

November 1, 2025

VIA ELECTRONIC SUBMISSION

Honorable David Keeling
Acting Administrator
U.S. Occupational Safety and Health Administration
200 Constitution Ave. NW
Washington, D.C. 20010

**RE: Interpretation of the General Duty Clause: Limitation for Hazards Inherent to the Profession
(Docket No. OSHA-2025-0041)**

Dear Mr. Keeling,

On behalf of the American Road & Transportation Builders Association (ARTBA), the Associated General Contractors of America (AGC), and the National Asphalt Pavement Association (NAPA) we respectfully submit these comments on the Occupational Safety and Health Administration's (OSHA) proposed rule to modify the interpretation of the General Duty Clause, 29 U.S.C. § 654(a)(1).¹ Our collective associations represents a broad cross-section of the transportation construction industry. Our members are engaged in every aspect of building and maintaining transportation infrastructure nationwide.

ARTBA's membership includes public and private sector members, that plan, design, build and maintain the nation's roadways, waterways, bridges, ports, airports, rail and transit systems. ARTBA's members are comprised of contractors, planning and design firms, materials suppliers, state and local agencies, and safety equipment manufacturers. ARTBA's nearly 8,000 members generate more than \$650 billion annually in U.S. economic activity, sustaining more than 4.4 million American jobs.

AGC is the nation's leading construction trade association. It dates to 1918 and today represents more than 28,000 member firms including construction contractor firms both union and open-shop, suppliers, and service providers. Through a nationwide network of 87 chapters in all 50 states, D.C., and Puerto Rico, AGC contractors are engaged in the construction of the nation's highways, bridges, utilities, airports, transit systems, public and private buildings, water works facilities and multi-family housing units, among other projects critical to the economy.

¹ Occupational Safety and Health Standards; Interpretation of the General Duty Clause: Limitation for Inherently Risky Professional Activities, 90 Fed. Reg. 28,370 (July 1, 2025).

NAPA is the only trade association nationally representing over 1,000 companies associated with the production and (road paving) application of over 400 million tons of asphalt pavement mixtures annually. NAPA members operate pavement mix plants in virtually every Congressional district, coast to coast, border to border. More than 94 percent of America’s roadways and over 80 percent of airfields are surfaced with asphalt.

Safety and health are foundational to our members’ operations, and we share OSHA’s commitment to advancing effective, practical approaches to worker protection. We appreciate OSHA’s effort to clarify that the General Duty Clause should not be applied to hazards that are “integral to the essential function” of certain professions, and for which there is no existing OSHA codified standard. This clarification will help reduce regulatory uncertainty, promote consistent enforcement, and strengthen collaboration between OSHA and the transportation construction industry to focus on hazards that employers can meaningfully control. Our associations offer the following comments to support and refine the agency’s proposal.

Background

On August 20, 2025, OSHA published a [proposed rule](#) revising the interpretation of the General Duty Clause² to clarify that the clause does not apply to hazards that are inherent and inseparable from the core nature of certain professional activities. The proposal seeks to provide clearer limits on employer obligations where hazards cannot reasonably be eliminated through abatement efforts, particularly when doing so would fundamentally alter or prohibit the activity itself.

Our associations appreciate OSHA’s focus on fair and consistent enforcement of the General Duty Clause. Our member organizations—representing contractors, suppliers, engineers, and public agencies across the full spectrum of the construction industry—are directly affected by this interpretation. Given the nature of construction work in active roadway environments, our members routinely face hazards that cannot be fully controlled despite full compliance with federal and state safety protocols. Accordingly, our associations submit these comments to ensure OSHA’s final interpretation accurately reflects the realities of construction work and the practical limits of employer control.

Comments on the Proposed Rule

OSHA’s proposed interpretation appropriately limits the application of the General Duty Clause to hazards employers can feasibly control. The transportation construction sector’s inclusion would be consistent with OSHA’s stated goal of excluding from enforcement “hazards that are known, recognized, and inherent in the core activity of a profession.”³ In highway construction, exposure to moving traffic is an inherent hazard that cannot be fully eliminated without closing down large portions of critical roadways.

² 29 U.S.C. § 654(a)(1).

³ 89 Fed. Reg. at 64364.

