



NGFA

Newsletter

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NGFA Challenges EPA Interpretation of Temporary Storage for Air Permitting

The NGFA this week mounted a forceful challenge to the U.S. Environmental Protection Agency's (EPA) tentative conclusion that some types of temporary grain storage structures should be classified as permanent storage under the Clean Air Act's New Source Performance Standard.

How the issue is resolved is extremely important, since classifying certain types of temporary storage as permanent space could cause affected facilities to be considered a "major

source" of emissions, and hence subject to air-permitting requirements for grain dust emissions. Under the New Source Performance Standard, 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 law also applies to any facility that is **modified** after 1978 to expand its permanent storage capacity to more than 2.5 million bushels. *[These designations exclude grain handling facilities located at feed mills, pet*

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USDA Issues New Federal Grain, Rice Warehouse Licensing Agreement

...New License to be Discussed at NGFA Industry Town Hall Meeting on Dec. 9...

The U.S. Department of Agriculture (USDA) has issued its new licensing agreement for grain and rice warehouses operating under the U.S. Warehouse Act (USWA).

Federally licensed grain warehouses will be asked to sign and execute two copies of the **"USWA Licensing Agreement for Grain and Rice Warehouse Operators"** by **March 3**. One of the signed copies will be returned to the federally licensed warehouse operator after it is counter-signed by USDA's Kansas City Commodity Office.

New Licensing Agreement to be Subject of NGFA-Sponsored Town Hall Open Meeting Dec. 9: The new, legally binding licensing agreement will be discussed by USDA officials during the **NGFA-sponsored Industry Town Hall Open Forum on Sunday, Dec. 9, from 4 to 5:30 p.m. at the Marriott Magnificent Mile Hotel in downtown Chicago**, in conjunction with the NGFA's Country Elevator/Feed Industry Conference. The session will be of interest to both federal- and state-licensed grain warehouse operators, and all are encouraged to attend. During the Industry Town Hall Meeting, USDA officials will provide an overview of the new licensing agreement, discuss how it differs from previous regulations governing federally licensed grain warehouses, and highlight the obligations and duties it imposes on federally licensed grain warehouses. The USDA presentation will be made by Farm Service Agency (FSA) Deputy Administrator for Commodity Operations Larry Adams; Assistant to the Deputy Administrator for Commodity Operations Candace Thompson; and USWA Program Manager Roger Hinkle. Officials from USDA's Kansas City Commodity Office also will be on hand to respond

to questions.

The new licensing agreement implements the amendments to the U.S. Warehouse Act approved by Congress in 2000, and was cleared just recently by USDA's General Counsel's Office. The 41-page licensing agreement contains updates and changes to many of the provisions previously contained in regulations that applied to federally licensed grain and rice warehouses. USDA's intent in doing so is to provide greater flexibility to revise the licensing agreement, if needed, on a year-to-year basis, which is more difficult and time-consuming to do under the federal regulatory process.

The new federal grain and rice licensing agreement is posted on both USDA's and NGFA's websites. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access it.

Important Changes and Additions to USWA Licensing Requirements: There are several significant changes and additions contained in the new licensing agreement for federally licensed warehouses that were not present in previous regulations. In several cases, the changes are designed to make the licensing agreement more compatible with existing trade practices in the warehouse industry. A focus group of federally licensed grain warehouses convened last December by the NGFA provided significant input to USDA on the new licensing agreement.

Among the most significant are these:

► **Increase in Minimum Net Worth Requirement:** USDA is increasing, at the warehouse industry's request, the

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Agreement Reached on Consideration of Amendments to 2007 Senate Farm Bill

The Senate leadership late tonight (Dec. 6) reached agreement on the number and type of amendments allowed to be offered during floor consideration of the 2007 farm bill.

Under the agreement, a total of 40 amendments – 20 each for Democrats and Republicans – will be permitted. The amendments will be required to come from a list agreed upon prior to Congress's Thanksgiving recess.

Senate Majority Leader Harry Reid, D-Nev., on Dec. 5 had filed for cloture for a second time on the farm bill in an attempt to limit debate to 30 hours. With tonight's agreement between Reid and Minority Leader Mitch McConnell, R-Ky., a cloture vote originally scheduled for Dec. 7 has been postponed to a future date. Instead, debate on farm bill amendments will begin on Dec. 7.

A previous cloture vote, which occurred Nov. 16, failed by a

55-43 margin (60 votes are required for passage of a cloture motion).

The impasse over amendments and procedure had delayed floor consideration since it was first brought up on Nov. 12. Currently, more than 290 amendments have been filed – most unrelated to the farm bill. Reid continued to favor not allowing non-germane amendments to be considered, while McConnell continued to advocate what he termed a more “open” process. An agreement between the two seemed imminent at one point earlier this week, when Reid proposed that Democrats be given the opportunity to offer five amendments to the farm bill, while Republicans be allowed to offer 10, plus two non-germane amendments – likely one that would repeal the estate tax and amend the alternative minimum tax triggers under the federal income tax. *[See list of potential amendments on pages 2-3.]*

Potential Amendments to Senate Farm Bill

(As of Dec. 6, 2007)

The following is a summary of potential amendments to the Senate version of the 2007 farm bill that may be considered once floor debate begins. Several of these are expected to be included as part of a package in a single “manager’s amendment” to be introduced by Senate Agriculture Committee Chairman Tom Harkin, D-Iowa.

