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Washington, D.C. 20004

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July 21, 2025

The Honorable Lori Chavez-DeRemer  
Secretary of Labor  
c/o Acting Assistant Secretary for  
Occupational Safety and Health  
Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

Dear Madam Secretary:

This letter presents comments of the National Federation of Independent Business (NFIB)<sup>1</sup> on six Occupational Safety and Health Administration (OSHA) notices of proposed rulemaking published in volume 90 of the *Federal Register* on July 1, 2025, at the pages indicated: (1) "Safety Color Code for Marking Physical Hazards; Textiles; Sawmills; Safety Color Code for Marking Physical Hazards for Shipyard Employment," **OSHA-2025-0009**, p. 28282; (2) "House Falls in Marine Terminals," **OSHA-2025-0008**, p. 28358; (3) "Occupational Exposure to COVID-19 in Healthcare Settings," **OSHA-2020-0004**, p. 28336; (4) "Construction Illumination," **OSHA-2025-0040**, p. 28366; (5) "Occupational Safety and Health Standards; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities," **OSHA-2025-0041**, p. 28370; and (6) "Amending the Medical Evaluation Requirements in the Respiratory Protection Standard for Certain Types of Respirators," **OSHA-2025-0006**, p. 28463.

These notices represent an excellent beginning to the Department of Labor's implementation of the President's policy "to significantly reduce the private expenditures required to comply with Federal regulations" and "to alleviate unnecessary regulatory burdens placed on the American people."<sup>2</sup> NFIB comments as follows on each of the July 1, 2025, OSHA deregulatory initiatives:

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<sup>1</sup> NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that the governments of the United States and the fifty States hear the voice of small business as they formulate public policies.

<sup>2</sup> Executive Order 14192, "Unleashing Prosperity Through Deregulation" (January 31, 2025), 90 *Fed. Reg.* 9065 (February 6, 2025), sections 1 and 2.

Safety Color Code (OSHA-2025-0009): The proposed rule revokes regulations prescribing safety color codes for the Marking Physical Hazard Standard, Textiles Standard, Sawmills Standard, and Shipyard Employment Standard. OSHA notes that (1) OSHA understands that state and local building and fire codes, and OSHA's Specifications for Accident Prevention Signs and Tags Standard, adequately address the hazards addressed by the regulations proposed for revocation; (2) identification of hazards by color alone disservices the color blind; and (3) OSHA rarely issues a citation for violation of the regulations proposed for regulation.<sup>3</sup> Moreover, revocation will increase the freedom of 7,452,757 establishments and reduce private compliance expenditures by \$87.6 million annually.<sup>4</sup> For these reasons, NFIB concurs in the proposed rule to revoke the regulations.

House Falls in Marine Terminals (OSHA-2025-0008): The proposed rule revokes OSHA's House Falls in Marine Terminals Standard. OSHA states that the standard "is no longer necessary to protect employees working in marine terminals from occupational safety and health hazards,"<sup>5</sup> based on OSHA's understanding that "the marine terminals industry does not currently employ house falls because most cargo has been containerized and is moved by cranes."<sup>6</sup> OSHA also notes that OSHA has not issued a citation for a violation of the standard since 2012 or earlier.<sup>7</sup> Moreover, revocation of the standard will increase the freedom of 2,617 establishments and reduce private compliance expenditures by \$15,377 annually.<sup>8</sup> For these reasons, NFIB concurs in the proposed revocation of the standard.

COVID-19 in Healthcare Settings (OSHA-2020-0004): The proposed rule revokes OSHA's regulations requiring employers to keep records of, and to report to OSHA, hospitalization or death of employees caused by COVID-19. OSHA declared that "the public health emergency is over" on January 15, 2025.<sup>9</sup> And by memorandum of February 5, 2025, OSHA ceased enforcement of the COVID-19 recordkeeping and reporting requirements.<sup>10</sup> With no COVID-19 public health emergency, and with OSHA having decided not to enforce the COVID-19 recordkeeping and reporting

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<sup>3</sup> 90 *Fed. Reg.* at 28284, col. 2.

<sup>4</sup> 90 *Fed. Reg.* at 28284, col 3.

<sup>5</sup> 90 *Fed. Reg.* at 28359, col. 2.

<sup>6</sup> 90 *Fed. Reg.* at 28360, col. 2.

<sup>7</sup> 90 *Fed. Reg.* at 28360, col. 2.

<sup>8</sup> 90 *Fed. Reg.* at 28360, col. 3.

<sup>9</sup> 90 *Fed. Reg.* at 3666, col. 1. Note that Congress had by law terminated the COVID-19 national emergency much earlier, on April 10, 2023. Public Law 118-3 (April 10, 2023). Note also that the Supreme Court held that OSHA's authority extends only to "an *occupational* hazard," but not to a "universal risk" that is "no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases." *NFIB v. Department of Labor, OSHA*, 595 U.S. 109, 118 (2022).

