



NGFA

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Election Outcomes Suggest Changes to Key Congressional Committees

Even though Democrats picked up additional seats in both chambers, this week's election results are unlikely to bring wholesale changes to congressional committees important to the grain, feed and processing industry.

The most recent tallies put Democratic gains at six seats in the Senate – giving them a 55-39 majority, with two Independents. That's short of the 60 votes needed in the Senate to shut off a filibuster and bring legislation to a vote. In the House, the Democrats thus far have gained 20 seats, giving them a 254-173 majority. The outcomes of several races still are undecided.

Here's a look at the elections' impact on several key congressional committees:

Senate Ag Committee: One of the three Democratic targets on the Senate Agriculture Committee – Senate Minority Leader Mitch McConnell, R-Ky. – withstood challenge and was re-elected. The two others – ranking member Sen. Saxby Chambliss, R-Ga., and Sen. Norm Coleman, R-Minn., are in closely contested

races. Coleman was leading his Democratic opponent, Al Franken, by 477 votes, triggering an automatic recount under the state's election law that could delay the outcome until December. Meanwhile, Chambliss held a more commanding 114,000 vote lead but still may face a Dec. 2 runoff under Georgia's election law if he falls shy of garnering more than 50 percent of the vote. Currently, Chambliss has 49.9 percent after being hampered by a Libertarian candidate who received 3.4 percent.

House Agriculture Committee: While the Senate Agriculture Committee may emerge largely intact, the same can't be said for the House, where three incumbent Democrats and four Republicans were ousted by voters. The Democratic losses included three first-term members from Republican-leaning congressional districts who were elected two years ago largely on the shortcomings or poor campaigns of their opponents: Rep. Nancy Boyda, D-Kan., was ousted by Kansas State Treasurer Lynn Jenkins, while Rep. Nick Lampson, D-Texas, lost to Pete Olson, former chief of staff to Sen. John Cornyn, R-Texas. Scandal-plagued Rep. Tim Mahoney, D-Fla., was defeated by lawyer Tom

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NGFA Submits Compelled Loadout Concept to CME Group

The NGFA this week submitted a “modified” compelled loadout concept to the CME Group for consideration as “one potential approach” to enhance performance of the CBOT wheat futures contract.

Under the concept, a new tool – “demand certificates” – would be created that those holding futures market positions could issue to compel physical load out of the underlying commodity as a means of satisfying their outstanding futures contract obligations. The NGFA said it believed such a tool is one mechanism that could encourage the convergence of futures and cash prices during the delivery period as the expiration date of CBOT wheat futures contracts near.

“Convergence of cash and futures (prices) has not occurred consistently in recent CBOT wheat futures contract expirations, limiting the contract's usefulness for price discovery and risk management on which traditional market participants have relied,” wrote NGFA Risk Management Committee Chairman Rod Clark, vice president of CGB Diversified Services, Mt. Vernon, Ind., in conveying the concept to CME Group Chief Executive Officer Craig S. Donohue. “The lack of performance has driven a

number of traditional CBOT customers away from the market in search of alternative pricing and hedging mechanisms.”

The NGFA for the past year and a half has cited the infusion into agricultural commodity futures markets of large amounts of investment capital as a major contributor to futures price volatility and market disruption. Such investment capital interests typically take “long-only” futures market positions unrelated to supply/demand fundamentals, which means they purchase futures or options contracts but do not offset those purchases with a cash market position in the underlying commodity.

The NGFA said the modified compelled loadout concept represented a “balanced approach” that could help reestablish a more predictable relationship between cash and futures prices, while “not unduly disadvantaging” those holding either “long” or “short” futures market positions.

In conveying the modified compelled loadout concept, the NGFA reiterated that it did not object to other changes to the

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CBOT wheat futures contract proposed in September by the CME Group. Those CME Group proposals, action on which is pending at the Commodity Futures Trading Commission, involve establishing seasonal storage rates at grain elevators designated as delivery locations for CBOT wheat futures contracts; expanding the number of grain elevator delivery locations for CBOT wheat at market-based differentials; and setting tighter limits on deoxynivalenol (vomitoxin) in wheat eligible for delivery to satisfy outstanding futures contracts.¹

But the NGFA said it had "continuing concerns" that these changes alone will not achieve the degree of convergence that traditional market users require.

