



## Senate to Resume Consideration of Waterways Bill as Bush Vows Veto

When Congress reconvenes in early September following its August recess, the Senate is scheduled to resume consideration of the final joint House-Senate conference committee version of the long-sought Water Resources Development Act, which, among other things, would authorize \$3.6 billion to construct seven new 1,200-foot locks on the Upper Mississippi and Illinois Waterways.

The House on Aug. 1 approved the bill, a major legislative priority of the NGFA, by a 381-40 vote.

But final passage was delayed on Aug. 3 after Sen. Russell Feingold, D-Wis., objected to a unanimous consent request by Senate Majority Leader Harry Reid, D-Nev., that would have brought the bill up for a vote on the Senate floor. Feingold objects to the final version because it modified the onerous U.S. Army Corps of Engineers reform measures that Feingold and Sen. John McCain, R-Ariz., included in the original Senate

version of the bill. The final version requires independent review of U.S. Army Corps of Engineers' waterway and port projects when the cost exceeds \$45 million, when an affected governor requests one, or when the chief of the U.S. Army Corps of Engineers deems a project to be controversial. When the Senate reconvenes in September, Reid will need to file a cloture motion to cut off debate and move the bill to a vote.

Strong support will be needed in both chambers of Congress following President Bush's pledge to veto the final version of the bill. As reported in the Aug. 2 *NGFA Newsletter*, the Bush administration issued a policy statement citing the conference committee bill's \$21 billion cost, which exceeds both the \$15 billion version originally adopted by the House and the \$14 billion version originally passed by the Senate. The administration also alleged that the bill would "shift potentially billions of dollars from non-federal beneficiaries...to

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## STB Proposes Fundamental Change in Estimating Rail 'Cost of Capital'

### ...Agency Also Issues Final Rule on Rail Fuel Surcharges; Little Impact Foreseen...

The federal Surface Transportation Board (STB) this week issued two rulemakings, one of which would result in a fundamental change in how it determines whether freight railroads are revenue adequate, and therefore subject to rate challenges under the Staggers Rail Act.

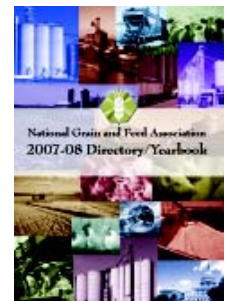
On Aug. 15, the agency posted on its website a proposed rulemaking [*Ex Parte 664*] under which it would reassess the methodology it uses to calculate the railroad industry's "cost of capital."

Separately, the agency on Aug. 14 published in the *Federal Register* its final regulations requiring Class I carriers to report data related to fuel surcharges, which is expected to provide minimal, if any, help in allowing shippers to determine if the surcharges being assessed are reasonably related to carriers' additional fuel costs.

**STB Rulemaking on Computing Rail Cost of Capital:** The STB currently determines rail carrier cost of capital by estimating two components: cost of debt and cost of equity, and apportioning these two costs on an industry-wide basis. Estimating

*(Continued on page 2)*

### NGFA 2007-08 Directory/Year- book at Printer



The 2007-08 edition of the *NGFA's Directory/Yearbook* is at the printer and is scheduled to be published and distributed via bulk mail within two weeks. It contains current listings of NGFA member companies; NGFA officers and committees; and the current version of the NGFA's Trade Rules and Arbitration Rules. A pictorial Yearbook highlights just a few of the activities of the past year. Look for your copy soon!

The *NGFA Directory/Yearbook* now is being published every-other year. This edition replaces the one issued in 2005.



## "STB Rules" continued from page 1

the cost of debt is fairly straightforward, as bond and interest rate markets are reliable indicators of such costs. However, the cost of equity has been subject to controversy among the regulator and financial community, and the STB has been under increasing criticism as it has continued to use the current agency method to declare most railroads as "revenue inadequate," even as rail profits have grown impressively with robust economic times through both higher volumes and higher rates in a constrained market. In fact, under the existing standards for cost-of-capital measures, the STB has declared that only one carrier – the Norfolk Southern – currently is revenue adequate.

The STB's proposed change, which is subject to comments and rebuttals before the agency develops a final rule, would shift from a "discounted cash flow" (DCF) model to a capital-asset pricing model (CAPM). The STB estimates that in 2005, this change would have reduced the agency's estimated cost of capital for the rail industry from 12.2 percent per year to 6.8 percent per year, potentially making several Class I rail carriers "revenue adequate" based upon the agency's definition. Such a change, if finalized, has some potential over time to shift the regulatory landscape at the STB, in particular for rail rate cases. It also potentially could affect other adjudication proceedings, in which the STB has in the past leaned toward protecting the carriers' revenue base.

