



## NGFA Urges Schafer to Promptly Clarify Remarks Implying USDA Willing to Intervene to Finance Market Losses

In an Oct. 21 statement that was reported widely by the trade press and other media, the NGFA urged Secretary of Agriculture Edward T. Schafer to promptly clarify remarks attributed to him following an Oct. 17 address in Iowa implying that the U.S. Department of Agriculture was considering using rural development funds to compensate ethanol plants that sustained losses related to corn purchases during the volatile futures markets earlier this year.

Following his address to the World Food Prize symposium breakfast on Oct. 17, in Des Moines, Iowa, Schafer was quoted by multiple media outlets as saying that USDA is considering awarding up to \$25 million in rural development funds to ethanol plants that are “under pressure because they’ve been speculating on corn.” The NGFA stated that any such action runs severely counter to the free market system,

and that the lack of clarity in Schafer’s alleged remarks contributes to the impression that USDA is selectively intervening in the competitive marketplace.

### At-A-Glance

- Secretary of Agriculture Edward Schafer implies in interview with reporters that USDA prepared to provide rural development funds to compensate for corn hedging losses.
- NGFA urges Schafer to clarify USDA does not intend to intervene in competitive market.
- NGFA says doing otherwise would have harmful unintended consequences and create dangerous precedent for U.S. agriculture and free market system.

“Companies that purchase grain for use in animal feed, processing, ethanol production, exporting or for other purposes utilize different approaches in managing price risks for buying whole grains,” wrote NGFA President Kendell Keith. “There have been recent news reports of sizable losses on commodity hedging/trading across several industries. However, we know of no reasonable justification for USDA, or any other government agency, picking ‘winners’ and ‘losers’ in the market by selectively choosing which company losses in commodity markets should be cushioned by an ad hoc inflow of taxpayer money versus those that should assume responsibility for their own actions.

We think each company needs to be responsible for the risks it  
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## Reports of Suspicious Trading Spread to Other Midwestern States

In the Oct. 3 *NGFA E-Alert* and the ensuing Oct. 9 *NGFA Newsletter*, the NGFA alerted members to breaking reports received from an Affiliated State and Regional Grain and Feed Association that an entity or entities purporting to be producers were distributing notices to buyers in Iowa and Nebraska, and perhaps elsewhere, that they did not intend to deliver soybeans against existing contracts.

Subsequently, the NGFA has been made aware of additional reports of suspicious trading in Minnesota, South Dakota and Illinois. Further, it has become known that these activities allegedly mirror those that occurred in Kansas in 2007 involving contracted 2008-crop wheat. In each of these situations, the entity or entities are issuing written notices or contacting grain buyers by phone referencing NGFA Grain Trade Rule 28, Failure to Perform.

Law enforcement officials in each of these states – ranging from the state police to the attorneys general office – have been notified by the respective Affiliated State and Regional Grain and Feed Associations, and have launched investigations into the matter. The South Dakota Public Utilities Commission, which among other things regulates grain warehousing and merchandising in the state, published a warning on Oct. 21 to grain buyers in the state regarding what it called an “alleged scheme (that) involves grain sellers who enter into contracts without any intention of producing grain to fulfill the obligation.” The South Dakota Public Utilities Commission notice goes on to state: “The grain seller then notifies buyers he cannot deliver contracted grain. The grain seller asks the buyer to close the contract and submit to him any difference between the contract price and the current market price. Research into these incidents has indicated that the sellers may not be legitimate producers.” The South Dakota agency further stated: “...[I]t is ever important for all grain buyers to be aware and carefully evaluate requests to close a contract.”

The NGFA is in contact, and is collaborating closely, with affected State and Regional Grain and Feed Associations to jointly address this matter. NGFA members who may have received such notices are encouraged to contact Randy Gordon, vice president for communications and government relations, at the NGFA office ([rgordon@ngfa.org](mailto:rgordon@ngfa.org) or 202-289-0873). Buyers may wish to consult with competent legal counsel if they receive any notices they believe are suspicious.



## Member Views on NGFA and its Services

The NGFA recently conducted a survey of its members, something we do about every five years in an effort to measure any significant directional changes in member needs and member views on services that are most important to your business.

We know how much “fun” it is to voluntarily participate in surveys these days – such important inquiries seem to come from every conceivable business and organization. So we want to especially thank those who took a few minutes to let us know the NGFA services that you think are most valuable, as well as your suggestions for improvement. (By the way, the next time, we will try to do this general survey in years when there is no presidential election; we are still learning!)

Over the last 20 years, periodic membership surveys members have been pretty consistent in identifying the four major areas of NGFA services viewed as most important. This survey was no different. The NGFA’s role in representing the industry’s interest before federal agencies and the U.S. Congress always receives the highest ranking among Association services, and the results this year were no different. The other three areas viewed as high priority and ranked just slightly below government representation are: arbitration and trade rules; news and information; and meetings.

