



## Senators Named to Financial Regulatory Reform Conference Committee

Prior to departing for its Memorial Day recess, Senate leaders appointed its delegation that will work with House counterparts on a joint conference committee to reconcile the separate versions of financial regulatory reform legislation previously approved by the two chambers.

The dozen senators named to the panel include Senate Banking Committee Chairman Chris Dodd, D-Conn., and Senate Agriculture Committee Chairman Blanche Lincoln, D-Ark., the latter of whom is the author of a much-debated section of the Senate-passed bill that would require banks to segregate their derivatives businesses into separately capitalized entities, with such transactions cleared on public exchanges. Other Senate Democrats selected for the joint House-Senate conference committee were Sens. Jack Reed of Ohio, Tom Harkin of Iowa, Tim Johnson of South Dakota, Charles Schumer of New York and Patrick Leahy of Vermont. Republicans named as Senate conferees were Sens. Richard Shelby of Alabama, senior Republican on the Banking Committee; Senate Agriculture Committee Ranking Member Saxby Chambliss of Georgia; and Sens. Judd

Gregg of New Hampshire, Bob Corker of Tennessee and Michael Crapo of Idaho.

House Speaker Nancy Pelosi, D-Calif., has not yet named House members of the conference committee, and is not expected to do so until Congress returns from its Memorial Day recess. But House delegates likely will include several members of the House Financial Services Committee, including Chairman Barney Frank of Massachusetts. Several members of the House Agriculture Committee, including Chairman Collin Peterson, D-Minn., also likely will be tapped to work with the conference committee on issues under the Agriculture Committee's jurisdiction, such as derivatives regulation.

### **Contentious Matters and Issues Important to NGFA Members:**

The conference committee could begin meeting as early as June 9. Chairmen Frank and Dodd have expressed hope that a final version of the bill can be enacted by both chambers prior to the congressional Fourth of July holiday recess.

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## FDA Issues Updated Guidance on Electronic Portal for Reporting Serious Food, Grain, Feed Adulteration Incidents

### **...Requests Comments on When Products Considered 'Transferred'...**

The Food and Drug Administration (FDA) on May 24 issued an updated version of its long-awaited guidance to the industry on its electronic portal that facilities are to use to report serious adulteration incidents involving food (including grain and grain products), feed, feed ingredients and other food products that pose a risk of causing serious adverse health consequences or death to humans or animals.

Further, as reported by the NGFA in its May 20 *NGFA Newsletter*, the agency also issued an accompanying *Federal Register* notice on May 25 seeking comments on when an agricultural commodity or food or feed product is considered to have been "transferred" to another party, the latter of which then would have the reporting obligation to FDA if receiving or further shipping such a product if it met the legal threshold for reporting.

The electronic portal – known as the "Reportable Food Registry" – was mandated by Congress under the FDA Amendments Act of 2007 (FDAAA), and has been operational since Sept. 8, 2009. The law requires "responsible parties" with facilities registered with FDA under the Bioterrorism Prevention Act of 2002 to submit a report to FDA through its electronic portal within 24 hours after making a determination that an article of food poses a "reasonable probability" of causing serious adverse health consequences or death to humans or animals. Such facilities include domestic and foreign facilities that are engaged in manufacturing, processing, packing or holding food for consumption in the United States, and include grain elevators; feed, feed ingredient and pet food manufacturers; grain processors and millers; and exporters.

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## Megan Provost to Join NGFA Staff as Director of Legislative Affairs



NGFA President Kendell W. Keith today announced that **Megan Provost** will join the NGFA's staff as director of legislative affairs, effective June 14.

In this capacity, Provost will be responsible for leading the NGFA's legislative efforts on a wide range of issues important to the NGFA's members on Capitol Hill. She also will work as principal staff liaison to several NGFA committees, including the International Trade/Agricultural Policy Committee. She replaces Chris Holdgreve, who left the NGFA's staff in March to become executive director of "Excellence Through Stewardship" – the biotechnology industry-coordinated initiative that promotes global adoption of stewardship programs and quality-management systems for biotechnology-enhanced plant products.

Provost joins the NGFA's staff after serving as trade and southern crops economist for the American Farm Bureau Federation (AFBF). In that capacity, she worked extensively on trade and international economic analyses with a primary emphasis on trade negotiations, such as free trade agreements negotiated with Korea, Colombia, Panama and other countries, as well as the Doha Round of World Trade Organization negotiations. She also has worked on economic analyses involving crop markets.

