



Congress Renews Focus on Food, Feed Safety Legislation in Aftermath of Peanut Butter Recall

Members of Congress from both political parties pledged renewed efforts to enact sweeping new food and feed safety legislation this year during two separate hearings in successive weeks on the actions of the Peanut Corp. of America and the ensuing peanut butter recall.

During a widely reported Feb. 11 hearing conducted by the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations, several congressmen expressed "outrage" over the conduct of the Peanut Corp. of America and its president, Stewart Parnell, and vowed to victims of the peanut butter recall that they would be the last to endure such an incident under the current regulatory regime. Opening statements at the hearing from congressmen lasted for more than an hour.

During the House hearing, Food and Drug Administration (FDA) officials renewed their call on Congress to approve legislation that would grant the agency new authority to: 1)

issue preventive controls for "high-risk" foods; 2) access records of firms during routine inspections "to ensure that inspectors have access to all information that bears on product safety"; and 3) require facilities to renew their Bioterrorism Act registrations with FDA every two years, and allow FDA to modify the registration product categories to be more useful in the event of a product traceback. Dr. Stephen F. Sundlof, director of FDA's Center for Food Safety and Applied Nutrition, also said the agency believed mandatory recall authority "would be a useful tool that in some circumstances could result in faster removal of implicated products from commerce."

During ensuing discussion with congressmen, Sundlof also said FDA is changing its procedures to require inspectors to collect more samples for testing when conducting inspections. He said inspectors also would begin asking plants what product testing is being done and what the results have been.

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Phibro Pursues FDA Approval to Advance Regulatory Status of Lactrol® in Fuel-Ethanol Production

Phibro Animal Health Corp., the manufacturer of Lactrol®, has informed the NGFA that it is well underway in developing a food additive petition to be submitted to the Food and Drug Administration (FDA) to obtain approval to advance the regulatory status of its virginiamycin-based product used widely in fuel-ethanol production.

During a Feb. 5 meeting at the NGFA office, top officials from its PhibroChem Division confirmed that the company had been notified by FDA's Center for Veterinary Medicine (FDA/CVM) in a June 2008 letter that the agency recognized the need for using antimicrobials in fuel-ethanol production. Significantly, Phibro officials further stated that FDA/CVM does not plan to take enforcement action against Lactrol or biofuel co-products containing residues of the antimicrobial drug so long as it is pursuing the food-additive petition process in an intentional manner. Specifically, Phibro officials quoted the FDA/CVM letter as stating that the agency, "recognizes the need for these types of additives in fuel ethanol production, and does not anticipate recommending or initiating enforcement action against PHAC's (Phibro Animal Health Corp.) virginiamycin-based

product, Lactrol, or any distiller by-product and/or non-medicated finished feed containing residues of virginiamycin during the period of time PHAC is diligently pursuing the approval of virginiamycin through a FAP (food-additive petition)." Phibro said FDA/CVM officials had reconfirmed this policy position during followup communications this month.

As reported in the Jan. 29 edition of the *NGFA Newsletter*, concern over FDA/CVM's regulatory stance on virginiamycin and other antimicrobial drugs used in fuel-ethanol production had emanated from a Jan. 27 address at an International Feed Regulator's Meeting in Atlanta, Ga. During that event, a top agency official had said FDA/CVM was reviewing the appropriateness, in the current regulatory environment, of its November 1993 "letter-of-no-objection" under which the agency allowed residues of up to 0.5 parts per million (p.p.m.) of virginiamycin in distillers grain products. Dr. Daniel McChesney, director of FDA/CVM's Office of Surveillance and Compliance, also stated that the agency was examining the use of other antimicrobials used in ethanol production, including erythromycin and tylosin.

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House Agriculture Committee Approves 'Anti-Speculation' Bill

The House Agriculture Committee today (Feb. 12) by a voice vote approved legislation (H.R. 977) that would, among other things, impose a new regulatory regime on financial derivatives and over-the-counter (OTC) products that some members of Congress believe share responsibility for the near-collapse of the U.S. financial system.

Generally, the NGFA supports the bill's provisions that would enhance transparency and reporting requirements, especially as applied to non-traditional investment capital. Specifically, the bill, sponsored by Chairman Collin Peterson, D-Minn., would require the Commodity Futures Trading Commission (CFTC) to disaggregate and separately report the trading activity of index funds and swap dealers in agriculture and energy futures markets. The legislation also would empower the agency to impose criminal penalties on persons who violate the Commodity Exchange Act.

