



November 13, 2023

Mr. Douglas Parker  
Assistant Secretary of Labor Occupational Safety and Health  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

**Re: *Worker Walkaround Representative Designation Process*, Docket No. OSHA-2023-0008**

Dear Assistant Secretary Parker:

On behalf of our product suppliers, food retailers, and wholesalers, FMI – The Food Industry Association appreciates the opportunity to provide comments on the Occupational Safety and Health Administration’s (OSHA) notice of proposed rulemaking (NPRM) on *“Worker Walkaround Representative Designation Process.”* As the association representing the grocery supply chain, FMI is very concerned about the far-reaching consequences and negative impact that the NPRM could have on the safety and health of the food and consumer goods production and supply chain. FMI supports the comments in opposition to the NPRM filed by the Coalition for Workplace Safety, of which FMI is a member.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain – from retailers that sell to consumers, to producers that supply food and other products, as well as a variety of companies providing critical services – to amplify the collective work of the industry. Safety and hygiene procedures are held to the highest regard in the production, warehousing, and distribution of food and consumers goods.

A diverse collective of our membership manufactures, distributes, and sells the food and consumer goods found in all pantries, refrigerators, medicine cabinets, and laundry rooms across the country. These products are offered for sale in approximately 33,000 grocery stores and 12,000 supermarket pharmacies operated by FMI’s retail members in every community across the country. FMI members ultimately touch the lives of more than 100 million U.S. households per week.

As noted above, FMI shares the concerns outlined in the comments filed by the Coalition for Workplace Safety regarding the NPRM’s overreach of OSH Act authority. FMI is very concerned that the proposed rule will require companies to provide union representation with non-public access to non-union facilities, unnecessarily introduce hazards into manufacturing facilities and food distribution settings and result in economic hardship for employers with no corresponding



benefit to workers and their health. While the proposed rule is problematic from a variety of perspectives, FMI is particularly concerned for the following reasons:

- FMI believes the proposed rule will result in significant disruptions in food facilities and could create unnecessary disruptions and hazards impacting the safety of food and consumer goods production; and
- FMI strongly believes the proposed rule will negatively impact areas of our member companies' business without aiding OSHA inspectors in any meaningful way.

### ***FMI is a Leader in Food and Consumer Goods Safety***

FMI serves as a national and global leader in [safety](#) and health in all aspects of the grocery supply chain. The scientific and nutrition expertise of FMI is relied upon daily by federal regulators in the U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA), and throughout the industry. Food safety continues to be the top priority of the food industry.

FMI created and facilitates [SafeMark®](#), the comprehensive food safety training and certification program which instills consumer confidence in the safety of food purchased in retail stores by educating food managers and food handlers with the essential knowledge needed to prepare, handle, display and sell food safely. SafeMark® was developed with leading retail food safety experts, scientists, and educators, who brought decades of experience in training retail food handlers and managers. The program is grounded in the fundamentals of food safety science established by the principles of the hazard analysis critical control point (HACCP) system and is based on the most current FDA Food Code. FMI also is a founding member of and serves on the board of directors for the [Partnership for Food Safety Education \(PFSE\)](#). PFSE was first convened by federal and state government, industry, and consumer leaders over 25 years ago to develop and promote effective education programs to reduce foodborne illness risk for consumers.

Further, FMI's [Safe and Quality Foods Institute \(SQFI\)](#) serves as a global leader in the establishment of standards for food industry professionals. The SQF Program is a rigorous and credible food safety and quality program that is recognized by retailers, brand owners, and foodservice providers worldwide. The SQF Food Safety Codes are designed to meet industry, customer, and regulatory requirements for all sectors of the food supply chain – from the farm all the way to retail stores. With over 12,000 certified sites in 40 countries, SQFI's mission is to deliver consistent, globally recognized food safety and quality certification programs based on sound scientific principles, applied across all industry sectors, and valued by all stakeholders.

### ***The NPRM will result in Disruption and Harm to the Food and Consumer Goods Production and Supply Chain***

As stated above, FMI and its member companies hold the safety and health of its employees and customers to the highest importance. At each step in the food and consumer goods supply



chain there are numerous federal, state, industry, and global safety and health regulations and standards that must be met. In the NPRM, OSHA proposes 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 an OSHA Compliance Safety and Health Officer (CSHO) when they are reasonably necessary to aid in the inspection. FMI is very concerned that the proposed rule will create operational challenges within a facility and could introduce serious hazards from a safety perspective.

The NPRM does not take into consideration the safety and health consequences of permitting a third-party individual or group(s) of individuals from entering a facility without regard to the complex web of food supply chain measures and existing regulatory landscapes. For example, the NPRM is silent on verifying the validity of a third-party individual or group(s) of individuals' background or qualifications for accessing a secure goods production facility beyond being selected by an employee to accompany a CSHO.