However, this likely is not the last STB rulemaking that could affect future rail revenue-adequacy determinations. The STB noted in its notice that while it would not accept the Association of American Railroad's (AAR) proposal to simultaneously amend the revenue adequacy calculation to consider "replacement cost analysis" for current and future investments (which would have the effect of reducing the probability for railroads to be declared revenue adequate), the STB invited the AAR (or another interested party) to "...offer a practical means to implement a replacement-cost approach (through a separate petition to the agency)...."

**STB Final Rule on Fuel Surcharges:** In a major disappointment, the STB's final regulation requiring Class I railroads to report fuel surcharge data provides little transparency for the market and severely limits the degree to which individual shippers can assess whether fuel surcharges bear a reasonable relationship to additional fuel costs being incurred by carriers.

In its final rule, the STB requires only five types of data from each carrier, three of which already are reported publicly in quarterly financial filings that carriers make to the Securities and Exchange Commission: 1) total

fuel cost; 2) gallons of fuel consumed; and 3) change in the total cost of fuel. The only new data being required by the STB are: 1) total revenue from fuel surcharges; and 2) revenue from fuel surcharges on regulated (including grain and coal) traffic. The STB rejected the NGFA's recommendation that carriers report separate data for major classes of traffic (such as coal versus grain) so shippers could assess whether the surcharges are equitable between various classes of traffic where the mileage-based surcharges are different (for instance, to allow a comparison of a given carrier's coal and grain fuel surcharge rates). Further, the STB rejected the NGFA's proposal to require that carriers also report, by each major class of traffic, the fuel consumption per mile, ton-mile or whatever unit of measurement on which the surcharge is based for that particular carrier. The agency attempted to defend its decision not to require reporting of additional data by stating that the fuel surcharge report is "intended to provide an overall picture of the use of fuel surcharges (and) not...as a substitute for evidence brought in an individual case."

Without these NGFA-requested data, both shippers and the STB will have at best a very crude mechanism to assess whether fuel surcharges are reasonably related to fuel cost increases because: 1) reported total fuel costs include both gains and losses from hedging, which will vary over time and tend to mask the underlying spot price of fuel on which surcharges are supposedly based; and 2) rail-carrier changes to the base oil or fuel price for surcharges will make identifying the relationship between surcharges and costs difficult. As such, the STB's final rule will provide no mechanism for the agency or shippers to determine the equity of surcharges across any variation in classes of service, except for a crude measure between regulated traffic and total traffic. So, best case, the STB potentially will be able to assess the rate of change in fuel surcharge revenue over time and track whether it is reasonably related to the change in market price for fuel on a system-wide basis for each carrier, but only if carriers maintain a constant base for surcharges over several years.

In addition, the final rule requires only quarterly submissions of data from carriers, in concert with their current financial reporting; originally, the STB had proposed monthly reporting. Further, the STB final rule states that if any carrier finds it "burdensome" to separately report fuel surcharges assessed on regulated and non-regulated traffic, it can seek an individual exemption by petitioning the agency.

Fuel surcharge reporting is to begin with the three months starting on Oct. 1.



## Japan Food Safety Commission: Syngenta's Agrisure™ RW Corn Safe

Japan's Food Safety Commission has notified the Ministry of Agriculture, Forestry and Fisheries that Syngenta's Agrisure RW™ MIR 604 biotechnology-enhanced corn trait is safe for use in feed.

The action came following the expiration of a 30-day public comment period. Previously, the commission had notified Japan's Ministry of Health, Labor and Welfare that the Agrisure RW MIR604 event was safe for use in food. Environmental approval by Japan had occurred in May. The next step is for the Japanese government to provide an administrative sign-off, which would grant final approval – perhaps within a month.

However, it is believed that the majority of 2007-crop Agrisure corn plantings in the United States consisted of a

stacked event that protects against both European corn borer and corn rootworm (the Agrisure CB/RW trait) that has **not** been subjected yet to food or feed safety review by Japan. Most countries, including Japan, have a separate approval process for stacked biotech events. Japan does not require a separate comment period for stacked traits.

But in an Aug. 8 advisory, the Japan Feed Trade Association (JAFTA) said the Japanese regulatory-approval process for the Agrisure stacked event is not scheduled to begin until early September, with approval potentially occurring in October or November. "Although we are aware that there is no testing method that would identify a stacked trait as a stacked trait..., it would create some compliance issues on our members' part if we were to arrange shipments prior to approval of stacked traits," JAFTA warned.



## NGFA Task Force Continues Evaluation of Futures Market Performance

The special NGFA task force formed to evaluate futures market performance and recommend enhancements for contract performance to the Chicago Board of Trade conducted its first conference call on Aug. 9.

Next steps call for a meeting of the task force in Chicago in late September or early October to attempt to reach consensus on such recommendations. The CBOT will be invited to participate in the Chicago meeting.