But as approved by the committee, the bill also contains several troubling provisions, including one that seeks to precisely define in legislative language what constitutes a "bona-fide" hedge and, by extension, which entities would qualify for hedge exemptions. Previously, this function has been left to the CFTC. The NGFA previously communicated its concerns to Peterson that, while it supports the bill's intent to limit hedge exemptions to legitimate commercial hedgers, such a complex concept is not appropriately addressed in statutory language. The NGFA warned that legitimate, commercial hedgers could be

excluded unintentionally. As an alternative, the NGFA had argued that determination of a bona-fide hedge should be left with the CFTC, with Congress providing appropriate guidance to the agency.

The bill also contains language that will require all prospective over-the-counter transactions to be settled and cleared through a CFTC-regulated designated clearing organization, unless exempted by the agency based upon specific criteria. The bill also would require the CFTC to set trading limits for physically deliverable commodities to prevent "excessive speculation."

The committee today also adopted an amendment by Rep. Earl Pomeroy, D-N.D., that would require the CFTC to conduct two public hearings annually to solicit input on appropriate levels for speculative position limits. Peterson's bill had required such hearings annually – one for speculative position limits for agricultural commodities and one for energy futures.

The enclosed edition of *NGFA Issues and Actions* contains more on the NGFA's recommendations made to the House Agriculture Committee on a draft version of the legislation that preceded today's markup.

The ultimate fate of the House Agriculture Committee-approved bill is unclear. Other House committees are virtually certain to request "sequential referral" of the bill, and could take dramatically different approaches than Peterson's bill.

Mark Your Calendars! NGFA Ag Transportation Symposium Scheduled

Intercontinental Hotel, Kansas City, Mo.

May 12-13, 2009

The NGFA has a well-earned reputation for leadership in representing the interests of shippers and receivers of agricultural products.

This year, for the first time since 2000, the NGFA will be conducting a major **Ag Transportation Symposium** as a forum for carriers and their customers to discuss major issues. Here's a brief preview:

Ø **Keynote Address:** Michael Haverty (*confirmed*), chairman and chief executive officer, Kansas City Southern Railway, Kansas City, Mo.

Ø Other Major Topics

- Wall Street and Government Perspectives on the U.S. Rail Sector
- Economics of the Rail Industry Today
- Waterborne Transportation Issues: Rail and Barge
- Dispute Resolution: NGFA Rail Arbitration System

Reserve the Dates and Watch for Registration Details Soon!



House-Senate Conferees Agree on \$789.5 Billion Economic Stimulus Bill

House and Senate conferees this week agreed to a slightly pared-back, \$789.5 billion economic stimulus bill, setting the stage for expected final passage by Feb. 14.

While the basic parameters of the \$789.5 billion package were agreed to Feb. 11, congressional staff members worked through the night to draft the actual compromise bill language. The final version includes \$282 billion in tax cuts, with the remainder consisting of spending in a variety of areas, including \$120 billion for infrastructure and science; \$14.2 billion for health care; \$105.9 billion for education and training; \$37.5 billion for energy; \$24.3 billion for programs for the poor, such as food assistance; and \$7.8 billion for law enforcement, oversight activities and other programs.

The Congressional Budget Office estimated the measure would boost the nation's gross domestic product (GDP) by between 1.4 percent and 3.8 percent for the remainder of 2009, and by 1.1 percent to 3.3 percent by the end of 2010. Most of the bill's spending is mandated to occur during the next two years. However, opponents continue to cite the bill's spending level and impact on the federal budget deficit as being excessive. Republican amendments aimed at increasing the proportion of the bill devoted to tax cuts, coupled with paring back spending, were defeated on the Senate floor during its consideration of the bill.

Passage was assured only after a group of self-described centrist senators worked to reduce the overall cost of the Senate bill. The centrist group reportedly had identified about \$107 billion in recommended cuts from the legislation, with most of the reduction coming in education funding, with some additional money being allocated to infrastructure spending. More than two dozen senators had met behind closed doors in an attempt to reach a compromise. But the key players in reaching a deal were Sens. Susan Collins, R-Maine, Ben Nelson, D-Neb., Olympia Snowe, R-Maine, and Arlen Specter, R-Pa. The final version emerging from the House-Senate conference deliberations, after some last-minute haggling over school construction funds, appears to be supported by the Republican senators.

