



NGFA

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NGFA Task Force Begins Evaluation of Compelled Loadout

As part of the NGFA's continuing extensive work on enhancing futures market performance and convergence, Chairman Tom Coyle has appointed an 11-person task force to examine potential modifications to the concept of compelled loadout for the CBOT wheat futures contract.

The task force's findings will be utilized in determining whether the NGFA should recommend adoption of compelled loadout, with some modifications, as a change to the CBOT wheat contract to achieve convergence.

The task force's objective will be to analyze and evaluate potential modifications to the compelled loadout concept that could help maintain contract balance between those holding short and long positions in CBOT wheat futures, while still achieving convergence in the wheat contract. The group's findings and recommendations will be reported to the Risk Management Committee and NGFA leadership for review. At that time, a decision will be made on whether the NGFA should recommend compelled loadout, with appropriate modifications, to the CME Group as a CBOT wheat futures contract change.

In comments submitted in early August to the CME Group, the NGFA noted that compelled loadout "may be part of the solution" to enhancing convergence in the CBOT wheat futures contract, and informed the CME Group and the Commodity Futures Trading Commission that it was forming a task force to further analyze the structure of such a change and how it could be implemented. In those comments, the NGFA did not oppose the CME Group's proposed changes to its CBOT wheat futures contract – implementing seasonal storage rates, adding grain warehouse delivery capacity at market-based differentials and tightening existing limits on deoxynivalenol (vomitoxin) for wheat eligible for delivery. But the NGFA emphasized that much more dramatic, substantive changes need to be made to restore the "integrity and functionality" of the contract, and expressed a "sense of urgency" that the CME Group take further action to achieve convergence in the CBOT wheat futures contract, which it said "may be at risk of failing if current trends continue." [See *NGFA Issues and Actions*, Sept. 11, 2008.]

Task force members have been drawn from the NGFA's Risk Management Committee, Country Elevator Committee and other segments of the NGFA membership. Members are:

- ▶ **Rod Clark**, task force chair and chair of the NGFA's Risk Management Committee; vice president, CGB/Diversified Services, Mt. Vernon, Ind.
- ▶ **Erik Anderson**, president, Louis Dreyfus Commodities, Wilton, Conn.
- ▶ **Matt Bruns**, vice president-exports, Archer Daniels Midland Co., Decatur, Ill.
- ▶ **John Fletcher**, general manager, Central Missouri AGRIService LLC, Marshall, Mo.
- ▶ **Peter Grady**, vice president, Lansing Trade Group LLC, Westminster, Colo.
- ▶ **Robert Jones**, Fortis Clearing Americas, Chicago, Ill.
- ▶ **Diana Klemme**, vice president, Grain Service Corp., Atlanta, Ga.
- ▶ **Rick Longbrake**, vice president, grain, The Mennel Milling Co., Fostoria, Ohio.
- ▶ **Mike Miller**, vice president, Cargill Ag Horizons, Minneapolis, Minn.
- ▶ **Craig Parr**, manager, commodity hedging and risk analysis, The Andersons Inc., Maumee, Ohio.
- ▶ **Bryce Wells**, chair, NGFA Country Elevator Committee; president and chief executive officer, West Plains Co., Kansas City, Mo.

The task force has scheduled an initial conference call on Sept. 26 to begin cataloguing and describing the issues surrounding compelled loadout and potential alternatives for modifications. A face-to-face meeting of the group is scheduled for Oct. 6 in Chicago, with the goal of completing action on recommendations soon thereafter.

All NGFA members are invited to provide input for the task force's consideration by emailing NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org.



Congressional Action on Futures Speculation Bill Likely Delayed to 2009

By a 283-133 margin, the House on Sept. 18 approved legislation (H.R. 6604) designed to curb “excessive speculation” in energy and agricultural futures markets.

But despite clearing the House, the bill is not expected to become law, as the Senate has not yet announced plans to consider similar legislation and President Bush has vowed a veto if a final bill resembles the House version. Congress is scheduled to adjourn later this month for the fall elections.

The House bill, sponsored by House Agriculture Committee chairman Collin Peterson, D-Minn., was considered under a “closed rule,” which required a two-thirds vote for passage. A number of Republicans joined most House Democrats in voting to pass the measure. A similar version had failed to garner the needed two-thirds vote on July 30 shortly before Congress began its five-week summer recess.

The NGFA continues to have a major concern over one provision of the bill that was modified slightly from Peterson’s original version. That provision would specifically define a “bona-fide” hedge and, by implication, establish which entities would be eligible for hedge exemptions from speculative position limits. The provision’s intent is to limit hedge exemptions to entities hedging physical commodities, or to swaps dealers if the over-the-counter transaction is executed with a counterparty that otherwise would meet the bona-fide hedger definition. The NGFA had expressed concern to Peterson about the potential for unforeseen and unintended consequences when attempting to define a complex concept like “bona-fide” hedging in legislation. The NGFA had recommended that discretion be left to the Commodity Futures Trading Commission (CFTC) regarding implementing the specific definition contained in the bill.