During the Aug. 9 conference call, discussion centered on potential changes to the delivery process that might enhance convergence and aid in preserving CBOT contracts as effective hedging tools for traditional users. In recent months, heavy participation in agricultural futures markets by non-traditional users like investment funds and institutional investors have led to concerns over certain contracts' continued utility as a hedging tool.

Concepts discussed included potential changes to storage rates, load-out charges, which parties can compel load-out, adding more domestic-oriented delivery locations, changes in speculative position limits, and the potential for a new cash-settled index contract that might attract fund investment and ease pressures on current contracts. These concepts are to be explored in greater detail when the task force meets this fall, with the goal of refining which ideas that have merit, are balanced and practical, and might be pursued jointly with the CBOT.

**Two New CFTC Commissioners Take Office:** Meanwhile, two new commissioners – **Jill Sommers** and **Bart Chilton** – were

sworn into office at the Commodity Futures Trading Commission (CFTC) on Aug. 8 after being confirmed by the Senate prior to its August recess.

**Sommers** was confirmed to fill the unexpired term of former commissioner Sharon Brown-Hruska, which runs through April 13, 2009. She joins the CFTC after serving on the Washington staff of the International Swaps and Derivatives Association, where she was policy director and head of government affairs. Prior to that, she was associate director of government affairs at the Chicago Mercantile Exchange. From 1991-95, Sommers was on the staff of then-Sen. Bob Dole, R-Kan. A Kansas native, she received her undergraduate degree in political science from the University of Kansas. Meanwhile, **Chilton** fills the term of former CFTC Commissioner Fred Hatfield, which expires on April 13, 2008. He comes to the CFTC after serving as chief of staff and vice president for government relations at the National Farmers Union. Prior to that, he was executive assistant to the U.S. Farm Credit Administration Board. From 2001-05, he was senior adviser to then-Sen. Tom Daschle, D-S.D., during his tenure as Senate Democratic leader. A Delaware native, Chilton was raised in Indiana and attended Purdue University, where he studied political science and communications.

The two new members join Acting Chairman Walter Lukken and Commissioner Mike Dunn as current members of the CFTC. One vacancy still exists, as President Bush has not yet nominated a replacement for former CFTC Chairman Reuben Jeffery, who in July became undersecretary of state for economic, energy and agricultural affairs.



**"Waterways Bill" continued from page 1**

federal taxpayers" of various projects that would be authorized in the final version of the measure.

Another "wrinkle" that may complicate passage of the waterways bill is new ethics legislation that was approved by the Senate prior to the recess. Among other things, that bill – once signed into law – would prohibit the inclusion of spending "earmarks" in conference committee bills that were not included in the House- and Senate-passed versions of legislation. That's exactly what occurred during the conference committee on the waterways bill, although the additional spending projects that were tacked on were unrelated to the Upper Mississippi and Illinois Waterway projects. Thus, the ethics bill could empower earmark opponents to raise objections to the bill, necessitating a 60-vote majority to override.

The bill's provisions for the Upper Mississippi and Illinois Waterway would authorize construction of new replacement locks in two phases. The first phase would involve construction of seven new 1,200-foot locks at locks 20, 21, 22, 24 and 25 on the Upper Mississippi River, as well as at the LaGrange and Peoria locks on the Illinois Waterway. Construction of mooring facilities at locks 12, 14, 18, 20, 22, 24 and LaGrange, as well as switchboats at locks 20 through 25, also would be authorized in the first phase to expedite barge movements. The second phase would involve ecosystem restoration on the waterway. The bill also would authorize \$1.9 billion for Gulf Coast restoration and vest in the U.S. Army Corps of Engineers the responsibility for determining how the Mississippi River Gulf Outlet would be closed.

## Congress Expected to Consider Biofuels Mandate in Final Energy Bill

The NGFA learned this week that a joint congressional conference committee is expected to consider a new mandate for ethanol and other renewable fuels when it begins meeting this fall to reconcile differences between the House- and Senate-passed versions of a major energy bill.

The House approved its version of a wide-ranging energy bill (H.R. 3221) on Aug. 4, omitting any further increases in the renewable fuels mandate for ethanol or other biofuels. That puts it in stark contrast with the energy bill (H.R. 6) passed on June 21 by the Senate, which includes language increasing the current 7.5-billion-gallon renewable fuels standard to 15 billion gallons by 2015 (primarily from corn-based ethanol). Starting in 2016, the Senate bill would mandate additional 3-billion-gallon annual increases in biofuels production, derived from cellulosic material, until reaching 36 billion gallons by 2022. An amendment intended to be offered by Reps. Stephanie Herseth-Sandlin, D-S.D., that would have implemented a similar renewable fuels mandate in the House bill was withdrawn after the House Democratic leadership raised objections.

But the NGFA has learned that House leaders may be amenable to considering new mandates for both renewable fuels and fuel-efficiency standards for cars and light trucks – another feature of the Senate bill omitted by the House – during the conference committee deliberations.

