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TRANSPORTATION SECURITY REGULATIONS: IMPACTS ON GRAIN, FEED AND PROCESSING INDUSTRIES

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Transportation security has been increasing in commercial industry for a number of years, even prior to the events of 9-11-2001. Most of these enhanced security measures were related to customer demands in commercial channels to protect the integrity and safety of the food supply, particularly on products close to the consumer. The focus on transportation security has been magnified many-fold in the last two years. We now have extensive voluntary efforts---driven by the entire supply chain; customer-driven security measures; security requirements driven by the carriers; and the security driven by new government requirements.

Commercial issues of what is a reasonable and rational approach to security to protect the interests of the consumer and the food supply chain tend to sort themselves out in give-and-take between customers and suppliers. However, it can take a number of years of give-and-take, and I'll cite at least one example of this occurring today. When the new security requirements are driven by government, there are concerns about: duplicative and overlapping regulations and government oversight; whether the regulations are pragmatic for all circumstances; and whether the process for developing new regulations allow for the most rational, and cost-effective outcome, given the level of security desired. We are just now entering the initial periods for compliance with some new government rules, so in many cases we have not had much industry experience, but I will give you some early reactions.

The perspective the NGFA brings to this issue is based on its membership of 1,000 companies that operate grain elevators, commercial feed mills, corn and oilseed processing plants, flour mills, export elevators and integrated livestock and poultry operations. All told, these companies operate about 5,000 facilities that handle more than two-thirds of all U.S. grains and oilseeds.

Overview of Government Rules Affecting Grain, Feed and Processing Industries

FDA Rules: FDA recently implemented regulations emanating from the "Bio-terrorism Preparedness Law" passed in 2002. As a brief summary, the FDA is requiring the vast majority of commercial food, feed and grain facilities to register with the agency. The deadline for registering was December 12, 2003, although the agency is allowing a brief grace period before penalizing non-compliers. This part of the rule has gone reasonably smoothly. The registration process can be done on-line, and if you have all the information needed, can be done in an hour or less. We are hearing of some issues with the FDA confirmation mailings going to wrong addresses, such as branch locations,

rather than company headquarters, but the problem areas seem relatively minor. On-line registration is very much appreciated by the industry.

Another part of this FDA regulation is for food importers to give prior notice on food imports. This also was effective December 12, 2003. The time frame for giving notice prior to entry into the U.S. varies by mode of transportation. While this regulation has not caused a great deal of concern with grain companies, it has caused problems among food companies that import a wide range of ingredients with a wide range of shelf life, from a wide range of sources through various modes. There is concern with the industry obligation and burden, and what the value of the information really might be. As our industry incurs costs to comply, some wonder who will be monitoring all these data on imports and, if it is monitored, what the individuals monitoring are trying to track. As we consider these questions in the future, there may be a better way for some imported ingredients, or some sources.

The last part of the FDA regulation of major interest to our industry---record keeping on products received, products shipped and the identity of shipper and receiver---will not be finalized until the end of March, 2004 at the earliest. We have been working with FDA on this rule, but the degree of traceability that may be required is a concern to our industry, which generally handles commodities on a commingled basis. We think the FDA understands this and will provide that commodity-based industries do not have to provide precise data on traceability and the identity of specific shippers for specific lots of commodities that are very likely being stored on a commingled basis, unless such commodities are being handled on an identity-preserved (IP) basis for market-driven reasons.

Coast Guard Rules for Vessel Handlers: One of the most extensive set of regulations for our industry involves the Coast Guard rules implementing the Maritime Security Act of 2002. That regulation covers all facilities involved in maritime trade (vessels as well as ports and facilities within ports) and requires owners and operators to implement “security plans.” It allows companies to develop their own security plan or to adopt a common “Alternative Security Program” developed by an association, approved by the Coast Guard.

In the grain industry, North America Export Grain Association developed an Alternative Security Plan (or ASP) and it was tentatively approved by the Coast Guard on December 22, 2003. NGFA has worked closely with NAEGA on portions of this plan and NAEGA has graciously permitted some member companies of NGFA to also adopt the NAEGA plan. NAEGA and some members of our staff continue to work with the Coast Guard on finalizing this plan, and we have found them to be reasonable generally. Companies were required to submit their own security plan or sign-up under one of the association sponsored security plans prior to December 31, 2003. The deadline for regulatory compliance and making the plan fully operational is not until July 1, 2004. However, Coast Guard has informed us that fines are already being issued to companies that have not met the plan filing deadline of December 31, 2003.

This Coast Guard regulation is very extensive. It requires the designation of a "Facility Security Officer." It requires extensive record keeping, training, coordination, security systems, access control, monitoring, and at least annual audits. In short, companies at port locations handling vessels are going to face some extensive and expensive new requirements. The realization of just how much detail is required is just now dawning on the industry. Between now and July 1, no doubt we and NAEGA will be hearing more reaction from our industry on what resources are required to implement the new ASP.

USDA Rules for Warehouses: USDA this year required all warehousemen that sign contracts to handle government and loan grain (this represents about 95% or more of warehousemen that commercially store grain) to sign an agreement to conduct a facility vulnerability assessment and develop a security plan. As it relates to transportation, this agreement requires a specific plan for "shipping and receiving." Expected enforcement date is September 1, 2004.

