List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____ to read as follows:

§ 9.____ San Luis Rey.

(a) *Name.* The name of the viticultural area described in this section is ''San Luis Rey''. For purposes of part 4 of this chapter, ''San Luis Rey'' is a term of viticultural significance.

(b) *Approved maps.* The 8 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are as follows:

(1) Oceanside, CA, 2018;
(2) San Luis Rey, CA, 2018;
(3) San Marcos, CA, 2018;
(4) Valley Center, CA, 2018;
(5) Bonsall, CA, 2018;
(6) Temecula, CA, 2018;
(7) Fallbrook, CA, 2018; and
(8) Morro Hill, CA, 2018.

(c) *Boundary.* The San Luis Rey viticultural area is located in San Diego County, California. The boundary of the San Luis Rey viticultural area is described as follows:

(1) The beginning point is on the Oceanside map at the intersection of Interstate 5 and the Marine Corps Base (MCB) Camp Pendleton boundary. From the beginning point, proceed northeast for a total of 11.21 miles along the MCB Camp Pendleton boundary, crossing over the San Luis Rey map and onto the Morro Hill map, and continuing along the MCB Camp Pendleton boundary to its intersection with the Naval Weapons Station (NWS) Seal Beach Fallbrook California boundary; then

(2) Proceed east along the NWS Seal Beach Fallbrook California boundary for a total of 6.85 miles, crossing onto the Bonsall map and continuing north, then west along the boundary, and crossing back onto the Morro Hill map and continuing northerly along the boundary, crossing onto the Fallbrook map, and continuing along the boundary as it becomes concurrent with the MCB Camp Pendleton boundary, and continuing along the boundary to its intersection with De Luz Road; then

(3) Proceed east along De Luz Road for 0.38 mile to its intersection with Sandia Creek Drive; then

(4) Proceed northerly along Sandia Creek Drive for a total of 3.98 miles, crossing onto the Temecula map and continuing along Sandia Creek Drive to its intersection with an unnamed road known locally as Rock Mountain Road; then

(5) Proceed east along Rock Mountain Road for 0.21 mile to its intersection with the San Diego County line; then

(6) Proceed south then east along the San Diego County line for 6.72 miles to its intersection with an unnamed road known locally as Old Highway 395; then

(7) Proceed south along Old Highway 395 for a total of 14.9 miles, crossing onto the Bonsall map and continuing south along Old Highway 395 to its intersection with an unnamed road known locally as Old Castle Road; then

(8) Proceed east on Old Castle Road for a total of 0.59 mile, crossing onto the San Marcos map and continuing east along Old Castle Road to its intersection with Gordon Hill Road; then

(9) Proceed southeasterly along Gordon Hill Road for 0.92 mile to its intersection with the 800-foot elevation contour; then

(10) Proceed east along the 800-foot elevation contour for a total of 2.5 miles, crossing onto the Valley Center map and continuing east along the 800-foot elevation contour to its intersection with Canyon Country Lane; then

(11) Proceed northwest and then south along Canyon Country Lane for 0.83 mile to its intersection with the 1,240-foot elevation contour; then

(12) Proceed east along the 1,240-foot elevation contour for 2.90 miles to its intersection with Cougar Pass Road; then

(13) Proceed west then south along Cougar Pass Road for 0.4 mile to its intersection with Meadow Glen Way East; then

(14) Proceed south along Meadow Glen Way East for 0.46 mile to its intersection with Hidden Meadows Road; then

(15) Proceed southwest along Hidden Meadows Road for 0.73 mile to its intersection with Mountain Meadow Road; then

(16) Proceed southwest along Mountain Meadow Road for a total of 1.44 miles, crossing onto the San Marcos map and continuing along Mountain Meadow Road to the point where Mountain Meadow Road becomes known as Deer Springs Road just west of Interstate 15; then

(17) Proceed southwest along Deer Springs Road for 2.42 miles to its intersection with an unnamed road known locally as North Twin Oaks Valley Road; then

(18) Proceed south along North Twin Oaks Valley Road for 3.01 miles to its intersection with an unnamed road known locally as West Mission Road; then

(19) Proceed northwest along West Mission Road (which becomes South Santa Fe Avenue) for a total of 3.9 miles to its intersection with Robelini Drive; then

(20) Proceed southwest along Robelini Drive (which becomes Sycamore Avenue) for a total of 0.55 mile to its intersection with State Highway 78; then

(21) Proceed northwest, then westerly along State Highway 78 for a total of 9.09 miles, crossing onto the San Luis Rey map and continuing westerly along State Highway 78 to its intersection with Interstate 5; then

(22) Proceed northwest along Interstate 5 for a total of 3.14 miles, crossing onto the Oceanside map and returning to the beginning point.

Signed: August 21, 2023.

Mary G. Ryan,

Administrator.

Approved: August 22, 2023.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2023–18587 Filed 8–29–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1903

[Docket No. OSHA–2023–0008]

RIN 1218–AD45

Worker Walkaround Representative Designation Process

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA is proposing to amend its Representatives of Employers and Employees regulation to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party; such third-party employee representative(s) may accompany the OSHA Compliance Safety and Health Officer (CSHO) when they are reasonably necessary to aid in

the inspection. OSHA is also proposing clarifications of the relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills of third-party representative(s) authorized by employees who may be reasonably necessary to the conduct of a CSHO's physical inspection of the workplace. OSHA has preliminarily determined that the proposed changes will aid OSHA's workplace inspections by better enabling employees to select a representative of their choice to accompany the CSHO during a physical workplace inspection. Employee representation during the inspection is critically important to ensuring OSHA obtains the necessary information about worksite conditions and hazards. The agency requests comments regarding the proposed revisions.

DATES: Submit comments by October 30, 2023. All submissions must provide evidence of the submission date. (See the following section titled **ADDRESSES** for instructions on making submissions.)

