



NGFA

Newsletter

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CFTC Extends Comment Period on Speculative Position Limit Hike Proposal

The NGFA was notified on Dec. 21 by Commodity Futures Trading Commission (CFTC) that it would extend to **Jan 21** the comment period for its proposal to increase speculative position limits for corn, wheat and soybeans (among other commodities).

The agency followed up by issuing a formal notice published in the Dec. 31 *Federal Register*, in which it specifically cited the NGFA's letter requesting an extension as one reason it extended the comment period. The NGFA's Risk Management Committee will meet on Jan. 10 in Washington, D.C., to develop a formal position on the issue. In addition, a task force established by the NGFA's Country Elevator Committee currently is studying the issue, with the goal of providing recommendations to the Risk Management Committee for consideration during its Jan. 10 meeting.

As reported in previous *NGFA Newsletters*, the CFTC's

Nov. 21 proposal to increase speculative position limits would apply to wheat, corn, soybean, soybean oil, soybean meal and several other futures contracts traded on all three U.S. agricultural exchanges. For example, the all-months speculative position limit for corn would increase from 22,000 contracts to 42,400 contracts, with single-month limits increasing from 13,500 contracts to 26,000 contracts. Soybean all-months limits would increase from 10,000 to 13,300 contracts, with the single-month limit rising from 6,500 to 8,600 contracts. The wheat all-months limit would increase from 6,500 to 14,500 contracts, with single-month limits increasing from 5,000 to 11,100 contracts. Under the CFTC proposal, speculative position limits for the spot month would remain unchanged at 600 contracts for each of these three commodities. Consistent with past CFTC practice, limits would be the same across all three agricultural futures exchanges.

(Continued on page 8)

EPA Fails to Further Clarify Application of Clean Air Act Permit Requirements for Certain Temporary Storage Systems

...Agency Indicates It Will Resolve Matter through Rulemaking; NGFA to Elevate Issue...

The U.S. Environmental Protection Agency (EPA) has indicated to the NGFA that it does not intend to further clarify or rescind its tentative position that certain types of temporary grain storage structures should be classified as permanent storage for air-permitting purposes until it completes a rulemaking on the issue later this year.

In a letter dated Dec. 21 and received on Dec. 26, EPA Compliance Assessment and Media Programs Division Director Michael Alushin wrote that the agency "understands the functional, practical and U.S. Department of Agriculture regulatory differences" between temporary and permanent grain storage, and stated that these issues "could potentially be brought up" during a notice-and-comment rulemaking currently being considered by the agency's Office of Air and Radiation.

The NGFA is vigorously opposing EPA's stance – believing it is both misguided and counterproductive to grain quality and environmental protection – and had asked the agency to

reverse and rescind its tentative position. The NGFA has argued that EPA's position is particularly inadvisable given the agency's plan to conduct a rulemaking to clarify the matter. **Importantly, the Illinois EPA already has indicated that it plans to enforce the "tentative" federal EPA policy.** This is despite the fact that federal EPA has said that its tentative position is not binding, is not site-specific and does not represent final agency action on the matter.

How the issue ultimately is resolved is extremely important, since classifying certain types of temporary storage as permanent space could cause affected facilities, including many country elevators, to be considered "major sources" of emissions under EPA's new source performance standards (NSPS), and hence subject to air permitting requirements for grain dust emissions. Under the NSPS, any commercial grain elevator built after 1978 that has a permanent storage capacity exceeding 2.5 million bushels is required to comply with stricter air-permitting and emissions standards. The requirement also

(Continued on page 2)



"Clean Air Act" continued from page 1

applies to any facility that has been modified since 1978 to expand its permanent storage capacity to more than 2.5 million bushels; it is this latter requirement that would be triggered by EPA's new tentative interpretation regarding certain types of temporary storage, most of which has been added since 1978. *[Importantly, these designations exclude grain handling facilities located at feed mills, pet food manufacturers, cereal manufacturers, breweries and livestock feedlots.]*

Congress enacted the law in 1977 in response to numerous public comments submitted to EPA by the NGFA and others that stated it was unreasonable to require small country elevators to obtain air permits because they typically were located in rural areas, emitted a small amount of total emissions, and would be economically devastated by the requirement. Also subject to the standard are grain storage elevators with a permanent storage capacity exceeding 1 million bushels that are located at any wheat flour mill, wet or dry corn mill (for human consumption), rice mill or soybean oil extraction plant.