Other key provisions in the House-passed bill would:

- ▶ Close the so-called “London loophole” by prohibiting 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 observed by U.S.-based exchanges (such as reporting and speculative position limits).
- ▶ Require 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. These reporting transparency provisions are consistent with the NGFA’s legislative recommendations to Congress.
- ▶ Require a rulemaking by the CFTC to define and classify index traders and swaps dealers for purposes of establishing routine, detailed reporting requirements. This provision also is consistent with the NGFA’s legislative recommendations.
- ▶ Establish speculative position limits for energy and agriculture, codifying what already is CFTC practice for enumerated agricultural commodities and mirroring that for energy commodities.
- ▶ Establish a Position Limit Agricultural Advisory Group to recommend annually whether position limits should be administered by the CFTC or by the exchanges.
- ▶ Require the CFTC to hire 100 new employees, subject to appropriations not contained in this bill.

Senate Defers Action on Comprehensive Energy Bill

The Senate on Sept. 23 approved, by a 93-2 vote, legislation (H.R. 6049) containing \$100 billion in tax breaks, including for renewable energy sources.

The legislation also includes another one-year “fix” to avoid subjecting millions of additional Americans to the alternative minimum tax. Among the renewable energy tax breaks included in the Senate-passed measure is an extension of the \$1-per-gallon biodiesel production tax credit through 2009. The provision also extends for one year the 10-cent-per-gallon credit for small biodiesel producers, as well as the \$1-per-gallon production tax credit for diesel fuel created from biomass. The Senate-passed bill also would expand the allowance for cellulosic biofuels facilities. The provision would allow taxpayers to immediately write off 50 percent of the cost of cellulosic ethanol and other cellulosic biofuel produc-

tion facilities if such plants are placed into service before Jan. 1, 2013.

The House late today was preparing to vote on its version of the bill, which, unlike the Senate measure does not include tax incentives for refineries to process oil from shale and tar sands, or coal liquification plants. Both bills would finance the tax breaks by limiting tax breaks for oil and gas companies. But unless the House relents and adopts the Senate version, it is unlikely the measure will pass before Congress adjourns for the election.

The Senate signaled that it would not consider a more far-reaching energy bill (H.R. 6899), narrowly approved by the House on Sept. 16 by a 236-189 mostly party-line vote, that among other things would authorize oil and gas drilling 100

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miles beyond the U.S. Atlantic and Pacific coasts, removing a ban that has been in effect for 26 years. The bill also would authorize states to permit oil and gas drilling between 50 and 100 miles of the U.S. coastline. But most Republicans opposed the bill, in part because it would not share offshore oil and gas revenue with state governments, and because the 50-mile buffer would leave most known energy reserves off the Pacific Coast off-limits for exploration.

Other provisions in the House-passed bill of interest to NGFA members would:

- ▶ Extend for one year – through 2009 – certain tax credits for biodiesel that currently expire at the end of 2008, including the \$1-per-gallon production tax credit and the 10-cent-per-gallon small biodiesel production credit. It also would extend through 2009 the \$1-per-gallon production tax credit for renewable diesel created from biomass. Further, it would amend current law to eliminate a requirement that diesel fuel be produced using a particular, specified process, thereby making the credit available to any diesel fuel produced from biomass. In addition, the measure would eliminate a current disparity in how the credit applies to biodiesel and agri-biodiesel, designed to ensure that the credit can be claimed for any diesel fuel created from biomass, without any limit based upon the process used. The bill would clarify that the credit for renewable diesel is available only for fuels produced solely from biomass, making co-processed diesel produced after Feb. 13, 2008 eligible instead for the 50-cent-per-gallon credit for alternative fuels. The bill also would clarify that certain fuel-related tax credits are designed to provide an incentive for U.S. production, which would apply to claims for credit or payment made after May 15. These tax incentives carry an estimated price tag of \$401 million over 10 years.
- ▶ Add cellulosic biofuels to energy sources eligible for bonus depreciation rules. Current law provides a 50 percent “bonus” depreciation in the first year that certain property is placed in service at cellulosic biomass ethanol plants. Under the rules for the depreciation, a business can deduct an additional 50 percent of its adjusted basis in property in the year it is placed in service, thus essentially writing off those costs. The rule generally applies to items placed in service through the end of 2012. The bill would allow any cellulosic biofuels, and not just cellulosic biomass ethanol, to qualify for the bonus-depreciation rules. The measure would define “cellulosic biofuel” to mean any liquid fuel produced from lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. The depreciation rules currently cover ethanol made from such materials.
- ▶ Require the government to exchange 70 million barrels of “light, sweet” crude oil from the Strategic Petroleum Reserve (SPR) for “heavy, sour” oil, which is more difficult to refine. Under current law, the government is prohibited from

putting any additional oil in the reserve this year unless the average price of oil does not exceed \$75 per barrel over the most recent 90-day period