The NGFA-developed modified compelled loadout concept contains the following elements:

- ▶ Adopt demand certificates (compelled loadout) for all CBOT wheat futures contract delivery locations, both existing locations and new locations proposed in September by the CME Group.
- ▶ When certificates are registered, the issuing warehouse would be required to declare which certificates are to be regular shipping certificates (as now utilized by the CME Group) and which are to be demand certificates. An issuer of certificates would have a 24-hour period after the last trading day of each wheat futures contract month (after the contract expires, but before 8 p.m. the following business day) to declare whether the taker of delivery – the entity holding a "long" futures market position – must load out the underlying commodity. Demand certificates could not be re-tendered for delivery against a subsequent futures contract month; instead, loadout must occur. Regular shipping certificates for which loadout is not compelled by the issuer could be re-tendered by the taker against a subsequent contract month, as currently permitted.
- ▶ The maximum quantity for which loadout could be compelled would be 15 percent of each facility's registered loadout capacity. The 15-percent limit would be specific to each warehouse location, not company-wide. The NGFA said the proposed quantity limit is designed to help ensure that the marketplace will be able to absorb supplies in the unlikely event maximum deliveries are triggered.
- ▶ Loadout is to occur within 60 days, during which time storage charges would be paid by the taker of delivery.
- ▶ If loadout did not occur within 60 days, accelerated storage charges would be paid by the taker of delivery. Those increased storage charges would amount to an additional 1 cent per bushel per day the first month following the 60-day loadout period, and would be doubled each subsequent month that loadout was not accomplished (i.e., 2 cents per bushel per day in the second month, etc.).
- ▶ Milling quality specifications would be applicable to deliveries made under modified compelled loadout as follows: 1) Maximum of 10 insect-damaged kernels (IDK) in 100 grams; 2) maximum of 1 percent dockage; and 3) maximum 2 parts per million (p.p.m.) vomitoxin. The NGFA noted that these specifications would provide a higher quality, more merchantable product for the taker of delivery when compelled to load out. They would be applicable only when the issuer of the demand certificate compelled loadout; CBOT wheat futures contract quality specifications still would apply when the taker initiates loadout.

"Some additional changes to (this concept) may be desirable, and other solutions to achieve convergence also may exist," the NGFA said, such as a world wheat index futures contract, an all-classes U.S. wheat futures contract or some other index product.

The NGFA's modified compelled loadout concept was developed by a special task force consisting of members of its Risk Management Committee, Country Elevator Committee and other selected members. It subsequently was reviewed and approved by the NGFA's full Risk Management Committee, and was reviewed by the NGFA Board of Directors before being submitted to the CME Group.

The proposal now is expected to undergo comprehensive review and analysis by the CME Group. The NGFA said it will continue consulting with the CME Group during this review period to determine whether additional modifications may be advisable prior to possible consideration by the exchange.

¹ The CME Group-proposed changes to its CBOT wheat futures contracts include the following:

- Implement seasonal storage rates at grain warehouses eligible for delivery of wheat to satisfy expiring CBOT wheat futures contracts. Under this proposal, storage rates would increase to 8 cents per bushel per month for July through November, before reverting to the current 5 cents per bushel per month for the remainder of the year.
- Add grain warehouse delivery capacity at market-based differentials. The changes would involve adding: 1) northwest Ohio shuttle-loading warehouses, with deliveries subject to a 20-cent-per-bushel discount to Chicago/Toledo; 2) Ohio River warehouse locations from Cincinnati to the Mississippi River, with deliveries at par to Chicago/Toledo; and 3) Mississippi River locations south of St. Louis, Mo., to Memphis, Tenn., with deliveries at a 20-cent premium to Chicago/Toledo.
- Tighten the limit on deoxynivalenol (vomitoxin) for wheat eligible for delivery to 2 parts per million (p.p.m.), which would take effect with the September 2011 contract. Wheat with 3 p.p.m. and 4 p.p.m. deoxynivalenol would continue to be eligible for delivery, but at discounts of 12 and 24 cents per bushel, respectively.



"Congressional Committees" continued from page 1

Rooney. Republican Ag Committee losses included Ranking Member of the Livestock, Dairy and Poultry Subcommittee Robin Hayes, R-N.C., who lost in a rematch to Larry Kissell. Rep. Marilyn Musgrave, R-Colo., lost to Betty Markey, former staff person for Sen. Ken Salazar, D-Colo. First-term Rep. Tim Walburg, R-Mich., was defeated in a close race by State Sen. Mark Schauer. And Rep. Randy Kuhl, R-N.Y., lost another close race to Eric Massa, a retired Naval commander.