In an initial letter dated Nov. 21 (distributed with the Dec. 6 *NGFA Newsletter*), EPA stated that it considers certain classes of temporary storage to be permanent storage based upon *Webster's Dictionary* definition of "bin." EPA's November letter also stated that the agency "intends to proceed with a notice-and-comment rulemaking...to clarify the issue," while noting that the letter "is not a site-specific applicability determination and does not represent final agency action."

The NGFA responded with a Dec. 5 letter in which it challenged EPA's tentative conclusion as being "without merit" and asked that the agency to "immediately withdraw" its letter for reconsideration. NGFA President Kendell W. Keith said that if the agency's interpretation is allowed to stand, it would create "other risks and problems that are counter to EPA's mission and the clear intent and direction of other federal government initiatives" (such as expanding the production of biofuels in the United States and providing sufficient storage to serve U.S. farmers). The NGFA also charged EPA with attempting to rewrite the law by changing its interpretation of what constitutes permanent storage by reclassifying the most modern temporary storage as part of the elevator's permanent space.

The NGFA noted that these modern temporary storage structures – when compared to outside emergency storage – have very low levels of fugitive grain dust emissions.

The decision also could have adverse consequences for stormwater runoff, as well as the preservation of grain quality and safety. The NGFA told EPA in its Dec. 5 letter that the economic impact would run into the tens of millions of dollars, yet the agency had not conducted an engineering cost analysis. And, it said, EPA's tentative conclusion would discourage the building and use of temporary storage, reducing the industry's ability to respond to producers' expanding grain storage needs resulting from increasing grain production to meet rapidly growing food, feed, export and biofuels demand, and reducing grain prices, particularly at harvest.

The NGFA also expressed its "dismay" at EPA's failure to respond to the NGFA's repeated requests – both verbal and written on four separate occasions – for additional meetings with industry experts to clarify and provide additional critical information before making a decision. EPA provided assurances in July that it would meet with the NGFA in the aftermath of the Association providing written responses to questions posed by the agency. The NGFA also had provided information to EPA on multiple occasions over the past 18 months on the issue.

In its Dec. 21 reply letter, EPA's Alushin said the agency believed it had sufficient information and dialogue with the NGFA to render its tentative position. Further, he said EPA could not provide a site-specific determination as to the applicability of its tentative policy decision and was instead responding only to the "general question of whether certain grain storage systems marketed as 'temporary' would be considered permanent storage" under the NSPS. "Site-specific storage configurations can vary significantly; therefore, I stated that the letter did not bind EPA to this interpretation if the question is later raised in the context of a site-specific request for an applicability determination," he wrote.

The issue first arose following an inspection of an Illinois grain facility in early 2006, during which an Illinois EPA inspector attempted to classify a particular type of storage facility as "permanent" grain storage. The temporary storage facility cited by the Illinois EPA inspector included a conveyer belt that transported grain from permanent bin space to the temporary storage structure (rather than trucking the grain, which is typical in other traditional storage structures), and an aeration tower that also served to raise and lower the tarp during loading of grain into the location. The U.S. EPA subsequently was asked to review the issue to ensure regulatory consistency between states.

(Continued on page 3)



NGFA's Next Steps: Given EPA's refusal to rescind its tentative position, the NGFA plans to seek a meeting involving representatives from national farm and commodity organizations with EPA Administrator Steve Johnson to further demonstrate the misguided nature of the agency's tentative position and the adverse impacts it would have throughout the agricultural industry. The NGFA also is coordinating closely with affiliated State and Regional Grain and Feed Associations on the matter.

In addition, NGFA/GEAPS Safety, Health and Environmental Quality Committee Chairman Kevin Danner plans to conduct a committee meeting soon to further discuss NGFA's future strategies, including additional meetings between industry experts and senior EPA staff. The committee also may consider whether it is advisable to urge EPA to make additional revisions to the NSPS for grain elevators (40 CFR 60 Subpart DD).

In addition, the NGFA has begun making contacts with members of Congress and plans to notify other federal agencies to make them aware of EPA's tentative position and the damaging consequences it would have.

The NGFA has said EPA's tentative position classifying certain types of temporary storage as permanent storage is both arbitrary and indefensible on the following grounds:

- ▶ It ignores the clear functional, practical and regulated (by USDA) differences between "permanent storage," under which commodities can be safely stored for multiple years, versus "temporary storage" that is authorized only for short-term (because of grain quality risk) and seasonal use to relieve storage pressure at harvest.
- ▶ It will contribute to more fugitive dust emissions and potential groundwater contamination if the industry responds by increasing the use of emergency storage (ground piles).
- ▶ By discouraging the use of temporary storage, EPA's stance would lead to increased grain quality issues as more commodities are stored in emergency space.
- ▶ It will reduce the ability of commercial firms to meet the growing storage needs of both farmers and biofuel plants, which would have a depressing impact on farmgate prices at harvest.
- ▶ It erroneously asserts that temporary storage structures

have "long-lasting covers." The NGFA noted that in contrast to the 25- to 30-year lifespan of permanent storage roofs, tarps used in conjunction with temporary storage typically last only two years or less.