Amendment	Sponsors	Provisions
Payment Limitations	Dorgan/Grassley	Hard cap of \$250,00 per couple for farm program payments. Passed with 66 votes during 2002 debate, but was stripped in conference.
FRESH Act	Lugar/Lautenberg	Alternative farm bill that replaces current payments with revenue insurance program with savings (\$16 billion est.) directed towards nutrition, conservation, renewable fuels, research and specialty crops.
ACR Program	Brown/Durbin	Revert to original Average Crop Revenue program that was modified in Committee to de-link from crop insurance by an amendment from Sen. Roberts. Sen. Brown also likely to introduce amendment that includes some modification that deals with crop insurance subsidies.
Sodsaver	Johnson	Prohibit payments on grass and rangeland converted to farm land – CRP acres exempt.
WTO Corrective Action	Lugar	Requires president to submit corrective legislation upon finding that a commodity program violates U.S. WTO commitments.
Cuba Sales	Baucus	Ease definition of cash-in-advance for sales to Cuba and expand eligibility to include ag machinery and equipments.
Biofuels Credit	Chambliss	Provide greater access to biofuels industry to financing through the Farm Credit System.
RFS	Domenici/Thune	Title I from Senate energy bill that includes RFS increase to 36 million gallons by 2022.

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Amendment	Sponsors	Provisions
Packer Ownership Ban	Roberts	Amendment to strike language that bans packer ownership of livestock.
Animal Cloning	Mikulski	Two amendments that deal with studying and labeling animal cloning.
Animal Disease Outbreak		Clarifies USDA as lead agency for all animal and plant health emergencies.
Ag Competition and Merger Review	Grassley/Thune	Mandate Justice Department review of ag mergers and create entities in USDA and Justice Department to investigate “problems” in ag competition and ag mergers. Creates competition task force. Creates new attorney for ag antitrust matters. Shifts burden of proof to businesses that mergers will not lessen competition. Creates USDA Office of Competition and Fair Practices.
Border Inspections	Feinstein/Casey/Martinez	Relocate ag quarantine and inspection functions and inspectors from DHS/CBP back to USDA/APHIS.
Food Safety Sunset	Durbin	Amendment to sunset all food safety laws within two years.
Meat Poultry Reporting	Durbin	Subject all USDA regulated food products to reporting to Reportable Food Registry established within USDA for products found to pose a “reasonable probability” of causing human or animal health risks.
Eminent Domain	Casey	Prohibits state or local governments that take working ag lands for open spaces from receiving federal assistance for five years. “Traditional” eminent domain uses would not be affected.
Packer Forward Contracts	Enzi	Prohibits packers from using forward contracts that are based on a formula price that does not contain a firm base price, thereby likely limiting the size of contracts.
Initiative for Future Ag and Food Systems	Alexander	Restore \$74 million in funding to IFAFS – a program established for “research, extension and education competitive grants program to address a number of critical emerging agricultural issues.”
Ag Disaster Program	Bunning	Strike language creating a permanent ag disaster program.
Payment Limits	Ensign	Set AGI at \$200,000.
Direct Payments	Feingold	Reduce direct payments and shift funding to other areas.
Nutrition	Harkin/Murkowski	School nutrition initiatives.
Payment Limits	Klobuchar	Lower AGI for farm program payments.
AMT	Kyl	Taxpayer relief under the Alternative Minimum Tax.
Competitive Injury	Harkin	Create a “no-competitive-injury clause,” which would not require a producer to demonstrate broad competitive harm to the industry.
Energy Market Pricing	Levin	Prevent price manipulation in energy markets.
Farm Savings Accounts	Session	Pilot program to allow farm savings accounts as replacement for subsidized crop insurance coverage.
Fisherman	Stevens	Makes commercial fisherman eligible for FSA operating loans.
Carbon Capture	Tester	USDA Rural Utility Service loans for carbon capture and storage equipment.
Biomass Grants	Wyden	Establish a program for biomass grants.

House Approves Energy Bill with Renewable Fuels Mandate

The House passed a comprehensive energy bill today (Dec. 6) by a 235-181 vote, despite a near certain filibuster by Republicans in the Senate.

A top priority for House Speaker Nancy Pelosi, D-Calif., consideration of the long-sought measure occurred after months of delay and behind-the-scenes negotiations among lawmakers of both parties to arrive at a consensus approach. Details of the final package were in flux until the end, as Democratic leaders worked to garner sufficient votes to avert a potentially embarrassing floor defeat.

