



NGFA

Newsletter

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NGFA to Review Performance of HRW Wheat Futures Contract with KCBT Officials

The NGFA's Risk Management Committee will be reviewing the performance of the hard red winter (HRW) wheat futures contract when it meets July 21 in Kansas City, Mo.

Basis levels for HRW wheat have widened in recent weeks during a period of plentiful stocks, sluggish export demand and a low-protein crops in some HRW wheat-growing areas, raising concerns from farmers and grain elevators. The issue was a significant discussion item during the early June meeting of the NGFA's Country Elevator Committee, as well as the July 13 meeting of the NGFA's Executive Committee, both conducted in Washington. Officials of the Commodity Futures Trading Commission also have met with the KCBT to discuss the wheat contract's performance. *[See related article on page 2.]*

The July 21 meeting will provide an opportunity for the NGFA and Kansas City Board of Trade (KCBT) officials to review current market conditions and discuss impacts on elevators and their farmer-customers. The NGFA Risk Management Committee anticipates meeting with members

of the KCBT's Wheat Contract Committee, as well as with the exchange's executive leadership.

In addition, representatives of the NGFA's Country Elevator Committee and NGFA state and regional affiliated associations from Kansas and Oklahoma will be attending the meeting to facilitate a broad and meaningful discussion. NGFA members are encouraged to submit any comments or suggestions that should be considered during committee's July 21 meeting to NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org, or by calling 202-289-0873, ext. 16.

During its meeting, the committee also plans to review potential changes to the CME Group's grain futures contract settlement procedures; implementation of the variable storage rate concept for the Chicago Board of Trade wheat futures contract; and preparation for the discussion on convergence issues scheduled for the Aug. 5 meeting of the Commodity Futures Trading Commission's Agricultural Advisory Committee.

FDA Updates Vomitoxin Advisory Levels to Include Gluten Feed, Meal

The Food and Drug Administration (FDA) on July 7 updated its new industry guidance document for deoxynivalenol (DON), commonly referred to as vomitoxin, to specifically include gluten feed and gluten meal among the grain co-products subject to a 30 part per million p.p.m. advisory level if destined for ruminating beef and dairy cattle older than four months.

Previously, only distillers grains and brewers grains specifically were identified as being subject to the newly established 30 p.p.m. advisory level. As originally reported in the July 1 edition of the *NGFA Newsletter*, FDA officials had told the NGFA previously that they intended to make a further revision to the DON advisory levels after inadvertently omitting gluten feeds and gluten meals when first issuing the new guidance document on June 29. Significantly, the newly updated FDA guidance document does

not specifically reference gluten feed or meal derived solely from corn, thereby providing flexibility for gluten derived from other grain sources such as wheat, rye and barley. FDA's advisory levels recommend that the total ration of ruminating beef and feedlot cattle over four months not exceed 10 p.p.m. of DON, while the total ration of ruminating dairy cattle older than four months should not exceed 5 p.p.m. DON, both on an 88 percent dry matter basis.

FDA increased its advisory levels for grain and grain co-products destined for beef cattle, and established for the first time a separate advisory level for dairy cattle, in response to a joint letter submitted May 14 by the NGFA and American Feed Industry Association (AFIA). The two organizations had requested that FDA reexamine and update its DON advisory levels, which were last amended in September 1993, to reflect more recent scientific studies that
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CFTC Convergence Group Reconvenes on CBOT, KCBT Wheat Contracts

The Commodity Futures Trading Commission's Subcommittee on Convergence today (July 15) convened via conference call to discuss convergence issues related to both the Chicago Board of Trade (CBOT) and Kansas City Board of Trade (KCBT) wheat contracts.

The NGFA is represented on the subcommittee by Risk Management Committee Chairman Matt Bruns, vice president, corn processing, for Archer Daniels Midland Co., Decatur, Ill.

During the conference call, CFTC subcommittee members received a short briefing from David Lehman, director of commodity research and product development at the CME Group, concerning performance of the CBOT wheat contract as the contract's variable storage rate feature is being implemented. Lehman reported that the exchange is pleased with performance of the contract and detailed strengthened basis and enhanced convergence. Lehman suggested that the variable storage rate, in combination with changes in soft wheat market fundamentals – lower plantings and a decline in stocks – has contributed to the contract's enhanced performance. In response to a question from one subcommittee member, Lehman said the CME Group preferred to gauge the effects of the variable storage rate over several CBOT wheat contract expirations before considering its potential adoption for other CBOT contracts.

