



NGFA

Newsletter

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FDA Revising, Standardizing Questions Posed to Facilities in Updating Inventory of Regulated Firms

The Food and Drug Administration (FDA) has agreed to standardize a script being used when contacting FDA-regulated establishments by telephone to obtain information on their facilities' operations as part of the agency's so-called Official Establishment Inventory (OEI) program.

In addition, FDA said it will eliminate some questions previously being posed of industry facilities that had raised concerns because they solicited sensitive or proprietary business information.

FDA said its OEI initiative is an ongoing activity that occurs throughout the year to obtain updated information about its inventory of regulated firms. The activity covers a wide variety of industry sectors for which FDA has oversight. This activity is unrelated to the Bioterrorism Act facility registration requirement and related activities of FDA.

The NGFA last October had notified FDA after being contacted by member companies that they were receiving telephone calls from agency personnel and contractors operating under FDA authority seeking information about company facilities and their operations. In addition to updating information on the firm's legal name, location and contact information, as well as a description of the firm's operations, FDA at that time was posing questions soliciting information about:

- ▶ the types of products handled, manufactured, packaged and/or distributed at each of the company's facilities;
- ▶ the percentage of the facility's products that were either received via or shipped in interstate commerce;
- ▶ the percentage of the facility's sales that were distributed retail and wholesale;

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FDA Updates Animal Feed Safety System Framework

...Proposed Regulations Likely in Fall...

The Food and Drug Administration (FDA) on Jan. 8 released the latest version – the fourth so far – of the framework for its Animal Feed Safety System (AFSS) initiative that for the first time would extend regulation to feed ingredients, non-medicated feed and on-farm feed manufacturing.

Separately, the NGFA has learned that the agency anticipates proposing such regulations for public comment sometime this fall, at the earliest. FDA already largely has completed drafting the proposed regulations. But it likely will wait until Congress enacts food and feed safety legislation – expected during the first half of 2010 – before finalizing the proposed regulations' preamble and the economic impact analysis that is required to accompany the proposal. Additional guidance documents also may need to be developed, according to FDA officials.

The AFSS initiative was launched by FDA in September 2003 in an effort to develop a “comprehensive and risk-based approach” to feed safety. The agency's stated intent is to create a regulatory approach that encompasses all sectors of the feed industry, including feed ingredients, transport and distribution. FDA's current regulations primarily address medicated feeds and prohibitions on feeding certain mammalian protein to ruminants, the latter of which is designed to prevent bovine spongiform encephalopathy (BSE).

Revisions to AFSS Framework Document: In the latest iteration of its AFSS framework document, FDA expanded on the work of its team in addressing current “gaps” in feed safety, and provided additional insights about how the risks from the presence of feed hazards can affect human or animal health adversely.

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- ▶ the number of employees at the facility, and each of their job functions;
- ▶ whether the facility operated only on a seasonal basis, and if so, what seasons it routinely operated;
- ▶ the facility's normal hours of operation; and
- ▶ the approximate annual dollar sales volume the facility and firm generated from FDA-regulated commodities and products.

In some cases, FDA personnel or contractors allegedly told NGFA-member companies that if they refused to provide what they considered to be proprietary business information being sought by the agency, they would be subjected to an on-site inspection and be required to divulge such information. Further, several NGFA-member companies alleged that they were informed by FDA personnel or agency contractors that if they refused to allow entry, FDA would designate such firms as uncooperative and pursue court action to require entry.

FDA Changes OEI Survey to Standardize, Improve Procedures: In part as a result of these industry concerns, FDA officials told the NGFA this week that the agency is in the process of standardizing and improving the script for the OEI telephone survey in an effort to promote consistency throughout its field offices. Further, FDA will include "only those essential questions" that it needs to ask as part of the OEI initiative to validate existing data that the agency has on regulated establishments, according to Michael C. Rogers, deputy director of FDA's Office of Regional Operations in Rockville.

In addition, Rogers said FDA has "made an effort to eliminate

questions that posed concerns or were viewed as sensitive business information" by regulated firms. He also said that FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine, which have jurisdiction over food, and animal feed and pet food, respectively, recognize the opportunity to inform industries about the OEI activity, are exploring ways to accomplish this, and plan to communicate how the information collected typically is used to identify FDA's need for inspection resources and its risk-based decision making on which establishments to deploy its inspection resources.

Among the types of questions expected to be eliminated from the OEI information collection are those dealing with the number of facility employees and their job functions, as well as the company's approximate annual volume of sales.

