



NGFA NEWSLETTER

A weekly update from the National Grain and Feed Association

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NEWS

NASS country crop reports included in fiscal year 2025 appropriations

Both the House and Senate Appropriations Committees approved their fiscal year 2025 Agriculture, Food and Drug Administration, and Related Agencies spending bills this week with funding for the National Agricultural Statistics Service (NASS) to resume county crop reports.

In a 27-0 vote, the Senate Committee unanimously approved its bill, which provides \$27 billion in total funding, an \$821 million increase over fiscal year 2024.

The House bill, approved 29-26 by committee members, allots \$25.9 billion for USDA, FDA, and related agencies including the Commodity Futures Trading Commission. The bill reduces USDA and FDA funding by \$355 million from 2024 levels.

Both bills direct NASS to reinstate all County Estimates for Crops, the July Cattle report and the Cotton Objective Yield Survey and direct the U.S. Department of Agriculture (USDA) to notify House and Senate appropriations before eliminating future reports.

Citing budget constraints, NASS announced on April 9 that it would discontinue all county estimates for crops and livestock beginning with the 2024 production year.

Language in the House bill states that “despite numerous bipartisan and bicameral Congressional efforts,” NASS ignored congressional intent by refusing to reinstate the reports.

“The Committee is deeply concerned by the lack of communication and transparency surrounding NASS’ decision to cancel several critical market reports in fiscal year 2024,” the language in the bill states. “Therefore, the Committee

includes bill language that limits NASS' flexibilities to only core mission activities. This language ensures that NASS has the necessary funding for fiscal year 2025 to reinstate all reports that NASS chose to cancel or discontinue in 2024."

NGFA worked to notify lawmakers and issued a statement on June 12 noting that the NASS reports aid competition and transparency by providing fundamental marketplace information for the agricultural sector.

"The NASS county crop estimates are critical to the operation of agricultural businesses," NGFA stated in a press release. "They are used to build supply and demand estimates, which help determine commodity sourcing plans to keep agribusiness facilities operational. NGFA members, including agricultural exporters, processors, and livestock feeders rely on these reports to participate in the export sales market and to make appropriate purchase decisions."

NGFA will continue working with lawmakers and USDA to reinstate the NGFA county crop estimates.

OSHA publishes heat standard proposal

NGFA notified members on July 2 that the Occupational Safety and Health Administration (OSHA) [announced](#) a heat standard proposal requiring employers to develop an injury and illness prevention plan to control heat hazards in workplaces affected by excessive heat.

"The nation's first-ever federal safety standard addressing excessive heat in the workplace," would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agriculture sectors where OSHA has jurisdiction, the White House said in its announcement.

The rule excludes short-duration employee exposures to heat, emergency response activities, work at indoor sites kept below 80°F, telework, and indoor sedentary work activities.

OSHA submitted the proposal to the White House Office of Information and Regulatory Affairs (OIRA) on June 11, which completed its review in just three weeks. OSHA's proposed rule will be open for a 120-day public comment period after it is officially published in the Federal Register.

Among other provisions, the proposed standard – as summarized in [this OSHA fact sheet](#) – would require employers to:

- Develop and implement a work site heat injury and illness prevention plan (HIIPP) with site-specific information to evaluate and control heat hazards in their workplace.
- Identify heat hazards in both outdoor and indoor work sites.
- Implement control measures at or above the Initial Heat Trigger (i.e., a heat index of 80°F) that include providing employees with cool drinking water; break areas with cooling measures; indoor work area controls; acclimatization protocols for new and returning unacclimatized employees; paid rest breaks if needed to prevent overheating; and regular and effective two-way communication.
- Implement additional control measures at or above the High Heat Trigger (i.e., heat index of 90°F) that include providing employees mandatory rest breaks of 15 minutes at least every two hours; observation for signs and symptoms of heat-related illness; a hazard alert to remind employees of key parts of the HIIPP; and warning signs at indoor work areas with ambient temperatures that regularly exceed 120°F.

- Take steps if an employee is experiencing signs and symptoms of a heat-related illness or a heat emergency and develop a heat emergency response plan.
- Provide initial and annual refresher training for supervisors, heat safety coordinators, and employees, as well as supplemental training after changes in exposure to heat hazards, policies and procedures, or the occurrence of a heat injury or illness.
- Have and maintain, for a minimum of six months, written or electronic records of indoor monitoring data.
- Ensure that all requirements are at no cost to employees.