The CFTC Convergence Subcommittee also focused on performance of the KCBT wheat contract, which has experienced historically wide basis swings in recent weeks. Joe Ott, KCBT's vice president for compliance, attributed weaker basis levels to multiple factors, including a low-protein 2009 hard red winter (HRW) wheat crop, robust production and large carryover stocks; a decrease in global demand for U.S. wheat; increased transportation costs; and a shortage of storage space. Ott reported that the KCBT Wheat Contract Committee is well aware of the basis situation and continues to meet to discuss potential contract changes that he said would be beneficial and balanced for the maker and taker. Asked whether the KCBT would consider implementing a variable storage rate on its wheat futures contract, Ott replied that there were very limited data available thus far to evaluate the impacts of the variable storage rate on the CBOT wheat contract, and that it would be KCBT's preference to observe its effects for some period of time prior to any consideration of its application, if any, to the KCBT contract.

The discussion of convergence with respect to the CBOT and KCBT futures contracts is to continue at the CFTC's Agricultural Advisory Committee meeting on Aug. 5 in Washington; both exchanges were requested by CFTC staff members to prepare reports to be presented at that upcoming meeting.



Senate Approves Financial Regulatory Reform Bill

The Senate today (July 15) approved sweeping financial regulatory reform legislation (H.R. 4173), clearing the way for President Obama to sign it in to law next week.

The Senate approved the bill by a 60-39 vote, after Democratic leaders garnered the votes of three Northeast Republicans: Sens. Susan Collins and Olympia Snow, both of Maine, and Scott Brown of Massachusetts. The only Democrat to vote against the bill was Sen. Russ Feingold of Wisconsin, who said the measure was not tough enough on banks and investment houses.

The House had approved the 2,315-page measure on June 30 by a 237-192 vote. An analysis by *The Wall Street Journal* found that the new law will result in at least 243 separate rulemakings by federal agencies to implement its provisions, including at least 61 by the Commodity Futures Trading Commission (CFTC).

The final version includes House-passed language that defines a "bona-fide" hedge, something the NGFA had advised against because of concerns it may have "unforeseen and unintended consequences" that may "diminish" the ability of commercial hedgers – including grain, feed and grain processing merchants – to use futures market instruments to offset market risk as such tools change and evolve over time. But inclusion of the definition was a priority for House Agriculture Committee Chairman Collin Peterson, D-Minn., who saw it as way to provide a clear signal to the Commodity Futures Trading Commission (CFTC) that its *bona-fide* hedge definition remain narrowly focused on traditional hedgers. Peterson believes the definition's inclusion in federal law will help prevent the agency from approving hedge exemptions for non-traditional financial participants and will help tamp down instances of "excessive speculation," primarily in the energy sector.

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However, the bill also includes provisions that grant the CFTC broad authority to grant hedge exemptions, which should provide the agency with some latitude if futures products/strategies merit different treatment than would be accorded under the specific *bona-fide* hedge definition. It is important to note that the definition of *bona-fide* hedging in the legislation virtually is identical to the definition used by CFTC. In essence, there has been no substantive change in the nature of transactions that will be considered a *bona-fide* hedge. The difference, though, is that Congress now has signaled its intent to the CFTC, which could make the granting of hedge exemptions to non-traditional participants more difficult to obtain in the future.

Other Provisions: The final version of the bill also contains the following provisions of interest to the grain, feed and processing industry:

◆ **Exchange Clearing of OTC Derivatives:** As in both House and Senate versions, the bill requires exchange-clearing of derivatives that can be cleared. For those instances where derivatives are not sufficiently standardized to be cleared, or when there is no derivatives-clearing organization to clear them, extensive reporting is required.

◆ **Margining and Position Limits:** The CFTC is authorized to develop capital and margining requirements for swaps and derivatives participants and position limits for all products/commodities traded on-exchange.

◆ **Reporting:** There are extensive data collection and publication requirements for swaps and derivatives participants, designed to promote transparency for all market participants.

◆ **End-User Exemption:** An exemption from exchange-clearing requirements is provided for commercial end-users.

◆ **Spin-Off of Derivatives Trading:** The bill includes provisions authored by Senate Agriculture Committee Chairman Blanche Lincoln, D-Ark., that require banks to spin off their derivatives trading operations to separately capitalized entities walled off from federally insured deposits. Under the bill, banks now would be required to spin off only their riskiest derivatives businesses.

◆ **Insider Trading:** The insider-trading language that the NGFA negotiated with CFTC was included in the bill.

Reid Vows to Bring Energy, Climate-Change Bill to Senate Floor in July

...FAPRI's Conclusion on Impact of Climate Change Legislation: It Depends...

