



# NGFA

# Newsletter<sup>®</sup>



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## CME Group Schedules Corn/Soybean Industry Meeting

### ...NGFA Recommendations on Agenda...

The CME Group will conduct an industry meeting on Dec. 4 in Chicago, Ill., to discuss and receive feedback from market participants on potential changes to the CBOT corn and soybean futures contracts.

The meeting will convene at 1:45 p.m. in the Fifth Floor Theatre of the Chicago Board of Trade Building. Issues to be discussed include contract performance; potential changes to price limits; electronic trade in agricultural markets; and other issues participants would like to discuss regarding futures contract performance. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the meeting agenda.

Of special note, the recommendations recently submitted to the CME Group by the NGFA hold a prominent spot on the meeting agenda. Those recommendations included changes to storage rates and load-out charges to make them consistent with wheat; and recommendations for more analysis on several concepts with an eye toward changes that will encourage convergence and maintain the contracts' usefulness to traditional users to hedge against market risk.

**To Attend:** NGFA members wishing to attend should register in advance by contacting Mable Myrick at the CME Group at 312-338-7127. Questions about the meeting and its agenda topics may be directed to Fred Seamon (312-634-1597) or Dave Lehman (312-930-1875) with the CME Group.

**Other Issues:** In other futures market-related developments, the NGFA has learned:

► The Commodity Futures Trading Commission (CFTC) will soon publish a proposed rule requesting comments on increasing speculative position limits for agricultural commodity futures contracts on all three exchanges – the CBOT, Kansas City Board of Trade and Minneapolis Grain Exchange. While the contents of the CFTC notice are not known yet, the NGFA understands that the proposal also may request comments on whether the exchanges should be authorized to manage their own speculative position limits, without prior approval from the agency.

In tandem, the CFTC also is scheduled to publish a proposed rule that would grant an exemption from speculative position limits to index funds. Publication of both

proposed rules in the *Federal Register* is imminent – perhaps as soon as Nov. 21.

► The House Agriculture Committee may consider legislation reauthorizing the CFTC prior to recessing in December. The long-pending reauthorization of the agency repeatedly has been delayed by deliberations on providing the agency additional anti-fraud authority pertaining to currency transactions. The NGFA has alerted the House Agriculture Committee about the importance of **not** having such language inadvertently impinge upon the cash-forward exemption granted to agricultural commodities under the Commodity Exchange Act.

### There's Still Room at the Inn! But Don't Delay!!!

In response to the extremely heavy attendance – more than 600 so far! – for this year's **NGFA Country Elevator/Feed Industry Conference**, the NGFA's room block at the headquarters hotel temporarily sold out last week.

But the NGFA has been successful in adding a limited number of additional rooms to its room block at the **Chicago Marriott Magnificent Mile** at the special conference rate of \$149/single, \$159/double occupancy. But it is expected that those rooms will go quickly. **So, if you were unsuccessful in getting a hotel reservation earlier – or hadn't done so yet – please call the Chicago Marriott Magnificent Mile immediately for a reservation at 312-836-0100.** Identify with the "NGFA Country Elevator/Feed Industry Conference" to obtain the special hotel room rate. Don't delay!

If you experience any problems in making a hotel reservation, please contact NGFA Meetings Manager Heidi Chapman at [hchapman@ngfa.org](mailto:hchapman@ngfa.org), or call her at 202-289-0873, extension 21.





## FDA Says BSE Feed Rule Changes Now at White House for Final Review

During a conference call on its recently released Food Protection Plan on Nov. 16, the Food and Drug Administration (FDA) revealed that a final rule amending its feed regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE) has cleared its parent agency – the U.S. Department of Health and Human Services – and is awaiting final action by the White House Office of Management and Budget (OMB).

OMB received the document from FDA on Nov. 1. OMB review, which typically is restricted to 90 days, is the last step in the regulatory clearance process.

FDA's proposed changes to the BSE-prevention feed regulations, issued on Oct. 6, would ban the use in all animal feed (including pet food) of brain and spinal cord from live cattle 30 months or older that are presented for slaughter. In addition, FDA proposed to prohibit the use in all animal feed of all nonambulatory (downer) and dead cattle unless brain and spinal cord were removed. Significantly, it is believed FDA changed portions of its original proposal concerning nonambulatory and dead stock, specifically by including an exemption to the requirement to remove brain and spinal cord for cattle younger than 30 months if the animal's age can be verified by a suitable means. The change is a science-based

effort by FDA to reduce the economic impact of the feed rule changes by decreasing the number of cattle that likely would need to be disposed because of the impracticality and cost of removing brain and spinal cord – particularly from dead cattle. Such a change in particular would affect feedlot cattle disposal, since most nonambulatory and dead stock dairy cattle exceed 30 months of age. BSE, to the extent it exists in a country's cattle population, is believed to manifest itself in cattle older than 30 months.