Throughout the rulemaking process, NGFA has submitted [comments](#) opposing a one-size-fits-all standard that lacks the necessary flexibility for employers to determine and implement appropriate controls to protect their employees. The primary concern with the rulemaking is that it will place an undue regulatory burden on grain handling facilities in indirect (employee time) and direct costs (equipment) and additional paperwork requirements.

NGFA submitted comments on the Advance Notice of Proposed Rulemaking (ANPRM) docket and to the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel regarding the heat standard. NGFA will continue to engage with other stakeholders to submit comments on the proposed standard after it is published in the Federal Register.

NGFA and NAEGA say FGIS user fees increase is unsustainable

In June, the Federal Grain Inspection Service (FGIS) published an [interim rule](#) effective July 8 to increase the hourly and unit fees for official inspection services that are performed under the U.S. Grain Standards Act (USGSA).

NGFA and the North America Export Grain Association (NAEGA) [submitted comments](#) this week urging the FGIS to make adjustments to its user fee provisions.

“Due to the fees changes through the interim rule, NGFA and NAEGA are concerned about the potential impact of promoting the marketing of high-quality grain to both domestic and foreign buyers based on the agency’s current financial status,” noted NGFA President and CEO Mike Seyfert and NAEGA President and CEO Alejandra Costillo in the comments submitted July 8.

Notably, considering the projected decrease in agricultural exports, continued fee increases are unsustainable for the industry, NGFA and NAEGA said.

“There is a continued projection over the next twelve to eighteen months of a decline in exports. Therefore, the agency needs to look at all options to minimize costs and expenses for both the federal government and exporters to prepare for the decrease in user-fee revenue,” they stated.

Read NGFA’s full [comments here](#).

NGFA monitors impact of SCOTUS Chevron decision for industry

By Jess McCluer, NGFA Senior Vice President, Safety and Regulatory

NGFA will be assessing and periodically updating its members on potential consequences to federal regulations as a result of the Supreme Court’s decision to end the *Chevron* deference. The following summary includes a brief update and analysis on labor, environment and employment regulations provided to NGFA’s Safety, Health and Environment Committee.

In a 6-3 [decision](#) on June 28, the Court overruled the 1984 *Chevron U.S.A Inc. vs. Natural Resources Defense Council Inc.* decision, holding that courts may not defer to an agency's interpretation of the law just because it is ambiguous but instead "must exercise their independent judgment when deciding whether an agency has acted within its statutory authority."

In its reasoning, the Court wrote that *Chevron* is at odds with the requirements of the Administrative Procedure Act (which governs the process by which federal agencies develop and issue regulations) because it allows agencies to change positions as they please without being authorized by Congress to do so. The Court also wrote that *Chevron* "prevents judges from judging."

The *Chevron* doctrine allowed the court to determine if a statute has not directly addressed the precise question at issue but is instead silent or ambiguous with respect to the specific issue; thus, the court should defer to an agency's interpretation of the statute so long as that interpretation is permissible.

The ruling put an end to *Chevron* deference and requires courts reviewing agency action to exercise their independent judgment. Going forward, if an agency action is challenged in court, courts will continue to respect the agency's authority if it has been properly delegated by statute. **However, if a law is ambiguous, courts will now get to decide whether an agency has acted within its statutory authority – rather than yielding to the agency. In the past, many courts deferred to the agency to interpret the complex statutory language and application.** This may result in a rush of litigation to test the new limits of agency deference, develop new precedent and likely revisit, at least in part, existing precedent. It remains to be seen if challenges to prior rulings will be forthcoming.

In general, agencies are likely to be more cautious in rulemaking proceedings, decisions and statutory interpretations. There may be calls for agencies to avoid filling in legislative gaps and not to act in the absence of explicit directives from Congress. Agencies may be reticent to devote months toward certain administrative actions if there is an increased likelihood that such efforts will be struck down by courts.

In letters released on July 10, Republican chairs in the House asked all federal agencies to begin reviews of regulations that could be affected by the Supreme Court ruling. [Read the letters here.](#)

"This week, House Republican Committees are sending letters to their corresponding federal agencies to demand the review of various overreaching regulations in our fight to free the American people from the power-hungry administrative state," said House Majority Leader Steve Scalise, R-La.