ADDRESSES: Comments may be submitted as follows:

Written comments: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and docket number for this rulemaking (Docket No. OSHA–2023–0008). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting information that they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other information in the docket, go to Docket No. OSHA–2023–0008 at *https://www.regulations.gov.* All comments and submissions are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2500 (TDY number 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, OSHA Office of Communications, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical inquiries: Donald Klienback, OSHA Directorate of Construction, telephone: (202) 693–2020; email: *klienback.donald.w@dol.gov.*

Copies of this ***Federal Register*** *notice and news releases:* Electronic copies of these documents are available at OSHA's web page at *https://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Section 8(e) of the OSH Act grants a representative of the employer and a representative authorized by employees the opportunity to accompany OSHA during the physical inspection of the workplace for the purpose of aiding the inspection. While OSHA long interpreted one of section 8(e)'s implementing regulations, 29 CFR 1903.8(c), to permit third-party representatives authorized by employees to accompany OSHA on the walkaround inspection when reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, a district court concluded that interpretation was not consistent with the regulation. OSHA is therefore proposing to revise 29 CFR 1903.8(c) to clarify the types of individuals who can be a representative(s) authorized by employees during OSHA's physical inspections of the workplace (also referred to as the ''walkaround inspection''). This revision will more clearly align with section 8(e) of the OSH Act, 29 U.S.C. 657(e), and with OSHA's longstanding interpretation of the OSH Act.

OSHA is proposing two revisions of 29 CFR 1903.8(c). First, OSHA is proposing to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party. Second, OSHA is proposing to clarify that a third-party representative authorized by employees may be reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace by virtue of their knowledge, skills, or experience. This proposed revision clarifies that the employees' options for third-party representation during OSHA inspections are not limited to only those individuals with skills and knowledge similar to that of the two examples provided in existing regulatory text: Industrial Hygienist or Safety Engineer.

The proposed revisions to 1903.8(c) do not change the CSHO's authority to determine whether an individual is a representative authorized by employees (29 CFR 1903.8(b)). Also, the proposed revisions do not affect other provisions of section 1903 that limit participation in walkaround inspections, such as the CSHO's authority to prevent an individual from participating in the walkaround inspection if their conduct interferes with a fair and orderly inspection (29 CFR 1903.8(d)) or the employer's right to limit entry of employee authorized representatives into areas of the workplace that contain trade secrets (29 CFR 1903.9(d)).

The agency preliminarily concludes that these changes would not increase costs or compliance burdens for employers.

II. Background

A. The OSH Act and OSHA's Inspection Authority

The Occupational Safety and Health Act of 1970 (OSH Act or Act) was enacted ''to assure so far as possible every working [person] in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651 (b). To effectuate the Act's purpose, Congress authorized the Secretary of Labor to promulgate occupational safety and health standards. See 29 U.S.C. 655. The Act

also grants broad authority to the Secretary to promulgate rules and regulations related to inspections, investigations, and recordkeeping. See 29 U.S.C. 657.

Section 8 of the OSH Act states that OSHA's inspection authority is essential to carrying out the Act's purposes and provides that employers must give OSHA access to inspect worksites ''without delay.'' 29 U.S.C. 657(a). Section 8(e) of the Act provides specifically that ''[s]ubject to regulations issued by the Secretary, a representative of the employer and a representative authorized by [its] employees shall be given an opportunity to accompany [the CSHO] for the purpose of aiding such inspection.'' 29 U.S.C. 657(e). Section 8(g) further authorizes the Secretary to promulgate such rules and regulations as the agency deems necessary to carry out the agency's responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment. 29 U.S.C. 657(g).

B. Regulatory History and Interpretive Guidance

On May 5, 1971, OSHA proposed rules and general policies for the enforcement of the inspection, citation, and penalty provisions of the OSH Act. (36 FR 8376, May 5, 1971). OSHA subsequently issued regulations for inspections, citations, and proposed penalties at 29 CFR part 1903. (36 FR 17850, Sept. 4, 1971).

The OSH Act and 29 CFR part 1903 provide OSHA CSHOs with significant authority to conduct workplace inspections. Part 1903 contains specific provisions that describe the CSHO's authority and role in carrying out inspections under the OSH Act. For example, the CSHO is in charge of conducting inspections and interviewing individuals, and has authority to permit additional employer representatives and representative(s) authorized by employees to participate in the physical inspection of the workplace. See 29 CFR 1903.8(a). In addition, the CSHO has the authority to resolve any disputes about who the employer and employee representatives are and to deny any person from participating in the inspection whose conduct interferes with a fair and orderly inspection. See 29 CFR 1903.8(b), (d). The CSHO also has authority to use various reasonable investigative methods and techniques, such as taking photographs, obtaining environmental samples, and questioning individuals while carrying out their inspection. 29 CFR 1903.7(b); see also 1903.3(a).

Section 1903.8(c), the subject of this proposed rulemaking, grants additional authority to the CSHO to determine whether third-party representatives would aid in the physical workplace inspection. This paragraph provides: ''The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.'' 29 CFR 1903.8(c). Section 1903.8, which primarily addresses employer and employee representatives during inspections, has not been revised since 1971.

Since issuing its inspection-related regulations, OSHA has provided guidance on its interpretation of section 1903.8(c) and the meaning of representative authorized by employees for purposes of the OSHA walkaround inspection. For example, on March 7, 2003, OSHA issued a letter of interpretation to Mr. Milan Racic (Racic letter), a health and safety specialist with the International Brotherhood of Boilermakers. (Docket ID OSHA–2023–0008–0002). Mr. Racic asked whether a union representative who files a complaint on behalf of a single worker could then also act as a walkaround inspection representative in a workplace that has no labor agreement or certified bargaining agent. In its response letter, OSHA stated that there was no ''provision for a walkaround representative who has filed a complaint on behalf of an employee of the workplace.'' (Docket ID OSHA–2023–0008–0002).

On February 21, 2013, OSHA issued a letter of interpretation to Mr. Steve Sallman (Sallman letter) of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. (Docket ID OSHA–2023–0008–0003). Mr. Sallman asked whether workers at a worksite without a collective bargaining agreement could designate a person affiliated with a union or a community organization to act on their behalf as a walkaround representative. OSHA responded in the affirmative, explaining that such person could act on behalf of employees as long as they had been authorized by employees to serve as their representative.