Transportation Spending: The transportation spending includes \$4.6 billion in funds for U.S. Army Corps of Engineers projects, \$27.5 billion for highway and road construction, \$8.4 billion for public transportation, \$1.5 billion for state and local transportation grants, \$1.3 billion for air transportation projects and \$9.3 billion for passenger rail projects.

Tax Provisions: The compromise bill also includes several of the business-related tax provisions, although some have been scaled back or deleted.

Bonus Depreciation: This provision would extend a measure

passed by Congress last year that would allow a business to more quickly recover the cost of new capital expenditures. Rather than follow the normal depreciation schedule, businesses would be allowed to immediately write off 50 percent of the cost of depreciable expenses for new plants or equipment.

Net Operating Loss Carryback: This provision expands to five years the number of years net operating losses may be carried back. Previously, it was two years back. This provision originally was applicable to all businesses that did not receive money from the Temporary Asset Relief Program (TARP). But the provision has been scaled back further to apply only to those businesses with gross receipts of less than \$15 million. The measure also increases the percent of the alternative minimum tax (AMT) liability that can be offset from 90 percent to 100 percent for 2008 and 2009 losses.

Small Business Expensing: The bill would give small businesses the option to write off the entire cost of certain capital expenses in the year the expense is incurred, rather than through depreciation. The measure also extends last year's increase in the amount small businesses can write off for capital expenses in 2009. The write off increase will continue at \$250,000, up from \$125,000. And the phase-out threshold for eligibility remains at \$800,000 in capital expenditures, up from the previous \$500,000.

In addition, the final version adopts the Senate provision that tones down a controversial "Buy American" provision that raised prospects of triggering a trade war. The new language would add the caveat "applied in a manner consistent with U.S. obligations under international agreements" to a requirement that public-works projects funded by taxpayer stimulus money use only American-made materials.

Solis Nomination as Labor Secretary Advances

The Senate Health, Education, Labor and Pensions Committee on Feb. 11 approved the nomination of Rep. Hilda Solis, D-Calif., to be secretary of labor.

A date for floor consideration has not been set, and Senate Republicans continue to pose questions about tax issues involving Solis' husband and her work as a non-paid treasurer of a pro-labor group – American Rights at Work – while serving in the House. Much of the focus for Solis' opponents has been on ethical questions raised by her affiliation with the lobby group rather than the tax issues, which involved tax liens against her husband's auto repair shop that recently have been resolved.



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House Energy and Commerce Committee Chairman Henry Waxman, D-Calif., said, "For too long, the American people have not been able to trust that the food they eat is safe....[O]ur food supply is at risk." Said Rep. Diana DeGette, D-Colo., sponsor of two food/feed safety bills, "This is the 10th food safety hearing I've participated in....How many sick kids does it take for us to act?"

Meanwhile, former House Energy and Commerce Committee Chairman John Dingell, D-Mich., sponsor of the first comprehensive food/feed safety bill (H.R. 759) introduced in the new Congress, grilled Sundlof on each of the bill's provisions, demanding a "yes" or "no" response as to whether FDA supported them. When Sundlof responded hesitantly to a question on whether FDA would support the bill's call for industry user fees to help finance the agency's food/feed safety and inspection activities, Dingell responded: "You're (FDA) either short of resources or incompetent. Which is it?"

Meanwhile, at a separate Senate Agriculture Committee hearing on Feb. 5, both Committee Chairman Tom Harkin, D-Iowa, and ranking member Saxby Chambliss, R-Ga., called for plugging what Chambliss termed "a very serious loophole" in existing law under which tests on products for various hazards conducted by companies, states or private laboratories are not required to be reported immediately to FDA. A similar call emerged during the Feb. 11 House subcommittee hearing.

New Food/Feed Safety Bills Introduced: In addition to the Dingell bill, which was summarized in the Jan. 29 *NGFA Newsletter*, significant legislation also has been introduced in the House by Reps. Rosa DeLauro, D-Conn., along with 29 cosponsors, and Rep. DeGette.

The bill (H.R. 875) introduced Feb. 4 by DeLauro, the influential chairman of the House Appropriations Committee's subcommittee that has oversight of FDA, would, among other things, carve out all of the food and feed safety activities of FDA and put them in a new Food Safety Administration (FSA) within the U.S. Department of Health and Human Services. This would include the current FDA Center for Food Safety and Applied Nutrition (which addresses human food safety matters), the Center for Veterinary Medicine (which has jurisdiction over animal feed and feed ingredient safety), the National Center for Toxicological Research and the National Marine Fisheries Service (which operates a voluntary seafood safety and quality inspection program). The personnel at FDA's Office of Regulatory Affairs responsible for administering and conducting inspections at food and feed establishments also would be merged into the new agency. The bill stops

short of creating a single food safety agency – DeLauro's ultimate objective – retaining the regulation of meat and poultry products at the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service.

