



## Outlook for Major Federal Policy Issues in 2010

As the New Year approaches, the NGFA provides this snapshot of several key federal policy issues important to the grain, feed and processing industry on which the Association is working extensively, and which will be in the spotlight in 2010:

► **Climate-Change Legislation:** The focus on climate-change legislation will shift to the Senate, which has yet to develop an approach to cap-and-trade that could garner the support of 60 senators necessary to avoid a Republican-led filibuster. Moderate Democrats facing reelection in 2010 are urging Senate Majority Leader Harry Reid, D-Nev., who is among those facing the ballot box, to delay action on any Senate legislation until 2011, particularly after the bruising battle over health-care reform. But the White House is expected to exert pressure on the Senate to act to buttress commitments made by President Obama during the international climate-change confab in Copenhagen, Denmark earlier this month.

Sens. John Kerry, D-Mass., Lindsay Graham, R-S.C., and Joe Lieberman, I-Conn., continue to work to develop what they hope will be a bipartisan climate-change bill, all but ignoring the bill (S. 1733) authored by Kerry and Sen. Barbara Boxer, D-Calif., the latter of whom chairs the Senate Environment and Public Works Committee that approved the measure on Nov. 5. Separately, Sens. Maria Cantwell, D-Wash., and Susan Collins, R-Maine, introduced alternative legislation on Dec. 11 that does **not** contain a cap-and-trade feature. Instead, it would require reductions in carbon emissions by 20 percent by 2020 and 83 percent by 2050 compared to 2005 levels, and require emitters to purchase government-issued, non-tradeable “carbon shares” at monthly auctions. The Senate process will be a cumbersome one, with at least five committees having jurisdiction over one or more aspects of climate-change legislation.

The House approved its bill (H.R. 2454) on June 26 by a 219-212 margin. The House-passed measure would require a 17 percent reduction in carbon emissions from major U.S. sources by 2020 – and an 83 percent reduction by 2050 – compared to 2005 emission levels. The House bill would establish a carbon-allowance cap-and-trade system starting in 2012 under which 75 percent of carbon-emission allowances would be provided to emitters initially at no cost, with remaining allowances sold at auction. By 2030, 75 percent of carbon allowances would be sold by the U.S. Environmental Protec-

### U.S. Senate Elections in 2010

#### Retiring Senators

Ted Kaufman, D-Del.  
Christopher “Kit” Bond, R-Mo.  
Sam Brownback, R-Kan.  
Mel Martinez, R-Fla.  
George Voinovich, R-Ohio

#### Democratic Incumbents Running for Reelection

Blanche Lincoln, Arkansas  
Barbara Boxer, California  
Michael Bennet, Colorado  
Christopher Dodd, Connecticut  
Daniel Inouye, Hawaii  
Roland Burris, Illinois  
Evan Bayh, Indiana  
Barbara Mikulski, Maryland  
Harry Reid, Nevada  
Kirsten Gillibrand, New York  
Charles Schumer, New York  
Byron Dorgan, North Dakota  
Ron Wyden, Oregon

Arlen Specter, Pennsylvania  
Patrick Leahy, Vermont  
Patty Murray, Washington  
Russ Feingold, Wisconsin

#### Republican Incumbents Running for Reelection

Richard Shelby, Alabama  
Lisa Murkowski, Alaska  
John McCain, Arizona  
Johnny Isakson, Georgia  
Mike Crapo, Idaho  
Charles Grassley, Iowa  
Jim Bunning, Kentucky  
David Vitter, Louisiana  
Judd Gregg, New Hampshire  
Richard Burr, North Carolina  
Tom Coburn, Oklahoma  
James DeMint, South Carolina  
John Thune, South Dakota  
Bob Bennett, Utah

tion Agency under the cap-and-trade approach.

► **Rail Legislation:** The Senate is expected to consider major rail reform legislation (S. 2889) sometime during the first half of 2010, following passage of the measure on Dec. 17 by the Senate Commerce, Science and Transportation Committee. [See Dec. 17 edition of the *NGFA Newsletter* for complete details on the bill.] It is expected that additional changes will be incorporated into the bill prior to floor consideration, potentially including language modifying freight railroads’ current antitrust exemption that is being developed by Sen. Herb Kohl, D-Wis. Meanwhile, the House Transportation and Infrastructure Committee, chaired by Rep. James Oberstar, D-Minn., is expected to develop its own version of freight rail reform legislation during 2010.

