

July 16, 2026

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Submitted electronically: walkaroundrule@dir.ca.gov

RE: Employer Representative and Representative Authorized by Employees During Workplace Inspections (Walkaround Rule)

Dear Mr. Shawver:

The California Chamber of Commerce and the undersigned organizations submit this letter to comment on the proposed rulemaking regarding “Employer Representative and Representative Authorized by Employees-” (Proposed § 331.8, or “Proposed Regulation”). Specifically, this letter is provided to comment on the changes contained in the Notice of Proposed Modifications that was published on July 1, and for which comments are due by July 16th, 2026 (the “Noticed Changes”).

1) Concerns with the Proposed Changes

The Noticed Changes to the Proposed Regulation contain only two changes.

a. Change #1: Addition of “... for the purpose of aiding such inspection.” (Section 331.8(a))

Though we believe this change is well-intentioned, we believe it still needs additional clarity. Specifically, we believe it makes sense in the context of an employee representative who is gaining access to the premises, insofar as it clarifies that their role in accompanying the inspector is to aid the inspection and implicitly limits their actions on the premises to those related to aiding the inspection.

However, when read with the employer representative in mind, the provision makes less sense. The employer representative, in this case, may be the employer’s attorney, and as the employer’s attorney, their role is not to “aid[] such inspection.” Their role is to represent their client’s legal interests and ensure that the inspection proceeds fairly. In addition, the employer’s representative has an inherent right to be on their own property. That is not to say that the employer’s representative may not “aid” in some contexts – such as facilitating access to certain areas – but the overall role and position of the employer’s representative is similar to any legal counsel - to represent their employer, not unconditionally “aid” the inspector.

As a result, we are concerned that the Noticed Changes would seem to inaccurately reflect the role of the employer representative. To address that concern, we would propose adding the following language to clarify:

“For purposes of this section, an employer representative’s obligation to “aid” inspection shall not prohibit them from representing the employer during the inspection.”

b. Change #2: Change of “participation” to “accompaniment.” (Section 331.8(b))

We believe this change is helpful clarification of present text and have no concerns.

2) Concerns that Remain Unaddressed in the Proposed Changes

Because the Noticed Changes fail to address many of the concerns addressed in our prior comment letter dated April 1, 2026, we are reiterating them below. We remain particularly concerned about: the lack of limitations on an employee representative similar to those contained in federal FAQs (items 2. c.); the potential for expulsion of an employer representative from the employer’s own premises (2. d.); lack of

clarity about the ability of the employer to require PPE and sufficient training (2. f.); and restricted area concerns (2. g.).

a. Concerns Related to Non-Employee “Employee Representatives” Under the Proposed Regulation.

i. The Proposed Regulation Provides No Guidance for How an Employee Representative Will be Selected in Non-Union Workplaces.

First and foremost, we are concerned that the Proposed Regulation completely fails to identify how an “employee representative” in non-union workplaces must be selected by employees. Indeed, the Proposed Regulation skips how such a representative must be selected – and instead skips to whether Cal/OSHA’s Certified Safety and Health Official (“CSHO”) will accept the representative on the inspection (where it requires that CSHO find their “participation is reasonably necessary to conduct an effective and thorough investigation”).

What if, for example, multiple employees would like to select their own employee representative and no agreement is reached? With ten potential “employee representatives” urgently seeking to participate in the inspection, how will a selection among them be made? And how will the employer or Cal/OSHA verify that they are – in fact – representatives of employees at all? Under the present text of the Proposed Regulation, neither the employer nor the CSHO will have any guidance on how to address this situation.

The Proposed Regulation can and must provide guidance to CSHOs and employers for such scenarios. Notably, federal FAQs acknowledge this lack of clarity with multiple FAQs on the topic¹ – including:

- The employees’ selection process (“there is no single or required process...”)
- The number of employees necessary to select a representative (“no set number of employees ...”),
- The issue of multiple employees attempting to designate several different representatives (“... If several employee walkaround representatives are identified, the CSHO considers ... and whether the additional representatives would further aid the inspection.”)