DeLauro's bill also would require: 1) food and feed facilities to register annually with the new agency; 2) food and feed establishments to develop preventive processing controls and sanitation plans, utilizing "reasonably available technology," as well as meet performance standards for contaminants, implement sampling and testing programs and recordkeeping; 3) the new agency to establish and enforce "performance standards" for reducing contaminants. Specifically, the bill would require the new agency to identify contaminants that "contribute significantly to risk of foodborne illnesses" within six months, and develop "performance standards" within three years for the five most significant contaminants; 4) require inspections of food/feed facilities, with the frequency based upon the type of product handled and type of processing used; and 5) all imported food, feed and feed ingredients to meet U.S. product safety standards, with the agency required within two years after enactment to put in place a system for accrediting foreign governments or certifying agents to certify that foreign manufacturing establishments meet U.S. safety standards. "Uncertified" imports would be restricted to entry into the United States to ports that have an FDA-accredited laboratory for testing.

The bill also would authorize the new agency to set product-safety and product-tracing requirements for – and to inspect – food and feed production facilities in the United States and overseas, including farms, ranches and animal feeding operations. Further, the bill would require the new agency to establish a national system for tracing products from origin to retail sale. The agency also would be granted mandatory product recall and seizure authority. And it would increase civil penalties for food safety violations to a maximum of \$1 million, and authorize criminal penalties for those intending to defraud or mislead.

Meanwhile, DeGette, vice chairman of the House Energy and Commerce Committee, on Feb. 3 introduced two separate bills, in addition to cosponsoring the Dingell bill. One bill (H.R. 814) would provide mandatory recall authority to both FDA and the USDA. The second measure (H.R. 815) would require USDA to establish a product-tracing system for all food products, from origin to market, to facilitate product recalls.

It is expected that several other significant food/feed safety bills will be introduced in the next two weeks. Of

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major interest is legislation likely to be introduced in the Senate by Sen. Richard Durbin, D-Ill., and several Republican senators that is little changed from the largely risk-based approach that was featured in a bill introduced by Durbin last year. It is expected that companion legislation that mirrors the Durbin bill language will be introduced in the House by Reps. Jim Costa, D-Calif., and Adam Putnam, R-Fla.

Obama Administration's Position: While the Obama administration has not formally stated its position on food/feed safety legislation, the president has called for a "complete review" of how FDA operates. And Secretary of Agriculture Tom Vilsack has been quoted on at least two occasions in the past week as suggesting the creation of a single food safety agency.

VeraSun Seeks to Sell All Ethanol Facilities; Valero Bids for Six

VeraSun Energy Corp. on Feb. 6 announced it had filed a motion with the U.S. Bankruptcy Court for the Delaware District seeking authority to sell "substantially all" of its assets and 24 of its affiliates through a court-approved sale process.

The announcement also included a notice that VeraSun had signed a tentative agreement to sell to Valero Energy Corp. for \$280 million five of its ethanol facilities located in Aurora, S.D.; Charles City, Fort Dodge and Hartley, Iowa; and Welcome, Minn.; as well as a development site in Reynolds, Ind. VeraSun said the purchase price does not reflect the inventory and certain prepaid expenses that also would be purchased by Valero under the tentative agreement. Under bankruptcy court proceedings, VeraSun now is required to conduct an auction to determine if other bidders will offer more favorable terms on the deal than Valero's.

Under the proposed motion filed with the bankruptcy court in Delaware, VeraSun said it is seeking to sell all of its production facilities and operations in separate or combined transactions. VeraSun said it believed that it had "sufficient liquidity to maintain its production facilities and workforce through the anticipated conclusion of the sale process."

If the bid procedures are approved by the Delaware bankruptcy court during a scheduled Feb. 19 hearing, VeraSun said interested parties would be required to submit qualifying bids by March 13. If qualifying bids are received, the company would conduct an auction on March 16. Following bankruptcy court approval at a sale hearing, VeraSun said it would expect to complete the asset sales either by March 31 or early during the second quarter of the year.

More information on the VeraSun announcement is available by [clicking here](#).