Senate Majority Leader Harry Reid, D-Nev., this week said he plans to unveil a composite energy and climate-change bill within the next 10 days, and has reserved the week of July 26 to have it considered on the Senate floor.

Reid said the bill will address four major issues: 1) a legislative response to the Gulf oil spill; 2) energy provisions modeled after bipartisan legislation (S. 1462) sponsored by Senate Energy and Natural Resources Committee Chairman Jeff Bingaman, D-N.M., which was approved by the committee last year; 3) a tax package developed by the Senate Finance Committee; and 4) caps on greenhouse gas emissions from the electric utility industry, which produces about one-third of the nation's greenhouse gases – an alternative to a broader cap-and-trade bill applying to all industry sectors. As part of the electric-utility-only approach, Sens. John Kerry, D-Mass., and Joe Lieberman, I-Conn., are circulating 670-page “pared-down” draft of their previous all-encompassing climate-change bill that would

cap emissions from power plants at 17 percent below 2005 levels by 2020, 42 percent by 2030 and 83 percent by 2050. The revised Kerry-Lieberman draft focused solely on power plants would reduce to 500 million tons the number of offset credits available under a cap-and-trade approach, down from the 2 billion tons provided in their original bill. Under the draft bill, as with the previous comprehensive approach, states would be preempted from implementing cap-and-trade approaches to reduce greenhouse gas emissions, but would be allowed to establish separate state performance standards.

Meanwhile, Bingaman is circulating two separate draft bills developed several months ago focused solely on reducing emissions from electric utilities. One 50-page draft bill from Bingaman would be limited to requiring electric utilities to reduce only carbon dioxide emissions – not all six greenhouse gases – by 17 percent by 2020 and 43 percent by 2030, compared to 2005 levels. The second Bingaman

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draft bill – a 44-page version – would apply similar reductions to all greenhouse gas emissions from electric utilities. Bingaman’s bills would preempt state action until 2017.

There is concern that a climate-change bill targeted solely at electric utilities may risk exposing other industry sectors, such as manufacturers (including those engaged in certain grain processing and biofuels enterprises) to greenhouse gas regulations issued by the Environmental Protection Agency. The NGFA is working with a broad consortium of agricultural and food organizations to develop a coordinated response if such legislation is considered on the Senate floor.

New Study on Economic Impact of Climate-Change Legislation:

As climate-change legislation continues to surface in Congress, numerous studies have been conducted in an attempt to determine the economic impacts such legislation could have on the U.S. agricultural sector, including studies from the U.S. Department of Agriculture, the U.S. Energy Information Administration, Texas A&M University and the University of Tennessee

The latest entrant is an analysis, issued earlier this month, of the House-passed cap-and-trade climate-change bill by the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri. The study, conducted with an extended version of the FAPRI modeling system, evaluated the bill’s impact on the U.S. agricultural sector.

Working at the request of the U.S. Department of Agriculture’s Office of the Chief Economist, the analysis focused on three specific issues, specifically, the House-passed bill’s impact on: 1) farm production; 2) biofuel production; and 3) land-use decisions.

The study concluded that, for the farm sector as a whole, the impact on net farm income would depend upon the magnitude of the effects of the bill on agricultural production costs, biofuels production and land-use adjustments. “Higher production expenses reduce aggregate net farm income, but biofuel production, land-use shifts and income from the sale of offsets push farm income higher,” the study found. For example, corn use for ethanol could decline by 0.6 percent by 2030 if biofuel producers do not

have the opportunity to benefit from the higher prices for competing fuels. However, if biofuel producers are able to take advantage of higher consumer costs for gasoline and diesel fuel, corn use for ethanol could increase by nearly 15 percent, FAPRI said.

The study also concluded that, for the consumer, climate-change legislation likely would create higher food prices, attributable to higher farm commodity prices and higher energy costs associated with processing and transporting food.

FAPRI’s analysis concluded that altering just a few key assumptions “can lead to qualitatively different estimates of the bill’s impact.”