OSHA further explained that the right is qualified by 29 CFR 1903.8, which gives CSHOs the authority to determine who can participate in an inspection. OSHA noted that while 1903.8(c) acknowledged that most employee representatives will be employees of the employer being inspected, the regulation also explicitly allowed walkaround participation by an employee representative who is not an employee of the employer when, in the judgment of the CSHO, such representative is reasonably necessary to the conduct of an effective and thorough physical inspection. OSHA explained that such representatives are reasonably necessary when they will make a positive contribution to a thorough and effective inspection.

OSHA gave several examples of how an authorized employee representative who was not an employee of the employer could make an important contribution to the inspection, noting that the representative might have a particular skillset or experience evaluating similar working conditions in a different facility. OSHA also highlighted the usefulness to workers and to the CSHO of an employee representative who is bilingual or multilingual to better facilitate communication between employees and the CSHO.

Additionally, OSHA noted that the 2003 Racic letter had inadvertently created confusion among the regulated community regarding OSHA's interpretation of an authorized employee representative for walkaround inspection purposes. OSHA explained that the Racic letter merely stated that a non-employee who files a complaint does not necessarily have a right to participate in an inspection arising out of that complaint, but that it did not address the rights of workers without a certified or recognized collective bargaining agent to have a representative of their own choosing participate in an inspection. OSHA withdrew the Racic letter to eliminate any confusion and then included its interpretation of 29 CFR 1903.8(c) as to who could serve as an authorized employee representative when it updated its Field Operations Manual (FOM) CPL 02–00–159 on October 1, 2015. (Docket ID OSHA–2023–0008–0004). The FOM explained that ''[i]t is OSHA's view that representatives are 'reasonably necessary', when they make a positive contribution to a thorough and effective inspection'' and recognized that there may be cases in which workers without a certified or recognized bargaining agent would authorize a third party to represent the

workers on the inspection. *Id.* OSHA noted that ''[t]he purpose of a walkaround representative is to assist the inspection by helping the compliance officer receive valuable health and safety information from workers who may not be able or willing to provide such information absent the third-party participants.'' *Id.*

C. Litigation and Subsequent Agency Action

In September 2016, several years after OSHA issued the Sallman letter, the National Federation of Independent Business (NFIB) filed a suit in the district court for the Northern District of Texas challenging the Sallman letter, arguing it should have been subject to notice and comment rulemaking and that it conflicted with OSHA's regulations and exceeded OSHA's statutory authority. *Nat'l Fed'n of Indep. Bus.* v. *Dougherty,* No. 3:16–CV–2568–D, 2017 WL 1194666 (N.D. Tex. Feb. 3, 2017). On February 3, 2017, the district court concluded that OSHA's interpretation as stated in the Sallman letter was not consistent with 29 CFR 1903.8(c) and such a change to a regulation could not be made without notice and comment rulemaking. *Id.* at *11. The district court held that the letter ''plainly contradicts § 1903.8(c)'s requirement that the employee representative be an employee himself.'' *Id.*

Nevertheless, the court rejected NFIB's claim that the Sallman letter conflicted with the OSH Act, finding that OSHA's Sallman letter of interpretation was ''a persuasive and valid construction of the Act.'' *Id.* at *12. The court concluded that ''the Act merely provides that the employee's representative must be authorized by the employees, not that the representative must also be an employee of the employer.'' *Id.*

Following this decision, on April 25, 2017, OSHA rescinded the Sallman letter. (Docket ID OSHA–2023–0008–0005). OSHA also revised the FOM to remove language that incorporated the Sallman letter. OSHA is now engaging in notice and comment rulemaking to clarify who may serve as a representative authorized by employees for the purpose of walkaround inspections.

III. Legal Authority

The OSH Act authorizes the Secretary of Labor to issue safety and health ''standards'' and other ''regulations.'' See, *e.g.,* 29 U.S.C. 655, 657. An occupational safety and health standard, issued pursuant to section 6 of the Act, prescribes measures to be taken to remedy an identified occupational hazard. Other regulations issued pursuant to general rulemaking authority found, inter alia, in section 8 of the Act, establish enforcement or detection procedures designed to further the goals of the Act generally. See 29 U.S.C. 657(c); *Workplace Health and Safety Council* v. *Reich,* 56 F. 3d 1465, 1468 (D.C. Cir. 1995). The proposed amendments in this notice are to a regulation issued pursuant to authority expressly granted by section 8 of the Act. 29 U.S.C. 657(e) (authority to promulgate regulations related to employer and employee representation during an inspection) and (g) (authority to promulgate rules and regulations dealing with workplace inspections). These proposed revisions clarify employees' statutory right to a walkaround representative under section 8 of the OSH Act and do not impose any new substantive inspection-related requirements.

Numerous provisions of the OSH Act underscore Congress' understanding that OSHA's ability to conduct comprehensive inspections is essential to fulfilling the purposes of the OSH Act to protect working people from occupational safety and health hazards. Congress provided OSHA with broad authority to conduct inspections of workplaces and records, to require the attendance and testimony of witnesses, and to require the production of evidence. 29 U.S.C. 657(b). OSHA's ability to carry out these workplace inspections is critical to the OSH Act's entire enforcement scheme. 29 U.S.C. 658 (authorizing OSHA to issue citations for violations following an inspection or investigation); 659 (citations shall be issued within a reasonable time after inspection or investigation). Moreover, any approved State occupational safety and health plan must provide for an OSHA inspector's right of entry and inspection that is at least as effective as the OSH Act. 29 U.S.C. 667(c)(3).

To enable OSHA to conduct robust inspections, the OSH Act grants the Secretary broad authority to enact inspection-related regulations. Section 8(g)(2) of the Act generally empowers the Secretary to prescribe such rules and regulations as the Secretary may deem necessary for carrying out inspection activity. See 29 U.S.C. 657(g)(2). Section 8(e) also specifically contemplates regulations related to employee and employer representation during OSHA's inspection of the workplace. 29 U.S.C. 657(e).

