



Risk Management Committee to Discuss Spec Limits, Hedge Exemption

The NGFA's Risk Management Committee is scheduled to meet on Jan. 10 in Washington to develop the association's position on two significant proposals by the Commodity Futures Trading Commission (CFTC) that would increase significantly federal speculative position limits and create a new "risk management exemption" for index and pension funds.

As noted in the Dec. 6 edition of the *NGFA Newsletter*, the CFTC's Nov. 21 proposal to increase speculative position limits would apply to wheat, corn, soybean, soybean oil, soybean meal and several other futures contracts traded on all three U.S. agricultural exchanges. For example, the all-months speculative position limit for corn would increase from 22,000

contracts to 42,400 contracts, with single-month limits increasing from 13,500 contracts to 26,000 contracts. Soybean all-months limits would increase from 10,000 to 13,300 contracts, with the single-month limit rising from 6,500 to 8,600 contracts. The wheat all-months limit would increase from 6,500 to 14,500 contracts, with single-month limits increasing from 5,000 to 11,100 contracts. Under the CFTC proposal, speculative position limits for the spot month would remain unchanged at 600 contracts for each of these three commodities. Consistent with past CFTC practice, limits would be the same across all three agricultural futures exchanges.

Meanwhile, the CFTC's Nov. 27 proposal to create a new hedge exemption for agricultural commodities for entities like

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DHS Indicates Intent Not to Apply Chemical Security Regulations to Fumigant Use at Grain, Feed Facilities

The U.S. Department of Homeland Security (DHS) does **not** intend to apply its chemical facility anti-terrorism standards to grain elevators, feed mills and grain processing operations that use fumigants, and will be clarifying that in documents scheduled to be published within the next two weeks, according to a top DHS official who addressed the NGFA's Country Elevator/Feed Industry Conference on Dec. 10.

Dennis R. Deziel, acting deputy director of DHS's Chemical Security Compliance Division, noted that during the agency's meetings with the NGFA and other industry groups following the issuance of its chemical facility anti-terrorism standard, it had been made aware that its final regulations and the screening threshold quantities (STQs) established for various "chemicals of interest" – known as Appendix A – created uncertainty regarding chemicals used as fumigants to control insect and rodent infestation. For instance, the NGFA – working in cooperation with the North American Millers Association and National Pest Management Association – developed questions to DHS concerning its classification of aluminum phosphide/magnesium phosphide and phosphine. Deziel said an updated *Top Screen Users Manual* and industry guidance scheduled to be issued soon would clarify that

DHS's intent is **not to apply the regulations to facilities that use chemicals as fumigants**; during his remarks, he specifically cited fumigants used to control infestation in grain bins. In doing so, Deziel noted that the agency believes that such facilities typically do not possess sufficient quantities of chemicals that pose a terrorist threat.

Under the chemical facility anti-terrorism standards, facilities that "possess or plan to possess" DHS "chemicals of interest" at STQs listed in Appendix A are required to register with DHS and complete a web-based consequence-assessment tool known as "Top Screen" by Jan. 22. However, Deziel said DHS plans to be flexible in enforcing the Jan. 22 deadline, noting that "men in black coats are not going to show up on the doorsteps" of facilities on that date to enforce compliance. Rather, he said, enforcement would be focused to the degree necessary on chemical facilities that clearly are required to register and complete the Top Screen process based upon the types and quantities of chemicals being handled, but which refuse or are recalcitrant in doing so. The results of the "Top Screen" assessment tool will be evaluated and used by DHS to determine whether a facility is covered by the standard and required

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index and pension funds would formalize what the agency already has begun to do through the issuance of "no-action" letters. The proposal would encompass "futures or futures-equivalent position(s), held as part of a broadly diversified portfolio of long-only or short-only futures or futures-equivalent positions" based upon either: 1) a fiduciary obligation to match or track the results of a broadly diversified index that includes the same commodity markets in fundamentally the same proportions as the futures or futures-equivalent position (such as index funds); or 2) a portfolio diversification plan that has, among other substantial asset classes, an exposure to a broadly diversified index that includes the same commodity markets in fundamentally the same proportions as the futures or futures-equivalent position (such as pension funds). Under the agency's proposal, the exemption would be subject to several conditions, including that the positions must be passively managed, unleveraged (backed by cash and accrued profits) and could not be carried into the spot month. Entities would need to apply for and be granted the risk-management exemption by the CFTC.