Calendar

- July 21, 2010:* NGFA Risk Management Committee
Kansas City Board of Trade Board Room, Kansas City, Mo.
- July 28-29, 2010:* NGFA/Grain Journal Safety, Health and Environmental Quality Seminar
Hilton Hotel, Omaha, Neb.
- July 29, 2010:* NGFA Safety, Health and Environmental Quality Committee, Hilton Hotel, Omaha, Neb.
- Aug. 11, 2010:* NGFA Biotechnology Committee
NGFA Conference Room, Washington, D.C.
- Aug. 23, 2010:* NGFA Feed and Animal Agriculture Strategic Issues Committee, NGFA Conference Room, Washington, D.C.
- Sept. 8, 2010:* NGFA Executive Committee
Chicago Marriott Magnificent Mile, Chicago, Ill.
- Sept. 8-9, 2010:* NGFA Board of Directors
Chicago Marriott Magnificent Mile, Chicago, Ill.
- Sept. 22, 2010:* NGFA Feed Legislative and Regulatory Affairs Committee; and Feed Manufacturing and Technology Committee
Chicago Marriott Magnificent Mile, Chicago, Ill.
- Sept. 22-24, 2010:* NGFA-PFI Feed/Pet Food Joint Industries Conference
Chicago Marriott Magnificent Mile, Chicago, Ill.
- Dec. 5-7, 2010:* NGFA Country Elevator Conference & Trade Show
Marriott Indianapolis, Indianapolis, Ind.
- March 13-15, 2011:* 115th Annual Convention
Hotel Del Coronado, San Diego, Calif.





NGFA, USA Rice Federation to Provide Input to USDA on UGRSA Contract

The NGFA and USA Rice Federation are working together to develop joint recommendations to the U.S. Department of Agriculture (USDA) on provisions both organizations believe are important to retain in the Uniform Grain and Rice Storage Agreement (UGRSA) contract.

The joint effort follows a June 28 meeting between the NGFA, USA Rice Federation and representatives of several farm and commodity organizations with USDA Farm Service Agency (FSA) Administrator Jonathan Coppess and his key staff to discuss the agency's planned changes to the UGRSA contract. The contract with USDA's Commodity Credit Corporation currently is required to be entered into by warehouse operators wishing to offer marketing assistance loan services to producers of grains, oilseeds, rice and pulses, or who store CCC-owned commodities. Under its planned changes, FSA no longer would require a UGRSA contract for warehouses that are federal- or state-licensed as a precondition for offering warehouse-stored marketing assistance loans to producers. Further, FSA developed a new, two-section UGRSA contract that would apply to warehouse operators that are not federally licensed or that operate in states without a licensing program. As revised by FSA, deleted from the UGRSA contract would be all provisions related to financial standards (including net worth, bonding and insurance requirements); the requirement to submit financial statements for review; recordkeeping obligations (including the requirement to maintain a daily position record of warehouse obligations); appropriate warehouse practices (including the obligation to maintain quantity, quality, kind and classes of grains and oilseeds); and prohibitions on adulteration of commodities. [See *NGFA Newsletter*, May 20 and June 17, 2010 for additional details.]

During the June 28 meeting with FSA, NGFA Country Elevator Committee Chairman Jim Black, general manager of Maplehurst Farms Inc., Rochelle, Ill., raised concerns expressed by the NGFA committee over FSA's plan to issue the vastly curtailed version of the UGRSA contract. During the meeting, the NGFA recommended that FSA restore provisions of the contract that pertain to financial standards, including net worth, bonding and submission of annual financial statements; recordkeeping; insurance; appropriate warehouse practices; and other key provisions. The NGFA also expressed concerns that state budget pressures may hamper the ability of some existing state grain warehouse licensing authorities to perform adequate examinations and oversight to protect depositors.

FSA officials responded by noting that the UGRSA contract's intent is to protect the interests of USDA's Commodity Credit Corporation (CCC) as a lender (vis-à-vis

the commodities pledged as collateral by producers for marketing assistance loans) and as a depositor (of CCC-owned grain), not to protect the interests of producers or other depositors. FSA officials also maintained that USDA was attempting to reduce the legal liability it incurs when conducting warehouse examinations in response to a 1999 appellate court decision [*Appley Brothers vs. USA*], which involved an insolvency at a federally licensed grain warehouse (Bird Grain Co.) in South Dakota. In this decision, the appellate court twice found that USDA was negligent by not following up during an August 1988 examination on the results of an inspection four months earlier in which it detected grain shortages, but failed to check on the status of the shortages during a subsequent examination in August 1988. Instead, USDA did not suspend the facility's federal license until November 1988 after discovering extensive grain shortages.

However, the NGFA countered that the virtually non-existent standards in the new UGRSA would encourage non-traditional participants without warehousing experience – feedlots, dairies, ethanol plants and others, including operators of caves, shopping centers and other spaces where commodities could be stored – to apply for and obtain such contracts, thereby increasing risks to CCC, producers, other depositors and the warehouse industry. This would be particularly problematic in the 23 states that do not have state licensing and examination programs, the NGFA said, including such significant states as California, Oregon, North Carolina and Texas (for rice). In these states, the NGFA said, warehouse facilities that currently are federally licensed might be tempted to drop those licenses to reduce regulatory and business costs, particularly when presented with the opportunity to enter into a slimmed-down, no-cost UGRSA contract devoid of meaningful standards. Further, even in states with warehouse licensing and grain dealer laws, some new entrants might qualify for the new UGRSA without being subject to such state regulatory oversight.