In addition to granting OSHA broad authority to conduct comprehensive workplace inspections and promulgate regulations to effectuate those inspections, Congress also recognized the importance of ensuring employee participation and representation in the inspection process. The legislative history of section 8 of the OSH Act shows Congress' intent to provide representatives authorized by employees with an opportunity to accompany the inspector in order to benefit the inspection process and ''provide an appropriate degree of involvement of employees.'' S. Rep. No. 91–1282 91st Cong., 2nd Sess. (1970), reprinted in Legislative History of the Occupational Safety and Health Act of 1970 at 151 (Comm. Print 1971). Senator Harrison A. Williams of New Jersey, who was a sponsor of the bill that became the OSH Act, explained that the opportunity for workers themselves and a representative of their choosing to accompany OSHA inspectors was ''manifestly wise and fair'' and ''one of the key provisions of the bill.'' Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 430 (Comm. Print. 1971).

The OSH Act's legislative history further indicates that Congress considered potential concerns related to the presence of a representative authorized by employees at the inspection and ultimately decided to expressly include this right in section 8(e) of the Act. Congressional debate around this issue included concern from some members of Congress that a representative authorized by employees' presence in the inspection would cause an undue burden on employers or be used as ''an effort to ferment labor unrest.'' See Comments of Congressperson William J. Scherle of Iowa, 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 1224 (Comm. Print 1971); see also Comments of Congressperson Michel of Illinois, *id.* at 1057. Similarly, Senator Peter Dominick of Colorado proposed an amendment to the Senate bill that would have removed the right of a representative authorized by the employees to accompany the CSHO and instead would have only required that the CSHO consult with employees or their representative at ''a reasonable time.'' Proposed Amendment No. 1056., 92d Cong. 1st Sess., reprinted in Legislative History of the Occupational Safety and Health Act of 1970, at 370 (Comm. Print 1971). One of the stated reasons for the proposed amendment was a concern that ''[t]he mandatory

'walk-around' provisions now in the bill could . . . lead to 'collective bargaining' sessions during the course of the inspection and could therefore interfere both with the inspection and the employer's operations.'' *Id.* at 372.

This proposed amendment was rejected, and Section 8(e) of the OSH Act reflects Congress' considered judgment of the best way to strike the balance between employers' concerns about workplace disruptions and the critical importance of employee representation in the inspection process. And while section 8(e) underscores the importance of employee representation in OSHA's workplace inspection, the Act itself does not place restrictions on who can be a representative authorized by employees. See 29 U.S.C. 657(e); see also *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d 334, 338 (7th Cir. 1995) (''[T]he plain language of § 8(e) permits private parties to accompany OSHA inspectors,''); *Nat'l Fed'n of Indep. Bus.,* 2017 WL 1194666, at *12 (''[T]he Act merely provides that the employee's representative must be authorized by the employee, not that the representative must also be an employee of the employer.'').

Instead, the Act authorizes the Secretary of Labor (via OSHA) to issue regulations and determine who may be an authorized employee representative for purposes of the OSHA inspection. 29 U.S.C. 657(e). Congress intended to give the Secretary of Labor the authority to issue regulations related to determining the specifics and resolving the question of who could be an authorized employee representatives for purposes of the walkaround inspection. See Legislative History of the Occupational Safety and Health Act of 1970, at 151 (Comm. Print 1971) (''Although questions may arise as to who shall be considered a duly authorized representative of employees, the bill provides the Secretary of Labor with authority to promulgate regulations for resolving this question.'').

While the OSH Act grants the Secretary of Labor broad authority to inspect workplaces ''without delay'' to find and remedy safety and health violations, 29 U.S.C. 657(a)(1)–(2), these inspections must be carried out in a manner consistent with the Fourth Amendment of the U.S. Constitution regarding reasonable searches. See *Marshall* v. *Barlow's Inc.,* 436 U.S. 307 (1978). If an employer refuses entry, OSHA seeks a warrant, as required by the Fourth Amendment. *Id.* at 313; see also 29 CFR 1903.4. At times OSHA might seek an anticipatory warrant to inspect a worksite, such as if OSHA has been refused entry to inspect a workplace in the past and anticipates that the employer might refuse again without proof of a warrant. See 29 CFR 1903.4(b). Because OSHA's inspections are conducted in accordance with the Fourth Amendment, they do not constitute a ''physical taking'' under the Takings Clause of the Fifth Amendment. See *Cedar Point Nursery* v. *Hassid,* 141 S. Ct. 2063, 2079 (2021) (''Because a property owner traditionally had no right to exclude an official engaged in a reasonable search, government searches that are consistent with the Fourth Amendment and state law cannot be said to take any property right from landowners.'') (internal citations omitted); *Matter of Establishment Inspection of Caterpillar Inc.,* 55 F.3d at 339–41 (upholding warrant that authorized participation of employee representatives as consistent with the Fourth Amendment).

Based on the foregoing, OSHA has determined that section 8(e) of the OSH Act, as well as the Act's history and purpose, support OSHA's longstanding interpretation that the representative(s) authorized by employees may be employees of the employer or a third party and the agency's proposed revisions to 29 CFR 1903.8(c).

III. Summary and Explanation of Proposed Changes

Section 8(e) of the OSH Act, 29 U.S.C. 657(e), Inspections, Investigations, and Recordkeeping, states that ''[s]ubject to regulations issued by the Secretary'' a representative authorized by employees ''shall be given an opportunity to accompany the [CSHO] during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection.'' The first sentence of existing section 1903.8(c) states that an authorized employee representative(s) shall be an employee(s) of the employer being inspected. However, the second sentence of paragraph (c) provides an exception for the presence of a third party if the CSHO determines there is good cause shown why their presence is reasonably necessary to conduct an effective and thorough physical inspection of the workplace. Paragraph (c) provides industrial hygienists and safety engineers as two examples of helpful non-employees who a CSHO might determine are reasonably necessary to include in the inspection.