Maybe the most striking change in members’ views regarding the relative rankings of these four major areas of NGFA operations has been with trade rules and arbitration. A similar member survey conducted 20 years ago ranked NGFA arbitration as one of the top four member services; but of those four, it ranked last. The survey conducted in 2008 ranked arbitration as the second most important reason that companies belong to the NGFA. While this enhanced appreciation for access to NGFA arbitration service may be related to the volatile markets of 2008, the growing interest in arbitration by commercial businesses has been trending upward for several years. The NGFA’s reputation for operating one of the oldest and most widely respected commercial arbitration systems in the North America has assisted the Association in growing its membership at a rapid pace for the first six months of this membership year. The leaders that established the NGFA arbitration system more than 100 years ago probably had no idea of the wisdom of their vision for the industry!

In the 2008 survey, we received some good feedback

from members on the types of programming that would be desirable for the Country Elevator/Feed Industry Conference in December and the NGFA Convention in March. More than ever, managers are seeking hands-on information that can be applied directly in business operations.

Regarding meetings, we also inquired of members who attend the December Country Elevator/Feed Industry Conference which locations they prefer. The top four cities (in order of preference) were St. Louis, Chicago, Kansas City and Omaha. St. Louis and Kansas City have been regular rotating cities for that conference for several years. But Omaha and Chicago have not been, so we may have some new cities to put into more regular rotation. Not far down the list from these top four was Nashville – another city that we have not convened in since the mid-1980s.

Another focus of the survey was educational program offerings by the NGFA to its members. Within that topic, we asked if companies would utilize “long-distance learning” programs for training more or less than traditional seminars. Such training programs allow employees to go on-line to receive interactive instruction on a variety of topics. A fairly strong majority of respondents were favorable toward such programs, and this is a direction that the NGFA tentatively plans to emphasize for several topics in the future. We will be rolling out the Feed Quality Assurance Distance Learning module later this fall. If you have a feed manufacturing segment in your business, please take a look at what this program may offer in needed training for some of your employees on a very affordable basis.

Finally, we had to ask a question about the responsiveness of NGFA staff service. We approached this by asking whether NGFA staff members generally are accessible and responsive when members contact us, and if members are treated in a professional manner when seeking assistance. Roughly 80 percent of the responses said that NGFA staff members were “always” accessible; roughly 90 percent of responses said they were always treated in a professional manner. Out of 250-plus responses, we really did not receive any complaints about poor service. I don’t know that we deserve such high marks, but we appreciate the kind words and I assure you that we do make a sincere effort to serve member needs to the best of our ability.

Many thanks again for completing the survey. Your thoughts and ideas are important to us!



"Schafer" continued from page 1

takes in competing in commodity markets with other buyers and sellers."

The NGFA's statement urged Schafer to reconsider "this ill-conceived idea" and let the competitive marketplace "do its job without ad hoc government intervention and manipulation." Doing otherwise, the NGFA said, would have harmful unintended consequences and create an "exceedingly dangerous precedent" for U.S. agriculture and free market system. Further, given the widespread reporting of Schafer's alleged remarks, the NGFA asked that USDA promptly clarify the intent and "appropriate and inappropriate" use of the program to which he purportedly

was referring – USDA's Business and Industry Loan Guarantee Program.

Schafer and other USDA officials subsequently have conducted a number of different press interviews attempting to clarify his remarks and discuss the scope of the Business and Industry Loan Guarantee Program [see accompanying sidebar for details on the program]. But as of press time today (Oct. 23), USDA had not published an official clarification.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the complete text of the NGFA's letter to Schafer.

## USDA's Business and Industrial Loan Guarantee Program – What It Is and Isn't

The Business and Industry Loan Guarantee Program to which the U.S. Department of Agriculture (USDA) now confirms Secretary Schafer was alluding to – but which news counts did not identify – has existed in some form since 1972. It is a program under which loans extended by commercial lenders are guaranteed based upon a percentage of the loan amount. The ostensible purpose of the program is to create and maintain employment, and improve economic activity and the environment, in rural communities.

USDA officials emphasized it is not a "bailout" program – "the program does not guarantee marginal or substandard loans," one USDA official told the NGFA. Further, USDA funds are not extended to loan recipients; that is done by commercial lenders through normal lending practices. USDA said that applications involving loans in communities with populations of up to 50,000 potentially are eligible, with priority given to applicants in communities with populations of 25,000 or less.