► **Food/Feed Safety Legislation:** The Senate during the first few months of the new year is expected to consider major food and feed safety legislation (S. 510) that was ap-

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proved on Nov. 18 by the Senate Health, Education, Labor and Pensions Committee. The NGFA continues to work to secure additional improvements to the Senate bill, and it is expected that a slightly modified version will be offered prior to Senate floor consideration. The Senate version of the bill generally is more science- and risk-based than – and is much preferable to – a House-passed bill (H.R. 2749) that was approved on July 29. The House measure also would grant more expansive powers to the Food and Drug Administration (FDA) than the Senate version. While some preliminary, informal discussions between the sponsors of the Senate measure and the House have begun over the contents of a final bill, it is unknown at this stage whether either chamber will be willing to accept the version adopted by the other in an effort to avoid a joint House-Senate conference committee to reconcile the considerable differences between the two measures.

Both bills would require all facilities registered with FDA (domestic and foreign, including grain elevators, feed and feed ingredient manufacturers, grain processors, exporters and others) to assess and develop procedures and written plans to address hazards that adversely could affect human or animal health. The legislation also would significantly expand FDA's access to company records, and grant the agency mandatory recall authority if companies refuse to implement recalls voluntarily. A comparison of the Senate and House food/feed safety bills is available on the NGFA's website by [clicking here](#). [Also see the Dec. 3 edition of the *NGFA Newsletter* for a report on the Senate committee's bill.]

► **Financial Services Regulatory Reform:** Senate action also is anticipated in 2010 on legislation that would reform the U.S. financial system. Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd, D-Conn., on Nov. 10 introduced a draft bill that was the subject of a committee markup hearing on Nov. 19. The House passed its version of a bill (H.R. 4173) on Dec. 11, which among other things would for the first time authorize federal regulation of over-the-counter derivatives and includes a troubling provision that would statutorily define what constitutes a "bona-fide" hedge. Other provisions that would require the Commodity Futures Trading Commission (CFTC) to establish position limits for all exchange-traded commodities and grant broad exemption authority to the agency from setting such limits mirror the approach already taken for enumerated agricultural commodities, such as grains and oilseeds.

Several provisions of Dodd's draft Senate bill mirror the House-passed measure, including: 1) establishing a new Consumer Financial Protection Agency to "protect American

Consumers from fraud and abuse"; 2) establishing a process for shutting down "too-big-to-fail" financial institutions; 3) creating an Agency for Financial Stability to impose increasingly strict rules for capital, leverage, liquidity, risk management and other requirements as financial institutions grow in size, and empowering federal regulators to "break up large, complex companies if they pose risks to the financial system"; 4) authorizing the Securities and Exchange Commission and CFTC to regulate over-the-counter derivatives, including a requirement that hedge funds register; and 5) giving shareholders leverage to exert greater influence over executive compensation levels.

► **2012 Farm Bill:** House Agriculture Committee Chairman Collin Peterson, D-Minn., has announced his intent to launch hearings this spring to jump-start the process of developing a 2012 farm bill. He also has warned farm groups not to expect additional funding beyond the budget baseline, and indicates he expects more focus on a revenue-based farm safety net in the next iteration of the farm bill.

► **FDA Animal Feed Safety System Proposed Regulations:** After nearly four years of study, public meetings and internal deliberations, FDA's Center for Veterinary Medicine (FDA/CVM) in 2010 is expected to propose regulations that for the first time would encompass all animal feed, feed ingredient and pet food manufacturers and distributors, including transporters. A product of its Animal Feed Safety System (AFSS) initiative, the proposed regulations are expected to require firms to analyze hazards that could be present in their operations that could adversely affect human or animal health, and develop controls designed to prevent such hazards from occurring. The agency has completed writing the proposed regulations, and is in the midst of completing an economic impact analysis required to accompany the proposal. Current FDA/CVM regulation of animal feed largely is limited to medicated feed and regulations that prevent the use of certain mammalian material in animal feed to reduce the risk of bovine spongiform encephalopathy.