Since its promulgation in 1971, OSHA has interpreted section 1903.8(c) to allow third parties to serve as authorized employee representatives on the walkaround inspection when reasonably necessary. However, as described in Background, Section II.C of this preamble, a district court held that OSHA's interpretation of paragraph (c) was inconsistent with the regulatory text as written. See *Nat'l Fed'n of Indep. Bus.,* 2017 WL 1194666, at *11. In OSHA's experience, representatives authorized by employees are usually employed by the employer. However, under the OSH Act, they need not be. *Id.* at *12. OSHA is therefore proposing to amend 29 CFR 1903.8(c) to clarify that, for the purpose of the walkaround inspection, the representative(s) authorized by employees may be an employee of the employer or, when they are reasonably necessary to aid in the inspection, a third party.

These changes will ensure employees are able to select trusted and knowledgeable representatives of their choice, leading to more effective inspections. The OSH Act gives employees in all workplaces—whether they have a collective bargaining agreement or not—the right to have a representative authorized by them to accompany OSHA during a workplace inspection for purposes of aiding the inspection. See 29 U.S.C. 657(e). The criteria outlined in paragraph (c) therefore applies to all worksites that OSHA inspects.

When the representative(s) authorized by employees are not employed by the employer, they may accompany the CSHO during the inspection if in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. OSHA proposes to revise paragraph (c) to clarify that third-party representatives authorized by employees may have a variety of skills, knowledge, or experience that could aid the CSHO's inspection. This includes knowledge, skills, or experience with particular hazards or conditions in the workplace or similar workplaces, as well as any relevant language skills a representative may have to facilitate better communication between workers and the CSHO. Therefore, OSHA proposes to delete the examples of industrial hygienists and safety engineers currently in paragraph (c) so that the focus is properly on the knowledge, skills, or experience of the individual rather than their professional discipline. This proposed deletion does not signal that an industrial hygienist or safety engineer cannot be a representative authorized by employees.

In OSHA's experience, there are a multitude of third parties who might serve as representatives authorized by employees for purposes of the OSHA walkaround inspection. The examples discussed in this proposal are not

exhaustive and OSHA seeks comment, including any data or anecdotal examples, of individuals who might be selected by employees to serve as their authorized employee representative in an OSHA walkaround inspection.

One scenario where OSHA has encountered third-party employee representatives is in union workplaces where employees have designated a union representative, such as an elected local union leader, business agent, or safety and health specialist, to be their representative for the walkaround inspection. These representatives are often employees of the union rather than the employer being inspected. Third-party representation may also arise in workplaces without collective bargaining agreements where employees have designated a representative from a worker advocacy group, community organization, or labor union to serve as their representative in an OSHA inspection.

Relatedly, there may be safety organizations, such as local safety councils, with safety professionals or technical representatives for the equipment used and operations performed at the employee's worksite. Section 1903.8(c) as proposed would more explicitly permit employees to designate such a safety professional or technical representative as their authorized employee representative.

Another scenario where employees may wish to designate a third-party representative is on multi-employer worksites or joint-employer worksites where it is not always clear at the time of the walkaround inspection which employees are employed by which employer. On many worksites, employees with different employers may work near each other and may have knowledge of the workplace conditions, work practices, and hazards; in some cases, they may even perform the same or similar work. On worksites like these, it is foreseeable that employees may choose to designate a third party as their representative for the walkaround inspection. Likewise, on worksites where non-union employees work in proximity to union employees, employees may wish to designate the union representative to speak of worksite conditions and operations on their behalf.

There may also be circumstances where employees are not fluent in English (or another language spoken by the CSHO) and want a trusted representative to allow for open and effective communication with the CSHO regarding workplace conditions. For example, employees might determine that a bilingual representative or an interpreter should represent them on the inspection and the CSHO might find such a representative is useful to ensure the CSHO receives an accurate account of workers' knowledge and experience with safety and health conditions in the workplace.

In other situations, employees may be reluctant to speak directly or candidly with government officials for a number of reasons. For example, some workers, such as immigrants, refugees, or other vulnerable workers, may be unfamiliar with OSHA and the agency's inspection process, face cultural barriers, or fear that their employer will retaliate against them for speaking to OSHA. In these situations, employees may not feel comfortable participating in OSHA's inspection without a trusted presence, which would negatively affect the CSHO's ability to obtain important information about workplace hazards and conditions. Worker advocacy organizations, labor organization representatives, consultants, or attorneys who are experienced in interacting with government officials or have relevant cultural competencies may be authorized by employees to represent them on walkaround inspections. The CSHO may determine such third-party representatives are reasonably necessary to the conduct of an effective and thorough physical workplace inspection if their presence during the walkaround inspection would enable more open and candid communication with employees who may not otherwise be willing to participate in the inspection.

In general, OSHA seeks comment on why employees may wish to be represented by a third-party representative. Additionally, OSHA seeks comment and examples of third-party representatives who have been or could be reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

Once the CSHO is notified that the employees have authorized a third party to represent them during a walkaround inspection, the CSHO would allow the third party to participate in the inspection so long as the CSHO determines that they would be reasonably necessary to aid in the inspection. The third party should have relevant skills, knowledge, or experience that would be helpful to OSHA's inspection despite not being directly employed by the employer.

OSHA has found that third-party representatives can help ensure that OSHA's walkaround inspection is comprehensive. In one example from 2012, a worker for a company removing asbestos at a worksite reported safety concerns to OSHA and a third party. The third party contacted OSHA and a community organization on behalf of the workers to ensure their safety and health concerns were fully communicated to and understood by the CSHO. The community organization's attorney and a former employee of the workplace were chosen as the employees' representatives to participate in the walkaround inspection. OSHA found the presence of both individuals to be very beneficial to the inspection because the representatives were able to clearly identify and communicate safety concerns to the CSHO during the walkaround. Many of the exposed workers on this worksite were not fluent in English, and having representatives who the workers trusted and facilitated communication with the CSHO enabled OSHA to conduct numerous worker interviews and better investigate the workplace conditions. OSHA seeks comment providing examples or information regarding any other unique skills of representatives authorized by employees that have been helpful or added safety and health value to the CSHO's physical inspection of the workplace.

The proposed revisions to paragraph (c) do not change the existing precondition that the CSHO must determine that any third-party employee representative's participation is reasonably necessary to the conduct of an effective and thorough inspection. These proposed revisions also do not implicate any other limitations found elsewhere in part 1903.