Further, given the justifiable diligence related to telephonic solicitation of business information, FDA concurs with the NGFA that if companies have concern that the person calling is an FDA official, it is appropriate to ask for the caller's contact information switchboard number, and to call the individual back before divulging such information. Rogers said FDA will instruct its personnel and contractors to identify themselves properly when calling.

The NGFA is in contact with the two FDA centers to determine how they intend to provide appropriate information to the grain, feed and grain processing industry about the OEI telephone surveys. NGFA members contacted by FDA as part of these surveys that have concerns over potentially inappropriate questions are encouraged to contact the NGFA's vice president of communications and government relations, Randy Gordon at rgordon@ngfa.org or at (202) 289-0873, extension 12.

CME Group Seeks Input on Grain, Oilseed Futures Contract Settlement Procedures

The CME Group is inviting futures market participants to provide input on the daily settlement procedures it uses for CBOT's grain and oilseed futures contracts.

The worldwide internet-based survey was issued Jan. 4, and the exchange is requesting responses by **Jan. 29**. Survey topics on which the CME Group is soliciting feedback include the following:

- ▶ How daily settlement prices for grain and oilseed futures markets should be established.
- ▶ The proportion of nearby months that should be settled to the electronic Globex system versus floor prices.

- ▶ Whether Globex trading should be extended to accommodate determination of settlement prices.

The survey also provides an opportunity for respondents to make additional comments on the grain and oilseed settlement process.

The survey takes approximately three minutes to complete. Survey responses are confidential, as only aggregated results are provided to the CME Group. Members receiving the **NGFA Newsletter** electronically may access the survey by [clicking here](#) or by pasting www.cmegroup.com/settlementsurvey into your internet browser.



USDA Invites Warehouse Operators to Submit UGRSA Rate Offers

...NGFA Plans to Survey Members on Public Tariff Rates to Determine Potential Applicability...

The U.S. Department of Agriculture's (USDA) Farm Service Agency this week sent letters to warehouse operators requesting that they submit offers by **Jan. 27** if they wish to change storage and handling rates under the Uniform Grain and Rice Storage Agreement (UGRSA) for the 2010-11 contract year, which begins April 1.

As it has done for several years, USDA's Jan. 11 letter states that warehouse operators who do not wish to make changes to their UGRSA rates need take no further action. In such instances, the current 2009-10 UGRSA contract rates will remain in effect through March 31, 2011, USDA said.

As reported in the Dec. 17 *NGFA Newsletter*, USDA still is in the process of reviewing its previous decision to generally no longer require federal- and state-licensed warehouse operators to obtain a UGRSA contract. Internal USDA discussions on the policy continue, and a decision is expected soon. However, the agency has cited benefits of the contract in protecting producers, other depositors and the Commodity Credit Corporation (CCC). In addition, USDA's Risk Management Agency's expressed desire to maintain the contract until at least 2011, in part because of a farm law provision that currently requires warehouse operators to either offer official inspection services, or be either federally licensed or have a CCC storage agreement (if state-licensed or unlicensed) to be eligible to make quality-loss determinations under the federal crop insurance program. Further, many farm programs utilize crop insurance as a risk-management tool; these synergies also contributed to a revisiting of the UGRSA policy, officials said.

USDA officials told the NGFA on Jan. 13 that they will analyze the rate offers submitted by UGRSA warehouses before recommending a course of action on rates. During a meeting with the NGFA's Country Elevator Committee on Dec. 6, USDA officials outlined three potential methods for UGRSA rate-determination, including: 1) the current offer-acceptance system, under which CCC can reject and negotiate warehouse rate offers; 2) national or regional storage and handling rates; and 3) utilizing the warehouse operator's public tariff rate.

For the last three consecutive years, USDA has frozen UGRSA storage and handling rates at previous-year levels. The current maximum UGRSA storage rate is 40 cents per bushel; the maximum handling rate is 21 cents per bushel (receiving and load-out), provided that neither the receiving nor load-out rate can exceed 10.5 cents per bushel.

NGFA to Survey Members on Public Tariff Rate: The NGFA has informed USDA officials of its opposition to setting national or regional storage and handling rates under the UGRSA, given the different value of storage and market

conditions in different locations. Importantly, in an effort to provide USDA with data on the benefits of potentially utilizing warehouse public tariff rates as the basis for UGRSA rate-determination, the NGFA plans to conduct a **confidential** survey of member companies that have grain-handling operations to request that they extrapolate their public tariff rates to a daily tariff rate for the **potential** application of the UGRSA. The survey likely will be distributed during the week of Jan. 18, with a request for responses in early February. **All results will be aggregated before being shared with USDA, with individual facility responses held in strictest confidence.** Thanks in advance for your cooperation!