Transportation Committees: Former Senate Commerce Committee Ranking Member Sen. Ted Stevens, R-Alaska, is locked in a tight race to retain his Senate seat in the aftermath of his recent felony conviction for misreporting \$250,000 in gifts on his disclosure forms. While holding a 1 percent lead, Stevens may face a steep challenge to be seated in the next Congress, where senators may press action against him that would force him out of office. That would leave Republican Gov. and Republican Vice Presidential candidate Sarah Palin in position to appoint a replacement. Since being indicted, Stevens has been replaced as ranking member on the key Senate committee by Sen. Kay Bailey Hutchison, R-Texas, who likely will continue in that role. Meanwhile, current Commerce Committee Chairman Sen. Daniel Inouye, D-Hawaii, has been rumored to potentially assume the chairmanship of the Senate Appropriations Committee, replacing the ailing Sen. Robert Byrd, D-W.Va. If that occurs, Sen. Jay Rockefeller, D-W.Va., would be next in line to chair the committee. The Commerce Committee's Surface Transportation Subcommittee will see a change given the narrow election loss of Ranking Member Sen. Gordon Smith, R-Ore.

As for the House Transportation and Infrastructure Committee and Rail and Waterborne Subcommittees, the election resulted in little change. Transportation and Infrastructure Committee Chairman Rep. James Oberstar, D-Minn., was among those handily winning reelection. Committee assignments, however, will remain fluid until caucuses meet in the coming weeks.

Food/Feed Safety and Climate Change: In a rare post-election skirmish, a battle is underway for the chairmanship of the powerful House Energy and Commerce Committee, whose jurisdiction includes food and feed safety, as well as climate change. Current Chairman John Dingell, D-Mich., is trying to hold onto his position against another powerful and outspoken member of the Democratic Caucus, Rep. Henry Waxman, D-Calif. While Dingell has been strident in his views on food/feed safety, his congressional district is heavily influenced by the presence of the auto industry, making him more pragmatic on such issues as climate change. Waxman, current chairman of the House Oversight and Government Reform Committee, is well known for his investigatory zeal. And his committee has taken an active oversight role on many of the major issues that have stirred Congress over the past two years.

In the Senate, the Health, Education, Labor and Pensions Committee, which has primary jurisdiction over food/feed safety issues, is chaired by the ailing Sen. Ted Kennedy, D-Mass. Kennedy has reaffirmed his intent to return to Congress in 2009, and has been working behind the scenes to develop a bipartisan health care bill that may be one of Congress's initial legislative priorities.

Congressional Leadership Posts: Despite another tough election for House Republicans, it appears Minority Leader Rep. John Boehner, R-Ohio, will continue in his post. But angling already has begun for other positions within the Republican Caucus. McConnell, after surviving a tough reelection bid, also appears likely to remain as Senate Minority Leader. Little change is expected among the Democratic leadership, with Majority Leader Harry Reid, D-Nev., and the newly reelected Majority Whip Sen. Richard Durbin, D-Ill., expected to retain their leadership posts.

The NGFA will provide continuing coverage of the transition in Congress as the races are decided, leadership posts are finalized and committees are reformed.

111th Congress Legislative Spotlight: Commodity Market Anti-Speculation

[Editor's Note: This is the first of a series on major legislative issues important to the grain, feed and processing industry that are expected to be considered in the new Congress.]

The 110th Congress is likely to return the week of Nov. 17 to wrap up some last-minute business and perhaps consider a second economic stimulus package.

But attention invariably will turn to the new 111th Congress that will convene in January following the inauguration of President-Elect Barack Obama. Congressional Democrats are likely to pursue a raft of major legislative items that were thwarted in the past by the Bush administration and its congressional allies.

Among those is legislation designed to curb "excessive" speculation in energy and agricultural futures markets, as well as strengthen the Commodity Futures Trading Commission (CFTC) with the infusion of additional funds to hire 100 more employees. The House version of the bill, introduced by Agriculture Committee Chairman Rep. Collin Peterson, D-Minn., passed that chamber earlier this fall, and a similar version is expected to be introduced and considered when the House convenes in 2009. Earlier Senate versions fell prey to the filibuster and were never considered on the Senate floor. Shortly before Congress recessed for the elections, a new version was introduced by Senate Agriculture Committee Chairman Tom Harkin, D-Iowa, and

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On Capitol Hill

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fellow Sens. Carl Levin, D-Mich., and Jeff Bingaman, D-N.M. This bill could provide the basis for a new Senate version to be introduced when it reconvenes.

The NGFA has been extremely active in meeting with congressional staff members on this legislation, and in suggesting

modifications sought by the industry. This proactive outreach by the NGFA will continue as new versions are drafted in 2009.

