeasible or creates a greater hazard, then I can choose to use another method, such as slide guards or safety monitors by developing a site-specific fall protection plan. Let me describe this option for you. The requirements found in 29 CFR §1926.502(k) are as follows:

1. The plan must be prepared by a qualified person¹, 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 person².
5. The plan must document the reasons conventional fall protection is infeasible or creates a greater hazard.

¹ "Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

² "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

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.
8. 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).
9. 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.
10. 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.

Adding 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 apparently could 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,"³ even *this* option 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 greater number of structures conceivably may qualify as residential because of that change, but, the agency *also* limited the definition to include an "end-use" requirement, meaning 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 as a means of fall protection other than the three conventional methods at that job site.

³"The Agency's interpretation of "residential construction" for purposes of 1926.500(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 the wood framing, does not disqualify a structure from being considered residential construction.)"

Mr. Chairman, here is what the option for determining personal fall arrest systems are either infeasible or create a greater hazard means in the real world. Suppose you discover you have a roof leak, and you call my company to fix it. When my company gets a call like that, our practice is to send one person to the home to investigate the leak and to try to fix it on the spot. Before the new rule was issued, if my employee found the source of the leak and was going to repair it, he would install slide guards at the roof eave in the area where he would be working. If the roof was steeper than 8-in-12, he would use a personal fall arrest system before he went on the roof.

Let's suppose that your leak is from deteriorated flashing around your chimney, and the chimney is near the roof eave. Let's also suppose my employee determines he could fix it fairly easily, and is concerned about attaching a harness to himself and climbing up to the ridge of the roof, where he is unsure that there is an anchor point that would hold 5,000 pounds. OSHA says that the personal fall arrest systems have to be anchored⁴ to support a load of 5,000 pounds or have a safety factor of two, which would need to be determined again by a qualified person. I'm not sure how many of my small business counterparts have engineers on staff to do these calculations, but I suspect it is close to none, so we have to rely on manufacturer installation requirements that come with the anchors. The liability of even attempting to assume a safety factor of two is frankly foolish for anyone without a structural engineer on the company's payroll.

If he wanted to repair the leak quickly by installing slide guards near the eave just like we have for the past 15 years, here is what my employee would have to do under the new rule: He would have to return to the office to have a qualified person write a site-specific fall protection plan for the project stating why the new conventional fall protection methods are not feasible or create a greater hazard. Since the "qualified person" might not be familiar with the project, he would probably have to visit the job site. Then I would have to arrange for a "competent person" to accompany my employee to your home to oversee the work.

Mr. Chairman, what would have been a simple roof repair has now turned into a very slow and costly ordeal. By the time the leak is fixed, your house would be pretty wet. A simple roof repair would have cost you a lot of money. And I would have put perhaps three of my employees at needless risk.

I fully support the idea of having roofing companies take positive steps to prevent falls. I know it appears that using personal fall arrest systems seems like the best way to prevent falls. But when it comes to residential reroofing and repair I honestly feel it is much better to assess the hazards and choose the fall protection system best suited for each unique job. Often, we have

⁴ 1926.502(d)(15) Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least 5,000 pounds per employee attached, or shall be designed, installed, and used as follows; (i) as part of complete personal fall arrest system which maintains a safety factor of at least two; and (ii) under the supervision of a qualified person.

no way of knowing that the residential structure was designed to resist a 5,000 pound load. A fall due to my negligence could not only result in OSHA fines and business disruption, it could in fact put me out of business. But most importantly it could cause a life-changing incident that could not only affect my employee but also his or her family. My company has spent the last 15 years training our employees about what we believe are the very best methods for preventing falls.

This is a dangerous industry even when all safety measures are being used. I have to be able to look myself in the mirror and know without question that I have provided the proper training to minimize the chance of an accident. It is an important investment that is well worth the expense. Now I am faced with the prospect of re-training all of my employees to use equipment they don't have confidence in, equipment that provides only a false sense of security and has been proven to be riskier to use in many circumstances.

Mr. Chairman, OSHA has told us they would provide us with all sorts of training materials to help us comply with this new rule. I remind you that it was issued almost 10 months ago. Until very recently, we had seen only a PowerPoint presentation on the OSHA web site that is focused almost entirely on new home construction, which again is completely different from repair and replacement, which accounts for 80% of the work done in the roofing industry. OSHA has promised for months that it would be developing a booklet specific to roof repair and replacement. The enforcement date for the new rule has come and gone, and there is no booklet. I recently learned there is a new Fact Sheet on OSHA's website that discusses roof replacement and repair, but it is virtually useless to me.

It talks, for example, about using scaffolds or aerial lifts to perform repair work at a roof's edge. So for that roof repair described earlier, I suppose I could rent an aerial lift and transport it to the home (probably destroying some landscaping in the process) in order to fix that leak near the chimney. Or I could erect a scaffold system on the side of the house, but of course the new Fact Sheet doesn't address the exposure to falls that workers have when erecting scaffolding or the damage it may do to the home.

Additionally, the new rule is full of ambiguities that have not been addressed by OSHA. Representatives from my industry have tried, without success, to be heard before the new rule was issued. I hope you can understand how frustrating this is for me and my roofing industry colleagues.

It is also important to note that OSHA has presented absolutely no evidence to demonstrate that slide guards are a less effective form of fall protection than the alternatives. In fact, a review of OSHA data indicates that between 2004 and 2008 there were 14 fatalities from roof falls when personal fall arrest systems were in use, compared to only two or three involving slide guards. Government agencies should be required to justify regulatory actions such as this directive with credible, scientifically-based evidence and data. OSHA has not done so in this case, and, we believe, cannot do so.

Another important point is that OSHA's data show clearly that approximately 90% of fatal falls from roofs happen when no form of fall protection is in use. Why would OSHA want to eliminate or limit slide guards, which are proven to be an effective form of fall protection? Moreover, in order to truly improve workplace safety and prevent falls in our industry, OSHA should target its enforcement efforts at contractors that use no fall protection.

Interestingly, there are some OSHA state plans that have worked with the roofing industry to promulgate safety standards that have taken into account many of these concerns. For example in California, CAL-OSHA has a unique set of roofing-related requirements that have, among other choices, slide guards available as an option closely reflecting the former federal provisions. So there is evidence that others are not only working with the affected industry but developing smart safety rules as a result.

Meanwhile, Mr. Chairman, I will be returning to Indiana tomorrow and requiring my employees to follow practices that I believe are not always the best ways to prevent them from falling. I find that incredibly difficult to do.

On behalf of the National Roofing Contractors Association, I respectfully ask the committee to consider a legislative remedy to this problem, which threatens workplace safety in our industry, if OSHA is not willing to work with industry representatives to address our concerns. NRCA wishes to commend Rep. Denny Rehberg for including language in the FY 2012 Labor/HHS/Education Appropriations bill introduced Sept. 29 that would restrict OSHA from enforcing this directive with respect to roof repair and replacement activities. NRCA urges Congress to approve this legislation that will prevent injuries to workers that may result from OSHA's directive and minimize disruption in the roofing industry while we continue working to develop a policy that makes sense for our industry.

We stand ready to continue working with Congress and agency officials to resolve this problem and to find the best possible solutions for improving worker safety. Thank you for your careful consideration of our views on this important issue.