Calendar

March 3-5, 2010: NGFA 114th Annual Convention
Westin Maui, Lahaina, Maui, Hawaii

March 3, 2010: NGFA Waterborne Commerce Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Membership & Marketing Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Country Elevator Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Trade Rules Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Grain Grades & Weights Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Rail Shipper/Receiver Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Risk Management Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA International Trade/Agricultural Policy Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Joint Agroterrorism/Facility Security Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Biofuels Committee
Westin Maui, Lahaina, Maui, Hawaii

March 4, 2010: NGFA Rail Arbitration Rules Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Biotechnology Committee
Westin Maui, Lahaina, Maui, Hawaii

March 5, 2010: NGFA Feed Legislative & Regulatory Affairs/
Feed Manufacturing & Technology Joint Committee
Westin Maui, Lahaina, Maui, Hawaii

NGFA Finance & Administration Committee
Westin Maui, Lahaina, Maui, Hawaii



EPA Issues Final Feed Rule on Emission Controls for Manufacturers Handling Chromium, Manganese Compounds

The Environmental Protection Agency (EPA) on Jan. 5 issued final regulations under the Clean Air Act governing emissions of chromium and manganese compounds from feed and feed ingredient manufacturers (*excluding* pet food manufacturers and facilities manufacturing feed on-farm or at feedlots).

Importantly, the regulations apply to facilities classified with a **NAICS code of 311119** (facilities “primarily engaged in manufacturing animal feed”), *provided*: 1) such facilities use a material containing 0.1 percent or more of chromium or 1 percent or more of manganese by weight; and 2) production of animal feed represents more than 50 percent of total annual production at the facility. EPA’s final rule expressly states that facilities “primarily engaged in raising or feeding animals are *not* considered prepared feeds manufacturing facilities.” [*Emphasis added.*] As an aside, integrated livestock and poultry operations may be classified under different NAICS codes (e.g., 112112 for hog and pig farming, or 112111 for beef cattle ranching and farming).

EPA issued the regulations to comply with a federal court order citing a Clean Air Act requirement that the agency identify and implement standards for at least 30 hazardous air pollutants that pose the greatest threat to public health in the largest number of urban areas. EPA’s final regulations contain the following requirements:

◆ **Management and Housekeeping:** The final rule requires facilities to minimize excessive dust that could contain chromium or manganese by: 1) manual sweeping; 2) removing dust from walls, ledges and equipment at least monthly; 3) keeping doors to the facility shut, except during normal entry and exit; 4) storing all raw materials containing chromium or manganese in closed containers; and 5) adding materials containing chromium or manganese to the mixer in a way that minimizes emissions, and covering the mixer at all times when mixing is occurring (except when materials are being added to the mixer).

◆ **Control Measures:** The final rule requires that during loadout of bulk feed or feed ingredients, a device be used that reduces the distance between the loading arm and the truck or railcar to reduce fugitive emissions of chromium and manganese. Examples of such devices cited by EPA include drop socks, flexible spouts and any device that reduces the distance between the loading arm and the truck or railcar “to a degree that avoids dust.” EPA does not define “loading arm” in the rule, and the

NGFA will seek clarification on how this requirement is to be applied.

In addition, for pelleting operations at facilities with an average daily feed or feed ingredient production level exceeding 50 tons per day, EPA’s final rule requires that emissions be captured and routed to a cyclone designed to reduce emissions of particulate matter by 95 percent or more. EPA initially had proposed that a cyclone efficiency rating of 95 percent or greater apply to all particulate matter 10 microns in size or smaller. But even with this reduced requirement, it is likely that some older cyclones will not meet the efficiency standard mandated in EPA’s final rule.

◆ **Inspection and Monitoring Requirements:** The EPA final rule requires covered facilities to inspect the following equipment to ensure it is functioning properly: 1) monthly inspections of the device used during bulk loadout to minimize fugitive emissions of chromium and manganese; and 2) quarterly inspections of pellet cyclones for corrosion, erosion or other damage that could result in air leakage. In addition, when the pelleting process is operating, the facility is to monitor and record at least daily the pellet cyclone inlet flow rate, inlet velocity, pressure drop or fan amperage; this may necessitate installation of monitoring equipment by many facilities.

◆ **Notification, Reporting and Recordkeeping Requirements:** Covered facilities are required by **May 5** to provide initial notification to EPA that they handle chromium and manganese at levels equal to or exceeding the threshold level, and hence are subject to the regulations. Existing facilities then are required to submit a notification of compliance status to EPA on or before **May 4, 2012**; newly constructed facilities subject to the regulations are to submit such notification within 120 days of initial startup, or by May 4, 2012, whichever is later. Subsequently, every March 1 thereafter, covered facilities are required to submit to EPA annual compliance certification reports for the previous calendar year. Covered facilities are to maintain required records, notifications and reports for at least five years.