► **USDA Grain Warehouse Storage Contract:** The U.S. Department of Agriculture's Farm Service Agency (FSA) early in 2010 is expected to decide to change its previous decision and retain the Uniform Grain and Rice Storage Agreement (UGRSA) contract with warehouse operators. When doing so, FSA also will be determining which type of process to use to determine storage and handling rates under the UGRSA contract, which applies to grains, oilseeds, rice and pulses, but not to cotton, peanuts or sugar. FSA is considering whether to: 1) retain the current offer-acceptance rate system, under which warehouse operators have the option to submit new rate

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offers under a streamlined process, with the Commodity Credit Corporation (CCC) having the latitude to reject, negotiate or accept the rate offers; 2) set national or regional rates; or 3) accept the warehouse operator's public tariff rate for storage and handling of CCC-owned commodities covered under the UGRSA contract. [See *NGFA Newsletter*, Dec. 17 for more details.]

► **OSHA Combustible Dust Standard:** The Occupational Safety and Health Administration (OSHA) in late 2010 is expected to propose a comprehensive combustible dust standard that would apply across various industry sectors. The agency on Oct. 21 issued an advance notice of proposed rulemaking, posing a series of 69 questions (several with multiple sub-questions) on which it is seeking comment by Jan. 19 and which will serve as the basis for developing proposed

regulations. OSHA also conducted an initial "stakeholder" public meeting on Dec. 14, and has scheduled two more. [See *NGFA Newsletter*, Dec. 17 for more details.]

► **Environmental Regulations for Feed Mills:** The U.S. Environmental Protection Agency (EPA) in early January is expected to make public the final rule that will govern emissions of certain compounds from commercial feed and feed ingredient manufacturing facilities. EPA Administrator Lisa Jackson signed the final rule on Dec. 16 to comply with a federal court order, but the new standard has not been released yet. EPA's proposed rule would apply to the vast majority of feed manufacturers that use chromium or manganese compounds in their operations. [See *NGFA Newsletter*, Dec. 17 for more details.]

## New Senate Agriculture Subcommittee Leadership Announced

New leadership of three subcommittees of the Senate Agriculture, Nutrition and Forestry Committee has been announced by new Chairman Blanche Lincoln, D-Ark.

The committee reorganization was necessitated when Lincoln assumed the chairmanship from Sen. Tom Harkin, D-Iowa, who now chairs the Senate Health, Education, Labor and Pensions Committee following the death of Sen. Edward Kennedy, D-Mass. The changes involve the following senators:

- **Sen. Debbie Stabenow**, D-Mich., will chair the Subcommittee on Rural Revitalization, Conservation, Forestry and Credit, a post previously held by Lincoln.
- **Sen. Michael Bennet**, D-Colo., will chair the Subcommittee on Energy, Science and Technology, the post previously held by Stabenow.

► **Harkin** will assume a seat on the Subcommittee on Rural Revitalization, Conservation, Forestry and Credit; the Subcommittee on Hunger, Nutrition, and Family Farms; and the Subcommittee on Production, Income Protection and Price Support. Each of those posts previously were held by Lincoln.

Lincoln and ranking member Saxby Chambliss, R-Ga., serve as ex officio members of all subcommittees by virtue of their office.

Lincoln also announced the selection of **Julie Anna Potts** to serve as chief counsel for the Senate committee. Potts, an Alabama native, previously was general counsel for the American Farm Bureau Federation. Prior to that, she was an attorney with Mayer Brown LLP in Washington, and a law clerk at the U.S. District Court for the District of Columbia circuit.

## Nebraska Grain Elevator Cited by OSHA for Suffocation Incident

A Nebraska grain elevator has been cited by the Occupational Safety and Health Administration (OSHA) with one alleged willful and nine alleged serious violations following the death of an employee who suffocated in a boot pit on June 19.