Here are some details on the Business and Industry Loan Guarantee Program:

- ▶ **Who's Eligible:** Any legal entity, including individuals, public and private organizations, and federally recognized Indian tribal groups. There is no size limit. Local economic development organizations and investors also may be eligible.
- ▶ **Eligible Loan Purposes:** Loan guarantees potentially are available for loans involving: 1) business and industry acquisitions, construction, conversion, expansion, repair, modernization and development costs; 2) purchase of equipment, machinery or supplies; 3) startup costs and working capital; 4) processing and marketing facilities; 5) Pollution control and abatement; and 6) other purposes. [Emphasis added.] Businesses are required to be at least 51 percent owned and controlled by U.S. citizens. Among the types of loans that are **ineligible** for loan guarantees are: 1) lines of credit; 2) agricultural production that is not part of an integrated business involved in processing agricultural products; 3) projects likely to result in transfer of employment from one area to another; 4) projects involving the transfer or ownership of a business (unless the loan will prevent the

business from closing, prevent loss of jobs or create more jobs); and 5) charitable and educational institutions, religious organizations, fraternal organizations, etc.

- ▶ **Size of Program:** USDA officials indicate that its current congressional budget authority for loan guarantees is \$15.6 million, which is sufficient to provide backing for \$362 million in loans.
- ▶ **Maximum Loan Amount and Loan Guarantee Limits:** Loan guarantees are limited to: 1) 80 percent of loans up to \$5 million; 2) 70 percent of loans between \$5 million and \$10 million; and 3) 60 percent of loans \$10 million or more. A one-time 2 percent loan guarantee origination fee is charged by USDA against the lender, which may be passed on to the borrower. Annual renewal fees also are charged to maintain the enforceability of the guarantee as to the lender.
- ▶ **Borrower Equity Requirements:** A minimum of 10 percent tangible balance sheet equity, developed in accordance with general accepted accounting principles, is required at the time the loan note guarantee is issued for an existing business. A 20 percent tangible balance sheet equity is required for new businesses. In addition to the business adequacy of equity, the lender is required to prepare a written credit analysis addressing cash flow, collateral, history, management and current status of the applicable industry.
- ▶ **Collateral/Appraisals:** As a condition for obtaining a loan guarantee, the lender is required to conduct a written credit analysis of the potential borrower and obtain collateral from the potential borrower that "reasonably assures" the entire loan will be repaid. Personal and corporate guarantees are required.
- ▶ **Maximum Repayment Terms:** Seven years for working capital; 15 years (or useful life) for machinery and equipment; 30 years for real estate.

More on the USDA Business and Industry Loan Guarantee Program, including information on how to submit an application, is available by [clicking here](#).



## USDA Study Finds Higher *E. Coli* in Cattle Fed 40% Distillers Grains

### ...Other Studies Find No Such Linkage...

A recently completed U.S. Department of Agriculture (USDA) research study found a significant increase of *E. coli* O157:H7 bacteria in cattle that were fed a diet containing a high percentage of distillers grains.

USDA's Agricultural Research Service (ARS) conducted the study involving 600 steers at its meat animal research center in Clay Center, Neb. Half of the steers were fed corn, while the other half ate feed that contained 40 percent distillers grains. Researchers tested the fecal matter from the animals of the two groups for the presence of *E. coli* O157:H7. The study found *E. coli* O157:H7 in almost 15 percent of the samples obtained from the distillers grain group. In contrast, 1.5 percent of the samples from the corn-fed group tested positive for the bacteria.

Scientists within USDA and industry will conduct a peer review of the ARS research prior to the study being officially published in a scientific journal.

The ARS findings are the latest in a series of conflicting results from research projects that have attempted to find a correlation between feeding distillers grains and the prevalence of *E. coli* O157:H7 in cattle.

Kansas State University has conducted four such studies, each of which compared diets consisting of steam-flaked corn with or without distillers grains representing 25 percent of the total dry matter content of the ration. In results from the first three experiments published in 2007, K-State researchers concluded that feeding distillers grains increased the prevalence

of *E. coli* O157:H7. However, K-State's most recent study in 2008 – a major project consisting of 700 hundred cattle fed for 150 days – showed no significant relationship between feeding distillers grain and the occurrence of *E. coli* O157:H7.

Meanwhile, researchers at the University of Nebraska-Lincoln have studied the impact of adding distillers grains products to dry-rolled corn diets fed to cattle. The results of this experiment, published in 2007, indicated that diets containing 10, 20 and 30 percent distillers grains decreased the prevalence of *E. coli* O157:H7 shed from cattle. At 40 and 50 percent distillers grains feeding levels, *E. coli* O157:H7 shedding numerically increased compared to the control group, but the increase was not statistically significant.

Another major study to evaluate this issue is underway. In August, USDA awarded a \$939,220 grant to a group of K-State researchers to further study the potential link between feeding distillers grains and the emergence of *E. coli* O157:H7 in cattle, as well as to identify strategies designed to reduce the presence of the naturally occurring pathogen in animals. Within the grant project, researchers will examine ways to reduce the amount of *E. coli* O157:H7 present in cattle, such as by administering a probiotic (an experimental vaccine) and by feeding brown seaweed (a plant shown to have a positive effect in reducing *E. coli* O157:H7 prevalence in cattle). The researchers also will study whether feeding varied amounts of distillers grains, or making it dry or wet, has an impact on the prevalence of *E. coli* O157:H7 occurring in cattle.

