



# National Grain and Feed Association

## Issues & Actions

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## NGFA Voices Concerns to Senate on Climate-Change Legislation

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*[Editor's Note: This publication keeps you – as a stakeholder in the NGFA – informed about issues being addressed and actions being taken to serve your business interests. NGFA members are encouraged to contact the NGFA office to provide input, ask questions and raise other topics you believe should be addressed by your Association.]*

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The NGFA on July 20 joined with 14 other major national organizations in urging the Senate to consider carefully the full impact that climate-change legislation would have on the nation's ability to provide an abundant and affordable food supply for U.S. and world consumers.

In identical statements submitted to the Senate Environment and Public Works Committee and Senate Agriculture Committee, the NGFA and other groups warned about the potential adverse impacts that a cap-and-trade approach could have on idling productive U.S. farmland.

The organizations also noted that establishments that encompass food, agricultural commodity, feed, ingredient, beverage and consumer-product processors, manufacturers, distributors and retailers emit only about 2 percent of the nation's greenhouse gases, but would be disproportionately vulnerable to indirect cost increases – including higher costs for inputs, fuel and transportation – that would result under the House-passed climate-change bill (H.R. 2454). “Congress must take extreme care to avoid adverse impacts on food security, prices, safety and accessibility to necessary consumer products,” the NGFA and other groups wrote.

At a minimum, the groups said, any climate-change legislation considered by Congress should include the following safeguards:

▶ Carbon-credit allowances should be distributed in a way that takes into account the needs of manufacturers, dis-

tributors and retailers of food, agricultural commodities, feed and household products. The groups said the allowances should be based upon an industry's historic emissions, and additional allowances should be distributed to reflect practices implemented to reduce emissions between 2000 and 2012. On this score, the groups faulted the House-passed climate-change bill (H.R. 2454) for excluding manufacturers, distributors and retailers of food, feed and household products from receiving carbon allowances, which they noted would put the U.S. food and agriculture sector at an economic disadvantage.

▶ If an emissions cap is adopted, the U.S. Environmental Protection Agency (EPA) should not be allowed to reduce it in the future, or to use the Clean Air Act to regulate emissions to levels less than called for in the cap.

▶ Food processors, agricultural commodity handlers and processors, farmers, ranchers and others should be permitted to generate carbon offsets for credit. The groups said that no distinction should be made between the use of domestic and international offsets, and no restrictions should be placed on the use of offsets by covered facilities. But such a system should “strike a balance between the need for affordable offsets and the need for productive farmland,” they said.

▶ The legislation should preempt or harmonize state, local and regional climate-related programs. The groups also said that any federal climate-change legislation should

explicitly preempt EPA regulation under the Clean Air Act, including the agency's authority to issue new source performance standards for sources that emit between 10,000 and 25,000 tons of carbon dioxide-equivalent gases per year.

be designed to comply with our trade obligations," the groups said. "We should not demonstrate global climate leadership by undermining our commitment to global trade."

▶ The legislation should be contingent upon the Senate ratifying an international treaty among "all major sources" of carbon emissions obligating such countries to reduce greenhouse gases on a global basis. "...[C]limate change legislation should

▶ Any legislation designed to reduce greenhouse-gas emissions also should ensure that there will continue to be a safe, abundant and affordable supply of food, feed and other agricultural products.

## Joint Safety, Health, Environmental Quality Committee Examines Key Issues



*The NGFA/GEAPS Joint Safety, Health and Environmental Quality Committee is shown during its Aug. 12-13 meeting in Washington, during which it met with key officials from the Occupational Safety and Health Administration (OSHA), and Environmental Protection Agency (EPA). Major topics discussed with OSHA included its upcoming rulemaking and national inspection emphasis program on combustible dust, the agency's pending proposed rule on fall protection and its approaches to ergonomics. Discussions with EPA focused on its review of new source performance standards for grain-handling facilities under the Clean Air Act, and its development of proposed regulations that would impose emission standards on most feed manufacturers.*



*NGFA/GEAPS Joint Safety, Health and Environmental Quality Committee Chairman Kevin Danner (right) visits with Larry Elworth (center), counselor to EPA Administrator Lisa Jackson on agricultural policy. Danner is environmental, health and safety director for West Central Cooperative, Ralston, Iowa. Also pictured is NGFA Director of Regulatory Affairs Jess McCluer, who provides executive staff support to the committee.*

# NGFA, NOPA, PFI Urge FDA to Delay Implementation of Food, Feed Adulteration Reporting Electronic Portal

The three major national organizations representing the grain, feed, oilseed processing and pet food industries have urged the Food and Drug Administration (FDA) to provide an appropriate phase-in period before activating the electronic portal through which facilities are required to report within 24 hours after determining that adulteration incidents present a “reasonable probability” of causing “serious adverse health consequences or death to humans or animals.”

In a 13-page statement authored by the NGFA and co-signed by the National Oilseed Processors Association (NOPA) and Pet Food Institute (PFI), the groups objected to FDA’s announced plan to require firms to begin reporting through the electronic portal – known as the Reportable Food Registry – on Sept. 8. That’s the same date FDA intends to first make the portal available for use. Instead, the three organizations urged FDA to either further extend by an additional 45 to 60 days the effective date for reporting incidents through the electronic portal, or to exercise enforcement discretion for a comparable period of time to provide an appropriate and necessary phase-in period.