The 1,003-page House bill also differs from the Senate-passed measure in that it includes tax provisions. Neither the House- nor Senate-passed bills contain a biodiesel fuel mandate. As a result, biodiesel advocates have turned their attention to urging an expansion in the USDA Commodity Credit Corporation's Bioenergy Program, which subsidizes the purchase cost of feedstocks used for bioenergy production, as well as the Biodiesel Education Program.

to spend: 1) \$550 million during fiscal years 2007-15 for a new research grant program to be operated jointly by the U.S. Departments of Agriculture and Energy to foster improvements in the process of converting biomass to fuels; 2) \$640 million in loan guarantees to develop and construct biofuels refineries and production plants; 3) \$200 million for grants in each of fiscal years 2008 through 2014 to encourage retail and wholesale motor fuels vendors to replace or convert existing gas pumps to dispense ethanol or biodiesel; 4) \$1 million in both fiscal years 2008 and 2009 on an ethanol pipeline construction feasibility study; 5) \$75 million in grants through fiscal year 2010 to encourage increased ethanol production in states that currently have low production rates; and 6) \$377 million in fiscal year 2008, \$398 million in fiscal 2009 and \$419 million in fiscal 2010 on bioenergy research, up from the \$525 million authorized under current law for fiscal years 2008 and 2009.

The House measure also would ban any oil company franchise-related agreement from discouraging the dispensing or purchase of alternative fuels. Among practices that would be prohibited are restrictions against: 1) installing pumps to dispense alternative fuels; 2) advertising the availability of alternative fuels; 3) converting existing equipment to dispense alternative fuels; and 4) using credit cards to purchase alternative fuels. Further, it would require a number of studies related to alternative fuels, including whether to require gas stations to install E-85 fuel pumps and dispense greater percentages of ethanol in gasoline blends. The bill also requires the Energy Department to study the effect of biodiesel on the performance and durability of engines, as well as whether the use of E-85 fuel would increase the fuel efficiency of flexible-fuel vehicles. There's also a tidbit for the sugar industry – a new program under which USDA would purchase raw or refined sugar to sell to biofuels producers.

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The House-passed bill includes a number of other biofuels development incentives, including authorization





To reduce truck traffic, the House-passed bill also would authorize a total of \$1 billion in grants from fiscal 2008 through 2011 for Class II and III railroads to modify tracks to handle 286,000-pound railcars. The grants also could be issued to state and local governments, with the railroads' concurrence. The federal government would provide an 80 percent share of each grant-funded project. Also authorized is a total of \$40 million in grants from fiscal 2008 through 2011 for a "green" locomotive pilot program, under which state and local governments could receive 90-percent cost-share grants to purchase hybrid locomotives.

The most contentious portion of the House bill was its provisions that would require retail electricity suppliers to produce a gradually increasing share of their energy from renewable sources, such as wind, solar, ocean, tidal, geothermal, biomass or hydropower. Starting in 2010, electric suppliers

would be required to produce at least 2.75 percent of electricity from renewable sources; the bill would mandate annual increases until reaching 15 percent by 2020. Exempt from the requirement would be rural electric co-ops, government-owned utilities and electrical suppliers that sell less than 1 million megawatt hours of electric energy annually. Electricity suppliers could meet the requirement by purchasing credits from other suppliers, up to 27 percent of the mandated renewable fuel level. The bill also increases energy-efficiency standards for appliances and related consumer items.

To fund the bill, the House measure would generate \$16 billion by increasing taxes on oil companies and reducing foreign income tax deductions for companies that produce oil and natural gas overseas. The tax provisions caused the Bush administration to issue a veto threat.

## Dingell Announces Framework for Major House Food/Feed Safety Bill

House Energy and Commerce Committee Chairman Rep. John Dingell, D-Mich., has unveiled a draft bill that would grant broad new powers to the Food and Drug Administration (FDA) to regulate the safety of food and feed, and impose restrictions on imported food and feed ingredients.

Dingell's draft bill also would provide FDA with mandatory recall authority to stop distribution of food, feed, feed ingredients, drugs and other FDA-regulated products if the agency has a "reasonable suspicion" that the product would cause "serious adverse health consequences or death" to humans or animals – the same threshold as contained in the Bioterrorism Act. The bill also would increase significantly the civil penalties imposed on domestic manufacturers or importers of adulterated food or feed to \$100,000 for individuals, \$500,000 for companies and up to \$1 million per occurrence.

For **domestic** products, the bill would require FDA within two years to develop regulations requiring, as part of current good manufacturing practices, that processed food and feed products undergo testing to detect "substances...that may render the food adulterated, including microbial pathogens, toxic chemicals, and such other substances" as FDA finds appropriate.