## Texas Considers Changes in Regulating Feed Ingredients, Aflatoxin

The Office of the Texas State Chemist (OTSC) – the office that administers and enforces the state's commercial feed laws – currently is considering regulatory changes that could have dramatic impacts on the labeling of a wide array of feed ingredients and how grain containing aflatoxin may be distributed lawfully within the Texas and to other countries.

At issue are two *Feed Industry Memorandums* proposed by the OTSC that would establish new regulations for grain and feed companies conducting business in Texas. The first memorandum would mandate that the labels of most feed ingredients containing sulfur at levels of 0.5 percent or more state the maximum sulfur content in the ingredient. The second memorandum would provide the OTSC the authority to place a stop-sale order on any grain containing aflatoxin in excess of 20 parts per

billion (p.p.b.) intended for export at Texas grain elevator facilities.

**Maximum Sulfur Guarantees:** The OTSC-proposed policy for sulfur guarantees would require that: 1) the label of feed ingredients containing 0.5 percent or more sulfur state the maximum sulfur in the product; and 2) the sulfur guarantee be stated in terms of percentage. Exempt from the policy would be ingredients prohibited from being fed to ruminants.

As justification for the policy, the OTSC states within the proposed memorandum that the growth of the biofuels industry has increased the amount of distillers grains used by feed manufacturers and that many of these products contain high sulfur levels. The OTSC further states that the proposed sulfur

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policy is needed to address the alleged increasing risk presented to cattle and other ruminants associated with feed ingredients containing high levels of sulfur, since the presence of sulfur in cattle rations exceeding 0.4 percent dry matter may result in polioencephalomalacia (PEM) – a disease of the central nervous system.

The NGFA joined with the Texas Grain and Feed Association to oppose the proposed sulfur policy for several reasons, including:

- ◆ Mandating a maximum sulfur guarantee for those feed ingredients that contain 0.5 percent sulfur or more that are fed to ruminants does not enhance the ability of feed manufacturers, livestock producers or nutritionists to determine the total sulfur content in an animal's diet. When balancing sulfur in livestock diets, producers and nutritionists should consider actual sulfur content of all feed ingredients, including water, when determining overall sulfur intake.
- ◆ Feed regulations in all U.S. states – except South Dakota, whose water often is found to have an elevated sulfur content – currently do not require a maximum sulfur guarantee on feed ingredient labels. If Texas were to adopt such a requirement, it would be inconsistent with virtually all other states and make it more difficult and costly for feed companies operating in multiple states to distribute feed ingredients within Texas.
- ◆ The proposed memorandum potentially would encompass a large number of feed ingredients, including feathermeal, cane molasses, distillers grains, fish meal, canola meal, corn gluten meal, a variety of mineral products and others. The industry's cost to comply with the proposed policy would be significant, while the proposal's benefits would be questionable.
- ◆ Texas law by reference adopts the Association of American Feed Control Officials' (AAFCO) feed definitions and feed terms. AAFCO defines the term "feed ingredient" as "each of the constituent materials making up a commercial feed." Based upon this definition, it is possible that the OTSC could apply the proposed regulation to the labels of feed premixes and other compound manufactured feed products used during the production of animal feeds, thereby further expanding the regulation's scope.

**Grain Containing Aflatoxin:** The OTSC's proposed policy for aflatoxin in grain would provide the agency with the authority to place a stop-sale order on grain containing aflatoxin in excess of 20 p.p.b. intended for export at Texas grain elevator facilities. The draft policy would allow such stop-sale orders to be rescinded and the grain released for export or interstate commerce only if approved by the regulatory authority in the export country and/or the U.S. Food and Drug Administration (FDA).

Alternatively, the policy would allow release of the aflatoxin-contaminated grain for use in Texas for feed under provisions outlined by the OTSC.

