

Office of Regulatory Management
Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16VAC25-60.240
VAC Chapter title(s)	Virginia Administrative Regulation for the Virginia Occupational Safety and Health Program
Action title	Final Rule Regarding Walkaround Worker Representative Designation Procedures
Date this document prepared	September 23, 2024
Regulatory Stage (including Issuance of Guidance Documents)	Exempt Action – Final Regulation

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. **You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.**

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

NOTES:

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 Va. Code § 2.2-4006.A.4(c).

Federal OSHA (Occupational Safety and Health Administration) has promulgated a Final Rule Regarding Walkaround Worker Representative Designation Procedures¹ in Part § 1903.8(c).

¹ <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.”²
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 the agency 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).”³

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 Final Rule on Hazard Communication Standard by September 28, 2024.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable
(3) Net Monetized Benefit		
(4) Other Costs & Benefits (Non-Monetized)	OSHA does not anticipate any new cost burdens to employers resulting from this final rule. They emphasize that the rule “...merely clarifies who can be an authorized employee representative during OSHA’s walkaround	

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

³ *Id.*

	inspection.” ⁴ OSHA goes on to state that an employer cannot ‘violate’ this regulation as it is not a regulation which requires any changes in employer conduct.
(5) Information Sources	OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024. https://www.federalregister.gov/documents/2024/04/01/2024-06572/worker-walkaround-representative-designation-process

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Net Monetized Benefit	Not applicable	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable	
(5) Information Sources	Not applicable	

Table 1c: Costs and Benefits under Alternative Approach(es) – FEDERAL IDENTICAL

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here.
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⁴ OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024, p. 22594

	Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Net Monetized Benefit		
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources		

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Other Costs & Benefits (Non-Monetized)	OSHA does not anticipate any new cost burdens to employers resulting from this final rule. They emphasize that the rule "...merely clarifies who can be an authorized employee representative during OSHA’s walkaround inspection.” ⁵	

⁵ OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024, p. 22594

(4) Assistance	Not applicable
(5) Information Sources	OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024. https://www.federalregister.gov/documents/2024/04/01/2024-06572/worker-walkaround-representative-designation-process

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Other Costs & Benefits (Non-Monetized)	<p>In order to ensure that OSHA obtains necessary information regarding worksite hazards and conditions during an inspection, they note that proper employee representation is critical. It is argued by OSHA in this final rule that these clarifications will better enable employees to select a representative of their choice to attend the physical worksite inspection⁶.</p> <p>OSHA offers the following as a benefit to employees as a result of this final rule: “By clarifying who can serve as employees’ walkaround representative, the rule facilitates improved employee representation during OSHA inspections.”⁷ OSHA further believes these changes will improve walkaround inspection efficiency going forward leading to improvements in employee health and safety.</p>	
(4) Information Sources	OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024. https://www.federalregister.gov/documents/2024/04/01/2024-06572/worker-walkaround-representative-designation-process	

⁶ Ibid p. 22558

⁷ Ibid p. 22559

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Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Other Costs & Benefits (Non-Monetized)	OSHA does not anticipate any new cost burdens to employers resulting from this final rule. They emphasize that the rule "...merely clarifies who can be an authorized employee representative during OSHA’s walkaround inspection.” ⁸ OSHA goes on to state that an employer cannot ‘violate’ this regulation as it is not a regulation which requires any changes in employer conduct.	
(4) Alternatives	Not applicable	
(5) Information Sources	<u>Federal Register: Hazard Communication Standard.</u>	

⁸ OSHA “Worker Walkaround Representative Designation Process” Federal Register Vol. 89, No. 63, Monday, April 1, 2024, p. 22594

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements FEDERAL IDENTICAL

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Net Change
16VAC25-60-240	Statutory:	0	0	0	0
	Discretionary:	0	0	0	0
	Statutory:				
	Discretionary:				
	Statutory:				
	Discretionary:				
Total Net Change of Statutory Requirements:					0
Total Net Change of Discretionary Requirements:					0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).