NRCA

Statement of Lisa Sprick

President, Sprick Roofing Co., Inc.

On behalf of the National Roofing Contractors Association

Workforce Protections Subcommittee

House Committee on Education and the Workforce

May 25, 2016

Mr. Chairman and members of the subcommittee,

My name is Lisa Sprick and I am president of Sprick Roofing Co., Inc. in Corvallis, Oregon. Today I am testifying on behalf of the National Roofing Contractors Association, of which my company is a long-time member. I greatly appreciate the opportunity to provide the perspectives of a roofing contractor with respect to the policies of the Occupational Safety and Health Administration (OSHA) and the impact of such polices on workplace safety.

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of professional roofing contractors worldwide. NRCA has approximately 3,500 contractors in all 50 states who are typically small, privately held companies, with the average member employing 45 people and attaining sales of about $4.5 million per year. NRCA members also include manufacturers, distributors, architects, consultants, government agency and academic representatives. NRCA has developed more than 50 roofing safety-related publications, programs or training materials on diverse topics including asbestos, hazard communication, fall protection and cranes. In addition, over the past fourteen years, OSHA has awarded NRCA eleven individual grants to develop programs designed to improve workplace safety in the roofing industry. NRCA also represents the roofing industry in proceedings before OSHA's Advisory Committee for Construction Safety and Health, is a member of the American National Standards Institute's A10 Committee on Construction and Demolition Operations, ISO 45001 Occupational Safety and Health Management Systems Technical Advisory Group, and participates in other organizations that impact safety in the roofing industry.

NRCA

Sprick Roofing Co., Inc. was founded in 1952 and currently has 25 employees; however, with our current workload we will be hiring 10-15 more if and when we are able to find qualified workers. Our company installs low and steep slope roof systems on commercial, industrial and residential buildings. To date, we have worked 1,360 workdays, or more than five years, without a time-loss accident, with our previous record being 1,182 days. Our worker's compensation experience modification rate (EMR) is .73. As you may know, EMR is a metric used by insurance companies to measure an employer's rate of accidents and injuries. The EMR compares an employer's losses against an average of the employers in the same industry in the same state, with the "average" being an EMR of 1.0. Given our company's size with minimum annual premium requirements, the lowest EMR we could hope to achieve with zero claims would be .71. I believe the fact that it was been over five years since having a time-loss accident coupled with our excellent EMR clearly speaks to our commitment to safety and the culture we've fostered among our employees to work every day with a focus on their personal safety.

My primary message today is that there is great concern within the roofing industry about a number of OSHA regulations and the impacts they will have on worker safety and on businesses like mine. I believe that these regulations will do little, if anything, to promote safer workplaces in our industry. Moreover, I am concerned that some OSHA regulations and actions could prove to be counterproductive toward making workplaces safer, which is a goal I know we all share. This would be truly tragic given the inherent danger of roofing work.

My company, and most professional roofing contractors, would very much like to work with OSHA on a cooperative basis to ensure the safest possible workplace for our workers. We have always had a respectful and cooperative relationship with Oregon OSHA officials and this is one of the keys to our excellent safety record. But federal OSHA's rigid and overreaching regulatory approach to safety, as exemplified in regulations and unilateral actions, does not help responsible contractors who are working very hard to provide the safest possible work environment for our employees. OSHA seems stuck in a "Washington, DC, knows best" mode of regulating our industry, and it is not helping to make workplaces safer. OSHA should focus on working cooperatively with responsible contractors who are making every effort to implement the most effective safety programs rather than moving forward with regulatory approaches that merely divert time, resources and best practices away from efforts to truly make workplaces safer.

Today I will comment on a few examples of how recent OSHA regulations are taking the wrong approach to improving workplace safety in our industry.

