



## NGFA Urges Speedy Adoption of Variable Storage Rate Concept to Enhance CBOT Wheat Futures Contract Performance

The NGFA has notified the CME Group that it supports the variable storage rate concept being considered by the exchange, calling it “the next logical step” in the ongoing effort to encourage convergence between cash and futures market values in the CBOT wheat futures contract.

In a statement submitted to the CME Group, the NGFA urged the exchange to propose to the Commodity Futures Trading Commission (CFTC) that the variable storage rate concept be implemented by December if the September CBOT wheat futures contract at expiration does not exhibit better convergence than expected. Convergence – the narrowing between futures and cash prices as futures contracts near expiration – has been lacking for the CBOT wheat contract for more than two years.

Under the variable storage rate concept, storage (premium) charges assessed by grain elevators approved by the CME Group as locations for physical delivery of wheat to satisfy outstanding CBOT wheat futures contract obligations would expand or contract based upon the carry in the market that is

implied by futures-market spreads. Under the proposal being considered by the CME Group and supported by the NGFA, an increase in the storage rate would be triggered if futures market spreads reached 80 percent or more of full carry. Such an increase in storage rates would make it more costly to continue to hold or roll futures market positions forward, a practice that has contributed to the significant gap between futures and cash market values. Similarly, a decrease in storage rates would be triggered if futures-market spreads declined to 50 percent of full carry. Under the proposal, the maximum that storage rates could increase or decrease would be about 3 cents per bushel per month, which the NGFA supported as a “significant adjustment” that should enhance convergence.

The NGFA said variable storage rates would better reflect cash fundamentals and enhance the ability of market participants to manage basis risk, which has increased dramatically in recent years. Better management of basis risk also should benefit banks and other lenders that provide financing to the agricultural sector, the NGFA noted.

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## FDA Activates Electronic Portal for Required Reporting of Serious Food/Feed Adulteration Incidents

### ...Agency to Exercise Enforcement Discretion for 90 Days for Good-Faith Compliance...

The U.S. Food and Drug Administration (FDA) has activated its new electronic portal through which facilities – starting today (Sept. 8) – are required to report severe food- and feed-product safety incidents that meet the threshold of posing a “reasonable probability” of causing “serious adverse health consequences or death to humans or animals.”

Importantly, in response to a request from the NGFA and other organizations, the agency said it would exercise “enforcement discretion” for 90 days – **until Dec. 8** – for facilities that make “reasonable” efforts to comply with the requirement to report through the electronic portal – known as the “Reportable Food Registry” – adulterated commodities or products that meet this danger threshold, and which take other “appropriate actions” to protect human and animal health if encountering such incidents. This is an important accommodation by FDA, since failure to report is deemed under the law to be a prohibited act

under the federal Food, Drug and Cosmetic Act, and is a misdemeanor for unintentional violations and a felony for willful violations.

The Reportable Food Registry is the congressionally mandated electronic portal through which U.S. and foreign facilities registered with FDA under the Bioterrorism Act of 2002 are required to report within 24 hours after the facility makes a determination that use of, or exposure to, an adulterated FDA-regulated product that has left its control would present a “reasonable probability” of causing “serious adverse health consequences or death to humans or animals.” As such, **it applies to all facilities – domestic and foreign – registered with FDA under the Bioterrorism Act that receive, store, handle, manufacture and distribute grains and oilseeds, milled and processed grain and oilseed products, animal feed and feed**

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*("Variable Storage Rate" continued from page 1)*

The NGFA said that a major practical reason to implement variable storage rates as soon as possible – preferably no later than December – is that without such action, the seasonal storage rates implemented by the CME Group in July at delivery warehouses will decline in December by about 3 cents per bushel – from the current approximately 8 cents per bushel to about 5 cents per bushel per month. “Implementation in December would at least prevent the storage rate from moving in the wrong direction, and would prevent further delay in remedying the CBOT wheat futures contract’s recent performance,” said NGFA Risk Management Committee Chairman Rod Clark, , vice president of CGB Diversified Services, Mount Vernon, Ind.

The seasonal storage rate was one of several steps taken by the CME Group over the last 18 months in an attempt to address the problematic lack of convergence in the CBOT wheat futures contract. These other actions included changing the deliverable instrument to a shipping certificate, adding wheat delivery locations and, effective with the September contract, reducing limits for the presence of deoxynivalenol (vomitoxin) in wheat delivered to satisfy outstanding CBOT wheat futures contracts.