- ▶ EPA's use of the common dictionary term for "bin" to redraw its regulatory standards is "arbitrary and capricious, ignores the clear intent of the law and fails to acknowledge the clear physical and functional differences in permanent versus temporary storage. The NGFA noted that EPA's dictionary definition of "bin" as an "enclosed space" for storage also would encompass a giant hole lined with vinyl and covered with a vinyl top, or even an underground cave that has a tarp pulled over the cover after it is filled with grain. "The NGFA is not arguing that any of these systems should be classified as 'permanent storage' anymore than we think Congress intended its (statutory) definition for 'permanent storage' applied to temporary storage space that clearly has no permanent cover and is regulated by the U.S. Department of Agriculture" as short-term, seasonal storage.
- ▶ EPA's stance, while maintaining it is preliminary and not binding for enforcement purposes, exposes the industry to inspection harassment by regional EPA offices or states, thereby creating unnecessary business risk, leading to potentially unnecessary expense and litigation," until a final rule is issued.
- ▶ EPA's stance would impose immediate and significant capital costs on the grain storage industry – well in excess of tens of millions of dollars – to install additional grain dust control devices to comply with the NSPS. It also would add ongoing annual operating expenses associated with complying with air permit emission levels.

NGFA Continues to Ask Members to Keep It Informed:

During this period of continued uncertainty, the NGFA again requests that if your company confronts an enforcement action or notification by either federal EPA or a state or regional EPA office, that you contact Jess McCluer, Randy Gordon or Kendell Keith at the NGFA at 202-289-0873. Depending upon the facts and circumstances of any particular enforcement activity, the NGFA may consider what supportive action may be appropriate to protect the overall interest of the industry. Regardless of the NGFA's decision on involvement in individual situations that could have broader implications industrywide, the NGFA believes the assimilation of data on any enforcement activities could prove useful.



Iowa Agency Set to Approve New Air Permitting Rules at Jan. 15 Meeting

The Iowa Environmental Protection Commission (EPC) on Jan. 15 is set to conduct a final review and approval of proposed regulations that would establish air-permitting requirements for all grain elevators in Iowa.

The new air-permitting regulations to be considered by the EPC are the outcome of more than two years of negotiations between the industry and the Iowa Department of Natural Resources (IDNR) over the content of the proposed program. IDNR formally initiated the development of the regulations in September 2005, when it proposed to industry an air-permitting template for "small country grain elevators." The proposed template was based upon National Ambient Air Quality Standards and air quality dispersion modeling techniques, rather than relying upon standard Environmental Protection Agency (EPA) emission thresholds and established EPA factors to project annual emissions. The originally proposed template would have placed severe operating restrictions on grain elevators that would be much more burdensome than the requirements contained in existing air-permit programs already implemented in other major grain-producing states. An industry-sponsored economic impact study estimated that complying with the proposed program could cost the Iowa grain industry up to \$997 million in one-time capital expenditures.

Current Iowa regulations require construction permits for any equipment capable of emitting air pollution built or modified after Sept. 23, 1970, including equipment associated with grain elevator operations. Construction permits are required before construction, installation or alteration of equipment or facilities begins. But the IDNR in the past has not required most Iowa grain elevators to comply with the air construction permit requirements.

In response to the originally proposed program, the Agribusiness Association of Iowa's (AAI) Grain Committee established three industry working groups to develop and present reasonable alternative air-permitting programs to the IDNR. The NGFA and Grain Elevator and Processing Society (GEAPS) worked closely with AAI and NGFA-member companies with operations in Iowa to provide technical support and input throughout this process.

Components of Program Under Review: The new air-permitting program proposed by the IDNR would specify the permitting options, emissions calculation methodology, emissions reporting and recordkeeping and best management practices (BMPs) for controlling air pollution at grain elevators in the state. Major components of the proposed program include:

- ▶ Establishing four permitting groups for grain elevators based upon their potential-to-emit (PTE) particulate matter of 10 microns (PM-10) in size or less, as indicated in the

following table:

Air-Permitting Groups for Iowa Elevators		
Group	Potential to Emit PM10 (tons per year)	IDNR Estimated Number of Facilities
1	<15	~ 700
2	= 15 and < 50	~ 70
3	= 50 and <100	~ 20
4	=100	