The NGFA, Texas Grain and Feed Association and other industry members opposed the proposed aflatoxin policy because:

- ◆ Under such a broad policy, the OTSC could decide that grain in any elevator located in Texas potentially could be directed to export channels. Therefore, the possibility exists under the policy that the OTSC could issue a stop-sale order for any grain commercially stored in the state that is found to contain aflatoxin at levels exceeding 20 p.p.b., even if intended for approved feed uses. Such a practice would cause extreme disruptions within the grain trade and unjustified economic hardships. Further, this potentially expansive stop-sale authority would contradict existing OTSC policy that allows grain containing aflatoxin at levels exceeding 20 p.p.b. to be directed to approved animal feed uses, and does not subject the elevator to stop-sale orders.
- ◆ Provisions of the proposed policy potentially violate the Commerce Clause of the U.S. Constitution by interjecting the OTSC into interstate and international commerce roles that are properly the authority of FDA. Under section 801(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), corn intended for export that contains aflatoxin at levels greater than those specified in FDA's action levels is permitted to be shipped in international commerce so long as the shipment meets each of the following conditions:
  1. It is in accordance with the specifications of the foreign buyer;
  2. It does not conflict with the laws of the importing country;
  3. It is labeled as intended for export; and
  4. It is not subsequently diverted or offered for sale in domestic commerce.
- ◆ Under federal law, it is FDA – not the OTSC or other state authorities – that has jurisdiction to determine whether exporters are in compliance with the export exception provision of the FFDCA. The OTSC – and indeed other states – do not have the legal authority to interject themselves into the role of determining whether these conditions have been met; that is a role that is the exclusive purview of FDA.
- ◆ Chapter 3, section 77 (c) of the U.S. Grain Standards Act states that, "The secretary (of agriculture) [USDA] is autho-

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## "Texas Regulations" continued from page 5

rized and directed to require that all corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin contamination, unless the contract for export between the buyer and seller stipulates that aflatoxin testing shall not be conducted."

**Next Steps:** During a recent meeting of the OTSC Advisory Committee, the industry expressed major concerns about both of the proposed memorandums. However, the

two policies remain under consideration by the OTSC, with the proposed sulfur policy likely to be published in the **Texas Register** – the journal of state agency regulations for Texas.

The NGFA will continue to be engaged actively on these issues. More information is available by contacting NGFA Director of Feed Services Dave Fairfield at [dfairfield@ngfa.org](mailto:dfairfield@ngfa.org), or at 712-243-4035.

## FDA to Open First Foreign Offices by End of 2008

The "reach" of the U.S. Food and Drug Administration (FDA) is scheduled to expand to several foreign countries this year, with the opening of the first foreign offices – in China, India, Europe and Latin America – under its "beyond our borders" initiative.

In an Oct. 16 announcement, Health and Human Services (HHS) Secretary Michael O. Leavitt said the first FDA overseas office will be in Beijing, China, with additional staff to be added in Shanghai and Guangzhou in 2009 – totaling eight U.S. nationals to be posted in China. Leavitt plans to travel to China in November to meet with Chinese health officials to review "mutual efforts to ensure the safety of food and medical products..., particularly imported goods." FDA also plans to establish overseas offices in India, the first scheduled this year in New Delhi with another to follow in 2009. FDA said it had received approval to establish the office from the Chinese government, and was in the process of securing India's formal approval. In both China and India, FDA said its activities would focus on providing technical advice, conducting additional inspections and working with foreign government agencies and private sector entities to develop third-party certification programs.

FDA said it also planned to open offices in Europe and Latin America before the end of 2008, with a fifth office in the Middle East to follow during the first half of 2009.

In a related development, U.S. officials also currently are negotiating memoranda of understanding for such offices with Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama to "work together on product safety." These efforts would include "information-sharing on (the countries') respective regulatory systems, and joint workshops and training" on food and medical product safety. The United States and Latin

countries "also will...find opportunities for joint training for food-borne illnesses and the oversight of food traded internationally," HHS said.

In making the announcement, HHS also renewed its call on Congress to adopt legislation granting FDA the power to: 1) accredit "highly qualified third parties" to evaluate compliance with U.S. food and medical safety standards; 2) require certification of designated "high-risk" products as an additional requirement for import into the United States; 3) reject imports from foreign firms that delay, limit or deny access of FDA inspectors to their facilities; and 4) conduct mandatory recalls of food and feed products when firms refuse to do so voluntarily.



## Calendar

**Nov. 5, 2008:** Joint Agroterrorism and Facility Security Committee Task Force  
Hilton Garden Inn O'Hare, Chicago, Ill.

**Dec. 7, 2008:** Country Elevator Committee  
Marriott Renaissance Grand Hotel, St. Louis, Mo.

**Dec. 7-9, 2008:** Country Elevator and Feed Industry Conference & Trade Show  
Marriott Renaissance Grand Hotel, St. Louis, Mo.

**Dec. 9, 2008:** Membership & Marketing Committee  
Marriott Renaissance Grand Hotel, St. Louis, Mo.

**Dec. 9, 2008:** Joint Agroterrorism/Facility Security Committee  
Marriott Renaissance Grand Hotel, St. Louis, Mo.

**Dec. 17, 2008:** NGFA/GEAPS Joint Grain, Grades and Weights Committee  
Kansas City Airport Hilton Hotel, Kansas City, Mo.