It also is believed that the final rule, as currently written, would have a one-year implementation period.

In its comments submitted to FDA in December 2005, the NGFA strongly urged FDA to change its proposed rule to allow the use in non-ruminant feed of nonambulatory cattle less than 30 months of age without requiring removal of brain and spinal cord. The NGFA generally supported other substantive aspects of the FDA proposal as a science-based approach to further reduce the already very low risk of BSE in the United States.

It is expected that that the National Renderers Association and perhaps other organizations that have opposed the changes will seek meetings with OMB to argue against issuance of a final rule.

## FDA, AAFCO Clarify Roles in Approving Ingredients for Use in Feed

The Food and Drug Administration's Center for Veterinary Medicine (FDA/CVM) this week officially published a memorandum of understanding between the agency and the Association of American Feed Control Officials (AAFCO) to clarify the responsibilities of each party in defining and approving ingredients for use in animal feeds.

AAFCO is the professional organization of state and federal feed regulatory officials who have responsibility for enforcing federal and state laws and regulations concerning the safety of animal feeds.

The agreement between the two organizations addresses a so-called regulatory "gap" in the feed ingredient-approval process previously noted by FDA/CVM as part of its Animal Feed Safety System (AFSS) initiative. Through the on-going AFSS initiative, launched in September 2003, the agency is designing a comprehensive, risk-based regulatory approach to enhance the safety of animal feeds that will encompass all sectors of the feed industry, including feed ingredients. During this process, the agency had identified the need to enter into an agreement with AAFCO to: 1) formalize the responsibilities of each organization within the long-standing Ingredient Definition Process administered by AAFCO to approve and

define feed ingredients; and 2) officially recognize the ingredients listed in the AAFCO *Official Publication* as acceptable for use in animal feeds.

FDA/CVM acknowledged in the notice, published in the Nov. 19 *Federal Register*, that the past partnership between the agency and AAFCO in approving feed ingredients has resulted in the "establishment of an effective program of benefit to feed regulatory officials, the industry and the public." In entering into the memorandum of understanding, the agency also stated that the agreement will "facilitate FDA's collaboration with AAFCO... by clarifying the responsibilities of FDA and AAFCO during the feed ingredient definition process and providing mechanisms for resolving disputes that arise and for modifying the process when required."

Key elements agreed to by FDA/CVM and AAFCO within the memorandum of understanding include:

- ▶ AAFCO maintains definitions for ingredients accepted for use in animal feed and annually publishes the currently accepted feed ingredient definitions in the AAFCO *Official Publication*.

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# Feed Facts

by David A. Fairfield  
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- ▶ AAFCO will seek advice and a letter of concurrence regarding the suitability of the feed ingredient for its proposed use from FDA/CVM prior to adopting new feed ingredient definitions or amending existing ones.
- ▶ If FDA/CVM decides to address a feed ingredient through a food additive petition regulation, AAFCO will not include that ingredient in the AAFCO *Official Publication* until the agency completes the regulation.
- ▶ Disagreements on existing feed ingredient definitions, the establishment of new ingredient definitions, or modifications of existing definitions between FDA/CVM and AAFCO will be referred to an arbitration board comprised of two individuals appointed from AAFCO and two FDA/CVM officials.
- ▶ AAFCO will accept all requests from FDA/CVM to remove an ingredient definition from the AAFCO *Official Publica-*

*tion* upon the agency presenting convincing information and/or scientific evidence showing the ingredient no longer is suitable for its stated use.

- ▶ Likewise, AAFCO is allowed, on its own initiative and with FDA/CVM concurrence, to request that an AAFCO feed ingredient definition be removed from the AAFCO *Official Publication* upon AAFCO providing convincing information and/or scientific evidence showing the ingredient is no longer suitable for its stated use.
- ▶ FDA/CVM and AAFCO will review the memorandum of understanding annually and make modifications that are mutually agreeable to both organizations.

Members receiving the NGFA *Newsletter* electronically may [click here](#) to access more information about the agreement entered into by FDA/CVM and AAFCO.



# From the Bench

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## NGFA Trade Rules and Arbitration Rules Coming Soon...in Español

The NGFA is pleased to announce that its extensive efforts to develop a Spanish translation of the NGFA Trade Rules and Arbitration Rules are nearing completion.