Among the policy options discussed during the meeting was whether to require that grain and rice storage warehouses be required to obtain a federal license in the 23 states that do not have a licensing system. There also was some discussion about increasing the bonding requirements for UGRSA warehouses in lieu of net worth and other financial standards.

The NGFA and USA Rice Federation have been asked to provide additional recommendations to FSA by July 19. In the meantime, FSA officials have put in abeyance their planned changes to the UGRSA contract.





(Vomitoxin Advisory Levels continued from page 1)

demonstrated that higher levels of DON could be fed safely to certain species while still fully protecting human and animal health.

In a response letter dated July 1 to the NGFA, FDA stated that an increase in the DON advisory levels for beef and dairy cattle was justified following its review of scientific studies referenced in the NGFA-AFIA letter, as well as the agency's own indepen-

dent scientific literature review of what it called "a number of well-designed studies of DON fed to cattle" that have been published since the agency last revised its DON advisory levels 17 years ago. The FDA letter to the NGFA noted that residues of DON and its metabolite (DOM) are not found in meat or milk at levels that would pose a human health concern. Further, FDA stated that the rumen microflora in beef and dairy cattle "are quite proficient in degrading DON." In addition, "[f]uture research

may provide data to support the safety of higher (DON) levels in the total ration for ruminants," wrote Dr. Terry Proescholdt, leader of the Feed Safety Team at the FDA Center for Veterinary Medicine's Division of Animal Feeds.

The nearby NGFA-prepared table depicts the new FDA advisory levels for DON. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the newly updated FDA advisory levels for DON (*caution, the PDF version of the FDA guidance has not been updated yet*).

FDA's New Advisory Levels for DON (Vomitoxin)	
Product and Intended Use	DON Level (parts per million)
Finished Wheat Products for Human Consumption	1 p.p.m.
For grain and grain co-products destined for swine . FDA recommends that ingredients containing this level not exceed 20 percent of the diet.	5 p.p.m.
For grain and grain co-products destined for ruminating beef cattle and feedlot cattle older than four months . FDA further recommends that this 10 p.p.m. level not be exceeded in the total ration (includes all grains; grain co-products, including distillers and brewers grains; gluten feed and gluten meals; hay; silage; and roughage).	10 p.p.m.
For grain and grain co-products destined for ruminating dairy cattle older than four months . FDA further recommends that DON not exceed 5 p.p.m. of the total ration (<i>see above</i>).	10 p.p.m.
For distillers grains, brewers grains, gluten feeds and gluten meals destined for ruminating beef and feedlot cattle, as well as ruminating dairy cattle, older than four months . FDA further recommends that DON not exceed 10 p.p.m. in the total ration for beef and feedlot cattle, and 5 p.p.m. in the total ration for dairy cattle.	30 p.p.m.
For grain and grain co-products destined for chickens . FDA further recommends ingredients at this level not exceed 50 percent of diet.	10 p.p.m.
For grain and grain byproducts destined for all other animal species . FDA recommends that ingredients containing this level not exceed 40 percent of the diet.	5 p.p.m.

McCain Introduces Bill to Repeal Jones Act

Calling it "unnecessary and antiquated," Sen. John McCain, R-Ariz., introduced legislation (S.3525) that would repeal the so-called Jones Act, which requires all goods shipped between U.S. waterborne ports to be transported on vessels built and flagged in the United States, and owned and operated by U.S. citizens.

McCain pointed out the most recent perverse impact of the Jones Act – the Gulf Coast oil spill, in which 21 countries as of June 21 that had offered to provide vessels to skim oil from surface waters were denied entry to U.S. waters by the U.S. State Department. "The (Obama) administration has the ability to grant a waiver of the Jones Act to any vessel – just as the previous administration did during Hurricane Katrina – to allow the international community to assist in recovery efforts," McCain said when introducing the bill. "Unfortunately, this administration has not done so."

McCain said that fact, in addition to the Jones Act's adverse economic impact that he estimated at nearly \$1 billion annually to the U.S. economy by increasing shipping costs "making U.S. farmers less competitive and increasing costs for American consumers," justified "permanent repeal." Members receiving the *NGFA Newsletter* electronically may [click here](#) to access McCain's bill.