The measure includes bipartisan-supported provisions, such as an increase in the renewable fuels standard of slightly more than 20 billion gallons by 2015, with about 5 billion gallons of that quantity mandated to be derived from cellulosic ethanol and another portion from biomass-based diesel. After 2015, the House bill’s mandate would increase, calculated by using an indexed number linked to increases in renewable fuel production. The House-passed bill also would require a new study of the impacts of increasing the renewable fuels mandate after the increase has been implemented. The

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original version of the House energy measure, passed on Aug. 4, omitted any increase in the renewable fuels standard, but the current version places it more in line with the Senate version passed on June 21. That Senate-passed bill would increase the current 7.5-billion-gallon renewable fuels standard to 15 billion gallons by 2015; then, starting in 2016, it would mandate additional 3-billion-gallon annual increases in biofuels use to be derived from cellulosic material, until reaching 36 billion gallons by 2022.

The House bill, dubbed the “*Energy Independence and Security Act*,” also contains widely supported language to increase the Corporate Average Fuel Economy (CAFE) standard to a fleet average of 35 miles per gallon. Current CAFE standards have not been revised since they were increased to 27.5 miles per gallon for cars and 22.2 miles per gallon for light trucks and SUVs in 1975. However, in a provision that will complicate its approval in the Senate, the House bill includes two highly controversial provisions – a \$21 billion tax package and a renewable electricity standard. The tax package includes a wide array of tax incentives offset in part by repeal of \$13.5 billion in tax breaks currently enjoyed by the

oil and gas industry. Several fiscally conservative “Blue Dog” Democrats and normally supportive moderate Republicans in the House objected to the large tax package. Earlier this year, the Senate fell two votes short of limiting debate on a similar, but larger, energy tax package, with supporters hopeful that last-minute tweaks may bring in the extra votes needed for Senate approval.

The renewable electricity standard would require that utility companies by 2020 garner 15 percent of electricity from renewable sources, such as wind and solar power. But Southern lawmakers maintain that the standard would be difficult to meet in their region because there is less opportunity to generate wind power. Republican leaders in the Senate appeared confident that a cloture vote – likely to occur either Dec. 7 or 8 – to limit debate would not pass, and the two controversial provisions would have to be stricken and then the bill sent back to the House in its pared-down form. Adding to pressures to compromise is the Bush administration’s threat to veto the bill if it includes the electricity renewable standard or the tax package.

Senate Approves Peru Free Trade Agreement

The Senate on Dec. 5, by a 77-18 vote, ratified the first free trade agreement approved under the new Democratic-controlled Congress.

The Peru free trade agreement (FTA), previously passed by the House, was the first trade pact considered following the brokering of an agreement between congressional Democratic leaders and the Bush administration to include additional commitments on labor and environmental standards. The U.S.-Peru accord was the only major trade vote conducted this year, with three other free trade agreements still awaiting congressional approval. The Peru FTA, widely considered the easiest to pass of those negotiated under the President’s trade promotion authority, could provide a springboard for more difficult votes looming on trade deals with South Korea, Colombia and Panama. The other agreements have yet to garner the support of key Democrats who were instrumental in helping the Peru FTA over the finish line.

The Peru FTA would result in immediate duty-free access for more than two-thirds of U.S. agricultural exports to Peru, including wheat, soybeans, soybean meal, crude soybean oil, high-quality beef, cotton and many fruits, vegetables and processed food products. Peruvian tariffs on most remaining U.S. agricultural products, including pork, corn and dairy, would be phased out within 15 years – tariffs for many of those would expire within five years. All tariffs would be eliminated within 17 years. In addition, Peru agreed to eliminate its price band that applies to more than 40 agricultural products, including corn, rice, dairy and sugar. The American Farm Bureau Federation has estimated that the accord would

increase U.S. farm exports by \$705 million.

Significantly, the trade accord also resolved several major sanitary, phytosanitary and technical standards issues that are expected to expand U.S. meat exports. These include agreement on a science- and risk-based approach for addressing bovine spongiform encephalopathy in beef and beef products, and avian influenza in poultry and poultry products, as well as pork and pork products, and rice. These actions included Peru’s formalization of its recognition of the equivalence of the U.S. meat and poultry inspection systems, and elimination of a rice quality standard that discriminated against imports of U.S. rice.

Senate action marks the completion of the first FTA to include an enforceable reciprocal obligation for Peru and the United States to adopt and maintain laws and practices reflecting internationally recognized labor rights issued in 1998 by the International Labor Organization, as well as commitments to enforce domestic environmental laws and regulations, as well as seven covered multilateral environmental agreements. This was essential to the Democratically controlled Congress passing any trade accord brokered by the administration. While all of the votes against the accord except one came from Democrats, a majority still voted to pass the agreement. A key consideration to passage was the more than 98 percent of Peruvian agricultural products that already enter the United States duty free under most-favored nation tariff rates and various preference programs. The new FTA grants reciprocal access to the Peruvian market for U.S. products.





CFTC Proposes Significant Increases in Speculative Position Limits

The Commodity Futures Trading Commission (CFTC) on Nov. 21 published a proposed rule that would increase significantly speculative position limits for futures contracts for wheat, corn, soybean, soybean oil and soybean meal contracts (among others).

