

Summary of Remarks: ACD Teleconference E.O. 1286 Meeting with OMB on Worker Walkaround Representative Designation Process Final Rule (Docket No. OSHA-2023-0008)

I. Introductions and Opening Remarks

The group spoke on behalf of the Alliance for Chemical Distribution (ACD) which is a trade association that represents over 400 members who process, formulate, blend, re-package, warehouse, market, and transport chemical products for over 750,000 customers across the U.S. Jennifer Gibson, Senior Vice President of Regulatory Affairs, Analisa Puzzanghero, Director of Regulatory Affairs, Nick Breslin, Manager of Regulatory Affairs, and Kyle Reinheimer, Intern, were all present from NACD staff.

ACD member company representatives Pete Downing, Joe DeVirgilio, Jim Palmer, and Shawn Wiram all hold facility-level expertise, allowing them to describe how the proposed rule is unnecessary and likely to create safety, security, and cost issues for ACD member companies. Pete Downing is the Founder and President of Environment & Safety Solutions, Inc., a small consulting firm focused on chemical manufacturing and distribution company compliance nationwide. Many of his clients are members of ACD, although the viewpoint that he expresses is generally unanimous among his client base. Joseph DeVirgilio is the Director of Safety, Quality & Regulatory Compliance at Peoples Services, Inc. He holds approximately 20 years of experience in the industry ensuring Occupational Safety and Health Administration (OSHA) compliance and the safety of his employees. Jim Palmer is the President and Chief Executive Officer of Allied Universal Corporation. His company has several locations responsible for critical functions such as delivering chlorine for water treatment. Shawn Wiram is Vice-President of Safety, Health and Environment with Brenntag North America, Inc. He has 28 years of experience with Brenntag and has worked with the company's 170 U.S. facilities to develop various safety programs to comply with a multitude of safety regulations. Joe, Jim, and Shawn all have facilities that regularly undergo OSHA inspections and would be impacted by the changes proposed.

All participants agree that the proposed rule does not justify the changes put forward. Participants also share concerns that the proposal would increase costs and cause facility disruptions without increasing safety.

II. Specific Issue Discussion

- a. Union Representatives Entering Non-Union Workplaces
 - i. Allowing union representatives to enter non-union workplaces as a third-party representative during an OSHA inspection is likely to cause disruptions. There are concerns that there would be attempts

from the union representative to unionize these facilities despite employees having already made the decision to not unionize. This would cause a distraction and take attention away from the inspection's objective.

- ii. The OSHA Field Operations Manual clearly states that compliance officers cannot get into labor disputes, and this rule would likely force these officers into these scenarios.
- iii. Allowing union representatives in non-union workplaces appears to politicize the agency, as it is giving unfair advantages to unions. This also undermines OSHA's credibility as it appears to indicate that OSHA is unable to perform viable inspections on its own.

b. Safety and Security Concerns

- i. This proposal would undermine the efforts made by ACD members to ensure the safety of their facilities by ensuring unauthorized individuals do not enter their facilities and limiting access to potentially dangerous areas. Individuals without knowledge of chemical hazards could be permitted access under this proposal, creating the potential for unintentional harm done to them or employees. This proposal would also make it easier for bad actors and those looking to disrupt facility operations, such as disgruntled former employees, to access facilities.
- ii. Numerous ACD member facilities contain security-sensitive information. There have been instances of unauthorized individuals attempting to gain access to some of these member facilities in the past with some resulting in the arrest of these individuals. There is also a concern with confidential business information being exposed to third-party individuals.
- iii. Another serious concern is the process of ensuring third parties have credentials verifying expertise and whether they are a security threat. Current regulations require credentials of OSHA inspectors, but the proposed rule does not require this of third-party representatives.
- iv. In addition, the proposed rule is likely to make relationships between employers and OSHA more adversarial. This proposal would lead to more opposition from companies in granting access to third-party representatives which would then force OSHA to put more effort into granting those access to those individuals. This will damage the effectiveness of OSHA inspections. Instead, OSHA and employers

should focus on working together to ensure the shared goal of providing a safe working environment is met.

- v. Another concern is the lack of employer protections in this proposed rule, which needs to be addressed if the agency moves forward with a final rule.

c. Cost Concerns

- i. This proposal estimates no financial impact on regulated facilities. This is not realistic as facilities will be required to dedicate additional senior-level employees who understand all aspects of the facility to assist in inspections. The proposed rule will also require resources to familiarize facility personnel with the new regulations, disperse more personal protective equipment to the additional inspectors, and invest in additional liability insurance.
- ii. OSHA inspections will take longer and be more cumbersome for both the facility personnel and OSHA inspectors.

d. Evidence Does Not Show Need for Rule

- i. There is no evidence showing the need for this rule. Technically qualified individuals, such as industrial hygienists, are already permitted to assist with inspections when necessary. This proposal undermines OSHA's credibility and appears to be a political effort to support unionization. An almost identical regulatory effort was attempted by the Obama administration and not approved. This proposal does not improve safety.
- ii. OSHA inspectors have the necessary knowledge and safety background. Facility owners and operators know these individuals understand safety regulations. This proposal would add another layer of individuals who may not have this expertise.
- iii. ACD members are committed to providing safe workplaces. Nearly all facilities have staff onsite whose primary responsibility is to ensure employees are safe when working. Keeping employees safe is in the best interest of employers and workers. Unfortunately, this proposal does not provide any benefit to employee safety. Instead, it may distract from the objective of safety inspections and lead to negative outcomes for employees.