Codex Establishes Task Force to Prioritize Hazards in Animal Feed, Feed Ingredients

...Task Force also Directed to Develop International Guidance on Applying Risk-Assessment Methods...

At its annual meeting during the week of July 5, an international body known as the Codex Alimentarius Commission (Codex) approved creation of a time-limited task force to prioritize hazards reasonably likely to occur in animal feed and feed ingredients that could adversely affect human health.

The task force also was directed to develop guidelines that world governments can use on how to apply existing Codex risk-assessment methodologies to the various types of contaminants and residues that may be present in feed ingredients, including those intended for use in food-producing animals.

The task force is scheduled to begin meeting in 2011, with a maximum of three meetings authorized.

The action was taken in response to a recommendation of a Codex Electronic Working Group on Animal Feeding, co-chaired by Denmark and the United States, that recommended that Codex pursue some additional work related to animal feed safety following the successful completion in 2004 of the first international animal feed safety code of practice. However, the Electronic Working Group could not agree on whether to recommend that Codex establish a new task force to pursue the additional tasks, or parcel the work out to existing Codex committees.

The U.S. government, in which the NGFA participated actively, recommended that the additional work be assigned to Codex's Committee on Residues of Veterinary Drugs in Foods, which is chaired by the United States and whose delegates have expertise in animal feed safety. But Codex opted instead to adopt a European Commission proposal to establish a time-limited task force, to be chaired by Switzerland and perhaps co-chaired by an as-yet-to-be-named developing country.

The two specific tasks assigned to the new Codex task force are to develop:

- ▶ Guidelines for use by international governments on how to apply existing Codex risk-assessment methodologies to various contaminants and residues present in feed

ingredients, including those used in food-producing animals. The guidelines are to include specific, science-based risk-assessment criteria to apply to feed contaminants and residues, and are to be developed in a way that assists countries in prioritizing and assessing risks based upon local conditions, use, exposure of animals and the impact, if any, on human health.

The task force also is to consider whether there is a need for the guidance to address the rates at which hazards can transfer and accumulate in edible tissues of animal-derived products.

- ▶ A prioritized list of hazards of international relevance reasonably likely to occur in feed ingredients and feed additives that may warrant attention by international governments when developing science- and risk-based approaches to feed safety. Codex specifically directed the task force to consider a prudent, well-thought-out list of a limited number of hazards developed two years ago at a Food and Agriculture Organization/World Health Organization Expert Meeting on Animal Feed's Impact on Food Safety. Codex further directed the task force to use "clear criteria" for prioritizing hazards, and to consider the potential transfer of contaminants and residues present in feed to edible animal products, such as meat, fish, milk and eggs.

The NGFA anticipates being invited by the Food and Drug Administration to serve on the official U.S. government delegation to the task force. The NGFA served in a similar capacity as part of the U.S. government delegation that drafted the original animal feed product safety code, a five-year effort.

Codex, established in 1963 by the United Nations, develops science-based international food safety standards designed to protect human health, while facilitating trade in food, feed and agricultural products. Codes of practice developed by Codex are important because they are recognized by the World Trade Organization as the basis for resolving international trade disputes. Such codes also frequently serve as the basis for formulating individual-country standards.



FDA to Consider Regulatory Approach, if Needed, to Address 'Judicious Use' of 'Medically Important' Antimicrobials in Food-Producing Animals

The Food and Drug Administration (FDA) on July 14 testified that it believes there is "unequivocal evidence" that the use of "medically important" antimicrobial drugs in food-producing animals contributes to a build-up in human resistance to such products, and that it is prepared to address the matter through regulation, if necessary.

The statements were made by FDA Principal Deputy Commissioner Dr. Joshua Sharfstein in response to questions during a four-hour hearing on the use of antibiotics in food-producing animals conducted by the House Energy and Commerce Committee's Subcommittee on Health. During the hearing, much of the focus was on whether there were scientific studies conducted in the United States to demonstrate a definitive link between so-called subtherapeutic use of antimicrobials in food animal production and the buildup of resistance in humans to the use of the same drugs to treat human illness. Sharfstein's written testimony was more measured, stating that the "overall weight of evidence available to date supports the conclusion that using medically important antimicrobial drugs for (animal) production purposes is not in the interest of protecting and promoting public health." But in response to questions, the FDA official testified that there was a "mountain of evidence... a very strong foundation of evidence" to establish a direct link.