The proposed increases, on which the agency is seeking comments by Dec. 21, would apply to Chicago Board of Trade, Kansas City Board of Trade and Minneapolis Grain Exchange-traded futures.

The newly proposed limits have been derived through use of a formula utilized by the CFTC that is based upon open-interest levels. Given large increases in open interest for certain contracts, the CFTC's use of the formula triggers some large proposed increases in speculative position limits, too, which are shown on page three of the proposed rule that is available by [clicking here](#). 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 rise from 6,500 to 14,500 contracts, with single-month limits increasing from 5,000 to 11,100 contracts. Under the CFTC's proposal, speculative position limits for the spot month would remain un-

changed at 600 contracts for each of these three commodities. Limits would be the same across the three exchanges, consistent with past CFTC practice.

One interesting new wrinkle is that the CFTC proposed to aggregate traders' positions for speculative position limits for substantially similar contracts traded on different exchanges. The example provided in the CFTC proposal is the New York Board of Trade's (NYBOT) cotton contract and a new New York Merchants Exchange (NYMEX) cash-settled cotton index contract. Currently, grains and oilseeds would be unaffected by this change.

Submitting Comments: The NGFA's Risk Management Committee is reviewing the proposal and will formulate a response to the agency. The topic also will be discussed by the NGFA's Country Elevator Committee during its open meeting on Dec. 9 conducted in conjunction with the NGFA's Country Elevator/Feed Industry Conference. NGFA members wishing to comment directly to the CFTC may do so to David Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, DC 20581. Comments also may be sent by FAX to (202) 418-5521, or by e-mail to secretary@cftc.gov, with reference in the subject line to "Proposed Revision of Federal Speculative Position Limits."

CFTC Proposes New Hedge Exemption for Ag Index, Pension Funds

The Commodity Futures Trading Commission (CFTC) on Nov. 27 proposed to create a new hedge exemption for agricultural commodities for entities like index funds and pension funds.

Specifically, the CFTC proposed that the exemption apply to "risk management positions," which the CFTC proposed to define as: "a futures or futures-equivalent position, held as part of a broadly diversified portfolio of long-only or short-only futures or futures-equivalent positions, based on either: 1) a fiduciary obligation to match or track the results of a broadly diversified index that includes the same commodity markets in fundamentally the same proportions as the futures or futures-equivalent position (e.g., index funds); or 2) a portfolio diversification plan that has, among other substantial asset classes, an exposure to a broadly diversified index that includes the same commodity markets in fundamentally the same

proportions as the futures or futures equivalent-position (e.g., pension funds). Under the CFTC's proposal, the exemption would be subject to a number of conditions, including that the positions must be passively managed, unleveraged (backed by cash and accrued profits), and could not be carried into the spot month. Entities would need to apply for and be granted the risk-management exemption by the CFTC.

In essence, the CFTC proposal would create a hedge-exemption mechanism for index funds and pension funds to formalize what the agency already has begun to do through the issuance of "no-action" letters. At least a couple of funds have requested and received from the CFTC relief from speculative position limits, even though the funds technically do not qualify, in the CFTC's opinion, for the existing hedge exemption where futures offset risks related to swaps and over-the-counter

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positions. The new proposed hedge exemption would allow index and pension funds to apply for a hedge exemption and, if granted by the CFTC, themselves put on futures positions under the risk-management exemption – instead of entering into an over-the-counter position or swap.

The NGFA's Risk Management Committee will be reviewing the CFTC proposal and formulating the Association's response to the agency by the [Jan. 28](#)

deadline. NGFA members wishing to comment directly to the CFTC may do so by sending statements to: David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. N.W., Washington, D.C., 20581. Comments also may be sent by FAX to (202) 418-5521 or e-mailed to secretary@cftc.gov with reference to "Proposed Risk Management Exemption from Federal Speculative Position Limits" in the email subject line. [Click here](#) to access the full text of the CFTC proposal.

CFTC Conducts Ag Advisory Committee Meeting

...Speculative Position Limits, Hedge Exemption Proposal Key Agenda Topics...

The Commodity Futures Trading Commission's (CFTC) proposals to increase speculative position limits on futures contracts and to establish a new hedge exemption for index and pension funds both were prominent agenda topics at today's meeting of the CFTC Agricultural Advisory Committee.

Chaired by CFTC Commissioner Mike Dunn, the committee meets occasionally to discuss futures industry items of particular interest to the agricultural sector. All three other CFTC commissioners – Acting Chairman Walt Lukken, Jill Summers and Bart Chilton – also attended.

The NGFA's representative to the CFTC Agricultural Advisory Committee – NGFA First Vice Chairman Tom Coyle, general manager of Chicago & Illinois River Marketing, Chicago, Ill. – told the group that the NGFA still is in the process of formulating its positions on both proposals. The Risk Management Committee will meet in Washington, D.C., on Jan. 10 to consider these items. The NGFA's Country Elevator Committee, during its Dec. 9 meeting, also will be developing input for the Risk Management Committee's consideration.