- ▶ Require electric power companies to produce at least 15 percent of their electricity from renewable resources by 2020, with incremental increases required starting in 2010. Among the bills’ grant programs is one that would help fund college and university research on renewable energy, alternative energy, energy efficiency and energy conservation.
- ▶ Permit oil and gas lease holders that entered into leases in 1998 and 1999 to renegotiate their leases to include provisions requiring them to pay royalties to the federal government if the price of oil or gas exceeds \$34.73 per barrel of oil and \$4.34 per million British thermal units of gas (in 2005 dollars). Currently, these leases have no price thresholds. As incentive, the bill would prohibit these lease holders from acquiring new leases if they do not renegotiate price thresholds.
- ▶ Ban the export of Alaskan oil and require the Interior Department to conduct lease sales in the National Petroleum Reserve in Alaska annually (instead of every two years). The measure also would require the federal government to take steps to expedite construction of a planned natural gas pipeline that would stretch from Alaska’s North Slope to the lower 48 states.
- ▶ Require lease holders to “diligently develop” leases currently held before becoming eligible for new leases. The Interior Department would determine the definition of “diligent development.”

The House bill also includes renewable energy tax provisions valued at an estimated \$19 billion over 10 years. Included are an extension of a renewable energy production tax credit, covering wind facilities for one additional year, through 2009, and certain other renewable energy production for three years, through 2011, while capping credits for facilities that come into service after 2009. The bill also would extend for eight years, through 2016, a credit for investing in solar energy and fuel cells, at a cost of \$1.8 billion. Further, it would extend the energy-efficient commercial building deduction for five years, the credit for efficiency improvements to existing homes for one year, and a credit for energy-efficient appliances for three years.

To pay for these provisions, the bill contains revenue-raising measures, including repealing the ability of major integrated oil companies, as well as foreign government-controlled oil companies, to use the current tax deduction aimed at domestic manufacturing – estimated to raise \$13.9 billion over 10 years. It also would change the tax treatment of oil and gas income earned outside the United States, estimated to raise \$3.9 billion over 10 years.



Producers to Pay Receiving Charges on Warehouse-Stored Loans

As harvest approaches, the U.S. Department of Agriculture's Farm Service Agency (FSA) is reminding producers that starting this year, they are required to pay receiving (load-in) charges for all warehouse-stored commodities, except cotton, pledged as collateral for marketing-assistance loans.

As first reported in the May 22 *NGFA Newsletter*, FSA on June 27 issued a notice (Notice LP-2097) – accessible by [clicking here](#) – stating that producers of 2008-crop wheat, feed grains, soybeans, rice, pulses, minor oilseeds, peanuts, honey, wool and mohair will be required to pay or provide for payment of receiving charges for warehouse-stored marketing-assistance loan commodities before CCC will accept the commodity as collateral for a warehouse-stored loan.

Under the new policy, producers will be required to provide “acceptable documentation” showing that the load-in charges have been paid, or that arrangements have been made for doing so. USDA said “acceptable documentation” includes having specific information on the warehouse receipt stating that receiving charges have been paid or will be paid, or presenting a separate document signed by the warehouse operator that accompanies the warehouse receipt and includes the following language: “Arrangements for the payment of in-handling charges have been made by the depositor of the commodity

covered by the receipt number [insert receipt number]. No lien will be asserted by the warehouse operator against the Commodity Credit Corporation or any subsequent holder of the warehouse receipt for the in-handling charges.” Failure to present the required documentation denoting that receiving charges have been paid or provided for will deem the commodity ineligible to be pledged as collateral for a marketing-assistance loan.

Previously, USDA's Commodity Credit Corporation (CCC) paid warehouse operators or reimbursed producers for in-handling charges on forfeited commodities pledged as collateral for warehouse-stored marketing-assistance loans or that were delivered to CCC in satisfaction of farm-stored loans.

For commodities pledged as collateral for farm-stored marketing-assistance loans that subsequently are forfeited to CCC, USDA now will require the producer or warehouse operator accepting delivery to provide the documentation that the receiving charges have been paid or provided for before the loan settlement will be recorded. If such documentation is not provided, USDA said CCC will reduce the producer's settlement value for the forfeited commodity to reflect the amount of unpaid receiving charges at the rate stipulated in the warehouse's public tariff; CCC then will remit the money to the storing warehouse operator on the producer's behalf.