[Click here](#) to access EPA’s final rule. See the special edition of *NGFA Plant Operations Bulletin* accompanying this *NGFA Newsletter* for a comprehensive report on the final rule’s requirements.





Growing NGFA's Legislative Influence – Role of Grain and Feed PAC

It's the New Year and Congress returns next week to an agenda that will have serious impact on the grain, feed and processing industry!

As part of its legislative efforts, NGFA is taking aggressive steps to motivate member companies to play an active role in educating public policy decision makers in Washington. We have developed a broad government relations strategy that includes significant staff resources devoted to working with Congress and administrative agencies, getting our membership engaged in conversations with their elected officials on priority issues and leveraging NGFA's political action committee – Grain and Feed PAC – to gain greater access to decision makers.

The NGFA's Grain and Feed PAC is a small but integral part to the success of this broad strategy. And now, more than ever, we believe strategically placed donations will provide the access we need to make the industry's case to lawmakers on critical issues of bottom-line importance to NGFA member companies! In this new year, the NGFA will be asking more from you than we have before – the current situation in Washington dictates a different, more aggressive approach. Increasing NGFA's PAC presence will help us represent your interest the best we can on Capitol Hill.

The challenges facing the industry in 2010 are huge, daunting and more diverse than experienced in many years. Topping the list, of course, is the climate-change legislation that as currently written would divert upwards of 59 million acres of cropland and pasture into forest by 2050. Coupled with the Conservation Reserve Program, this would idle 22 percent of U.S. cropland. Also, on the NGFA's legislative priority list are bills that would reform the financial regulatory system, which among other things would affect futures contracts, market speculation, derivatives and the role of the Commodity Futures Trading Commission. Legislation also is likely to be considered addressing food and feed safety, safety and combustible dusts, restrictions on mandatory arbitration clauses in contracts, easing labor union organizing and the future of biofuels policies.

Rather than shrink from these challenges, it is NGFA's intention to meet them head on while also being proactive in addressing opportunities in these new times. For instance, for the first time in 30 years, there's a chance Congress will enact rail reform legislation. Also, likely to be considered is transportation infrastructure legislation addressing the funding shortages for major rehabilitation and construction on the nation's inland waterways and a new highway bill. There even may be an opportunity to secure movement in the Senate on long-pending free trade agreements to provide more access to U.S. agricultural products in world markets.

Whether it is confronting legislative challenges or capturing opportunities, the NGFA and its member companies need to be fully engaged and committed to the process. Just the small list of issues identified here encompass congressional committees well beyond the NGFA's usual sphere – Banking; Financial Services; Health, Education, Labor and Pensions; Commerce, Transportation and Infrastructure; Environment and Public Works, etc. – the list just continues to grow!

Traditionally, the NGFA's Grain and Feed PAC has played only a minor supporting role in the NGFA's legislative strategy. While the PAC will never be the dominant aspect of NGFA's legislative strategy, there is a great opportunity to leverage it to enhance the other pillars of our strategy – which focus on doing our homework to build a convincing case for NGFA policies on legislation, enhancing the ability of NGFA members to contact their members of Congress on key issues, and expending considerable staff resources to positively influence the outcome.

Clearly, the political climate and policy landscape have changed! The NGFA, too, must adapt. That is why NGFA's Grain and Feed PAC is poised to play an integral role in the Association's strategy in 2010. The NGFA has set aggressive targets for its PAC. Rather than rest on a goal of \$25,000 per year as has been established in the past, the NGFA has set a new goal of increasing it to \$100,000 for 2010 and recruiting more than 200 individual NGFA member companies to participate.

The NGFA already has made some strides to help meet this fundraising challenge. We have four individuals that have pledged to contribute \$5,000. The NGFA president, Kendell Keith, has pledged to contribute \$2,500. The \$100,000 is an achievable goal. A number of representatives of NGFA-member companies have responded to a challenge NGFA Chairman Tom Coyle issued last fall. There also was a good turnout for the NGFA Grain and Feed PAC event featuring Rep. Lynn Jenkins, R-Kan., during the Country Elevator/Feed Industry Conference in December. With political elections sneaking up quickly in November 2010, NGFA's Grain and Feed PAC is at a critical juncture in making a difference that will help members' public policy agenda.