On speculative position limits, Coyle noted that the NGFA generally has been supportive of previous increases requested by the exchanges. But he cautioned that a marketplace changed by growing participation of funds in agricultural futures markets, biofuels growth, transportation cost increases, increased volatility, problems with convergence and wider-than-expected basis levels could lead some traditional hedgers to be less inclined to support the proposed increases. Similarly,



NGFA First Vice Chairman Tom Coyle (right), general manager of Chicago & Illinois River Marketing, Chicago, Ill., is shown with CFTC Agricultural Advisory Committee Chair Mike Dunn during the group's Dec. 6 meeting in Washington.

Coyle commented that the agency's logic in proposing the hedge exemption for index and pension funds makes sense and could introduce additional transparency to the marketplace. But he stressed that some might view previous speculative position limits as part of the reason for changed marketplace conditions, and may be reluctant to support the proposed increases.

Coyle also complimented the CFTC for implementing the new "Index" category in its Commitments of Traders report, and urged the agency to remain vigilant on properly classifying non-traditional activity in the new category. He also reported on the NGFA's Futures Market Performance Task Force and its recommendations to the CME Group to enhance convergence and improve contract performance.





"Warehouse Licensing" continued from page 1

minimum net worth requirement for federally licensed grain and rice warehouses to \$200,000, up from the current \$50,000 minimum. The increase will be phased in over an up-to-three-year period, based upon the federal warehouse's annual renewal date. For instance, federally licensed grain and rice warehouses that currently have a net worth of less than \$100,000 will be required to meet a \$100,000 minimum net worth requirement when renewing their licensing agreement on or after Jan. 1, 2009. Such warehouses then will need to meet a \$150,000 minimum net worth requirement when renewing their federal licenses on or after Jan. 1, 2010, and then meet the \$200,000 requirement when renewing their licenses on or after Jan. 1, 2011. USDA officials told the NGFA that about 18 federal grain and rice warehouse licensees currently have a net worth of less than \$200,000.

▶ **Authorization for Emergency and Temporary Storage:** Significantly, the new licensing agreement provides standing authority sought by the NGFA under which federally licensed grain and rice warehouses will be able to request permission to utilize emergency and temporary storage from one year to the next, pending authorization from FSA's deputy administrator for commodity operations. This should significantly expedite the process for authorizing use of emergency and temporary storage. USDA will continue to set the time limits and kinds of commodities eligible for temporary and emergency storage. Temporary storage consists of structures (such as bunkers) with rigid, self-supporting sidewalls; asphalt, concrete or other approved floor; aeration; and an acceptable cover, which usually consists of a polyurethane or vinyl tarp. Emergency storage consists of ground piles.

▶ **Additional Flexibility to Meet Deficiencies in Net Worth:** The new agreement provides increased flexibility for federally licensed grain and rice warehouse operators to utilize U.S. Treasury notes, other U.S. public debt instruments, irrevocable letters of credit and "other forms of financial assurance...deemed acceptable" by USDA in lieu of a bond to meet deficiencies in net worth that exceed the \$200,000 minimum. The new licensing agreement continues to compute net worth at a rate of 20-cents per bushel for the first 1 million bushels of federally licensed warehouse capacity; 15-cents per bushel for the second 1 million bushels; and 10-cents per bushel for licensed capacity exceeding 2 million bushels. The maximum net worth is \$500,000 for each state in which the federal licensee operates.

▶ **Transferring and Forwarding of Grain:** The new agreement expressly authorizes federally licensed grain and rice warehouse operators to transfer or forward grain by physical movement or transfer of warehouse receipts, with permission from USDA. Such transfers or forwarding may be made to: 1) another federally licensed warehouse; 2) a

state-licensed warehouse; or 3) a warehouse operating under a Commodity Credit Corporation (CCC)-approved storage agreement (i.e., the Uniform Grain and Rice Storage Agreement contract). The licensing agreement also stipulates obligations that apply to the transferring warehouse operator, including providing written notification and obtaining written approval from USDA prior to moving or transferring warehouse-receipted or CCC-owned commodities.

▶ **Non-Discriminatory Treatment and Pre-Dispute Arbitration:**

The new agreement reflects the statutory changes to the U.S. Warehouse Act by stating that federally licensed warehouse operators are not to discriminate against depositors or lawful owners of commodities seeking warehouse storage and services, but are able to establish storage practices to allocate available space. A separate "fair-treatment" section of the licensing agreement obligates warehouse operators to deal in a "fair and reasonable manner" with persons storing or seeking to store grain if each of the following conditions is met: 1) the grain is of a kind, type and quantity customarily stored or handled in the geographic area; 2) the grain has been tendered to the warehouse in a suitable condition for storage; and 3) the grain is tendered in a manner "consistent with the ordinary and usual course" of the warehouse operator's business. The agreement also expressly authorizes federal warehouse operators to enter into agreements with depositors to allocate available warehouse storage space. These provisions are intended to provide flexibility to warehouse operators to allocate available space to traditional depositors or in other ways that are consistent with sound warehouse practices.