RMA Reminds Industry of Sampling, Testing Procedures for Determining Mycotoxin Content for Federal Crop Insurance Loss-Adjustments Purposes

The U.S. Department of Agriculture's Risk Management Agency (RMA) has contacted the NGFA to remind grain elevators, feed mills and other grain buyers about procedures that are to be used if producer commodities contaminated with mycotoxins are to be eligible for loss-adjustment payments under the federal crop insurance program.

Commodities contaminated with aflatoxin, fumonisin and vomitoxin at levels exceeding the Food and Drug Administration's (FDA) action levels or advisory levels are eligible for quality-adjustment coverage under federal crop insurance, **provided the grain is sampled and an official determination of the mycotoxin content is made before the commodity is placed into storage.**

RMA's procedures governing commodities that contain substances, such as mycotoxins, that may be injurious to human or animal health differ from normal grain-quality factors, such as determining the test weight, damage or other quality factors. For these “normal” grain quality factors, RMA's procedures allow – for federal crop insurance loss-adjustment purposes – that quality be determined by any of the following: 1) a licensed grader working under the

authority of a warehouse licensed under the U.S. Warehouse Act or a state grain licensing authority; 2) a grader working at a facility operating under USDA's Uniform Grain Storage and Rice Agreement contract; or 3) an official inspector operating under the authority of the U.S. Grain Standards Act (*i.e.*, working for the Federal Grain Inspection Service (FGIS) or an FGIS- designated or delegated official agency).

Testing for Mycotoxins: But for mycotoxin determinations to be eligible for crop insurance loss-adjustment coverage, RMA requires that samples be analyzed by a laboratory that: 1) is a disinterested third party not involved in buying or selling the commodity being tested; 2) is a recognized commercial, governmental or university testing laboratory that utilizes recognized sample sizes, equipment and procedures for testing the specific mycotoxin; and 3) performs quantitative tests (determining the mycotoxin level in parts per million or billion) using test kits certified by FGIS. RMA's website contains a listing of several such laboratories accredited for performing aflatoxin testing, which is available by [clicking here](#).

Obtaining Samples for Mycotoxin Testing: Further, RMA has procedures grain elevators, feed mills and other facilities

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"Testing for Mycotoxins" continued from page 4

taking delivery from producers are to use when sampling inbound commodities for mycotoxins if the resulting sample is to be acceptable for use in determining mycotoxin levels for federal crop insurance loss-adjustment purposes:

- ▶ First, the producer or grain-handling facility should obtain permission from the "approved insurance provider" (*i.e.*, the *USDA-approved crop insurance company and its designated agent*) in advance that it will be acceptable for the facility to obtain the sample for use in determining the mycotoxin level.
- ▶ If the approved insurance provider agrees, the elevator may obtain samples from each load (which can be combined into a composite sample representative of the producer's delivery) that, in turn, may be sent to an approved testing facility for determining the mycotoxin content. **Such sampling must occur before the commodities are unloaded into a bin or other storage facility.** The size of sample taken is required to be as specified by the testing facility to which the sample is to be sent, and is to be stored and transported

in a manner in accordance with the testing facility's requirements.

- ▶ If the approved insurance provider authorizes the grain-handling facility to obtain the sample, it also can agree to allow the facility to submit the sample directly to an approved laboratory for mycotoxin testing. If the grain facility does not submit the samples, the crop insurance adjuster or other authorized insurance provider is to pick up the samples and transport them to the approved lab for testing.
- ▶ The samples are to be mailed or transported to the testing lab within four days after the sample is taken, or sooner if specified by the lab.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to obtain more information from RMA's *Loss Adjustment Handbook*. The section on mycotoxins begins on page 247.

USDA Reorganizes FSA Commodity Operations Division

The U.S. Department of Agriculture's Farm Service Agency recently completed a reorganization of the Washington, D.C., headquarters of its Commodity Operations Division, which among other things oversees its grain warehouse programs.

Deputy Administrator for Commodity Operations Larry Adams announced that under the restructuring, FSA eliminated the separate divisions that previously existed for: 1) Warehouse and Inventory; and 2) Commodity Procurement Policy and Analysis. In its place, the new structure creates a single Commodity Operations Division headed by long-time USDA official Steve Gill that consists of six separate "program" areas. Mark Overbo has been appointed deputy director. Those program functions, each headed by a manager, consist of:

- ▶ **Domestic**, which oversees the agency's domestic food assistance purchases and programs.
- ▶ **Export**, which oversees the agency's purchases and distribution of international food assistance. Howard Froehlich, who previously oversaw the Uniform Grain and Rice Storage Agreement, has been tapped to be manager of the Export Program function.
- ▶ **Warehouse Operations**, which oversees the federal grain warehouse program and Uniform Grain and Rice Storage Agreement contract requirements.
- ▶ **Cotton**, headed by Tim Murray, which oversees the

agency's cotton warehouse program.