NGFA Country Elevator Committee to Host Open Forum on General Bankruptcy Proceedings at NGFA Convention: Given the current economic environment, the NGFA's Country Elevator Committee will be hosting an Industry **Town Hall Meeting on March 29** during the NGFA's 113th annual convention that will focus on bankruptcy proceedings and their impact on grain purchase and sales contracts. The Sunday afternoon open forum is scheduled for 2 to 3 p.m. Special featured speaker will be

Chris Giaimo, a bankruptcy attorney with the NGFA's outside law firm of Arent Fox, Washington, D.C. Giaimo authored a very informative primer on bankruptcy proceedings in the NGFA's *Focus on Industry Issues* publication that accompanied the Dec. 4 edition of the *NGFA Newsletter*.



Calendar

Feb. 28, 2009: NGFA Safety, Health & Environmental Quality Committee
America's Center, St. Louis, Mo.

March 29, 2009: NGFA Executive Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Country Elevator Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Grain Grades and Weights Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Membership & Marketing Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Trade Rules Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Waterborne Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Rail Shipper/Receiver Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Biofuels Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA International Trade/Agricultural Policy Committee
Walt Disney World Swan Hotel, Orlando, Fla.
Joint Agroterrorism Facility Security Committee
Walt Disney World Swan Hotel, Orlando, Fla.
NGFA Risk Management Committee
Walt Disney World Swan Hotel, Orlando, Fla.

March 29-31, 2009: 113th Annual NGFA Convention
Walt Disney World Swan Hotel, Orlando, Fla.

March 30, 2009: NGFA Rail Arbitration Rules Committee
Walt Disney World Swan Hotel, Orlando, Fla.

March 31, 2009: Joint NGFA Feed Legislative/Regulatory Affairs Committee/
Feed Manufacturing and Technology Committee/
Feed and Animal Agriculture Strategic Issues Committee
Walt Disney World Swan Hotel, Orlando, Fla.

March 29-31, 2009: NGFA Board of Directors
Walt Disney World Swan Hotel, Orlando, Fla.

May 12-13, 2009: NGFA Ag Transportation Symposium
Intercontinental Hotel, Kansas City, Mo.





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Antimicrobial drugs are used in ethanol production to kill and control during the fermentation process bacteria that can negatively affect the amount of alcohol yielded from corn, thereby boosting production.

Communications between FDA and a private company are considered confidential, unless released by the company, because they frequently contain proprietary business information. Thus, during the Jan. 27 address, FDA/CVM properly did not allude to Phibro Animal Health Corp. having notified the agency that it was in the process of developing a food-additive petition to formalize approval of Lactrol® in fuel-ethanol production, or to any private communications between the agency and Phibro.

As reported in the Jan. 29 *NGFA Newsletter*, Phibro officials did confirm their understanding that FDA/CVM is requiring all manufacturers of antimicrobial products used in ethanol production to obtain a food-additive petition because of the increased production and use of distillers grains as a feed product.

Phibro officials said they were committed to obtaining a food-additive approval for Lactrol "as quickly as possible," and that the product's status for use in fuel-ethanol production "has not changed" during the interim. "Phibro Animal Health remains completely confident that Lactrol will obtain approval as a food additive," company officials said, adding that the company already has on file with FDA "a substantial dossier for this active ingredient (virginiamycin). The FDA previously accepted a substantial data package from Phibro Animal Health, which demonstrates no residue in animal tissues when virginiamycin is dosed as a medicated feed additive to livestock," company officials noted.

Phibro officials also questioned the testing methodology used by FDA/CVM to determine the presence of virginiamycin residues in distillers products, preliminary results of which Dr. McChesney presented during the Jan. 27 meeting. [See *NGFA Newsletter*, Jan. 29, 2009.] The test method used by FDA/CVM – liquid chromatography-mass spectrometry-mass spectrometry (LC/MS/MS) – to determine antimicrobial residues in distillers products in its nationwide 60-sample survey typically is used as a screening test, and is not the FDA-recognized method for determining antibiotic residues for animal feed assays in compounds containing virginiamycin, Phibro officials said.

"Phibro Animal Health supports the FDA's efforts to assure the safety of all materials used in the food chain," wrote Michael J. Giambalvo, president of PhibroChem in a Feb. 3 letter to customers. "We remain committed to supporting the FDA in achieving safe DG (distillers grains) while providing fuel-ethanol producers (with) a valuable production tool."