This major project involved significant work by NGFA-member companies, principally those with offices in Mexico, and NGFA staff, as well as a comprehensive review by a prominent Mexico City-based law firm. The NGFA rules were translated once before (in 1994) for informational purposes. But the NGFA Executive Committee determined that a new translation was warranted because each of the Association's sets of rules – Grain Trade Rules, Feed Trade Rules, Barge Trade Rules, Barge Freight Trading Rules and Arbitration Rules – had changed significantly in structure and content since 1994.

The newly completed translation even includes the new Secondary Rail Freight Trading Rules just recently approved by the NGFA Board of Directors. As before, the new translation will be an invaluable resource for U.S. and non-U.S. companies engaged in the trade throughout the Spanish-speaking world. Importantly, the NGFA leadership also directed that significant efforts be made so that the new translation as clearly and accurately as possible states the terms and usage as applied by the industry in Mexico – with the design that the rules be effectively employable, and even potentially enforceable, by the trade in Mexico.

Look for an announcement next month in the *NGFA Newsletter* concerning the availability of the Spanish-version of the NGFA rules, as well as information on how to order!



## Calendar

- Nov. 29, 2007:** Joint NGFA/GEAPS Grain Grades and Weights Committee  
Westin Tabor Center, Denver, Colo.
- Dec. 9, 2007:** NGFA Leadership Conference for Affiliated State/Regional Associations  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.
- Dec. 9, 2007:** NGFA Trade Rules Committee  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.
- Dec. 9, 2007:** NGFA Country Elevator Committee  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.
- Dec. 9-11, 2007:** NGFA's 36th Annual Country Elevator and 11th Annual Feed Industry Conference  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.
- Dec. 10, 2007:** NGFA's Feed Legislative and Regulatory Affairs Committee and Feed Manufacturing Technology Committee  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.
- Dec. 11, 2007:** NGFA Marketing and Business Development Committee  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.



## On Capitol Hill

by Randall C. Gordon  
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### Senate to Regroup on 2007 Farm Bill After Thanksgiving Recess

The Senate leadership will be using part of the two-week Thanksgiving recess to regroup on the type and number of amendments that will be allowed to be considered during floor debate on the 2007 farm bill.

A Nov. 16 cloture vote to limit debate on the measure fell five short of the 60 votes required. The 55-42 vote was mostly along party lines, although four Republicans – Minnesota’s Norm Coleman, South Dakota’s John Thune, Oregon’s Gordon Smith and Iowa’s Charles Grassley – voted with the Democrats to invoke cloture. Not voting were three Republicans – Sens. John Cornyn of Texas, Trent Lott of Mississippi and John McCain of Arizona.

At the crux of the delay was the impasse between Senate Majority Leader Harry Reid, D-Nev., and Minority Leader Mitch McConnell, R-Ky., over which amendments would be allowed to be considered. Senators thus far have filed more than 200 possible amendments, although typically that number is reduced considerably by the time legislation is debated on the floor. McConnell faulted Reid for “block(ing) a fair and open amendment process on the farm bill.” McConnell also said Republicans were “disappointed that we were prevented from improving this 1,600-page, \$286 billion bill without the advance, expressed permission of the majority after first being told the

farm bill debate would be ‘wide open, as is usual in the Senate.’” McConnell concluded by saying that the Senate would pass a farm bill – “that is certain – but only after an open and fair debate on the Senate floor.”

Senate Agriculture Committee Chairman Tom Harkin, D-Iowa, said he was “deeply disappointed” by the vote and said he was “worried that there is a deliberate and orchestrated attempt to derail the farm bill” by the Bush administration. The White House earlier had issued an official statement of administration policy citing a host of objectionable provisions that would cause the president’s advisers to recommend a veto.

Meanwhile, House Agriculture Committee Chairman Collin Peterson, D-Minn., remained optimistic that the Senate eventually would approve a bill before year’s end, and that a joint conference committee could resolve differences between the already-passed House measure and the Senate version in a timely fashion. But his Republican colleagues appear to be less convinced, with House Agriculture Committee Ranking Member Bob Goodlatte, R-Va., and Rep. Jerry Moran, R-Kan., introducing a bill that would extend the 2002 farm law through Sept. 30, 2008.



## Rails, Rivers and Roads

by Charlie Delacruz  
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### Appeals Court Grants NGFA, Other Shippers Right to Participate in Small Rail Rate Case Challenge

The U.S. Court of Appeals for the District of Columbia Circuit on Oct. 25 granted the motion filed jointly by the NGFA and an array of other shipper groups for leave to intervene in connection with various petitions by rail carriers seeking review of the federal Surface Transportation Board’s (STB) decision on small rail rate cases [*STB Ex Parte No. 646*].

