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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	Department of Labor and Industry
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	16VAC25-60-240
<b>VAC Chapter title(s)</b>	Virginia Administrative Regulation for the Virginia Occupational Safety and Health Program
<b>Action title</b>	Exempt Filing
<b>Final agency action date</b>	September 23, 2024
<b>Date this document prepared</b>	September 24, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This action is necessary to meet the requirements of federal law and is therefore exempt from the requirements of the Administrative Process Act (APA) under §2.2-4006.A.4(c).

Federal OSHA has promulgated a Final Rule Regarding Walkaround Worker Representative Designation Procedures<sup>1</sup> in Part [§ 1903.8\(c\)](#).

<sup>1</sup> <https://www.federalregister.gov/documents/2024/04/01/2024-06572/worker-walkaround-representative-designation-process>

This final rule effective May 31, 2024, regarding the Worker Walkaround Representative Designation Process, makes several updates to the regulation:

1. The final rule removes the requirement that the representative authorized by the employees to attend an inspection must be an employee of the employer: “The representative(s) authorized by employees may be an employee of the employer or a third-party.”<sup>2</sup>
2. The final rule also removes the listing of industrial hygienist and safety engineer as the two examples of potential third-party accompaniments. It instead provides a description of the qualifications necessary for a CSHO to allow the third party to accompany the inspection: “(including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).”<sup>3</sup>

The Department of Labor and Industry is filing this exempt regulatory action to amend the Virginia regulation 16VAC25-60-240 to reflect the changes made to the federal OSHA requirements.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

When Federal OSHA (OSHA) promulgates a new standard or more stringent amendment to an existing standard, OSHA-approved State Plans must either amend their standards to reflect the new standard or amendment or show OSHA why such action is unnecessary, e.g., because an existing State standard covering this area is “at least as effective” as the new Federal standard or amendment. [29 CFR 1953.5\(a\)](#). State Plans must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule.

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On September 23, 2024, the Safety and Health Codes Board adopted the proposed amendments to 16VAC25-60-240.Walkthrough to reflect the federal OSHA final rule Final Rule Regarding Walkaround Worker Representative Designation Procedures as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with a proposed effective date of November 19, 2024.

<sup>2</sup> OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024, p. 22558

<sup>3</sup> OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024, p. 22558

**Hazard Communication Standard; Final Rule**

As Adopted by the  
Safety and Health Codes Board

Date: September 23, 2024



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Amending 16VAC25-60-240

When the regulations, as set forth in the Final Rule for the Hazard Communication Standard, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department or DOLI

July 19, 2024

November 20, 2024

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 final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it would not have “tribal implications” as defined in that order. The clarifications to 29 CFR 1903.8(c), do 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.

**XI. Environmental Impact Assessment**

OSHA reviewed the final 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. List of Subjects in 29 CFR Part 1903**

Occupational safety and health, Health, Administrative practice and procedures, Law enforcement.

**XIII. 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 is amending 29 CFR part 1903 to read as follows:

**PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES**

■ 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. Revise paragraph (c) of § 1903.8 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 accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

\* \* \* \* \*

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