- ▶ **Inventory and Dispositions**, which oversees Commodity Credit Corporation-owned commodities, as well as the outlets and disposition of such stocks.
- ▶ **Special Programs**, which oversees the emergency feed assistance program, the end-use certificate program, electronic-government initiatives and any biotechnology initiatives that may be addressed by the division. Bill March has been selected as manager of this program function.

The reorganization also includes a **Support Branch**, headed by Dean Jensen, consisting of 12 marketing specialists who provide support for program managers in the division.

FSA officials told the NGFA that the restructuring eliminated one division director, one deputy director and two branch chiefs, while creating a more flexible organizational structure. It also eliminated functions no longer performed and positions no longer relevant to the division, they said. Twenty-three staff members currently exist in the Washington headquarters that comprise the deputy administrator for commodity operations' office, as well as the Commodity Operations Division, although the agency is authorized to have 35 persons. There are 251 staff members currently operating for FSA at USDA's Kansas City Commodity Office, although that office is authorized to have 289 persons.





FDA Proposes Labeling Imported Food, Feed Rejected for Entry into U.S.

The U.S. Food and Drug Administration (FDA) is requesting comments by Dec. 2 on a proposal to require labeling of imported food, feed and feed ingredients refused entry into the United States in an attempt to prevent the so-called practice of "port shopping."

Under the proposal, published in the Sept. 18 *Federal Register*, owners or consignees of imported food, feed or feed ingredients would be required to "promptly" label shipping containers (defined as individual containers designed for shipping one or more immediate containers) and all documents (such as invoices, bills of lading and electronic documents) associated with import shipments that are refused entry. The label statement would read: "UNITED STATES: REFUSED ENTRY" in clear, conspicuous print. FDA states that it will interpret "owner" and "consignee" to encompass persons acting on the owner's or consignee's behalf, such as their respective employees and agents. Products refused entry would not be permitted to be moved until the owner or consignee complied with the labeling requirements. FDA's proposal would authorize the agency to collect "reimbursement" fees from owners or consignees of "refused-entry" products to compensate for costs incurred in affixing such labels.

The agency proposed that the refused-entry statement be printed in all-capital letters in black ink on a white background and in either Arial or Univers font type. The required type size would be at least 72-point for labels affixed to shipping containers and at least 36-point if printed on documents, such as bills of lading or invoices accompanying shipments. The proposed rule would exclude railcars, vessels, truck trailer bodies (e.g., *intermodal shipping containers*) and similar transportation vehicles from the definition of "shipping

container," thereby exempting such conveyances from labeling.

Current FDA regulations require that shipping containers of food, feed, feed ingredients or other animal food products, including pet food, rejected at U.S. ports of entry either be reexported within 90 days or be destroyed by the U.S. Department of Homeland Security's Customs and Border Protection. FDA notes that its current import safety practices include reviewing electronic prior notices submitted by exporters under the Bioterrorism Act of 2002, as well as an entry review to determine whether additional scrutiny of the shipment may be warranted upon arrival or thereafter. Such further examination may include visual examination and sampling of the products upon arrival, as well as verifying the registration of the products and requesting supporting documentation. If the shipment appears not to be in compliance with U.S. food/feed safety requirements, FDA notes that it issues a notice that the shipment has been detained. FDA notes that it is planning to expand this notification statement to include references to the proposed labeling, as well as whether the refused imported product(s) present a threat of serious adverse health consequences or death to humans or animals.

But investigations have found instances in which products rejected by FDA at one U.S. port have been reshipped to another U.S. port in hopes of gaining entry. "This system will make it more difficult for food importers to evade import controls after being denied admission into the United States," said FDA Deputy Commissioner for Policy Randall Lutter. "It will complement our ongoing efforts to monitor food imports." Members receiving the *NGFA Newsletter* electronically may access the FDA proposal by [clicking here](#).

DeLauro to Introduce Bill Creating New Food Safety Agency

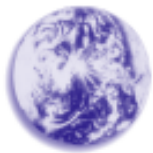
A key member of Congress next week plans to introduce legislation that would create a new Food Safety Administration within the U.S. Department of Health and Human Services – in effect removing jurisdiction over food and feed safety from the Food and Drug Administration (FDA).

Rep. Rosa DeLauro, D-Conn., who chairs the House Appropriations Committee's Agricultural Appropriations Subcommittee, said she still favors establishing a single, independent food-safety agency that would incorporate the functions of both FDA and the U.S. Department of Agriculture's Food Safety and Inspection Service, the latter of which oversees meat and poultry safety.