The accompanying table compares and contrasts the major provisions in the bills expected to serve as the primary vehicles for congressional consideration next year:

Provision	House	Senate
Bona Fide Hedge	Defines a "bona-fide" hedge and, by implication, establishes which entities would be eligible for hedge exemptions from speculative position limits.	No attempt to define "bona-fide" hedgers.
London Loophole	Prohibits a foreign board of trade from providing its U.S. members/participants access to its electronic energy or ag transactions unless the foreign board of trade establishes rules similar to those adopted by U.S.-based exchanges (<i>e.g., reporting, position limits</i>).	Similar provision included.
Reporting/Transparency	Requires the CFTC to disaggregate and report monthly data reported by index funds and other passive, long-only and short-only positions, as defined by the agency, and to disaggregate and report monthly on speculative positions relative to "bona-fide" hedgers, to the extent such information is available.	Similar provision, but does not include the caveat "to the extent such information is available" that is included in the House version.
Index/Swap Reporting	Requires a rulemaking by the CFTC to define and classify index traders and swaps dealers for purposes of establishing routine, detailed reporting requirements.	The CFTC within 60 days after the bill is enacted would be mandated to require detailed reporting from index traders and swaps dealers. It also would be required to reclassify traders to distinguish in reports and regulations between index traders and swaps dealers. The agency also would be required to review index trading practices to ensure they are not adversely affecting the price-discovery function, and determine if new or different regulations are needed.
Speculative Position Limits	Establishes speculative position limits for energy and agricultural futures contracts, codifying what already is CFTC practice for enumerated agricultural commodities and mirroring that for energy commodities.	Similar provision included, but notes that "nothing in this section shall require the (CFTC) to revise any position limit for an agricultural commodity that is in effect on the date of enactment...."
Over-the-Counter Transactions (OTCs)	Requires the CFTC to conduct a study to determine the impacts of speculative position limits on OTCs. Also gives the CFTC authority to request routine reporting information on OTC activity.	Requires reporting of some OTCs and gives the CFTC the authority to set limits on OTCs if the reporting indicates it should or if a "major market disturbance" is caused by OTCs.
Advisory Committee	Establishes a Speculative Position Limit Agricultural Advisory Group to recommend annually whether position limits should be administered by the CFTC or by the exchanges.	No similar advisory body created.
CFTC Resources	Requires the CFTC to hire 100 new employees, subject to appropriations not contained in the bill.	Similar provision included.





California Voters Approve Onerous Farm Animal Welfare Proposition

By a lopsided 63-37 percent margin, California voters approved an animal welfare proposition that is expected to undermine animal agricultural production within the state, particularly the egg industry.

Proposition 2, which takes effect in 2015, amends the California Health and Safety Code to make it illegal for farmers to tether or confine animals covered by the law in a manner that does not allow them to turn around freely, lie down, stand up and fully extend their limbs. Proposition 2 applies to swine during pregnancy, calves raised for veal and egg-laying hens kept on-farm. If enforced as intended, the measure is expected to **outlaw almost all current modern and safe housing systems for egg-laying hens used within the state's egg farms, thereby eliminating almost all modern egg production in California.** The impact on the state's swine and veal industry is expected to be minimal.

Californians for Humane Farms – a group funded by the Humane Society of the United States (HSUS), Farm Sanctuary and other animal rights groups – was the principal advocate of the measure, which was patterned after a similar ballot initiative approved by Arizona voters in 2006 that banned the use of gestation crates during farrowing of pigs. It also represents the continued efforts of HSUS and other activist groups to target their animal rights agenda within individual states in hopes of

gaining momentum for broader federal legislative action.

The NGFA joined as part of a coalition – **Californians for SAFE Food**, consisting of public health and food safety experts, agricultural organizations, labor unions, consumers, family farmers and veterinarians – to oppose Proposition 2. Among other things, the groups argued that humane treatment of animals, including farm animals, already is required by California law. Enclosing animals without proper care and treatment is prohibited, and California law already requires that animals have adequate space when being housed. In addition, 98 percent of California egg farms adhere to stringent food safety standards under the California Egg Quality Assurance Plan (CEQAP). CEQAP requires that egg farms use the most modern, safe and practical egg farming techniques and standards. The NGFA and other opponents also contended Proposition 2 will require California poultry producers to build eight to 16 times more hen houses as currently in use to comply with the new law's requirements and maintain current egg production. Buying the land and securing the necessary capital to accomplish this is prohibitively expensive and economically infeasible. Opponents also noted that current egg-laying housing systems provide optimal feed, light, air, water, space and sanitation that effectively control animal disease and the risk of potential bacteriums, such as *Salmonella enteritidis*, that can cause human illness.