The NGFA said the variable storage rate concept is “fairly straightforward,” but encouraged the CME Group to fully inform market participants about its mechanics, and pledged to assist in that effort. Further, the NGFA “fully supported” the CME Group’s plan – if the variable storage rate concept ultimately is proposed and adopted – to post the full-carry calculation daily on the exchange’s website, thereby enhancing market transparency.

Citing some confusion in the industry, the NGFA also recommended that the CME Group clarify its intent that the

variable storage rate concept would replace – not be in addition to – the seasonal storage rate implemented earlier this year for the CBOT wheat futures contract. In addition, the NGFA recommended that the variable storage rate be applied first to the CBOT wheat futures contract. If it proves successful, as expected, it may merit consideration for application to the CBOT corn and soybean futures contracts in the future, the NGFA said.

The variable storage rate concept also is expected to garner support from the CFTC’s Subcommittee on Convergence when it reports its findings to the CFTC Agricultural Advisory Committee shortly after expiration of the September CBOT wheat futures contract. The CFTC convergence subcommittee is comprised of 18 experts representing a broad and diverse spectrum of agricultural futures market participants, including the NGFA.

The NGFA in August had met with senior staff leadership at the CME Group to discuss and provide further input on the variable storage rate concept as part of the association’s ongoing, substantive efforts to enhance the performance of U.S. futures markets for traditional users, such as grain merchants, feed manufacturers, grain processors, livestock and poultry operations, and others that rely upon futures contracts as hedging instruments to offset price and inventory risks in the cash market.

The NGFA’s efforts to address futures market performance also have encompassed discussions with Congress and the CFTC. During testimony in late July before a Senate subcommittee, the NGFA urged both the CME Group and CFTC to be prepared to act quickly to adopt additional steps if CBOT wheat futures contract changes already being implemented by the exchange fall short in enhancing the contract’s performance.

## CFTC Expands Reporting of Futures Market Contract Positions

The Commodity Futures Trading Commission (CFTC) has expanded the data available in its weekly commitments of traders report and announced it will begin issuing quarterly reports on data collected from an ongoing “special call” on swap dealers and index traders involved in futures markets.

The actions follow a pledge made by CFTC Chairman Gary Gensler in July that the agency would enhance its reports to make futures market activity more transparent, which the NGFA had supported strongly. “For the first time, we will break out managed money and swaps in our commitments of traders reports, and release information on index investment to give the public a better view of trading in the futures markets,” Gensler said in a Sept. 2 statement.

**Commitments of Traders Report:** Starting with the commitments of traders report issued Sept. 4, the CFTC began publishing additional data for 22 contract markets, including major

agriculture, energy and metals markets. The new reports now break data into four categories of traders: 1) producer/merchant/processor/user; 2) swap dealers, 3) managed money; and 4) other reportables. Previously the report only aggregated data based on two classifications of futures market participants – commercial and noncommercial. The CFTC said it intends to produce the same disaggregated data on all of the remaining physical commodity markets for which it currently publishes commitments of traders data.

The agency said it also will continue to issue the traditional commitments of traders reports for a transition period until at least the end of 2009 to enable users to become familiar with the new reports and provide any recommended enhancements. The CFTC said comments on the new report should be submitted via email to [cotchanges@cftc.gov](mailto:cotchanges@cftc.gov) by Oct. 1. The agency said it also plans to soon release three years of historical data for the new report.

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Further, it said it is working to create a new commitments of traders report for all financial markets in a form that will improve their transparency. The categories of the new financial commitments of traders report may be different from those applied to the physical markets, the agency said. The CFTC said it concurrently is working to improve its so-called Form 40 and other methodologies to improve the accuracy of trader classifications.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the first CFTC commitments of traders report containing the expanded data.

**Index Investment Data:** In addition to disaggregating its commitments of traders reports, the CFTC announced it will

begin periodically releasing data on index investment in commodity futures markets. In September 2008, the CFTC published a report on swap dealer and index trader involvement in futures markets that was based upon data received from the agency's "special call" authority. The CFTC said it continued this special call, and enhanced the information disseminated in the previous report.

Starting with the Sept. 4, 2009 report, the agency began releasing the data on a quarterly basis and indicated its intent to eventually issue such data monthly. The new data include both gross-long and gross-short positions, as well as updates and includes additional data from what was presented in the September 2008 report.

## CFTC Recommends MGE Improve Market Surveillance, Staffing

The Commodity Futures Trading Commission (CFTC) has recommended that the Minneapolis Grain Exchange (MGE) make several improvements in its audit-trail compliance program and beef up staffing during a recently completed rule enforcement review completed by the agency's Division of Market Oversight.