But during a Sept. 17 hearing that focused on the *Salmonella SaintPaul* outbreak earlier this spring that first implicated tomatoes but later switched to peppers imported from Mexico, DeLauro said she was so disappointed by FDA's handling of the situation that she believes an interim measure is needed. "It is the system that is broken," she asserted. DeLauro also called for development of mandatory food-safety production standards for fruits and vegetables, as well as better traceback to the source of production.

DeLauro said her new bill also may contain provisions mandating additional product traceability, new inspections and new controls on imported food, feed and feed ingredients.





Monsanto Receives Chinese Approval for Imports of New Soybean

Monsanto Company this month announced Chinese regulatory approval of its biotechnology-enhanced Roundup Ready 2 Yield™ soybean.

This represents a significant step forward in the company's plan to commercialize the new soybean in 2009. Monsanto reports that the Round Ready 2 Yield soybean is the "second generation" of the previously released Roundup Ready products.

In addition to China and the United States, the trait has been approved in Canada, Mexico, Taiwan, Japan, the Philippines, Australia and New Zealand. Still outstanding is final approval in the European Union, although the European Food Safety Authority (EFSA) already has given Roundup Ready 2 Yield™ a "positive scientific opinion" stating that the product

is "safe for import as food and feed."

Monsanto announced that the new soybean "will be introduced on 1 million to 2 million acres for the 2009 season as part of a controlled commercial release." The company said it expects to expand that to 5 million to 6 million acres for 2010. This follows the recent announcement of Chinese and EU approval of Bayer's LibertyLink biotechnology-enhanced soybean trait, also expected to be commercialized in 2009.

Achieving widespread international approvals has been a key issue for the grain trade to avoid possible disruptions in the worldwide flow of U.S. agricultural commodities. Clearing the Chinese hurdle, representing more than 35 percent of recent U.S. soybean exports, is an important and significant step towards commercialization.

NAEGA, K-State Unveil Wheat, Flour Quality Analysis Web Site

...Site Updates Popular "Wheat and Flour Testing Methods" Guidebook...

The North American Export Grain Association (NAEGA), in cooperation with Kansas State University's Department of Grain Science and Industry, launched a new website that provides an introduction to the quality analysis of wheat and flour in an easily understood format.

The website, www.wheatflourbook.org, updates the reference book, *Wheat and Flour Testing Methods – A Guide to Understanding Wheat and Flour Quality*, which was authored and published by the Wheat Marketing Center in 2003. It includes expanded content, updated photos and some videos to illustrate wheat testing. The book also is available for download in PDF format from the site.

The publication posted on the website features the following major sections:

- ▶ Section 1 contains the rules and terms incorporated into standard export grain contracts, based upon NAEGA's No. 2 contract. This section also discusses Addendum No. 1 to the NAEGA No. 2 contract, which incorporates the terms and conditions governing settlement of laytime (time lost and/or gained, demurrage and/or despatch) during loading. It also includes the arbitration clause addendum, which specifies how buyers and sellers agree to settle any dispute or breach of contract through the International Arbitration Rules of the [American Arbitration Association](#).
- ▶ Section 2 provides information on the official U.S. export grain inspection system, administered by the U.S. Depart-

ment of Agriculture's (USDA) Federal Grain Inspection Service, as well as the origin and uses of various U.S. wheat classes.

- ▶ Section 3 reviews the most common physical and chemical tests used to determine wheat and flour quality, including moisture, ash and protein content, falling number, thousand-kernel weight, sedimentation, vomitoxin and single-kernel characteristics. A simplified milling process diagram and laboratory tests also are discussed.
- ▶ Section 4 examines the most common flour dough functionality tests.
- ▶ Section 5 provides a brief overview of laboratory product-testing protocols used to evaluate flour quality for various wheat-based products (breads, cookies, cakes and pasta). These model systems may be used to predict commercial production for common uses of wheat flour worldwide.

The website was produced by Kansas State University's International Grains Program, in cooperation with the Wheat Marketing Center Inc., Portland, Ore., and Northern Crops Institute. Funds for the project were made available by NAEGA through its USDA Market Access Program grant. Also utilized in the website were text and photos provided by U.S. Wheat's *U.S. Grain Inspection Manual*, which was prepared with extensive support from USDA's Federal Grain Inspection Service.





USDA to Conduct Pesticide Residue Survey of U.S. Soybean Exports

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) has notified the NGFA that it will initiate a pesticide-residue survey of U.S. export soybeans this marketing year in response to what it said was interest from international buyers.

The agency noted that it has conducted a similar pesticide-residue survey of U.S. wheat exports, in cooperation with U.S. Wheat Associates, for more than 20 years, under which it annually tests 300 randomly selected subplot samples for 61 different pesticide residues and compounds. Based upon data obtained as a result of such testing, GIPSA has been able to issue a letterhead statement, upon request, accompanying the official inspection certificate attesting that the samples tested all were within established U.S. Environmental Protection Agency (EPA) pesticide-residue limits.

