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MEMORANDUM

To: Hon. David Keeling, Assistant Secretary of Labor for Occupational Safety and Health

From: Andrew Langer, Director, Center for Regulatory Freedom, CPAC Foundation

Date: November 1, 2025

Re: Comments on the Occupational Safety and Health Administration’s Notice of Proposed Rulemaking, “Occupational Safety and Health Standards: Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities”, Docket No. OSHA-2025-0041, Posted July 1, 2025

Below are comments of the American Conservative Union Foundation's (d/b/a. Conservative Political Action Coalition Foundation) (hereinafter “CPAC Foundation”) Center for Regulatory Freedom (hereinafter “CRF”), in response to the Occupational Safety and Health Administration’s Notice of Proposed Rulemaking, “Occupational Safety and Health Standards: Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities”, Docket No. OSHA-2025-0041, posted July 1, 2025.

CRF is a project of the CPAC Foundation, a non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that the risks and costs of regulations are fully based on sound scientific and economic evidence, and to ensure that the voices, interests, and freedoms of Americans, and especially of small businesses, are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

Executive Summary

The Center for Regulatory Freedom (“CRF”) strongly supports OSHA’s proposed interpretation of the General Duty Clause (Docket No. OSHA-2025-0041) to limit its application to hazards that are *not* inherent and integral to professional or performance-based occupations. This clarification will restore regulatory clarity, align enforcement with statutory and constitutional limits, reduce burdens on small business, and reinforce respect for professional autonomy and risk management.

Key Points

- **Clarification of Purpose and Scope**
 - The General Duty Clause was designed as a *gap-filling* provision, not as a vehicle for ongoing policy innovation or enforcement in unregulated areas.
 - OSHA’s proposed limitation rightly acknowledges that some hazards are inseparable from the essential nature of certain professions and cannot be eliminated without destroying their core function.
 - This interpretation brings long-needed clarity to employers and inspectors while re-balancing OSHA’s dual obligations: protecting workers and respecting the limits of statutory authority.
- **Addressing “Backdoor” Regulation**
 - Historically, OSHA has used the Clause as a substitute for formal rulemaking—creating de facto policy through citations and guidance rather than through the transparent rulemaking process required by the Administrative Procedure Act.
 - Such “backdoor regulation” has generated uncertainty, inconsistent enforcement, and disproportionate costs, especially for small businesses.
 - The proposed rule ends this practice by clearly defining where professional judgment and voluntary standards govern, and where OSHA’s enforcement authority properly applies.
- **Alignment with Constitutional and Judicial Standards**
 - Following *Loper Bright v. Raimondo* and *Relentless v. Commerce*, agencies can no longer rely on *Chevron* deference to interpret ambiguous statutes expansively.
 - This clarification ensures OSHA’s enforcement remains within clear statutory limits and protects the agency’s actions from judicial invalidation under the *Major Questions* and non-delegation doctrines.
 - By narrowing its own authority, OSHA demonstrates constitutional prudence and reinforces separation-of-powers principles.
- **Recognition of Inherently Risky Professions**
 - OSHA correctly identifies sectors—such as live performance, motorsports, animal handling, tactical training, and hazardous-environment journalism—where risk is inherent to professional identity and excellence.
 - CRF recommends extending recognition to other sectors (e.g., emergency response, industrial demolition, field research, agriculture, and film production) that meet the same criteria.
 - The agency should formalize clear standards:
 - The hazard arises directly from core occupational functions.
 - Eliminating the hazard would fundamentally alter the activity.
 - The risk is professionally managed and voluntarily assumed.

- **Strengthening Self-Regulation and Professional Standards**
 - Inherently risky professions already maintain robust safety systems through voluntary consensus standards (ANSI, ASTM, SAE, NFPA) and internal governance.
 - OSHA’s limitation reinforces these systems by removing redundant enforcement while preserving intervention authority for egregious negligence.
 - This approach reflects confidence in private-sector expertise and promotes innovation in risk management.
- **Benefits for Small Business and Regulatory Flexibility**
 - Ambiguity under the General Duty Clause has long imposed disproportionate burdens on small enterprises, which lack compliance departments and legal counsel.
 - The proposed limitation restores predictability and transforms compliance from guesswork into governance.
 - Clear boundaries reduce the cost of uncertainty, enabling small firms to reinvest resources in training, equipment, and safety improvement rather than litigation or defensive compliance.
- **Legal and Economic Rationale**
 - Clarifying the Clause enhances legal certainty, reducing disputes and administrative litigation.
 - It aligns enforcement with Executive Order 12866’s cost-benefit standards, ensuring regulation focuses on hazards that can realistically be mitigated.
 - Greater predictability strengthens competitiveness and intergovernmental uniformity, as state-plan jurisdictions will follow consistent federal guidance.
- **Broader Policy Significance**
 - The proposal affirms that OSHA’s role is to promote intelligent risk management, not to outlaw risk itself.
 - By distinguishing inherent professional dangers from preventable workplace hazards, OSHA reinforces public trust in the integrity of safety regulation.
 - This interpretation strengthens cooperative federalism, professional autonomy, and the cultural understanding that safety is achieved through competence, preparedness, and personal responsibility—not by the elimination of all risk.