▶ Defining grain elevators as follows:

- **"Country Grain Elevator"**: Any facility where grain is unloaded, handled, cleaned, dried, stored or loaded and which: 1) receives more than 50 percent of its grain from farmers in the immediate vicinity during harvest; and 2) is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill or soybean oil extraction plant.
- **"Country Grain Terminal Elevator"**: Any facility where grain is unloaded, handled, cleaned, dried, stored or loaded and which: 1) receives 50 percent or less of its grain from farmers in the immediate vicinity during harvest; 2) has a permanent storage capacity of less than or equal to 2.5 million bushels; and 3) is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill or soybean oil extraction plant.
- **"Grain Terminal Elevator"**: Any facility where grain is unloaded, handled, cleaned, dried, stored or loaded and which: 1) receives 50 percent or less of its grain from farmers in the immediate vicinity during harvest; 2) has a permanent storage capacity exceeding 2.5 million bushels; 3) is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot; and 4) is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill or soybean oil extraction plant.

▶ Calculating PTE with an IDNR spreadsheet that utilizes the following methodology based upon the types of facilities defined within the proposed regulation:

- **Country Grain Elevators:** Handling capacity is to be determined by the greatest amount of grain received during previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. This resulting capacity then would be multiplied by established EPA emission factors, with consideration given to control efficiencies and/or practices whose use is enforceable under the regulations.
- **Country Grain Terminal Elevators and Grain Terminal Elevators:** Handling capacity is to be determined by

(Continued on page 5)





physical and operational design of the facility. Any physical or operational limitation on the capacity of a facility to emit particulate matter, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material handled, will be treated as part of its design if the limitation is enforceable under the regulation. However, this resulting capacity then would be multiplied by established EPA emission factors, with consideration given to control efficiencies and/or practices whose use is enforceable under the regulations.

- ▶ Requiring all grain elevators, regardless of emission levels, to comply with BMPs designated within the rule. The BMPs address practices associated with: 1) general maintenance, upkeep and repair; 2) grain receiving, handling and loading equipment operations; 3) operation of grain dryers; and 4) recordkeeping requirements.
- ▶ Making Group 1 facilities exempt from the requirement to obtain an air construction permit. However, these facilities would be required to register with the IDNR, provide and certify PTE calculations, and use BMPs as outlined by the agency.
- ▶ Allowing Group 2 facilities to use an IDNR-proposed permit application in lieu of obtaining regular construction permits. The use of the Group 2 permit application would require oiling of grain at the facility or use of other approved methods that provide equivalent emission reductions, and use of BMPs as outlined by the agency.
- ▶ Requiring Group 3 and Group 4 facilities to obtain air construction permits approved through the standard IDNR permitting process, which typically utilizes air dispersion modeling.
- ▶ Requiring air construction permits for “feed mill equipment” operating at grain elevators. Under the proposed regulations, “feed mill equipment” includes, but is not limited to, grinders, crackers, hammermills and pellet coolers located at grain elevators.
- ▶ Establishing an emission limit of 0.1 grain per dry standard cubic foot of air discharge from grain bin vents constructed, modified, or reconstructed on or after March 31, 2008 at “country grain terminal elevators” and “grain terminal elevators,” as defined in the proposed regulations. To meet this standard, effected facilities will need to install control devices on grain bin vents constructed, modified, or reconstructed on or after March 31, 2008.

Industry Concerns: AAI, with the support of the NGFA and GEAPS, expressed several significant concerns about the proposed regulations in written comments previously submitted to the IDNR, including: 1) numerous suggested

revisions to the proposed BMPs to make clear their intent and application; 2) statements to clarify industry’s understanding of the proposed definitions for the terms “immediate vicinity” and “permanent storage” used within the proposed regulations to define the different types of grain elevators; 3) a request that the agency establish an emission limit of 1.0 grain per standard cubic foot of air discharge from bin vents for all grain elevators in Iowa; and 4) a request that no air construction permits be required for any air-emission source at any elevator that was constructed, reconstructed or modified between 1978 and 1995, during which time the Iowa General Assembly restricted IDNR’s authority to require air construction permits for grain elevators.

IDNR addressed some, but not all, of the industry’s concerns within the final draft of the proposed regulations to be considered by the EPC.

Implementation Period: If approved by the EPC without modification, the new air-permitting regulations will require Iowa grain elevators to submit by March 31 the appropriate permit registration or application to the IDNR. The new regulations also will require: 1) Group 1 and Group 2 elevators to implement BMPs and have any control devices used in determining PTE operating by March 31, 2009; and 2) Group 3 and Group 4 elevators to obtain air construction permits and implement BMPs, as specified within the permit.

