



November 9, 2023

VIA FEDERAL eRULEMAKING PORTAL (<http://regulations.gov>)

The Honorable Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: Worker Walkaround Representative Designation Process (Docket No. OSHA-2023-0008)

Dear Assistant Secretary Parker:

The National Treasury Employees Union (NTEU) submits these comments in support of the proposed rule published in the *Federal Register* on August 30, 2023 (88 Fed. Reg. 59,825). NTEU is the exclusive representative of federal employees in 35 departments and agencies.

I. NTEU supports OSHA’s proposed rule because it empowers workers to exercise their rights under the OSH Act, which in turn increases both compliance and overall workplace safety.

NTEU supports OSHA’s proposal to clarify the possible options for worker representatives who may accompany OSHA Compliance Safety and Health Officers (CSHOs) during worksite inspections. Empowering workers to exercise their rights under the OSH Act (“the Act”) yields critical benefits, including more effective enforcement of those rights and improved workplace safety. After all, workers who are at the worksite on a regular basis will often possess significant knowledge about worksite conditions. With that knowledge, workers can select trusted and authorized representatives to participate in workplace inspections.

Indeed, NTEU itself routinely acts as an advocate for workplace safety on behalf of the federal employees it represents. In August 2022, it contacted OSHA and IRS leadership about extremely concerning safety issues at an IRS worksite in Missouri. NTEU leadership learned of these problems from employees and from the local NTEU chapter. The IRS voluntarily closed the worksite and addressed the hazards raised by NTEU. This is just one example in which workers’ collective ability to raise concerns—including through a third-party non-employee representative—significantly improved their working conditions and their overall safety, consistent with the OSH Act.

Empowering workers, therefore, promotes the underlying goals of the Act. NTEU agrees with OSHA that it should clarify that workers may select any representative who can contribute to an effective inspection, even if that representative is not employed at the worksite.

By strengthening workers' ability to enforce their rights under the Act, the proposed rule better aligns OSHA's regulations with the statute's text. *See* 88 Fed. Reg. at 59,828–29 (explaining relationship between Act's text and proposed clarification). OSHA's proposed clarification is also consistent with the Biden-Harris Administration's goal of promoting workers' rights. *See, e.g.,* Secretary Marty Walsh, *Getting to Work During the Biden-Harris Administration's First 100 Days*, U.S. Dep't of Labor Blog (Apr. 30, 2021), <https://blog.dol.gov/2021/04/30/100-days> (“[A]t the core of all of our work is our renewed focus on strengthening worker protections[.] . . . [W]e are prioritizing workers' rights and safety.”). Moreover, empowering workers reduces the prevalence of OSHA violations. *See* Leah Ford & Jeffrey Freund, *The Connection Between Unions and Worker Safety*, U.S. Dep't of Labor Blog (May 11, 2022), <https://blog.dol.gov/2022/05/11/the-connection-between-unions-and-worker-safety> (citing statistics showing lower prevalence of OSHA violations in unionized workplaces).

Separate from statutory compliance, empowering workers to exercise their rights under the OSH Act increases overall workplace safety. This is, of course, consistent with the underlying purposes of the Act.

II. NTEU recommends that OSHA adopt the proposed rule's additional proposals to further empower workers during walkaround inspections.

In addition to its proposed clarification concerning third-party representatives, OSHA has posed three additional questions about potential changes to the regulation. 88 Fed. Reg. at 59,833. NTEU recommends that OSHA act on its proposals to maximize workers' agency throughout the inspection process.

First, NTEU recommends that OSHA adopt its proposal to “defer to [] employees' selection of a representative . . . when the representative is a third party,” just as it does when the representative is an employee. *See id.* As OSHA noted, there are various scenarios where third parties, such as union representatives, safety professionals, or individuals at multi-employer worksites, may serve as representatives for an inspection. Employees are the best situated individuals to identify and invite such individuals. Their decisions should receive the same amount of deference regardless of whether the representative they select is an employee.

OSHA's second question asks whether, if it decides not to defer to employees' choice of third-party representative, it should “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.” *See id.* If OSHA adopts the deference proposal, of course, it need not adopt this presumption. However, if OSHA opts against the deference proposal, NTEU supports the addition of a presumption that employees' chosen representative “is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.” *See id.* NTEU

The Honorable Douglas L. Parker
November 9, 2023
Page 3 of 3

welcomes this presumption for the same reasons that it supports the deference proposal set forth in the first question.

Finally, NTEU recommends that OSHA adopt the proposal in its third question, under which it would “expand the criteria for an employees’ representative . . . to include circumstances when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act.” *See id.* This is a meritorious proposal because empowering workers to exercise their rights under the Act increases the likelihood of effective enforcement. This, in turn, contributes to increased workplace safety. NTEU further recommends that OSHA defer to employees’ choice of representative under this standard. Employees themselves are in the best position to choose a representative who will aid them in exercising their rights.

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In sum, NTEU urges OSHA to prioritize workers’ empowerment, health, and safety as it moves forward with this proposed rule. Keeping these priorities at the forefront will strengthen OSH Act enforcement consistent with the text and purpose of the statute.

Thank you for the opportunity to submit comments on this important topic. Please do not hesitate to contact NTEU for elaboration of these views.

Sincerely,



Doreen P. Greenwald
National President