In summary: CRF supports OSHA’s proposed limitation as a model of responsible, constitutionally grounded, and economically rational regulation. It restores legal clarity, promotes small-business competitiveness, respects professional expertise, and ensures that OSHA’s enforcement authority remains focused where it can deliver measurable safety benefits.

Introduction

The Center for Regulatory Freedom (“CRF”) welcomes OSHA’s inquiry into the scope and application of the General Duty Clause because it touches one of the most persistent and consequential problems in modern administrative law: the tendency of agencies to transform broadly worded statutory provisions into tools for policymaking without the discipline of formal rulemaking. The Clause, originally conceived as a narrow safety net for unaddressed workplace hazards, has over time become an elastic instrument used to advance regulatory goals that Congress never debated and the agency never codified. In effect, it has served as a form of “backdoor regulation”—policy by enforcement rather than by law. That practice undermines the

very foundations of administrative legitimacy and introduces vast uncertainty for employers, especially those in sectors where risk is inseparable from the nature of the work itself.

For decades, agencies have relied on ambiguous statutory language to justify expansive interventions. When a hazard could not be addressed through the normal rulemaking process—because the evidence was uncertain, the costs were prohibitive, or the political appetite was lacking—OSHA and other regulators frequently invoked residual authority under clauses like this one to fill the gap. While such improvisation may have been well intentioned, it carried a profound cost: it blurred the line between enforcement and lawmaking. Employers were left guessing where legitimate risk management ended and regulatory overreach began. Small businesses, lacking the resources to track shifting agency interpretations, bore the brunt of this uncertainty in the form of litigation, compliance anxiety, and lost opportunity.

This inquiry is therefore not simply about the interpretation of a single clause in the Occupational Safety and Health Act—it is about restoring constitutional and procedural balance to the regulatory system. The Supreme Court’s decision in *Loper Bright v. Raimondo* has fundamentally altered the landscape in which agencies operate. With the end of *Chevron* deference, the courts will no longer assume that agency interpretations of ambiguous statutes are controlling. Instead, judges will interpret statutory text directly, with no presumption in favor of bureaucratic discretion. In that post-*Loper Bright* world, agencies can no longer rely on vague phrases like “recognized hazards” to justify expansive policymaking. They must demonstrate that their actions fall squarely within the authority Congress granted—and nothing more.

OSHA’s willingness to revisit the reach of the General Duty Clause is therefore both timely and commendable. By proactively defining the limits of its own authority, the agency acknowledges the new legal reality and demonstrates respect for constitutional principles. This self-restraint not only reduces the risk of judicial reversal but also signals to the regulated community that OSHA is committed to predictable, lawful, and evidence-based enforcement. It represents a shift from the culture of “enforcement as policy” toward one of statutory discipline and regulatory humility—an approach that strengthens both worker protection and public confidence.

The problem of backdoor regulation extends beyond OSHA. Across the administrative state, agencies have used interpretive guidance, policy statements, and catch-all statutory provisions to achieve outcomes that could not withstand the scrutiny of notice-and-comment rulemaking. The cumulative result has been an erosion of transparency and accountability. Rules that should have been developed in open dialogue with stakeholders have instead emerged through enforcement actions and settlement agreements, leaving affected industries uncertain of their obligations. OSHA’s proposal to confine the General Duty Clause to hazards that can realistically be mitigated offers a model for how agencies can reverse that pattern—by embracing clarity, process, and respect for statutory limits.

