



NGFA

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House Committee Plans Action on Food/Feed Safety Bill by Summer

The House Energy and Commerce Committee tentatively plans to begin consideration of a major food/feed safety bill early this summer.

In an April 14 meeting with the NGFA and other agricultural organizations, a principal staff member for Energy and Commerce Committee Chairman Henry Waxman, D-Calif., said that staff work has just begun on developing a discussion draft bill. Being used as a foundation and starting point for the committee bill are the food/feed safety provisions of a comprehensive bill (H.R. 759) introduced by former committee chairman Rep. John Dingell, D-Mich., and several other key committee members. *[See discussion on page 2 on key areas of concern in Dingell's bill.]*

Given the committee's priority focus on climate change and health care legislation, the staff aide said it was likely that food/feed safety legislation would not be considered until after the Memorial Day recess – although that timetable could be expedited if action on the other bills is delayed. The committee does plan to circulate a discussion draft of a new bill once it is

developed, and conduct one or more hearings. The committee staff has retained a key Food and Drug Administration (FDA) official as an adviser for the next six months.

Importantly, legislation being considered in the House and Senate would affect all grain elevators, feed mills, grain processing and export facilities – in essence, any facility that is registered with FDA under the Bioterrorism Act. Such facilities would be required to develop written plans that identify hazards that reasonably likely to occur in the products they store, handle, process and ship, as well as develop and implement preventive controls to ensure such hazards do not pose a risk to human or animal health.

Chairman Waxman has made clear that the legislation will not involve a restructuring of FDA's food/feed safety functions or merging into FDA the food-safety functions of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS), although such a reorganization may be considered in the future.

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House Climate Change Hearings Spark Policy Debate

The House Energy and Commerce Committee on April 21 kicked off a week-long series of hearings analyzing draft legislation that would create a system to cap carbon emissions and provide an open market to trade carbon credits.

In addition to its carbon-cap provisions, the bill, proposed by committee Chairman Henry Waxman, D-Calif., and Environment Subcommittee Chairman Ed Markey, D-Mass., is intended to be a comprehensive energy bill that includes sections on "clean" energy, energy efficiency and transition assistance into a new "clean-energy economy." A summary of the basic provisions of the proposed "cap-and-trade" system was reported in the April 9 edition of the *NGFA Newsletter*.

The hearings began amid the release of a U.S. Environmental Protection Agency (EPA) report estimating the potential economic costs of the draft bill. The EPA's analysis indicated that the price-per-ton of a carbon credit likely would be \$13 to \$17 by 2015. That's down markedly from the \$20- to \$50-per-ton price tag the agency assigned last year to a Senate climate-change bill sponsored by Sens. Joe Lieberman, I-Conn., and John Warner, R-Va. EPA now projects that the cost for carbon credits by 2050

will range from \$74 to \$96 per ton, down from last year's estimates of \$160 to \$200 per ton. The significant decrease from previous estimates was attributed to lower projections for economic growth during the recent downturn, which forecasts lower overall emissions. The EPA report also estimated that the average-per-year household cost of the legislation would be \$98 to \$140 per family. This estimate is contradicted by other studies that project the economic impact to be much greater.

Legislators on both sides of the political spectrum expressed skepticism of the EPA numbers, given a key limitation of the current bill – it does not dictate to what extent credits will be auctioned off or given away. Supporters generally have assumed that at least a significant portion of the carbon credits will be auctioned, and that the revenue generated would be credited back to users of power to mitigate increased costs associated with a carbon-reduction program.

Concerning the bill itself, House Energy and Commerce Committee members lined up largely along party lines. Most Democrats supported the draft bill, citing its creation of "green" jobs and the importance of acting on climate change. Republi-

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("Food/Feed Safety Bill" continued from page 1)

Among the major issues being deliberated is whether – and what level of – user fees would be needed and appropriate to finance FDA's food and feed inspection activities that cannot be obtained through congressional appropriations, as well as the frequency with which food/feed product inspections should be conducted by the agency. The bill also likely will authorize FDA to set certain minimum food/feed safety standards for certain commodities or food groups, based upon risk, the congressional staff aide said. The aide also noted Waxman's "deep concerns" over third-party inspections, based in part over revelations that the third-party entity that inspected the Peanut Corp. of America – the company involved in the massive *salmonella* peanut recall – had pre-advised when its inspections would occur and allegedly conducted substandard inspections once it arrived at the company's plant.

Dingell Bill – Objectionable Provisions: An NGFA staff analysis of the legislation (H.R. 759) introduced by Dingell has revealed many objectionable and problematic provisions. They include:

▶ **Facility Registration Fees:** The bill does not specify – and contains no limit – on total fees that could be assessed against U.S. facilities required to register under the Bioterrorism Act. Instead, the bill would vest in the secretary of Health and Human Services the authority to determine the total revenue amount needed, which is to be communicated to Congress 60 days prior to the start of the fiscal year. Further, the fee would be adjusted each year for inflation and the agency's inspection workload. The bill does include: 1) provisions for refunding fees if congressional appropriations exceed the amount needed to fund FDA's food/feed inspections and safety programs; and 2) a fee waiver for small businesses. For importers of foreign agricultural products into the United States, including feed ingredients, the bill would impose a \$10,000 per year registration fee, which likely would violate the United States' commitments under the World Trade Organization and trigger trade retaliation against U.S. agricultural and food exporters.

▶ **Product Tracing:** The bill would deem raw agricultural commodities to be misbranded – and therefore, subject to seizure – if commercial shipments fail to contain information on the grower, the location where produced, the harvesting and packing dates, and "any other information determined appropriate" by FDA. This would conflict with – and far exceed – the "one-step-forward/one-step-back" Bioterrorism Act recordkeeping requirement. The bill also would require records to be kept in a standardized electronic format, which may be difficult for smaller firms.