When asked by Rep. John Shimkus, R-Ill., to cite specific peer-reviewed U.S. scientific studies documenting such a link, Sharfstein referenced a 367-page report issued in 2003 by the National Academies of Sciences' Institute of Medicine – prepared by a task force headed by now FDA Commissioner Margaret Hamburg – that is primarily a literature review of previous studies and papers, and contains only two short sections on the use of antimicrobials in animal agriculture

production. Sharfstein also cited a 2004 World Health Organization study.

Much of the focus of the hearing was on a 19-page draft guidance document issued by FDA on June 28 outlining the agency's current thinking on strategies to ensure antimicrobial drugs important for therapeutic treatment in humans are used "judiciously" in animal agriculture production. The draft guidance stated that FDA believes use of medically important antimicrobials in food-producing animals to enhance feed efficiency or promote growth does not constitute "judicious use," and Sharfstein reiterated in his testimony that FDA recommends "phasing in" measures that would limit such use to instances in which it is necessary for assuring animal health, with increased veterinary oversight or consultation.

Meanwhile, the U.S. Department of Agriculture's Chief Veterinarian, Dr. John Clifford of the Animal and Plant Health Inspection Service, testified that "the use of antibiotics in animal agriculture does lead to some cases of antibacterial resistance among humans and in the animals themselves, and it is important that these medically important antibiotics be used judiciously" – the first time USDA has publicly stated such a position. Clifford called the FDA draft guidance a "good first step." But USDA's Office of Congressional Relations the next day issued a clarification of Clifford's testimony, stating that antibiotic use in food-producing animals "likely" leads to some cases of antimicrobial resistance among humans and animals, and that USDA "does not support the broad elimination of antimicrobials for specific uses in animal agriculture...."

A full report on FDA's draft guidance was published in the July 1 edition of the *NGFA Newsletter*. [Click here](#) to access.

Ohio Strikes Deal with Humane Society to Phase Out Certain Animal-Production Practices to Avoid Ballot Initiative

The memorandum of understanding (MOU) inked July 1 by Ohio farm and animal agriculture organizations with the Humane Society of the United States (HSUS) and Ohioans for Humane Farms would phase out certain animal-production practices while averting, at least for the time being, an HSUS-led ballot initiative that agricultural interests said could have cost upwards of \$10 million to oppose.

The MOU includes recommendations that the Ohio Livestock Care Standards Board adopt the following provisions that were included in the HSUS ballot initiative: 1) Ban all veal crates by 2017, the same date developed by the American Veal Association as a recommended industry practice two years ago; 2) ban new swine gestation crates in the state after Dec.

31, with existing facilities required to stop using gestation crates by 2026; 3) prohibiting issuance of new permits for battery cages for laying hens, although no timetable was included for phasing out existing battery cage systems; 4) establishing standards for excluding non-ambulatory livestock from being transported for slaughter; and 5) establishing standards governing euthanasia practices on farms. The latter two provisions already were included in the Ohio Livestock Standards Care Board's agenda.

Failure to implement the provisions by Dec. 31 could void the MOU and allow HSUS to resume its ballot initiative campaign. However, if terms of the agreement are implemented to the satisfaction of the parties, it would be extended until Jan. 1, 2014 with further extensions possible through 2019.





Court Upholds Expanded 'Employee-by-Employee' Approach for OSHA Violations

A federal appellate court recently upheld a rule issued by the Occupational Safety and Health Administration (OSHA) that "each" failure by an employer – in this specific case to provide personal protective equipment or training to employees – may be considered a separate violation of the agency's standards.

Under the Occupational Safety and Health Act, the secretary of labor is empowered to promulgate workplace standards that are "reasonably necessary or appropriate" for employee health and safety, and to issue citations and penalties against employers who violate such standards. Under current law, the penalties vary based upon the severity, frequency and willful nature of the violations, up to \$70,000 per violation. Employers may appeal such citations and penalties to an independent tribunal, the Occupational Safety and Health Review Commission.

In this case [*National Association of Home Builders v. OSHA*, No. 09-1053, U.S. Court of Appeals for the District of Columbia Circuit (decided April 16, 2010)], the employer hired 11 workers to renovate a building containing asbestos but failed to train the workers or provide them with respirators. The Occupational

Safety and Health Administration (OSHA) then cited the employer for 11 separate violations. The Occupational Safety and Health Review Commission, however, rejected OSHA's employee-by-employee approach, and decided that the standards required the employer to institute a single training program and to provide respirators to employees as a group. Thus, the commission ruled that only two violations had occurred. But OSHA subsequently amended its rules to state that the employer's failure to provide the personal protective equipment or workplace training constituted not one violation of the applicable health and safety standards, but separate violations for each employee who did not receive the equipment or training.