Concerning **imports**, the draft bill would require FDA to: 1) impose on imported food, feed, feed ingredients, and other food products under its regulation the same standards that apply to U.S. products, and implement random sampling, inspections and product testing or on-site inspections of foreign plants to verify compliance; 2) certify "each" foreign facility exporting food, feed or feed ingredients to the United States, attesting that the foreign facility maintains a program that uses "reliable analytical methods" to ensure compliance with U.S. food safety standards; 3) impose user fees on all imported food, feed, feed ingredient and drug products. The fee would amount to \$50 per line item for each food/feed

product, and \$1,000 per line item for drug products. The fees would be adjusted annually for inflation. At least 90 percent of the fees would be used to fund FDA inspections of imports, while 10 percent or less would be used for research to develop tests to detect adulterants in imports at U.S. ports of entry; 4)

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## Harkin to Unveil Senate Draft Farm Bill in Mid-September

Senate Agriculture Committee Chairman Tom Harkin, D-Iowa, said this week that he intends to release a draft version of the Senate's 2007 farm bill in mid-September.

Under the ambitious timetable laid out by Harkin, the Senate Agriculture Committee would consider the measure during the third week of September, with Senate floor time requested for late September or October. Drafts of sections of the Senate farm bill have been circulated among senators and some other groups for review and input during the last few months, as Harkin seeks to determine areas of consensus. He has reiterated that the Conservation Security Program – which provides payments to landowners and producers to implement conservation practices on working farmland – will be part of any final version of the farm bill.

The provisions of the current 2002 farm law extend through the 2007 crop year for all commodities, even though the law technically expires on Sept. 30. If a new farm law is not in place prior to harvest of 2008 crops, farm programs would revert back to the 1949 farm law that includes such provisions as parity-level price supports, farm-acreage allotments and marketing quotas – an untenable situation that Congress has never allowed to happen.





# On Capitol Hill

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require country-of-origin labeling of all imported food within 180 days after the bill becomes law; and 5) restrict, within five years, the number of ports of entry for imported food, feed and feed ingredients to metropolitan areas serviced by an FDA diagnostic laboratory. Currently, FDA inspectors are stationed at 90 of the 320 ports-of-entry for food products into the United States. FDA could waive the restriction if importation of the food or feed through an alternative U.S. port-of-entry would not "increase the probability that such food will cause serious, adverse health consequences or death."

Within two years after enactment, FDA would be required to develop food safety guidelines under which U.S. importers of foreign food/feed could obtain expedited movement of such products through the inspection process. In addition, the draft bill would delay FDA's now-delayed plan to close seven of its 13 current field testing laboratories and reorganize its 20 district offices until after the Government Accountability Office (GAO)

– the investigative arm of Congress – completes a review and issues recommendations.

Several aspects of the Dingell draft bill – including the imposition of user fees on imports, increasing civil penalties and granting FDA mandatory recall authority – closely mirror legislation already introduced or being contemplated by Senate Majority Whip Richard Durbin, D-Ill. It is widely expected that both the House and Senate will consider major food/feed safety legislation late this fall or early in 2008.

In addition, the Bush administration's Cabinet-level working group is scheduled to issue a report by mid-September on steps that can be taken – within existing resources – to promote the safety of imported food products.

The NGFA is working actively with other organizations in the grocery, food, feed, pet food and producer sectors to provide alternative proposals to Congress for consideration.



# Country/Terminal Corner

by Randall C. Gordon  
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## USDA Seeks Offers to Barter CCC-Owned Wheat for Domestic Food Aid

The U.S. Department of Agriculture's Commodity Credit Corp. (CCC) on Aug. 14 issued its first tender seeking to barter CCC-owned wheat in exchange for food products to be directed to domestic food-assistance programs.

CCC sought offers for 5.775 million pounds (154 truckloads) of canned boned poultry in exchange for CCC-owned wheat. Offers are due Aug. 30, with awards to be issued on Aug. 31.

Under the barter program announced by Secretary of Agriculture Mike Johanns on July 6, USDA plans to exchange up to \$50 million worth of CCC-owned bulk commodities for processed food products. Approximately 80 percent of the processed food products is to be directed to USDA's Food and Nutrition Service for its Emergency Food Assistance Program and Commodity Supplemental Food Program, while 20 percent is to be earmarked for the McGovern-Dole international food-assistance program. For the domestic food-assistance programs, CCC-owned commodities are to be exchanged for canned chicken, canned beef, canned pork, chunky beef stew and canned vegetables, such as tomatoes, green beans and carrots. Johanns used authority provided under the CCC Charter Act and several other federal laws to implement the barter program.