The proposals come in the wake of industry concerns about a lack of convergence between cash and futures for some exchange-traded agricultural futures contracts. As one measure of that concern, the NGFA's Country Elevator Committee during its Dec. 9 meeting in Chicago voted to establish a task force to study the CFTC proposals and provide input to the Risk Management Committee for its Jan. 10

meeting.

Meanwhile, the CFTC has notified the NGFA that its comment period on the speculative position limit proposal will **not** be extended beyond the published Dec. 21 deadline. The NGFA had formally requested a 30-day extension of that deadline to enable feedback to the CFTC prior to expiration of the comment period. However, the CFTC's staff has assured the NGFA that, consistent with CFTC's past practice, NGFA comments received following the Risk Management Committee's Jan. 10 meeting will be given serious consideration and equal weight with comments received by the Dec. 21 date. A preliminary statement will be submitted to the CFTC this week summarizing the NGFA's previous support of speculative position limit increases, but cautioning that circumstances today have changed, necessitating a careful and deliberate review of the issue.

The comment deadline on the agency's second proposal – to establish the hedge exemption for index and pension funds – currently is Jan. 28. The NGFA also will be submitting formal comments to the CFTC on that proposal.

Input for the Risk Management Committee's Jan. 10 meeting is welcomed from all NGFA members. Please e-mail your thoughts to NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org.

CME Planning Increases in Corn, Soybean Storage, Load-Out Charges

The CME Group is considering plans to move ahead with proposals to increase corn and soybean futures contract storage rates and load-out charges, with the earliest potential implementation likely to be November 2008 for the soybean futures contract and December 2008 for the corn futures contract.

That was one of the messages conveyed by Fred Seamon, associate director, corporate development for the CME Group, during his presentation at the NGFA's Country Elevator/Feed Industry Conference in Chicago on Dec. 11.

Seamon noted that the two proposals submitted by the NGFA's Futures Market Performance Task Force, chaired by NGFA First Vice Chairman Tom Coyle, had generated "broad industry support" during the CME Group's Dec. 4 meeting. Under the storage rate proposal, the corn and soybean futures contract storage (premium) charges would be increased from the current 15/100ths-cent per bushel per day (approximately 4.5 cents per bushel per month) to 16.5/100ths-cent per bushel per day (approximately 5 cents per bushel per month) to

bring storage rate (premium) charges into line with wheat futures and more in line with cash market storage rates. Under the load-out charge proposal, the load-out rate for corn and soybean futures contracts would be increased from the current 4 cents per bushel to 6 cents per bushel to match the load-out rate for wheat futures and to reflect current higher elevation costs.

Seamon also said the CME Group planned to further research and analysis of a third NGFA recommendation: Developing a cash-settled index contract or index component of current contracts to attract the interest of fund investors and to allow traditional deliverable grain and oilseed contracts to better reflect supply/demand conditions.

Seamon also said the CME Group would be evaluating the possibility of increasing price limits for agricultural futures contracts. He said that nine soybean contracts and 27 corn contracts have settled at the price limit in 2007. He said the exchange is evaluating two options for potentially raising price limits: 1) raising the price limits, but keeping them static; or 2) basing price limits on a percentage increase factor.



Conference Committee to Begin Farm Bill Deliberations in January

House and Senate Agriculture Committee staff members this week began work to identify and reconcile differences between their respective versions of the 2007 farm bill in preparation for a joint House-Senate conference committee that will begin work in early January.

The preparatory work began after the Senate approved its measure by a 79-14 vote on Dec. 14. In a related development, Congress included in the massive fiscal 2008 spending bill a short-term extension of funding for the 2002 farm law – through March 15 – to provide time for the conference committee to complete action and for the House and Senate to approve the final version. Despite the three-month grace period, House Agriculture Committee Chairman Collin Peterson, D-Minn., and Senate Agriculture Committee Chairman Tom Harkin, D-Iowa, have stated a strong desire to complete the process by the end of January.