▶ **Certification of Imports:** The Dingell bill would require certification (by a foreign government, foreign cooperative or third party) of all import shipments within two years of enactment. Any imports not certified would be deemed

misbranded. This, too, would invite affected foreign countries to impose a similar, non-risk-based certification of all U.S. agricultural products, and risk violating the United States' WTO commitments.

▶ **Mandatory Recall/Administrative Detention Authority:** The bill would establish a relatively low threshold under which FDA would be authorized to order a product recall – the new standard would be if consumption of the product "may result in illness or injury." The bill also would significantly lower the threshold under which FDA could detain a product compared to the language in the Bioterrorism Act (*which requires FDA to have "credible evidence or information indicating" a product is adulterated and "presents a threat of serious adverse health consequences or death to humans or animals"*). Under Dingell's bill, the new standard would give FDA administrative-detention authority if it has a "*reason to believe*" the product "*is adulterated or misbranded.*"

▶ **Food Safety Plans/Preventive Controls:** Dingell's bill ostensibly would require the implementation of any measure necessary to "*significantly minimize, prevent, or eliminate hazards...*" regardless of whether such measures are reasonable. The bill also would require FDA to review each facility's food safety plan during each inspection to "*ensure the plan meets the relevant requirements...and is adequate to protect the public health.*" In many, if not most, cases, such plans are highly proprietary for market-competitive reasons, and are not shared by companies. In addition, the bill would require preventive controls be implemented to address procedures or practices that may be inappropriate for certain sectors of the food/feed chain. An example is the bill's requirement that all companies implement sanitation procedures for food contact surfaces and utensils, environmental controls for pathogens and allergen control, which are inappropriate for grain elevators and feed mills.

▶ **Recordkeeping/Access to Records:** Dingell's bill would delete the current restriction under the Bioterrorism Act that authorizes FDA to access records only if the "*Secretary has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals...*" It also would delete the requirement that FDA present a written notice before having the authority to access records.

▶ **Country-of-Origin Labeling:** The bill would create a two-tier system of country-of-origin labeling for non-processed and processed food. For non-processed food, it would require: 1) labeling; and 2) the website of the original packer. For processed food, it would require: 1) labeling of where the final processing was conducted; and 2) posting on the company's website of the country-of-origin of each ingredient.



USDA Announces Additional Appointments to USDA

Secretary of Agriculture Tom Vilsack has announced officially the appointment of two individuals to serve in the U.S. Department of Agriculture's (USDA) Farm and Foreign Agricultural Services division with Undersecretary Jim Miller.

▶ As previously reported in the March 20 edition of *NGFA E-Alert*, Vilsack announced the appointment of **John Burnham "Bud" Philbrook** to be USDA's deputy undersecretary for farm and foreign agricultural services, where he will have principal responsibility for international programs. A Minnesotan, he began his public service career at age of 28 by winning election to Minnesota's House of Representatives, where he served on the Education, Agriculture and Environmental Committees.

Previously, he had worked on the presidential campaigns of former Sens. Eugene McCarthy, D-Minn., and George McGovern, D-S.D. After serving in the Minnesota legislature, he was appointed assistant commissioner for the Minnesota Department of Natural Resources. After receiving his law degree, he opened a private law practice in St. Paul, Minn., where he focused on business and government law. Twelve years later, in 1994, he closed the law firm to become full-time president and chief executive officer of Global Volunteers, which he and his wife had co-founded 10 years earlier. Global Volunteers is a human and economic development service organization focused on teaching conversational English and business skills, caring for children, assisting with health care, and building community facilities and homes in the United States and foreign countries.

▶ **Michael T. Scuse** was tapped to serve as the other deputy undersecretary for farm and foreign agricultural services, where he will focus on domestic programs. Those responsi-

bilities will include USDA's grain-warehousing, farm- and risk-management programs operated by USDA's Farm Service Agency (FSA) and Risk Management Agency.

Scuse was Delaware's secretary of agriculture from May 2001 through September 2008; during a portion of that time, he served as vice president of the National Association of State Departments of Agriculture. He also was president of the Northeast Association of State Departments of Agriculture. In September 2008, he was selected as chief of staff for Delaware Gov. Ruth Ann Minner. From 1996-2001, he served as both chairman of the Kent County Delaware Regional Planning Commission and chairman of FSA's state committee. Scuse is an active member of Ducks Unlimited and the Quality Deer Management Association, and jointly has operated a grain farm in Delaware with his brother.

Rajiv Shah Nominated USDA Chief Scientist: Meanwhile, President Obama has nominated **Rajiv Shah** to be USDA's undersecretary of research, education and economics and chief scientist. As such, he would oversee USDA's Agricultural Research Service, Economic Research Service, National Agricultural Statistics Service, and the Cooperative State Research, Education and Extension Service.

Shah previously was director of the Agricultural Development Program at The Bill and Melinda Gates Foundation, the multi-billion dollar global effort focused on reducing hunger and poverty. He joined the foundation in 2001, and previously served as its director of strategic opportunities and deputy director of policy and finance for global health. Before joining the foundation, Shah was a health care policy adviser for Albert Gore's unsuccessful 2000 presidential campaign and a member of Pennsylvania Gov. Ed Rendell's transition committee on health.



Bruns Selected as NGFA Delegate to CFTC Subcommittee on Convergence

The NGFA has been notified that **Matt Bruns**, vice president, exports for Archer Daniels Midland Co., Decatur, Ill., has been selected as the Association's representative to the Commodity Futures Trading Commission's (CFTC) Subcommittee on Convergence.

Bruns serves as vice chairman of the NGFA's Risk Management Committee and as the NGFA's representative to the CFTC Agricultural Advisory Committee. Bruns immediately was invited to submit preliminary input to the subcommittee on three convergence-related topics. [See the April 23 edition of *NGFA Issues and Actions* for a report.]