Additional Background: FDA/CVM for the past several years has been examining production practices used by ethanol plants producing distillers co-products used as ingredients in livestock and poultry feeds, as well as pet foods. Specifically, FDA/CVM has noted that the use of processing aids, such as yeasts, enzymes and antibiotics, used during the ethanol production process can result in residues being present in the resulting distillers grains and solubles, which could pose feed safety issues, depending upon the levels present and the species for which they are intended.

FDA/CVM provided its 1993 "no-objection" letter to the then-drug manufacturer SmithKline Beecham Animal Health (now Phibro Animal Health Corp., Ridgefield Park, N.J.) to allow the use of virginiamycin with lactose. The letter subsequently was revised in 1994 to provide for the use of virginiamycin with dextrose, instead of lactose. The FDA/CVM letter stipulated that the use of virginiamycin with dextrose was limited to situations in which it: 1) was added during the fermentation phase; 2) was used at a rate of 2 to 6 p.p.m.; and 3) had a maximum residue level of 0.2 to 0.5 p.p.m. in the resulting distillers co-product, with the maximum value dependent upon the inclusion rate for distillers co-products in feed. FDA/CVM's determination was based upon a safety assessment at the time that assumed a 20 percent maximum inclusion rate of DDGs in animal diets.

FDA Policy on Use of Biodiesel-Derived Glycerin in Animal Feed:

Also as reported in the Jan. 29 edition of the *NGFA Newsletter*, Dr. McChesney during his Jan. 27 address had indicated that the agency does not consider glycerin derived from biodiesel production to be generally recognized as safe (GRAS) because of concerns over methanol and salt levels that may be present. An FDA official subsequently clarified this position during a conversation this week with the NGFA by stating that the agency has **never** considered glycerin derived from biodiesel production to be GRAS, since such glycerin is produced using a manufacturing process that has not been assessed by FDA. The official stated that the *Code of Federal Regulations'* listing of glycerin as GRAS (21 CFR 582.1320) is based upon FDA's evaluation of glycerin manufactured by a process that differs from that used to produce biodiesel.

Importantly, the FDA official stated – in accordance with its November 2006 letter to the NGFA – that the agency continues to **not** object to the use of biodiesel-derived glycerin in animal feed **if** it meets the specifications of the U.S. Pharmacopeia (USP) for glycerin used in drugs or the Food and Chemical Code (FCC) specifications for glycerin used in human food. However, the official also stated that without additional information on free methanol levels that may exist in glycerin from biodiesel production, it would consider glycerin with methanol levels exceeding 150 p.p.m. to be unacceptable for use in animal feed, even if it were to meet the USP and/or FCC specifications.





Milbank Honored with Lifetime Achievement Award

[Editor's Note: The NGFA Newsletter is adding this new section, which will be published periodically, to recognize and honor individuals with NGFA-member companies who have been appointed to significant positions or been honored by their companies. Please forward information to Randy Gordon at rgordon@ngfa.org.]

NGFA Past President **Edward P. Milbank**, president of Milbank Mills Inc., Chillicothe, Mo., was recognized by the Chillicothe Area Chamber of Commerce with its Lifetime Achievement Award on Feb. 6 for "a lifetime spent giving."

"Throughout his lifetime, he has meant so much to so many different people," said Chillicothe Chamber of Commerce official Pam Jarding. "(His) generosity, strength and diplomacy make him the perfect candidate for this particular award."

Jarding noted that Milbank owns and operates the oldest business in Chillicothe – the family owned feed mill that has been in continuous operation since being founded first as a flour mill in 1867 by his great grandfather after returning home from the Civil War. Milbank served as the NGFA's top industry officer from 1990-92, and previously served as chairman of its then-Feed Industry Committee from 1978-88. He also served on the NGFA Board of Directors and Executive Committee for more than 15 years. He continues to serve as a member of the NGFA's Feed Legislative and Regulatory Affairs Committee, and Feed Manufacturing and

Technology Committee, and as an arbitrator.

During the Chillicothe Chamber of Commerce event, Jarding discussed Milbank's service to the NGFA and its "time-honored arbitration system – the oldest arbitration system in the United States." She also cited his "generosity with his time and financial contributions to the community, which knows no bounds," noting his service on the Board of Directors of the Chillicothe Development Corp., Main Street Chillicothe, Lyric Opera Board in Kansas City, Mo., the Lyceum Theatre Board in Arrow Rock, Mo., and several other civic and business institutions. **Congratulations, Ed!**



NGFA Past President Edward P. Milbank – recipient of the Lifetime Achievement Award from the Chillicothe (Mo.) Chamber of Commerce.