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"We're extremely pleased to have Megan join the NGFA organization," said Keith. "She brings great expertise and analytical capabilities that will be tremendous assets as we work with our committees and industry leadership to develop policies on a wide array of legislative issues affecting the industry. Megan also is a very enjoyable person with high integrity, qualities that our members will both enjoy and appreciate as we work with Congress to advocate policies that promote economic growth and free enterprise. We look forward to continuing to build upon our legislative effectiveness with her talents and business acumen."

Provost rejoined AFBF's Department of Economic Analysis, headed by AFBF Chief Economist Bob Young, in November 2008 after having served as the special assistant to the administrator of the U.S. Department of Agriculture's Foreign Agricultural Service (FAS) during the Bush administration. While at FAS, she was the chief policy adviser and deputy chief of staff for USDA's agency that is involved in promoting and resolving impediments to exports of U.S. agricultural products.

Prior to her work at USDA, Provost worked as trade economist for AFBF for four years, during which she advocated policy positions and conducted research and analyses on international and trade topics. She also helped facilitate development of a 20-year vision for the U.S. agricultural sector through AFBF's Making American Agriculture Productive and Profitable Project.

Provost received an undergraduate degree in agribusiness and a master's degree in agricultural economics, both from Oklahoma State University in Stillwater, Okla. In addition, she currently is working toward a law degree at The George Washington University Law School in Washington, D.C.

She is a native of central Indiana, where she grew up on a corn and soybean farm, and was an avid equestrian. She remains involved with the horse industry. She is a member of several professional organizations, including the American Economics Association and the Washington International Trade Association.

Even though she doesn't officially join the NGFA's staff until June 14, Provost will be participating in the June 8-9 meeting of the NGFA's Country Elevator Committee, whose agenda includes a day of meetings with key congressional offices on issues important to the industry.



## Calendar

- June 8-9, 2010:** NGFA Country Elevator Committee  
L'Enfant Plaza Hotel, Washington, D.C.
- July 14, 2010:** NGFA Grain Grades and Weights Committee  
Kansas City Airport Hilton, Kansas City, Mo.
- July 28-29, 2010:** NGFA/Grain Journal Safety, Health and Environmental Quality Seminar  
Hilton Hotel, Omaha, Neb.
- July 29, 2010:** NGFA Safety, Health and Environmental Quality Committee  
Hilton Hotel, Omaha, Neb.
- Aug. 11, 2010:** NGFA Biotechnology Committee  
NGFA Library Conference Room, Washington, D.C.
- Sept. 7-9, 2010:** NGFA Board of Directors  
Chicago Marriott Magnificent Mile, Chicago, Ill.
- Sept. 22, 2010:** NGFA Feed Legislative and Regulatory Affairs Committee; Feed Manufacturing and Technology Committee; Feed and Animal Agriculture Strategic Issues Committee  
Chicago Marriott Magnificent Mile, Chicago, Ill.
- Sept. 22-24, 2010:** NGFA-PFI Feed/Pet Food Joint Industries Conference  
Chicago Marriott Magnificent Mile, Chicago, Ill.



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Among major issues that will need to be resolved by the conference committee is whether derivatives should be required to be traded on public exchanges, as the Senate bill proposes. The Senate bill also would require banks to divest much of their derivatives trading business, which has raised concerns with Rep. Frank and some Senate Democrats, as well as with Republicans.

The NGFA has been supportive of congressional efforts to enhance financial market transparency and reporting as beneficial to all market participants, but has not taken a formal position either in favor of or opposed to the overall bill. However, the NGFA has urged Congress to take a reasoned approach that does not overreact to short-term developments, and has communicated the following on specific issues of importance to the grain, feed and processing industry:

► **Bona-Fide Hedge Definition:** The House-passed bill contains a very specific definition of what constitutes a bona-fide hedge, which could create unintended consequences for commercial hedgers of grains, oilseeds and feed ingredients. The Senate-passed version contains no such provision. Authority for defining what constitutes a bona-fide hedge traditionally has been vested in the Commodity Futures Trading Commission (CFTC), which has the expertise to administer and oversee this important element of the law. The NGFA will urge that the Senate version prevail in the conference committee, and that the bona-fide hedge definition be omitted from a final bill.

► **End-User Exemption:** Both the House- and Senate-passed bills contain an exemption from exchange-clearing and exchange-trading requirements for legitimate hedgers that utilize derivatives to hedge their commercial business risk. The NGFA has supported such an exemption as being appropriate and necessary, and will urge that the exemption be retained in the final bill.