The licensing agreement includes language proposed by the NGFA that provides for use of nondiscriminatory pre-dispute arbitration (such as that offered by the NGFA) to resolve disputes between federal grain and rice warehouses, as well as between licensed warehouses and depositors.

▶ **Execution of Open-Storage and Credit-Sale Contracts:** The licensing agreement requires that both parties to a producer open-storage or credit-sale grain contract execute the contract within 30 days of final application of grain against the contract.

▶ **Conjoint and Identity-Preserved Storage:** The new licensing agreement establishes a new definition and requirements for "conjoint storage." USDA defines the term to mean "storage obligations for grain created by warehouse receipts issued in common to multiple depositors that identify and denote specific binning methods that results in the segregated storage and handling of such grain with like

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characteristics apart and separate from all other grain.” The licensing agreement requires that warehouse receipts be issued for any lot of conjoint or identity-preserved grain stored, and to deliver the actual commingled conjoint-stored grain to those depositors holding title to such grain. The warehouse operator retains the latitude not to accept delivery of conjoint- or identity-preserved grain.

► **Direct Shipments:** Likewise, the new licensing agreement establishes a new definition for “direct shipments”: “Grain delivered for the account of the warehouse operator at a location other than the warehouse operator’s USWA-licensed warehouse facility.”

Other Provisions: Other provisions of the new licensing agreement address recordkeeping; insurance requirements;

grain inspection and weighing; delivery requirements; commodities that have gone out-of-condition while in storage; warehouse examinations; issuance of warehouse paper and electronic warehouse receipts; licensing fees; and other issues. The new agreement also incorporates already-existing requirements that federally licensed grain and rice warehouses conduct facility vulnerability assessments and develop written facility security plans to protect grain handled and stored under the license.

Federal- and state-licensed warehouses are strongly encouraged to take advantage of the opportunity to learn about – and pose questions to USDA officials on – the new licensing agreement during the NGFA-sponsored Industry Town Hall meeting on Dec. 9.

USDA Proposes National Sorghum Checkoff Collected by Grain Handlers

The U.S. Department of Agriculture (USDA) on Nov. 23 proposed, at the request of the National Sorghum Producers organization, to create a new national checkoff program for sorghum to be collected by “first handlers” at the first point of sale.

The checkoff would encompass domestic and imported grain sorghum, sorghum forage, sorghum hay and haylage, sorghum silage and sorghum billets. The checkoff would amount to 0.6 percent of the net market value for grain sorghum received by the producer, and 0.35 percent of the net market value for sorghum forage, sorghum hay and haylage, sorghum silage and sorghum billets. The checkoff could be increased by up to 0.2 percent of net market value in any single calendar year, up to a maximum total increase of 1 percent over time. Within three years after the assessments begin, USDA would be required to conduct a producer referendum to determine whether to continue the checkoff.

National Sorghum Producers said the research and promotion checkoff was needed to “allow the industry to address a number of production and marketing problems: 1) lack of yield improvement and technology; aggressive marketing competition; and lagging ethanol research. The organization’s petition was supported by nine other organizations, including sorghum producer organizations from five states and the U.S. Grains Council. Currently, state grain sorghum checkoffs exist in Kansas, Texas, Nebraska, Oklahoma, Louisiana and Arkansas, which National Sorghum Producers allege are not generating a “sufficient scale of funding to effectuate large, coordinated research programs.” The proposal would extend the checkoff nationwide.

The checkoff would be administered by a 13-member board consisting solely of producers. Importers would be entitled to one seat if the value of assessments collected on imported sorghum reached or exceeded the production of the state with

the third-largest production, a very remote possibility.

Collecting the Sorghum Checkoff: Under the proposal, the definition of “first handler” – responsible for collecting the checkoff – covers any commercial grain elevator that annually buys for subsequent sale more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay or haylage, sorghum billets or sorghum silage from producers. Importers (*including agents, brokers or consignees*), cattle feeders and dairies purchasing these quantities also would be required to collect the checkoff. The term “first handler” also includes a producer who markets his or her own sorghum production directly to consumers. It also encompasses USDA’s Commodity Credit Corporation (CCC) for sorghum pledged as collateral for a marketing assistance loan or forfeited to CCC in lieu of loan repayment.

The proposal would require that the checkoff be remitted on a monthly basis along with a report documenting the volume of sorghum on which the assessments were collected, as well as the state from which the sorghum was produced (*not the state where sold*). Grain handlers and others required to collect the checkoff also would be required to maintain records of purchases for at least two years after the fiscal year of the purchase, and make those records available for inspection.

Submitting Comments: Comments on the proposal are due by Jan. 22. The NGFA’s Country Elevator Committee will be reviewing the proposal and developing comments on behalf of the Association. NGFA-member companies wishing to submit comments directly to USDA may do so by faxing to 202-720-1125. When faxing, address comments to Kenneth Payne, Chief, Marketing Programs, Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2628 South Building, STOP0251, 1400 Independence Ave., S.W., Washington, D.C., 20250-0251.