This rulemaking also arrives at a moment of heightened public concern about the economic and constitutional consequences of regulatory overreach. Small businesses in particular have borne the costs of what might be called “informal regulation”—those interpretations, memoranda, and enforcement practices that carry the weight of law without its procedural protections. Inherent-risk professions are among the most vulnerable, as their very existence depends on the controlled management of danger rather than its elimination. By acknowledging that distinction, OSHA not only protects those sectors from regulatory distortion but also restores coherence to the broader framework of occupational safety.

Ultimately, the significance of this inquiry extends beyond any one agency. It is part of a broader national reassessment of administrative power in the wake of *Loper Bright* and *West Virginia v. EPA*. OSHA’s effort to clarify and limit its own use of the General Duty Clause demonstrates that regulatory agencies can adapt constructively to this new era—by aligning enforcement with statutory text, constitutional structure, and common sense. The Center for Regulatory Freedom supports this inquiry as a model of responsible governance: a reaffirmation that safety, liberty, and lawful process are not competing goals, but complementary pillars of a modern regulatory state worthy of public trust.

I. Statutory and Regulatory Context

The Center for Regulatory Freedom (“CRF”) respectfully submits these comments in response to the Occupational Safety and Health Administration’s proposal to clarify the scope of the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970. CRF strongly supports OSHA’s decision to codify a principled limitation on the Clause’s applicability—excluding from enforcement those hazards that are inherent and integral to the core performance of a professional or performance-based occupation. We view this effort not as a retreat from worker protection, but as an affirmation of sound regulatory philosophy and statutory fidelity.

For half a century, the General Duty Clause has served as OSHA’s most flexible yet most controversial enforcement provision. The Clause’s original purpose was to ensure that employers could be held accountable for plainly recognizable dangers that had not yet been addressed by specific standards—essentially a safeguard to fill gaps temporarily, not a vehicle for ongoing policy innovation. Yet, over time, the Clause became a convenient substitute for rulemaking. It enabled enforcement in areas where Congress had not spoken clearly or where the agency lacked the scientific or political capital to promulgate a standard. In doing so, OSHA transformed what was intended as a narrow backstop into a broad enforcement mechanism that reached well beyond its statutory text.

The problem is not merely theoretical. The agency’s historical reliance on the Clause to regulate subjects such as ergonomics, heat stress, workplace violence, and infectious-disease exposure demonstrates how a general statutory obligation can evolve into an instrument of administrative discretion. In many instances, these uses occurred precisely after the agency had failed to enact a rule through proper notice-and-comment procedures. Each such expansion introduced uncertainty into the compliance environment, as employers struggled to discern what counted as a “recognized hazard” and what level of mitigation OSHA considered sufficient. The result has been a patchwork of enforcement precedents and interpretive letters that operate with the force of law but without its transparency.

The practical consequences are substantial. Small- and medium-sized employers, lacking dedicated legal departments or compliance consultants, must navigate a landscape of open-ended obligations. A well-intentioned employer who believes all feasible controls have been implemented may nonetheless face citation because an inspector interprets the Clause differently. This dynamic has long been at odds with the rule-of-law principle that legal duties should be knowable in advance and applied consistently.

By proposing to draw a line around inherently risky professional activities, OSHA is taking an important step toward restoring that principle. The agency is acknowledging that some hazards cannot be meaningfully eliminated without destroying the essence of the work itself. The proposed limitation is thus both a recognition of practical reality and a reassertion of statutory

restraint. It re-balances OSHA’s dual obligations—to protect workers and to respect the legal limits of its own authority.

From CRF’s perspective, this clarification is especially timely. The occupational landscape has diversified dramatically since 1970. The American workforce now encompasses sectors—such as live performance, motorsports, animal handling, and tactical training—that were peripheral or nonexistent when the Act was written. Many of these professions embrace risk as part of their identity. For such industries, safety means not the elimination of danger, but the mastery of it. OSHA’s proposal appropriately recognizes this distinction and reflects a mature understanding of how professional risk is managed in a modern economy.

II. The Problem of Overbroad Enforcement and “Backdoor” Regulation

The heart of the controversy surrounding the General Duty Clause lies in its potential to become a substitute for democratic rulemaking. Because the Clause’s language is general, it offers enforcement flexibility—but without clear boundaries, that flexibility becomes a form of policymaking. Over the years, OSHA has used the Clause to regulate everything from heat exposure to workplace violence and “psychosocial hazards.” In many of these cases, the agency’s reliance on Section 5(a)(1) followed political or judicial setbacks that prevented it from issuing a dedicated standard. The Clause thus evolved into a backdoor rulemaking device, allowing OSHA to impose substantive requirements through citation rather than through the transparent, deliberative process required by the Administrative Procedure Act.