The AAI, IDNR, University of Northern Iowa and Iowa Department of Economic Development are co-sponsoring a series of workshops in January for grain elevators to provide an overview of the new air-permitting requirements. Members receiving the *NGFA Newsletter* electronically may [click here](#) for more information about the workshops and the air-permitting program.



Calendar

- Jan. 10, 2008:** NGFA Risk Management Committee
NGFA Conference Room, Washington, D.C.
- Jan. 13-14, 2008:** NGFA Executive Committee
Fairmont Mayakoba, Cancun, Mexico
- March 26-28, 2008:** NGFA 112th Annual Convention
Westin Kierland Resort, Scottsdale, Ariz.
- May 6-7, 2008:** Trade Rules Seminar
St. Louis Airport Marriott, St. Louis, Mo.





O'Connor Named New Director of FGIS Compliance Division



Former NGFA Director of Technical Services **Thomas C. O'Connor** has been selected as the new director of the Federal Grain Inspection Service's Compliance Division within the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration.

O'Connor will assume his new duties as the official grain inspection and weighing agency's top compliance officer on Jan. 20.

He succeeds John Sharpe, who recently became director of the FGIS Technical Center in Kansas City, Mo., to fill the vacancy created when Steve Tanner became director of the USDA Farm Service Agency's Kansas City Commodity Office in 2007.

O'Connor served as NGFA director of technical services from 1990-2005, where he was responsible for managing issues affecting grain inspection and grain quality, occupational safety, health and environmental compliance, agricultural biotechnology and other technical issues. Since 2005, he has served as national trade director for grains at USDA's Animal and Plant Health Inspection

Service, a newly created position in which he represented the United States on sanitary and phytosanitary issues in negotiations with foreign countries.

The FGIS Compliance Division is responsible for maintaining the integrity of the national official grain inspection and weighing system. Among other things, it conducts reviews and evaluations, and, as necessary, initiates enforcement actions. It also delegates and designates state and privately owned grain inspection agencies to provide official inspection and weighing services, and conducts periodic operational reviews of the performance of these agencies and GIPSA field offices. It also evaluates reports of alleged violations of the U.S. Grain Standards Act and Agricultural Marketing Act and conducts investigations, including assisting those conducted by USDA's Office of Inspector General. The FGIS Compliance Division also registers all persons engaged in buying grain for sale in foreign commerce, and administers the agency's safety and health program.

The NGFA offers its heartiest congratulations to Tom on his new assignment!



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

Registration Begins for NGFA's 112th Annual Convention

On Jan. 4, registration materials for the 112th NGFA annual convention in Scottsdale will be e-mailed to all NGFA members!

Registrants who act by Feb. 25 will receive the preferred Early-Bird registration rate – making the NGFA convention an outstanding value, as well as an indispensable business opportunity.

Convention headquarters is the scenic and relaxing Westin Kierland Resort & Spa, located in sunny Scottsdale, Ariz. Resort activities and beautiful surroundings will make the NGFA convention fun for the entire family.

A very strong, high-level program is coming together. Confirmed and invited headline speakers to date include:

- ▶ **The Honorable Michael Leavitt (invited), U.S. Secretary of Health and Human Services:** Leavitt has led the Bush administration's efforts to develop fundamental changes to the way the U.S. regulates food and feed safety for imported and domestically produced products, and has been invited to preview its implementation plans.
- ▶ **Fernando Palacios (confirmed), President, Land O'Lakes Purina Feed LLC:** A key opinion leader for U.S. agribusiness, Palacios will discuss major issues for the success and profitability of the U.S. feed manufacturing sector.

▶ **House Agriculture Committee Chairman Collin Peterson (invited), D-Minn.:** Peterson has been invited to present a congressional leadership update on farm bill changes, including CRP reform.

▶ **Hunter Harrison (invited), President & CEO, Canadian National Railway:** Harrison has been invited to discuss his perspectives on U.S. rail policy, rail service and performance, and rail infrastructure.

In addition, major program sessions will focus on challenges facing the biofuels industry in meeting the new renewable fuels standards recently signed into law and in developing commercial cellulosic ethanol production; and on the impact of non-traditional participants like index and pension funds in agricultural futures markets.

Informal events include the traditional CME Group Welcome Reception on Wednesday, March 26; the annual Foundation golf tournament, played this year at Stonecreek Golf Club near the resort; several fun and exciting afternoon tours; and the closing cocktail reception and banquet, followed by an evening of unforgettable entertainment! Make plans to stay through Friday evening, March 28, so you don't miss the fun!