Hansen-Mueller Honors Employee for Swift Action to Extinguish Fire



Joe Neville, manager of Hansen-Mueller Co.'s Kansas City, Mo., facility congratulates Gria Ellison, who single-handedly extinguished an electric motor fire at the plant last November.

An employee at Hansen-Mueller Co. is being honored by the company for taking swift, decisive action in extinguishing an electric motor fire at its Kansas City, Mo., facility late last November.

The employee – **Gria Ellison** – was in the process

of cleaning the dust-control system platform at the 4-million-bushel grain warehouse when she smelled smoke. Looking up, she detected the beginning of an electric motor fire in an air compressor located directly below a dust collector. Hansen-Mueller officials said she immediately shut down the power to equipment in the area, informed the rest of the elevator crew by radio, grabbed a fire extinguisher and single-handedly put out the fire before any damage could occur.

Hansen-Mueller describes Gria as "a remarkably conscientious" person and a "tireless worker and quick study" whose duties have rapidly expanded since she joined the firm as a temporary employee in April 2007 to perform housekeeping duties. She subsequently learned how to set up equipment, bin grain, perform grain bin measurements and preventive maintenance, has acquired a bonded weighmaster's license from the Missouri Department of Agriculture, and is licensed to inspect and weigh grain by the U.S. Department of Agriculture under the U.S. Warehouse Act. **Congratulations, Gria!**

of cleaning the dust-control system platform at the 4-million-bushel grain warehouse when she smelled smoke. Looking up, she detected the beginning of an electric motor fire in an



House Bill Requires OSHA to Issue New Combustible Dust Regs

The chairman of a key House committee on Feb. 4 introduced legislation (H.R. 849) that would require the Occupational Safety and Health Administration (OSHA) to implement a new standard for all combustible dusts, including organic dusts, within 90 days of enactment.

Introduction of the bill by Rep. George Miller, D-Calif., who chairs the House Education and Labor Committee, was timed to coincide with the one-year anniversary of the dust explosion at the Imperial Sugar Co. refinery in Port Wentworth, Ga., that killed 13. The bill language is identical to one passed by the House last year, without NGFA's support. Importantly, the bill contains several recommendations made by the NGFA in an attempt to clarify that the standard to be developed by OSHA is to **exempt** facilities already covered by the agency's grain-handling safety standard. For instance, the bill cites as examples of organic dusts that should be covered under a new OSHA standard: "...such as sugar, candy, paper, soap and dried blood." This replaced language in the original version of last year's bill that included references to "food" facilities, including "starch, feed and flour." Also removed at the NGFA's urging was a specific reference to the National Fire Protection Association's 61 standard, which is specific to prevent-

ing fires and dust explosions.

But the NGFA continues to object to the bill because it excludes from a new OSHA combustible dust standard only "processes already covered by OSHA's standard on grain facilities" and retains a reference calling on OSHA to use "relevant and appropriate" NFPA standards when crafting a new combustible dust standard. The concern is that the NFPA standards, which are voluntary and not subject to cost-benefit analysis, are much broader, more complex and more stringent, and that the bill could be interpreted as directing OSHA, when promulgating a combustible dust standard, to address other "processes" occurring at grain elevators, commercial feed and flour mills, and other grain processing operations not already covered by the current grain-handling safety standard.

The NGFA also objected to the prescriptive and expedited nature of the previous bill because it would require OSHA to implement a specific "one-size-fits-all" standard prior to obtaining any public comments. The NGFA will continue to monitor the status of the current bill and urge the bill's sponsors to include the association's recommendations.

EPA Extends Comments on Spill-Prevention Rules

The U.S. Environmental Protection Agency (EPA) on Feb. 3 announced it is delaying the effective date and requesting additional comments on final amendments to its spill-prevention and countermeasures (SPCC) regulations issued by the Bush administration that are designed to streamline requirements and provide greater flexibility to regulated facilities.

The SPCC regulations apply to owners and operators of facilities that store, transfer, use or consume oil or oil products exceeding applicable threshold quantities, if such oils could "reasonably be expected to discharge oil to waters of the United States."