In announcing the proposed citations on Dec. 15, the agency alleged that the elevator failed to comply with its permit-required confined space regulations. A willful violation citation was issued based upon the agency's allegation that the company did not evaluate permit-required confined space conditions by testing the atmospheric conditions in the boot pit for oxygen and

carbon dioxide levels prior to allowing the employee to enter the space. The agency said it issued serious citations against the firm for alleged failure to adequately address hazards associated with walking and working surfaces, permit-required confined spaces, grain handling facilities and wiring methods. Proposed fines total \$120,700.

The company has 15 business days from receipt of the citations to comply, request an informal conference with OSHA's area director in Omaha, Neb., or contest the findings before the Occupational Safety and Health Review Commission.



## NGFA's 38<sup>th</sup> Annual Country Elevator and 13<sup>th</sup> Annual Feed Industry Conference

### ...A Pictorial Review of Conference Program Highlights...

Despite the delayed harvest that prevented many from attending, nearly 500 country elevator and feed mill managers, as well as allied industry members, converged on Kansas City, Mo., on Dec. 6-8 for the NGFA's Country Elevator and Feed Industry Conference.

They were treated to an outstanding array of speakers on diverse topics vitally important to grain elevators, feed and feed ingredient manufacturers, and integrated livestock and poultry operations. The event was complemented by a trade show featuring 84 exhibitors – the second highest ever – that showcased the latest products and services for the industry.

The PowerPoint presentations of conference speakers are available by clicking the conference icon on the NGFA website's homepage at [www.ngfa.org](http://www.ngfa.org). Members receiving the *NGFA Newsletter* electronically may [click here](#) to access those presentations directly.

Mark your calendars now for the 2010 edition of this outstanding conference, scheduled for **Dec. 5-7** at the Marriott Hotel in downtown Indianapolis, Ind.

*What's a much bigger than global warming? Sustainability! That was the message conveyed in one of the conference's most riveting and eye-opening presentations by Ron Olson, vice president of grain operations for General Mills Inc., Minneapolis, Minn., on the impact sustainability initiatives are having on commercial firms, including the food industry. He noted that \$2.7 trillion of investment assets now are being directed toward "socially responsible" industries. Olson said that while agriculture accounts for only 1 percent of energy consumption (the U.S. food industry as a whole, including transportation, uses 5 percent), it generates about 9 percent of greenhouse gas emissions (while the food industry as a whole, including transportation, accounts for 18 percent). Meanwhile, the food industry as a whole accounts for 82 percent of water use (80 percent for agricultural production), which he termed a "huge" issue. He also noted that the food industry accounts for 40 percent of the municipal solid waste generated.*

*Noting the impact of Wal-Mart, which markets more than 25 percent of food sold in the United States annually, Olson said the firm within five years will demand that companies with which it does business have a lifecycle database on every product they manufacture (water, energy use, etc.). Within three years, Wal-Mart's goal is to have 20 percent of its supply chain aligned with the company's sustainability goals, with its buying preference given to aligned suppliers within two years. Sustainable agriculture is one of four areas of focus by Wal-Mart, Olson said. As for Wal-Mart's top sustainability issues for agriculture, he listed high water consumption, water contamination, agrochemicals, deforestation, extensive monoculture, soil degradation, biofuels and agricultural biotechnology as among the 10 major environmental factors, and farm productivity and animal welfare among eight "social factors" being weighed by the company.*

*Olson concluded by stressing the importance of agricultural businesses "engaging much more broadly and more vocally" on sustainability issues, and in communicating with consumers – in "kitchen-like language" – what firms are doing to contribute to sustainability, noting that grain elevators have virtually no negative impact on sustainability.*





*Kim Young, deputy director of compliance for the Food and Drug Administration's Center for Veterinary Medicine, discusses the criteria under which grain elevators, feed mills and others in the food/feed chain are to report to an electronic portal – known as the Reportable Food Registry – those product safety adulteration incidents that they determine may cause serious adverse health consequences or death to humans or animals. [A report on Young's presentation can be found on page 7 of the Dec. 17 edition of the NGFA Newsletter.]*