The CFTC has not yet publicly announced the composition of the Subcommittee on Convergence, although individuals who have been appointed have been notified individually. The agency's staff has told the NGFA that an announcement on all appointees should be forthcoming soon, along with more details on the group's work and meeting schedule.

The subcommittee, operating under the auspices of the CFTC's Agricultural Advisory Committee, has been tasked with examining reasons for the lack of convergence in agricultural futures contracts and developing potential solutions to help reestablish predictable and consistent convergence.



On Capitol Hill

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("Climate Change Hearings" continued from page 1)

cans expressed opposition, raising concerns that it will force higher costs on businesses and families without solving any environmental problems as global competitors take advantage of the U.S. capping its industrial output unilaterally. In addition to skeptics and proponents, both parties included a number of centrists who cited a need to act, but cautioned that it be done in a way that protects U.S. consumers and maintains U.S. economic competitiveness.

Key Testimony: During its April 22 hearing, the committee received testimony from several Cabinet officials, including EPA Administrator Lisa Jackson, Secretary of Transportation Ray LaHood and Secretary of Energy Steven Chu.

While admitting during the question-and-answer phase of the hearing that they had not read the entire 648-page draft bill, each Cabinet member lent support to the general provisions of the bill and offered to work with the committee to draft a bill that would provide the necessary lessening in greenhouse gas emissions while mitigating negative impacts on the nation's economy. Chu indicated that the Energy Department still was reviewing the draft bill, but that it appeared to meet many of the criteria set out by the president during the campaign and his initial months in office. Chu cited the potential creation of "green" jobs and "weaning the nation from its dependence on oil" as critical components of the bill. Jackson highlighted her Agency's analysis of the bill stating, "EPA's available economic modeling indicates that the investment Americans would make to implement the cap-and-trade program of the American Clean Energy and Security Act would be modest compared to the benefits that science and plain common sense tell us a comprehensive energy and climate policy will deliver."

A second panel included executives from DuPont, ConocoPhillips, Duke Energy, Alcoa and NRG Energy that had led a consortium dubbed the U.S. Climate Action Partnership to reach a consensus among involved business firms, environmental groups and other stakeholders on market-based climate-change legislation. That group put forward a number of recommendations that were included in the draft bill.

International Implications: In addition to the draft bill's cost implications and the consequences of action or inaction on climate change, a significant focus of committee members was the role China and India might play in carbon reductions. Several alluded to reports that those countries potentially see U.S. action on carbon reduction as an opportunity to gain a competitive advantage. Chu noted that China was taking steps to address its "carbon footprint," although India may not be as far along. But Chu argued that the United States should take a global leadership role, and not use other countries' actions or inactions as a reason not to proceed.

Allocating Carbon Credits: The third day of testimony focused on how best to allocate credits to mitigate the economic impact on consumers, maintain U.S. competitiveness and secure international participation in the reduction of carbon emissions. How to do this was left out of the draft bill and it is clearly a major point of contention. The administration's proposed budget included significant revenue from the allocation of the credits, but industry and many in Congress have opposed a 100 percent auctioning of credits. Allocating the credits for free has generated wide criticism of the European system, making some combination of free and auctioned credits the most likely outcome if a cap-and-trade system ends up being the carbon-reduction method chosen by Congress.

A final day of hearings slated for April 24 will feature testimony from former Vice President Al Gore and former Sen. John Warner, R-Va., as well as panels that will examine the draft bill's energy-efficiency provisions, the role of states and implications the legislation would have on the Clean Air Act.

Chairman Waxman has indicated that the committee will begin consideration of the bill during the week of April 27, with a goal of completing committee work before the Memorial Day recess and moving it to the House floor before the summer recess in August. However several other committees likely will insist on having major input into the process, including the House Ways and Means and Agriculture Committees. House Speaker Nancy Pelosi, D-Calif., announced her intentions to have the House pass a climate change bill before the end of the year.

Despite the rapid push forward by Democratic leaders, Republicans and several conservative Democrats have called for a more deliberative process. Those with concerns continue to point to the difficulty of passage in the more deliberative Senate as a potential safeguard in ultimately arriving at a more reasonable outcome.



Calendar

May 12-13, 2009: NGFA Ag Transportation Symposium
Intercontinental Hotel, Kansas City, Mo.

June 2-3, 2009: NGFA Country Elevator Committee
L'Enfant Plaza Hotel, Washington, D.C.

June 15, 2009: NGFA Executive Committee
Four Seasons, Toronto, Canada

July 28-29, 2009: NGFA/GEAPS Grain-Quality Management
Seminar
Marriott St. Louis Airport Hotel, St. Louis, Mo.

July 29, 2009: Joint Agroterrorism/Facility Security Committee
Marriott St. Louis Airport Hotel, St. Louis, Mo.





Rails, Rivers and Roads

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STB Cancels Planned Hearing on Rail Competition

At the request of the Senate Commerce, Science and Transportation Committee, the federal Surface Transportation Board (STB) announced it is postponing "until further notice" a previously scheduled May 18-19 public hearing on rail competition issues – another signal that Congress may be considering reviewing such matters as part of STB reauthorization legislation this year.

In a decision dated April 17, the STB quoted Senate Commerce, Science and Transportation Committee Chairman John (Jay) Rockefeller, D-W. Va., and Sen. Frank Lautenberg, D-N.J., chairman of its Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security, as asking the agency to "refrain" from conducting hearings to examine policies related to competitive access and so-called "bottleneck" rates until the

Senate committee has an "opportunity to conduct its legislative review" of issues related to the STB's reauthorization.

The STB on April 14 had announced plans to conduct the now postponed two-day public meeting in May at its headquarters in Washington to solicit public comment on: 1) "current issues stemming from the agency's 'bottleneck' and competitive-access decisions; 2) the continuing propriety of the (agency's) policies on competitive access; 3) the effects on rates and service these policies have had; and 4) possible implications of changing these policies." Rail "bottlenecks" refer to situations in which more than one railroad can provide service over at least a portion of a movement from origin to destination, but where either the origin or destination is served by only one carrier.