► **CFTC Regulatory Jurisdiction of Futures Markets:** Both the House- and Senate-passed bills contain slightly varying provisions that would authorize the CFTC to cede regulatory authority over certain energy-related contracts over which the Federal Energy Regulatory Commission traditionally has shared some authority when found by the CFTC to be in the public interest. The NGFA will support this concept, *provided* the final bill is clear that regulatory authority over U.S. futures markets is vested solely in the CFTC.

► **Insider Trading:** The Senate bill contains a provision that would prohibit, under the Commodity Exchange Act, the misappropriation and use of government information for futures-trading purposes. Following some initial concerns about the vagueness and overly broad nature of this provision, the NGFA negotiated changes with the CFTC that resulted in the agency revising its proposal. Because it was agreed that this important change would be included in the Senate-passed bill, the NGFA now is agreeable to this Senate bill provision.

## Senate to Consider Tax Break Bill Upon Return from Memorial Day Recess

The focus on legislation that would extend several significant tax breaks will shift to the Senate next week when it reconvenes June 8 following its Memorial Day recess.

The House on May 28 approved its version of legislation (H.R. 4213) that would extend several significant tax exemptions, including the biodiesel tax credit that expired at the end of 2009. For much of the previous two weeks, the bill had been embroiled in a House debate over its adverse impact on the federal budget deficit. That debate – and potential reshaping of the bill yet again – is expected to resume once the Senate begins its consideration of the measure.

Different versions of the bill previously had been approved by the House and Senate, which necessitated reconsideration by both chambers.

As approved on May 28 by the House, the bill is estimated to cost \$116 billion over 10 years – adding \$54 billion to the deficit after subtracting new taxes and fees added to the measure in an attempt to make it more palatable to fiscally conservative Democrats. That's down from the nearly \$200 billion House-Senate compromise version unveiled last week, which then was pared down by House Democratic negotiators.

House approval came on two back-to-back votes, with the core of the bill approved 215-204 followed by a second vote (245-171) that would delay the imposition of cuts to Medicare payments to physicians for an additional 19 months. All House Republicans voted against the bill, with the exception of Rep. Anh (Joseph) Cao, R-La.

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The House-approved measure would extend the existing \$1 per gallon biodiesel and renewable diesel tax credit to Dec. 31, 2010, making it retroactive to Jan. 1, 2010 when it originally expired. It also would extend for one year the current 50-cents-per-gallon tax incentive for transportation fuels manufactured from biomass, biogas, natural gas and propane. And it would extend the rail track maintenance tax credit, as well as the five-year depreciation schedule for farm business machinery and equipment – both to Jan. 1, 2011.

**Agricultural Disaster Assistance:** The House version also retains an agricultural disaster assistance package originally adopted by the Senate at the behest of Senate Agriculture Committee Chairman Blanche Lincoln, D-Ark.

The “emergency agricultural disaster-assistance” package would designate \$1.5 billion for producers sustaining weather- or natural-disaster-related losses for 2009 crops, specialty crops, livestock, poultry, aquaculture, cottonseed and sugar. Producers would need to have sustained only a 5 percent or more crop or quality loss to be eligible, and would be required to purchase federal crop insurance coverage for their 2010 crops.

The agricultural disaster funding would extend \$1 billion in supplemental direct payments, equating to 90 percent of the annual direct payment for growers of farm program crops (such as grains, oilseeds and cotton) in counties declared

by the U.S. Department of Agriculture to be disaster areas in 2009.

The agricultural disaster-assistance provisions also would provide:

- ◆ Up to \$300 million for specialty crop producers;
- ◆ Up to \$50 million for ranchers sustaining grazing losses, with compensation made through livestock forage assistance.
- ◆ Up to \$75 million in no-interest loans for poultry producers whose contracts with processor Pilgrim’s Pride were terminated when the firm declared bankruptcy on Dec. 1, 2008;
- ◆ Up to \$25 million for aquaculture assistance, allocated based upon the quantity of aquaculture feed used in each state; and
- ◆ Up to \$42 million for producers and first-handlers of cottonseed.

Payments for specialty crop and aquaculture would be issued through grants to states. [Click here](#) to access the agriculture disaster-assistance provisions of the House-passed bill.

## Senate Vote Set for June on Bill Revoking EPA’s Authority to Regulate Greenhouse Gases

Sen. Lisa Murkowski, R-Alaska, has secured an agreement from Senate Majority Leader Harry Reid, D-Nev., to allow a June 10 vote on her resolution (S.J. Res. 26) that would revoke the Environmental Protection Agency’s (EPA’s) authority to regulate greenhouse gases under the Clean Air Act.