EPA Issues Final Permitting Regs for Confined Animal Feeding Operations

The U.S. Environmental Protection Agency (EPA) on Oct. 31 issued final regulations governing the permitting requirements that apply to concentrated animal feeding operations (CAFOs) under the Clean Water Act.

The final rule, which the agency said reflects the outcome of an appellate court decision [*Waterkeeper Alliance, et. al, vs. EPA*], revises EPA's permitting regulations for CAFOs originally issued in February 2003. The final rule makes two key changes:

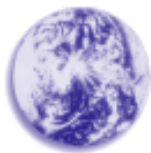
- ▶ First, it revises the requirement that all CAFOS apply for a national pollution discharge elimination system (NPDES) permit; now, only those CAFOs that discharge or propose to discharge effluents will be required to apply for permits. The agency also provides additional clarification on how operators are to evaluate whether they discharge or propose to discharge. Such determinations will be made on a case-by-case basis by the CAFO owner or operator. The final regulation also provides for a "voluntary no-discharge certification" option for CAFOs that do not discharge or propose to discharge effluents.
- ▶ Second, EPA said the new rule adds new requirements for regulated CAFOs to submit nutrient management plans with their permit applications. CAFO operators previously were required to develop such plans under EPA's 2003 rule. But

the new rule requires CAFOs to include the plans when submitting their NPDES permit applications. Under the new rule, permitting authorities will be required to review the nutrient management plans and provide public notice and opportunity for comment. Permitting authorities also are required to include the terms of the nutrient management plans as enforceable elements of the NPDES permit.

Other changes contained in the final rule to reflect the court decision include: 1) a clarification by EPA that water quality-based effluent limits may be required in any CAFO permit with respect to production-area discharges and discharges from land-application areas that are not exempt agricultural stormwater sites; and 2) removal of a provision that allowed new source swine, poultry and veal calf CAFOs to use containment structures designed for the 100-year, 24-hour storm as a way of complying with the no-discharge requirement. Such CAFOs now are required to meet the no-discharge requirement with site-specific best management practices designed to limit effluents.

EPA to Conduct Nov. 19 Webcast on Final Rule: EPA has scheduled a free two-hour audio webcast on the new CAFO final rule for Nov. 19, from noon to 2 p.m. Eastern (11 a.m.-1 p.m. Central). Members receiving the *NGFA Newsletter* may [click here to register for the webcast](#). For an EPA fact sheet on the final rule, [click here](#).





FDA Makes Minor Changes to Bioterrorism Prior Notice Import Regs

The U.S. Food and Drug Administration (FDA) in today's (Nov. 7) *Federal Register* published its final regulations implementing the prior notice requirements that apply to imported food, feed and feed ingredients under the Bioterrorism Act of 2002.

FDA's final rule, which takes effect May 6, makes only relatively minor changes to the interim final regulations that the agency issued in October 2003. Simultaneously, the agency announced the availability of an updated draft Compliance Policy Guide that outlines its intentions for enforcing the prior notice requirements. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the 13-page draft Compliance Policy Guide. Meanwhile, the 118-page *Federal Register* notice containing the final rule and explanatory material is available by [clicking here](#).

Among the changes made in the prior-notice final rule pertinent to the grain, feed and processing industry are these:

▶ **Timeframes for Submitting Prior Notice Unchanged:** The previous timeframes for submitting prior notice to FDA regarding food and feed imports are retained. Thus, the final rule continues to require that FDA receive electronic prior notice of imports no less than eight hours before arrival at the port of entry if shipped by vessel (water); four hours if arriving by rail or air; and two hours if arriving overland by truck. FDA said the agency and the U.S. Department of Homeland Security's Customs and Border Protection (CBP) evaluated the feasibility of reducing these time periods, but found that they represented the "minimum amount of time FDA needs to meet its responsibility under the Bioterrorism Act to receive, review, and respond to prior-notice submissions."

▶ **Shippers Allowed More Lead Time to Submit Prior Notices:** Under the final rule, prior notice submissions now will be able to be submitted up to 15 calendar days before the anticipated date of arrival if the submissions are done through FDA's Prior Notice System Interface (PNSI), and up to 30 calendar days before the anticipated date of arrival for submissions made through CBP's Automated Broker Interface of the Automated Commercial System (ABI/ACS). Previously, the regulations prohibited submissions of notifications more than five calendar days prior to anticipated arrival of the shipment.

