April 16, 2025

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

The Honorable Amanda Wood Laihow
Acting Assistant Secretary of Labor
Occupational Safety and Health
U.S. Department of Labor
Room S2315
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Chavez-DeRemer and Acting Assistant Secretary Laihow:

The Coalition for Workplace Safety (CWS) writes to request the Occupational Safety and Health Administration (OSHA) consider rescinding the regulations listed below as part of its review of all regulations, both proposed and final, under its purview required by Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*. These regulations, if allowed to remain in effect or if finalized, would have damaging consequences for the economy, workers, and the employer community. They create unnecessary uncertainty, add to the regulatory and administrative burdens employers must absorb, and could trigger inflationary pressures. Moreover, each regulation falls under at least one of the seven categories of regulations that are unlawful and/or undermine the national interest as specified in the Executive Order. The regulations are:

- Worker Walkaround Representative Designation Process (RIN 1218-AD45)
- Improve Tracking of Workplace Injuries and Illnesses (RIN 1218-AD40)
- Heat Injury and Illness Prevention (RIN 1218-AD39)
- Emergency Response (RIN 1218-AC91)
- Powered Industrial Trucks Design Standard Update (RIN 1218-AD26)

CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. CWS believes that workplace safety is everyone's concern. Improving safety can only happen when all parties – employers, employees, and OSHA – have a strong working relationship.

The Trump administration's Executive Order directs agencies to review all regulations within their jurisdictions and, within 60 days, identify those that fall into seven categories of regulations that are unlawful and/or "undermine national interest." The categories are as follows:

- Are unconstitutional or raise constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;

- Are based on unlawful delegations of legislative power;
- Are based on anything other than the best reading of the underlying statutory authority or provision;
- Implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
- Impose significant costs upon private parties that are not outweighed by public benefits;
- Harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and
- Impose undue burdens on small business and impede private enterprise and entrepreneurship.

Based on these categories, the Office of Information and Regulatory Affairs (OIRA) will publish a regulatory agenda that seeks to rescind or modify the identified regulations.

Below, we provide more detail on the finalized and proposed regulations that we believe the Department of Labor (DOL) should consider rescinding. Each of the identified rules falls under at least one of the seven categories outlined in the Executive Order.

Final Rules that Are Currently Being Challenged in Court:

Worker Walkaround Representative Designation Process (RIN 1218-AD45)
On March 29, OSHA under the Biden administration issued its worker walkaround final rule, which allows third parties to accompany OSHA safety and health officers on facility inspections. Under the previous regulations, safety experts, such as hygienists and safety engineers, could accompany OSHA on an inspection of the employer's worksite. The final rule greatly expanded the regulation to allow a "multitude of third parties" to join OSHA on an inspection if an employee requests the agency do so. These third parties could include labor organizers that do not represent the employees, community organizers, activists, or others with an agenda against the employer.

The final rule serves to distract OSHA from its core mission of ensuring a safe and healthy workplace, as third parties would easily be able to redirect attention to their own agendas and OSHA inspectors will be forced to police their behavior rather than focus on conducting a fair and thorough worksite inspection. Further, the rule traps OSHA inspectors in the middle of complex labor disputes and organizing drives, for which they are simply unqualified. The rule also violates workers' right to choose their own representation by allowing an employee to

designate a representative for the entire workforce. Implementation of this rule will create significant difficulties for the regulated community, especially small businesses that lack administrative staff and time. The rule is short on guidance for how to implement the changes and protect the inspection process. This ambiguity will likely result in a rise in citations despite employers spending additional hours of administrative burden attempting to comply.

Though the rule is currently in effect, it faces litigation. The case, *Chamber of Commerce v OSHA*, in which the U.S. Chamber of Commerce, Associated Builders and Contractors, and several other employer organizations challenged the legality of the rule, is currently before the Western District of Texas. The case has been fully briefed, and a decision is pending.

Following the completion of the litigation, regardless of which way the courts decide, the Trump administration should rescind this Final Rule, as it fits within the Executive Order's categories, including implicating matters of economic and social significance that are not authorized by clear statutory authority and imposing undue burdens on small businesses, which would be disproportionately burdened by increased administrative and compliance costs.

Final Rules that Remain in Effect:

Improve Tracking of Workplace Injuries and Illnesses (RIN 1218-AD40)
On July 21, 2023, OSHA published its final rule to Improve Tracking of Workplace Injuries and Illnesses, which modifies the existing reporting and recordkeeping requirements under the Occupational Safety and Health (OSH) Act. Previously, establishments with 200-249 employees and those with 250 or more employees were required to submit to OSHA their injury and illness records via OSHA Forms 300 and 301 once a year electronically. Under the rule's new reporting requirements, however, establishments with 100 or more employees in certain industries must also electronically submit their forms to OSHA annually. Further, the rule mandated that employers' Forms 300 and 301 would be made public via a searchable database.

The Biden-era rule was originally proposed during the Obama administration. The first Trump administration then issued its own tracking of workplace injuries and illnesses rule in 2019, emphasizing worker privacy and rescinding the requirement that the records be publicized. Instead, the Trump regulation required establishments to maintain those records on-site so that OSHA could obtain them as necessary for inspections and enforcement actions. The Biden-era 2023 rule, by contrast, forces the regulated community to disclose sensitive information to the public. OSHA Forms 300 and 301 contain individual employees' personal and medical information, including home addresses, dates of birth, and injury details, the publication of which is a violation of individual privacy. Further, the publicity of this data could result in manipulation, mischaracterization, and misuse of the data, opening employers to illegitimate attacks.