For example, paragraph 1903.8(a) explains that the CSHO is in charge of the inspection process. 29 CFR 1903.8(a). Paragraph 1903.8(b) authorizes the CSHO to resolve any disputes as to who the authorized representatives are, and if the CSHO is unable to determine who is the representative authorized by employees, the CSHO will then consult a reasonable number of employees concerning matters of safety and health in the workplace. 29 CFR 1903.8(b). Paragraph 1903.8(d) authorizes the CSHO to deny individuals from participating in the inspection if their conduct interferes with a fair and orderly inspection process. 29 CFR 1903.8(d). Therefore, the CSHO considers a range of factors when determining who can participate in the walkaround inspection as a representative authorized by employees.

In addition to the limitations in 29 CFR 1903.8, employers also maintain the right to request that areas of the facility containing trade secrets be off-limits to the representatives authorized

by employee(s) who do not work in that particular part of the facility. 29 CFR 1903.9(d). As explained in Background, Section II. of this preamble, the proposed revisions to 1903.8(c) do not alter or limit any of these other provisions related to the CSHO's determinations or the inspection process.

Finally, OSHA notes that paragraph 1903.8(c) addresses representatives authorized by employees for purposes of OSHA's physical inspections of workplaces. While OSHA proposes changes to this paragraph to clarify the relevant knowledge, skills, experience with hazards or conditions in the workplace or similar workplaces, or language skills of third-party representatives authorized by employees who may be reasonably necessary to aid in the CSHO's inspection, these proposed revisions are not intended to narrow or otherwise limit OSHA's authority to conduct effective and thorough workplace inspections, including its authority to be accompanied by other types of third parties or experts who may be needed to properly conduct the inspection. See generally, 29 U.S.C. 657(a), (b); see also 29 CFR 1903.4(b)(3).

OSHA seeks comment on whether the proposed changes to paragraph (c) are clear regarding representatives authorized by employees for purposes of walkaround inspections. Why or why not? OSHA also seeks comment on how to best communicate the right of all employees to employee representation on a physical inspection of the workplace.

V. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

Executive Orders 12866 and 13563 require OSHA estimate the benefits, costs, and net benefits of regulations. Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the agency promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposal is not significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, nor is it a major rule under the Unfunded Mandates Reform Act or Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*).

OSHA is proposing to revise and clarify its requirements for employee authorized representation during OSHA's physical inspections of the workplace to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party. Additionally, OSHA is proposing to further clarify the relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills of third-party representative(s) authorized by employees who may accompany an OSHA Compliance Safety and Health Officer (CSHO) when they are reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. The proposed revisions will also clarify that the employees' options for third-party representation during OSHA inspections are not limited to the two examples provided in existing regulatory text: Industrial Hygienist or Safety Engineer. OSHA has preliminarily determined that these clarifications do not introduce a new or expanded burden on employers.

As discussed earlier in Background, Section II. of this preamble, OSHA published rules and general policies for the enforcement of the inspection, citation, and penalty provisions of the OSH Act on September 4, 1971. These include Section 1903.8(c), the subject of this proposed rulemaking, which grants authority to the CSHO to determine whether a third-party representative would aid the physical workplace inspection and to have that representative accompany the CSHO on the inspection.

A. Costs

This proposed rule imposes no new burden on employers and does not require them to take any action to comply. The proposed rule clarifies who can be an authorized employee representative during OSHA's walkaround inspection. Regulatory impact analysis is meant to estimate the costs of a change from the current situation without the proposed or final rule to a world where the proposed or final rule exists. This proposed rule simply clarifies employee rights and OSHA's authority with regard to inspection procedures. The proposed clarification does not impose any costs on employers.

In evaluating potential costs, OSHA considered that employers may have policies and rules for third parties, such as visitors must wear PPE on site or participate in a safety briefing before entering as well as procedures in place to protect confidential business information from third parties who may be on site. However, such policies are not required by this regulation, and therefore any associated costs are therefore not attributable to this proposed rule. Moreover, OSHA believes there would be no real cost to an employer to have an additional visitor on site. PPE could be supplied from extra PPE that might be available on site for visitors or could be supplied by the third party. There is no cost to have one more individual present during any potential safety briefing since any potential briefing would be given regardless of the number of individual present.

In addition, this proposed rule does not require the employer make a third party available nor does it require the employer to pay for that third party's time. While there is an opportunity cost to the third party insomuch as their time is being spent on an inspection versus other activities they could be engaged in, that time is not compensated by the employer whose worksite is being inspected and is not a burden on that employer. OSHA has preliminarily determined that this proposed rule does not impose costs on employers. The agency welcomes comment on this determination and information on costs the public believes OSHA should consider.

B. Benefits

While there are no new costs borne by employers associated with this proposal, clarifying Section 1903.8(c) will reinforce the benefits of the OSH Act. Third-party employee representatives—given their knowledge, expertise, or skills with hazardous workplace conditions—can increase employee participation and help ensure that CSHOs conduct comprehensive workplace inspections, leading to safer workplaces. OSHA welcomes information, data, and comments on anticipated cost savings and benefits.

C. Certification of No Significant Impact on a Substantial Number of Small Entities

The proposed rule does not impose costs of compliance on employers. Therefore, OSHA certifies that, if promulgated, the proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. OMB Review Under the Paperwork Reduction Act

This proposed rule for Worker Walkaround Representative Designation Process contains no information collection requirements subject to OMB

approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. The PRA defines a collection of information as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' 44 U.S.C. 3502(3)(A). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it, and the agency displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

VII. Federalism

OSHA reviewed this proposed rule in accordance with the Executive Order on Federalism (E.O. 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional and statutory authority exists, and the problem is national in scope. This proposal merely clarifies requirements related to employee representation during workplace safety and health inspections conducted by OSHA under the OSH Act. Because these inspections are conducted by OSHA, not States, and occur under the authority of federal law, OSHA does not believe that the proposal would restrict any State policy options.