▶ **Manufacturers:** A definition for "manufacturer" was added and FDA now provides an alternative for identifying the manufacturer when its Bioterrorism Act facility registration number is not known. In addition to the name of the manufacturer, the final rule requires the submitter to provide either: 1) the Bioterrorism Act registration number of the facility associated with the article of food or feed; or 2) the full address of the site-specific facility and reason why no registration number is being provided. The previous

regulations generally only allowed for the submission of the name of the manufacturer and its registration number.

Further, when the final rule takes effect, persons currently submitting prior notice using reason code L (unable to determine identity of the manufacturer - providing identity of manufacturer's headquarters) and code M (unable to determine identity of manufacturer or headquarters - providing invoicing firm's identity) no longer will be able to do so. As noted previously, the final rule now will require the submitter to identify the site-specific manufacturer.

- ▶ **Shipper Information:** The name and full address of the shipper of the imported product is required, if different from the manufacturer. Previously, the shipper's information needed to be provided even if it was identical to the manufacturers'. Further, FDA's final rule no longer requires the prior notice to include the shipper's Bioterrorism Act registration number.
- ▶ **Anticipated Arrival Information:** The final rule removes the previous requirement to identify the anticipated border crossing point within the port of arrival, because FDA and CBP determined such information is not necessary for communications purposes.
- ▶ **Harmonized Tariff Code:** The previous requirement to provide the harmonized tariff schedule (HTS) code was deleted.
- ▶ **Products Denied Entry into U.S.:** The final rule now allows products denied entry into the United States because of failure to provide adequate prior notice must be moved under appropriate custodial bond unless immediately exported under CBP supervision. The final rule also requires that the date the article arrived now is required for post-refusal submissions.



Calendar

- 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. 9, 2008:* Waterborne Commerce 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.
- March 29-31, 2009:* 113th Annual Convention
Westin Swan Hotel, Walt Disney World, Orlando, Fla.





STB Releases Rail Competition Study

The U.S. Surface Transportation Board (STB) on Nov. 3 released the results of a 14-month study that purports to assess the state of competition in the rail industry and different options that could enhance it.

The study, conducted by Christensen Associates, a Madison, Wis.-based economic consulting firm, was discussed during a STB public meeting on Nov. 6. The study was spurred by a 2006 report by the U.S. Government Accountability Office (GAO) – the investigatory arm of Congress – that raised questions about the “possible abuse of market power” by railroads, and recommended that the STB conduct a rigorous analysis of the state of U.S. railroad competition. The STB subsequently contracted with Christensen in September 2007 to conduct a comprehensive analysis of a wide range of issues in the freight rail industry, including competition, capacity and the interplay between the two. The NGFA was among the organizations and companies with which Christensen met in developing the study.

The key findings of the study were summarized in response to five questions: 1) What is the current state of competition in the U.S. railroad industry? 2) What are the current and near-future capacity constraints for the industry? 3) How does competition and regulation impact capacity investment? 4) How do capacity constraints impact competition? 5) How do competition, capacity constraints and other factors influence the quality of service?

According to Christensen – focusing on these questions – the study “sheds light on whether the current situation reflects reasonable economic practices by the railroads” and provides an economic analysis of recent proposals for railroad industry policy changes. Among the key general findings of the study, as stated by Christensen, are:

- ◆ For most years during the 1987 to 2006 period that was studied, the Class I railroads did not appear to be earning “above-normal profit.”

- ◆ The increase in rates in recent years is the result of declining productivity growth and increased costs, rather than the increased exercise of market power by carriers.
- ◆ The revenue-to-variable-cost ratio is not a reliable indicator of market dominance by railroads.
- ◆ Different commodity groups face different markups of railroads’ rates over marginal costs. (The study refers to the GAO report, indicating that while most rates decreased between 1985 and 2004, grain rates increased overall during the same period.)
- ◆ Within commodity groups, shippers with no or very limited transportation options tend to pay higher rates.
- ◆ Current market circumstances imply that providing significant rate relief to certain groups of shippers likely will result in rate increases for other shippers or threaten railroad financial viability.
- ◆ Looking at four “open-access proposals” discussed in the GAO report to address competition-related concerns (reciprocal switching agreements, requiring bottleneck rate quotes, terminal agreements and trackage rights agreements), the “incremental policies” related to reciprocal switching and terminal agreements have a greater likelihood of resolving shipper concerns without triggering adverse changes in industry structure, costs and operations.
- ◆ Some shippers will not benefit from efforts to enhance railroad competition, implying the necessity of continued regulatory oversight.