The Biden administration's "Improve Tracking of Workplace Injuries and Illnesses" final rule should be rescinded, as it qualifies within the Executive Order's categories, including imposing significant costs upon private parties that are not outweighed by public benefits, imposing undue burdens on small business, implicating matters of economic significance that are not authorized by clear statutory authority, and harming the national interest.

Proposed Rulemakings:

Heat Injury and Illness Prevention (RIN 1218-AD39)
On July 2, OSHA issued its proposed rule on Heat Injury and Illness Prevention in Indoor and Outdoor Work Settings. The rule mandates that employers with a "reasonable expectation" that workers will be exposed to certain heat thresholds have a written Heat Injury and Illness Prevention Plan (HIIPP), track local heat index forecasts, monitor workers when either of the two "heat triggers" are reached, train workers on heat injury and illness prevention and the workplace HIIPP, and maintain records of the workplace heat measurements for six months. If either of the rule's two heat triggers is reached, the employer must provide certain additional mediation efforts, such as acclimatization protocols and mandatory rest breaks.

CWS and 81 employer organizations previously submitted comments in response to the proposed rule. The comments requested that OSHA withdraw the proposed rule as it "fails to consider the extensive concerns provided during the [Small Business Regulatory Enforcement Fairness Act] process regarding the inflexibility of the requirements" and "creates substantial confusion and burdens for employers in several areas, without proof of commensurate benefit to employees." The comments also emphasized that OSHA's existing "Water.Rest.Shade" resources provide excellent guidance to the regulated community about heat injury and illness prevention as compared to the proposed rule, which creates more burdens than it solves.

The Biden administration's proposed heat rule should be withdrawn, as it fits within several of the Executive Order's categories, including imposing significant costs upon private parties not outweighed by public benefits, imposing undue burdens on small business, and harming the national interest.

Emergency Response (RIN 1218-AC91)
On February 5, 2024, OSHA issued its Emergency Response proposed rule, which updates workplace protections for emergency service personnel. The rule makes changes to all aspects of emergency response, including but not limited to staffing, training, medical examinations, and protective clothing and equipment.

While many of the provisions included in the proposed rule would likely improve the safety for emergency responders, the scope of the rule is vast and fails to account for the resource, staffing, and funding restraints with which many volunteer fire and emergency services departments must operate. When the limitations of departments are considered, the swath of changes that the safety standard would require becomes impossible to implement. Many of the rule's requirements are economically infeasible and disproportionately burdensome, which would likely result in department closures or failure to comply with the federal standard, opening emergency response teams to additional fines, citations, and civil liability.

The Biden administration's proposed Emergency Response rule should be withdrawn, as it fits within multiple categories identified in the Executive Order, including imposing undue burdens on small businesses and harming the national interest by significantly and unjustifiably impeding disaster response.

Powered Industrial Trucks Design Standard Update (RIN 1218-AD26)
On February 16, 2022, OSHA issued its proposed rule to update the Powered Industrial Trucks Design Standard. Specifically, the update references the latest requirements published by the American National Standards Institute (ANSI) and the Industrial Truck Standards Development Foundation (ITSDF). The proposed rule would require all powered industrial trucks (PITs) manufactured on or after the effective date to comply with these standards or a more productive alternative.

Though the rule is intended to improve worker safety and health by ensuring that consensus standards referenced in OSHA rules address current industry practice, the rule lacks clarity and fails to account for the costs that regulated industries would face if the rule were adopted. The proposed rule sets forth alternative methods of compliance, assuming that the employer can demonstrate that the design and construction of the PIT are at least as protective as one following the applicable ANSI B56 standard. This alternative method of compliance will create confusion and uncertainty for both OSHA inspectors and the regulated community as they attempt to determine whether PITs comply with the regulation, especially as the standards continue to update. This will likely lead to uneven enforcement of the standard. Further, the proposed rule recognizes the need for additional guidance regarding this provision, saying it "may *consider* periodically issuing guidance"; however, OSHA guidance is not mandatory, and the agency has not committed to issuing any. In addition, OSHA's preliminary economic analysis of this rule underestimated the true cost of compliance to the regulated community, suggesting that the rule "will impose no new costs on employers." Employers will have to adapt their processes to come into compliance with the ANSI standards and will likely incur further compliance costs due to

the rule's lack of clarity and guidance. The rule also fails to consider the costs associated with the implementation and training needed to ensure compliance.

The Biden administration's proposed Powered Industrial Trucks Design Standard Update rule should be withdrawn, as it aligns with multiple categories identified in the Executive Order, including imposing undue burdens on small businesses and significant costs upon private parties not outweighed by public benefits.

Withdrawing or rescinding these rules would align with the Trump administration's deregulatory agenda and save the agency significant resources. CWS, therefore, urges OSHA to withdraw or rescind the above regulations that are unlawful and/or undermine national interest.

Sincerely,

Coalition for Workplace Safety