In its decision, the STB made some significant changes to its proposed rules for challenging excessive rail rates. In a petition for reconsideration filed with the agency, the NGFA and other shipper groups supported several of those STB modifications, but requested reconsideration of several aspects of the decision that “remain extremely troubling.” In particular, the NGFA and other shipper organizations cited the relief caps set by the STB for still being “substantially and unlawfully too low,” resulting in shippers being forced to forego potential relief and their rights to a reasonable rate in a signifi-

cant range of case values.

The petitions for review of the STB’s decision pending with the appellate court initially were filed by several of the major railroads, which generally alleged that they had been “aggrieved” and that the STB decision was “contrary to law, clearly erroneous, arbitrary and capricious, an abuse of discretion and not supported by substantial evidence.” The carriers requested that the court hold unlawful, vacate, enjoin and set aside the STB decision.

It is anticipated that the appellate court will defer litigation and the filing of briefs by the parties until after the STB rules upon the petitions for reconsideration. The NGFA and the other shipper groups filed their petition to intervene so that they, too, may reserve the right to participate in the court proceedings if they occur.





## DHS Publishes Final Rule on List of Chemicals Subject to Anti-Terrorism Regs

### ...Deadline is **Jan. 22** for Affected Firms to Register with DHS, Complete 'Top Screen' Vulnerability Assessment Tool...

The U.S. Department of Homeland Security (DHS) today (Nov. 20) published in the *Federal Register* its list of "chemicals of interest" – known as "Appendix A" – that will be used to determine whether facilities potentially will be subject to regulation under its chemical facility antiterrorism standards.

The significance of the publication is that it starts the 60-calendar-day clock for facilities that "possess or plan to possess" such chemicals at levels that exceed specified minimum concentrations at quantities that meet or exceed specified screening threshold quantities (STQs) to register with DHS and complete a web-based consequence-assessment tool known as "Top Screen." Ostensibly, that makes Saturday, Jan, 19 the deadline for completing the registration and "Top Screen" process. But DHS announced today it is **extending the deadline to Tuesday, Jan. 22** given the weekend and the Martin Luther King holiday on Jan. 21. 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.

The NGFA will be meeting on Nov. 21 with a top DHS official who oversaw the agency's development of Appendix A to review a series of questions posed to the agency by the NGFA. The NGFA will be publishing DHS's responses to those questions as soon as they are available. The NGFA also is requesting that DHS provide a PowerPoint tutorial to orient industry firms about the Top Screen process so that affected facilities will be familiar with the questions and screen pages that are part of the vulnerability-assessment tool.

As was reported extensively in the *NGFA Government and Grain* article published on Nov. 8, DHS when publishing its Appendix A adopted several major recommendations made in extensive comments submitted jointly to the agency by the NGFA and Grain Elevator and Processing Society (GEAPS) that will significantly reduce the number of grain, feed and processing facilities potentially regulated under the chemical facility antiterrorism regulations. Here's a brief summary of the agency's actions on several

chemicals of primary interest to grain handlers, feed manufacturers and grain processing facilities:

- ▶ **Urea** was deleted entirely from Appendix A. DHS accepted the NGFA/GEAPS' argument that urea would need to be combined with nitric acid to form a hazardous explosive device, and that it should focus its regulatory attention on concentrated nitric acid. The result is extremely beneficial to the feed manufacturing and fertilizer sectors.
- ▶ **Acetone** also was deleted entirely from Appendix A. DHS used the same logic as for urea, since acetone must be combined with hydrogen peroxide to form an explosive device. This is an important change for oilseed processors, as acetone is used in the extraction process.
- ▶ **Propane:** DHS substantially increased the STQ to 60,000 pounds (14,285 gallons) from the initially proposed 7,500 pounds. In addition, facilities will not be required to count propane tanks containing 10,000 pounds (2,381 gallons) or less when calculating whether they possess a sufficient quantity of propane to reach the threshold quantity. DHS maintained that the new STQ will encompass only very large, industrial-type agricultural facilities, providing significant regulatory relief to grain elevators, feed manufacturers and processing plants.
- ▶ **Phosphine:** DHS classified this chemical as a release-flammables threat, but increased its STQ to 10,000 pounds at a minimum concentration of 1 percent. However, the agency also classified phosphine as a theft threat, and imposed a 15-pound STQ at a minimum concentration of 0.67 percent. Initially, the agency proposed to require "Top Screen" assessments if any quantity of phosphine was present at a facility. This new theft classification for this chemical and its corresponding minimum concentration and threshold levels may encompass fumigation activities that occur at grain, feed and processing facilities. The NGFA is seeking further clarification from DHS on this issue.