From the Bench

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Supreme Court Upholds Arbitration for Resolving Employment Claims

...But Employment-Related Disputes Expected to Increase...

In another decision recognizing its use as an alternative dispute-resolution method, the U.S. Supreme Court recently issued a decision upholding the enforceability of an agreement-to-arbitrate in the employer-employee context.

The Supreme Court, in a decision [*14 Penn Plaza LLC v. Pyett*, (Case No. 07-581)] issued on April 1, upheld the enforceability – "as a matter of federal law" – of a provision in a collective bargaining agreement that required union members to arbitrate claims under the Age Discrimination in Employment Act of 1967 (ADEA). The employees, who initially worked as night watchmen and in similar capacities, brought the case alleging they were reassigned to jobs as cleaners and porters because of age discrimination, in violation of the ADEA. The employer contested the action, filing a motion to compel arbitration of the workers' claims based upon a provision in the collective bargaining agreement that required the union members to arbitrate claims of employment discrimination. Both the district court and lower appellate court denied the employers' motion.

However, in a 5-4 decision, the Supreme Court reversed the lower courts' decisions based upon review of applicable federal law – the ADEA and the National Labor Relations Act – that the majority said provided "a straightforward answer to the question presented" that there simply was no legal basis to strike down an unambiguous arbitration clause freely negotiated between the workers' union and employer. The High Court described authorities cited by the workers as "rested on a misconceived view of arbitration that this Court has since abandoned" and "far out of step with our current strong endorsement of the federal statutes

favoring this method of resolving disputes."

Thus, although clearly divided in this decision, the Supreme Court reaffirmed its long-standing view of arbitration as a proper vehicle to resolve disputes. However, it remains to be seen whether the new Congress and Obama administration will let this decision stand – or attempt to reverse it through legislation as already has occurred in other recent employment-related cases.

Other developments indicate that legislative and legal activity on employment-related issues is on an upswing:

- ▶ The Supreme Court is expected this year to address various other significant employment law cases involving issues like evidentiary standards and the burdens of proof for discrimination cases; maternity-leave benefits under the Pregnancy Discrimination Act; and a class-action gender-discrimination suit with up to 1.5 million potential class members.
- ▶ In Congress, legislation introduced in the House on March 25 would expand significantly worker benefits for family and medical leave by creating an insurance fund to provide for 12 weeks of paid leave for employees to take time off because of their own illness or to care for a sick family member [*The Family Leave Insurance Act of 2009 – H.R. 1723*].
- ▶ The U.S. Equal Employment Opportunity Commission recently announced a 15 percent increase in employment discrimination filings during 2008, representing a historic high of 95,402 claims. The commission is expected to become more active and have its budget increased under the new administration.





FDA to Delay Compliance with New BSE-Prevention Feed Rule Changes to Oct. 26

The NGFA has been notified by the U.S. Food and Drug Administration (FDA) that it will publish an official notice in the April 24 *Federal Register* delaying for an additional six months – to **Oct. 26** – the compliance date for amended feed regulations banning the use of brain and spinal cord from cattle 30 months or older in all animal feed to further enhance U.S. safeguards against bovine spongiform encephalopathy (BSE).

The rule change also contains a requirement that tallow sourced on or after the compliance date contain not more than 0.15 percent insoluble impurities, regardless of the tallow's origin.

FDA in the April 9 *Federal Register* had proposed delaying the effective date of the rule by 60 days, to June 26, instead of the originally scheduled April 27 effective date. The new six-month delay provides additional time for compliance beyond that originally proposed by the agency.

In its notice to be published April 24, an advance copy of which was obtained by the NGFA and is available by [clicking here](#), FDA reaffirms its decision to adopt the feed rule amendments without change by confirming the effective date of the rule will remain April 27. FDA says this reaffirms the agency's belief that changes to the feed rule are needed to further enhance existing U.S. safeguards against BSE, and also reflects the "significant number of comments" submitted by consumer groups opposing further delay. FDA also notes in the notice that by affirming the April 27 effective date, "renderers can begin putting the new BSE safeguards into place by removing prohibited cattle materials from the animal feed chain." Importantly, FDA officials told the NGFA that it already has completed inspections of most, if not all, rendering plants to verify their compliance with the ban on brain and spinal cord, so the agency expects minimal problems.

Importantly, however, FDA's decision to delay the compliance date to Oct. 26 provides time for cattle producers and others to develop disposal plans in the event rendering of such newly prohibited cattle material no longer will be available in certain areas. FDA adopted a similar approach when implementing the original BSE-prevention feed rule in 1997; it established an effective date for the rule but delayed compliance for 60 days to allow the feed pipeline to be cleared of prohibited mammalian material that no longer could be used in ruminant feed. With the new six-month

extension in the compliance date, FDA will have provided 18 months for compliance with the newly enhanced BSE-prevention feed rule.

The feed rule changes are expected to have minimal impact on commercial feed manufacturers, with the principal compliance burden falling upon the rendering sector. FDA officials repeatedly have told the NGFA and stated publicly that there is no requirement in the final rule for feed manufacturers to clean out storage tanks containing animal fats to purge tallow residue that may not meet the new feed rule's purity standard of not more than 0.15 percent insoluble impurities in feed. FDA officials say they believe tallow represents a negligible risk of transmitting BSE, and that "no special cleanout is needed as long as the transition to the new (tallow) product (meeting the new purity standard) is made" before the compliance date. FDA officials also have stated that bins used to store meat and bone meal do not need to be cleaned out to comply with the new rule, so long as the product being used on or after the compliance date has had the brain and spinal cord removed if derived from cattle 30 months or older.