Stay tuned for program and speaker details as convention plans are finalized. But don't wait to register!



DHS Extends Deadline 'Until Further Notice' for Certain Ag Facilities to Comply with Chemical Anti-Terrorism Security Rule

...Extension Covers Grain, Feed and Grain Processing Facilities that Apply, but Don't Sell, Fumigants...

The U.S. Department of Homeland Security (DHS) has announced that it "soon" will publish in the *Federal Register* a notice granting an extension until further notice for certain agricultural facilities to submit information under its chemical facility anti-terrorism standards.

The announcement was made during a Dec. 21 conference call conducted with members of the Food and Agriculture Sector Security Coordinating Council, of which the NGFA is a founding member. The NGFA also serves as one of three industry co-chairs of the council.

The DHS standards took effect on June 8, except for the final list of chemicals for which the rule applies – dubbed "Appendix A" – which was published in the Nov. 20 *Federal Register*. The standards require grain elevators, feed mills, grain processors, farm supply retailers and a host of other food and agricultural, chemical and other facilities to register with DHS and complete a web-based consequence-assessment tool known as "Top Screen" by Jan. 22 if they "possess or plan to possess" listed "chemicals of interest" that meet or exceed specified minimum concentrations and at quantities that meet or exceed screening threshold quantity (STQ) levels. The results of the Top Screen assessment tool will be evaluated by DHS to determine whether a facility is required to conduct a security vulnerability assessment and implement additional performance-based security measures.

Prior to publication of Appendix A, the NGFA was successful in encouraging the agency to delete or significantly increase the threshold trigger levels for many chemicals used extensively by the feed and grain-handling industries, including urea (which was removed as a DHS chemical of concern), propane, phosphine and aluminum phosphide/magnesium phosphide.

During the Dec. 21 conference call, Larry Stanton, director of the DHS Chemical Security Compliance Division, stated that the agency intended to limit the coverage of the standard's requirements for agricultural users of chemicals of interest when issuing its final Appendix A. However, he noted that additional questions and concerns – including several posed by the NGFA – had been raised regarding the applicability of the Top Screen to agricultural facilities, and that DHS currently is gathering more information about those issues to determine whether any modifications of the standard's requirements may be warranted.

In addition, Stanton noted that Congress recently had enacted the Department of Homeland Security Appropriations Act of 2008 that authorizes the agency to regulate the sale and transfer of ammonium nitrate. The law authorizes DHS to develop processes for the registration of ammonium nitrate purchasers and for the maintenance of relevant records. Because this law likely will cover many agricultural operations, he noted that DHS may review further its approach towards chemicals of interest used in agricultural operations.

Because of the nature of agricultural operations and the aforementioned circumstances, Stanton stated that DHS is extending the deadline for submitting Top Screens **until further notice** for agricultural operations that otherwise would be required to do so solely because they possess chemicals of interest at or above the applicable screening threshold quantity for use:

- ◆ in preparation for the treatment of crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility; or
- ◆ during application to or treatment of crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility.

DHS said its *Federal Register* notice will include a letter in which it states that the extension will apply to facilities such as farms; ranches and rangeland; poultry, dairy, and equine facilities; turfgrass growers; golf courses; nurseries; floricultural operations; and public and private parks. The extension does **not** apply to chemical distribution facilities, or commercial chemical application services.

Importantly, in response to questions posed by the NGFA during the conference call, DHS has confirmed that:

- ◆ Grain, feed manufacturing, grain-processing and food facilities that possess a quantity of a chemical of interest that meets or exceeds the STQ level **solely** for the purpose of fumigating grain, feed or food **are** included under the extension. However, facilities that **sell** fumigants are **not** covered by the extension.
- ◆ Chemicals of interest that are fuels (such as propane) are **not** covered by the extension. Therefore, facilities that possess quantities of propane that meet or exceed the propane STQ [60,000 pounds (approximately 14,285

(Continued on page 8)



Country/Terminal Corner

by David A. Fairfield
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gallons)] are not covered by the extension. However, under the final version of Appendix A, facilities do not need to count propane stored in tanks containing less than 10,000 pounds (approximately 2,381 gallons) when determining whether their STQ meets the trigger level requiring them to register with DHS and complete the Top Screen process.

- ▶ Agricultural facilities that sell anhydrous ammonia to farmers are **not** covered by the extension.

An advance copy of the DHS letter was made available prior to the conference call, which members receiving the *NGFA Newsletter* electronically may access by [clicking here](#).