Accessing the Study: The full study (about 660 pages long) may be accessed in three separate volumes through the STB’s website at <http://www.stb.dot.gov> by clicking the “E-Library” tab.

NGFA Rail Shipper/Receiver Committee Meets

The NGFA’s Rail Shipper/Receiver Committee met Oct. 29 in Chicago to address various rail transportation-related industry issues. Decisions made during the day-long meeting position the NGFA to take a number of actions, including the following:

- ◆ The NGFA will be collecting information and otherwise participating in response to congressionally mandated transportation-related studies underway by the U.S. Departments of Agriculture and Transportation.
- ◆ The NGFA will continue its prominent role in the small rate case litigation before the U.S. Court of Appeals for the District of Columbia Circuit, whose goal is to secure an effective and meaningful mechanism currently unavailable to the vast majority of shippers to challenge unreasonable freight rates.
- ◆ The NGFA will remain engaged in a variety of regulatory matters arising at the federal Surface Transportation Board (STB), including proceedings related to the railroad “common carrier obligation” that potentially could affect the allocation of risks, liabilities and costs between railroads and shippers concerning the transportation of “hazardous materials” (e.g., ethanol and some fertilizers).
- ◆ The NGFA will be examining a variety of issues involving new surcharges, accessorial, fees, and indemnification and liability-transferring mechanisms arising in the transportation of grain by rail.
- ◆ The NGFA will be examining anticipated rail transportation-related legislative measures.
- ◆ The NGFA plans to conduct a day-and-a-half Agricultural Transportation Symposium in May 2009.





NGFA, GEAPS Partnering on New General Safety DVD

...Members Given Opportunity to Sponsor or Pre-Order New Safety Education Package...

The NGFA and Grain Elevator and Processing Society (GEAPS) are partnering to develop a new safety education DVD and training materials for employees of grain-handling, feed-manufacturing and grain-processing operations.

The new safety DVD and training materials are scheduled to be completed by March. The need for the DVD was identified by the NGFA/GEAPS Safety, Health and Environmental Quality Committee, which noted that an up-to-date training video on general safety practices for the grain, feed and processing industry currently does not exist. The committee also noted that fatalities and injuries resulting from such events as engulfments in grain bins are a reminder that despite the great strides made in reducing the occurrence of fires and explosions in facilities over the last 25 years, safety challenges still remain. Further, the committee believes the new DVD is needed to meet the challenge of training new employees given job turnover and the increasing diversity in the workplace.

The new DVD will be modeled after GEAPS' *Common Hazards/Common Sense* video produced in 1988 following issuance of the Occupational Safety and Health Administration's grain handling safety standard [1910.272]. The 30-minute DVD, which also will be available in Spanish, will address the following:

- Fires and explosions.
- Confined space and bin entry.
- Truck and rail safety (such as fall protection).
- Safe operation of equipment (such as proper lockout and tagout procedures).
- Ladder safety.
- Manlifts.
- Electrical.
- Personal protective equipment.
- Hazard communication.
- First aid.

- Emergency action plans.
- Facility security.

To make the DVD affordable while covering costs, the NGFA and GEAPS plan to charge \$100 per DVD package, which includes non-reproducible English and Spanish versions along with supplemental training materials.

Both the National Grain and Feed Foundation and GEAPS have pledged \$10,000 each in up-front investments to finance a portion of the cost of the DVD and associated training materials. To finance the remainder, the NGFA and GEAPS are seeking commitments from member companies.

◆ **Sponsorship:** Companies willing to sponsor this project with a \$2,500 contribution will be recognized in both advance marketing materials and in the DVD credits. In addition, sponsoring companies will be granted unlimited reproduction rights to both the English and Spanish versions, allowing them to make and distribute as many copies as desired within their firms. Other single copies sold to companies will be in non-reproducible form. The deadline for indicating a desire to be a sponsor is **Dec. 1**.

◆ **Pre-Order Opportunity:** Companies that decline to sponsor but which would like to pre-order advance copies of the DVD package (which includes both English and Spanish versions in non-reproducible formats) will receive a **15 percent discount** compared to the post-production price. To qualify, pre-orders must be received by **Jan. 31**.

Safety DVD Interest Response Form: To indicate your interest in sponsoring or pre-ordering the DVD, please fill out and return by mail or fax (202-289-5388) the response form found on page 9 of the *NGFA Newsletter*. Or contact NGFA Director of Regulatory Affairs Jess McCluer at 202-289-0873, Ext. 23, or by email to jmclcluer@ngfa.org.