This backdoor approach produces several distortions. First, it replaces rulemaking’s public dialogue with enforcement unilateralism. Stakeholders who would normally participate in the development of a rule—businesses, workers, experts, and the general public—are excluded from the process. Instead, new policy is created through litigation or settlement. Second, it undermines regulatory predictability. Because OSHA’s internal interpretations can shift over time, employers cannot confidently determine their obligations in advance. Third, it fosters an adversarial rather than cooperative relationship between regulator and regulated community. Employers see the Clause not as a safeguard but as a trapdoor—an open invitation for citation whenever OSHA believes a new hazard deserves attention.

These effects are particularly acute for small enterprises. A large corporation can track evolving interpretations, hire consultants, and absorb the cost of contesting a citation. A small business cannot. The result is a de facto regime of selective enforcement, in which risk aversion replaces innovation. Firms avoid certain activities or contracts simply because the compliance risk is incalculable. This “regulatory chilling effect” does not advance safety; it stifles legitimate enterprise and undermines economic opportunity.

The proposed limitation helps correct this pattern. By acknowledging that certain hazards are inseparable from the activity itself, OSHA is setting a rational boundary. Employers and inspectors alike will have a clearer sense of where the Clause ends and where professional judgment begins. This clarity does not weaken worker protection. It strengthens it, by reserving OSHA’s enforcement for situations where meaningful mitigation is actually possible.

In broader policy terms, this reform will restore a proper balance between agency discretion and public accountability. The rulemaking process exists for a reason: it ensures that new obligations are justified by evidence, tested through public comment, and measured for economic impact. Enforcement should be the application of those rules, not their creation. Limiting the General Duty Clause to hazards that can be feasibly addressed re-anchors OSHA within the procedural norms that safeguard both liberty and legitimacy.

III. Constitutional and Administrative-Law Constraints After *Loper Bright*

The Supreme Court’s recent decision in *Loper Bright v. Raimondo*, together with *Relentless v. Department of Commerce*, fundamentally restructured the relationship between administrative agencies and the courts. By overturning *Chevron* deference, the Court restored to the judiciary the full responsibility for interpreting statutes. Agencies can no longer expand their authority by claiming that Congress left “ambiguities” for them to fill. The statutory text now governs—and agencies must demonstrate that their actions are clearly authorized by law.

This development bears directly on OSHA’s use of the General Duty Clause. The Clause’s language is brief: it obligates employers to furnish a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” Now that courts review statutory meaning *de novo*, OSHA cannot stretch that phrase to cover every emerging risk that the agency believes merits attention. If the hazard is not one Congress intended the Clause to address—if it is inherent to the occupation, or if it involves policy questions of major economic or social significance—then enforcement exceeds statutory bounds.

The *Loper Bright* decision interacts powerfully with the Court’s earlier *West Virginia v. EPA* ruling, which articulated the Major Questions Doctrine. Together, these cases require clear congressional authorization for any agency action of significant scope. OSHA can no longer rely on the General Duty Clause to address complex or controversial hazards that carry nationwide implications or high economic impact. Those issues demand explicit legislative or regulatory grounding.

In this post-*Chevron* environment, OSHA’s proposal represents prudent self-governance. By voluntarily narrowing the Clause’s reach, the agency protects its enforcement actions from judicial invalidation. It acknowledges that using Section 5(a)(1) as an all-purpose regulatory tool would invite legal challenge under *Loper Bright*’s *de novo* standard. Clarifying that the Clause does not apply to hazards that are “inherent and integral” to certain professions ensures that enforcement remains within textual limits.

This approach also aligns with the separation-of-powers principles that underlie the Court’s reasoning. When agencies assume legislative functions, they erode democratic accountability. By drawing a clear boundary around its own authority, OSHA signals respect for Congress’s prerogatives and for the judiciary’s interpretive role. The result is a more constitutionally sustainable regulatory system—one that emphasizes precision over breadth and legality over expedience.

IV. Categories of Inherently Risky Professional Activities

OSHA’s proposed interpretation identifies several categories of work in which hazards are inseparable from the performance of professional duties. These include, among others, live performance and stunt work, animal handling, motorsports, tactical and defense training, extreme sports, and hazardous-environment journalism. Each example shares defining traits: the activity involves managed exposure to danger; that danger is central to the profession’s purpose; and eliminating it would fundamentally alter or extinguish the occupation.