EPA Eases Ability of Landfills to Handle Cattle Brain, Spinal Cord Banned from Animal Feed under FDA BSE-Prevention Feed Rule:

In a related and long-awaited development, the Environmental Protection Agency (EPA) on April 16 issued a notice clarifying that brain and spinal cord from cattle 30 months or older that would be banned from animal feed by FDA will not be classified as hazardous waste, allowing such material to be landfilled if permitted under state and local law. The issue had arisen as to whether such material would be classified by EPA as a "hazardous waste" under the Resource Conservation and Recovery Act (RCRA).

The EPA notice said that for a solid waste to be classified as "hazardous," it either must be specifically listed or exhibit a characteristic – such as ignitable, corrosive, reactive or toxic – that would justify it being classified as such. "Animal mortalities (i.e., dead stock) and wastes generated from the slaughter of animals, including cattle material prohibited from animal feed (brain and spinal cord of cattle 30 months or older) are neither listed nor would they likely exhibit a characteristic" that would cause them to be designated hazardous wastes," EPA ruled. "Therefore, the...material would not be a hazardous waste under RCRA, but a solid waste." [Click here](#) to access the EPA notice.





FDA to Delay Proposed Regulations on Feed, Feed Ingredients until 2010

The Food and Drug Administration's Center for Veterinary Medicine (FDA/CVM) issued an update April 16 stating that it will be delaying the anticipated release of proposed new feed and feed ingredient regulations until 2010.

The agency noted that its Animal Feed Safety System team has completed writing the proposed regulations, and is nearly done with the accompanying preamble. But developing the required economic impact analysis will consume much of this year.

The FDA/CVM update noted that the process-control regulations to be proposed will blend the requirements of a hazard analysis and critical control point (HACCP) and current good manufacturing practice (CGMP) approach. The proposed regulations will apply to all animal feed and feed ingredient sectors, including ingredient suppliers, mixed feed manufacturers (including non-medicated feed) and on-farm feed processors, FDA/CVM said. The new rules will require that they determine where and when hazards can be introduced into feed or feed ingredients and establish and implement control practices to protect against "unacceptable" feed safety risks. As an example, FDA/CVM cited a possible proposed regulation that would require feed manufacturers to have written procedures to test incoming mycotoxin-susceptible ingredients to address such a hazard. The proposed process-control standards will apply to the procurement, manufacturing, packaging, storing and distribution of feed ingredients and mixed feeds, FDA/CVM noted.

In its update, FDA/CVM also said:

- ▶ It is amending its Animal Feed Safety System Framework document that is serving as the basis for developing the proposed regulations to clarify certain definitions, "particularly the definition of hazard," and to ensure the role of research is appropriately recognized. The NGFA, in comments submitted previously to the agency, had urged it to address both issues.
- ▶ It plans to develop a "Safe Animal Feeding" guidance document to "help animal feed producers develop and implement on-farm practices to ensure the safety of animal feed kept on the farm and fed to the farm's animals."

The agency also confirmed, as reported in the April 9 edition of the *NGFA Newsletter*, that it plans to start a pilot program this summer to permit sponsors of animal feed ingredients, including those used in pet food, to gain approval through a generally recognized as safe (GRAS) notification process. Earlier this year, FDA/CVM said, it formed an Ingredient Safety Team to handle GRAS-notification submissions. The five-member team will be in place when the pilot program begins. [See page 8 of the April 9 *NGFA Newsletter* for more information on this development.]

NGFA members receiving the *NGFA Newsletter* electronically may [click here](#) to access the FDA/CVM Animal Feed Safety System update.

NGFA Participates in N.C. State Feed Science Advisory Board Meeting

NGFA Director of Feed Services Dave Fairfield on April 7 participated in the latest meeting of North Carolina State University's Feed Science Advisory Board in Raleigh, N.C.

The advisory board, established in November 2007, is charged with reviewing and approving research initiatives, curriculum changes and program goals associated with the university's Feed Science Program. The feed educational and training efforts at North Carolina State are being spearheaded by Dr. Charles Stark, a former member of the NGFA's Feed Manufacturing and Technology Committee.

The North Carolina State Feed Science Program is designed to meet the educational and training needs of students and professionals in the feed manufacturing industry. The program offers the option for students pursuing a degree at the university in the Departments of Animal Science, Biological and Agricultural Engineering, or Poultry Science to obtain a "feed science minor" to add to their bachelor's degree. Students also may choose to complete a less comprehensive study program to receive a "certificate of feed milling." For individuals working in the feed industry, a "certificate of feed milling" option is available through the program.

The university's fully automated Feed Mill Educational Unit provides opportunities for students and industry members to learn the principles and methods of feed manufacturing. It also provides industry representatives and academia with the ability to conduct research to develop and evaluate new processing techniques and nutritional products.

Current priorities of North Carolina State's Feed Science Program include: 1) finalizing several feed quality assurance and operations courses, most of which will be offered through the university's distance-learning education program; 2) conducting a feed manufacturing short course on May 15-16 in Raleigh, N.C.; and 3) continuing research efforts related to feed processing and nutrition.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the N.C. State Feed Science Program's website to learn more about upcoming events, as well as the academic, extension, and research efforts in the university's College of Agriculture and Life Sciences.

Fairfield also serves on the Feed Science Advisory Committee at Kansas State University.



USDA Starts New Method for Calculating Loan-Repayment, LDP Rates

The U.S. Department of Agriculture (USDA) on April 15 inaugurated its new, two-tiered method for determining repayment rates under its marketing assistance loan and loan deficiency payment (LDP) programs.

The new repayment methods, which were authorized under the 2008 farm law, apply to wheat, feed grains, oilseeds, pulse crops, wool, mohair and honey, but not rice, cotton or peanuts.