In a letter dated Sept. 10 to NGFA President Kendell Keith, GIPSA said it will analyze 100 export cargo subplot samples of soybeans collected by official personnel for 100 pesticides registered for use in the United States. As is the case with the wheat pesticide-residue survey, the soybean samples will be obtained randomly, and information on the test results will be conveyed only in aggregate – without identifying the source or origin of any of the samples. The tests will be conducted by GIPSA at its National Grain Center in Kansas City, Mo.

“We plan to continue this project over multiple years to increase the statistical veracity of the data,” wrote Randall Jones, the new deputy administrator of GIPSA's Federal Grain Inspection Service. “Based on the survey findings, we anticipate making available, upon request, a soybean letterhead statement similar to the wheat letterhead statement.”



CN Files Court Suit Challenging STB Rejection of Expedited Timetable to Consider Acquisition of Chicago Shortline Carrier

The Canadian National Railway (CN) on Sept. 18 filed suit in the U.S. Court of Appeals for the District of Columbia Circuit challenging the federal Surface Transportation Board's (STB) rejection of its request to expedite consideration of its planned acquisition of a Chicago-area shortline carrier, the Elgin, Joliet and Eastern (EJ&E) Railway.

Specifically, the STB in a decision dated Sept. 8 rejected the CN's request to rule by Oct. 15 on whether to allow its \$300 million acquisition of the shortline carrier to proceed. The CN sought the expedited consideration to allow its stock purchase to be completed by the Dec. 31 deadline specified in the transaction. Instead, the STB said it would retain the schedule unveiled July 25 that envisions completing a full-scale environmental review of the transaction in December or January before making a decision on the application “as soon as possible thereafter.”

The CN had offered to delay making any changes to the shortline carrier's operations if the STB would rule separately on the merits of the transaction by Oct. 15 prior to completion of the environmental assessment, at which time the agency might impose additional environmental mitigation measures. Instead, the STB restated its intent to complete its full-scale review under the National Environmental Policy Act before ruling on the merits of the purchase, which it said was consistent with the procedures it had followed in other rail-merger cases. The STB asserted that a procedure that gives CN control over the EJ&E Railway before the agency rules

on the environmental issues would violate the National Environmental Policy Act's principles and regulations. The agency also asserted that the CN had failed to demonstrate that its proposal to maintain the environmental status quo would be workable. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the STB's three-page decision.

Meanwhile, in a related action, the House Transportation and Infrastructure Committee on Sept. 24 approved legislation (H.R. 6707) that would require the STB to consider the impact on safety, the environment and intercity passenger rail service when deciding any rail merger transactions not approved prior by Aug. 1. The bill clearly is targeted at the CN's acquisition of the EJ&E Railway, since the transaction would transfer to CN control a substantial portion of the shortline carrier's existing rail line, which consists primarily of an arc around Chicago.

In other rail-related matters:

- ◆ During a Sept. 17 meeting of the STB's Rail Energy Transportation Advisory Committee, a transportation consulting firm – Cambridge Systematics – said a preliminary “snapshot” of the initial portion of a study on the investment needs of the rail industry concluded that about \$148 billion would be required over the next 28 years. Of that amount, the firm estimated that \$135 billion would be needed by Class I carriers.





FDA Issues Draft Guidance on Regulating Genetically Engineered Animals

The U.S. Food and Drug Administration is seeking comments by Nov. 18 on a draft guidance document that it hopes to finalize by year's end outlining how it has regulated – and will continue to regulate – genetically engineered animals and the products derived therefrom.

In releasing the draft guidance on Sept. 18, the agency reiterated its intent to regulate genetically engineered animals under the new animal drug authorities found in the federal Food, Drug and Cosmetic Act, since such animals contain an rDNA construct intended to alter the structure and function of the animal by introducing new characteristics or traits. The agency noted that genetically engineered animals include those that: 1) produce human or animal pharmaceuticals (biopharm animals); 2) serve as models for human diseases; 3) produce high-value industrial or consumer products, such as fibers; and 4) possess new traits, such as improved nutrition, faster growth or reduced environmental impacts (such as reduced phosphate in manure).

Under the draft guidance, FDA said that in those cases in which the genetically engineered animal is intended for food use, producers will be required to demonstrate that food from the animal is safe to eat. FDA said it will review this information as part of its food safety assessment, consistent with that recommended in the recently adopted Codex Alimentarius Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Animals. Codex was formed by the United Nations in 1963 to develop international science-based food and feed safety codes.