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◆ **Sulfur Tetrafluoride:** DHS assigned this chemical into two threat categories:

- release-toxic – minimum concentration of 1 percent and STQ of 2,500 pounds; and
- theft – minimum concentration of 1.33 percent and STQ of 15 pounds.

DHS previously had proposed an “any amount” threshold quantity for this chemical. Similar to phosphine, the NGFA is seeking information from DHS on whether this new theft classification for sulfur tetrafluoride applies to fumigation activities.

◆ **Aluminum Phosphide and Magnesium Phosphide:** In another potentially troubling development, DHS’s final Appendix A classified aluminum phosphide and magnesium phosphide as sabotage/contamination threats and listed their STQs as the quantity sufficient to require placarding during shipping according to DOT regulations. Indications are that could amount to a single pellet. The NGFA also will be seeking further clarification on these chemicals from DHS. Initially, DHS proposed a 2,000-pound threshold level.

◆ **Anhydrous Ammonia:** DHS classified this chemical as a release-toxic threat, but increased the threshold quantity level to 10,000 pounds from the originally proposed 7,500 pounds. It also clarified that the threshold applies to product with a minimum concentration of 1 percent.

◆ **Ammonia (concentrations of 20 percent or greater):** DHS classified this chemical as a release-toxic threat, but increased the threshold quantity to 20,000 pounds from the originally proposed 15,000 pounds.

◆ **Chlorine:** DHS created two separate STQs: a) 2,500 pounds as a release-toxic threat; and b) 500 pounds (e.g., five or more 100-pound cylinders) as a theft hazard. Initially, DHS proposed a 1,875-pound threshold.

◆ **Hydrogen Peroxide:** DHS increased the STQ concentration to 35 percent or greater from the originally proposed 30 percent, but established a 400-pound screening threshold as a theft threat. This chemical is used as a processing agent in flour milling. DHS initially proposed a 2,000-pound threshold for concentrations of 30 percent or greater.

◆ **Hydrogen:** The final Appendix A classified this chemical as a release-flammables threat, and established a 10,000-pound STQ and clarified that it applies to hydrogen with a minimum concentration of 1 percent. That’s an increase from the 7,500-pound level initially proposed.

Members receiving the *NGFA Newsletter* electronically may access the Nov. 8 *NGFA Government and Grain* article by [clicking here](#) for a comprehensive report on this final chemical facility antiterrorism regulation and Appendix A.

## USDA Issues New Barter Invitation to Exchange CCC-Owned Wheat

The U.S. Department of Agriculture’s Commodity Credit Corporation (CCC) is seeking offers by Nov. 21 to exchange CCC-owned wheat for 300 metric tons of vegetable oil for food aid under the McGovern-Dole Food for Education Program.

As was the case with its most recent barter-exchange invitation for domestic food aid, CCC issued a catalog listing 3.918 million bushels. That represents all CCC-owned wheat exceeding the approximately 33.6 million bushels being retained by the agency for the Bill Emerson Humanitarian Trust international food aid reserve. In addition, as with the most recent barter-exchange catalog, the sole determinant used by CCC for listing its wheat

inventories was the current storage rate in effect at the storing warehouse.

Of the CCC-owned wheat listed as available under the barter exchange, 1.716 million bushels are stored in Oklahoma; 618,153 bushels in Nebraska; 545,121 bushels in Texas; 408,457 bushels in South Dakota; 246,039 bushels in North Dakota; 219,739 bushels in Montana; 72,888 bushels in Minnesota; 38,956 bushels in California; 36,288 bushels in Kansas; and 16,500 bushels in Idaho.

Members receiving the *NGFA Newsletter* electronically may access the CCC barter-exchange invitation by [clicking here](#) and the wheat catalog by [clicking here](#).





## OSHA Issues Final Rule Requiring Employers to Continue to Pay for Worker Personal Protective Equipment

Employers will continue to be required to provide personal protection equipment to employees at the employer's expense for all but a handful of items under a final rule issued by the Occupational Safety and Health Administration (OSHA) in the Nov. 15 *Federal Register*.

