AMERICAN COLLEGE OF
OCCUPATIONAL AND
ENVIRONMENTAL MEDICINE

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

RE: Docket No. OSHA-2025-0041 – Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities

Dear Acting Assistant Secretary Laihow:

Thank you for the opportunity to comment on the Occupational Safety and Health Administration (OSHA)'s July 1, 2025 Notice of Proposed Rulemaking (NPRM) entitled "Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities," as set forth at 90 Fed. Reg. 28370 (July 1, 2025) and proposed 29 CFR § 1975.7. The American College of Occupational and Environmental Medicine (ACOEM) is a national medical society representing over 3,000 occupational medicine physicians and other health care professionals devoted to promoting optimal health and safety of workers, workplaces, and environments. ACOEM is dedicated to improving the care and well-being of workers through science and the sharing of knowledge.

OSHA's proposed changes to the General Duty Clause is antithetical to the purpose of the Occupational Safety and Health Act (OSHAct): "To assure safe and healthful working conditions for working men and women" and would create serious loopholes that would threaten worker safety across multiple industries. The broad language would exempt far too many occupations and situations, undermining the foundational protection that the General Duty Clause is meant to provide. We urge OSHA not to proceed with the proposed rule. OSHA should retain authority, and the practical means, to safeguard **all** workers from recognized hazards.

Analysis and Commentary

1. **The language is too broad, creating loopholes for basic protections to be evaded.** The exemption of "professional or performance-based occupations" (proposed §1975.7(a)(1)) is sweeping. As the regulatory preamble in the Federal Register

acknowledges, the list of affected industries (Section (b)) is "not limited to" the enumerated examples – meaning that healthcare, teaching, laboratory research, and other fields could assert similar exemptions. Unlike the intent suggested in the proposed regulatory text, this language does not meaningfully limit the scope; instead, it could potentially be cited by any employer wishing to avoid the General Duty Clause.

2. **Labeling a hazard as "inherent" to an occupation is incorrect and will result in ignoring workplace controls that prevent occupational injuries, illnesses and death.** The definition of inherent is "existing in something as a permanent, essential, or characteristic attribute." In 1969, coal miners thought that black lung disease was inherent or "part of the job." But through the Mine Safety and Health Act, which required engineering and workplace controls to protect coal miners from breathing in coal dust, fewer coal miners get black lung now. The same can be said for OSHA's asbestos standard, lead standard, ventilation standard, electrical standards or the many more standards that have raised the bar for workplace safety and health. OSHA standards have helped to decrease workplace deaths from approximately 14,000 in 1970 to approximately 5,000/year now and cut workplace injuries by 500%.

   To label an occupational hazard as "inherent" implies that there is no way to control or prevent the hazard. Sometimes workplace hazards can be completely prevented through removal of the hazard or substitution of a less hazardous exposure. In other cases, the number or severity of injuries and illnesses can be lessened through engineering and administrative controls. The General Duty Clause simply requires that feasible abatements of the hazard be employed. There is no reason to eliminate industries or occupations from the OSHAct because hazards exist in the occupation.

   For instance, in the Sea World case cited in the NPRM, OSHA noted actions Sea World could have taken to protect trainers and prevent the trainer's death. These included installing appropriate stair railings on the stairways, using barriers and other engineering controls, and maintaining a minimum distance between trainers and whales known to be aggressive. It should be further noted that, after OSHA cited Sea World, Sea World did put these controls in place. Without the protection of the General Duty Clause, Sea World trainers, along with many other workers, would be at greatly increased risk of injury and death.

3. **OSHA oversight should remain in hazardous entertainment and performance settings.**
   The entertainment industry provides vivid examples of why blanket exemptions are dangerous. Movie productions, for instance, use explosions, special effects, compressed gases, and hazardous chemicals. Under today's rules, OSHA can – and does – use the General Duty Clause to require commonsense safety precautions (e.g., restricting chemical use, improving ventilation, mandating protective equipment) to protect film crews regardless of the artistic vision at stake. But under the proposed change, an employer could

simply claim that such protections "fundamentally alter" the activity and evade regulatory scrutiny, even if industry best practice and science support the controls. This would open the door to unnecessary and avoidable injuries and deaths.

An instructive precedent comes from Cal/OSHA's regulations in the adult film industry. Some argued that requiring condoms and other protections "changed the nature of the activity," but the rule was based on clear science and practical feasibility and did not destroy the industry. Instead, it gave workers a critical defense against serious harm. This example illustrates why OSHA must retain the ability to apply the General Duty Clause, even in "performance-based" occupations.

4. **The risks are not limited to voluntary participants – support staff are exposed, too.**
Often overlooked in the discussion of "inherent risk" are those who are not star performers (athletes, actors, etc.) but support personnel – set builders, camera operators, pyrotechnics experts, animal handlers, and more – who do not sign up for on-camera risk but are nonetheless put in harm's way by unsafe production practices. Exempting an entire domain of activity would leave these workers unprotected, undermining the entire principle of workplace safety that the OSH Act sought to achieve.

5. **The "reasonable efforts" language (§1975.7(a)(3)) is vague and unenforceable.**
The proposed requirement that employers need only make "reasonable efforts that do not alter the nature of the activity" to control hazards is inherently ambiguous. What is "reasonable?" Who decides? OSHA itself acknowledges, in the preamble, that the undefined standard poses a challenge for effective enforcement. This makes it far too easy for employers to sidestep meaningful hazard reduction, and extremely difficult for OSHA to act, even when clear, practical, and effective controls exist.

6. **Mathematical rationale: The General Duty Clause is essential because regulation by enumeration is not possible.**
There is a fundamental mathematical rationale for the General Duty Clause. The range of possible workplace risks grows so rapidly (combinatorial explosion) that it is simply not feasible to write a regulation for every possible scenario. Work environments, technologies, and hazards are continually evolving. The General Duty Clause is designed to fill those inevitable gaps, ensuring employers act to protect workers from serious hazards even in the absence of a specific rule. Broad exemptions defeat this purpose, leaving workers vulnerable to unanticipated but foreseeable risks.

7. **OSHA already exercises discretion and restraint.**
The notion that the General Duty Clause is overly broad or frequently misapplied is contradicted by enforcement history. OSHA only invokes the Clause when recognized, serious hazards exist for which feasible remedies are known, and in the absence of other coverage. No evidence suggests a need for written, broad restrictions of this kind.

8. **The proposed rule will remove protections for the most vulnerable workers.** By definition, the workers in the occupations and industries listed in the proposed rule are at high risk of injuries, illnesses and death. Further, many workers in the professions noted are young. Young workers have higher injury rates due, at least in part, to lack of experience in recognizing workplace hazards.

In Summary

- The proposed change to §1975.7 would create sweeping exemptions that risk undoing decades of hard-won safety gains, especially for lower-paid or less visible employees who are integral – even if not central – to "inherently risky" sectors.
- OSHA should not weaken its authority through vague, loophole-driven language.
- The General Duty Clause is indispensable because of the mathematical impossibility of regulating every hazard by specific rule.

We urge OSHA to withdraw the proposed amendment and instead strengthen – not weaken – the universal commitment to a safe and healthy workplace, as enshrined in the OSH Act.

If you have any questions or need additional information, please contact Julie Ording, MPH, ACOEM Director, Scientific Affairs at julie@acoem.org.

Sincerely,

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