While USDA has yet to release specific requirements, we expect that USDA would like to see some of the following concepts in security plans: 1) Know your shipper sending product to your facility or test the load before dumping; 2) Talk to farmers about on-farm security; 3) Manage truck loads in transit---specifics will vary by type of truck transportation; 4) Rail shipments---seals can provide some security; but there may be other means; and 5) Barge security issues may be mostly related to barges awaiting loading or unloading.

This rule from USDA, because it will affect nearly 7,000 facilities throughout the U.S. will have the broadest impact. The amount of actual additional work and expense for companies will not be determined until after September 1, 2004.

Overview of Commercial Issues Driving Transportation Security

Voluntary Industry Guidelines: Since 9-11-2001, there has been a demand for information in our industry on how facilities can better protect themselves. Some of this demand is related to terrorist threat, but sometimes the risk can be related to disgruntled neighbors of a business or vandalism.

In response to that industry demand, NGFA developed in November 2001 an "Agribusiness Facility and Operations Security" document that made suggestions for companies on: 1) Conducting vulnerability assessments; 2) General security of facility; 3) Operating procedures; 4) Shipping and receiving; and 5) Emergency action planning.

While we know that a number of companies have taken voluntary action using these guidelines, the whole concept of guidelines, suggestions, etc. and their appropriateness is left up to the management of the company. The wide differences in facilities and operations in our industry suggest that we need to be very cautious in assuming that such guidelines are appropriate as candidates for regulatory requirements. What works for an elevator will not work for a soybean processing plant or wet corn mill. All the security measures that work for a flour mill are not practical for a feed mill. Inputs, outputs,

supply sources and customers of all these different agribusiness plants are different, as are typical security arrangements.

Another commercial initiative that could affect future regulatory requirements is a set of security guidelines for “tanker trucks” adopted voluntarily by a group of food-related organizations. While only guidelines, it is interesting that the guidelines are now posted on the FDA website. While we have only briefly reviewed these guidelines, and see nothing inappropriate or ill-advised, a concern that we have is that regulations for tanker trucks might be interpreted as appropriate for rail tankers which are widely used in the grain processing industry. This may or may not be the case, and we need to be cautious about proceeding too quickly in drawing such conclusions.

On any voluntary guidelines, drafted by NGFA or any other group, it’s important to ask: Who had input? How broad was the input? Who controlled the final work product? And what was the process for review?

Commercial Rail Car Sealing Issues: Most shipments of products on the processed side of our business---flour, oil, corn syrup---are all being sealed today. It is a commercial decision between buyer and seller. There are some grain shipments also being sealed, but mostly such shipments are related closely to food products, such as wheat going to a flour mill or barley going to a maltster.

What is interesting to observe, is the extent to which railroads are driving the standards for sealing. While the railroad does not dictate to the shipper what sealing practices should be, at least four of the major carriers have established private rules for compensation in case a seal is damaged or removed in shipment and the customer rejects the cargo. In general, the railroads’ rules include some or all of the following requirements on shippers and receivers in order to pay for claims for damages related to broken or missing seals: 1) Shipper must affix a seal; 2) Shipper must be able to prove the seal was properly affixed; 3) Seal must meet minimum size requirements (1/8 inch steel cable is common); 4) Receiver must inspect at destination within prescribed time frame; and 5) Shipper may ultimately have to prove the product with a broken seal is contaminated.

Industry efforts to discuss a common approach with the railroads regarding broken seal policy and damage claims has not met with success thus far. Over time, we would expect the differences in carrier policies to narrow as we have additional experiences.

BSE-Related Changes in Transport Security: While NGFA and the railroads and trucking industry several months back established some best management practices to ensure that ruminant meat and bone meal did not contaminate other shipments of vegetable and other proteins acceptable under the 1997 FDA feed rules, these are subject to revision as FDA looks to implement new rules in the next 2 months or so. FDA has indicated it wants dedicated facilities for rendering plants and feed mills. We expect some rules also to be developed for transport equipment. The railroads already have in place some fairly strong requirements on dedicated equipment for the movement of

ruminant meat and bone meal. Guidelines are not as clear for the trucking industry at this stage. Interestingly, we are currently dealing with this issue with the stoppages at the Canadian border for vegetable protein coming into the United States.

BSE-related transportation security, and what it could potentially mean for not only the rendering industry but also any shipper of grain-based feed ingredients, may have far-reaching implications.

Concerns as We Move Forward on Security Issues

As we move forward to make this country's agricultural and transport system more secure, it is clear that we have work to do. Our industry is supportive of such efforts and certainly is willing to play a significant role.

But we do have concerns about how such efforts will be coordinated within the government framework. What we **don't** want to see happen is the emergence of multiple initiatives and requirements from different agencies that result in duplicative, overlapping or rules. To the extent that the federal government can coordinate and come forward with a unified, consistent, practical and well-reasoned approach – with appropriate input from the start from private-sector stakeholders – the better the chances of a productive outcome that truly enhances transportation security and does so in a way that is cost-effective and does not undermine the efficiency of this highly competitive, global industry.

To accomplish that will require the involvement of knowledgeable, practical, pragmatic officials from both government and the private sector. But doing so will engender a high level of compliance and instill even more confidence among U.S. and world consumers in the safety, wholesomeness and affordability of the U.S. food supply.