

Safety, Health, and Environmental Quality Committee

Report to the Board of Directors

March 2024

I. Key Issues:

- Joe Mlynek – Safety Consulting Services for NGFA
- Heat Injury and Illness Small Business Review Panel
- Union Walkaround Proposed Rule
- OSHA Warehousing and Distribution Center National Emphasis Program

II. Committee Activities:

A. Joe Mlynek – Safety Consulting Services for NGFA: NGFA formally converted the safety training and education role to a consultant position and signed a contract with Progressive Safety Services, LLC that is operated by Joe Mlynek who also serves as President. Joe works with [Safety Made Simple](#), too. As part of the agreement, Progressive Safety Services, LLC will work with NGFA to conduct the following:

- Review and update safety sheets and programs available to members;
- Create new training materials, e.g., tip sheets, guidance document, and videos;
- Work with NGFA to provide several safety webinars to members each year; and
- Assist with regional safety seminars as needed.

Joe has already completed review of the e-recordkeeping guidance document since OSHA has recently revised the standard; is scheduled to provide three webinars in 2024 and is in the process of updating NGFA's Safety and Health manual.

B. Heat Injury and Illness Small Business Review Panel: OSHA is in the process of finalizing a proposed rule on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. NGFA submitted comments to OSHA on Oct. 3 reiterating opposition to any broad federal regulation on heat.

Brian Corderman, Farmers Coop in Alva, Okla., who is a member of NGFA's Safety, Health and Environmental Quality Committee participated as a small entity representative (SER) on the Sept. 12 Small Business Advocacy Review panel, consisting of officials from the agency, the U.S. Small Business Administration's (SBA) chief counsel for advocacy and the Office of Management and Budget's Office of Information and Regulatory Affairs. When an OSHA proposal is expected to have a significant impact on a number of small entities, the agency must notify the SBA's Office of Advocacy, which then recommends that SERs be consulted on the rule and its effects.

Specifically, NGFA is opposed to the creation of one-size-fits-all federal regulation. The

Association's primary concern with the proposed rulemaking on heat injury and illness prevention is that it will place an undue regulatory burden on grain handling facilities in both indirect (employee time) and direct costs (equipment) and additional paperwork requirements. Some examples include: 1) additional paperwork burdens related to monitoring and recording the proposed initial heat (80°) or high heat index (87°) in numerous locations throughout a facility both indoor and outdoor; 2) retrofitting facilities and purchasing new equipment related to ventilation and thermometer measurement (wet bulb) in outdoor environments; and 3) acclimation and employee training, preparedness and equipment, to name a few. In addition, OSHA does not specifically identify what is defined as "indoor" and/or "outdoor;" therefore, it is difficult to determine what should be done in each circumstance to address the issue.

The NGFA encouraged OSHA to consider the recommendations of the SERs and not burden facilities with a one-size-fits-all standard that is overly complicated and lacks the necessary flexibility for employers to determine and implement appropriate controls to protect their employees.

- C. Union Walkaround Proposed Rule:** In comments submitted Nov. 13 to OSHA, the NGFA joined a coalition of agriculture and business groups to urge OSHA to withdraw a proposal that would expand access for third parties to participate as employee representatives in OSHA inspections.

OSHA issued the Notice of Proposed Rulemaking (NPRM) for a "Worker Walkaround Representative Designation" rule on Aug. 30. Among other issues, the proposed rule would open the door to union representatives at non-union workplaces if an OSHA Compliance Safety and Health Officer (CSHO) determined the third party would positively impact the inspection. This would include environmental activists, anti-fossil fuel activists, plaintiffs' attorneys, or anyone else with an agenda against the employer.

However, the NPRM includes no guidance on how CHSOs should determine who qualifies as the "authorized representative" of the employees, or what to do when competing third parties claim interests in an inspection.

In its comments, the coalition noted that the proposal would violate several laws, including the OSH Act, the National Labor Relations Act, and the Fourth Amendment.

The new regulation also does not limit how many employee representatives could be included in an OSHA inspection. Because this regulation is highly desired by the administration's union supporters, this regulation is expected to be finalized quickly and issued sometime this spring. On February 9, it went to the White House office in charge of reviewing regulations.

- D. Warehousing and Distribution Center National Emphasis Program (NEP):** NGFA conducted a virtual meeting with senior OSHA staff including Manday Evans, Deputy

Assistant Secretary and Kim Stille, Director, Directorate of Enforcement Programs to discuss OSHA's inclusion of NAICS 493130 (Farm Product Warehousing and Storage) in the Warehousing and Distribution Center NEP that went into effect in July 2023. Prior to the call there were several recent instances of CSHOs trying to apply the NEP at traditional grain elevator facilities, presumably confusing those worksites as being under 493130 and other instances where part of the facility may be a farm product storage facility, but the NEP inspection has been expanded to the grain elevator portion of the facility, e.g. flat storage structures.

During the call, we highlighted that grain handling facilities are a different kind of operation than all of the other industry sectors covered by the Warehouses NEP. It involves little, if any, PIT operations, no storage racks, no picking and packaging, no conveyor operations. It is generally just large ground grain piles. It seems out of place among the covered NAICS codes. It is also worth noting that the Grain Handling Standard Regional Emphasis Programs and Local Emphasis Programs also already include NAICS 493130.

At the end of the discussion, we asked OSHA to reconsider the inclusion of the Farm Product Warehousing and Storage NAICS in the NEP, either now or when the agency assesses the effectiveness of the NEP after a year, as called for by the NEP's Directive. OSHA's response was that the points we raised about grain handling facilities were valid and that they would take them into consideration when they begin reviewing the results of the inspection data from the NEP to determine if the NEP needs to be modified, as part of the NEP's annual review. Since the inspection part of the NEP only began a few weeks ago, it could be several months before OSHA begins the review process.

III. Issues for Discussion:

- A.** What suggestions do you have for additional regulatory or enforcement topics that NGFA should address with OSHA and/or EPA?
- B.** Has participation in the Alliance with OSHA been beneficial to NGFA and industry, and what other safety initiatives should be considered under the Alliance umbrella?
- C.** What additional specific areas of safety training and education should NGFA pursue to further enhance workplace safety within the grain, feed, processing, and export industry? What are your most pressing safety education and training needs? Have you used with your employees – and do you find value in – the new workplace safety videos and Safety Tip Sheets being produced by NGFA?

IV. Other Actions:

The committee and NGFA staff also were engaged in the following activities during the September 2023– March 2024 period:

- The NGFA partnered with the following organizations to conduct a one-day Regulatory Compliance Seminar:
 - California Grain and Feed Association on October 26 in Fresno, Calif.
 - Montana Grain Elevator Association on January 23 in Great Falls, Mont.
 - North Dakota Grain Dealers Association on March 12 in Fargo, ND.

- Safety, Health, and Environmental Quality Committee held an in-person meeting on February 15-16 at the CGB office in St. Louis, Mo.

- Attended in-person NFPA 660 *Standard for Combustible Dusts* committee meeting on Feb. 20-22 in Tempe, Ariz.

- Attended in-person *NFPA 660 Agricultural Dust Section/Standard for Combustible Dusts* meeting on March 7-8 in Tampa, Fla.

- The NGFA provided in person and virtual updates on OSHA priorities in the Biden Administration for the following:
 - MABA/MGEA Annual Meeting on Jan. 24 in Great Falls.
 - GEAPS Exchange, Feb. 27 in Kansas City, Mo.