CRF strongly supports OSHA’s analytical framework and recommends expanding the discussion of such sectors to provide even greater clarity. For instance, emergency-response professions—including firefighting, disaster rescue, and law-enforcement training—fit squarely within the same reasoning. Their hazards cannot be “eliminated” without ending the activity. Similarly, industrial testing, demolition, and structural inspection involve exposure to conditions that are by nature unpredictable and sometimes uncontrollable. Agricultural work presents unavoidable environmental hazards such as weather, terrain, and animal behavior. Even scientific field research and film production may involve inherent risks that defy complete elimination.

A comprehensive enumeration is neither feasible nor desirable; flexibility is essential. Nevertheless, OSHA can strengthen its interpretive guidance by articulating objective criteria for determining when a hazard is inherent and integral. CRF suggests the following standards:

1. **Direct Derivation from Core Function:** the hazard arises unavoidably from the essential performance of the occupation.
2. **Fundamental Alteration Test:** eliminating the hazard would negate or transform the work’s defining activity.
3. **Professional Governance:** the risk is recognized, managed, and mitigated through established industry norms or certification systems.
4. **Voluntary and Informed Participation:** practitioners engage with full awareness of risk and possess specialized training to control it.

These criteria would ensure that OSHA’s limitation remains principled rather than arbitrary. They would also facilitate uniform application across state-plan jurisdictions, preventing divergent interpretations that could undermine regulatory coherence.

Recognizing inherently risky professions does not equate to deregulation. Instead, it channels regulatory attention toward ensuring that existing professional safeguards—training, equipment standards, emergency protocols—are functioning effectively. OSHA retains ample authority to intervene if an employer disregards basic safety principles or fails to provide appropriate protective gear. What the agency wisely relinquishes is the impulse to re-engineer professions whose defining characteristic is the managed acceptance of risk.

V. Managing Inherent Hazards Through Professional Standards

CRF underscores that exempting inherent hazards from General Duty Clause enforcement does not leave workers unprotected. In most affected industries, risk management is not an afterthought but a defining competency. These professions maintain intricate systems of self-

regulation built on consensus standards, peer review, and continuous improvement. Such systems often deliver superior outcomes because they evolve faster than government rules and reflect specialized expertise unavailable to regulators.

Consider the entertainment industry. Stunt coordinators, producers, and unions collaborate to craft safety protocols covering pyrotechnics, rigging, aerial performance, and vehicular stunts. These standards are codified in contracts, insurance requirements, and professional handbooks. Compliance is verified through training, certification, and inspection by private safety officers. Incidents are investigated collectively, leading to rapid dissemination of lessons learned. OSHA's proposed limitation acknowledges this mature safety culture and removes the threat of redundant enforcement that could interfere with established processes.

Similarly, motorsports organizations maintain engineering specifications for helmets, restraint systems, barriers, and vehicle construction that far exceed general industrial norms. The Fédération Internationale de l'Automobile, NASCAR, and other sanctioning bodies enforce these requirements rigorously because their reputations and commercial viability depend on safety. In animal-handling and veterinary contexts, bio-security and sedation protocols are continuously refined through professional associations and academic research. Tactical and defense-training entities adhere to doctrine-based risk-management models emphasizing disciplined procedure and protective technology.

In all these cases, safety is integrated into the profession's identity. Government intrusion through the General Duty Clause adds little value and considerable confusion. By deferring to sector-specific standards, OSHA promotes a cooperative model of governance. It encourages industries to maintain ownership of their safety culture while preserving the agency's ability to intervene when basic obligations—training, maintenance, or hazard communication—are neglected.

From a policy standpoint, this deference reflects confidence in civil society's capacity for self-governance. It aligns with the broader regulatory trend toward performance-based and outcome-oriented standards. Rather than prescribing uniform methods, OSHA's clarification focuses on measurable results: demonstrably safe practice achieved through professional discipline. Such an approach harmonizes public oversight with private initiative and recognizes that the pursuit of excellence in risky professions is itself a form of safety advancement.