*NGFA Country Elevator Committee Chairman Bryce Wells (center), president and chief executive officer of West Plains Co., Kansas City, Mo., is flanked by panelists Tom Fernandes (left), manager of operations for Greenhaven LLC, Atlanta, Ga., and Matt Bruns, vice president-exports, Archer Daniels Midland Co., Decatur, Ill., following their presentations on factors shaping agricultural futures markets in 2010. Fernandes discussed the strategies likely to be taken by investment funds, who view agricultural futures as a sound investment asset class, while Bruns focused on the impact that China will have in driving future demand for grains and oilseeds.*



*Kansas City Board of Trade President and Chief Executive Officer Jeff Borchardt welcomes the NGFA to Kansas City.*

*Capital will continue to be available in 2010 to grain, feed and farm supply operations that are in a strong position, even though the lending environment will be more difficult, according to Antony Bahr, executive vice president of the Banking Services Group at CoBank, Denver, Colo. He said there still is "fairly strong support" for agribusiness among commercial banks, and said CoBank has a strong balance sheet and will be prepared to deal with expected volatility in agricultural commodity markets.*

*But he said lenders will stay extremely focused on risk-management practices – some banks have implemented capital allocation committees in addition to credit committees to provide a second level of evaluation of lending risk – after going through "soul searching and a lot of restructuring" following the financial crisis.*

*Bahr said commercial and investment banks in 2010 likely will remain under "extreme pressure," with higher minimum capital requirements, a need to raise more capital, a rethinking of risk-management models, and substantial internal restructuring and deleveraging, all while facing an uncertain regulatory environment.*





The importance of grain-quality management was the timely topic discussed by Dr. Dirk Maier (left photo), head of the Department of Grain Science and Industry at Kansas State University, Manhattan, Kan., and Robert Marlow, regional operations manager for The Andersons, Delphi, Ind. Maier used the acronym “SLAM” to remind attendees of the four major steps in managing grain quality, especially during a challenging weather year – sanitation, loading, aeration and monitoring. Maier charted the combinations of temperature, humidity and moisture of corn associated with minimal to excessive mold development. At 40-degrees, F, and 70 percent humidity, Maier noted, even 16 percent moisture corn is an optimal candidate for mold growth. At 60-degrees, F, and 70 percent humidity, even corn dried to 14.5 moisture is highly susceptible to mold growth, he noted.

Marlow commented on the challenge presented this year in receiving and drying corn with uneven moisture content. He also encouraged managers to review shrink policies and procedures.

Both Maier and Marlow discussed the value of using CO<sub>2</sub> sensors, in addition to monitoring the temperature of stored grain, as a way to detect the emergence of hot spots and mold, since both emit higher CO<sub>2</sub> readings in a bin’s headspace or off the fans, even before increased temperatures are detected. A more comprehensive report on these important conference presentations is scheduled for a future NGFA Newsletter to be published in January.

Bill Hudson, principal and founder of The ProExporter Network, Olathe, Kan., focused on the research, or lack thereof, underpinning the debate over global warming and climate change as he reviewed domestic and global market trends. He said there has been a relatively stable weather period over the last 13 years, and said the biggest debate in the future will focus on surplus land use and who gets to control it – the government or the market. He projected that given yield increases, corn prices should remain in the \$3.50- to \$4-per-bushel range, even given increasing demand for food, feed, meat and biofuels. He also noted that the United States and Brazil are the only countries that can meaningfully engage in biofuels production given their productive capacity vis-à-vis their respective land mass.



Top safety, health and environmental issues facing country elevators and feed mills were addressed by an all-star panel featuring NGFA Safety, Health and Environmental Quality Committee Chairman Kevin Danner (left), environmental, health and safety director for West Central Co-operative, Ralston, Iowa; and Paul Luther (center), environmental, health and safety leader for Land O’Lakes Purina Feed LLC, St. Louis, Mo. NGFA Director of Regulatory Affairs Jess McCluer (right) moderated the session.