This vagueness will leave both employers and CSHOs without any standards by which to address any issues that arise in implementing this regulation – which we expect to be particularly prevalent in non-union workplaces.

ii. Because the Proposed Regulation Includes No Guidance on Non-Union Representative Selection, it Leaves Employers with No Process to Confirm that Selection is Legitimate.

As a corollary of the lack of a clear selection process for employees to identify one (or a few) representatives in a workplace (above), the Proposed Regulation leaves employers without any way to verify that an employee representative was appropriately chosen. In other words: because there is no process provided, employers cannot verify that any proper process was complied with.

iii. The Proposed Regulation Also Provides no Workable Process for Employers to Challenge an Incorrect Determination that an Employee Representative is “Reasonably Necessary to the Conduct of an Effective and Thorough Physical Investigation.”

In any adversarial legal process, both parties must be able to observe and verify the propriety of their opponent’s conduct – indeed, that principle is at the core of the walkaround rule itself. Despite that principle, the Proposed Regulation provides no functional process for the employer to challenge an abuse of discretion by the CSHO in accepting an employee representative as “reasonably necessary to the conduct of an effective and thorough physical investigation.” Federal FAQs again acknowledge this issue but merely direct the employer to make their appeals to the CSHO,² which provides only the illusion of an appeal.

¹ Federal FAQs on this topic available at: <https://www.osha.gov/worker-walkaround/final-rule/faq>.

² See FAQ: “Is there a way for the employees or the employer to object to a walkaround representative?” and its corresponding answer (“Employees and the employer can object ... by raising any concerns ... with the CSHO.”)

For example: at an inspection at a non-union workplace, employees cannot agree on a representative. Ultimately, the CSHO accepts five representatives – two of which are veterans of the industry and highly-skilled, but three of which have no clear qualifications except that they were persistent and wore down the CSHO. Here, the employer urgently wants to challenge these three representatives – but must do so to *the very same CSHO who just allowed them to participate*. It goes without saying that such an appeal would be incredibly unlikely to result in any change in position by the CSHO, as it is their own decision they are being asked to reconsider.

Employers must have a workable process to protect their workplace from inspection by unqualified, untrustworthy, and potentially unsafe representatives. Here, we would suggest inclusion of language such as:

“Employer shall have the right to contact the District Manager in the event that the Chief or their representative fails to enforce.”

b. Concerns Related to Confidentiality and Restricted Area Issues

Third-party representatives will be accompanying CSHO’s through areas that may contain trade secret materials that have economic value due to their privacy. In addition, third-party representatives may be entering areas with special security concerns.

We would urge that the Proposed Regulation expressly clarify that employers can require third-party representatives to avoid or minimize photography or recording of confidential or trade secret materials, and similarly expressly state that employers can require third-party representatives to respect confidentiality or trade secret materials.

One method of accomplishing this would be to include such provisions in a list of activities that would be considered “interfering with an inspection,” as discussed below.

c. Concerns Related to the Conduct of Employee Representatives During an Inspection.

We are also concerned with the Proposed Regulation’s lack of clarity related to the employee representative’s conduct during the inspection. Again, this is an area of concern that federal FAQs anticipate – and provide a detailed response for – but that California’s Proposed Regulation provides scant guidance on.³

Of particular concern is the absence of any restriction on distributing materials or solicitation activities during inspections. Federal OSHA explicitly recognizes that ‘distributing or handing out any material without the CSHO’s review and consent’ constitutes interfering conduct. Without this safeguard in California’s regulation, third-party representatives could use inspection access for purposes unrelated to workplace safety, such as union organizing campaigns or political advocacy, fundamentally altering the nature and purpose of OSHA inspections.

Specifically, the Proposed Regulation provides only that the CSHO may “deny the right of accompaniment ... to any person whose conduct interferes with a fair and orderly inspection.” But this limitation leaves sizable gaps in what behavior or conduct might be problematic. For example: it says nothing at all about a representative’s conduct potentially disrupting the operation of the workplace.