The CFTC found that the MGE generally maintains adequate audit-trail and trade-practice surveillance programs, as well as adequate disciplinary procedures. However, the agency found that the "high turnover" in the exchange's compliance staff and the need to focus on market surveillance during "unprecedented" market volatility and volume strained the MGE's "ability to perform all of its self-regulatory functions."

To address these areas, the CFTC recommended that the

MGE: 1) augment its audit-trail compliance program to include a programmatic review of electronic audit and recordkeeping rules; 2) hire additional staff members to ensure interviews are conducted promptly after a potential trading violation is identified and that investigations are completed promptly; 3) ensure that disciplinary committees issue penalties of "sufficient magnitude" in all disciplinary cases and complete traders' complete disciplinary history when determining appropriate sanctions; and 4) ensure no member receives more than one "reminder letter" and one "warning letter" for the same type of violation in a rolling 12-month period.

Members receiving the *NGFA Newsletter* electronically may access the CFTC's 61-page report by [clicking here](#).



## On Capitol Hill

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## Senate Leaders Delay Introduction of Climate-Change Bill

Democratic leaders have announced that the Senate's version of climate-change legislation now won't be introduced until "later in September."

In a joint Aug. 31 statement, Environment and Public Works Committee Chairman Barbara Boxer, D-Calif., and Foreign Relations Committee Chairman John Kerry, D-Mass., said that plans to release the draft legislation when the Senate reconvened on Sept. 8 had been altered by the death of Sen. Edward M. Kennedy, D-Mass., Kerry's hip surgery and "intensive" work on health care legislation, particularly by the Senate Finance Committee on which Kerry also serves. The two chairmen said Senate Majority Leader Harry Reid, D-Nev., had agreed to provide "some additional time to work on the final details of our bill, and to reach out to colleagues and important stakeholders."

In a separate statement, Reid said that Boxer and Kerry were "working diligently to craft a well-balanced bill" and that he expected that the Senate still would have "ample time to consider this comprehensive clean energy and climate legislation before the end of the year."

Jurisdiction over the Senate's climate-change bill will involve no less than six separate committees: Finance; Agriculture, Nutrition and Forestry; Commerce, Science and Transportation; Energy and Natural Resources; Environment and Public Works; and Foreign Relations. Prior to Congress beginning its August recess, Reid had laid out an aggressive timetable that called for all six committees to complete their deliberations by Sept. 28.



## EPA Urged to Revamp Proposed Emission Controls for Feed Mills

The NGFA and American Feed Industry Association (AFIA) joined on Aug. 26 in urging the U.S. Environmental Protection Agency (EPA) to revamp its proposed regulations that would require many feed manufacturers to implement specified management practices and equipment standards to minimize alleged emissions of chromium compounds and manganese compounds if used within their operations.

The NGFA and AFIA collaborated to develop a joint statement to EPA recommending significant changes to several provisions of EPA's proposed rule, which would apply to the vast majority of feed manufacturers that use chromium or manganese compounds in their operations. EPA issued its proposed rule on July 27 to comply with provisions of the Clean Air Act that require the agency to identify and implement standards for at least 30 hazardous air pollutants that pose the greatest threat to public health in the largest number of urban areas.

The two organizations also faulted EPA for basing its proposal on erroneous and misguided assumptions and estimates of emissions of chromium and manganese compounds that potentially result from feed manufacturing activities. Further, the NGFA and AFIA stressed that EPA grossly underestimated the potential capital cost of the proposed rule's management practices and equipment controls, and said such practices and controls would result in few, if any, commensurate benefits in reducing potential chromium or manganese emissions from feed manufacturing operations.

In an extensive 15-page joint statement, the NGFA and AFIA articulated several major overarching concerns about the EPA-proposed rule, including the following:

◆ **Lack of Ample Due Process in Developing the Rule:** The NGFA and AFIA objected to EPA's denying their previous joint request that urged the agency to grant a 90-day extension in the proposed rule's extremely limited 30-day comment period. In that previous request, the two groups had identified several key aspects of the proposed rule for which EPA lacked critical information directly related to the proposed rule's provisions and impacts upon feed manufacturers. The NGFA and AFIA also said the agency's actions for gathering industry information, the timing of the proposed rule and rejection of the comment period extension request were not indicative of a constructive or meaningful rulemaking process.

◆ **Inaccurately Low Estimates of Affected Feed Manufacturers:** The NGFA and AFIA said EPA grossly underestimated the number of feed manufacturing facilities affected by the proposed rule. The agency projected that 1,800 feed mills would be subjected to the rule, while the actual number

exceeds 6,300. As such, the two groups said, the proposed regulation would have a much greater cost impact upon the industry than envisioned by EPA.