*NGFA Chairman Tom Coyle, general manager, Chicago & Illinois River Marketing LLC, Chicago, Ill., discusses cap-and-trade climate-change legislation with Rep. Lynn Jenkins, R-Kan., during the NGFA Grain and Feed PAC breakfast conducted in conjunction with the conference.*

*Jenkins, who later keynoted the conference, voiced concerns over congressional actions related to the federal budget deficit, the cost of health care reform legislation, and what she termed the impracticalities of climate-change legislation passed by the House.*

*She also focused on legislation being considered in the House that would revamp regulation of the financial services industry, calling the proposed Consumer Financial Protection Agency unnecessary and a potential impediment to lending by financial institutions to small businesses. She serves as a member of the House Financial Services Committee.*



*An outstanding panel of legal experts discussed the causes and ways of mitigating contract disputes with farmer-customers during the conference's closing session. Pictured are (from left) NGFA Counsel for Public Affairs Charles Delacruz; panelist Joan Maclin, senior vice president and general counsel for The Scoular Co., Minneapolis, Minn.; NGFA Country Elevator Committee Chairman Bryce Wells; and panelist David C. Barrett Jr., partner in the law firm of Barrett, Easterday, Cunningham & Eselgroth LLP, Dublin, Ohio.*

*Maclin noted that one of the biggest causes of contract disputes between producers and grain buyers is attributable to the "poorly aligned expectations" that the respective parties have concerning the transaction. She strongly encouraged firms to "refamiliarize" themselves with their contracts, and to evaluate the risks in different phases of the transaction, including which risks can be addressed in the contract and which ones can be managed only outside the contract (such as market volatility). She also stressed the importance of communicating with producer-customers, particularly during difficult situations.*

*Meanwhile, Barrett stressed the importance of knowing the business relationship between producers and their landlords, including how the landlord is organized. He also focused on the advantages of having a master trading agreement in place with producers and other business parties that can be modified, as appropriate, through separate contractual documents. Barrett stressed the importance of having a plan for identifying with whom a company wishes to do business, a plan for how to enter into contracts and monitor the performance of the counterparty, and a plan for what to include in contractual documents. He also touted the advantages of including references to NGFA Trade Rules and Arbitration in contracts with producers.*



## NGFA Annual Convention – Important Deadlines Looming!

In the pre-holiday rush, don't overlook these important deadlines:

- **Important Deadline #1 – Jan. 29:** That is when the early-bird registration rate for the NGFA's 114<sup>th</sup> annual convention expires! Notice that this year's registration fees have been reduced more than 10 percent from 2009 – that's a good value!

**Recommendation:** [Click here](#) to register now. Just fill out the online convention registration form and then click on "Submit Form." It's that easy! If you receive the *NGFA Newsletter* via regular mail, use the convenient insert to register.

While you're at it, book your airline reservations. American Airlines is offering NGFA convention-goers a 5 percent discount off its lowest published fares for travel between Feb. 25 and March 11. Use promotional code A2720AA when making your airline reservation at [www.AA.com](http://www.AA.com).

- **Important Deadline #2 – Jan. 31:** That's when the NGFA's special room block at the Westin Maui Resort and Spa expires. If you wait too long, you may not get your first choice of rooms at the special NGFA-negotiated rate. Or you might not get a room at all!



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**TIME SENSITIVE**

**Recommendation:** [Click here](#) to make your convention hotel reservation online. Or call 1-808-921-4651 to contact the hotel's reservation staff directly. Rates are published in the insert to this edition of the *NGFA Newsletter*. Note that the hotel has reduced the NGFA standard room rate by \$20 per night!

- **Important Deadline #3 – March 3-5:** If you're not on Maui by then, you are missing the NGFA's first Hawaiian convention since 1992! With this year's 10 percent dues reduction, plus reduced registration fees and hotel rates, you have no reason not to attend!

The NGFA's 114<sup>th</sup> annual convention once again will deliver the year's best combination of business program value and tropical vacation. Most NGFA committees will meet on Wednesday, March 3, followed by the CoBank Welcome Reception. Outstanding convention sessions have been scheduled for the mornings of Thursday, March 4 and Friday, March 5. Don't forget to sign up for the National Grain and Feed Foundation golf tournament on Thursday afternoon, March 4. The festivities will culminate at a Friday evening reception and banquet on March 5!

For a summary schedule of the NGFA convention, [click here](#). Watch for a full description of speakers and sessions soon!