Under the new approach, USDA's Farm Service Agency (FSA) calculates repayment rates based upon the following:

- ▶ The loan rate, plus interest;
- ▶ a 30-day moving average of all terminal markets applicable to the covered commodity (or class, in the case of wheat); and
- ▶ a five-day (weekly) moving average rate based upon terminal markets applicable to the county where the commodity is stored or delivered.

The effective repayment rate is the lower of the calculations resulting from these three methods, after adjusting the 30-day rate for the national average loan rate and applicable county loan rate, and the five-day (weekly) rate for adjustments to terminal market prices and county differentials.

Importantly, USDA officials told the NGFA that during its evaluation of this new method, the five-calendar-day method for grain and soybeans virtually always prevailed over the 30-day method in determining the ultimate repayment rate.

The new loan repayment rate methods replace the previous method in which FSA determined posted county prices daily for grains and soybeans based upon the previous day's market rates. USDA officials say the new methods are designed to moderate potential large day-to-day fluctuations in posted county prices, lessen the effects that daily market volatility has on loan repayment rates and "provide more certainty" for producers using the loan programs. Importantly, the new loan-repayment-rate methodology applies to all outstanding 2008-crop marketing assistance loans, as well as 2009 marketing assistance loans and LDPs. Of course, producers still retain the ability to repay marketing assistance loans at the loan rate, plus interest.

Here's how the new methods work:

30-Calendar-Day Method: FSA determines and publishes loan repayment rates based upon average market prices during the preceding 30-calendar-day period. For all covered commodities except wheat, pulses, and wool, mohair and honey, (i.e., corn, sorghum, soybeans, barley, oats, canola, flaxseed, sunflower seed, crambe, mustard seed, rapeseed, safflower and sesame seed), the 30-day average will be calculated using the prices

of all terminal markets applicable to the crop (*for instance, 10 terminal markets in the case of corn*). This 30-day moving average is adjusted by the difference between the national loan rate and the county loan rate. For wheat, the 30-calendar-day average reflects a moving average of all applicable terminal market prices for the applicable wheat class, adjusted by the difference between the applicable national average loan rate by wheat class and the county loan rate by class. The repayment rate under the 30-day method results in a nationwide market gain/LDP rate for each commodity and wheat class.

Five-Calendar-Day (Alternative) Method: Under this method – which FSA has dubbed the "alternative" method – loan repayment rates are determined based upon terminal market prices applicable to the county for the preceding five calendar days, adjusted by the applicable county differential and the five-day average of any temporary adjustments to each terminal market price applicable to the county for which the loan repayment rate is based. This method applies to corn, sorghum, soybeans, barley, oats, canola, flaxseed, sunflower seed and each class of wheat. For pulse crops, as well as crambe, mustard seed, rapeseed, safflower, sesame seed, wool and mohair, FSA said it will continue to announce alternative loan repayment rates on a weekly or monthly basis, as done currently. No alternative repayment rate will be used for honey. For covered feed grains, soybeans, canola, flaxseed, sunflower seed and each class of wheat, FSA determines an applicable terminal market price for each of the five days, and adds those numbers. The resulting figures then are divided by five (to determine the five-calendar-day moving average). FSA then subtracts from that five-day average: 1) the assigned county differential for the specific terminal market; and 2) the calculated five-calendar-day average terminal market adjustments for that specific terminal market. This calculation is completed for each terminal market applicable to the crop and county, and the figure resulting from the higher of those calculations is the five-day rate.

FSA then uses the lower of the figures resulting from the loan rate, plus interest, and the five-day and 30-day calculations as the loan repayment rate. But as noted previously, USDA officials told the NGFA that the five-day method for grains and soybeans most often prevails over the 30-day method as the lower of the two calculations. FSA said it will post the loan-repayment rates daily (except weekends) for grains, soybeans, canola, flaxseed, sunflower seed and classes of wheat, and each week for other oilseeds and pulse crops. The repayment rates will be posted on the following new USDA websites:

- ▶ For grains and oilseeds, [click here](#) for daily LDP rates.
- ▶ For pulse crops, [click here](#).

[Click here](#) to access USDA's loan program notice (Notice LP-

(Continued on page 9)





Country/Terminal Corner

by Randall C. Gordon
V.P., Communications/
Gov't Relations

2113) that further explains the calculation procedures, and lists the current terminal markets used for all affected commodities.

USDA to Announce 2009-Crop County Loan Rates Soon: In a related matter, FSA officials told the NGFA that it is near to announcing county loan rates for 2009-crop wheat, feed grains, soybeans and oilseeds. The new county loan rates are expected to include adjustments for several classes of wheat compared to

the 2008 rates. The new county loan rates reportedly have been approved by Undersecretary for Farm and Foreign Agricultural Services Jim Miller, and are awaiting posting on USDA's website and the issuance of a press release from USDA.

Once available, the new county loan rates will be posted on FSA's website, which members receiving the *NGFA Newsletter* electronically may access by [clicking here](#).

Doug Caruso Selected as New FSA Administrator

Secretary of Agriculture Tom Vilsack has announced the appointment of **Doug Caruso** to be the new administrator of the U.S. Department of Agriculture's Farm Service Agency (FSA).

Caruso previously served from 1993-2001 as FSA state executive director in Wisconsin for eight years. Most recently, he has been the chief executive officer of Wisconsin Farmers Union Specialty Cheese, a cheese manufacturing firm. From 1989 to 1993, he worked as state director for Sen. Herb Kohl, D-Wis. Prior to that, he was general manager and communications director for the nation's sixth largest farmer-owned milk marketing cooperative.

While FSA state director in Wisconsin, Caruso participated in multi-agency USDA initiatives and worked on the initial implementation of the milk income loss contract payment program in 2000. In 2000, he was honored by FSA as its Outstanding State Executive Director for "exemplary leadership, superior management skills, and significant contributions to the betterment of the (FSA) at all levels."