For this domestic food-assistance tender, CCC issued a catalog of its entire wheat inventory – amounting to 40.9 million bushels – from which bidders can select. CCC's wheat inventory consists of 23.8 million bushels of

hard red winter wheat, 12 million bushels of soft white, 3.2 million bushels of hard red spring, 1.6 million bushels of durum and 9,994 bushels of hard white wheat. Ostensibly, approximately 7.3 million bushels are available for this and future domestic and international food assistance barter offers, since 33.6 million bushels of CCC-owned wheat are earmarked for the Bill Emerson Humanitarian Trust reserve.

USDA thus far has issued two tenders to barter CCC-owned bulk commodities for foreign food assistance donations of pinto beans, milled rice and vegoils under the McGovern-Dole International Food for Education and Child Nutrition Program.

USDA officials drew a distinction between the barter program and the one-year congressional ban imposed in April 2003 that prohibited sales of CCC-owned wheat designated under the Emerson Trust to purchase non-wheat commodities for food aid. Even though the congressional restriction has expired, USDA officials said they continue to follow that guidance and are not monetizing the Emerson Trust to sell stocks and buy products for food assistance. Instead, they said CCC is swapping CCC-owned commodities for consumable food aid products. Further, the Emerson Trust reserve is being maintained. USDA officials also told the NGFA that CCC currently spends approximately \$1.25 million monthly to store for CCC-owned inventories, \$1.134 million of which is for CCC-owned wheat.





## DHS Now Plans to Finalize List of Chemicals Subject to Anti-Terrorism Security Regs by End of August

The NGFA has learned that the U.S. Department of Homeland Security (DHS) now intends by the end of August to issue a final version of its list of “chemicals of interest” and threshold quantity trigger levels that will be used to determine which facilities potentially will be regulated under the agency’s chemical facility antiterrorism regulations.

These regulations, finalized on June 8, require facilities (including grain elevators, feed mills, grain processors and farm supply retailers) handling such chemicals at levels exceeding specific threshold trigger quantities to register with DHS and complete a web-based screening tool (dubbed “Top Screen”). The results of the “Top Screen” assessment tool then are to be evaluated by DHS to determine whether the facility represents a “high-risk” chemical facility that should be subject to additional regulations, including a requirement to conduct a vulnerability assessment and implement additional performance-based security measures.

When issuing the final regulations, DHS sought comments on an “Appendix A” that listed 344 separate “chemicals of interest” which, if facilities possessed or came into possession at specified threshold quantities would trigger the need for such facilities to register and complete the “Top Screen” process.

During the inaugural meeting of the joint NGFA/GEAPS/NAEGA Agroterrorism-Prevention and Facility Security Committee on Aug. 9, a top DHS official said the Appendix A list of chemicals and threshold quantities had been reviewed with the agency’s legal counsel on Aug. 8, and would be reviewed with the White House Office of Management and Budget shortly. The DHS official indicated that each chemical listed would have a specific minimum threshold quantity established, rather than the original proposal in which several chemicals if possessed at “any level” would be subject to potential regulation.

Once the final version of Appendix A is published in the *Federal Register*, DHS will provide 60 days for affected facilities to register with the agency and complete the “Top Screen” process. The result of the “Top Screen” process will determine if the facility is excluded from the regulations, or is placed in a preliminary tier of risk for further evaluation by DHS.

Within 60 days after the “Top Screen” process is completed, DHS is to notify affected facilities as to whether they are a “high-risk” chemical facility, as well as their respective risk category. Four risk categories will be established – ranging from Tier 1 (highest risk) to Tier 4 (lowest risk), with the level of security risk-based performance standards escalat-

ing based upon the category. Affected facilities subsequently will be required to conduct a security vulnerability analysis that assesses security measures currently in place that mitigate or reduce the likelihood of a successful attack on an asset of the facility. Affected facilities then will be required to develop a site security plan that contains specific security measures the facility has implemented or will implement to meet the applicable risk-based performance standards.

### Senator Seeks to Expand USDA Farm Storage Loans

Sen. Norm Coleman, R-Minn., has introduced legislation (S. 1837) that would expand the eligibility of producers to obtain low-interest rate loans from the U.S. Department of Agriculture (USDA) to build on-farm storage.

The bill would modify USDA’s farm storage facility loan program by: 1) extending the loan period to no less than 20 years, up from the current seven-year payback limit; 2) remove the current Farm Service Agency (FSA) requirement that producers have a first mortgage to qualify for a farm storage facility loan by allowing USDA to instead enter into an egress agreement with the producer for collateralized equipment or structures; and 3) remove the FSA-imposed limit on the farm storage loan amount by replacing it with a requirement that the producer be entitled to a loan amount equal to the average of the producer’s most recent three years’ annual production history, minus the producer’s current on-farm storage capacity.