The resolution would overturn the so-called “endangerment finding” issued by EPA last December that determined greenhouse gases qualify as dangerous pollutants that are subject to regulation under the Clean Air Act. EPA’s ruling was triggered by a 2007 Supreme Court decision that directed the agency to determine whether greenhouse gas emissions posed a threat to human health. Up to six hours of Senate floor debate have been allocated, with no amendments. While Murkowski’s resolution has more than 40 cosponsors, it is unclear if there will be sufficient votes for passage. Further, the measure faces considerable opposi-

tion in the House and from the Obama administration.

Meanwhile, Sens. Robert Casey, D-Pa., and Tom Carper, D-Del., are developing legislation that would support EPA’s endangerment finding and the agency’s “tailoring” regulations that would subject the largest emitters of greenhouse gases to the Clean Air Act’s permitting requirements.

**Kerry-Lieberman Climate-Change Bill:** On a related matter, Reid has indicated he will wait until the Senate reconvenes during the week of June 7 before deciding whether to provide floor time for debate on the climate-change discussion draft legislation unveiled earlier this month by Sens. John Kerry, D-Mass., and Joe Lieberman, I-Conn. Reid has said he would need assurances that the measure could garner the 60 votes needed to avoid a filibuster before proceeding.





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Importantly, it is the facility (company) that makes the determination as to whether the reporting threshold has been met, based upon evidence of the extent of the adulteration, the intended use of the commodity or product, and whether the product still is under its control or has been "transferred" to another party. This adulteration threshold equates closely with FDA's current Class I recall criteria, which the agency defines as a "serious emergency situation involving recall of a product that may have an immediate or long-range adverse impact on the life or health of animals or humans."

The FDAAA provides an exemption from the requirement that a responsible party submit a report, even if the adulteration threshold is met, if all three of the following provisions are met: 1) The adulteration of the product must have originated with the responsible party; 2) the responsible party must have detected the adulteration "prior to any transfer to another person" of the product; and 3) the responsible party must have corrected the adulteration or destroyed the food. *[Emphasis added.]*

**"Transfer" Issue Opened for Public Comment:** Importantly, within the *Federal Register* notice officially announcing the availability of the updated guidance document, FDA requested public comments by July 26 on when "transfer" of a commodity or product to another party has occurred, thereby shifting the reporting obligation if the adulteration threshold is met.

Importantly, FDA's updated guidance contains the following questions and answers that provide the agency's current interpretation about the "transfer" issue:

▶ **Question D.10:** *"If a food facility enters into a contract with a farmer whereby the food facility agrees it will purchase the produce grown by that farmer when that produce is harvested, and the facility tests the produce in the field before it is harvested and determines that it meets the definition of a reportable food, must the food facility that contracted with the farmer submit a reportable food report?"*

**FDA:** "No, the food facility that contracted with the farmer and tested the produce in the field is not required to submit a reportable food report, provided that the facility did not manufacture, process, pack or hold the produce and therefore never became a responsible party with respect to the produce. However, if the field had been harvested and the contaminated produce had been moved to the food facility, the facility would have become a responsible party because it "held" the food and would be required to submit a reportable food report. Provided that the farm is not a facility required to register..., the farm is not a responsible party ... and is not required to submit a report."

▶ **Question E. 10:** *"Our manufacturing facility receives bulk trailer shipments of ingredients from our suppliers. A truck driver brings a trailer full of bulk ingredients onto our property, drops off the trailer, and drives away. However, as company policy, we do not off-load the trailers that are delivered to our facility or take ownership of the food in the trailers until after we test a sample of the food and determine that the food is acceptable. If we "reject" a shipment, i.e., return the food to the supplier, because the sample result indicates that the food is a reportable food, are we required to submit a reportable food report?"*

**FDA Answer:** "Yes, provided that you are a facility required to register with FDA...you must submit a report for the food you determined to be a reportable food, even though you returned the food to your supplier. FDA considers that your facility "held" the reportable food because the trailers were no longer in transit once they were dropped off on your property. Thus, you are a responsible party with regard to the reportable food. Provided that the adulteration did not originate with you, you do not meet the criteria for the exemption from reporting..."

Further, FDA officials provided the following oral responses to questions posed concerning the "transfer" issue during a stakeholder conference call conducted on May 24 in which the NGFA participated.