The [SQF Code](#), which many food facilities follow, details safety measures and practices for manufacturing and holding food including food and animal production, dietary supplements, food packaging, aquaculture, foodservice and food retailing. While the SQF Manufacturing Code recommends standard policies for facility visitors, FMI member companies implement customized, facility-specific policies and protocols pertaining to production and the movement of goods. These policies and protocols take into account compliance with USDA and FDA-regulatory requirements.

Allowing an unknowledgeable third-party representative to accompany a CSHO during an OSHA-inspection could create serious food safety hazards in both food production and warehousing. Food production facilities have strict sanitation protocols for employees and visitors, including inspectors. Most facilities require personal protective equipment (PPE) to be worn, including boots, foot covers, smocks, and coveralls for employees; and outside shoes and clothing are not permitted to be worn. Many food pathogens are commonly found in the environment, thus street or everyday clothing and shoes are not permitted in clean, sanitized production environments. With respect to animal production, hatcheries, growing operations, and feed lots have strict biosecurity requirements to protect animal health. Many of these facilities, including farms and slaughter operations, mandate additional protective coverings including a biohazard suit to protect animal health or even have a "shower in/shower out" policy.

Most food facilities, which are regulated by USDA and FDA, are required to implement individual, site-specific [food defense plans](#) to prevent intentional alteration of products. These food defense plans ensure the security of the facility to ensure individuals do not have unauthorized access to production areas. As noted by [USDA](#), "[f]ood defense is the protection of food products from contamination or adulteration intended to cause public health harm or economic disruption." Any third party could introduce new hazards into a facility. The amount of unauthorized people should be limited in a facility.



### ***Other Operational Risks Under the NPRM***

FMI and its member companies are also very concerned about additional operational risks that could result under the NPRM. These include increased liability for a facility, concerns surrounding the security and safety of proprietary business information, and union access to non-union facilities. Further, the NPRM lacks an appeals process for employers and is blatantly ambiguous as to the justification for enabling a third-party individual or group(s) of individuals to access to a facility simply because a CSHO has deemed them to be “reasonably necessary to conduct an effective and thorough physical inspection.”

The NPRM is silent on any liability protections for employers who are forced to permit a third-party individual or group(s) of individuals from entering a facility. As OSHA is acutely aware, facilities implement rigorous safety training, policies, protocols, and background checks for employees. These safety policies and protocols must also be adhered to by visitors, including inspectors, such as wearing PPE or other protective attire, following specific pathways as to not disrupt or contaminate production or impede warehouse equipment, and avoid sensitive areas including pharmacy warehousing and facility chemical storage. FMI is troubled that an unvetted individual or group(s) of individuals may purposely or inadvertently cause a situation which would unknowingly expose an employer to liability.

Additionally, the NPRM does not fully recognize the immense concerns that businesses have with protecting proprietary information such as manufacturing processes, product design and development, and warehousing and distribution techniques. The food industry is highly competitive, and our members invest a significant number of resources in innovative products, processes, and practices. Businesses verify the identity of a visitor before granting entry to a facility and bar them, including inspectors, from having a cell phone, recording device, or taking photographs or video. Many companies require visitors to sign a confidentiality or non-disclosure agreement. Government inspectors must also adhere to requests for confidentiality of documents and site information within the specific scope of an investigation. The NPRM provides no assurance or protection to a business that a third-party individual or group(s) of individuals will not disclose trade secrets or that they are not a representative of a business' direct competitor.

Finally, the NPRM exceeds the core safety and health purpose of the OSH Act and OSHA by authorizing union representatives to enter non-union facilities as third-party individuals or group(s) of individuals under the guise of facilitating inspections. The federal authorities regarding union representative interaction at non-union facilities and governance of union elections are not under the purview OSHA and a CSHO. As detailed in comments filed by the Coalition for Workplace Safety, OSHA has no legitimacy or authority to propose a rule that grants union representatives entry that would not be offered to representatives in non-union facilities.



***Conclusion***

FMI and its member companies hold the safety and health of its employees and customers to the highest importance. At the heart of the food industry is our commitment to a safer, healthier, and more efficient consumer food supply chain. The safety of employees in every facet of the grocery supply chain – from production line, to warehousing, to front and back of store operations – and our customers who shop in our retail locations is paramount. FMI opposes the NPRM and strongly urges OSHA to reconsider the proposal. The unvetted, unnecessary entry by third-party individuals or group(s) of individuals will harm, not improve, the safety and health of facilities.

Thank you for your consideration of these comments. Please contact us if you have questions or would like to discuss our comments and other issues vital to the food industry.

Sincerely,



Christine Pollack  
Vice President, Government Relations