On inauguration day (Jan. 20), White House Chief of Staff Rahm Emmanuel issued a memo directing the heads of all U.S. government departments and agencies to consider extending for 60 days the effective date of regulations that had been published in the *Federal Register* but not yet taken effect. In accordance with this memorandum and a followup memo from the White House Office of Management and Budget, EPA on Jan. 29 delayed for 60 days the effective date of the final rule that amends the SPCC

regulations issued on Dec. 5. The amendments now tentatively are scheduled to take effect April 4. Public comments on the extension of the effective date and its duration and on the amendments themselves are due by March 5. Neither this delay, nor the Dec. 5 final rule, remove any regulatory requirement for owners or operators of facilities operating before Aug. 16, 2002 to maintain an SPCC Plan in accordance with EPA's regulations.

In addition, former EPA Administrator Stephen Johnson signed a final rule notice amending compliance dates in January 2009. This notice was posted on the EPA website but was not published in the *Federal Register*. As a result, the notice was removed from the website and the agency is reviewing the compliance dates.

Importantly, while the final rule developed by the Bush administration completes the revisions initially proposed by EPA in October 2007, it still does **not address how vegoil and animal fats are to be regulated.** Prior to the latest developments, senior EPA staff indicated the agency would address the "definition of oil" issue prior to the original compliance date (which had been set for Nov. 1, 2009). The NGFA

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repeatedly has urged – and will do so again during this reopened comment period – that EPA differentiate between petroleum-based oils versus far-less-toxic oils generated from animal fats and oilseeds.

White House Memo Delays New Source Review Implementation: In another matter, EPA has delayed the effective date of the Jan. 15 new source review’s final rule regarding “aggregation” policy by 90 days. The new policy now is not scheduled to take effect before May 18, 2009.

New source review is an EPA pre-construction permitting program designed to ensure air quality is maintained when facilities are built or modified. The program ensures that state-of-the art emission-control technology is installed at new plants or existing plants that are undergoing major modification. Aggregation refers to the grouping of multiple, related physical or operational changes into a single project for evaluating requirements under the new source review program.



New Ledbetter Law Extends Deadlines for Pay Discrimination Claims

President Obama on Jan. 29 signed into law a bill that extends the time periods by which those claiming certain discriminatory employment practices under federal employment law are required to take administrative and legal action.

The new law – the “Lilly Ledbetter Fair Pay Act of 2009” – relates to the U.S. Supreme Court’s 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co.* (Case No. 05-1074). In that case, the court considered the statutory requirement that an individual wishing to bring an employment discrimination lawsuit under Title VII of the Civil Rights Act of 1964 must first file a claim with the Equal Employment Opportunity Commission (EEOC) within 180 days (or 300 days depending on the state) “after the alleged unlawful employment practice occurred.”

The High Court ruled that when an employer engages in a series of “separately actionable intentionally discriminatory acts,” then a “fresh violation” takes place when each act is committed for purposes of the 180-day filing deadline. However, the court determined that a new violation does not result from “subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination.”

During the trial of Ledbetter’s pay discrimination claim, Goodyear denied that its actions were discriminatory, but the jury ruled in favor of the plaintiff. On appeal, the U.S. Court of Appeals for the Eleventh Circuit decided that because her initial filing with EEOC was in March 1998, Ledbetter’s pay-discrimination claim was time-barred with respect to all pay-related decisions made before September

1997. The appellate court also found insufficient evidence of discriminatory intent in the only two subsequent pay-related decisions that occurred within 180 days of Ledbetter’s EEOC filing. Stating that “current effects alone cannot breathe life into prior, uncharged discrimination,” the Supreme Court affirmed the appellate court’s decision.

The new federal law expressly reverses what congressional proponents termed the Supreme Court’s “unduly restricting” approach by specifically providing that an actionable unlawful discriminatory practice occurs **each time** compensation is paid pursuant to a past discriminatory compensation decision or other practice. The law’s effective date is retroactive to May 28, 2007 – the day before the Supreme Court’s decision.

Impact of New Law: Despite the new law, the NGFA’s outside law firm of Arent Fox, Washington, D.C., states that plaintiffs will continue to bear the burden of proving that a compensation practice or decision is, or was, discriminatory. But employers will have a much more difficult time prevailing on the statute of limitations defense in these cases.

Arent Fox recommends that employers audit their compensation and benefit plans and policies to determine there are legitimate, nondiscriminatory reasons for differences in compensation practices or decisions. Where differences in compensation and benefits do exist among similarly situated employees, employers should be able to provide legitimate nondiscriminatory reasons as to why such differences exist.