DHS Begins Rulemaking on Secure Handling of Ammonium Nitrate

NGFA member companies that operate retail farm supply dealerships are advised that the U.S. Department of Homeland Security on Oct. 29 issued an advance notice of proposed rulemaking on the secure handling of ammonium nitrate.

The rulemaking was triggered by congressional enactment on Dec. 26, 2007 of legislation (P.L. 110-161, Section 553) requiring DHS to "regulate the sale and transfer" of ammonium nitrate by facilities to prevent misappropriation or use of the product in a terrorist act. DHS proposes to require ammonium nitrate facilities and prospective purchasers to register with DHS

and obtain a registration number as a condition for selling, transferring or purchasing the product. DHS, which said it generally would issue such registration numbers within 72 hours after the application is received, would check the registrations against a terrorist screening database.

DHS also proposes to require ammonium nitrate facilities to verify at point of sale that potential purchasers are registered with DHS – including verifying each potential purchaser's identity and registration number. The agency also proposes to

(Continued on page 9)





require such facilities to maintain records of sales or transfers of ammonium nitrate for two years after each transaction. Finally, DHS proposes to require that ammonium nitrate facilities and purchasers report any theft or loss of the product to federal law enforcement authorities within one day after discovering such an incident.

DHS said it is considering establishing a percentage-based threshold level of ammonium nitrate that would need to be present in a product before the rule applies to facilities and buyers. It said experts continue to study the minimum quantity

of ammonium nitrate required to detonate an improvised explosive device, as well as the size of conventional explosive charge necessary to detonate straight ammonium nitrate and the actual explosive energy that would result from such a detonation. DHS poses 13 questions on which it is seeking input prior to drafting a specific proposed rule. The Fertilizer Institute and Agricultural Retailers Association, both of which supported the legislation, are taking the lead in responding to this rulemaking. [Click here](#) to access the three-page DHS *Federal Register* proposal, on which comments are due by Dec. 29.

Response Form for Sponsorship and Pre-Ordering Copies of Safety DVD

If you have an interest in sponsoring or pre-ordering the new NGFA/GEAPS Safety DVD and training materials, please indicate below and return this form to the NGFA by mail or fax (202-289-5388). Thank you for your consideration!

Company Name: _____

Address: _____

City, State, Zip: _____

Email: _____

Name of Authorized Company Official: _____

Opportunity #1: Company Sponsors

_____ My company commits \$2,500 to sponsor the general safety DVD training program. This includes sponsorship recognition in both advanced marketing materials and in the DVD credits, along with obtaining reproducible copies and unlimited copying rights of the English and Spanish DVDs and supplemental material to distribute within my company. **Please reply by Dec. 1.**

[Note: If filling out this section, disregard Opportunity #2.]

Opportunity #2: Company Pre-Orders

My company does not wish to sponsor, but commits to pre-purchase multiple copies at **15 percent off the post-production price** (post-production prices are noted below). Each copy includes the non-reproducible version of the English and Spanish DVD and supplemental safety training materials. **Please reply by Jan 31.**

<u>Number of Copies</u>	<u>Post-Production Prices</u>
_____ 1-5	\$100 each
_____ 6-10	\$80 each
_____ More than 10	\$70 each

Thank You!





Van Doren Named New Administrator of USDA-GIPSA

Terry Van Doren on Nov. 3 became the new administrator of the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA).

Van Doren was named to the post on Oct. 31, concurrently with the official announcement that James Link would be leaving the GIPSA administrator's slot to become administrator of USDA's Agricultural Marketing Service (AMS). Among other things, GIPSA is responsible for overseeing the official U.S. grain standards and implementing the official grain inspection and weighing system.

Van Doren has served in several key roles at USDA since 2005, including working on research, education and economic policy issues, and later as senior adviser to the undersecretary of agriculture for marketing and regulatory programs. He took a one-year leave of absence in 2007 to

work with Senate Republican Leader Mitch McConnell, R-Ky., during the development of the 2008 farm law. Van Doren hails from a grain and livestock farm in Macoupin County, Ill., was graduated from the University of Illinois with a bachelor's degree in animal science, received a masters degree in agricultural science from Colorado State University, and served as associate director for agricultural policy at the National Cattlemen's Beef Association. In 1999, he joined the staff of then-Sen. Peter Fitzgerald, R-Ill., as his agriculture subcommittee staff director and later as legislative director.

Randall Jones was named in July to serve as GIPSA's deputy administrator for grain inspection, and will report to Van Doren. Jones replaced long-time GIPSA Deputy Administrator David Shipman, who took a job as AMS's associate administrator.



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