**Mar. 29-31, 2009:** 113th Annual Convention  
Westin Swan Hotel, Walt Disney World, Orlando, Fla.





## Seed Trade Association Suspends 'Market Choices' Biotech Program

The American Seed Trade Association (ASTA) announced Oct. 20 it is suspending the grain marketing and certification program known as "Market Choices®" because of the European Union's (EU) continued inability to agree on a tolerance for imports of U.S. commodity shipments containing trace levels of biotech-enhanced traits.

ASTA said its decision to phase out the Market Choices® certification mark and program by the fall of 2009 comes after trade of U.S. corn, corn gluten feed and distillers grains with the EU has "essentially stopped" because of the lack of timely regulatory approvals for corn biotech traits in Europe. "A zero tolerance for (biotech) traits not fully approved in the EU has made importation of U.S. corn and derived products virtually impossible since 2007," ASTA noted in its statement.

The Market Choices® certification mark was established in 2002 to assist growers and grain handlers in identifying biotech-enhanced corn hybrids that have been fully authorized for food and feed use in the United States, Canada and Japan, but not by the EU. The program was designed to allow growers and grain handlers to identify and segregate these hybrids to divert them from the EU export market.

European agricultural industry representatives repeatedly have urged the European Commission (EC) to establish a tolerance for biotechnology-enhanced traits not yet approved in Europe but approved in the country of origin. But the EC and EU member states failed to do so during the most recent meeting of

the Standing Committee on the Food Chain and Animal Health at the end of September.

ASTA further stated that even if such a tolerance were granted by the EU, there is "no indication" that it would be at a commercially viable levels to permit a resumption of U.S. exports of corn and corn-based products to Europe. "Most importantly, the EU regulatory system continues to be unpredictable with respect to the review and approval of biotechnology products, which negatively impacts Europe's feed and livestock industries, growers, and ultimately consumers," said ASTA President and Chief Executive Officer Andy LaVigne.

ASTA said it had been working with its members and other stakeholders to evaluate the future of the Market Choices® certification mark over the past year before making the decision to phase it out. But LaVigne said the seed industry would "continue to assist stakeholders" by providing information regarding regulatory approval of biotech-enhanced events in U.S. export markets to growers through the National Corn Growers Association's "Know Before You Grow" program.

LaVigne also noted that if the EC eventually adopts a commercially viable tolerance or demonstrates that it has a functioning biotech-approval regulatory system, ASTA would evaluate reestablishing the use of the Market Choices® certification mark and the related program with any appropriate adjustments needed to make the program effective.



## NGFA Reviewing Modified Compelled Loadout Concept for CBOT Wheat

The NGFA next week will continue to consider a modified compelled loadout concept that could be submitted to the CME Group as a way to enhance convergence in the CBOT wheat futures contract.

Following development of the concept by a special task force comprised of representatives from the Risk Management Committee, Country Elevator Committee and others, the Risk Management Committee conducted an Oct. 14 conference call to review it. The concept, which contains a number of modifications to basic compelled loadout, is designed to maintain balance between those with long and short positions in futures markets, and not expose any participant to overly disadvantageous risk levels. It received consensus support from the committee.

Following the Risk Management Committee's action, the NGFA Board of Directors was asked to review the package and submit substantive issues for consideration. Several such matters were raised by NGFA Board members, which will be the subject of a second conference call of the Risk Management Committee tentatively scheduled for Oct. 31. That call, in which the CME Group also will be invited to participate and provide input, is intended to facilitate the NGFA's recommendations to the CME Group on how modified compelled loadout might best be structured if adopted as part of the CBOT wheat contract.

The resulting recommendations to the CME Group will be reported to the NGFA membership shortly thereafter.



## Shippers Submit Opening Brief in Appellate Court Case on Effective Rail Rate Remedies

On Oct. 21, the NGFA and an array of shipper petitioners filed an opening brief in their court challenge of the federal Surface Transportation Board's (STB) decision regarding procedures for handling small rail rate cases.

In addition to the NGFA, petitioners in this suit before the U.S. Court of Appeals for the District of Columbia Circuit include The National Industrial Transportation League, American Chemistry Council, The Fertilizer Institute, Consumers United for Rail Equity, Alliance for Rail Competition, National Association of Wheat Growers, North Dakota Grain Dealers Association, and numerous other associations whose members rely upon rail transportation. The shippers' petition challenges certain aspects of the STB's decision to establish so-called "simplified" rail rate guidelines for small rail rate cases [*STB Ex Parte No. 646 (Sub-No. 1)*].

**A 20-Plus Year Tortured Odyssey for Rate Relief:** As detailed in the shippers' petition, the justification and mandate for an effective recourse for reasonable rail rates has a long and compelling history. Yet for a vast number of shippers today, the NGFA and other petitioners argue, there still is no effective remedy for unreasonable rates.