VI. Small-Business Impacts and Regulatory Flexibility

No constituency benefits more from this clarification than small business. The General Duty Clause, in its most expansive interpretations, has long posed disproportionate challenges to small employers. Large corporations can absorb compliance costs, retain counsel, and contest citations. Smaller enterprises must choose between costly precaution and uncertain exposure. The proposed limitation restores predictability and relieves these firms of obligations that cannot reasonably be met.

Small businesses are the backbone of inherently risky industries. Independent production companies, specialized construction firms, local event operators, and regional training facilities often lack the bureaucratic infrastructure to interpret evolving OSHA guidance. When

enforcement depends on case-by-case judgment, these businesses face an impossible task: anticipating the subjective view of an inspector rather than adhering to an objective standard. This unpredictability discourages participation in markets that depend on flexibility and innovation.

CRF's experience across multiple regulatory domains confirms that uncertainty itself is a regulatory cost. Entrepreneurs confronted with ambiguous rules divert resources from productive investment to compliance speculation. Projects are postponed, innovations delayed, and jobs foregone. The proposed limitation will substantially mitigate this inefficiency. By defining the boundaries of OSHA's authority in inherently risky occupations, it allows small firms to allocate resources toward actual safety improvements—training, equipment, and planning—rather than toward legal contingency.

The Regulatory Flexibility Act was designed precisely to prevent such unintended burdens. Even though OSHA has certified that this proposal will not have a significant economic impact on a substantial number of small entities, CRF encourages the agency to continue engaging the small-business community through voluntary roundtables and targeted outreach. Dialogue will ensure that implementation guidance remains practical and accessible. Moreover, periodic review of enforcement data could confirm that the limitation is delivering its intended relief without compromising safety outcomes.

From a broader perspective, the proposal exemplifies what responsible deregulation should look like: a reduction in uncertainty rather than a reduction in standards. It empowers small employers to compete and innovate on equal footing while maintaining accountability for genuine negligence or reckless disregard. Clarity is the most efficient form of regulation because it transforms compliance from guesswork into governance.

VII. Legal and Economic Rationale for Clarifying the Clause

Clarifying the scope of the General Duty Clause yields both legal and economic dividends. Legally, the clarification restores coherence to OSHA's enforcement framework. By delineating which hazards fall outside the Clause's reach, OSHA transforms an amorphous statutory provision into a predictable rule of application. This will reduce litigation by narrowing the grounds on which citations may be contested. Administrative law judges will no longer be forced to interpret ambiguous phrases in the absence of regulatory guidance, and employers will no longer face the dilemma of defending against undefined allegations.

The economic implications are equally significant. Enforcement predictability reduces transaction costs across entire industries. Companies can plan operations, procure insurance, and design safety programs with confidence that compliance expectations will remain stable. Resources currently devoted to litigation and redundant documentation can be redirected to tangible safety improvements. The aggregate effect—especially across small and medium enterprises—will be to enhance productivity, preserve jobs, and strengthen the resilience of high-risk sectors that contribute substantially to the nation's cultural and economic vitality.

Clarification also advances the principles of cost-effective regulation embedded in long-standing executive orders. Executive Order 12866 and its successors instruct agencies to pursue

regulatory approaches that maximize net benefits and minimize unnecessary burdens. The proposed limitation embodies that mandate. It targets enforcement where it can achieve real safety gains and withdraws from areas where intervention would be symbolic at best. In doing so, it upholds the spirit of evidence-based policymaking that has guided every administration's regulatory review process for more than three decades.

From a public-finance standpoint, the proposal conserves government resources. Each contested General Duty Clause citation consumes investigative, prosecutorial, and judicial time. Many such cases involve protracted disputes over whether a hazard was "recognized" or "inherent." By resolving those questions in advance through rulemaking, OSHA will reduce administrative backlog and free enforcement personnel to focus on violations of specific, codified standards where intervention produces measurable benefit.

Finally, the clarification will enhance intergovernmental coordination. State-plan jurisdictions depend on federal guidance to maintain equivalence. A clear federal interpretation of Section 5(a)(1) ensures that states adopt consistent enforcement practices, preventing the patchwork of conflicting standards that burdens multi-state employers. The resulting uniformity strengthens the integrity of the entire occupational-safety system.

VIII. Broader Policy Considerations

At its core, OSHA's proposed limitation raises a question not just of law but of philosophy: how should society balance the pursuit of safety with the acceptance of risk inherent in human endeavor? The American economy is built on enterprise, innovation, and professional excellence. Many of the occupations encompassed by this proposal—stunt performance, motorsports, animal training, rescue operations—embody those values. Their practitioners accept risk as a condition of mastery, not as a failure of management. Recognizing this distinction is essential to maintaining both personal freedom and professional integrity.