Reaching this ambitious funding goal will improve the prospects that the NGFA will have a "seat at the table" as Congress contemplates big policy changes. **So, we ask that you seriously consider the Grain and Feed PAC as NGFA fights for you on Capitol Hill!**

As the NGFA moves forward, your involvement in highlighting the "on-the-ground" implications of public policy decisions is going to be critical to achieving the industry's policy goals in

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the nation's capital. I have experience in working with key decision makers for a federal agency, and cannot stress enough the importance of the grassroots advocacy efforts to this process. Writing letters, making phone calls, attending NGFA-sponsored events and contributing to NGFA's Grain and Feed PAC will help protect your company's interests in public policy.

Washington may seem like a daunting place, and the issues too big for one person to make a difference. But the NGFA can have a meaningful impact by working in concert toward the goal of ensuring a thriving, competitive and growing U.S. agricultural sector. Remember, every major piece of legislation that has been approved over the last 11 months has only passed by a handful of votes! We don't need to change the vote of every congressman or senator; in fact, the outcome of key votes can be changed by convincing just a handful of the right ones!

Coming soon, the NGFA will roll out an online advocacy tool that will make it easier for you to contact your congressman and senators to voice your policy views and concerns, as well as to

support key legislative initiatives. This strategic grassroots movement will work in concert with Grain and Feed PAC and NGFA's staff to most efficiently utilize the industry's resources. Watch for more information on this advocacy tool in the Jan. 28 edition of the *NGFA Newsletter*.

Look for issue-oriented Grain and Feed PAC columns in future editions of the *NGFA Newsletter*, as well as the unveiling of the NGFA's new online member advocacy tool!

We are very excited about the changes here at the NGFA, and hope you are as well. Please don't hesitate to contact NGFA's Director of Legislative Affairs and PAC Treasurer Chris Holdgreve or me – Eleanor Rollings – at 202-289-0873. I look forward to interacting with many of you in my newly created role as director of public policy relations at the NGFA and helping to enhance NGFA-member company involvement in the association's government relations strategy.

Thanks!

Inland Waterways Users Board Approves Plan to Improve Project Delivery

At the December meeting of the Inland Waterways Users Board, the 11-member panel endorsed the recommendations of the Inland Marine Transportation System Capital Investment group to revamp project delivery, allow for new construction and rehabilitation to begin and alter the funding mechanism to provide greater investment from both the federal government and industry. The group of industry representatives, navigation experts, economists and engineers have been meeting throughout the year to develop a 20-year Capital Development Plan. Issues with funding, cost overruns and construction efficiency have hampered the inland waterways system for several years. Despite the passage of a comprehensive Water Resources Development Act (WRDA) which authorized a number of new projects — including those on the Upper Mississippi River and Illinois Waterway — no new starts were expected to begin in the near term and the construction schedule was estimating completion of current projects to occur well past deadline and well over budget.

Key to the report's recommendations are changes to the Army Corp of Engineers' project delivery and design management processes. The Capital Investment team's recommendations include a more active role for the Inland Waterways Users Board (IWUB) in approving new starts and regular status briefing from the Corps. In addition, the report calls for a priority list based on project criteria, independent external peer review, project management certification for Corps project managers, standardizing designs, contractor involvement earlier in

the design phase and the adoption of relevant concepts from the Corps' Military Construction program.

The 20-year plan calls for \$380 million per year allocated to programs with projects funded efficiently based on a prioritized list. The funding would include \$320 million for new construction and \$60 million for major rehabilitations. These levels would allow for new starts on Lock and Dam 25 by 2011, LaGrange in 2017, Lock and Dam 22 in 2022, and Lock and Dam 24 in 2024. Importantly, the funding mechanism would be altered — while the basic cost share of new construction would remain 50 percent federal and 50 percent from the Inland Waterways Trust Fund (IWTF), major rehabilitation projects less than \$100 million would be 100 percent funded through federal funds, as would all dam work. A cost-sharing cap would be developed for projects, and any funds needed above the cap would come at 100 percent federal expense. To implement the proposal, the IWTF would need revenue of \$110 million per year necessitating an increase in the fuel tax from 6 to 9 cents per gallon.

The final plan will be presented to the IWUB during their spring meeting, and Congress would have to pass legislation in order for a number of the changes to be implemented. Another WRDA bill, expected to be passed this year, could include the needed changes, or they could be made through the Energy and Water Appropriations bill. The NGFA will be considering the proposal and its impacts on agricultural shippers at the 114th Annual Convention in Maui, HI the first week of March.