Caruso is a member of the USDA/U.S. Trade Representative's Agricultural Technical Advisory Committee on Dairy and of the International Dairy Committee.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

Leading Membership Recruiters Honored at NGFA Convention

At the NGFA's 113th annual convention at Walt Disney World, the annual Membership Awards Ceremony recognized leading recruiters over the past year. A number of major prizes were awarded with the help of a famous Disney personality!

Scotty McCoy (right), winner of the annual recruiting competition, receives special congratulations from Mickey. McCoy won the competition for the third consecutive year and received the "Coronado Beach Break" prize, a complimentary weekend for two at the Hotel del Coronado in San Diego! (Airfare sponsored by Kincannon & Reed, Vienna, Va.)



Mickey and Greg Konsor (left), Gavilon Grain LLC, Omaha, Neb., both appear to be delighted with Konsor's second-place finish. Konsor won the "Windy City Weekend" prize, a complimentary weekend for two in Chicago. (Airfare sponsored by Evonik Degussa, Kennesaw, Ga.)



Mickey Mouse and Mark Avery (above), chair of the NGFA Membership & Marketing Committee, share a special moment of bonding at the conclusion of the membership awards.



Visit the NGFA web site at www.ngfa.org for a photo gallery of these and other winners!



NGFA, Others Meet with EPA on New Source Performance Standard

The NGFA and five other grain-processing organizations on April 22 met with senior officials of the U.S. Environmental Protection Agency (EPA) to begin discussions on the agency's announced plans to review its new source performance standard (NSPS) for grain facilities.

The NGFA has joined forces in a "shared-cost," joint arrangement with the National Oilseed Processors Association (NOPA), North American Millers Association (NAMA), Corn Refiners Association (CRA), National Council of Farmer Cooperatives (NCFC) and the USA Rice Federation to interact with EPA on the issue. The NGFA and NOPA are co-chairing the effort. The outcome of the rulemaking is extremely important, as it will determine whether facilities are subjected to stricter air-permitting and emission standards and thereby required to obtain costly air permits.

The April 22 meeting at the agency's Research Triangle Park offices in Raleigh, N.C., included Peter Tsirigotis, director of EPA's Sector Policies and Programs Division, and Robin Dunkins, group leader of the agency's Natural Resources and Commerce Group.

In November 2007, EPA headquarters issued an opinion that

the NSPS for grain elevators [40 CFR 60 Subpart DD] encompasses certain types of temporary storage facilities, as well as traditional grain elevator equipment – which would greatly expand the reach of the NSPS. The type of temporary storage potentially affected are structures that have a concrete/asphalt floor, aeration and a tarp cover, and also have a permanent aeration tower and a conveyer system to move the grain to the temporary storage system. But EPA's interpretation was based upon a dictionary definition of a key term, *i.e.* "bin." EPA failed to examine the record of the rulemaking at the time, which makes no mention of temporary storage facilities.

During the April 22 meeting, the six industry trade associations provided EPA with background on each association and its members, and received an update from EPA on the current status of the NSPS review process. The groups also discussed EPA's intentions for gathering information during its NSPS review, including both the Clean Air Act's required Section 114 questionnaire and industry-supplied data.

The NGFA will continue to keep members apprised of developments. Questions should be directed to NGFA Director of Regulatory Affairs Jess McCluer at jmcluer@ngfa.org, or by phone at 202-289-0873, ext. 21.

EPA Seeks Comment on Up to 15 Percent Ethanol Blend in U.S. Gasoline

The U.S. Environmental Protection Agency (EPA) on April 21 published in the *Federal Register* a request for public comments on the petition submitted by Growth Energy and 54 other ethanol manufacturers asking the agency to permit up to 15 percent ethanol (E15) by volume to be added to gasoline.

The notice, which members receiving the *NGFA Newsletter* electronically may access by [clicking here](#), announced that EPA is providing a 30-day comment period – ending on **May 21**. By law, the agency has 270 days after the filing of the petition – in this case, until Dec. 1 – to decide whether to grant or deny the request to increase the ethanol-gasoline blend waiver from the current 10 percent limit. Growth Energy, an ethanol advocacy organization, spearheaded submission of the petition to EPA on March 6, calling the current 10 percent level an "arbitrary cap."

Under the Clean Air Act, to approve the petition, EPA is required to determine only that ethanol blends of up to 15 percent will not adversely affect vehicle emission-control systems, including catalytic converters, such that vehicles would violate air-emission standards.

In its *Federal Register* notice, EPA stated that "one potential outcome" after reviewing scientific and technical information on the impact of an increase in the ethanol blend rate "may be an indication that a fuel up to E15 could meet the criteria

for a waiver for some vehicles and engines, but not for others." [Emphasis added.] EPA also said that it "wants to be assured that prior to granting a waiver, sufficient testing has been conducted to demonstrate the compatibility of a waiver fuel with engine, fuel and emission-control system components.

Specifically, the agency requested comments and data on whether there is "an appropriate level" of scientific and technical information to allow EPA to determine whether the use of E15 will not cause or contribute to a failure of any emission-control device or system over the useful life of any motor vehicle or motor vehicle engine, or any non-road vehicle or non-road engine, to achieve compliance with applicable emission standards. EPA also sought information on whether an appropriate level of scientific and technical information exists to grant an ethanol-gasoline blend waiver greater than 10 percent but less than or equal to 15 percent by volume, as well as the legal and technical aspects of granting a conditional or partial waiver for a subset of gasoline engines or vehicles. In addition, it requested comments on education efforts that would be needed to inform the public about a higher ethanol-gasoline blend fuel.

Comments may be submitted electronically to EPA via the www.regulations.gov portal, by email to: a-and-r-docket@epa.gov or by fax to 202-566-1741.



NGFA, GEAPS Complete Filming for New General Safety DVD

Earlier this month, the NGFA and the Grain Elevator and Processing Society (GEAPS) completed filming for the new safety education DVD that the organizations plan to release later this year.