Federal FAQs list a host of situations or behaviors that might qualify as “interfering with a fair and orderly inspection”⁴ - and we believe that such examples should be incorporated into the Proposed Regulation.

³ See FAQ: “What type of ... behavior could interfere with the inspection?”

⁴ *Id.*

Below is the relevant excerpt, which we believe should be incorporated into subsection (c) of the Proposed Regulation:

Interfering or disruptive conduct is conduct that delays or impedes the inspection. In addition, any activity not directly related to conducting an effective and thorough physical inspection of the workplace is also deemed to interfere with a fair and orderly inspection. Below is a non-exhaustive list of examples of behavior that may interfere with OSHA's inspection:

- Preventing the CSHO from taking essential photographs, video recordings, or surface or air monitoring.
- Preventing the CSHO from interviewing employees in private.
- Resisting or interfering with employee or employer representative involvement in the inspection.
- Failing to stay with the CSHO during the walkaround, such as wandering away from the inspection or going into unauthorized areas.
- Taking unauthorized photographs or videos.
- Solicitation, such as handing out union authorization cards.
- Distributing or handing out any material without the CSHO's review and consent.
- Failing to comply with the ground rules of the inspection.

We would also suggest the following be included, as they would clarify the permissible conduct:

- Representatives must remain with the CSHO at all times.
- Representatives may not independently photograph, video, or document the workplace.
- Representatives may not directly solicit employees or distribute materials.
- Representatives may not touch equipment, materials, or products without CSHO authorization.

d. Concerns Related to the Potential Expulsion of Employer Representatives from an Inspection.

While we understand the need for a CSHO to keep control of an inspection and potentially mediate between employer and employee representatives, we are deeply concerned by the implicit authority of the CSHO to exclude the employer's representative *from the inspection of the employer's own facility*. We believe that CSHO's do not have such authority, and that the Proposed Regulation absolutely should not create any such authority.

e. Concerns Related to the CSHO's Experience Mediating in Labor Disputes.

Viewing all of the above issues as a whole, we are concerned that the Proposed Regulation will place CSHOs - who are experts in workplace safety – in the role of determining proper representation for unionized and non-unionized workers and mediating disputes among employees themselves (related to their representation) and between employers and employees. This is a difficult task even for labor law professionals, and CSHOs lack of experience in this space makes it even more important that the Proposed Regulation be clear and workable in the respects identified above.

f. Training and PPE Requirements.

The Proposed Regulation does not address the training, equipment, or surveillance that may be necessitated to accompany a CSHO in an inspection. Depending on the area inspected, the third party may be required to: (1) use Personal Protective Equipment (PPE), (2) have specialized training, and (3) possibly submit to medical evaluation/surveillance. Examples of specialized training that may come into play include entering confined spaces, use of full-face respirators, and protective suits. The level of fitness to perform a supporting inspection may become an issue such as climbing ladders walking in narrow elevated walkways, etc...). Medical surveillance or specialized monitoring before and after may be needed in the case of fit

tests for respirators, fundus eye photos as a base line for when in areas of non-ionizing radiation area, radiation badging where ionizing sources may be present.

Though these precautions and training may be required to safely accompany a CSHO, the Proposed Regulation does not consider the situations that they may create. Some examples include:

- What if a third-party representative is selected unanimously by workers, but does not have the necessary training or ability to actually accompany the CSHO into relevant areas?
- What if a third-party representative does not want to wear appropriate PPE? Or what if unnecessary levels of PPE are demanded by the third-party representative?
- For security-sensitive workplaces, what if a third-party refuses to comply with a background check?
- What if the third-party refuses to sign waivers of liability or similar documents before entering covered spaces?