NGFA Trade Rules in Spanish Now Available!

The NGFA is pleased to announce that its *NGFA Trade Rules and Arbitration Rules* now are available in Spanish.

Like the English version, the translation provides an explanatory overview of the NGFA Trade Rules and Arbitration System, as well as special commentary on the use of the NGFA Trade Rules and Arbitration Rules for cross-border transactions within North America. The translation encompasses each set of NGFA's trading rules – Grain Trade Rules, Feed Trade Rules, Barge Trade Rules, Barge Freight Trading Rules and Secondary Rail Freight Trading Rules, the latter of which were approved by the NGFA Board of Directors in September. Also translated into Spanish are the rules governing NGFA's Arbitration System, including the NGFA Arbitration Rules that apply to most arbitration cases; the NGFA Rail Arbitration Rules that apply specifically to disputes between railroads and their customers; and the NGFA Rail Mediation Rules that apply to certain rate disputes.

The translation project was an extensive effort by the NGFA, several of its member companies and outside resources. The NGFA extends special appreciation to its expert industry volunteers from DeBruce Grain, Bunge North America and Cargill Inc. for their extensive investment of time and talent; and to the Mexico City-based law firm of Von Wobeser y Sierra, S.C., for its services.

A few points about the translation are worth mentioning:

► **Focus on Mexico:** The NGFA rules were translated once before (in 1994) for informational purposes. A new translation was warranted because each of the then-existing sets of rules had changed significantly in structure and content, and new rules had been adopted, including the Rail Arbitration Rules and Secondary Rail Freight Trading Rules. As before, the new translation is an invaluable resource for U.S. and non-U.S. companies engaged in the trade throughout the Spanish-speaking world. Notably for the 1994 translation, the focus was on the most generic terms and structure applicable, relying on Castilian Spanish and avoiding national or regional distinctions. For the current translation, significant efforts were made so that it as clearly and accurately as possible states the terms and usage as applied by the industry in Mexico. The intent is that the rules be effectively employable, and even potentially enforceable, by the trade in Mexico.

► **Apply the English Translation if Discrepancies Arise:** The translation of the NGFA Rules was done as thoroughly and accurately as possible. However, the English version should be consulted, as necessary. Should there appear to be any ambiguities or discrepancies between the English and Spanish version, then the English version should apply.

► **Keep Current on the Rules:** The NGFA Trade Rules and

Arbitration Rules in their English version are amended periodically pursuant to the NGFA Bylaws through a process that involves recommendations by specially-assigned committees directly for approval to the NGFA membership at the annual business meeting, or to the NGFA Board of Directors for approval and subsequent ratification by the membership. The translation now available is totally current, including amendments adopted by the NGFA Board of Directors this year, which are subject to ratification by the general membership at the March 2008 annual business meeting. In the future, because the Spanish version of the Rules is designed to be an exact replication of the English version, both the Spanish and English versions will be updated continually when amendments are adopted. As always, whether relying upon the English or Spanish versions, those referencing the rules should verify that their copy is current. The date of publication is found on every-other-page of the Rules.

Importantly, remember, that while the rules are accessible and available to NGFA members and non-members alike, **only NGFA members are ensured access to the NGFA Arbitration System.**

Obtaining Copies: Current copies in both English and Spanish are available on the NGFA website, or by contacting the NGFA at 202-289-0873. For members receiving the *NGFA Newsletter* electronically, [click here](#) to access the Spanish version.



Calendar

- 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.
- March 26-28, 2008:* NGFA 112th Annual Convention
Westin Kierland Resort, Scottsdale, Ariz.





"Challenge to EPA" continued from page 1

food manufacturers, cereal manufacturers, breweries and livestock feedlots.] Congress enacted the law 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 essence, EPA's letter (inserted with this *Newsletter*) stated that it considers certain classes of temporary storage to be permanent storage based upon the *Webster's Dictionary* definition of "bin." EPA's 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."

NGFA's Challenge: In a Dec. 5 response to EPA, the NGFA challenged EPA's tentative conclusion as "without merit" and urged 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 charged EPA with attempting to rewrite the law by changing its interpretation of what constitutes permanent storage by reclassifying the most modern temporary storage systems 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 that the economic impact would run into the tens of millions of dollars, yet the agency has 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 increased grain production to meet rapidly growing food, feed, export and biofuels demand, and reduce 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 letter, the NGFA cited the following problems with EPA's preliminary determination classifying certain types of temporary storage as permanent storage:

- ▶ EPA 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 use of the 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.
- ▶ While EPA's letter notes that it is a preliminary determination and not binding for enforcement purposes, its existence poses the risk that regional EPA offices or states could use it to "harass the industry and create unnecessary business risk, leading to potentially unnecessary expense and litigation," until a final rule is issued.
- ▶ EPA's letter 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"

(Continued on page 11)



Tech Talk

by Randall C. Gordon
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that is authorized only for short-term (because of grain quality risk) and seasonal use (to relieve storage congestion at harvest).