But neither the House- nor Senate-passed versions of the 2007 farm bill sit well with the Bush administration. During a Dec. 19 address to the Agribusiness Club of Washington, Acting Secretary of Agriculture Chuck Conner forcefully reiterated the administration's opposition and said it would be working vigorously with the joint House-Senate farm bill conference committee to advance meaningful reforms. He specifically cited the lack of meaningful caps on farm program payments; increases in loan rates and target prices for six commodities that would invite more trade challenges against U.S. farm programs at the World Trade Organization; and a significant increase in taxes (approximately \$17 billion, which generated significant opposition from House Republicans, as well) and budget gimmicks used in the bill to pay for expanded programs. He emphatically stated that because of these administration objections, "every senior advisor to the president was recommending a veto unless substantive reforms were adopted" and warned farm lobbyists "not (to) underestimate" the administration's resolve to secure substantial reforms.

Outcome of Significant Senate Farm Bill Amendments: Senate passage of its version of the 2007 farm bill occurred after several amendments were defeated during three days of floor debate, including two amendments that could have provided some degree of reform to current farm programs. Significantly for the grain, feed and processing industry, a particularly troubling amendment drafted by Sens. Chuck Grassley and Herb Kohl, D-Wis., that would have mandated extremely broad actions within the U.S. Justice Department, Federal Trade Commission and U.S. Department of Agriculture (USDA) to conduct investigations of agricultural competition and change the rules governing agricultural mergers was debated but never voted upon. The NGFA and other agribusiness groups had strongly opposed the Grassley-Kohl amendment, and the U.S. Justice Department submitted a forceful letter declaring the

provision unconstitutional.

In addition, importantly, there were no amendments offered to give states unbridled authority to regulate grain merchandising at federally licensed grain warehouses. Meanwhile, Sen. Dianne Feinstein, D-Calif., withdrew an amendment that would have transferred responsibility for conducting agricultural inspections for plant and animal diseases in imported products from the U.S. Department of Homeland Security (DHS) back to USDA's Animal and Plant Health Inspection Service. She did so only after extracting a commitment from DHS Secretary Michael Chertoff to stop the practice of assigning agriculture inspectors to conduct other, nonagricultural-related functions (which Feinstein alleged was occurring 22 percent of the time) and to create a new position within DHS – deputy director for agriculture operational oversight – that will be responsible for: 1) overseeing the joint Customs and Border Protection (CBP) and USDA Agriculture Quality Assurance Program; 2) monitor agricultural inspection performance for risk and efficiency; and 3) ensure appropriate staffing and budget allocations for agricultural product inspections. Feinstein warned she would be "watching closely" to ensure that "agriculture inspections become a priority at (DHS) and that the necessary changes are implemented.

Another amendment – introduced by Sen. John Tester, D-Mont., that would have modified the provision relating to unlawful practices under the Packers and Stockyards Act by adding "regardless of any alleged business justification" – was rejected Dec. 13 by a 40-55 vote. Meanwhile, an amendment initially proposed by Sen. Richard Durbin, D-Ill., to eliminate all U.S. food, feed, meat, seafood, produce, and fruit and vegetable safety laws in two years was modified significantly. It now directs the president to conduct a review and follow up report to the Congressional Bipartisan Food Safety Commission that already was included in the Senate farm bill. The provision also includes language that jumpstarts the congressional process for conducting hearings and advancing the commission's recommendations through the legislative process. Durbin's intent was to force Congress to reauthorize the Federal Food, Drug and Cosmetic Act and other food safety laws. A Durbin amendment that establishes a web-based adulterated food registry for USDA-regulated products was included in a package of amendments added to the bill by Harkin prior to floor debate. *[See a summary of other provisions included in Harkin's amendments package later in this article.]*

The trend against substantive reforms started with the first amendment offered, when the Senate on Dec. 11 rejected, by a 37-58 margin, the proposal offered by Sens. Richard Lugar, R-Ind., and Frank Lautenberg, D-N.J., that would have phased

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out current farm program direct and counter-cyclical payments and replaced them with a taxpayer-funded revenue insurance program for producers, with the more than \$16 billion in estimated savings being redirected to spending on nutrition, emergency food relief, conservation, renewable energy development, research and specialty crop assistance. Meanwhile, two other high-profile amendments went down to defeat on Dec. 13. The first was the payment limitation amendment offered by Sens. Byron Dorgan, D-N.D., and Charles Grassley, R-Iowa, that would have imposed a hard cap of \$250,000 per couple on farm program commodity payments (down from the current \$360,000 "soft" cap). The amendment fell four votes short (56-43) of the 60 votes needed to avoid a potential filibuster by southern senators. The second payment-limit amendment, introduced by Sen. Amy Klobuchar, D-Minn., fell 12 votes short of the 60 votes necessary (48-47). It would have eliminated commodity program payments for producers who have an adjusted gross income of more than \$250,000 if less than 66 percent of their income was derived from agriculture, ranching or forestry. Klobuchar's amendment would have imposed a \$750,000 adjusted gross income cap on producers who derive more than two-thirds of their income from agriculture, ranching or forestry.