Federal law requires that rates charged to captive shippers by market-dominant railroads "must be reasonable." In 1985, the Interstate Commerce Commission (ICC) adopted principles for determining maximum reasonable rail rates based upon a Full Stand-Alone Cost (SAC) standard. Because Full-SAC was a very costly, complex and time-consuming mechanism – only suitable for high-volume, unit train movements – shippers of commodities that moved in smaller volumes or between multiple and changing points were left without an effective remedy against unreasonably high rates. Therefore, the ICC itself recognized that the law was not being satisfied, and in 1986 the agency initiated proceedings to consider simplified alternative procedures for such cases.

**After a decade of inaction by the ICC,** Congress intervened through the ICC Termination Act and ordered the STB to complete proceedings to adopt within one year a "simplified and expedited" alternative to Full-SAC. In response, the STB adopted a "Three-Benchmark" standard in 1996. "But," as stated in the shippers' petition, "the new standard lacked sufficient clarity and definitiveness for shippers, who found it

impossible to determine whether they were eligible even to use the simplified standard or what level of relief they reasonably could expect to obtain...to value their case. Consequently, the 1996 Three-Benchmark standard languished for nearly another decade."

### At-A-Glance

- NGFA and other shippers, railroads file briefs in appellate court challenging STB's procedures for handling small rail rate cases.
- Shippers' brief notes ICC initially began rulemaking 22 years ago, yet meaningful opportunities to challenge unreasonable rates still not available to vast majority of shippers.
- Railroads argue new STB procedures provide too much opportunity for shippers to challenge rates.
- Appeals court decision not likely until fall 2009, at earliest.

Upon the repeated urging of the NGFA and other shipper groups for an effective rate-relief mechanism, the STB began conducting hearings on the issue in 2003. Finally, in 2006, the STB issued a proposed rulemaking, which culminated in the new rules that are the subject of the shippers' current petition before the appellate court.

**Shippers Argue Relief Caps Inadequate:** The shippers' petition is based upon certain aspects of the STB's decision being contrary

to law, erroneous, arbitrary and capricious, and unsupported by substantial evidence submitted in the proceeding. In particular, the petitioners urge that the levels of the relief caps adopted by the STB under the newest regime still provide for an inadequate alternative to Full-SAC when a Full-SAC is too costly given the value of the case. The petitioners state that, by considering only "maximum risk factors" – not "minimum risk factors" – the STB does not adequately relate the cost-effectiveness of the potential rate relief available to the value of the shipper's case. The petitioners also challenge the economic and legal justification and rationale of the STB's decision based upon the agency's own previously established precedent.

**Railroads Object:** The Association of American Railroads and certain other Class I railroads filed a separate petition in the same court challenging the STB's decision for allegedly providing too much opportunity for shippers to file rate challenges with the agency.

**What's Next:** The shippers' and carriers' petitions, and motions by the shippers and carriers to intervene in each others' cases, were granted and consolidated by the appellate court into a single case. Under the schedule established by the appellate court, the STB has until Dec. 5 to submit a reply brief responding to the briefs filed this week by both the shippers and carriers. Shippers and carriers then will have opportunities to file additional briefs, including in their capacity as intervenors in each others' cases, with all briefing to be concluded in late January under the court's schedule.

Oral arguments in the case are not expected to occur before late spring, with a decision unlikely until fall 2009.





## Coalition to Urge New Congress to Change Federal Truck Regulations

Three major organizations – the American Trucking Associations (ATA), the National Association of Manufacturers (NAM) and Americans for Safe and Efficient Transportation (ASET) – are developing strategies to urge the next Congress to increase federal truck size and weight limits as part of the reauthorization of the highway bill.

The proposal would increase the weight limits on trucks from 80,000 pounds to 97,000 pounds with a 6<sup>th</sup> axle.

In addition to the proposed weight limit changes, the organizations are recommending several more reforms, including:

- ▶ Allow Western states to harmonize longer-combination vehicle laws and regulations.
- ▶ Uncap bridge formula B for 5-axle combination vehicles.
- ▶ Allow limited expansion of LCVs beyond Western states.
- ▶ Standardize 53-foot trailer lengths.
- ▶ Allow states to authorize double 33-foot trailers.

## Tech Tidbits

**GIPSA to Retain Existing Soybean Standards:** The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration in the Oct. 21 *Federal Register* formally withdrew its advance notice of proposed rulemaking, originally published on May 1, 2007, that solicited public comment on whether to amend the official U.S. grain standards for soybeans. The agency had announced July 15 that it would withdraw the proposal.

The major issue raised by GIPSA in the 2007 proposal was whether the foreign material limits in the official U.S. soybean standards should be tightened. The agency said it received 17 comments from producers, grain handlers, international associations and companies, and academia. The NGFA, North American Export Grain Association, and the Grain Elevator and Processing Society submitted a joint statement strongly supporting the existing soybean standards, without change, and adamantly opposed a further tightening of foreign material grade limits.