◆ **Statistically Invalid Methodology to Estimate Baseline and Potential Reductions in Emissions:** The two organizations said it was unsound and unjustifiable for EPA to estimate the quantity of chromium and manganese compounds emitted by the entire feed manufacturing industry based upon data derived from a reported chromium release from only one facility and reported manganese releases from only eight facilities. Using such faulty methodology also resulted in EPA deriving "grossly inaccurate" estimates of emissions, and overstating greatly the estimated reductions in emissions that would result from the practices and controls proposed by the agency.

◆ **"One-Size-Fits-All" Regulatory Approach:** The NGFA and AFIA objected to EPA's proposed regulatory approach that would subject a feed manufacturer to the proposed rule if it used any quantity of a chromium compound or manganese compound during the manufacturing of feed. Instead, the two associations said EPA first should define what constitutes a chromium compound and manganese compound, and then establish a minimum-use threshold quantity of such compounds that feed manufacturers would need to use before being subjected to the proposed rule. In this regard, the two groups strongly urged EPA to: 1) establish a 25,000-pound threshold-use quantity that would apply separately to both chromium and manganese compounds; and 2) exempt chromium compounds and manganese compounds that have concentrations of less than 1 percent from the calculation used to determine whether the 25,000-pound-use threshold has been reached.

The NGFA and AFIA also urged EPA to make the following revisions to the management practices and equipment controls contained in the proposed rule:

◆ Delete overreaching and unjustified housekeeping provisions that would require affected facilities to: 1) remove dust from walls, ledges and equipment at least monthly using low-pressure air or other means, and then sweep or vacuum the area; and 2) keep doors shut, whenever practicable. The two organizations contended that EPA had no basis for correlating housekeeping practices with ambient air concentrations of chromium compounds or manganese compounds.

◆ Eliminate a provision that would require the mixer where materials containing chromium compounds or manganese compounds are added be covered at all times when mixing is occurring, except when the materials are being added to the





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mixer. The two associations stated that potential emissions from openings in mixers at facilities are not released directly into the atmosphere, but instead are captured within the facility in which the mixer is operating. For this reason, they stressed, the proposed provision is unnecessary and exceeds the scope of EPA's authority.

▶ Revise the proposed provision that would require the use of drop socks at feed load-out points to minimize potential dust emissions during truck and railcar loading. The NGFA and AFIA emphasized that such a requirement would be cost-excessive, unreasonable and not performance-based. They instead urged EPA to allow the use of other cost-effective control methods, such as inherent design features and enclosures, that equally are effective in minimizing potential emissions, in lieu of using drop socks.

▶ Eliminate the proposed requirements that cyclones used in

pelletting operations be: 1) capable of removing at least 95 percent of particulate matter 10 microns in diameter or less; and 2) equipped with gauges to measure pressure-drop across the unit. The NGFA and AFIA said the proposed 95 percent pellet cyclone efficiency-rating requirement would be unachievable technologically, and potentially could be achieved only by installing secondary control devices at a staggering \$1.23 billion capital estimated cost to the industry. Meanwhile, the two associations said the proposed use of pressure-drop gauges on pellet cyclones would cost the industry more than an additional \$15 million, while providing no meaningful information on the cyclone's performance.

▶ The NGFA and AFIA also urged EPA to modify its proposed reporting and recordkeeping requirements to conform with each of the aforementioned suggested housekeeping and equipment-related changes.

## From the Hammermill

**USDA Announces Intent to Purchase More Pork to Support Market Prices:** Secretary of Agriculture Tom Vilsack announced Sept. 3 that the U.S. Department of Agriculture (USDA) would purchase an additional \$30 million in pork products in fiscal 2009 for federal food and nutrition-assistance programs in an attempt to buttress pork market prices.

When combined with previous announcements, USDA now plans to purchase approximately \$151 million in pork products. "This action will help mitigate further downward prices, stabilize market conditions, stimulate the economy and provide high-quality, nutritious food to recipients of USDA's nutrition programs," Vilsack said in the announcement.

The move was praised by the National Pork Producers Council (NPPC), which had asked Vilsack to purchase up to \$50 million in additional pork products as pork producers attempt to weather a two-year downturn in market prices exacerbated by the closure of export markets in the aftermath of the H1N1 influenza virus that was dubbed swine flu. Since September 2007, NPPC noted that pork producers have been losing an average of more than \$21 per head, with more than \$4.6 billion in equity lost during that time span. The governors of Colorado, Illinois, Iowa, Kentucky, Michigan, Nebraska, North Carolina, Oklahoma and Wisconsin also had urged the Obama administration to intervene.