The result is that the Senate farm bill retains the current farm program payment "limits" of \$40,000 on direct payments and \$60,000 on counter-cyclical payments, with no limits on marketing loan gains. Current law also allows producers to have an adjusted gross income of up to \$2.5 million, but that cap does not apply if at least 75 percent of their income is

derived from agriculture. The Senate farm bill actually further eases that limit by reducing to 66 percent the income needed to be generated from agriculture, while those generating less than two-thirds of their income from agriculture would see the income-eligibility limit decline gradually to \$750,000 by 2010. Meanwhile, the House-passed farm bill establishes a \$500,000 adjusted gross income threshold for producers and landowners receiving less than two-thirds of their income from agriculture. Those with two-thirds or more of their income derived from agriculture could earn up to \$1 million in adjusted gross income and still receive payments under the House measure. The House-passed bill would prohibit payments to producers and landowners whose adjusted gross incomes exceed \$1 million. The Bush administration had sought to ban farm program payments to producers and landowners with adjusted gross incomes exceeding \$200,000.

Included in Harkin's amendments package with the consent of Sen. Saxby Chambliss, R-Ga., ranking member of the Senate Agriculture Committee, were more than 140 provisions. Some of the most significant would: 1) create a USDA grant program to improve agricultural security; 2) exempt trucks entering the United States from Canada from USDA agricultural quarantine and inspection user fees; 3) create an Office of Small Farms and Beginning Farmers and Ranchers within USDA; 4) require USDA to issue a report on the availability of cellulosic materials for energy production; 5) create a Biomass Crop Transition program; and 6) require studies related to animal cloning and the safety of food derived from such animals.

Energy Bill with New Biofuels Mandates Signed into Law

President Bush on Dec. 18 signed into law a comprehensive energy bill that includes significant increases for renewable fuels and corporate average fuel economy (CAFE) standards.

The Senate on Dec. 13 voted 86-8 to approve its version of the measure (H.R. 6) after removing a \$21 billion tax package comprised of a wide array of tax incentives, offset in part by a repeal of \$13.5 billion in tax breaks aimed at the oil and gas industry. The White House had issued a veto threat over the provisions. The House, having previously passed a version that included the tax package, followed the Senate's lead and passed the pared-down version by a 314-100 margin.

The new law features several bipartisan-supported provisions, including an increase in the renewable fuels standard from the current 9 billion gallons to 15 billion gallons by 2015.

Then, starting in 2016, it would mandate additional 3-billion-gallon annual increases in biofuels use to be derived from cellulosic material, until reaching 36 billion gallons by 2022.

The bill also includes related mandates for biodiesel, as well as a fuel-fee provision should cellulosic ethanol not be commercially viable by 2010. The bill mandates the blending of 1 billion gallons of biodiesel produced from vegetable oil and animal fats by 2012. Under the fuel-fee provision, fuel distributors are required to pay a fee for each gallon that they fall short in procuring the mandated blended-fuel quota amount each year. The fee will amount to 25 cents per gallon, or the difference between the wholesale gasoline prices and \$3, whichever is greatest. This fee is in addition to federal and state fuel excise taxes.

Congress Approves Massive Appropriations Bill, Adjourns for 2007

The House on Dec. 19 approved a \$555 billion spending measure for fiscal year 2008 that encompasses 11 of the 12 must-passed annual appropriations bills. President Bush was expected to sign the measure shortly.

The bill includes \$473.5 billion in discretionary spending and \$11.2 billion in emergency spending. The total spending largely adheres to the president's requested level of \$932.8 billion overall. Also included is \$70 billion for military

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operations in Iraq and Afghanistan.

The measure includes \$19.1 billion in discretionary spending for the U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA). That's nearly \$1 billion more than requested in the Bush administration's budget proposal. But much of that is included in "emergency" spending and cuts were made in other areas to keep the spending total near to the president's desired limit.