Labor and Employment

Many labor and employment law firms are anticipating a flurry of cases in the coming months attacking administrative interpretations of workplace laws as many rules and other pieces of administrative guidance may not pass the new standard. Moreover, judges in different jurisdictions could hand down different rulings on the same issue in different states, leading to a patchwork of compliance obligations that could impact multi-state employers. This includes the Department of Labor overtime rule, several labor law-related regulations issued by the Equal Employment and Opportunity Commission and National Labor Relations Board, pay equity, affirmative action and immigration. The Occupational Safety and Health Administration's (OSHA) worker walkaround rule and the revised broad electronic recordkeeping rule could also be impacted.

Environment

According to Stanford Law Professor Deborah Sivas, an environmental law expert, many environmental standards could be affected. She stated:

“Take climate change: Congress has never enacted climate legislation and given the extremely partisan nature of our current political system, is not likely to do so anytime in the near future. To address contemporary concerns, therefore, the EPA has turned largely to the Clean Air Act, which was enacted in 1970, long before climate change came onto the public radar. The Clean Act does not speak directly to greenhouse gas emissions or climate policy—that is, it is silent on those issues. So, the EPA has interpreted and applied various provisions of the statute to address climate issues. Courts will no longer be able to defer to the agency’s interpretation of the statute, setting the stage for the judiciary to more easily strike down climate regulations. The same is true across all federal regulatory agencies.”

NGFA will continue consulting with law firms and updating members on the impact of the Supreme Court’s decision.

House subcommittee explores CARB zero emissions freight proposal

A House Transportation and Infrastructure subcommittee held a [hearing](#) this week on the California Air Resources Board’s (CARB) request to authorize zero emissions standards for freight locomotives in California.

CARB’s “In-Use Locomotive Regulation” mandates that by 2030, only zero-emissions locomotives will be allowed to operate in California. Rail companies in the state also would be required to make annual contributions to a spending account based on emissions during the prior calendar year starting on July 1, 2026.

The U.S. Environmental Protection Agency is currently evaluating CARB’s request for a federal waiver that would allow it to enforce its new regulation. During the July 9 hearing, lawmakers and railroad representatives outlined national consequences if the rule is enacted.

Railroads, Pipelines, and Hazardous Materials Subcommittee Chairman Troy Nehls, R-Texas, said the regulation “must be rejected by EPA” in his opening comments.

“This proposed regulation is not just confined to California. It’s national in both impact and intent,” he stated. “According to CARB’s own analysis, the rule would require both BNSF and Union Pacific to replace their entire fleet of locomotives nationwide to comply with the regulation, which will cost billions of dollars and will make freight transportation and the costs of goods drastically more expensive.”

Modesto & Empire Traction Co. (MET) President and CEO Dillon Olvera, who [testified](#) on behalf of the American Short Line and Regional Railroad Association, said CARB’s proposal would lead to the elimination of shipping options and increased costs.

“Not only does it mandate the use of locomotives with technology not currently commercially available, but CARB has also publicly acknowledged that the massive compliance costs may be too much for some short line railroads in California to bear—they would be forced to cease operating because of their inability to comply with an impossible regulation,” Olvera stated. “This would have serious, negative impacts on the freight rail network, the U.S. supply chain, the environment, and highway safety.”

Olvera also testified that CARB’s proposal is preempted by federal law, including the Commerce Clause, the Interstate Commerce Commission Termination Act (ICCTA), the Clean Air Act and the Locomotive Inspection Act.

The American Short Line and Regional Rail Association along with the Association of American Railroads are challenging the proposed rules in the U.S. District Court for the Eastern District of California.

Earlier this year, NGFA and other members of the Agricultural Transportation Working Group urged U.S. Environmental Protection Agency (EPA) Administrator Michael Regan to deny CARB's request, noting the proposed regulations "pose a significant danger to U.S. agriculture and the broader U.S. supply chain," the groups noted in the [April 5 letter](#).

"If the CARB regulations were authorized by EPA, we believe freight rail carriers and rail customers would be significantly hindered financially and operationally. The inevitable increases in transportation costs and introduction of operational inefficiencies for agricultural shippers and receivers would result in food price inflation," NGFA and the other working group members stated.