▶ **Question 1:** *"A truck load of corn arrives at my feed facility and is tested for mycotoxin content. The testing indicates that the mycotoxin level is too high for use in my products, but that the level falls within permissible limits for other animal species. The load is rejected and not unloaded at my facility. What is my reporting obligation in this situation?"*

**FDA Answer:** "If the truckload of corn has not been drop-shipped, that is the truck is still attached to the trailer, then the company has no reporting obligation. However, if the trailer holding the corn was dropped and left on the facility's property, the company would be obligated to report the food. In the latter situation – when a drop-shipment has occurred – FDA views the company as being the party responsible for reporting because it holds or has possession of the food."

▶ **Question 2:** *"Railcars of corn are placed on my feed mill's property. The corn is tested for mycotoxins and it is determined that the mycotoxin level is too high for use in my products, but that the level falls within permissible limits for other animal species. The railcar load is rejected and not unloaded at my facility. What is my reporting obligation in this situation?"*

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**FDA Answer:** “Your company is obligated to report the food because the railcars have been dropped on your property, and you are holding the corn within your possession.”

FDA noted in its request for comments on the “transfer” issue that Congress did not define the term in the statute itself. In its original guidance, FDA said that a transfer occurs when one facility releases the food to another facility. In its *Federal Register* notice, FDA sought input on whether this interpretation of the term “transfer” is appropriate, or if other interpretations of the term would be more appropriate. Specifically, FDA requested comments on whether the interpretation of the term “transfer” should be dependent upon possession or ownership of the food, or whether there are other interpretations the agency should consider, such as a combination of possession and/or ownership. The NGFA will be submitting a statement to FDA concern-

ing this issue.

**FDA Activates New Safety Reporting Portal:** In a related development, FDA on May 24 transitioned its electronic Reportable Food Registry portal so that it now is part of the U.S. Department of Health and Human Services’ new Safety Reporting Portal. FDA said that the new portal features user-friendly software that offers conveniences to those submitting reports, including the ability to pre-populate reports with contact information, save drafts or partially completed reports, and view and edit previously submitted reports.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access FDA’s updated Reportable Food Registry guidance document. A copy of FDA’s May 25 *Federal Register* notice may be accessed by [clicking here](#).

## FDA to Announce GRAS Notification Pilot Program for Animal Feed Ingredients

The NGFA has learned that the Food and Drug Administration (FDA) on June 4 officially will announce that it is seeking participants for a voluntary pilot program in which persons submit to FDA notices of claims that a particular use of an animal feed ingredient is “generally recognized as safe” (GRAS) and, therefore, exempt from other legal premarket-approval requirements.

The opportunity for ingredients to gain GRAS recognition for use in animal feed is based upon an amendment to the federal Food, Drug and Cosmetic Act enacted in 1958 addressing food additives. The 1958 amendment defined the term “food additive” and established a premarket-approval process for such products. But it also excluded from the definition of food additive: 1) those substances that are generally recognized, among experts qualified by scientific training and experience, to be safe under the conditions of their intended use; and 2) substances used in food prior to Jan. 1, 1958 that through either scientific procedures or through experience have a demonstrated history of safe use. Importantly, under the 1958 amendment, it is the use of a substance, rather than the substance itself, that is eligible for the GRAS exemption.

FDA’s Center for Veterinary Medicine (FDA/CVM) will oversee the GRAS notification process for animal feed ingredients and pattern its activities after a similar process currently being administered by FDA’s Center for Food Safety and Applied Nutrition for human food ingredients. Within the process, FDA/CVM’s potential recognition of a GRAS notification for the use of an animal feed ingredient will be based upon scientific procedures that require the same quantity and

quality of scientific evidence as is necessary to obtain approval of a food additive regulation for the substance. In addition, the specified use of the feed ingredient will be required to meet two necessary elements established with the GRAS standard. Those elements are a “technical element” and a “common knowledge element.” The technical element requires that available information about the ingredient establish that the intended use of the ingredient is safe. Meanwhile, the common knowledge element includes two facets: 1) the data and information relied upon to establish the technical element must be generally available; and 2) there must be a basis to conclude that there is consensus among qualified experts about the safety of the ingredient for its intended use. Both facets are required to satisfy the “common knowledge element” of the GRAS standard.

Once the pilot program is announced, which is scheduled for publication in the June 4 *Federal Register*, FDA/CVM said it immediately will begin accepting notices of GRAS determinations from all interested parties. However, the agency said it strongly will encourage potential participants in the pilot program to contact the agency’s Division of Animal Feeds prior to submitting notices to discuss their submission plans and to ensure that such notices contain all necessary information.