The agency said it does plan to require premarket approval for animal species traditionally consumed as food, and expects to require approval of all genetically engineered animals intended for the human food supply. Among other things, the FDA draft guidance recommends that sponsors of genetically engineered animals submit detailed descriptions of: 1) the methods used to introduce the rDNA construct into the initial genetically engineered animal; 2) the breeding strategy used to produce progeny; and 3) a “full characterization” of the genetically engineered animal and the insertion site of the rDNA construct. FDA's draft guidance also recommends that sponsors submit samples of the genetically engineered article, as well as an analytical method for detecting the genetically engineered construct found in the resulting animal. And it contains a raft of requested information concerning the product definition that characterizes the genetically engineered animal; the molecular characterization of the rDNA construct and the genetically engineered animal's lineage; and food/feed safety and environmental safety assessments. The draft guidance also describes a sponsor's responsibility in meeting the requirements for environmental assessment under the National Environmental Policy Act.

Labeling: The draft guidance states that food derived from genetically engineered animals would not be required to be labeled as such unless the animal is materially different from its non-engineered counterpart. As an example, the agency stated that labeling of food derived from genetically engineered animals would be required if the food has a different nutritional profile.

Enforcement Discretion: FDA's draft guidance also describes how the agency will exercise enforcement discretion by not requiring premarket approval for some genetically engineered animals, depending upon potential risk. The agency noted that it exercised such authority after reviewing information about *Zebra danio*, a genetically engineered aquarium fish that glows in the dark, which was not likely to enter the human food supply. The draft guidance indicates that FDA intends to utilize similar enforcement discretion for laboratory animals used for research or investigational purposes, kept in confined conditions and disposed of after tests are completed. The agency said among the factors it will consider when determining whether to exercise enforcement discretion are: 1) whether there is anything about the genetically engineered animal that poses a human, animal or environmental risk; 2) whether the genetically engineered animal poses any greater environmental risk than its conventional counterpart if it is released; 3) whether there are concerns about the disposition of genetically engineered animals; and 4) whether there are any other safety questions not adequately addressed by the firm submitting the application.

The draft guidance also describes how FDA regulates heritable rDNA constructs (those inherited from one generation to the next). The agency said non-heritable constructs, such as those used for gene therapy to treat individual animals, may be the subject of subsequent guidance.

Coordination with Other Agencies: Depending upon the species of animal and its intended use, FDA said it will coordinate its review with the U.S. Department of Agriculture and U.S. Environmental Protection Agency, each of which have oversight over certain aspects of agricultural biotechnology under the U.S. regulatory framework. Concurrently, USDA's Animal and Plant Health Inspection Service (APHIS) issued a **Federal Register** notice requesting information on three aspects: 1) research conducted or planned on genetically engineered animals; 2) the importation and movement of genetically engineered animals among the U.S. livestock population; and 3) actions and approaches it should consider under the Animal Health Protection Act that would complement FDA's draft guidance.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the 25-page FDA guidance.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

Major Recruiting Drive Underway!!!

...Sign Up a New Member – Win a Weekend in Tahoe!...

Every sponsor of a new member by Dec. 31 wins a chance at a weekend in Tahoe!

That's the headline of a major membership recruiting push underway at the NGFA.

The NGFA Board of Directors kicked off the initiative at its Sept. 5-6 fall meeting, and the NGFA Membership Network has been alerted to the drive. Now, we want to broaden this fall membership campaign to include all NGFA members!

The time is right to capitalize on a rare confluence of factors:

- ▶ Volatile markets are emphasizing to potential members the value of ensuring their access to the NGFA Arbitration System – especially to reduce counter-party risk from failure to deliver contracted commodities. Even non-members who have dodged recruiters for years are signing up today – they've seen the light!
- ▶ The 10 percent dues reduction approved by the NGFA Board makes the value proposition of NGFA membership even better. Ask your prospect: When was the last time anyone reduced your dues?



National Grain and Feed Association
1250 Eye St., N.W., Suite 1003
Washington, D.C. 20005-3922

TIME SENSITIVE

Need an incentive? Here are two:

- ▶ Each new-member sponsor by Dec. 31 qualifies for a **Tahoe Weekend**, consisting of airfare for two to Reno, Nev., and a two-night stay at the luxurious **Hyatt Regency Lake Tahoe Resort, Spa and Casino**.
 - ▶ Great prizes will be awarded at the Orlando convention – and every successful recruiter is eligible to win something, like the Nootbaar Prize cash drawing. You don't have to sign up a "big company" to win big!
- Several documents to help you meet this challenge and win a big prize have been prepared:
- ▶ A list of our high-priority targets.
 - ▶ A one-page document summarizing the value of NGFA membership that you can use for talking points for a telephone or personal conversation, and then e-mail or leave behind with your prospect.
 - ▶ An Active membership application.

To request these documents, simply e-mail NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org. Your custom recruiting kit will be e-mailed to you immediately!