Within this proposed rulemaking, OSHA has requested input on whether additional industry sectors or occupations should be considered under this provision. We respectfully submit that the North American Industry Classification System (NAICS) Code 237310, covering Highway, Street, and Bridge Construction—should be included. NAICS 237310 encompasses our members engaged in the construction, reconstruction, rehabilitation, and repair of highways, streets, roads, airport runways, public sidewalks, and bridges.⁴ Much of this work occurs on active transportation infrastructure sites that remain open to motorized traffic, including passenger vehicles, motorcycles, and large commercial trucks.

I. Construction work zones exemplify hazards inherent to the profession.

Workers in this sector face unavoidable exposure to moving traffic, often operating at high speeds and under varied conditions. Despite adherence to robust safety protocols—including those prescribed by OSHA and the Federal Highway Administration (FHWA)—protective barriers, traffic control devices, and buffer zones cannot fully eliminate the risk of errant vehicles entering a work zone.

According to the Bureau of Labor Statistics' *Census of Fatal Occupational Injuries (CFOI)*, transportation incidents remain the leading cause of fatal occupational injuries in construction work zones, accounting for more than 60 percent of such fatalities annually.⁵ The overwhelming majority of these incidents involve impaired, distracted, or reckless drivers—behaviors entirely outside the employer's control.

II. Adding transportation construction to the proposed rule would increase consistency with OSHA's enforcement principles.

OSHA's proposed rule states that the agency intends to apply this interpretation to hazards that are inseparable from the nature of a professional activity. Highway, street, and bridge construction work squarely fits this definition. Contractors performing work on active roadways must operate within the confines of public transportation systems. They cannot close roads or regulate driver behavior without explicit direction and approval from government authorities.

Employers in this sector do not have the authority to control public roadways, enforce traffic laws, or prevent motorists from operating under the influence, while fatigued, or while distracted. These conditions are inherently external to the construction employer's control. OSHA's recognition of this limitation is essential to fair and consistent enforcement of the General Duty Clause.

III. Current data shows that certain hazards remain unavoidable despite industry best efforts.

FHWA's *Manual on Uniform Traffic Control Devices (MUTCD)*⁶, coupled with OSHA's own work zone safety guidelines, provides an integrated framework for mitigating traffic exposure. Employers who

⁴ U.S. Census Bureau, *North American Industry Classification System (NAICS) 237310* (2022), <https://www.census.gov/naics/>.

⁵ Bureau of Labor Statistics, *Census of Fatal Occupational Injuries (CFOI)* (2022), <https://www.bls.gov/iif/oshcfoi1.htm>.

⁶ Federal Highway Administration, *Manual on Uniform Traffic Control Devices for Streets and Highways* (11th ed. 2023), <https://mutcd.fhwa.dot.gov/>.

fully comply with these standards have implemented all feasible protective measures recognized by both agencies.

Despite these efforts, BLS data show that struck-by vehicle incidents continue to be the primary source of work zone fatalities, underscoring that some hazards remain unavoidable despite best practices. These are precisely the circumstances OSHA's proposed rulemaking seeks to acknowledge—where hazards are inherent to the nature of the work and not reasonably abatable through employer action.

IV. OSHA should clarify the rule's applicability to the transportation construction industry.

To align with OSHA's stated intent, we urge the agency to explicitly include "Highway, Street, and Bridge Construction (NAICS 237310)" among the examples of professional activities where exposure to uncontrolled third-party hazards—such as public traffic—constitutes an inherent hazard. Alternatively, OSHA could clarify in the final interpretation that industries in which workers must perform duties in proximity to uncontrolled public environments (e.g., roadways or rights-of-way) fall within the scope of this exclusion.

Conclusion

Until broader systemic changes are implemented — such as shifts in public policy, infrastructure design, or driver behavior — it is not feasible to eliminate this hazard. We strongly urge OSHA to include Highway, Street, and Bridge Construction under NAICS 237310 within the scope of its proposed interpretation of the General Duty Clause. This inclusion would acknowledge the limits of employer control and support fair and appropriate enforcement. If you have any questions or require further information, please contact psharma@artba.org.

Sincerely,

American Road & Transportation Builders Association (ARTBA)
Associated General Contractors of America (AGC)
National Asphalt Pavement Association (NAPA)