“We believe a simultaneous effective date for unveiling the electronic portal, issuing final guidance to industry, and requiring industry to report through the portal is fraught with danger, both for the agency and the regulated industry,” the NGFA, NOPA and PFI said. They said the risk to industry was substantial, given that failure to report is classified as a felony violation of the federal Food, Drug and Cosmetic Act.

FDA was required by Congress to establish the Reportable Food Registry under the FDA Amendments Act of 2007. But the agency already has twice used its administrative discretion to delay the statutorily mandated implementation date of the electronic portal until the agency could modernize its computer system.

The groups cited several major reasons why such an interim phase-in period “is absolutely necessary and justified,” including the fact that FDA indicates that neither the electronic portal nor FDA’s final guidance for industry will be available until on or shortly before the Sept. 8 activation date, which FDA selected arbitrarily. Further, the NGFA, NOPA and PFI noted that FDA has said that information being presented at three public workshops completed this month “are not final and are subject to change” prior to Sept. 8. A delay also would provide the agency and industry time to conduct necessary training on the use of the electronic portal, and give FDA additional time to improve the functionality and usability of the portal itself.

During a phase-in period, the three organizations noted that FDA could continue its current policy in strongly encouraging

facilities to report food/feed adulteration incidents through existing mechanisms, such as by notifying the appropriate FDA district office.

The NGFA, NOPA and PFI also suggested several significant changes to draft guidance issued by the agency concerning the Reportable Food Registry:

- ◆ FDA should not leave the mistaken impression in the guidance that the detection of any type or level of pathogen in food or feed would trigger the statutory threshold of posing a “reasonable probability” of causing death or serious adverse health consequences to humans or animals.
- ◆ Remove language in the draft guidance that implies that FDA under the law can require a subsequent recipient of an adulterated food to notify upstream and downstream suppliers and customers, including in instances when the adulterated product has not been shipped.
- ◆ Recommended that FDA, not the industry, take on the responsibility for notifying FDA district offices about adulteration incidents reported to the registry.
- ◆ Provide for automatic inclusion of congressionally mandated disclaimer language on all reports submitted to the registry that states that such notifications are product-safety reports, and are not admissions by the reporting party that the product is adulterated or may have caused or contributed to a death, serious injury or serious illness of humans or animals.

In addition, the NGFA, NOPA and PFI recommended that FDA add to the guidance document several questions-and answers addressing the following topics:

- ◆ Stating more equivocally that the adulteration reporting threshold established under the law is very similar to the current Class I recall criteria – a “serious emergency situation involving recall of a product that may have an immediate or long-range adverse effect on the life or health of animals or humans.”
- ◆ Clarifying that the law’s provisions that reporting of adulteration incidents is **not** required in cases where the product remains under the control of the facility also covers intra-company transfers and products in-transit on conveyances, such as trucks or railcars, that are recalled and returned to the facility before reaching another party.
- ◆ Clarifying whether farms are required to submit reports of adulteration incidents that originate on-farm.

- ▶ Clarifying that the law does **not** authorize consumers to submit reports through the electronic portal, which was a conscious decision by Congress to avoid submission of unfounded and unsubstantiated reports. Instead, the groups said, FDA should remind consumers of existing opportunities they have to report alleged or suspected food- or feed-safety incidents that may, or may not, prove to be legitimate.
- ▶ Promptly sharing incidents reported to FDA by public health officials with affected industry firms to facilitate investigation and timely action.
- ▶ Spelling out the provisions that apply to protecting the con-

fidentiality of reports submitted through the Reportable Food Registry.

- ▶ Encouraging FDA to expunge from the registry reported incidents that, based upon further information or investigation, are found to be unsubstantiated or fraudulent so that they are not disclosed via Freedom of Information Act requests.
- ▶ Allowing non-electronic reporting by foreign and domestic facilities that may not have access to the internet.

The NGFA, NOPA and PFI also suggested several changes to the language used on the actual computer screen messages of the Reportable Food Registry so that they conform to the law.

## NGFA Feed Legislative and Regulatory Affairs Committee Meets with Top FDA, AAFCO Officials

Members of the NGFA's Feed Legislative and Regulatory Affairs Committee are shown during their July 30 meeting in Washington, during which they discussed key regulatory issues with officials from the Food and Drug Administration's (FDA) Center for Veterinary Medicine and the Association of American Feed Control Officials (AAFCO). Below, the committee is shown during a luncheon discussion with AAFCO President Andy Gray of Montana and AAFCO Incoming President Chad Linton of West Virginia.

At the meeting, the committee examined: 1) the ramifications of the House-passed food/feed safety bill; 2) FDA policies concerning the subtherapeutic use of antibiotics in animal feed, the status of its pending proposed regulations to implement its Animal Feed Safety System initiative, implementation of the Reportable Food Registry that industry firms will be required to use to notify FDA of adulterated products that pose a risk to human and animal health, and labeling issues involving medicated feed; and 3) policy issues to be addressed during the AAFCO meeting.



*Inset Photos: NGFA Feed Legislative and Regulatory Affairs Committee Chairman Brad Gottula is shown meeting with key FDA and AAFCO Officials. In left photo, Gottula meets with Dr. Bernadette Dunham, director of FDA's Center for Veterinary Medicine. In the right photo, Gottula visits with AAFCO President Andy Gray during the AAFCO centennial meeting, conducted July 31-Aug. 3 in Washington. Gottula is quality assurance manager and plant manager for Quality Liquid Feeds Inc., Dunlap, Iowa.*