Newsletter

by Todd Kemp
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"Spec Limit Increase" continued from page 1

At the same time, the CFTC also has issued a proposal to establish a new "risk management exemption," similar to the hedge exemption currently in place for swaps transactions, that would allow index and pension funds to exceed speculative position limits in the period leading up to the contract's spot month. This proposal will be a second major topic of discussion at the Risk Management Committee's Jan. 10 meeting. Comments on this exemption proposal currently are due by Jan. 28, although there has been talk of some organizations requesting an extension of this comment deadline, too.

Positions Taken by Other Organizations: Several other trade groups already have submitted comments to the CFTC concerning the speculative position limit increase proposal. Here's a summary of what they've filed:

- ▶ **American Soybean Association (ASA):** The ASA noted that its "farmer members have recently been expressing concern about what many perceive as a lack of convergence and lack of performance of certain exchange-traded contracts." The ASA posed several questions to the CFTC: "(Has) analysis been completed on the impact of changes to speculative limits on convergence between futures and cash markets? Does the CFTC believe the changes in spec limits would be neutral, or could the changes exacerbate lack of convergence?" Further, ASA's statement said that, "If the changes could exacerbate lack of convergence, ASA would be opposed to increasing the limits." The ASA letter also referenced the NGFA's preliminary review of the issue and concurred with the NGFA that changes in speculative position limits need to be reviewed carefully in light of significant changes that are occurring in the markets.

- ▶ **Independent Bakers Association (IBA):** The IBA, which represents wholesale bakeries and allied trades, expressed "...alarm at your proposal to drastically increase the speculative position limits; in the case of wheat they are more than double!" Further, the IBA letter noted that the CFTC proposal would allow one fund to buy 11,100 con-

tracts (55.5 million bushels) in one month – 11 percent of the entire U.S. spring wheat crop. It concluded by urging the CFTC to retain its current speculative position limits.

- ▶ **Pilgrim's Pride Corp.:** The largest U.S. chicken processor said it was "...disturbed by both the timing and size of the proposed change....Our position is clear, we do not support the proposed revision of the federal speculative position limits. Nor do we support providing exemption for index funds and classifying them as hedgers." The letter further stressed its belief that the CFTC's proposal would create "unchecked market volatility that could be detrimental to the profitability and sustainability of some of the nation's largest corn and soy complex end users."

- ▶ **Managed Funds Association (MFA):** The MFA, according to its statement, represents "the global alternative investment industry," with members including hedge funds, funds of funds, and managed futures funds. The MFA supported the CFTC proposal to increase speculative position limits. "We believe that raising the current position limit levels would permit advisors greater flexibility in determining the appropriate positions for the accounts that they manage based on their assessment of profit or risk management opportunities," the MFA said. The MFA letter also noted CFTC's recognition that, "...the changing characteristics of markets...can allow larger positions to be taken without an adverse impact on price discovery."

- ▶ **DB Commodity Services LLC (Deutsche Bank Group):** DB Commodity Services also supported the CFTC-proposed increase in speculative position limits. In addition, it suggested that "...financial innovations like over-the-counter derivatives and exchange-traded notes linked to commodity futures argue for further loosening position limits and related rules...." The letter concluded by stating that position limits should be periodically reviewed and increased based upon increased open interest levels.





Canadian Food Agency Begins Safety Review of Distillers Grains

The Canadian Food Inspection Agency (CFIA) on Dec. 6 conducted a “pre-consultation” meeting with key Canadian stakeholders to discuss the regulation of distillers grains produced as co-products from fuel ethanol production.

As reported in the Aug. 30 edition of the *NGFA Newsletter*, CFIA previously issued a notice to the Canadian feed industry stating that distiller’s grains co-products derived from fuel ethanol production are **not** considered to be approved for use in animal feed under current Canadian feed regulations since “the manufacturing processes which generate fuel ethanol products differ from those of alcohol for human consumption; the differences stem from the use of non-food grade starting materials, different sources of enzymes, or processing aids.” In doing so, CFIA also stated its intent to conduct a safety evaluation of such distillers grains and use the resulting information to develop distillers grains products definitions representative of the products currently being produced, as well as a comprehensive policy document on distiller’s grains from fuel ethanol production.

During the stakeholder meeting, Canadian feed regulatory officials reiterated that all additives used in the production of distillers grains products to be fed to livestock, poultry and pets must be approved for use in feed by the CFIA. Agency officials also noted that, based upon inspection activities and communications with the industry, some of the additives used in the fuel ethanol manufacturing process previously have not been assessed for safety and, therefore, are not approved for use as feed additives in Canada.

