November 1, 2025

Amanda Wood Laihow
Acting Assistant Secretary of Labor for
Occupational Safety and Health
Occupational Health & Safety Administration (OSHA)
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Docket No. OSHA–2025–00541; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities

Dear Ms. Wood,

The International Safety Equipment Association (ISEA) represents the PPE and safety equipment industry, which protects over 125 million American workers, supports 350,000 jobs, and pays state and federal taxes of $9 billion. ISEA is accredited by the American National Standards Institute (ANSI) as a Standards Development Organization, and is secretariat for a number of ANSI standards, including Z87.1 (safety eyewear); Z89.1 (head protection); 107-2020 (high visibility safety apparel) and more. The full list of standards for which ISEA serves as secretariat can be found **here.**

ISEA appreciates the opportunity to offer comments in response to the notice of proposed rulemaking published in the July 1, 2025 issue of the Federal Register. Specifically, ISEA opposes OSHA's proposed rulemaking as currently written, interpreting Section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C 654(a)(1)), i.e. "General Duty Clause", to exempt inherently risky activities in performance-based jobs. We believe that OSHA's proposed rule is too broad, creates confusion, and leaves critical questions regarding scope and limitation unanswered. Therefore, ISEA supports a revision of this rule that ensures clarity for both industry and workers alike.

Use of the term "professional"

Throughout the preamble in OSHA's Notice of Proposed Rulemaking, the agency makes clear that the supporting case law and purpose for this rulemaking is to clarify that enforcement of the General Duty Clause is not to be applied to inherently risky activities specifically undertaken as part of performance-based or entertainment jobs. It is our understanding, therefore, that other jobs

or employment activities outside of performance and entertainment would not receive such exemption and employers in those general industry sectors must still meet their obligations set forth in Section 5, i.e. to ensure a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm." However, as can be seen from the proposed text of *1975.7 Application of the General Duty Clause to Inherently Risky Professional Activities*, the use of the term "**professional**" calls this assumption into question and creates ambiguity as to whether it is only performance-based/entertainment sector jobs that are exempt from the General Duty Clause or even those inherently risky activities that occur in other, unrelated industries:

> *(a) The General Duty Clause does not require employers to remove hazards arising from inherently risky employment activities, where:*
>
> > *(1) the activity is integral to the essential function of a* ***professional*** or *performance-based occupation; and*
> > *(2) the hazard cannot be eliminated without fundamentally altering or prohibiting the activity; and*
> > *(3) the employer has made reasonable efforts that do not alter the nature of the activity to control the hazard (e.g., through engineering controls, administrative controls, personal protective equipment).*

The inclusion of the term "professional" in this context conflicts with the stated intent of the rulemaking, to limit the exemption to performance-based/entertainment activities, and opens the door to reinterpretation of a host of existing OSHA regulations governing other professions and general industry, including those that exist under 29 CFR 1910, 1915, 1917, 1918, and 1926. To provide an opening for such reinterpretation would swamp the agency with litigation and cast OSHA's entire regulatory framework into chaos.

Question for the Record

Falls from heights are one of the most often cited workplace incidents OSHA investigates. Therefore, to highlight the significance of OSHA's proposed interpretation of Section 5 to this and other hazards faced by workers in general industry, ISEA poses the following question which we ask OSHA to answer in the final rule:

"Based on the proposed rule as currently written, could an owner of a roofing company, or any other business conducted at heights, argue that the business is inherently risky and should therefore be exempt from citation under this interpretation of the General Duty Clause?"

Recommendation

Considering the ambiguity raised by inclusion of the term "professional" in 1975.7 (a)(1) and the consequences for not only jobs at height, but for all other general industry occupations deemed inherently risky, ISEA suggests OSHA **strike "*professional*" from the text of 1975.7(a)(1)**

entirely. This would remain consistent with the Agency's intent, and that the vast array of American workers would retain the protections afforded to them under Section 5.

Addressing OSHA's Questions

Based on these comments, ISEA would like to answer two of the questions OSHA posed in their Notice of Proposed Rulemaking:

Firstly, OSHA asks: ***(5) Should OSHA consider limiting the application of this proposed rule to only those industries identified in the regulatory text? If so, should the list of industries be expanded to reflect that it is exclusive rather than illustrative?***

In response, ISEA strongly suggests that yes, any proposed General Duty Clause exemption should be limited only to specific, explicitly delineated industries and activities in the regulatory text to the exclusion of others. As mentioned before, any ambiguity or open-endedness in the rule will create conflict with existing regulations, confusion for America's workplaces, and ultimately undermine the intent and stated purpose of OSHA's Section 5 interpretation. Additionally, while OSHA works to clarify the text to limit its application to specific performance-based/entertainment activities, the agency must also make clear that stage crews and other workers who serve in supporting roles for performance-based/entertainment activities be considered general industry workers for the purposes of this rule. To capture all workers who merely support the underlying performance-based activity under the performance-based umbrella is, in our belief, a misapplication of the principle cited in Judge Kavanaugh's dissent in *Seaworld of Florida, LLC v. Perez* (2014), that OSHA may not regulate hazards stemming from normal activities intrinsic and inherent to performances, sports, and entertainment. Stage crews and support workers do not participate in the fundamental performance activity and therefore should be treated like all other workers afforded the protections of the General Duty Clause.

Secondly, OSHA asks: ***(6) OSHA did not define key terms in the regulatory text and welcomes comment on which terms could benefit from definition as well as potential definitions for such terms.***

ISEA, again, strongly supports any effort to clarify this proposed exemption and to remove as much ambiguity from it as possible. Therefore, key terms that could benefit from definition include "essential function", "fundamentally altering", "inherently risky", "integral", and even "entertainment" and "performance-based". ISEA acknowledges that some ambiguity may always exist in regulatory text, but that through these suggestions, employers and workers can enjoy relative clarity in understanding the intended scope of these protections and that the effects of OSHA's new rule are most consistent with their stated purpose.

For the record, ISEA would like to take the opportunity to request a public hearing on this rulemaking for further discussion, and to provide a forum for other supportive groups to do the same.

I may also be contacted at cmackey@safetyequipment.org for any other questions or comments, and I thank you for your consideration.

Sincerely,

s/ Cam Mackey

Cam Mackey
President & CEO
International Safety Equipment Association