Because there was no consensus on potential changes to the standards among comments submitted, GIPSA said it was withdrawing the rulemaking and taking "no action at this time." However, the agency maintained that soybean foreign material is "one issue that merits further review..." Since there was no consensus on that issue – and conflicting information and data submitted by those commenting – the agency said it would collect additional data about the quality of U.S. soybeans. In particular, the agency said it would use data collected under its ongoing five-year farmgate assessment project before considering a further rulemaking on soybean foreign material grading limits. "The assessment will provide first-point-of-sale data related to soybean foreign material content and composition

- ▶ Provide a 10 percent axle and gross weight tolerance for auto transporters.

The groups maintain that the proposed changes would increase transport productivity, increase highway safety and lessen traffic congestion by reducing the amount of truck traffic, decrease emissions by reducing fuel consumption and increase funding for infrastructure improvement.

Both the Teamsters and independent truck drivers have expressed opposition to the reform proposals. The Association of American Railroads also opposes the plan.

The NGFA will be reviewing this issue with several of its committees, including the Country Elevator Committee, Feed Legislative and Regulatory Affairs Committee, and Rail Shipper/Receiver Committee. Input from members is encouraged! Please contact NGFA Director of Regulatory Affairs Jess McCluer at [jmcccluer@ngfa.org](mailto:jmcccluer@ngfa.org), or at 202-289-0873, ext. 21.

across the United States, providing a foreign material range that can be used to formulate new foreign material grade limits, if appropriate," GIPSA noted.

**GIPSA Defers Action on Setting Standards for Ethanol Co-Products:** GIPSA in the Oct. 21 *Federal Register* also formally withdrew its advance notice of proposed rulemaking concerning whether it should establish official standards for co-products of ethanol production, such as distillers grains, as well as standardize the testing of such co-products. Again, the agency had announced July 15 that it would withdraw the proposal. GIPSA had published a notice seeking comments on these issues on July 20, 2007.

GIPSA said it received 29 comments from individuals and organizations across the marketing chain. The comments submitted – including those from the NGFA and other grain- and feed-based groups – strongly opposed GIPSA revising the existing definitions for ethanol co-products, establishing standards for such coproducts or offering standardized tests for grain used for ethanol production and resulting co-products. GIPSA said the "overriding theme" of comments submitted was that the "perceived needs of the ethanol industry will be met best by the various industry participants." The agency also noted a recurring comment from the NGFA and other groups that the ethanol industry is in its infancy, and that GIPSA's involvement in standardizing the testing of the inputs and outputs of ethanol production likely would hinder – not enhance – its progress. The agency said it would "continue to monitor developments...and will support the industry, as appropriate, in its efforts to successfully market ethanol co-products."





# Membership Matters

by Todd Kemp  
Director of Marketing/Treasurer

## Exhibitor Space Still Available at NGFA Trade Show

The NGFA Trade Show will occur on Dec. 7-8 at the Marriott Renaissance Grand Hotel in St. Louis, side-by-side with the NGFA's extremely popular and well-attended Country Elevator/Feed Industry Conference, slated for Dec. 7-9.

A **very** limited number of exhibitor spaces still are available – potential exhibitors may review show information and registration materials at [www.ngfa.org](http://www.ngfa.org). Registrations should be FAXed or e-mailed to Todd Kemp immediately at 202-289-5388 or [tkemp@ngfa.org](mailto:tkemp@ngfa.org).

The NGFA show is an excellent annual opportunity to showcase goods and services to the grain, feed and processing industry. More than 650 people are expected to attend this year's conference and show. Priced at only \$800 for NGFA-member firms, the show is an unmatched value in terms of reaching a national audience of targeted customers.

Don't wait, sign up today!

## Sponsorship Opportunities at St. Louis Conference

A second outstanding marketing opportunity – though sometimes overlooked – also is available at the St. Louis conference in December.

A number of sponsorship opportunities for various events and items still are available. Sponsors receive prime-time recognition in three ways in front of a large audience of qualified potential customers: with signage during events, thanks from the podium and in the printed conference program.

Examples of sponsor opportunities still available are:

- ▶ Co-sponsorship of beer and snacks in the trade show on Sunday afternoon, Dec. 7.

- ▶ Co-sponsorship of the large and lavish Welcome Reception on Sunday evening, Dec. 7.
- ▶ Co-sponsorship of the Coffee/Dessert Island during the Dec. 8 Monday lunch.
- ▶ Sole sponsorship of a Coffee Break on Tuesday morning, Dec. 9.

Sponsorships don't have to cost a lot, and they are an excellent way to build name recognition and show your support of the NGFA and this popular, business-focused conference. To request a roster of available opportunities, contact Todd Kemp at [tkemp@ngfa.org](mailto:tkemp@ngfa.org) or (202) 289-0873.



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