Discussion during the meeting focused on a draft policy statement proposed by CFIA that outlined potential regulations for distillers grains produced from fuel ethanol production. Among other things, the draft policy document provided proposed regulations that address the following issues:

▶ **Maximum Approved Antimicrobial Inclusion Rates for Use in Fermenters:** The CFIA-proposed policy would set the following maximum inclusion rates for approved antimicrobials:

- Penicillin - 1 p.p.m.
- Streptomycin - 2.7 p.p.m.
- Ampicillin - 4 p.p.m.
- Virginiamycin - 6 p.p.m.

If a manufacturer wishes to use other antimicrobial drugs in the fermentation process, CFIA would need to evaluate the safety of those antimicrobial drugs as residual contaminants. The draft regulations also specifically state that monensin sodium and tylosin tartrate are **not** approved for use during the production of distillers grains.

The proposed policy would require that all ethanol facilities monitor antimicrobial residue levels in distillers grains

products produced at their facilities to ensure their safety.

▶ **Label Guarantees for Distillers Grains Products:** The draft regulations would require that labels of distillers grains products derived from fuel ethanol production contain guarantees for: 1) minimum crude protein; 2) maximum moisture; 3) maximum crude fiber; 4) maximum sulfur; 5) maximum salt; and 6) maximum phosphorous.

▶ **Approved Fermentation Microorganisms and Enzymes, and Processing Aids:** The CFIA-proposed policy document states that all fermentation microorganisms and enzymes and processing aids used during the production of distillers grains products must be assessed and approved by a Canadian government body. Such approved products currently can be found in: 1) Schedule IV or V of CFIA’s Feed Regulations; 2) Health Canada’s Food and Drug Regulations; and 3) Environment Canada’s Domestic Substance List.

▶ **Plant Products Considered to be Novel Feed Ingredients:** The draft regulation would require a mandatory pre-market assessment and authorization from CFIA for plant products used in the fermentation of ethanol production that are considered to be “novel feeds.” The CFIA defines a “novel feed” as a feed comprising an organism or organisms, or part or products thereof, that: 1) is not approved for use in feed; and 2) contains a “novel trait” that has been intentionally selected, created or introduced into the feed through a specific genetic change, and, based upon valid scientific rationale, is not substantially equivalent in terms of its specific use and safety both for the environment and for human and animal health to any characteristic of a similar feed that is found in Schedule IV or V of CFIA’s Feeds Regulations.

▶ **Proposed Ingredient Definition:** The proposed policy would establish the following ingredient definition: “*Distillers grains dehydrated derived from fuel ethanol is the byproduct containing the coarse grain mixture obtained from the yeast fermentation process for the production of fuel grade ethanol which has been dried by methods employed in the grain distilling industry. The fermentation and post-production processes shall be conducted using approved ingredients that do not contain a novel trait. If the label bears a name descriptive of kind or form of grain, the product shall correspond thereto. It shall be labeled with guarantees for minimum crude protein, maximum moisture, maximum crude fiber, maximum sulfur, maximum salt and maximum phosphorous.*”

Importantly, CFIA noted during the meeting that the agency is collaborating with the U.S. Food and Drug Administration as it develops its regulatory policies for distillers grains

(Continued on page 10)



Feed Facts

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products derived from fuel ethanol production in an effort to potentially harmonize requirements and minimize possible cross-border trade issues.

The CFIA asked participants at the meeting to provide feedback on the draft policy statement by Jan. 15, 2008. After

comments are received and reviewed, CFIA will revise the policy document and post it on the feed consultation page of its website for further public review and comment. CFIA stated that the public comment period will last until April 1, 2008, after which the agency intends to finalize its regulations.

AAFCO Announces Availability of 2008 Edition of Official Publication

The Association of American Feed Control Officials (AAFCO), the professional organization of state and federal feed regulatory officials, has announced the availability of the 2008 edition of its *Official Publication* – an essential reference resource for those involved in the commercial feed, pet food and feed ingredient manufacturing business.

Among other things, the publication contains listings of approved feed ingredients and their definitions; contact information for state and federal feed regulatory officials; state regulatory requirements for distributing commercial feed; a listing of the organization's committees, as well as copies of its model law and regulations for commercial feed and pet food;

and various guidance documents and checklists for manufacturing safe commercial feed and feed ingredients.

Both perfect-bound and spiral-bound versions are available. The perfect-bound version is \$50 per copy, while the spiral-bound edition is \$55 per copy. Both prices include shipping and handling. If the book is used frequently, it is highly recommended to order the spiral-bound version.

Members receiving the *NGFA Newsletter* electronically may obtain an interactive copy of the order form for the *AAFCO Official Publication* by [clicking here](#). AAFCO requires that the order form be printed out and faxed or mailed to order a copy.



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