



October 29, 2025

The Honorable David Keeling
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

RE: “Occupational Safety and Health Standards; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities” (RIN: 1218-AD71)

Dear Mr. Keeling:

The Coalition for Workplace Safety (CWS) submits these comments in response to the Occupational Safety and Health Administration’s (OSHA) proposed rule, “Occupational Safety and Health Standards; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities” (RIN: 1218-AD71). As we explain in more detail below, as currently drafted, OSHA’s proposed rule could result in plaintiffs’ attorneys using OSHA’s “inherently risky” designation for certain professions or industries to argue companies did not sufficiently mitigate known risks. This could lead to significantly more frivolous litigation. CWS, therefore, urges OSHA to help mitigate this complication by adding language to the final rule to clarify that the “inherently risky” designations are limited to OSHA’s regulatory enforcement and do not affect civil liability or third-party claims. CWS provides suggested language to achieve that end.

CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The 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.

As currently drafted, OSHA’s proposed rule designates certain professions and industries as “inherently risky,” but doing so could result in unintended consequences. CWS foresees these designations being cited in personal injury litigation, in which third-party plaintiffs argue an employer failed to prepare for a known risk for the designated professions. Plaintiffs could attempt to use the OSHA designation itself — *i.e.*, that the industry is “inherently risky” — to argue that companies effectively acknowledged a heightened hazard but didn’t adopt sufficient mitigation protocols.

CWS, therefore, suggests OSHA mitigate this potential threat by adding language to the final rule clarifying that the rule is strictly limited to regulatory enforcement and does not affect civil liability or third-party claims. We have provided suggested language below:



A determination by OSHA regarding whether an activity is “inherently dangerous” for purposes of enforcement under the Occupational Safety and Health Act, including the General Duty Clause, is made solely for the purpose of administering and enforcing the Act. Such a determination does not establish, imply, or create a standard of care, duty, or legal status for any other federal, state, or local law, regulation, or civil cause of action. This determination is not intended to be, and shall not be construed as, evidence or precedent in any civil litigation, workers’ compensation proceeding, or other non-OSHA context.

Additionally, CWS strongly urges OSHA, during future rulemakings, to utilize a more realistic estimate for the regulated community to become “familiarized” with proposed rules. Familiarization involves far more than reading the final rule, and yet OSHA often presumes that reading rule text is sufficient to understand a rule and how to comply. For example, OSHA estimated the regulated community would only need 15 minutes to review this proposed rule, but in reality, reading, comprehending, and analyzing how to implement this rule within a workplace will take far longer and more resources than OSHA assumes. CWS urges OSHA to utilize a more realistic analysis for rule familiarization moving forward.

Sincerely,

Coalition for Workplace Safety