Once received, FDA/CVM said it will administer the GRAS notices under the pilot program as follows:

- ▶ Within 30 days of receipt of the GRAS notice, the agency intends to acknowledge receipt of it by informing the notifier in writing.

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- ▶ FDA/CVM intends to respond to the notifier in writing, as quickly as resources permit, concerning whether the notice received by the agency: 1) provides a sufficient basis for the GRAS determination; or 2) has generated additional questions within the agency as to whether the intended use of the substance is GRAS.
- ▶ Any GRAS-determination claim submitted as part of the pilot program will be available immediately for public disclosure on the date the notice is received. All remaining data and information in the notice also will be available for public disclosure, in accordance with applicable regulations, on the date the notice is received.
- ▶ For each notice of GRAS determination submitted under the pilot program, the following information will be accessible for public review and copying: 1) a copy of the submitted GRAS determination claim; and 2) a copy of any letter issued by the agency that advises the notifier that the notice provides a sufficient basis for the GRAS determination, or that the agency has identified questions as to whether the intended use of the substance is GRAS.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access a pre-publication copy of FDA's announcement of its GRAS notification pilot program for ingredients used in animal feed.

## Vilsack Says USDA to Propose New Rules in June Governing Producer-Packer Contracts

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) in mid-June will propose new rules governing sales contracts between livestock and poultry producers and meat packers.

Secretary of Agriculture Tom Vilsack announced the development during the second of five scheduled "workshops" being conducted jointly by USDA and the U.S. Justice Department concerning competition and regulatory issues in various sectors of agriculture. Vilsack said that, among other things, GIPSA's proposal will include what he termed a more precise definition of what constitutes anti-competitive business practices in the livestock and poultry industry to enable growers to utilize the Packers and Stockyards Act's threshold that requires them to show "injury to competition" when bringing a case. The agriculture secretary maintained that livestock and poultry producers would benefit when considering whether to bring claims under the Packers and Stockyards Act by knowing, "how specific and how much damage (producers) have to show," and whether they need to demonstrate that the damage applies across the entire industry, or just to the producer's own operation.

As mandated by the 2008 farm law, GIPSA also said the proposal would clarify when a company gives a "preference or advantage, or subjects a person or locality to an undue or unreasonable prejudice or disadvantage." The proposed regulation also is expected to establish criteria the agency will consider when determining whether a live poultry dealer has provided reasonable notice to contract growers that it would suspend delivery of birds if it requires the grower to make additional capital investments.

More than 500 persons attended the May 21 workshop on competition and regulatory issues in the poultry industry, conducted in Normal, Ala. Attorney General Eric Holder said more than 15,000 public comments had been submitted thus far on agricultural competition issues, and that the Justice Department was "committed to working jointly with USDA in protecting competition" in agricultural markets. During the workshop, growers who testified alleged that they received inadequate communication from companies; that grower rankings lacked transparency; and that poultry companies placed unreasonable demands that they make costly upgrades to poultry houses or risk having their contracts terminated. Virtually all growers testifying urged that GIPSA be given more enforcement authority; however, one South Carolina producer – to heckles from other producers in the audience – said grower contract formulas promote efficiency, and that there was no need for more government intervention in the integrated poultry industry. Meanwhile, the National Chicken Council (NCC) issued a study stating that competition was "alive and well" in the broiler sector. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the 37-page NCC study.

**Future Workshops:** The next workshop is scheduled for June 7 at the University of Wisconsin in Madison, Wis., and will focus on "concentration, marketplace transparency and vertical integration" in the dairy industry. The final two workshops are scheduled for Aug. 26 at Colorado State University in Fort Collins, Colo., examining beef, hog and other animal agriculture sectors; and Dec. 8 in Washington, D.C., examining "discrepancies between the prices received by farmers and the prices paid by consumers," as well as an analysis of agricultural markets nationally that incorporates discussions from each of the previous workshops.

## NGFA Continues to Urge OSHA to Clarify Policy on Sweep Augers

The NGFA continues to have ongoing discussions with the Occupational Safety and Health Administration (OSHA) concerning the agency's Dec. 24 interpretation letter that created a new policy for operating sweep augers inside grain bins.

In a Feb. 22 letter, the NGFA had urged the agency to immediately withdraw and reconsider its Dec. 24 interpretation letter. OSHA issued the letter in response to an inquiry from an insurance company 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 [29 CFR 1910.272] that addresses whether an employee may enter a bin when machines are operating, the agency does not have a formal policy addressing the operation of sweep augers. But in its Dec. 24 letter of interpretation, OSHA flatly stated that an employee cannot work inside a bin while an unguarded sweep auger is in operation. Yet, the agency did not offer any other type of procedure to remove grain from a bin if an unguarded auger cannot be used. Nor did it define what is meant by guarded or unguarded. OSHA subsequently refused to

rescind the letter and turned down the NGFA's request for a meeting.