The proposed regulations would:

- levy annual fees on rail carriers for deposit in accounts that can only be used to comply with the regulations;
- require the decommission of locomotives 23 years or older beginning in 2030 and require that new switch, industrial (rail customer) and passenger locomotives operate in zero-emission configuration (2035 for new line haul locomotives);
- attempt to regulate locomotive emissions by requiring railroads to shut them down while in transit in certain circumstances; and
- impose significant reporting and "administrative payments."

EVENTS

Don't miss CONVEY'24! Register to join us July 23-25.

[CONVEY'24](#), an annual conference jointly hosted by NGFA, Grain Journal, and the Grain and Elevator Processing Society (GEAPS), is July 23-25 in Omaha, Neb. View the full program of sessions and speakers and register at conveyconference.com. Watch the [video message](#) below to hear from NGFA Vice President, Safety and Regulatory, Jess McCluer, about the offerings at this year's conference.



Save the Date: NGFA's Harvest Safety Week is Aug. 19-23

NGFA's fifth annual Harvest Safety Week is Aug. 19-23! Each year at the end of August, NGFA dedicates a week to sharing safety resources particularly relevant to the busy harvest season.

This year's theme encourages members to "Participate. Prepare. Protect." by participating in sharing Harvest Safety Week resources, preparing for hazards during the harvest season and protecting the employees that "transform America's harvest" into food, fuel and fiber.

Harvest Safety Week 2024 will include new safety training videos designed to be easily watched in a couple of minutes, a live webinar with People Spark Consulting on employee onboarding, and a presentation with M&M Specialty Services.

Harvest Safety Week is brought to you by NGFA and the National Grain and Feed Foundation. Thanks to the support of the Foundation, billboards and radio ads highlighting Harvest Safety Week 2024 could be airing in your area.

Members and non-members can sign up to receive NGFA's Harvest Safety Week emails [here](#). Those already receiving NGFA emails will also receive Harvest Safety Week materials. NGFA encourages its members to share NGFA harvest safety resources throughout the industry and with farmer customers.

OSHA's Safe + Sound Week is Aug. 12-18

The Occupational Safety and Health Administration (OSHA) is hosting its [Safe + Sound Week](#) on Aug. 12-18. Registration is available on osha.gov/safeandsoundweek.

Safe + Sound Week is a nationwide event held each August. This year the event will provide resources for businesses on job hazard analysis. More than 3,900 participated in Safe + Sound Week in 2023. OSHA's [Plan & Promote Your Participation](#) webpage includes activity ideas as well as graphics and other materials.

SUPPLEMENTS

Register for next People Spark leadership training by July 19

The deadline to register for the August 2024 leadership program hosted by People Spark Consulting is July 19.

NGFA members receive a **bonus private coaching session** with their Leadership Transformation Program® registration. New cohorts begin monthly throughout 2024. [Click here for information!](#)

The investment for the 12-month People Spark Leadership Transformation Program® is \$2,500. Use reference code: NGFA

NGFA and People Spark Consulting have partnered to further the mission to provide education and training to members at all levels in the agriculture industry. The [People Spark Leadership Transformation Program®](#) is a year-long course that focuses on practical application of leadership skills and tools. It starts with an 8-week intensive training, followed by 10 months of ongoing support to reinforce and sustain the learned skills.

Matt Gibson appointed to NGFA Executive Committee

As directed by NGFA Chairman Chris Boerm, **Matt Gibson**, Viterra's vice president and general manager for U.S. and Mexico, has been appointed to NGFA's Executive Committee. He fills the committee role left vacant by Sheryl Wallace upon her acquiring the role of CEO at Ardent Mills. Wallace previously served as U.S. origination and grain president at Cargill.

Extra Supplements

NGFA in the news:

DTN: [What Farmers Need to Know About OSHA's Proposed Extreme-Heat Standards](#)

Other news:

Inside Climate News: [Supreme Court Overturns Chevron Doctrine: What it Means for Climate Change Policy](#)

Agri-Pulse: [Vilsack says Biden up to the job: 'You're damn right he's capable' \(log in\)](#)

Agri-Pulse: [GOP platform calls for revoking China trade status, slashing regulations, making tax cuts permanent \(log in\)](#)

Reuters: [US House Republicans demand regulatory reviews after Supreme Court ruling](#)

KFSN: [Ag industry adjusting through heat wave troubles](#)

Food Safety News: [Bird flu kept on coming during the holiday weekend](#)

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