Feed Regulators to Develop Checklist for Model Feed, Ingredient Regs

During its meeting scheduled for Jan. 19-21, the Association of American Feed Control Officials (AAFCO) – the organization of state and federal feed regulatory agencies – is scheduled to develop an inspection checklist that would be used by feed regulatory officials when determining whether a firm is complying with the association's new model current good manufacturing practice (CGMP) regulations for feed and feed ingredients.

The model CGMP regulations were approved by AAFCO on July 31 and establish baseline standards that would apply – for the first time – to non-medicated feed and feed ingredients, including potentially on-farm. Importantly, individual states would need to adopt the model CGMP regulations as part of their feed laws before the standards take effect and are enforceable within that state. The model regulations contain sections on receiving and storage of feed and feed ingredients; maintenance and housekeeping; equipment suitability and testing; manufacturing, including practices for minimizing the risk of adulteration and ensuring product safety; recordkeeping; labeling and packaging; storage of finished products; transportation and distribution; and voluntary recall and withdrawal from distribution procedures.

The NGFA interacts extensively with AAFCO. Among other things, NGFA industry members and staff serve as non-voting advisers to key AAFCO committees, and will participate actively in the upcoming meeting.

Other Issues: Other significant issues to be addressed during the upcoming AAFCO meeting include the following:

▶ **AAFCO Voluntary HACCP Checklist:** AAFCO's Feed Manufacturing Committee is scheduled to review a draft of the AAFCO Voluntary Hazard Analysis and Critical Control Point (HACCP) Checklist to determine if there are any conflicts with the AAFCO Model CGMP regulations. The draft HACCP checklist was created by feed regulatory officials and is based upon a HACCP verification program previously developed by an AAFCO task force.

▶ **Carbohydrate Claims on Feed Labels:** AAFCO's Feed Labeling Committee will consider a proposal that would establish specific requirements for labels when claims are made pertaining to the levels of dietary starch, sugars, or fructans present in a commercial feed (excluding pet food). The proposal – developed by an AAFCO working group – would require that the labels of such feeds include: 1) guarantees for maximum percentage of dietary starch and maximum percentage sugars; 2) a maximum percentage guarantee for fructans, if the feed contains forage products; and 3) feeding directions that indicate the proper use of the feed product and a recommendation to consult with a veterinarian or nutritionist for a recommended diet.

▶ **FDA Issues:** Food and Drug Administration (FDA) officials are scheduled to brief attendees on: 1) the agency's food protection plan; 2) implementation of its registry for electronically reporting adulterated food, feed and feed ingredients that pose a danger of causing serious adverse health consequences or death to humans or animals; and 3) implementation of the agency's enhanced feed rule for preventing bovine spongiform encephalopathy by banning the use in all feed of brain and spinal cord from cattle 30 months or older.

▶ **Training, Certification of Feed Inspectors:** AAFCO's Inspection and Sampling Committee will continue work on implementing proficiency training and certification of inspectors. AAFCO and FDA previously have agreed on a core curriculum that all inspectors would be required to complete to be eligible for certification by FDA. It is anticipated that state inspectors at some point in the future will need such certification before conducting inspections on behalf of FDA.

▶ **Feed Ingredient Definitions and Approvals:** Among other things, the AAFCO Ingredient Definition Committee will consider:

- Establishing a new ingredient definition for wheat gluten.
- Changing the definitions for soybean meal, dehulled, solvent extracted; soybean meal, mechanical extracted; and soybean meal, solvent extracted to require that the labels of such ingredients contain the following statement when a conditioning agent is used: “_____ has been added not to exceed 0.5% as an anticaking or conditioning agent.”
- Including within the AAFCO *Official Publication*, a list of processing aids that have been approved by FDA or for which the agency has issued a letter of no-objection for use during the production of biofuel co-products distributed as feed ingredients, such as distillers grains. The committee also will consider whether in the future to evaluate such processing aids within its established ingredient definition approval process.

▶ **Caloric Content on Labels of Pet Food:** AAFCO's Pet Food Committee will consider the concept of requiring mandatory calorie content statements on all pet foods, including snacks and treats. To facilitate the discussion, an AAFCO working group established to study the issue will provide a report and recommendation.

▶ **Processes for Feed Ingredient Approval:** During a general session program, representatives from FDA and AAFCO will provide an overview of the processes available through which ingredients may be approved and legally marketed for use in feed and pet food.

The NGFA will report the outcomes from the AAFCO meeting.



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The NGFA has provided extensive comments on each of the previous AFSS framework documents issued by FDA, including the third one that was replaced by the new version.