**USDA Proposes Changes to Regulations on Testing of Scales Used to Weigh Livestock, Poultry, Feed:** The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking comments by Oct. 23 on a proposal to

require scales used to weigh livestock, live poultry or feed to be tested at least twice a year within six-month intervals and to encompass swine contractors within the list of entities to which the scale-testing requirement applies.

Currently, GIPSA's regulations under the Packers and Stockyards Act regulations allow scale owners to have their scales tested twice annually at intervals "approximately" every six months. Under the GIPSA proposal, scale owners would be required to complete the first of two scale tests between Jan. 1 and June 30 of the calendar year, with the second test required to be completed between July 1 and Dec. 31 of the same calendar year. GIPSA said the agency found it difficult to determine when a scale owner was in violation of submitting scale-test reports given the use of the term "approximately." The proposed regulation applies primarily to stockyard owners, market agencies, packers and live poultry dealers.

In addition, GIPSA's proposal would require that at least a 120-day time period elapse between the two tests each year. More frequent testing still would be required in instances where a scale does not maintain its accuracy between tests, the agency noted. Further, GIPSA said, its proposal to expressly include swine contractors within the scale-testing regulations would "dispel any confusion" that they are subject to the requirement, which was mandated under the 2002 farm law.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access a copy of the GIPSA proposal, which includes information on how to submit comments.





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

**ingredients, pet food, and a wide range of other FDA-regulated agricultural commodities, products and foods.**

Hypothetically, for instance, raw grain containing mycotoxins at a level that a firm determines would pose a danger of serious illness or death to humans or the animal species for which it is clearly intended (e.g., as designated on the label or bill of lading accompanying the shipment) would represent a reportable incident.

The threshold that triggers reporting of a product-safety incident to FDA equates closely with FDA's Class I recall criteria, which is defined as a "serious emergency situation involving recall of a product that may have an immediate or long-range adverse effect on the life or health of animals or humans."

**FDA Issues Industry Guidance:** Simultaneous with activating the Reportable Food Registry, FDA today issued a 22-page guidance document for industry that provides important information on how the agency intends to implement the electronic reporting requirement. Here are several important highlights:

▶ **Who Makes the Determination of When an Adulterated Product is Reportable?:** As the statute and FDA's guidance make clear, it is the "responsible party" – i.e., the owner, operator or agent in charge who submitted the Bioterrorism Act registration for the facility – who makes the determination of whether use or exposure to an adulterated product would present a "reasonable probability" of posing serious adverse health consequences or death to humans or animals. The "responsible party" for the facility is allowed to delegate to other persons in the company the authority to report such incidents to FDA.

▶ **What Are Some Examples of Reportable Products?:** FDA's guidance document states that those products that would meet the definition of a Class I recall situation would meet the reporting threshold for the Reportable Food Registry. As examples, FDA's guidance cites several previous Class I recalls that it says would be reportable: 1) salmonella-contaminated peanut butter; 2) ice cream that did not declare that it contained peanut-derived ingredients but contained peanut butter as an ingredient, which could pose an allergen risk; 3) horse feed contaminated with elevated levels of monensin; 4) swine feed containing elevated levels of selenium; and 5) sheep feed containing elevated levels of copper. However, FDA notes that the Class I recall definition does not necessarily encompass all situations that may make a product reportable under the Reportable Food Registry, and "should not be used as a substitute for evaluating

the facts" of a particular situation to determine if a product is reportable.

▶ **When is Reporting Not Required?:** Even if a facility makes a determination that a product is adulterated and meets the reporting threshold ("reasonable probability" of causing "serious adverse health consequences or death"), reporting is **not** required under the law so long as **all three of the following conditions are met:** 1) the adulteration originated with the facility; 2) the adulteration was detected by the facility prior to any transfer to another party; and 3) the facility either corrected the adulterated product (e.g., through reworking it in an FDA-approved manner) or the product was destroyed.

▶ **When Does Transfer to Another Party Occur?:** FDA's guidance document states that **intra-company transfers** of an adulterated product within a company that is vertically integrated are **not** deemed to be transfers to another person (which includes individuals, partnerships, corporations and associations). Thus, if a single corporate entity owns a grain elevator, processing plant and distribution facility, an intra-company transfer from that firm's grain elevator to its processing facility using company-owned transportation conveyances would **not** be considered to be transfer to another person – even if the facilities have different Bioterrorism Act facility registration numbers.

