

## **Occupational Safety and Health Administration (OSHA)**

### **Docket #: OSHA-2023-0008 – Final Rule - Worker Walkaround Representative Designation Process**

OSHA initiated rulemaking activity 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.

On April 1, 2024, the Occupational Safety and Health Administration (OSHA) has published its final **Worker Walkaround Representative Designation Process (“Worker Walkaround”) rule** in the Federal Register. The final rule clarifies the rights of employees to authorize a representative to accompany an OSHA compliance officer during an inspection of their workplace. The final rule clarifies that, consistent with the law, workers may authorize another employee to serve as their representative or select a non-employee. For a non-employee representative to accompany the compliance officer in a workplace, they must be “reasonably necessary” to conduct an effective and thorough inspection. Consistent with OSHA's historic practice, the rule clarifies that a non-employee representative may be reasonably necessary based upon skills, knowledge, or experience. This experience may include knowledge or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills.

The final rule is available at <https://www.govinfo.gov/content/pkg/FR-2024-04-01/pdf/2024-06572.pdf>.

Along with the final rule, OSHA has published a press release ([US Department of Labor issues final rule to clarify rights to employee representation during OSHA inspections | Occupational Safety and Health Administration](#)) and Frequently Asked Questions guidance document about the rule that is available at <https://www.osha.gov/worker-walkaround/final-rule/faq>

### **Docket #: OSHA-2007-0073 – Proposed Rule – Emergency Response Standard**

OSHA is [proposing through a notice of proposed rulemaking \(NPRM\)](#) to issue a new safety and health standard, titled Emergency Response, to replace the existing Fire Brigades Standard. The new standard would address a broader scope of emergency responders and would include programmatic elements to protect emergency responders from a variety of occupational hazards. The agency recently announced a 45- day extension request comments on all aspects of the proposed rule due by June 21, 2024.

The proposed rule would replace OSHA's existing Fire Brigades standard, 29 CFR 1910.156, which was originally promulgated in 1980, covers only a subset of present-day emergency responders (firefighters) and has only had minor updates in the 43 years since it was published.

## NECA Regulatory Update – OSHA and FMCSA Rulemaking Activity

The focus of the proposed Emergency Response rule is to provide basic workplace protections for workers who respond to emergencies as part of their regularly assigned duties. Notably, the scope of protected workers under the proposed rule would be expanded to include workers who provide emergency medical service and technical search and rescue.

### **Key Points:**

- OSHA currently seeking Public Comment, NECA provided Public Comment on November 5, 2021
- Public Comment Period extended until June 21, 2024
- Introduces the term “Skilled Support Worker”
- Skilled Support Worker - an employee of an employer whose primary function is not as an emergency service provider and who is skilled in certain tasks or disciplines that can support an incident response. The proposed rule would require protections for skilled support workers who work for other employers but are performing activities on emergency incident scenes. These skilled support workers would operate under the direction of the Incident Commander (IC) or the Unified Command (UC) as provided in proposed paragraph (p)(10) of this section.
- Employees of electrical contractors called on by an Incident Commander during an emergency response could find themselves covered by this rule.

### **Federal Motor Carrier Safety Administration (FMCSA)**

#### **Docket #: FMCSA-2022-0028 – Final Rule - Clarification to the Applicability of Emergency Exemptions**

Effective December 12, 2023, FMCSA published their [final rule](#) revising the emergency exemption rules to narrow the scope of safety regulations from which relief is automatically provided for motor carriers and drivers providing direct assistance when an emergency has been declared. This rule ensures that the relief granted through emergency declarations is appropriate and tailored to the specifics of the circumstances and emergencies being addressed. This rule also revises the process for extending automatic emergency regulatory relief where circumstances warrant and allows for potential reporting requirements when FMCSA issues an extension or modification.

### **Key Points:**

- Presidential Declarations of Emergency continue to trigger exemptions for all FMCSRs in Parts 390-399 for 30 days
- Regional Declarations of Emergency by Governor, Governor’s authorized representative, or FMCSA reduced from 30 days to 14 days
- Regional Declarations apply only to Hours of Service (HOS) requirements (§§ 395.3 and 395.5)