In order to address these situations, the Proposed Regulation should clearly specify that any accompanying employee representative must comply with all of the workplace safety protocols and any other requirements which the CSHO is required to comply with. In the event that they refuse to do so (or are unable to do so) then they will not be considered to be “reasonably necessary to conduct an effective and thorough inspection...” pursuant to proposed section 331.8.

g. Restricted Areas Not Covered Under “Trade Secrets” Must Be Included in the Proposed Regulation.

The Proposed Regulation uses the definition of “trade secrets” found in Cal Civil Code 3426.1(d)⁵, then essentially allows the employee-representative, in those situations, to be limited to an employee who is already authorized to enter that area. We appreciate this provision, and agree that trade secrets must be protected, and that the Proposed Regulation should not endanger them by allowing any third-party representative to observe them (and potentially leak them).

However, while proposed subsection 331.8(d) covers “trade secrets,” it fails to consider that there may be non-trade secret workplaces which nevertheless require such precautions. There are, in fact, a variety of state and federal laws requiring secrecy or security, including the International Traffic in Arms Regulations (ITAR), which apply in national defense-related manufacturing or other national security-related industries.

To address these facilities, we would propose expanding subsection 331.8(d) as follows:

*Upon the request of an employer, any authorized representative of employees in an area containing trade secrets as defined by Civil Code Section 3426.1(d), **or other sensitive or confidential materials pursuant to state or federal law**, shall be an employee in that area or a representative authorized by the employer to enter that area. Where there is no such representative or employee, the Chief or their representative shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.”*

h. Concerns with the Legal Grounds for Adopting a Proposal Based on Alleged Necessity to Conform to “At Least as Effective” When the Federal Rule is Under Active Challenge and the California Proposal Differs from the Federal Rule.

We understand that the Board has asserted in the Initial Statement of Reasons (ISOR) for the Proposed Regulation that the legal basis for the proposal rooted in the command of Labor Code § 50.7 (d) for the DILR to take “all steps necessary to prevent withdrawal of approval for the state plan by the Federal Government.” We are concerned that the assertion of necessity on this basis is erroneous. OSHA’s final rule amending 29 CFR § 1903.8 became effective on April 1, 2024. While it is accurate that State plans generally are expected to adopt corresponding regulations within six months of a new or revised federal

⁵ This provision defines trade secret to be “(d) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

standard, it is simply false to suggest that California's state plan has faced any risk of withdrawal of approval by the Federal Government based on California not yet adopting a corresponding regulation. Instead, the legal basis for the Federal Rule on this occasion was controversial and subject to legal challenges from the outset. A legal challenge led by the U.S. Chamber of Commerce was promptly filed and remains pending in federal court through the date of this submission. See *Chamber of Commerce of the United States of America, et al. v. Occupational Safety and Health Administration, et al.*, No. 6:24-cv-00271 (W.D. Tex. 2024). In other words – does not appear to be any threat to the continuing approval of California's State plan based on not yet adopting a corresponding rule. For this reason, we respectfully view the assertion of necessity in the ISOR as erroneous.

Even if a necessity to act was present, which it is not, the current California proposal is not substantially the same as the Federal Rule. The numerous concerns outlined above arise from several of the substantial differences. The many substantive differences between the current California proposal and the Federal Rule further degrade the legal basis upon which the current proposal is based. Thus, there may be a requirement for the process to go through the full SRIA review, prior to being adopted and this leaves the rule open to be constitutionally challenged.

Conclusion:

We appreciate the opportunity to provide comment and look forward to participating in this important regulatory process.

Sincerely,



Robert Moutrie
Vice President for Advocacy
California Chamber of Commerce
on behalf of

American Composites Manufacturers Association
Associated Equipment Distributors
Associated Roofing Contractors of the Bay Area Counties
California Alliance of Family-Owned Businesses
California Association of Sheet Metal and Air Conditioning Contractors, National Association
California Association of Winegrape Growers
California Chamber of Commerce
California Farm Bureau
California Hospital Association
California League of Food Producers
California Retailers Association
Housing Contractors of California
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