Importantly, the bill does **not** contain NGFA-opposed language proposed by the administration that would have imposed \$4 million to \$6 million in new user fees to finance the cost of the grain standardization activities by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA). Nor does it include the administration's new proposed transaction fee on commodity futures and options contracts traded on approved exchanges to cover the cost of the Commodity Futures Trading Commission's (CFTC) regulatory activities, which the NGFA also strongly opposed.

Waterways Construction and Maintenance: The bill also includes \$5.591 billion in funding for the U.S. Army Corps of Engineers Civil Works programs, with \$417 million allocated to projects financed by the Inland Waterways Trust Fund. Projects funded under the construction account include \$485,000 for the Mel Price Lock and Dam. Under major rehabilitations, a number of Upper Mississippi River and Illinois Waterways projects were funded near or at levels greater than the president's funding request, including: 1) \$986,000 for Lock and Dam 3; 2) \$5.2 million for Lock and Dam 11; 3) \$1.4 million for Lock and Dam 19; 4) \$308,000 for Lock and Dam 24; 5) \$6.8 million for Lock and Dam 27; and 6) \$20.1 million for the Lockport Lock and Dam. A total of \$8.856 million was appropriated for the Upper Mississippi River and Illinois Waterway project – several million less than in the past two years, but an increase over the President's budget request of \$0.

CFTC Reauthorization Bills Approved by Senate, House Ag Committee

After years of delay, the Senate and House Agriculture Committee moved with great speed in approving separate bills that would reauthorize the Commodity Futures Trading Commission (CFTC). The Senate approved its version on Dec. 13 as an amendment to the 2007 farm bill, which subsequently was approved on the floor. Both bills would reauthorize the CFTC through fiscal year 2013 (which ends Sept. 30, 2013). Previously, the House Agriculture Committee on Dec. 12 approved its version of the measure. The agency, last authorized in 2000 with the passage of the Commodity Futures Modernization Act, has been operating without legislative authorization for more than a year, although Congress has continued to fund the agency to keep it operating. It is expected that the joint House-Senate conference committee established to reconcile differences in the two chambers' versions of the 2007 farm bill will address the CFTC reauthorization bill, as well.

During the House Agriculture Committee's passage, it adopted a narrow legislative fix to address the so-called Zelener court case, in which the CFTC in 2003 alleged that the defendants committed fraud in the sale of off-exchange foreign currency (forex) futures contracts. A U.S. district court subsequently concurred and a U.S. appellate court subsequently agreed, that the agency had presented proof that the defendants engaged in fraudulent sales, but dismissed the action based upon its determination that the transactions were spot transactions, not futures contracts, and thus beyond the jurisdictional reach of the Commodity Exchange Act. There had been discussions within the House Agriculture Committee about extending such authority over agricultural futures contracts, or even attempting to define a futures contract in the legislation. The NGFA successfully urged the committee to do

neither, warning that such action would raise major concerns among the grain, feed and grain processing industry over potential infringements on the cash-forward exemption embodied under the Commodity Exchange Act that industry firms rely upon to offer various forms of forward cash contracts. Instead, the House Agriculture Committee chose to provide the CFTC with additional legal authority over retail foreign exchange agreements and contracts in foreign currency.

The Senate adopted a slightly broader approach to address the Zelener case. In the Senate version, the CFTC is granted jurisdiction and anti-fraud enforcement authority over "rolling spot" contracts, dubbed as such because the contracts litigated in the Zelener case were rolled forward every two days. That authority would extend not only to foreign exchange contracts, but also to metals, agriculture and other commodities in the event such contracts spread to those sectors. If the CFTC desired to exercise that additional authority, its actions first would be subject to an agency rulemaking and public comment. **Importantly, the Senate also included a critically important provision stating that nothing in its bill will be interpreted as affecting the determination of whether a contract or transaction is a cash forward contract exempt from CFTC jurisdiction under the Commodity Exchange Act, or whether it is a futures contract subject to CFTC jurisdiction.**

Both the House and Senate bills seek to extend CFTC jurisdiction to trading on "exempt commercial markets" (such as the Intercontinental Exchange) and some over-the-counter derivatives. There has been special concern in both the Senate and House about alleged abuses in off-exchange energy markets.