OSHA noted that employers already pay for the vast majority – approximately 95 percent – of personal protective equipment required under the agency's general industry, construction and maritime standards. The agency said its final rule is designed to clarify employer/employee responsibilities for providing and paying for personal protective equipment, and creates a "clear and consistent policy across OSHA's standards, reducing confusion about the items for which employers are required to pay."

But OSHA's final rule did accept recommendations from the NGFA that employers **not** be required to provide or compensate employees for the cost of obtaining ordinary safety-toed protective footwear (including steel-toe shoes or steel-toe boots), ordinary prescription safety eyewear and weather-related gear (such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses and sunscreen or skin creams). In addition, the final rule exempts

employers from providing logging boots, as well as everyday and ordinary clothing (such as long-sleeve shirts, long pants, street shoes and normal working boots). The agency said the final rule also does **not** require employers to pay employees for the cost of uniforms.

In addition, OSHA's final rule states that when an employee voluntarily provides adequate personal protective equipment he or she owns, the employer may allow the employee to use that equipment and is not required to reimburse the employee for the cost of such devices. But OSHA said the decision must be completely voluntary with the employee, and the employer is required to ensure that the employee-provided equipment is adequate to protect the employee from workplace hazards.

The final rule **does** require employers to pay for replacement personal protective equipment, except in cases where the employee has lost or intentionally damaged the equipment.

The final rule takes effect on Feb. 13, and employers are required to implement the payment provisions of the rule **no later than May 15**.

## EPA Seeks Nominees for New Ag Advisory Committee

The U.S. Environmental Protection Agency (EPA) on Nov. 15 published a *Federal Register* notice soliciting applications for up to 25 persons to serve on its newly formed Agricultural Advisory Committee.

EPA said its goal in forming the advisory panel is to "build a more positive and proactive relationship with the agricultural industry and to protect human health and the environment." In a previous notice, EPA said the advisory committee initially will be asked to focus on three major issues: 1) how EPA's policies and regulations on climate change and promotion of renewable energy will affect U.S. agriculture; 2) providing input on an environmental strategy for livestock operations that "considers regulatory and voluntary approaches and provides tools for producers to attain superior environmental performance;" and 3) development of a "constructive approach" to advancing sustainable agriculture and environmental protection, including ways to enhance communication between environmental and agricultural interests, as well as to address "urban encroachment" into rural areas. EPA said other topics to be covered may include issues relating to water, air and radiation; solid waste and emergency response; pesticides and toxics; enforce-

ment and compliance assistance; and research and development.

The advisory committee is to be drawn from the following segments: 1) large- and small-scale crop (including specialty crop) and livestock farmers, ranchers and rural communities; 2) rural suppliers, marketers and processors; 3) academics and researchers who study environmental issues affecting agriculture; 4) tribal agricultural groups; 5) state and local governments; and 6) environmental and conservation groups. EPA said among the factors it will use to evaluate applicants is whether they serve in a senior leadership position within their organization, have memberships in professional societies, have extensive experience in agricultural environmental issues and are involved in processing, retailing, manufacturing and distributing agricultural products. EPA said the U.S. Department of Agriculture and other federal agencies also are invited to nominate members to the advisory committee. NGFA members wanting to obtain more information on the advisory committee are invited to contact NGFA Director of Regulatory Affairs Jess McCluer at [jmcluer@ngfa.org](mailto:jmcluer@ngfa.org) or 202-289-0873, Ext. 23.



## USDA Grain Inspection Advisory Committee Meeting Nov. 28-29 in Denver

The U.S. Department of Agriculture's Grain Inspection Advisory Committee will conduct its next meeting on Nov. 28-29 in Denver, Colo.

Agenda topics include reports on the Federal Grain Inspection Program's financial status; GIPSA's "role" in the ethanol market; an update on the pilot program for authorizing independent third parties to conduct official grain inspection and weighing services at U.S. export ports under federal supervision; "improvements" in the issuance of phytosanitary certificates; the agency's work in assessing wheat functionality, the relevance of the official grain standards for soybeans

and other products; and organizational and technological enhancements being implemented by the agency to improve official grain inspection and weighing services. The NGFA and its representatives serving on the advisory committee will be participating in the meeting, and will be providing members with a full report on any significant outcomes. The meeting is open to the public, and is being conducted at the Westin Tabor Center at 1672 Lawrence St.

The NGFA/GEAPS Joint Grain Grades and Weights Committee will be conducting a separate meeting in conjunction with the advisory committee meeting.

## Focus on EPA's Proposed Spill-Prevention Rules for Vegetable Oils, Animal Fats

As previously reported in the Oct. 11 *NGFA Newsletter*, the U.S. Environmental Protection Agency (EPA) recently proposed several amendments to its Spill Prevention, Control and Countermeasure (SPCC) rule.

