

# Safety, Health, and Environment Committee

## Report to the Board of Directors

### September 2024

#### I. Key Issues:

- Union Walkaround Final Rule
- 2024 Hazard Communication Standard
- Heat Injury and Illness Proposed Rule
- CONVEY '24
- Harvest Safety Week

#### II. Committee Activities:

- A. Union Walkaround Final Rule:** On April 1, OSHA published its Final Worker Walkaround Representative Designation Process Rule (the "Worker Walkaround Rule"), which became effective on May 31. The Occupational Safety and Health Act of 1970 permits employers and employee representatives to accompany inspectors during physical worksite inspections—a practice known as the "walkaround rule." Previously, employee representatives were primarily limited to current employees, with few exceptions for third-party representatives. The updated rule now states that representatives "may be an employee of the employer or a third party," allowing employees to invite external representatives to join OSHA inspectors during a walkaround. This change potentially opens the door for union organizers, community activists, or other third parties not officially representing the employees or the government to accompany OSHA on a workplace inspection if the Certified Safety and Health Official (CSHO) deems such parties "reasonably necessary" for a thorough inspection.

According to OSHA, "third-party" includes individuals with "relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills." The rule places the responsibility for determining the necessity of third-party representatives on the CSHO without providing specific criteria for guidance, potentially involving OSHA inspectors in labor and organizing matters that could detract from their primary mission of identifying workplace safety issues.

Experts from the Conn Maciel Carey LLP law firm, in a document prepared for NGFA members, argue that the rule is a covert effort to facilitate union access to non-union workplaces under the guise of safety inspections. They warn that the rule could allow various third parties, such as disgruntled former employees, media, competitors, and activist groups, to exploit the new regulation.

NGFA joined the *Employers Walkaround Representative Rulemaking Coalition* led by Conn Maciel Carey, which submitted comments in November urging OSHA to withdraw the proposal. The coalition argues that the proposal expands the scope of third-party

representatives, creating practical challenges for employers and violating several laws, including the OSH Act, the National Labor Relations Act, and the Fourth Amendment.

A coalition of business groups, including the U.S. Chamber of Commerce, filed a lawsuit challenging the walkaround rule in the U.S. District Court for the Western District of Texas. The complaint alleges that OSHA exceeded its statutory authority and violated the Administrative Procedure Act by failing to adequately explain the expansion of existing regulations and consider alternatives. This rule could be impacted by the Supreme Court's recent decision that overturned the *Chevron* deference and determined that lower courts can no longer defer to an agency's interpretation of the law just because it is ambiguous but instead "must exercise their independent judgment when deciding whether an agency has acted within its statutory authority."

**B. 2024 Hazard Communication Standard:** On May 20, OSHA published a [final rule](#) updating the Hazard Communication Standard (HCS, 29 CFR 1910.1200).

The updated HCS conforms to the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS), primarily Revision 7, address issues that arose during the implementation of the 2012 HCS update. The new rule went into effect on July 19, 2024, though phased-in compliance dates don't begin until January 2026.

In 2021, NGFA worked with outside counsel in drafting comments that specifically focused on the proposed amendment to create a federal definition of "combustible dust" which would have a direct impact on all grain, feed, processing and milling facilities. There was also concern on how the proposed amendments to the standard puts more of the burden on the manufacturer i.e. grain handling facilities to anticipate and know downstream events. For example, grain elevators could be liable if the grain self-combusted or rotted and produced CO<sub>2</sub>. Much of these changes are based on letters of interpretation that were issued by OSHA following the 2012 HCS.

Based on OSHA's response, the definition of combustible dust in the HCS will not be used to define dust in another standard if that standard has specific guidance. In other words, the Grain Handling Standard, 29CFR 1910.272 uses the term fugitive dust and has specific guidance to mitigate the hazards of the dust; therefore, the new definition of dust in the Hazard Communication standard cannot be used to determine dust hazard in 1910.272. Overall, OSHA disagreed with our argument on the increase in costs and the expansion of duties and responsibilities on manufacturers by the downstream user. By modifying the proposed language, OSHA believes that they have narrowed the scope of responsibilities for manufacturers in determining the risks for downstream users.