NGFA's 36th Annual Country Elevator and 11th Annual Feed Industry Conference ...A Pictorial Review of Conference Highlights...

More than 650 country elevator and feed mill managers and their key personnel converged on the Windy City on Dec. 9-11 as the NGFA's Country Elevator/Feed Industry Conference convened for the first time in Chicago. They were treated to an outstanding array of speakers on diverse topics important to grain elevators, feed mills and integrated livestock and poultry operations, as well as a trade show featuring the latest products and services for the industry and a vibrant city teeming with restaurants and holiday shopping opportunities. PowerPoint presentations or handouts presented by each of the speakers now are available on the NGFA's website at www.ngfa.org. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the files directly.

Mark your calendars now for the 2009 edition of this outstanding conference scheduled for **Dec. 7-9** at a new venue in **St. Louis, Mo.** – the Marriott Renaissance Grand Hotel!

NGFA Chairman Ron Olson, vice president, grain operations for General Mills Inc., Minneapolis, Minn., opens the conference by previewing NGFA activities planned for 2008 that are pertinent for country elevators and feed mills, including development of the first distance-learning training program on feed quality assurance for commercial feed mills; a "safety basics" DVD being produced in cooperation with the Grain Elevator and Processing Society; educational seminars on trading, trade rules and dispute resolution, as well as major safety, health and environmental issues; and a wholesale redesign of the NGFA's website.



Hall of fame broadcaster Orion Samuelson (center) of WGN Radio and Television, Chicago, is shown with NGFA Country Elevator Committee Chairman Eric Wilkey (left), president, Arizona Grain Inc., Casa Grande, Ariz., and NGFA President Kendell Keith following his captivating address on changes, challenges and opportunities confronting U.S. agriculture. Samuelson also did a series of interviews with NGFA officers and leadership while spending several hours at the conference.



Jim Wiesemeyer, vice president, policy and trade issues for Informa Economics, Washington, D.C., provides an energetic and informative look at major agricultural and trade policy issues awaiting action in Congress, as well as a preview of the 2008 presidential election.



Jeff Cox (right), president of Syngenta Seeds Inc., Golden Valley, Minn., takes questions from NGFA Biotechnology Committee Chairman Jim Stitzlein, manager, market development for Consolidated Grain & Barge Co., Chesterfield, Mo., following Cox's remarks providing a biotechnology company's view of future grain handling needs.



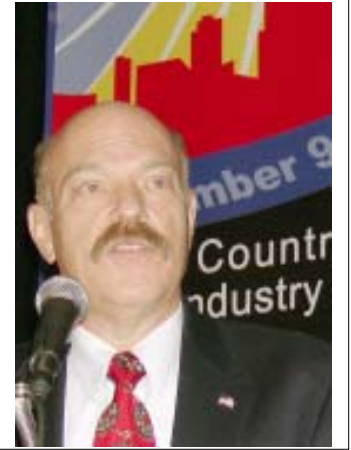
Dennis Deziel, acting deputy director of the U.S. Department of Homeland Security's Chemical Security Division, provides an overview of the impact of the agency's chemical facility anti-terrorism regulations on grain elevators and feed mills. [See summary in article on page 1.]

Focus on Biofuels



Marty Ruikka, president of PRX Geographic Inc., Chelsea, Mich., provides a comprehensive forecast for U.S. biofuels growth in 2008 and beyond, given grain supply/demand and price projections. He noted that a Supreme Court decision on a global warming suit brought by the state of Massachusetts will require EPA in 2008 to issue regulations to implement life-cycle carbon accounting for energy development and reductions of carbon dioxide emissions from motor vehicles, which could further spur development of new ethanol plants with the latest technology that reduces carbon emissions generated during fuel production. He noted that the U.S. Department of Agriculture's projections on ethanol growth exceed those of ProExporter Network. Ruikka was bearish on biodiesel, saying the industry currently is operating at 35 percent of capacity and another 1 billion gallons of capacity is under construction.

Mike Leister, fuels technology manager for Marathon Petroleum Co., Findlay, Ohio, gives his company's perspective on U.S. biofuels growth. Among other things, he stressed the two- to three-year lag time in creating sufficient demand to utilize the levels of ethanol being mandated by Congress, given logistical and other constraints. He also said fuel blenders will require incentives to shift to increased biofuels use.