However, during a meeting with FDA officials on Sept. 4, the NGFA was told that if the adulterated product is in transit and has been shipped on a **common carrier** (*truck, railcar, barge, etc.*) **not owned by the company**, the shipment would be considered to have been transferred and reportable if meeting the danger threshold, even if the product could be recalled by the original shipper prior to reaching the destination of another entity. The same applies to situations in which an adulterated product is shipped to a third-party warehouse, even though the originating shipper maintains ownership and direct control over distribution of the product. Further, FDA said during the Sept. 4 meeting that even if the adulterated product is rejected by the receiving facility that is owned by a company different from the originating shipper, the product would be reportable if the receiver determines it meets the reporting threshold.

▶ **When Does the 24-Hour Clock for Reporting an Incident Start?:** FDA's guidance document makes clear that reporting is required as soon as practicable, but in no case later than 24 hours **after** the responsible party (or his/her designee) **determines** that the product is adulterated.

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ated and meets the danger threshold for reporting. The point in time when that determination is made may be later than when the facility first discovers a product may be adulterated. The agency also recognizes that some testing methods do not yield presumptive positive results with sufficient reliability to create a “reasonable probability” that the product would meet the reporting threshold. By contrast, a test method that yields a confirmed positive result “would be expected to be sufficiently reliable to trigger the reporting requirement, FDA’s guidance states.

◆ **Are Subsequent Recipients of Adulterated Products Required to Report?:** Yes. FDA’s guidance states that a facility that receives a reportable product is required to submit a report to FDA even though it has not further shipped the product.

◆ **What is the Report to FDA Required to Contain?:** The electronic portal provides spaces for providing the following required information: 1) the Bioterrorism Act facility registration number; 2) the date the product was determined to meet the threshold that requires reporting; 3) a description of the product, including the quantity/amount involved; 4) the extent and nature of the adulteration; 5) the results of any investigation done into the cause of the adulteration; 6) the disposition of the adulterated product, once known; and 7) product information typically associated with the product, such as product codes, lot numbers, product expiration dates, if any, and the name(s) of the manufacturer(s), packer(s) or distributor(s) sufficient to identify the product. The required data elements are indicated on the electronic portal’s screens. FDA recognizes that not all of the required information may be available within 24 hours after the product is determined to be reportable, and notes that the report can be amended later to update the required information.

Unfortunately, the current version of the software used by FDA’s Reportable Food Registry requires that amendments to the original report be done by resubmitting the entire report – referencing the unique identification number assigned to the original report so the two can be linked. However, each report – the original and the amended report(s) – will be assigned its own unique identification number, FDA states.

◆ **Is the Reporting Party Required to Notify Its Suppliers and Receivers?:** FDA’s guidance states that once the responsible party reports an incident to FDA through the electronic registry, it will be analyzed quickly by the agency. After consultation between FDA and the responsible party who submitted the report, the agency

says it may require the reporting party to notify the immediate previous source(s) and/or immediate subsequent recipient(s) of the adulterated product. The FDA guidance (question #35) provides the type of information that FDA may require the responsible party to share with its immediate previous source(s) and immediate subsequent recipient(s). The Reportable Food Registry will allow for email attachments of the names and locations of such parties.

◆ **Are These Subsequent Suppliers/Receivers Required to Report to FDA?:** FDA’s guidance states that even if the immediate previous source(s) and/or immediate subsequent recipient(s) are notified by the responsible party that made the report to FDA, they, too, “should” submit a report to FDA within 24 hours after being so notified.

◆ **Does the FDA District Office Still Need to be Notified?:** FDA’s guidance document “encourages” responsible parties that determine a product meets the reporting threshold to still contact their FDA district office and state or local public health or regulatory officials, even though they have submitted the incident to FDA through the Reportable Food Registry. But contacting the FDA district office or public health agency does **not** alleviate the legal requirement to report the incident to FDA through the electronic portal.

◆ **How Long do Records of Reportable Product Incidents Need to be Maintained?:** The law requires that facilities maintain records for two years for each Reportable Food Registry report received or issued.

◆ **Are Reports to the Registry Deemed to Be Admissions of Guilt?:** No. The law and FDA’s electronic portal make clear that incidents reported to the Reportable Food Registry are considered product safety reports, and are not admissions that the product involved is adulterated or caused or contributed to death, serious injury or serious illness.

◆ **Are Reports to the Registry Subject to Public Disclosure?:** FDA’s guidance states that a report filed with the Reportable Food Registry is subject to Freedom of Information Act disclosure. But importantly, certain Bioterrorism Act information is **not subject to disclosure**, such as the facility’s registration number or the identity or location of a specific registered person, as well as trade secrets and confidential commercial or financial information. FDA officials could not say definitively today whether the facility’s name would be redacted from any disclosure made under the Freedom of Information Act.