Overreach through the General Duty Clause blurs that distinction. When government attempts to eliminate every hazard, it inadvertently undermines individual responsibility and professional judgment. Safety becomes synonymous with avoidance rather than competence. By limiting the Clause to hazards that can feasibly be removed or mitigated, OSHA reaffirms that its mission is not to outlaw risk but to ensure that risk is managed intelligently.

This clarification also reinforces public trust in regulatory institutions. Over time, expansive interpretations of the General Duty Clause have eroded confidence that OSHA acts within clear legal boundaries. Businesses perceive enforcement as arbitrary, while workers may doubt that standards reflect real dangers rather than bureaucratic priorities. A transparent limitation will demonstrate that the agency is capable of self-restraint and focused governance, strengthening its credibility with all stakeholders.

In a federal system that values cooperative federalism, clarity at the federal level fosters consistency among state programs. Many states operate their own occupational-safety plans, and differing interpretations of the Clause have produced uneven enforcement. A unified federal definition will promote harmony, reducing compliance confusion and ensuring that workers and employers receive consistent treatment across jurisdictions.

Finally, this rulemaking advances a cultural understanding of safety that respects personal agency. When the public recognizes that not all risk is preventable, discussions of safety become more honest and constructive. Rather than demanding impossible guarantees, society can focus on preparedness, training, and resilience. OSHA's limitation of the General Duty Clause contributes to that realism. It restores balance between protection and freedom, regulation and innovation, oversight and trust.

Conclusion

The Center for Regulatory Freedom commends OSHA for undertaking this careful and measured effort to clarify the reach of the General Duty Clause. For too long, this single provision has operated as a blank check—an open invitation for regulators to impose obligations beyond the scope of Congress's intent. The agency's proposal to confine the Clause to hazards that can be realistically mitigated, and to exclude those that are inherent and integral to professional activity, restores the integrity of both the statute and the regulatory process. By choosing clarity over expansion, OSHA demonstrates that responsible governance begins with respect for the limits of its own authority.

This clarification carries broad implications for the future of administrative law. In the post-*Loper Bright* era, agencies can no longer rely on judicial deference to sustain creative interpretations of ambiguous language. Instead, each must show that its enforcement practices fall squarely within its legislative mandate. OSHA's initiative thus serves as a model for other agencies, illustrating how self-discipline and statutory fidelity can enhance both effectiveness and legitimacy. By aligning its policies with the plain meaning of the law, OSHA not only strengthens its legal footing but also renews public confidence in the rulemaking process.

From an economic and practical standpoint, this proposal delivers meaningful benefits to small businesses, professional workers, and the broader American economy. By removing uncertainty and reducing the risk of arbitrary enforcement, OSHA empowers employers to allocate resources toward tangible safety improvements—training, equipment, and procedural innovation—rather than litigation and paperwork. The result is a more efficient, cooperative system in which compliance becomes a matter of professional practice rather than bureaucratic navigation. Clarity, predictability, and proportionality are themselves forms of protection, ensuring that limited safety resources are directed where they can have the greatest impact.

Equally important, the proposed limitation strengthens the cultural and ethical foundations of occupational safety. True safety does not arise from the illusion of total control, but from the responsible management of risk. Professions that embrace inherent danger—performers, rescuers, scientists, builders, and innovators—reflect the best of human courage and ingenuity. By recognizing that distinction, OSHA validates the dignity of work that involves calculated risk and honors the professional standards that govern it. This is not deregulation; it is intelligent regulation—focused, lawful, and respectful of human choice.

In closing, CRF urges OSHA to finalize this proposal expeditiously and to apply its principles consistently across future rulemakings. The agency's recognition that some hazards cannot be regulated away, and that enforcement must be grounded in law rather than policy preference, marks an important step toward a more balanced and transparent administrative state. This rulemaking reflects the spirit of accountability that *Loper Bright* demands and that the American people deserve. By adopting this clarification, OSHA will not only advance worker protection

but also reaffirm the essential truth that freedom and safety thrive best when law, not discretion, governs the conduct of government itself.

Sincerely,

A handwritten signature in black ink that reads "Andrew M. Langer". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Andrew M. Langer

Director

CPAC Foundation Center for Regulatory Freedom