Dr. John Lawrence, director of the Iowa Beef Center at Iowa State University, Ames, Iowa, reviews the impact of biofuels use on the animal feed and feeding sectors. He provided projections on the growth of distillers grain production (reaching 110 million tons if the United States produces the congressionally mandated 36 billion gallons of ethanol annually), noting that about 20 million tons of distillers grains realistically can be fed. He also provided insights on the potential for relocation of U.S. animal production driven by biofuels growth.



Tom Williamson, owner of Transportation Consultants Inc., Kansas City, Mo., reviews the burgeoning need for transportation infrastructure improvements to handle increased freight demand for commodities, biofuels and other products.

Market Factors and Futures Market Performance

Two outstanding panels focused on market factors that will drive price ranges for commodities in the coming year, as well as futures market performance and convergence behavior.



Steve Freed (left), vice president of research at ADM Investor Services, and Mark Ditsch, analyst at LaSalle Group/Rosenthal Collins, both of Chicago, provide commodity price forecasts for grains and oilseeds for the coming year.



Fred Seamon (left), associate director of corporate development at the CME Group, and NGFA First Vice Chairman Tom Coyle, general manager of Chicago & Illinois River Marketing LLC, a Nidera Co., both of Chicago, discuss the NGFA's recommendations to the CME Group for enhancing performance of corn and soybean futures contract performance, and concerns over whether convergence in cash and futures are occurring. [See report on pages 1-2.]



NGFA Trade Rules Committee Establishes Task Forces to Explore Issues

...Includes Consideration of Possible Trading Rules for Biofuels...

The NGFA's Trade Rules Committee assigned five separate task forces to develop various industry issues during its Dec. 9 meeting in Chicago conducted in conjunction with the NGFA's Country Elevator/Feed Industry Conference.

Among the task forces created by the Trade Rules Committee, chaired by James Keistler, merchandising manager, Twomey Co., Smithshire, Ill., is one that is to discuss and explore whether there is a need to develop trading rules for biofuels. The task force is scheduled to be constituted and conduct its discussions early in 2008. During its discussions, the Trade Rules Committee recognized that its deliberations were very preliminary and that extensive input from the NGFA membership and all sectors of the biofuels industry was essential to determine whether such rules merit development. Importantly, even if trading rules for biofuels are eventually developed, buyers and sellers have the right to expressly exclude some or all of the rules from their contracts – as is the case with each of the NGFA's existing sets of Trade Rules. It also is expected that the topic of possible trading rules for the biofuels sector will be a major session at the upcoming **NGFA Trading, Trade Rules and Dispute Resolution Seminar**, scheduled for **May 6-7 in St. Louis, Mo.**

Other NGFA Trade Rules task forces consist of:

- ▶ A task force derived from the Feed Trade Rules Subcommittee, which will follow up on last year's major effort regarding the prospect of establishing trading rules for distillers grains. In 2006, at the direction of the NGFA Executive Committee, a broad-based and widely supported task force was formed to identify issues related to trading rules, standardization and quality issues focused on distillers grains. The 2006 task force concluded that the question of trading rules for distillers grains should be revisited periodically. Following last week's meetings of the Trade Rules Committee and the Feed Trade Rules Subcommittee, the new task force will consider, in particular, amendments to the Feed Trade Rules to address recurring trade issues related to distillers grains. This task force expects to have at least preliminary findings to present during the Trade Rules Committee meeting at the March 2008 convention in Scottsdale, Ariz.
- ▶ A task force from the Barge Trading Rules Subcommittee, which will consider rules-related implications that may arise when "busted billing" (instances when a barge is

applied and then replaced by another barge) occurs in connection with a string of barge applications.

- ▶ An ongoing task force consisting primarily of NGFA Trade Rules Committee and NGFA Rail Shipper/Receiver Committee members, that is exploring seals-related trading rules questions. This task force already has initiated recommendations for changes to the NGFA Grain and Feed Trade Rules, some of which already have been approved by the NGFA Board of Directors and others that are to be recommended to the Board in March 2008.
- ▶ An ongoing, long-term task force that is to monitor and develop proposed amendments, as needed, to the new Secondary Rail Freight Trading Rules, which were approved by the NGFA Board of Directors in March 2007. In accordance with NGFA's Bylaws, the new set of trading rules for the secondary rail freight market will be submitted to the NGFA membership for final ratification at the next annual business meeting at the March 2008 convention. The task force is scheduled to confer periodically, most likely on a semi-annual basis.