Section 18(a) of the OSH Act states that ''[n]othing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6'' (see 29 U.S.C. 667(a)). Because this rulemaking action involves a ''regulation'' issued under Section 8 of the OSH Act (29 U.S.C. 657), and not an occupational safety and health standard under section 6 of the OSH Act (29 U.S.C. 655), it does not preempt State law under section 18(a). See 29 U.S.C. 667(a). The effect of a rule on states and territories with OSHA-approved occupational safety and health State Plans is discussed in Section VIII, State Plans.

VIII. State Plans

As discussed in the Summary and Explanation section of this preamble, this proposed rule would revise the language in OSHA's Representatives of employers and employees regulation, found at 29 CFR 1903.8(c), to explicitly clarify that the representative(s) authorized by employees may be an employee of the employer or a third party for purposes of an OSHA walkaround inspection. Additionally, OSHA is proposing to further clarify that when the CSHO has good cause to find that a representative authorized by employees who is not an employee of the employer would aid in the inspection, for example because they have knowledge or experience with hazards in the workplace, or other skills that would aid the inspection, the CSHO may allow the employee representative to accompany the CSHO on the inspection.

Among other requirements, section 18 of the OSH Act requires OSHA-approved State Plans to enforce occupational safety and health standards in a manner that is at least as effective as Federal OSHA's standards and enforcement program, and to provide for a right of entry and inspection of all workplaces subject to the Act that is at least as effective as that provided in section 8 (29 U.S.C. 667(c)(2)–(3)). As described above and in the Summary and Explanation of this preamble, OSHA believes that these proposed clarifying revisions would enhance the effectiveness of OSHA's inspections and enforcement of occupational safety and health standards. Therefore, OSHA has preliminarily determined that, within six months of the promulgation of a final rule, State Plans would be required to adopt regulations that are identical or ''at least as effective'' as this rule, unless they demonstrate that such amendments are not necessary because their existing requirements are already ''at least as effective'' in protecting workers as the Federal rule. See 29 CFR 1953.4(b)(3).

Of the 29 States and Territories with OSHA-approved State Plans, 22 cover both public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining seven States and Territories cover only state and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands.

IX. Unfunded Mandates Reform Act

OSHA reviewed this proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*). As discussed above in Section V of this preamble, the agency preliminarily determined that this proposal would not impose costs on any private- or public-sector entity. Accordingly, this proposal would not require additional expenditures by either public or private employers.

As noted above, the agency's regulations and standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the agency. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate.'' See Section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the agency certifies that this proposal would not mandate that State, local, or Tribal governments adopt new, unfunded regulatory obligations. Further, OSHA concludes that the rule would not impose a Federal mandate on the private sector in excess of $100 million (adjusted annually for inflation) in expenditures in any one year.

X. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and has preliminarily determined that it would not have ''tribal implications'' as defined in that order. The proposed clarifications to 29 CFR 1903.8(c), if promulgated, would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. OSHA seeks comment on its preliminary determination. Additionally, OSHA plans to consult with the appropriate tribal entities regarding its preliminary determination.

XI. Environmental Impact Assessment

OSHA reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and the Department of Labor's NEPA procedures (29 CFR part 11). The agency finds that the revisions included in this proposal would have no major negative impact on air, water, or soil quality, plant or animal life, the use of land or other aspects of the environment.

XII. Questions and Options

OSHA invites stakeholders to comment on all aspects of this proposal. In addition, OSHA is soliciting stakeholder input on regulatory options to allow for potential regulatory flexibility regarding the content of any final rule resulting from this rulemaking. In particular, OSHA seeks input on whether to maintain the existing requirement in 29 CFR 1903.8(c) for a third-party employee representative to be ''reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace'' given that Section 8(e) of the OSH Act more generally provides that employee representatives ''shall be given an opportunity to accompany'' the CSHO ''during the physical inspection of any workplace . . . for the purpose of aiding such inspection.'' 29 U.S.C. 657(e).

Under OSHA's implementing regulations, OSHA defers to the employer's determination regarding which employer representative would aid the inspection. See 29 CFR 1903.8(a). On the other hand, currently, OSHA defers to the employees' determination regarding which representative would aid the inspection only if that representative is employed by the employer. See 29 CFR 1903.8(c). When the representative authorized by employees is a third party, the CSHO must determine that there is good cause why the third-party representative is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. See 29 CFR 1903.8(c). If the CSHO makes that determination, the third-party employee representative may accompany the CSHO during the physical inspection of the worksite. Note that the CSHO is authorized to resolve any dispute as to who the employer's and employees' authorized representatives are and deny the right of accompaniment to any person whose conduct would interfere with a fair and orderly inspection. See 29 CFR 1903.8(b), (d).

OSHA solicits feedback regarding the ''reasonably necessary'' requirement in paragraph (c); the below questions do not affect CSHOs' authority under paragraphs (b) and (d).

1. Should OSHA defer to the employees' selection of a representative to aid the inspection when the representative is a third party (*i.e.,* remove the requirement for third-party representatives to be reasonably necessary to the inspection)? Why or why not? Please provide any relevant information, examples, considerations, and/or data to support your position.

2. Should OSHA retain the language as proposed, but add a presumption that a third-party representative authorized by employees is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace? Why or why not? Please provide any relevant information, examples, considerations and/or data to support your position.

3. Should OSHA expand the criteria for an employees' representative that is a third party to participate in the inspection to include circumstances when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act? Why or why not? If so, should OSHA defer to employees' selection of a representative who would aid them in effectively exercising their rights?

XIII. Public Participation

Inspection-related requirements promulgated under the Occupational Safety and Health Act of 1970 (OSH Act) are regulations, not standards. Therefore, this rulemaking is governed by the notice and comment requirements in the Administrative Procedure Act (APA), 5 U.S.C. 553, rather than by section 6(b) of the OSH Act (29 U.S.C. 655(b)) and 29 CFR part 1911 (both of which apply only to promulgating, modifying or revoking occupational safety or health standards). The OSH Act requirement for the agency to hold an informal public hearing on a proposed rule, when requested, does not apply to this rulemaking. See 29 U.S.C. 655(b)(3).