**C. OSHA Published Heat Injury and Illness Proposed Rule:** On July 2, OSHA published a heat standard proposal that would require employers to develop an injury and illness prevention plan to control heat hazards in workplaces affected by excessive heat. Excluded from the rule would be short-duration employee exposures to heat, emergency response activities, work at indoor sites kept below 80°F, telework, and indoor sedentary

work activities. OSHA submitted the proposal to the White House Office of Information and Regulatory Affairs (OIRA) on June 11, which completed its review in just three weeks.

Among other provisions, the proposed standard – as summarized in this OSHA fact sheet – would require employers to:

- Develop and implement a work site heat injury and illness prevention plan (HIIPP) with site-specific information to evaluate and control heat hazards in their workplace.
- Identify heat hazards in both outdoor and indoor work sites.
- Implement control measures at or above the Initial Heat Trigger (i.e., a heat index of 80°F) that include providing employees with cool drinking water; break areas with cooling measures; indoor work area controls; acclimatization protocols for new and returning unacclimatized employees; paid rest breaks if needed to prevent overheating; and regular and effective two-way communication.
- Implement additional control measures at or above the High Heat Trigger (i.e., heat index of 90°F) that include providing employees mandatory rest breaks of 15 minutes at least every two hours; observation for signs and symptoms of heat-related illness; a hazard alert to remind employees of key parts of the HIIPP; and warning signs at indoor work areas with ambient temperatures that regularly exceed 120°F.
- Take steps if an employee is experiencing signs and symptoms of a heat-related illness or a heat emergency and develop a heat emergency response plan.
- Provide initial and annual refresher training for supervisors, heat safety coordinators, and employees, as well as supplemental training after changes in exposure to heat hazards, policies and procedures, or the occurrence of a heat injury or illness.
- Have and maintain, for a minimum of six months, written or electronic records of indoor monitoring data.
- Ensure that all requirements are at no cost to employees.

NGFA submitted comments on the Advance Notice of Proposed Rulemaking (ANPRM) docket and to the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel regarding the heat standard. NGFA will continue to engage with other stakeholders to submit comments on the proposed standard.

- D. CONVEY '24:** Conducted a successful **CONVEY '24 Conference** in Omaha, Neb., on July 23-24 in partnership with *Grain Journal Magazine* and the **Grain Elevator and Processing Society**. Final attendance was 213 attendees and 71 exhibitors. This is the highest number of attendees since 2014 and the highest number of exhibitors since 2017. The conference focused on grain handling compliance and best practices and featured expert speakers covering employee management, safety management, regulatory issues, operations best practices and emerging technology.
- E. Harvest Safety Week:** NGFA concluded its fifth annual Harvest Safety Week. This year's theme was "Participate. Prepare. Protect." Members were encouraged to participate in sharing Harvest Safety Week resources, prepare for hazards during the harvest season and protect the employees that "transform America's harvest" into food, fuel and fiber. New safety training videos on "Shuttle Loading and Rail Safety" and "Bin

Site Entanglement Hazards” that are designed to be easily watched in a couple of minutes and are based on NGFA Safety Tips Sheets were made available on [ngfa.org/safety](http://ngfa.org/safety). A live webinar with People Spark Consulting on employee onboarding and a recorded video presentation with M&M Specialty Services on grain quality management were also offered. All videos were made possible with support from the National Grain and Feed Foundation.

### **III. Other Actions:**

The committee and NGFA staff also were engaged in the following activities during the March 2024 – September 2024 period:

- The NGFA partnered with the following organizations to conduct a one-day Regulatory Compliance Seminar:
  - Pacific Northwest Grain and Feed Association on April 26 in Lewiston, Idaho.
  - Kansas Grain and Feed Association
    - May 14 in York, Neb.
    - May 16 in Salina, Kan.
- The NGFA provided an update on OSHA priorities in the Biden Administration at the TGFA DFW Regional Dinner on Jun. 27 in Ft. Worth, Tex.
- Safety, Health, and Environment Committee held an in-person meeting on July 23 in Omaha, Neb.