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# Feed Facts

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## Accessing FDA's Guidance Document and Electronic Portal:

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the 22-page FDA guidance document on the Reportable Food Registry. [Click here](#) to access the section of FDA's website that contains the actual electronic portal, as well as other information on the Reportable Food Registry.

The NGFA will be working in the next few weeks to

develop additional authoritative information targeted specifically to the grain, feed and grain processing industry, and will be collaborating with FDA to ensure its accuracy. Members having questions on the Reportable Food Registry may contact Randy Gordon, NGFA vice president for communications and government relations, at 202-289-0873, ext. 12 ([rgordon@ngfa.org](mailto:rgordon@ngfa.org)); or Director of Feed Services David Fairfield at 712-243-4035 ([dfairfield@ngfa.org](mailto:dfairfield@ngfa.org)).



# Rails, Rivers and Roads

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## DOT Report Documents Mexican Truck Safety Comparable to U.S.

An updated report released Sept. 2 by the U.S. Department of Transportation's (DOT) Office of Inspector General (OIG) reports that the frequency of U.S. safety inspections of Mexican commercial trucks operating in the United States has increased dramatically, and that their safety is comparable to – and in some cases slightly better – than U.S. trucks.

The Mexican government earlier this year imposed \$2.4 billion in sanctions against U.S. manufactured and agricultural exports after the U.S. Congress banned funding for a pilot program that allowed Mexican commercial trucks to transport goods within a certain radius in the United States. The sanctions were upheld by a North American Free Trade Agreement tribunal that found the U.S. action violated the NAFTA accord.

The DOT OIG's report documented the dramatic increase in the number of federal and state personnel inspecting Mexican vehicles and drivers – rising from only 13 federal inspectors in 1997 to 588 federal and state inspectors in fiscal year 2008. In addition, the OIG's report found that 78.8 percent of Mexican commercial trucks passed safety inspections, while 21.2 percent were removed from service because of safety violations or other reasons. That compared a 78.2 percent safety record and 21.8 percent violation rate for U.S. commercial trucks. Further, the OIG report found that each Mexican commercial truck was inspected an average of 51 times during the course of the year, compared to eight for each U.S. truck. In addition, only 1.2 percent of Mexican drivers were placed out of service for a violation, compared to 6.9 percent for U.S. truck drivers.

As further fodder against congressional action in March that effectively eliminated a cross-border trucking safety demonstration project operated by DOT, the OIG's report found that DOT's Federal Motor Carrier Safety Administra-

tion has sufficient capacity to conduct "meaningful truck and driver inspections at the southern border," and to implement "effective enforcement" of Mexican motor carriers. In addition, the report found that computer data systems established by the U.S. and Mexican governments provide an accessible database containing "sufficiently comprehensive data" to monitor all Mexican motor carriers and their drivers that apply for authority to operate beyond the municipal and commercial zones on the U.S.-Mexican border.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the 40-page OIG report; the section containing data on the comparative inspections of Mexican and U.S. trucks is found in Exhibit B found on pages 16-20.



## Calendar

- Sept. 9-11, 2009:** NGFA Board of Directors  
L'Enfant Plaza Hotel, Washington, D.C.
- Sept. 23-24, 2009:** NGFA Risk Management Committee  
NGFA Conference Room, Washington, D.C.
- Dec. 6, 2009:** NGFA Country Elevator Committee  
Hyatt Regency Crown Center, Kansas City, Mo
- Dec. 6-8, 2009:** NGFA Country Elevator/Feed Industry  
Conference & Trade Show  
Hyatt Regency Crown Center, Kansas City, Mo.
- Dec. 8, 2009:** NGFA Membership and Marketing Committee  
Hyatt Regency Crown Center, Kansas City, Mo.
- Dec. 8-9, 2009:** NGFA Executive Committee  
Hyatt Regency Crown Center, Kansas City, Mo.





## Vilsack Names New General Sales Manager for Foreign Ag Service

Secretary of Agriculture Tom Vilsack has tapped **John D. Brewer** as the Foreign Agricultural Service's (FAS) new general sales manager.

Brewer, who was appointed in July as the agency's associate administrator, now will serve dual roles. His duties as general sales manager will include oversight of FAS's market-development, export-credit, export-subsidy and food-aid programs. The agency also has 97 offices in more than 154 foreign countries.