The APA, which governs this rulemaking, does not require a public hearing; instead, it states that the agency must ''give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.'' 5 U.S.C. 553(c). To promulgate a proposed regulation, the APA requires the agency to provide the terms of the proposed rule (or a description of those terms) and specify the time, place, and manner of rulemaking proceedings. See 5 U.S.C. 553(b). The APA does not specify a minimum period for submitting comments.

In accordance with the goals of Executive Order 12866, OSHA is providing 60 days for public comment (see section 6(a)(1) of Executive Order 12866).

A. Public Submissions

OSHA invites comments on all aspects of the proposed rule. OSHA will carefully review and evaluate any comments, information, or data received, as well as all other information in the rulemaking record, to determine how to proceed. When submitting comments, please follow the procedures specified in the sections titled **DATES** and **ADDRESSES** of this document. The comments should clearly identify the provision of the proposal being addressed, the position taken with respect to each issue, and the basis for that position. Comments, along with supporting data and references, submitted by the end of the specified comment period will become part of the rulemaking record, and will be available for public inspection at the Federal eRulemaking Portal (*http://www.regulations.gov*) and at the OSHA Docket Office, 200 Constitution Avenue NW—Room N–2625, Washington, DC 20210. (See the section titled **ADDRESSES** of this document for additional information on how to access these documents.)

XIV. List of Subjects in 29 CFR Part 1903

Occupational safety and health, health, administrative practice and procedures, law enforcement.

XV. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this document pursuant to 29 U.S.C. 657; 5 U.S.C. 553; Secretary of Labor's Order 8–2020, 85 FR 58393 (2020).

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, OSHA proposes to amend 29 CFR part 1903 to read as follows:

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES [AMENDED]

■ 1. The authority citation for part 1903 is revised to read as follows:

Authority: 29 U.S.C. 657; Secretary of Labor's Order No. 8–2020 (85 FR 58393); and 5 U.S.C. 553.

■ 2. In § 1903.8 revise paragraph (c) to read as follows:

§ 1903.8 Representatives of employers and employees.

* * * * *

(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by

employees is not an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why their participation is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (*e.g.,* because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills).

* * * * *

[FR Doc. 2023–18695 Filed 8–29–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0477; FRL–9848–01–R5]

Air Plan Approval; Indiana; Volatile Organic Compounds; Cold Cleaner Degreasing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the volatile organic compound (VOC) rules contained in the Indiana State Implementation Plan (SIP). Indiana modified its rules to provide an additional option for compliance with the volatile organic compound (VOC) vapor pressure limit for solvents used in cold cleaning degreasing operations. In addition, rule language was updated for clarity and consistency.

DATES: Comments must be received on or before September 29, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0477 at *https://www.regulations.gov,* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On July 14, 2021, Indiana submitted a request to revise the VOC rules in its SIP. The revisions are to the 326 Indiana Administrative Code (IAC) Article 8 Volatile Organic Compound rules. Indiana submitted revisions to the following: 326 IAC 8–3–1, ''Applicability and exemptions''; 326 IAC 8–3–2, ''Cold cleaner degreaser control equipment and operating requirements''; 326 IAC 8–3–3, ''Open top vapor degreaser operation''; 326 IAC 8–3–4, ''Conveyorized degreaser control equipment and operating requirements''; and 326 IAC 8–3–8, ''Material requirements for cold cleaner degreasers''.

Indiana's July 14, 2021, submission, included a previous version of 326 IAC 8–3–1, effective on June 9, 2021. EPA found concerns with that version of 326 IAC 8–3–1(a)(1) as it added qualifying language so that the rules would only apply to sources ''with the potential to emit VOC emissions of greater than or equal to fifteen (15) pounds per day.'' This would constitute a relaxation of the Clean Air Act (CAA) requirement for VOC reasonably available control technology.[1]

On January 23, 2023, Indiana submitted a revised version of 326 IAC 8–3–1, effective January 4, 2023, which removed the exemption language from 326 IAC 8–3–1(a)(1).

Indiana's current SIP VOC rules require sources operating cold cleaning degreasers to, among other things, use low vapor pressure solvent, not to exceed 1 millimeter of mercury (mm Hg) at 20 degrees Celsius, for cleaning or degreasing machine parts. These low vapor pressure solvents do not work well for some industries. These rules also allow sources to operate control systems that demonstrate equivalent or better emissions control with approval from both Indiana and EPA.

Indiana revised the control requirements for sources that use a solvent with a vapor pressure exceeding 1 mm Hg in 326 IAC 8–3–3, 326 IAC 8–3–4, and 326 IAC 8–3–8. The revised rules require VOC emission control with a capture efficiency of at least 90 percent. The control device must also either have at least a 90 percent destruction efficiency or have a VOC emission outlet concentration of less than 50 parts per million by volume. Indiana's rules also require compliance procedures. The changes replace the previously approved provision allowing an alternate VOC emission control system with approval of both Indiana and EPA in 326 IAC 8–3–3 and 326 IAC 8–3–4. This VOC control system requirement is an additional option in 326 IAC 8–3–8.

Indiana noted that, for some companies, the use of low vapor pressure solvents under 1 mm Hg results in poor performance and solvent contamination. Such sources cannot recycle the solvent because of the potential contamination. Such sources will thus often hand-clean machine parts, which results in all the solvent evaporating and thus being emitted into the air. Indiana further noted that hand-cleaning also produces a large amount of material that usually must be managed as hazardous waste, as the rags are contaminated with solvent and ink. Instead, the revised rules set parameters for control systems that specify standard VOC capture and control requirements for all users, which are expected to reduce the amount of solvent used and the amount of hazardous waste generated.

[1] EPA has made it clear that general exemptions for small cold cleaner degreasing operations are not allowed. See Memorandum from Richard Rhoads, EPA OAQPS, to Director, Air and Hazardous Materials Division, Regions I to X, Clarification of Degreasing Regulation Requirements, September 7, 1978. See 2–24, Solvent Metal Cleaning, in the ''Issues Relating to VOC Regulation Cut Points, Deficiencies, And Deviations'' guidance, as revised on January 11, 1990.