**NGFA Follow Up:** OSHA's failure to respond prompted the drafting of a more detailed NGFA letter to OSHA on May 4. The NGFA's May 4 letter pointed to several conflicts between OSHA's statements in its Dec. 24<sup>th</sup> letter compared to its current standards. The NGFA also cited how previous correspondence between the agency and the NGFA regarding deenergization was not referenced in the Dec. 24 OSHA letter. The NGFA currently is awaiting a response from OSHA to the May 4 letter, in which the association again requested an opportunity to meet to further discuss this important issue.

The current uncertainty on what type of sweep-auger equipment can be used and the types of procedures OSHA may find acceptable have caused great concern within the NGFA and its membership. The NGFA continues to work the issue, and will keep members informed on any response received from the agency. For more information, contact NGFA Director of Regulatory Affairs Jess McCluer at 202-289-0873, extension 23 or at [jmcluer@ngfa.org](mailto:jmcluer@ngfa.org).

## NGFA, Others to Meet with EPA on July 8 on New Source Performance Standards

The NGFA and five other grain-processing organizations are scheduled to meet on July 8 with U.S. Environmental Protection Agency (EPA) officials at the agency's Research Triangle Park, N.C., office to discuss further the agency's potential proposals to modify the new source performance standard (NSPS) for grain facilities, including temporary storage facilities.

On Nov. 21, 2007, EPA's Office of Enforcement and Compliance Assistance (OECA) 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. Were such a policy to stand, it would expand greatly the reach of the standard. The types 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 the term "bin."

Following the NGFA's formal challenge to the OECA letter (see *NGFA Newsletter*, Dec. 6, 2007), EPA initiated a review of the NSPS for grain elevators through a formal rulemaking process to determine if any changes needed to be made. The most recent previous review was conducted in 1984. After the review began, the NGFA 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.

EPA currently is analyzing the data generated through the Clean Air Act's required Section 114 questionnaire that was completed by nine industry companies, as well as industry-supplied data. After the data are compiled, EPA will develop a proposed rule – scheduled to occur by September, unless superseded by other priorities – if the agency determines changes to Subpart DD warrant consideration. If and when issued, it is estimated that it will take a year for the rulemaking process to be completed. 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.

For more information, contact NGFA Director of Regulatory Affairs Jess McCluer at 202-289-0873, extension 23 or at [jmcluer@ngfa.org](mailto:jmcluer@ngfa.org).



## OSHA's Emphasis Programs Focus on Grain Handling Industry

Several Occupational Safety and Health Administration's (OSHA) area offices have initiated a "local emphasis program" covering grain handling facilities, or will be doing so by the start of the next fiscal year on Oct. 1.

The NGFA has learned that the initiative involves several OSHA area offices in three regions – namely, Region V (Minnesota, Michigan, Illinois, Indiana and Ohio), Region VII (Nebraska, Kansas, Missouri and Iowa) and Region VIII (Montana, North Dakota, South Dakota, Colorado and Utah). Region VII currently has a grain-handling facility emphasis program that covers each area office.

Under a "local emphasis program," OSHA compliance safety and health officers are required to conduct inspections of grain elevators that are under federal OSHA jurisdiction. During those inspections, OSHA does not focus on any particular hazard, such as combustible dust or potential engulfment hazards. Further, there is not a specific number of grain handling facilities targeted for inspection. The emphasis program lasts for one fiscal year before being considered for renewal.

The emphasis program is intended to supplement existing OSHA inspection targeting programs, focusing additional resources as necessary to promote compliance and awareness of safety and health hazards at grain handling facilities.

## OSHA Proposes Major Revisions to Fall Protection Standard

The Occupational Safety and Health Administration (OSHA) on May 24 proposed major revisions to its walking-working surfaces and personal protective equipment (fall protection systems) standard – also known as Subpart D.

The wide-ranging proposal not only addresses falls and other hazards associated with walking-working surfaces, such as rail rolling stock, but also hazards related to combustible dusts.

Concerning fall protection, OSHA is seeking comments on whether specific regulations are needed to address falls from rolling stock and commercial motor vehicles. The agency's existing regulations under Subpart D do not specifically address or exclude fall protection on rolling stock or motor vehicles from coverage. In 1996, the agency issued an internal memorandum that directed OSHA inspectors not to cite rolling stock under Subpart D.