Injury and Illness Reporting Regulation

The first concern is OSHA's new regulation to require companies like mine to submit our injury and illness records electronically to the agency. The agency will then post the records on the

NRCA

Internet for public inspection. The regulation also requires employers to inform employees of their right to report injuries and illnesses and prohibits discrimination against employees who exercise this right. OSHA indicates this regulation is the result of "applying the insights of behavioral economics" to "nudge" employers to prevent workplace injuries and illnesses.

As a roofing contractor, I have several serious concerns with this new regulation. Overall, OSHA does not provide any convincing evidence that this regulation will improve workplace safety by preventing injuries and illnesses. The supposed benefits of the proposal are primarily speculative and not supported by empirical data sufficient to justify the costs of implementation.

The agency states that posting the information online will provide employees, potential employees, consumers, labor unions and other organizations with what now is confidential information about companies' safety records. However, the data will be presented without any meaningful context (such as company size, workforce size, business history, etc.) which is absolutely critical to understanding the information properly. Without presenting the whole picture of how certain injuries and illnesses occurred, the information is meaningless, so it is unclear how this information being made public will help advance the cause of improved workplace safety.

I am concerned that reported information taken out of context may have the opposite effect of OSHA's stated goal of allowing workers to pick supposedly safer companies to work for or to improve the behavior of unprofessional contractors. Additionally, misuse of the reported information by third parties, including those whose primary interest is not promoting safety, could cause significant harm to employers. It's not hard to imagine one of my competitors gathering this information, without knowing anything about the circumstances, and using it to sell against me, as just one example.

As an employer with 25 employees, I will be required to submit Form 300A annually under the new rule. The release of this summary document would seem to provide little if any information about my company's safety program. However, it is my understanding that while the new regulation does not require me to submit Forms 300 and 301 automatically, the rule does give OSHA the authority to request the documents and post them online. These documents contain more information but again they lack context, which is critical to giving the information meaning and providing insights into a firm's risk management practices.

Another concern with this regulation is the possible inadvertent public disclosure of private employee information and the harm this could cause to workers and employers. Our company currently goes to great lengths to protect sensitive employee data in all circumstances, be it electronic data we secure behind continually tested fire-walls or hard copies safely stored in separate, locked filing cabinets within a locked fire-safe room within in our office, monitored with cameras and security system. The regulation says that "OSHA does not intend to post any

10255 W. Higgins Road, Suite 600 Rosemont, IL 60018-5607 U.S.A. TELEPHONE: (847) 299-9070 FAX: (847) 299-1183 E-MAIL: nrca@nrca.net www.nrca.net

NRCA

information on the Web site that could be used to identify individual employees." That statement does not sound very reassuring. Will my company be liable if the private information of one of my employees is somehow posted for public dissemination? Will companies or individuals harmed by such disclosure of personal information have any recourse if this happens? Are there implications for disclosure of such information under the HIPPA law? Given the very serious and numerous concerns with privacy in today's interconnected world, the possibility of inadvertent publication or intentionally hacked data of sensitive employee information should be of paramount concern. I could site numerous examples of electronic data hacking as it has almost become daily news in today's electronic world, but suffice it to say I feel it is not unfair to state that data hacking has become our world's next "big business."

Another major concern of this rule is that it is unclear to me what impact it may have on employee incentive programs designed to promote workplace safety. I understand and share OSHA's intent to ensure that employees are not deterred from reporting injuries, and our company program is focused on promoting safety by providing incentives to employees to follow rules that meet or exceed OSHA standards. We take a proactive approach to safety and even encourage our employees to report near misses so that we can identify problems or trends in a way that prevents injuries or illnesses from occurring. But this regulation and other statements and actions from OSHA officials have produced a great deal of ambiguity with respect to OSHA's approval of incentive programs. My company has an excellent safety record and this is the result of the effective safety program we have implemented over many years. Employee incentives and discipline are key components of any effective safety program. Many of my fellow NRCA members have understood these statements to mean that any incentive program could be worthy of a violation of the rule. By creating uncertainty in how OSHA views incentive programs and disciplinary actions, the expanded authority in this regulation coupled with other agency actions may remove a key tool that employers now use to ensure a safe workplace.