The filming occurred at various grain-handling facilities in the Minneapolis/St. Paul, Minn., area. The need for the DVD was identified by the NGFA/GEAPS Safety, Health and Environmental Quality Committee, which noted that an up-to-date training video on general safety practices for the grain, feed and processing industry currently does not exist.

The new 30-minute DVD, which also will be available in Spanish, will address the following topics:

- ◆ Fires and explosions
- ◆ Confined space and bin entry
- ◆ Truck and rail safety (such as fall protection)
- ◆ Safe operation of equipment (such as proper lockout and tagout procedures)
- ◆ Ladder safety
- ◆ Manlifts
- ◆ Electrical
- ◆ Personal protective equipment
- ◆ Hazard communication
- ◆ First aid
- ◆ Emergency action plans
- ◆ Facility security

DVD Corporate Sponsorships: In response to the invitation extended in the Nov. 7 *NGFA Newsletter*, 20 companies

already have committed funds to sponsor the new safety education DVD and training materials.

Companies that have sponsored the project with a \$2,500 donation include: **Advanced AgriSolutions Co-op**, Wapakoneta, Ohio; **Agrex Inc.**, Shawnee Mission, Kan.; **Bartlett and Company**, Kansas City, Mo.; **Bunge North America Inc.**, St. Louis, Mo.; **Cargill Inc.**, Minneapolis, Minn.; **CGB Enterprises Inc.**, Mandeville, La.; **CHS Inc.**, St. Paul, Minn.; **Columbia Grain International Inc.**, Portland, Ore.; **DeBruce Grain Inc.**, Kansas City, Mo.; **DeLong Co.**, Clinton, Wis.; **General Mills Inc.**, Minneapolis, Minn. **Gold Eagle Cooperative**, Goldfield, Iowa; **GROWMARK Inc.**, Bloomington, Ill.; **Hansen-Mueller Co.**, Omaha, Neb.; **Nationwide Agribusiness**, Des Moines, Iowa; **South Dakota Wheat Growers Association**, Aberdeen, S.D.; **The Scoular Co.**, Omaha, Neb.; **Triangle Insurance Co.**, Enid, Okla.; **Vita Plus Corp.**, Madison, Wis., and **West Central Cooperative**, Ralston, Iowa.

In addition, nearly 50 companies thus far have placed pre-purchase orders for the DVD at a discount price.

Contact NGFA Director of Regulatory Affairs Jess McCluer at jmcluer@ngfa.org, or by phone at 202-289-0873, ext. 23, to become a sponsor or to pre-order copies of the DVD and training materials.

The NGFA and GEAPS greatly appreciate the contributions of these generous sponsors!

Sorghum Odor Task Force Meets to Determine Grade Line

A task force assembled by the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) to review the agency's sorghum odor grade line is scheduled within the next few weeks to review data compiled during an April 8 meeting.

During the meeting earlier this month, 12 representatives from the NGFA, North American Export Grain Association (NAEGA), Grain Elevator and Processing Society (GEAPS), and other sectors of the sorghum industry, including growers, end-users and suppliers, examined the issue at GIPSA's Technical Center in Kansas City, Mo. A report on the meeting's results are scheduled to be presented at the GIPSA Grain Inspection Advisory Committee meeting, tentatively scheduled for June 23-24 in St. Louis, Mo.

The task force was created by GIPSA to review and make a determination on the grade line for sorghum. Participants reviewed more than 50 samples for three particular types of odors: ground, storage and basement.

The NGFA was represented on the task force by **Curt Engle**, vice president, operations, The Scoular Co., Salina, Kan., and **Tom Foucek**, vice president, terminal facilities, Bartlett and Company, Kansas City, Mo. **Warren Duffy**, vice president, export operations, Archer Daniels Midland, Ama, La., and **Bill Mullins**, general manager, Texas Gulf operations, Louis Dreyfus Corp., Galena Park, Tex. represented NAEGA. **Todd Canatella**, manager, Zen-Noh Grain Corp., Convent, La., and **Tom Meyer**, president, Kansas Grain Inspection Service, Topeka, Kan., attended on behalf of GEAPS.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

Ag Transportation Symposium – A Must for Shippers, Receivers and Carriers

...Featured Forward-Looking Sessions on Financial Outlook, Competition/Capacity...

The NGFA's first **Agricultural Transportation Symposium** since 2000 will attract agricultural shippers and receivers, as well as their rail, barge and vessel carriers, to Kansas City, Mo., on May 12-13.

The conference, to be conducted at the InterContinental Hotel at Alameda Plaza, historically has been a prime venue for shippers/receivers and their carriers to discuss policy issues, government action and industry developments – and to schedule side meetings on key business issues. Unlike its predecessors, this edition of the conference will focus on multiple transportation modes.

A top-notch program has been assembled on major transportation-related topics.

Here are just two of the program highlights specifically designed to provide a forward-looking analysis of what shippers/receivers in the grain, feed and grain processing industry can expect in the future:

- ▶ A view from the financial industry concerning investment in the rail industry and its financial prospects will be presented by **William Green, executive director, Morgan Stanley, New York, N.Y.** Green is a respected analyst and prolific author, widely noted for his views on challenges and opportunities facing the rail sector, the financial prospects for the industry and railroad management issues.
- ▶ **Bill Hudson, principal/founder, The ProExporter Network, Olathe, Kan.,** will examine domestic and world market trends that will influence the volume and types of agricultural commodities and products that will compete for transportation availability in coming years, including a review of prospects for the biofuels industry.

Other Major Speakers: Other major featured speakers include **Frank Mulvey**, chairman, federal Surface Transportation Board, Washington, D.C. (*invited*); and keynoter **Michael Haverty** (*confirmed*), chairman and chief executive officer, Kansas City Southern Railway.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to view the full program and to register now for the Ag Transportation Symposium.



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