However, in its new proposal, the agency states that the memo "...did not result in clear direction to the public or to OSHA's field staff." OSHA defines "rolling stock" as any locomotive, railcar or vehicle operated exclusively on a rail or rails, or a trolley bus operated by electric power supplied from an overhead wire. OSHA's proposal seeks information on eight specific questions regarding rolling stock, such as the number of employees that work on rolling stock; the type of fall-protection equipment used; and alternative means that can be used to protect employees in the absence of such fall-protection devices.

But OSHA's proposal also would address potential hazards related to combustible dust, by modifying the general requirements found in Section 1910.22 of its regulations that obligate employers to keep workplaces, passageways, storerooms and service areas clean and orderly, and in a sanitary condition. Specifically, OSHA proposes to require that floors of workrooms be maintained in a clean and, so far as possible, dry condition to prevent slips, trips, falls and other hazards. It also would require that, where wet processes are used, drainage be maintained, and false doors, platforms, mats or other dry-standing places be

provided when practicable.

Historically, OSHA has interpreted these provisions as applying to combustible dust accumulations associated with fire and explosion hazards. And the agency maintains this section of its regulations provides the agency with one of its most important enforcement tools for preventing accumulations of combustible dust. For these reasons, OSHA said it is seeking comment on whether it should include an explicit reference to combustible dust or other hazardous material in the regulatory language of the final rule. The agency maintains that the language would merely clarify OSHA's long-held interpretation that Section 1910.22 is not limited to the hazards of slips, trips and falls, but also addresses any hazard that can be created when floors and work areas are not maintained in an orderly, clean, dry and sanitary condition. Based upon this proposal, grain elevators potentially could be cited for dust accumulation beyond the 35-foot priority housekeeping area near the bucket elevators required under the grain handling safety standard.

Among other topics addressed in OSHA's far-reaching proposal are requirements for guardrail, safety net and personal fall-protection systems (including fall arrest and positioning and travel-restraint systems); requirements for portable and fixed ladders; and requirements for employee training and retraining. The agency also seeks comments, as well as cost-benefit analysis, on whether to require employers to provide waterproof footwear in situations where wet processes are used.

The deadline for comments is Aug. 23, and OSHA said it would conduct a public meeting on the proposal thereafter. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the 60-page OSHA proposal. NGFA Safety, Health and Environmental Quality Committee Chairman Paul Luther of Land O'Lakes Purina Feed LLC, intends to appoint a task force to spearhead the organizations' efforts on this rulemaking. For more information, contact NGFA Director of Regulatory Affairs Jess McCluer at [jmcluer@ngfa.org](mailto:jmcluer@ngfa.org) or 202-289-0873, Ext.23.



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## **GIPSA Advisory Committee Schedules Meeting in June to Discuss Export User Fees and Wheat Standard**

The U.S. Department of Agriculture Grain Inspection, Packers and Stockyards Administration's (GIPSA) Grain Inspection Advisory Committee has scheduled a meeting for June 16-17 in Kansas City, Mo., to discuss, among other things, the current status of the agency's rulemaking on potential changes to the U.S. wheat standards and the application of the export tonnage fee.

The meeting, which will be attended by the NGFA, is scheduled for 8 a.m. to 4:30 p.m. on Wednesday, June 16, and 8 a.m. to noon on Thursday, June 17 at the Embassy Suites Kansas City-Plaza, 220 West 43<sup>rd</sup> St., Kansas City, Mo.

In 2009, GIPSA issued an advance notice of proposed rulemaking on the U.S. wheat standards, which last were amended substantively in 1993. The agency requested comments on "all facets" of the U.S. wheat standards, including "definitions, grade- and non-grade-determining factors, grade limits, damage, as well as on (wheat) grading

procedures and new services" GIPSA should offer. GIPSA will determine whether to propose specific changes for public comment.

In addition, GIPSA is to propose later this fall a significant increase in tonnage-based user fees charged for facilities utilizing official grain inspection and weighing services, beginning in fiscal 2011 (which begins Oct. 1, 2010).

The agenda also includes an update on the status of GIPSA's proposed container standard, which was based upon the expanded volume of export container shipments, as well as a report on the sorghum odor task force's efforts to resolve the differences between official interior inspections and export officials regarding "musty" sorghum odor.

The advisory committee meets twice annually to receive reports and advise GIPSA on programs and services provided under the U.S. Grain Standards Act.



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