In its decision, the federal appeals court based in Washington, D.C., rejected the claim by trade associations, which petitioned for review of the new rule, that OSHA lacked the statutory authority to issue the amendments to the rules. In so doing, the appellate court let stand OSHA's revised rules allowing the issuance of separate citations for each employee affected by a single workplace violation under the Occupational Safety and Health Act.



House Committee Sets July 21 Meeting to Approve Expansive OSHA Bill

The House Education and Labor Committee has scheduled a July 21 meeting to consider approval of a bill (H.R. 5663) that would expand dramatically the powers of the Occupational Safety and Health Administration (OSHA).

The so-called markup hearing follows a July 13 committee hearing on the bill, major sections of which would amend the Mine Safety and Health Act (MHSA) in the aftermath of the West Virginia coal mine disaster earlier this year. However, the bill includes a series of amendments to the Occupational Safety and Health Act that would affect more than 7 million workplaces overseen by OSHA.

OSHA Administrator David Michaels urged Congress to pass the bill, testifying that a "catch-me-if-you-can" mindset (is) prevalent in corporate America" and that the Occupational Safety and Health Act "must be brought into the 21st century to ensure OSHA has the tools and authority to prevent safety and health violations." But Rep. John Kline, R-Minn., ranking member of the committee, urged that the committee "set aside (the legislation's) misplaced inclusion of OSHA reforms in a bill that ought to be squarely focused on the safety of miners underground."

One of the bill's provisions would authorize OSHA inspectors

to shut down operations or make immediate changes to workplace designs without employers having the ability to challenge the new immediate abatement measure prescribed by the inspectors. The bill also would give OSHA the authority to impose a civil penalty of \$7,000 per day on employers who fail to either shut down or comply immediately with an issued hazard citation.

In addition, the bill would create a new process for arbitrating claims from employees who believe they inappropriately have been discharged or discriminated against because they reported an injury or unsafe workplace condition, or participated in a proceeding related to safety and health. The Occupational Safety and Health Act currently covers employees who believe they have been discriminated against on the basis of reporting safety violations, and no specific evidence was presented during the hearing to demonstrate existing procedures are not working as intended.

Another section of the bill would impose felony criminal sanctions against "any company officer or director" for "knowing" violations of the Occupational Safety and Health Act. The bill provides no definition of "knowing." Nor does it provide any limitation or guidance on which "officers or directors" could face criminal charges.





Membership Matters

by Randall C. Gordon
V.P., Communications/
Gov't Relations

Time to Register for NGFA-PFI Joint Feed/Pet Food Conference ...Sept. 22-24, Chicago!...

Program and registration information now is available for the first-ever **Feed and Pet Food Joint Industries Conference** to be conducted by the NGFA and its strategic partner, Pet Food Institute, in September at the Marriott Chicago Magnificent Mile in downtown Chicago.

The event will begin with an evening welcome reception on Wednesday, Sept. 22, followed by a day-and-a-half of unique, business-relevant programming concluding at noon on Friday, Sept. 24.

An outstanding program has been assembled. Confirmed topics include: 1) the market outlook for ingredients for 2011, including supply, quality considerations and cost; 2) the Food and Drug Administration's initiatives on food and feed safety that will directly affect feed mills, pet food manufacturers and ingredient suppliers (including grains and oilseeds); 3) emerging trends in animal rights and their impact on animal agriculture production practices and pet ownership; 4) sustainability initiatives being driven by retailers and consumers, and how they will affect feed and pet food manufacturers and suppliers; 5) how to prepare for an FDA or state regulatory inspection; 6) applying hazard analysis and critical control point principles and preventive controls to feed and pet food manufacturing operations; 7) how to develop a food

and feed defense plan, which will be a requirement under food/feed safety legislation being considered by Congress; and 8) integrating feed sector approaches to product safety into the global food safety approach. In addition, breakout sessions will focus on plant management and operations, and challenges confronting manufacturers of organic and natural pet food and feed. A special import/export workshop for pet food and feed ingredients also is confirmed.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the special conference website!

NGFA-Grain Journal Safety, Health, Environmental Conference Convenes July 28-29!

Even though the early bird rate has flown the coop, there's still time to pre-register – and save money by doing so – for the first-ever NGFA/Grain Journal's first-ever Safety, Health and Environmental Quality Conference scheduled for **July 28-29** at the Hilton Omaha Hotel in Omaha, Neb.

NGFA members can save \$40 per person from the on-site registration fee by registering on or before **July 25**. Members receiving the *NGFA Newsletter* electronically may [click here](#) to join more than 150 of your industry colleagues who already have preregistered for this value-added conference!



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