Of importance to the grain, feed and processing industry are the provisions of the EPA proposal governing facilities that store and handle vegetable oils and animal fats. The NGFA/GEAPS Joint Safety, Health and Environmental Quality Committee is reviewing the proposed rule.

Here, in a question-and-answer format, are some of the most important aspects of the proposal for the industry:

### 1. Did EPA differentiate between animal fats and vegetable oils versus petroleum oils in its proposed changes?

No. EPA maintains that it reviewed both toxicity and biodegradability data and found that not all animal fats and vegetable oils are non-toxic, and that some animal fat and vegetable oil products have similar toxicity profiles as other industrial oils. In addition, the agency said it determined that some other oils biodegrade similarly to animal fats and vegetable oils. Therefore, EPA said it concluded that it was inappropriate to differentiate animal fats and vegetable oils from other oils based on either toxicity or biodegradability.

### 2. Do EPA's proposed amendments clarify who is covered by the SPCC rule?

Yes. The proposal would modify the definition of "facility" covered by the SPCC rule to clarify that contiguous buildings, properties, parcels, structures and pipelines may be considered separate facilities. This change is intended to allow property owners and operators to separate or aggregate containers to determine facility boundaries, based upon such factors as ownership or operation of the containers or buildings, similarity of activities being conducted, and property boundaries.

### 3. Are there different requirements for Tier I and Tier II SPCC facilities?

EPA's SPCC proposal would establish streamlined requirements for certain facilities with low oil storage capacity and no discharge history, known as Tier I facilities. The proposal also delineates Tier I facilities from Tier II facilities.

► **Tier II Facilities:** EPA's proposal clarifies that facilities storing less than 10,000 gallons of oil and that have no record of a discharge exceeding 1,000 gallons (or two discharges exceeding 42 gallons) within a 12-month period during the three preceding years are Tier II facilities. In its December 2006 SPCC rule amendments, EPA allowed such facilities to self-certify their SPCC plans.

► **Tier I Facilities:** EPA's proposal would go further by establishing that facilities meeting the Tier II qualifications which also have a maximum individual oil storage container capacity of 5,000 gallons (i.e., no individual container exceeds 5,000 gallons) are Tier I facilities. Tier I facilities, under the proposal, would be allowed to complete a simplified, self-certified SPCC plan template developed by EPA, rather than preparing a full SPCC plan. The proposed rule also establishes streamlined requirements for Tier I facilities by modifying or eliminating certain requirements, such as overfill prevention and facility diagram and drainage requirements.

### 4. Are there new animal fat and vegetable oil integrity-testing requirements in EPA's proposal?

Yes. The agency is proposing a compliance alternative for SPCC integrity-testing requirements based upon how animal fats and vegetable oils are stored and handled. The compliance alternative would apply to bulk animal fat and vegetable oil storage containers subject to the Food and Drug Administration's (FDA) good manufacturing practice regulations [21 CFR, part 110]. In addition to being subject to the FDA rules, such containers also would be required to: 1) be elevated; 2) be made from austenitic  
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stainless steel; 3) have no external insulation; and 4) be shop-built. For containers meeting these conditions, the owner, operator or professional engineer certifying the SPCC plan would be allowed to use industry standards for visual inspection, instead of the otherwise-applicable integrity-testing requirements (including visual inspection and another testing technique). The owner, operator or professional engineer would **not** be required to make an environmental equivalence determination, but would be required to document the procedures used for inspection and testing.

**5. Do the proposed testing requirements apply only to facilities handling animal fats and vegetable oils?**

No. In addition to the specific provisions applicable to facilities storing or handling animal fats and vegetable oils, EPA proposes to make other, general changes to improve the flexibility of the integrity-testing provisions. The proposed rule would allow owners and operators to rely upon industry standards to determine appropriate qualifications for tank inspectors and testing personnel, as well as the type and frequency of testing for particular container sizes and configurations, without the professional engineer-certified explanation of environmental equivalence required under the current rule. In addition, while the proposed rule declines to establish differentiated integrity-testing requirements for indoor containers, the proposal does clarify that indoor conditions that reduce corrosion and discharge potential may be considered in establishing a site-specific inspection program.