▶ 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 New Source Performance Standard. It also would add ongoing annual operating expenses associated with complying with air permit emission levels.

NGFA Asks Members to Keep It Informed: Importantly, the NGFA requests that if your company confronts an enforcement action 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 Association believes the assimilation of data on any enforcement activities could prove useful.

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Feed Facts

Casey, Grassley Introduce Newest Food, Feed Safety Bill

Sens. Bob Casey, D-Pa., and Chuck Grassley, R-Iowa, became the latest entrants into the food/feed safety legislative arena, introducing a bill on Dec. 5

Among other things, the bill would require private laboratories that conduct tests on behalf of importers on Food and Drug Administration (FDA)-regulated products to apply for and receive FDA certification under a user-fee approach. It also would authorize FDA to impose civil penalties on laboratories or importers that knowingly or conspire to falsify laboratory sampling results. Civil penalties also would be authorized against importers that circumvent the U.S. Department of Agriculture's (USDA) import reinspection system.

It would authorize \$25 million for FDA and USDA to hire additional personnel to detect and track smuggled food and

agricultural products, and provide food defense monitoring. It also would authorize \$1.7 million for food safety cross-training for U.S. Department of Homeland Security (DHS) agricultural specialists and another \$4.8 million for agriculture cross-training for DHS border patrol agents. An additional \$3.5 million in food safety education grants also would be authorized. Further, the bill would require FDA and USDA to provide public notice of smuggled products introduced in commerce and to post on their respective websites notice on recalled food products in a searchable, consumer-friendly database. Finally, it would require the U.S. Department of Health and Human Services (FDA's parent agency) and USDA to develop intra- and inter-agency agreements to ensure the sharing of all data collected regarding foodborne pathogens, contaminants and illnesses.

Acheson to Head FDA's Center for Food Safety and Applied Nutrition

Commissioner of Food and Drugs Dr. Andrew von Eschenbach has designated Assistant Commissioner for Food Protection **Dr. David W.K. Acheson** to serve as acting director of the agency's Center for Food Safety and Applied Nutrition (CFSAN), which oversees activities pertaining to human food.

Acheson, who will retain his current duties as FDA's "food safety czar," will fill the vacancy to be created at the end of December when current CFSAN Director Robert Brackett leaves to become senior vice president and chief science and regulatory affairs officer with the Grocery Manufacturers Association. Acheson, who is a featured speaker during the Dec. 9-11 NGFA Country Elevator/Feed Industry Conference, has been instrumental in the development of the Bush administration's recently issued Food Protection Plan and Import Safety Working Group Action Plan, both of which would significantly change the federal government's approach to regulating the safety of domestic and imported food, feed and feed ingredients. Both plans call for adopting a more risk-

based approach that focuses on the entire "life cycle" of food and feed products, including preventive measures to reduce the potential for contamination at the point of manufacture. Acheson also has been Secretary of Health and Human Services Michael Leavitt's point person in negotiating a new memorandum of agreement with the People's Republic of China on imported food and feed safety that is scheduled to be signed in mid-December.

Acheson is internationally recognized for his expertise in food safety and research in infectious diseases. Prior to assuming his duties on May 1 in the newly created position of assistant commissioner for food protection, Acheson served as the agency's chief medical officer and director of its Office of Food Defense, Communication and Emergency Response. A native of the United Kingdom, Acheson was graduated from the University of London Medical School, with training in internal medicine and infectious diseases.



CME Group Conducts Industry Meeting on Corn/Bean Futures Contracts

The CME Group on Dec. 4 conducted an industry meeting in Chicago to examine contract performance of the CBOT corn and soybean futures contracts, and to receive industry feedback on potential changes to the contracts that might enhance contract performance.

Forty to 50 industry representatives attended the meeting, including several members of the NGFA's Risk Management Committee.

Prominent on the meeting agenda was discussion of the NGFA's recommendations to the CME Group to enhance contract performance and convergence. These recommendations were the result of several months of work by the NGFA's Futures Market Performance Task Force, comprised of representatives from the NGFA Country Elevator Committee, Risk Management Committee and other market participants.

CME officials told the NGFA following the meeting that the

Association's recommendations generally were well-supported by industry representatives at the meeting. In particular, there was no appreciable opposition to NGFA recommendations that storage rates and loadout charges for corn and soybean contracts be brought on par with the CBOT wheat contract.

However, little support was indicated for several concepts which the NGFA had recommended that the CME Group analyze. These included allowing the "maker" of delivery to compel loadout; and adding more delivery points, perhaps at interior rail locations. However, the NGFA recommendation that the CME Group consider the feasibility of an index contract was more well-received. Such an index contract might appeal to funds and other non-traditional investors, while taking some pressure off the existing corn and bean contracts. According to CME staff members, the index contract concept has been the subject of some analysis in recent years and may soon receive new scrutiny as a potential new product.



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