Another concern with this new regulation is, of course, increased costs for the employer. While the costs of this regulation are more modest than many other regulations, adding unnecessary costs is a great concern to all small employers. This is especially true when responsible employers like my company, which make good faith attempts to comply with, often exceeding, government regulations, are often competing in highly competitive markets against contractors who are flying under the radar and may be actively skirting government regulations to gain a competitive advantage.

Ultimately, I fear that adding new reporting burdens that promise unspecified and elusive benefits merely diverts valuable resources from proven risk management strategies that truly protect workers. In disseminating information to the public that is out of context, this regulation disregards and possibly hinders proven safety programs that companies like mine have already implemented. Based on my experiences as a small business person, efforts to improve

10255 W. Higgins Road, Suite 600 Rosemont, IL 60018-5607 U.S.A. TELEPHONE: (847) 299-9070 FAX: (847) 299-1183 E-MAIL: nrca@nrca.net www.nrca.net

NRCA

workplace safety would be much more effective if OSHA worked with safety-minded employers in a cooperative manner to employ proven strategies consistent with risk management principles, rather than issue unproven or unsubstantiated regulations.

Fall Protection Regulations

Another very serious concern that I and many other NRCA members have is OSHA's tendency to work outside the normal regulatory process to achieve regulatory objectives. OSHA's recent efforts to impose federal fall protection regulations on state-plan states like Oregon, even when injury rates demonstrate that state plan rules are more effective in preventing injuries than OSHA's rules, is alarming. I fear that this could seriously jeopardize the safety of my employees and many other workers in Oregon and other states such as California and Michigan.

As you will recall, OSHA issued a directive in 2010 that made significant changes in fall protection rules for residential construction over the objections of NRCA. NRCA member Pete Korellis of Korellis Roofing in Hammond, Indiana, testified before this subcommittee in 2011 to express the serious concerns of the roofing industry regarding OSHA's unilateral changes in fall protection regulations. The new rules effectively limit the options that are available to protect workers from falls, which of course can result in serious injury or death in our inherently dangerous industry. From a practical standpoint, OSHA's rules, which were fully implemented in early 2013, effectively impose a one-size-fits-all regulatory regime for fall protection by mandating the use of personal fall arrest systems (PFAs) in virtually all instances.

PFAs are clearly an effective fall protection option in many situations, but other options are sometimes more effective in preventing falls depending on key situational factors such as the slope of the roof and the type of roofing material being used. NRCA believes that contractors should follow long-established risk management principles in choosing the most effective form of fall protection for workers. This involves assessing each worksite individually based on the slope and height of the roof, type of building and roofing materials and other factors in order to determine the most effective form of fall protection.

The state of Oregon's fall protection rules currently allow more fall protection options than OSHA's rules issued in 2010, including the use of what are commonly called "slide guards" (brackets supporting 2" x 6" or greater-sized planks) installed at the roof edge to prevent falls. My company has been using slide guards to protect our workers for 63 years and has never had a fatality or serious accident related to the use of slide guards. We believe that under many circumstances on moderately sloped roofs, slide guards are the most effective option for preventing slips, trips and falls for our workers.

Much to my dismay, I have recently learned that, next year, Oregon will adopt the federal fall protection rules after OSHA demanded that the state change its rules or be faced with losing its

10255 W. Higgins Road, Suite 600 Rosemont, IL 60018-5607 U.S.A. TELEPHONE: (847) 299-9070 FAX: (847) 299-1183 E-MAIL: nrca@nrca.net www.nrca.net

NRCA

state-plan status. This will have the practical effect of limiting the fall protection options that my company, and others across Oregon, believe are the most effective in preventing falls in many situations based on decades of experience.