**6. Have the SPCC's containment requirements been modified?**

Yes. EPA's proposal would modify the SPCC rule's general secondary-containment requirement to clarify that the secondary-containment method, design and capacity need only address the typical failure mode and most likely quantity of oil discharged, based upon site-specific conditions. In addition, the proposed rule would allow either passive (such as curbing) or active (such as spill kits) secondary-containment methods. The proposed rule also clarifies that an SPCC plan may consider the ability of building walls and drainage systems to serve as secondary containment for containers located inside buildings. Finally, the proposal requests comment on whether non-transportation-related tanker trucks (such as trucks used to refill oil-filled equipment) should be exempt from sized secondary-containment requirements, just as mobile refuelers are exempt pursuant to EPA's December 2006 SPCC rule amendments.

**7. Will animal fat and vegetable oil facility owners have more input into their facility's security requirements?**

Yes. EPA proposes to take a more performance-oriented approach to SPCC security requirements by allowing facility

owners and operators to tailor their security measures to the specific characteristics and location of the facility, rather than prescribing such measures as lighting and fencing. Under the proposal, the SPCC plan would be required to describe how access to oil-handling, processing and storage areas is secured and controlled; how master flow and drain valves are secured; how unauthorized access to starter controls and oil pumps are prevented; and how out-of-service and loading/unloading connections are secured. The SPCC plan also would be required to address the appropriateness of security lighting to prevent vandalism and assist in the discovery of discharges.

**8. Does the content and capacity of every container, including portable ones, have to be included in the facility's security diagram?**

No. EPA's proposal would simplify the SPCC facility diagram requirements in response to concerns that documenting the contents of all storage containers with a capacity exceeding 55 gallons is impractical because of seasonal and market changes.

◆ **Fixed Containers and Piping:** The proposal would allow owners or operators to provide contents and capacity information about multiple, fixed storage containers or complex piping or transfer areas on a table or key, rather than in the diagram itself. EPA also requested comments on allowing detailed information on complex piping or oil-filled equipment to be supplied in the same manner.

◆ **Portable Containers:** The proposed rule would allow mobile or portable containers to be marked in the diagram as being in a certain area (such as a drum storage area), rather than having to be represented individually in the diagram. In addition, the estimated number of potential containers and anticipated contents could be indicated in a range in the SPCC plan, or by reference to facility inventory data, rather than in the diagram itself.

**9. Does EPA clarify the definition of "loading/unloading rack" in the new proposals?**

Yes. EPA proposes a new definition of "loading/unloading rack" designed to clarify whether the SPCC rule's tank car and tank truck loading/unloading rack requirements apply. The proposed definition would specify that a loading/unloading rack includes a platform, gangway or loading/unloading arm; and any combination of piping assemblies, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices. EPA's proposal also clarifies that the loading rack requirements (including sized secondary containment) apply to transfers at loading racks associated with any type of container, including exempt containers (such as underground storage tanks or motive power containers), as long as the rack meets the loading/unloading rack definition.





# Membership Matters

by Todd Kemp  
Director of Marketing/Treasurer

## “Save the Date!” NGFA Annual Convention on the Horizon!

The NGFA’s 112<sup>th</sup> annual convention is just around the corner!

Block out the following dates on your calendar so you don’t miss the year’s premier event for the grain, feed and processing industry:

▶ **When:** March 26-28, 2008

▶ **Where:** Westin Kierland Resort, Scottsdale, Ariz.

▶ **Who:** Hundreds of executives and managers from the grain, feed and processing industry...including you! Bring the family, too!

▶ **Why:** High-level business programming...unparalleled social and networking opportunities...a sunny afternoon of golf with your industry colleagues...a well-deserved end-of-winter break...a get-away for the entire family.

Here are a few tentative headline events to whet your appetite:

▶ **Wednesday, March 26:** Open committee meetings; the

popular Rail Open Forum; the traditional lavish Welcome Reception.

▶ **Thursday, March 27 – Grand Opening Session:** Planned speakers include a major NGFA-member company CEO; a major railroad CEO; and a biofuels session.

▶ **Thursday afternoon, March 27 – NGFF Golf Tournament:** The annual fundraiser for the National Grain and Feed Foundation.

▶ **Friday, March 28:** A Bush administration Cabinet officer; a major feed-manufacturer CEO; focus on international trade; a key congressional leader.

▶ **Friday, March 28 – Gala Closing Banquet:** An always entertaining and enjoyable way to cap off the convention with industry colleagues and friends, the closing cocktail party and banquet will be followed by an evening of entertainment you won’t soon forget!

Program and registration information will be hitting your e-mailboxes soon! For now, block out the dates on your calendar and make plans to join us in sunny Scottsdale!



**National Grain and Feed Association**  
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**TIME SENSITIVE**