As with the third edition, FDA's fourth version of the framework document identifies six major components for the AFSS: 1) feed ingredients and the ingredient-approval process; 2) establishing limits on hazards that may be present in feed and feed ingredients; 3) controls for reducing hazards in the production of feed and feed ingredients to acceptable levels that protect human and animal health; 4) reporting of unsafe feed to the agency; 5) regulatory oversight; and 6) education and outreach. Within each component, FDA identifies "gaps" in its current regulatory approach and discusses ways to address them.

FDA's latest framework document notes that the AFSS for the first time will apply a systematic approach for ranking risks posed by various potential feed hazards in relation to one another. Under this approach, the agency's framework states that its risk-ranking method "will try to account for the whole feed manufacturing continuum, from feed hazards present in incoming materials or feed ingredients (product-related risks), through the modulation of these feed hazards (whether they increase, decrease or remain at the same level) by manufacturing processes (process-related risks), to how the feed ingredients and mixed feed are handled at various establishments – feed manufacturers, transporters and on-farm mixers (facility-related risks).

The new framework document also discusses the new approach FDA plans to take in allowing the use of third-party certification. It notes that the agency has issued a guidance document for third-party certification programs. FDA states that such programs "are not intended to take the place of inspections performed by a regulatory agency," but that firms participating and compliant in "recognized" third-party programs likely pose a lower risk than those that are not. It also states that firms purchasing ingredients and other raw materials from suppliers that participate in and are in compliance with recognized third-party programs "may have more control over their processes than firms that do not do this." However, FDA currently has not established standards or processes for "recognizing" third-party certification programs.

Other revisions made by FDA in the fourth edition were:

- ▶ The addition to the document's operating principles of an "active and aggressive research program" to generate data to assist in addressing feed safety questions and gaps.
- ▶ The reiteration that FDA intends to implement an interim policy concerning a pilot program under which the agency will allow use of manufacturer "generally recognized as safe" (GRAS) notifications to attest to the safety of feed ingredients.

- ▶ A confirmation that it will need to re-propose regulations first proposed in December 1991 that would require medicated feed manufacturers to report adverse experiences associated with all medicated feeds they manufacture, not just those that require a license from FDA because of potency, withdrawal times, etc.
- ▶ An expanded discussion of FDA's Reportable Food Registry, under which facilities registered with FDA under the Bioterrorism Act are required to report into an electronic portal within 24 hours after determining that an adulterated product that has left their control would present a "reasonable probability" of causing serious adverse health consequences or death to humans or animals." [See *NGFA Newsletter*, Dec. 17, page 7 for details on the registry.]
- ▶ An update to reflect implementation of the agency's web-based system for posting recently approved "Blue Bird" labels that feed mills manufacturing medicated feed are to use.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the latest version of the 22-page FDA AFSS framework document.

Michael Taylor Named FDA Deputy Commissioner for Foods

Commissioner of Food and Drugs Margaret Hamburg on Jan. 13 named **Michael R. Taylor** to the newly created position of deputy commissioner for foods at the Food and Drug Administration (FDA).

In that role, Taylor will oversee all food and feed safety programs within the agency, including those in its Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine, as well as the food-related inspection programs managed by FDA's Office of Regulatory Affairs. Taylor began his career as an FDA staff lawyer in 1976 and served as the agency's deputy commissioner for policy in the 1990s. Most recently, prior to returning to FDA in July 2009 as Hamburg's senior adviser for food safety, Taylor was a research professor at George Washington University's School of Public Health and Health Services in Washington.

"Food safety and nutrition are major priorities for the (Obama) administration, and for FDA," Hamburg said. "With high-level support for our public health mission and new food safety legislation under development in Congress, we have an historic opportunity for change."



OSHA Issues New Policy on Sweep Augers Inside Grain Bins

The Occupational Safety and Health Administration (OSHA) on Dec. 24 signed a “letter of interpretation” that creates a new policy for operating sweep augers inside grain bins.

The letter was in response to questions posed by an insurance representative, who had asked: 1) if a sweep auger can be operated in a bin with an employee present; and 2) if not, what method or procedure OSHA would find acceptable for removing grain from flat-bottom grain bins.

Other than a provision in the OSHA grain handling safety standard (1910.272) that addresses whether an employee may enter a bin when machines are operating, OSHA does not have a formal policy addressing the operation of sweep augers. In August 2009, representatives from the NGFA and Grain Elevator and Processing Society (GEAPS) met with OSHA officials to discuss the methods and procedures used for the operation of sweep augers inside grain bins. The meeting was based upon OSHA’s request to learn more about the process of removing grain from a bin as it developed a response to the letter received from the insurance company representative, not associated with the NGFA, who had asked the agency to explain its “policies and procedures” for operating a sweep auger.