In introducing the bill, Coleman alleged that easing and increasing eligibility for producers to qualify for low-interest USDA farm storage facility loans was necessary to accommodate increased grain production for biofuels. “Minnesota farm families are feeding the world and fueling the nation, and...they need access to financial tools to build grain storage,” Coleman said. “We’ve seen big yields in the last couple years, especially for corn, and as a result farmers have had to resort to storing grain on the ground where some of the grain can rot. That’s wasted grain that could have gone to biofuels or livestock production.” It is anticipated that Coleman may offer the legislation as an amendment during the Senate Agriculture Committee’s consideration of its version of the 2007 farm law.





## AAFCO Advances Model CGMP Regulations at Annual Meeting

The Association of American Feed Control Officials – the professional organization of state and federal feed regulatory officials – took another step during its Aug. 2-4 annual meeting to advance its draft model current good manufacturing practice (CGMP) regulations for feed and feed ingredients, putting them on track to be considered and approved during the group's next meeting in late January 2008.

The model regulations for the first time would extend a basic set of CGMP regulations to all sectors of the feed industry, including to non-medicated feed and feed ingredients. The Food and Drug Administration's (FDA) existing CGMP regulations apply solely to medicated feed. The AAFCO model CGMPs were modified and approved by its Feed Manufacturing Committee, and next move to the Model Bill and Regulations Committee to ensure they conform to the organization's overall Model Feed Regulations, which provide the framework for state feed regulation.

AAFCO's goal is to have the model CGMPs voted on during its next meeting, scheduled for Jan. 29-31 in San Antonio, Texas. Also at that meeting, the organization is scheduled to vote on a long-pending non-commercial feed model bill that would expressly extend state regulatory authority to on-farm ingredient receiving and feed manufacturing activities. If approved by AAFCO **and** if subsequently adopted by states, the non-commercial feed model law could be used by states to apply the new model CGMP regulations on-farm.

**Model CGMP Regulations:** Among other things, the AAFCO model CGMP regulations would require feed and feed ingredient manufacturing establishments to develop and implement procedures for:

- ▶ visually inspecting, properly storing and cleaning out equipment when receiving ingredients to be used in feed to minimize the risk of adulteration that could pose a danger to human or animal health;
- ▶ manufacturing practices to minimize the risk of



*The NGFA's industry advisers to the Association of American Feed Control Officials (AAFCO) are shown meeting with newly elected AAFCO President Ricky Schroeder of Texas during its 97<sup>th</sup> annual meeting. Pictured are (from left): Jan Campbell, manager, regulatory services, Land O'Lakes Purina Feed LLC, St. Louis, Mo.; NGFA Director of Feed Services David Fairfield; Brad Gottula, quality assurance manager, Quality Liquid Feeds Inc., Dunlap, Iowa; AAFCO President Ricky Schroeder; Matt Frederking, director of regulatory affairs, POET Nutrition, Sioux Falls, S.D.; and John Petty, executive director, Wisconsin Agri-Service Association Inc., Madison, Wis. Rand Gordon, NGFA vice president for communications and government relations, also serves. Each of the NGFA industry advisers to AAFCO serve on NGFA's Feed Legislative and Regulatory Affairs Committee, which Gottula chairs.*

adulteration and ensure product safety, including measures effective in minimizing manufacturing errors. One significant improvement made by the AAFCO Feed Manufacturing Committee was to clarify that feed and/or feed ingredients that are considered to be adulterated may be used in further manufacturing if they are made safe for their intended use through conditioning or other measures;

- ▶ labeling and packaging of finished feed and feed ingredients; and
- ▶ storing finished feed and feed ingredients.

Establishments also would be required to establish procedures to visually inspect outbound product and to collect and retain samples for an appropriate length of time (flexibility provided based upon the product and intended species). The model CGMP regulations also include sections on personnel training; housekeeping; the use of equipment suitable for the type of feed and feed ingredient being manufactured; the use of clean conveyances for transporting feed and feed ingredients; and a requirement that records be maintained regarding the production, distribution and use of products sufficient to facilitate a trace-back to the immediate previous source, and trace-forward to the next subsequent recipient, if there ever is a need for product recall. This latter requirement mirrors the recordkeeping requirement already implemented by FDA for commercial operations.

(Continued on page 9)





# Feed Facts

by Randall C. Gordon  
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**Next Steps:** The AAFCO Feed Manufacturing Committee's next tasks related to the model CGMPs will be to develop implementation guidance and an inspection checklist for various sectors of industry (feed ingredient suppliers, nonmedicated feed manufacturers, transporters, etc.) in an effort to facilitate uniform application by state feed control agencies that eventually choose to adopt and enforce them. A task force consisting of AAFCO and industry representatives, including the NGFA, is being formed to develop these documents.

It also is envisioned that the AAFCO model CGMPs, once adopted officially, also will be forwarded to FDA for consideration as part of its risk-based Animal Feed Safety System (AFSS) initiative. FDA under the AFSS initiative has said it is developing new "process-control" regulations that would establish feed safety control steps for all sectors of the feed and feeding industries.