<sup>10</sup> Available at <https://www.osha.gov/laws-regs/standardinterpretations/2025-02-05> (visited July 15, 2025).

requirements, NFIB concurs that OSHA should revoke the requirements. OSHA estimated that the revocation would save employers \$1,587,494 annually.<sup>11</sup>

Construction Illumination (OSHA-2025-0040): The proposed rule revokes OSHA construction site illumination requirements in 29 CFR 1926.26 and 1926.56. OSHA has concluded the Construction Illumination Standard “does not reduce a significant risk to workers” and therefore is not reasonably necessary or appropriate under section 3(8) of the Occupational Safety and Health Act.<sup>12</sup> OSHA notes that the hazard (inadequate illumination) is obvious to employers and employees, as is the solution (adding lighting) and that, since “adequate illumination is important to performing work well,” OSHA can expect employers to ensure adequate illumination.<sup>13</sup> OSHA notes also that, if employers fail to ensure adequate illumination, OSHA could address the shortcoming as a violation of the General Duty Clause of the Occupational Safety and Health Act.<sup>14</sup> NFIB would add that state workers compensation law and tort law also furnish incentives to employers to provide adequate illumination. For the foregoing reasons, NFIB concurs that OSHA should revoke the Construction Illumination Standard. OSHA estimated that the revocation would save employers \$11.7 million annually.<sup>15</sup>

Limitation for Inherently Risky Professional Activities (OSHA-2025-0041): The proposed rule construes the General Duty Clause of the Occupational Safety and Health Act<sup>16</sup> by stating: “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).”<sup>17</sup> OSHA includes in its proposed rule examples of such activities: live entertainment and performing arts; animal handling and performance; professional and extreme sports; motorsports and high-risk recreation; tactical, defense, and combat simulation training; and hazard-based media and journalism activities.<sup>18</sup> NFIB concurs with the view that the General

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<sup>11</sup> 90 *Fed. Reg.* at 28336, col. 3.

<sup>12</sup> 90 *Fed. Reg.* at 28367, col. 2; 29 U.S.C. 652(8).

<sup>13</sup> 90 *Fed. Reg.* at 28368, col. 1.

<sup>14</sup> 90 *Fed. Reg.* at 28368, col. 1; 29 U.S.C. 654(a)(1) (“Each employer--(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employee; . . .”).

<sup>15</sup> 90 *Fed. Reg.* at 28368, col. 2.

<sup>16</sup> Section 5(a)(1) of the Occupational Safety and Health Act (29 U.S.C. 654(a)(1)) (“Each employer--(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employee; . . .”).

<sup>17</sup> 90 *Fed. Reg.* at 28375, cols. 2 and 3 (proposed 29 CFR 1975.7(a)).

<sup>18</sup> 90 *Fed. Reg.* at 28375, col. 3 (proposed 29 CFR 1975.7(b)).

Duty Clause does not provide the clear statement necessary under the major questions doctrine to allow OSHA to regulate such activities under the Clause.<sup>19</sup> Accordingly, NFIB concurs with the proposed rule, with one technical correction necessitated by the use of the term “activity” and not the term “sector” in proposed 29 CFR 1975.7(a): in proposed 29 CFR 1975.7(b), strike “Such sectors” and insert in lieu thereof “Such activities”.

Certain Types of Respirators (OSHA-2025-0006): The proposed rule would revoke some medical evaluation requirements in the Respiratory Protection rule<sup>20</sup> for filtering facepiece respirators (FFRs) and loose fitting powered air-purifying respirators (PAPRs).<sup>21</sup> After reviewing the available data, OSHA preliminarily concluded that “there is not sufficient evidence to conclude that wearing FFRs and loose fitting PAPRs without a prior medical evaluation can result in unavoidable adverse outcomes, and that the assumption that medical evaluation effectively detects risk for adverse effects from the occupational use of FFRs and loose fitting PAPRs is unproven.”<sup>22</sup> OSHA estimates that the revocation will result in a cost savings of just over \$80 million annually spread across 131,089 firms, including 127,351 small businesses.<sup>23</sup> NFIB concurs with the proposed revocation.

NFIB also appreciates that OSHA withdrew its proposal to amend the OSHA Log of Work-Related Injuries and Illnesses (Form 300) to add a column that employers would use to record work-related musculoskeletal disorders.<sup>24</sup> When OSHA considers imposing any recordkeeping or reporting requirements, OSHA should take careful account of the needs of small business. Compliance with such requirements costs small business owners time and money, both of which are generally in short supply as they strive to keep their businesses going and create jobs. Also, the Regulatory Flexibility Act makes clear that agencies should consider carefully the needs of small businesses.<sup>25</sup>

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<sup>19</sup> See OSHA discussion of *NFIB v. Department of Labor, OSHA*, 595 U.S. 109 (2022) and applicability of major questions doctrine to the General Duty Clause. 90 *Fed. Reg.* at 28371, col. 3.

<sup>20</sup> 29 CFR 1910.134.

<sup>21</sup> 90 *Fed. Reg.* at 28463, col. 3.

<sup>22</sup> 90 *Fed. Reg.* at 28466, col. 3.

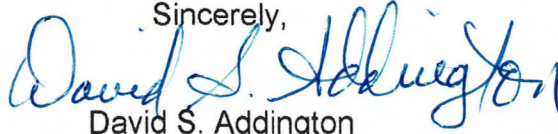
<sup>23</sup> 90 *Fed. Reg.* at 28470, Table 1 and col. 1.

<sup>24</sup> 90 *Fed. Reg.* at 28257 (July 1, 2025).

<sup>25</sup> Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 601 note. In paragraph 2(a)(4) of the RFA, Congress declared that “the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity . . . .” Congress also noted in paragraph 2(a)(6) of the RFA that “the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation . . . .”

NFIB looks forward to further deregulatory initiatives from the U.S. Department of Labor. With less government regulation, America will have freer markets. And free markets grow the American economy, meet the needs of businesses and their customers, and create jobs.

Sincerely,

A handwritten signature in blue ink that reads "David S. Addington". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David S. Addington  
Executive Vice President and General Counsel