OSHA agreed to meet with the NGFA and GEAPS to discuss how sweep augers operate, how they are used within the grain handling industry and how the initial best practices document was developed prior to issuing a response to the insurance representative’s second letter. Representatives of three OSHA entities were involved in the meeting – the Directorate of Standards and Guidance, the Directorate of Enforcement Pro-

grams and the Solicitor’s Office. During the meeting, several means of addressing employee safety while operating a sweep auger were discussed, including: 1) job safety analysis; 2) lockout/tagout of equipment; 3) confined space entry permits; 4) machine guarding; and 5) providing space between auger and employee while the auger is in use. The NGFA and GEAPS also emphasized that in the preamble of the grain handling standard, OSHA based the final language for Section 1910.272(g)(1)(ii) on comments that more flexibility is needed to protect employees from equipment when working inside bins, silos or tanks.

In its response letter, OSHA stated that an **employee cannot work inside a bin while an unguarded sweep auger is in operation**. Further, the agency did not offer any other type of procedure to remove grain from a bin if an unguarded auger cannot be used. Further, OSHA did not define what is meant by guarded or unguarded. The NGFA’s Safety, Health and Environmental Quality Committee will meet in February to further discuss the letter of interpretation and identify next steps to address the issue.

After obtaining a copy of OSHA’s letter of interpretation, the NGFA learned that the agency’s Directorate of Enforcement Programs supported many of the recommendations that NGFA and GEAPS made during the August meeting and included them in the first draft of the response letter. However, based upon recent incidents in grain-handling facilities involving falls and engulfments that have resulted in fatalities, the OSHA solicitor’s office changed the agency’s response, banning employees from working inside bins while unguarded sweep augers are operating.

Industry Reminded to Post OSHA 300A Forms from Feb. 1-April 30

Facilities that employed more than 10 persons at any time during the past calendar year are reminded to post summary Occupational Safety and Health Administration (OSHA) 300A forms from Feb. 1 to April 30.

The OSHA 300 form is a log of all recordable work-related injuries or illnesses, which are to include those that result in death, loss of consciousness, lost workdays, restricted work activity or job transfer, medical treatment beyond first aid, or any significant incident that is diagnosed by a physician or other licensed health care professional. Each recordable injury/illness is to be logged on a line of the OSHA 300 form, as well as recorded on the OSHA Form 301 or another equivalent form that constitutes an injury and illness incident report.

The OSHA 300A form is a summary of the OSHA 300 log, and is to designate incidents that occurred during the previous

calendar year. Importantly, OSHA Form 300A is to be posted even if no work-related injuries or illnesses occurred during the preceding year. The form, which includes information on the number of cases, number of days of job transfer or restriction, and injury and illness types, is to be posted in an area that is conspicuous and where other notices normally are posted.

Employers are required to maintain a log for each establishment or work site. If a company has more than one establishment, separate logs and summaries are to be maintained and posted for each physical location that is expected to be in operation for one year or longer.

Members receiving the *NGFA Newsletter* electronically may obtain more information on the OSHA 300 log and accident/illness reporting requirements from the agency’s website by [clicking here](#).



Kapraun Wins 'Washington Weekend' Membership Prize!

...Big Membership Recruiting Push Now On!...

Sponsors of 31 new NGFA-member firms that joined during the fall were entered in a high-stakes random drawing for a "Washington Weekend" comprised of the following:

- ▶ Airfare for two to Washington, D.C.
- ▶ Two nights' luxury accommodations at the L'Enfant Plaza Hotel.
- ▶ Drinks and unparalleled views of monumental DC at the rooftop "POV" lounge high atop the W Hotel overlooking the White House.
- ▶ Dinner at the W Hotel's "J&G Steakhouse," one of Washington's hottest new dining destinations.

At the conclusion of the tension-filled and closely-monitored drawing, the deserving winner was:

Joe Kapraun, manager, grain marketing, GROWMARK Inc., Bloomington, Ill.!!!

Congratulations to Joe, who qualified for the drawing by sponsoring the membership of Great Lakes Grain LLC, Chatham, Ontario, Canada. His signing of Great Lakes Grain gives Joe two new NGFA member companies to his credit during the current membership year, which runs until the NGFA's 114th annual convention in Maui on March 3-5.

Recruiting in the Home Stretch: With the membership year expiring in less than two months, it's time for the traditional sprint to the finish line of the 2009-10 membership campaign! All membership recruiters are urged to contact their prospects and get them signed up now! Fabulous membership prizes will be awarded to membership recruiters at the Maui convention. Watch this space for details soon!



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