This is disturbing given that Oregon's record of preventing falls is also better than other states with similar populations that operate under federal OSHA rules, according to Bureau of Labor Statistics (BLS) data. In 2014, the state of Oregon, with a construction workforce of about 81,000 workers, had nine deaths but zero reported from falls. In comparison, two states under federal jurisdiction, Alabama and Oklahoma, with construction workforces comparable to Oregon's at 81,000 and 76,000 workers respectively, had comparably worse fatality rates. In 2014 Alabama had 11 deaths in construction with 6 from falls, and Oklahoma had 20 fatalities with 4 from falls.

I am also informed that the state of California, which also has rules that allow for more fall protection options than allowed by federal rules, has a significantly lower rate of falls in construction compared with states with similar size workforces under federal jurisdiction. In 2014, there were 47 fatalities in the California construction industry compared to 105 in Texas, a state with similar size construction workforce that operates under federal rules.

These statistics demonstrate that fatality rates in Oregon and California are significantly lower than most states under OSHA's jurisdiction. I know that regulators in Oregon and California work very closely with industry and labor to understand and devise safety rules that meet the needs of industries like roofing, and they appear to be having consistent success. In fact, the original directive issued in 1995 by OSHA under the Clinton administration that allowed slide guards under federal rules was the result of a collaborative process involving industry, labor unions and other stakeholders. Maybe instead of forcing Oregon, California and other states to adopt the federal fall protection rules, OSHA should work cooperatively with stakeholders to establish the most effective rules. Isn't that how the regulatory process should work?

Additionally, it should be noted that since OSHA changed the rules for fall protection in 2010, the number of fatal falls nationwide has actually increased. According to BLS data, there were 61 fatalities from falls in roofing in 2012, and this number unfortunately climbed to 66 in 2013 and 71 in 2014. OSHA's promise that safer workplaces for roofing workers would result from its change in fall protection rules has not materialized to date.

I do not understand why the federal government would insist on imposing regulations that are different from state rules without having empirical evidence that the federal rules are more effective than the state rules. In this instance in Oregon, and possibly other states such as California, it appears that OSHA is imposing its rules on states despite statistical evidence indicating that the state rules have produced better results and over the objection of industry employers with decades of experience.

10255 W. Higgins Road, Suite 600 Rosemont, IL 60018-5607 U.S.A. TELEPHONE: (847) 299-9070 FAX: (847) 299-1183 E-MAIL: nrca@nrca.net www.nrca.net

NRCA

Mr. Chairman, I understand that you raised this issue with Assistance Secretary David Michaels in a hearing in this subcommittee last October, and that he replied that OSHA has developed "metrics" to determine when state-plan state rules that are different from OSHA's rules are "at least as effective" as the federal rules, as required under the OSH Act. He went on to say that OSHA is "now collecting data from the state plans and I think we are doing very well." NRCA is not aware of any of these metrics, or any of the data that was to have been collected, and we would implore you to follow up on this matter. It would be extremely helpful to all who want to improve workplace safety for OSHA to provide fully transparent information on how the agency determines whether state rules are "at least as effective" as federal rules. I would urge Congress to prevent OSHA from imposing its rules on state-plan states like Oregon unless it has objective data to clearly demonstrate that its rules produce better results that actually protect workers.

Conclusion

To conclude, I want to reiterate that there is great concern within the roofing industry with respect to the impact of OSHA regulations on workers and employers. Roofing is dangerous work, and it is vital that employers, workers, government officials and other stakeholders work together to craft effective safety policies that are based on sound risk management principles and reliable data.

Mr. Chairman, on behalf of NRCA I want to commend you for holding this hearing to review OSHA regulatory issues with the goal of improving workplace safety. I very much appreciate the opportunity to share the perspective of a roofing contractor with members of Congress on these very important issues. NRCA and its members stand ready to work with Congress and OSHA on efforts to improve workplace safety in the future.

Thank you for your consideration of our views and concerns.

10255 W. Higgins Road, Suite 600 Rosemont, IL 60018-5607 U.S.A. TELEPHONE: (847) 299-9070 FAX: (847) 299-1183 E-MAIL: nrca@nrca.net www.nrca.net