Brewer formerly worked with the consulting firm Booz Allen Hamilton, where he focused on a variety of intelligence and finance-related projects for the U.S. Departments

of Defense, Justice, Homeland Security and Treasury, as well as for private-sector financial institutions like Bank of America and Wachovia. He also was a senior analyst in the Office of Global Risk Assessments at the American International Group (AIG).

Brewer also spent more than a decade in the federal government, serving in the State, Treasury and Defense Departments. The South Carolina native received an undergraduate degree in history and English from Morehouse College, Atlanta, Ga., and a masters degree in diplomatic history from the London School of Economics and Political Science in the United Kingdom.



## Tech Talk

by Jess McCluer  
Director of Regulatory Affairs  
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## OSHA Close to Issuing Proposal on Combustible Dust Standard

The NGFA has learned that the Occupational Safety and Health Administration (OSHA) is putting the finishing touches on proposed new safety regulations to address combustible dusts in the workplace.

The proposal currently is being revised, based upon input from the office of Labor Secretary Hilda Solis, prior to being submitted to the White House Office of Management and Budget for review prior to publication in the *Federal Register* for public comment.

The proposal is being developed, in part, in response to the explosion and fire on Feb. 7 at the Imperial Sugar refinery northwest of Savannah, Ga. It is not known at this stage how expansive the proposed regulation will be; but it is

believed its focus may encompass some sectors of the grain-handling industry not currently subject to the house-keeping provisions of OSHA's grain handling safety standard.

In a related development, the Chemical Safety and Hazard Investigation Board has scheduled a public meeting on Sept. 23-24 in Savannah to review and likely approve the report of its investigation into the Imperial sugar dust explosion. The safety board indicated that key issues involved in its investigation included combustible dust hazard recognition, minimizing combustible dust accumulation in the workplace, and equipment design and maintenance.

## GIPSA Seeks Comments on Renewal of Certain Official Grain Inspection Agencies

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking comments by Oct. 1 concerning the potential renewal of the authorizations of seven agencies to which it has delegated authority to perform official grain inspection and weighing services under the U.S. Grain Standards Act.

GIPSA is seeking comments on the following official agencies, each of whose designations expires on March 31: Champaign-Danville (Ill.) Grain Inspection Departments Inc. (Champaign); Detroit (Mich.) Grain Inspection Service Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing

Service Inc. (Eastern Iowa); Enid (Okla.) Grain Inspection Company Inc. (Enid); Keokuk (Iowa) Grain Inspection Service (Keokuk); Michigan Grain Inspection Services Inc. (Michigan); and Omaha (Neb.) Grain Inspection Service, Inc. (Omaha).

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the *Federal Register* notice, in which GIPSA provides information on the geographic areas encompassed by each of the designated official agencies, as well as on how to submit comments.





# Membership Matters

by Todd Kemp  
Director of Marketing/Treasurer

## NGFA Fall Board of Directors Meeting to Kick Off Recruiting Initiative!

### ...Major Prize Announcement Coming Soon!...

After a very successful 2008-09 membership recruiting year that shattered new-member records going back more than 20 years – 147 new-member companies! – the NGFA’s 2009-10 membership year is off to a S-L-O-W start!

Currently, only 17 new member companies have joined the NGFA since the March 2009 convention.

Why the lag in new-member recruiting?

There are several possible explanations. Perhaps the general economic downturn has made potential members cautious about dues expenditures. Maybe a less volatile marketplace has dampened the urgency and the perceived need for ensuring access to NGFA arbitration services. Whatever the reason, the time to restart the recruiting engine is now!

The platform for a new start is coming up in Washington this week, when the NGFA’s Board of Directors convenes for its annual fall meeting. During the Board meeting, each NGFA director will be assigned at least one high-priority membership target to work on this fall. Our goal will be to have each director

recruit at least one new member company prior to the March 2010 annual convention in Maui. The NGFA Membership Network also will be tapped to sign up these high-priority targets.

As was the case last year, a major prize will be offered as an incentive – watch this space for details soon. Each sponsor of a new member company beginning this week and continuing through the end of 2009 will be eligible for our grand-prize drawing at the end of the year!

As for reasons to join the NGFA, there are many: Access to arbitration; the NGFA’s work with OSHA on a regulatory definition of “temporary” storage; the NGFA’s representation on futures market issues, especially contract changes to the CBOT wheat contract to reestablish convergence; leadership on food/feed safety legislation and FDA regulatory issues; rail representation and arbitration; and much more!

The NGFA Board and the NGFA Membership Network will receive regular e-mailed updates on recruiting strategies and results through the fall recruiting initiatives. Warm up your prospect now, and let’s work together to break out of the dog-day doldrums!



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