**Other AAFCO Developments:** There were these other significant developments during the AAFCO August meeting:

▶ **Sulfur Content in Distillers Grains:** A working group consisting of members of AAFCO's Feed Labeling Committee will be appointed to evaluate the need for sulfur guarantees on labels of distillers grain products. Several states said they were detecting high sulfur content in distillers grains used as feed, and expressed concerns over such levels causing toxic reactions in ruminant animals. State officials also expressed concern over the widely varying nature of the nutrient content of distillers grains, both between different manufacturers as well as based on the length of time stored. Concerns also were expressed about sulfur levels present in sorghum.

▶ **Carbohydrate Labeling:** AAFCO's Feed Labeling Committee approved and forwarded on to the AAFCO Board a proposal that would address the labeling of carbohydrates in feed. The intent is to enable companies to better guarantee important carbohydrate fractions so nutritionists can compare products. For instance, it is AAFCO's intent that companies be allowed to add various fractions to guarantee a combined number on the label, but should state clearly what has been added (e.g., sugars + starch max. 11%).

▶ **Labeling of Raw Milk as Feed Ingredient:** AAFCO's Feed Labeling Committee approved draft regulations governing the distribution of raw milk as an animal feed. The regulations would define "raw milk" as any milk or milk product, from any species other than humans, which has not been pasteurized, or processed to destroy harmful bacteria in

accordance with methods recognized by FDA. The regulations also would ban distribution of raw milk for commercial animal feed unless it is denatured through food coloring to prevent it from being mistaken as milk suitable for human consumption; packaged in containers dissimilar from those used to market milk for human consumption; and stored in an area separate from milk intended for retail sale to humans. Raw milk intended for animal feed also would be required to bear a warning statement that it is not for human consumption, has not been pasteurized and may contain harmful bacteria. If accepted by the AAFCO Board, the model regulations will be considered by the Model Bill and Regulations Committee to ensure they conform to the model regulations.

▶ **Confidentiality of Company-Specific Tonnage, Fee Reports to States:** AAFCO began discussing language that would amend its Model Bill to enable states to prohibit the disclosure of company-specific tonnage reports and fees submitted to state feed regulatory agencies. The issue arose after certain activist groups submitted requests for such data as part of their anti-animal-agriculture activities.

▶ **Principal Display Panel on Labels:** AAFCO began considering a new provision for its Model Bill that would define "principal display panel" for feed labels. AAFCO representatives believe such language would help states require that relevant label information be prominently displayed for consumers.

▶ **Mandatory Calorie Labeling for Pet Food, Treats:** A working group from AAFCO's Pet Food Committee was given additional time to consider a proposal from the American College of Veterinary Medicine that AAFCO require mandatory calorie content declarations on pet food labels. The Pet Food Institute has taken the industry lead in opposing such a change, arguing that consumers and veterinarians already have access to caloric content information from pet food companies, and that AAFCO's Pet Food Regulations already provide a mechanism for including voluntary calorie content declarations on pet food labels. PFI representatives also note that caloric content on pet food labels would not be as useful to consumers as it is on human food labels, since pet food labels do not contain standard serving sizes – which would be impractical.

In a related action, another working group was formed to evaluate an AAFCO pet food regulation that addresses descriptive terms for weight-related claims, such as "lite," "low calorie," and "low fat."





# Membership Matters

by Todd Kemp  
Director of Marketing/Treasurer

## Membership Month – Just Two Weeks Left!

A membership recruiting frenzy is building as the NGFA's 2007 edition of membership month heads into its final two weeks.

That means just two more weeks for recruiters to qualify for the fabulous Hoosier holiday grand prize: Airfare for two to Indianapolis, two nights at the downtown Marriott, dinner at the world famous St. Elmo's steakhouse, and tickets to a Colts game!

The grand prize drawing will be conducted at close of business on Aug. 31. All recruiters who sponsor a new member by then will qualify for the drawing.

**What You Can Do:** The NGFA needs every member to get involved. Make membership recruiting part of your job description for the next two weeks by thinking about who you can contact about becoming a member. Excellent prospects include feed ingredient suppliers, ethanol producers, rail shippers/receivers, and

any company providing goods or services to the grain, feed, and processing industry!

Once you have identified a prospect or two, call them and invite them to become an NGFA member. It's that easy! Your NGFA staff members always are ready to back you up with information and a followup call.

Thank you for making NGFA membership recruiting part of your summer! Watch for the Hoosier holiday winner to be announced on Sept. 1!



## Calendar

**Sept. 10-11, 2007:** NGFA Board of Directors  
Fairmont Chateau Frontenac, Quebec City, Canada

**Dec. 9-11, 2007:** NGFA's 36th Annual Country Elevator and  
11th Annual Feed Industry Conference  
Chicago Marriott Magnificent Mile Hotel, Chicago, Ill.



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