The NGFA welcomes and encourages membership input on the issues being addressed by the NGFA Trade Rules Committee and its task forces. Please provide your comments to NGFA Counsel for Public Affairs Charlie Delacruz at cdelacruz@ngfa.org.



Calendar

- Jan. 10, 2008:** NGFA Risk Management Committee
NGFA Conference Room, Washington, D.C.
- Jan. 13-14, 2008:** NGFA Executive Committee
Fairmont Mayakoba, Cancun, Mexico
- March 26-28, 2008:** NGFA 112th Annual Convention
Westin Kierland Resort, Scottsdale, Ariz.
- May 6-7, 2008:** Trade Rules Seminar
St. Louis Airport Marriott, St. Louis, Mo.





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to submit a security vulnerability assessment and implement additional performance-based security measures.

As noted in the NGFA questions posed to DHS, the confusion concerning aluminum phosphide/magnesium phosphide and phosphine arose from DHS classifying them as "sabotage/contamination" and "theft" threats, respectively. The agency then established a STQ for aluminum phosphide/magnesium phosphide that is triggered if a facility "ships the chemical and is required to placard the shipment." For phosphine, DHS established a minimum concentration for the chemical of 0.67 percent and a STQ of 15 pounds.

But the STQ for aluminum phosphide/magnesium phosphide created confusion, since some manufacturers refer to the U.S. Environmental Protection Agency's (EPA) warning signs required to be affixed to fumigated sites as "placards." Further, the U.S. Department of Transportation (DOT) requires conveyances containing fumigated agricultural commodities to be identified with "fumigant marking" or a hazard warning label. The NGFA told the agency that EPA's warning signs and DOT's fumigant markings are different than DOT placards cited in DHS's regulations that apply to shipments of hazardous materials over public roads, and that fumigated grain, feed, processed commodities and food products shipped in railcars and barges are not subject to DOT placarding requirement. Therefore, the NGFA told DHS, the agency should not subject such facilities to the Appendix A registration and Top-Screen process when storing such chemicals at their facilities for fumigation-related activities.

In the case of phosphine, a phosphine-based fumigant commonly used by the grain, feed and processing industry exceeds the 0.67 percent minimum concentration established by DHS, but the phosphine is in combination with another chemical that results in the fumigant mixture being classified by DOT as a zone D inhalation hazard. Within the preamble language of the chemical facility anti-terrorism standards, DHS specifically states that it did not include chemicals assigned to hazard zone D within Appendix A because they do not rise to a level of consequentiality that warrant their inclusion. For these reasons, the NGFA also told DHS that it should exclude quantities of chemical mixtures classified by DOT as hazard zone D from its regulations, even when the mixture contains a chemical present in an amount at or above the minimum concentration specified in Appendix A.

During his remarks at the NGFA conference, DHS's Deziel responded to these NGFA concerns by saying the agency's intent in utilizing "a placarded amount" as the STQ was to capture **manufacturers** and **distributors** of chemicals of interest listed in Appendix A. He said DHS had particular

concern that significant quantities of prepackaged chemicals possessed by such manufacturing and distribution facilities could represent a threat risk from terrorists. But he emphasized DHS's intent was **not to encompass users** of these chemicals, since these facilities typically do not possess significant quantities of chemicals of interest. Further, he said that DHS has **no authority** to regulate transporters of chemicals under the chemical facility anti-terrorism standards, and noted that rail and truck terminals are expressly excluded from coverage under the regulations.

Deziel also said that DHS currently is developing guidance for industry to further explain its intent when using the term "commercial grade" for chemicals listed in Appendix A. The same information will be provided in the updated version of the **Top Screen Users Manual**, he said. The definition is important when calculating the STQ for substances classified by DHS as "release-explosive" or "theft-explosives/improvised explosive device precursor" chemicals found in Appendix A. In the case of both classes of chemicals of interest, DHS requires facilities to tabulate the total quantity of all "commercial grades" of the chemical(s) of interest when calculating the STQ. The lone exception is when a specific minimum concentration is assigned in the minimum concentration column of Appendix A, in which case the facility is to count the total quantity of all "commercial grades" of the respective chemical at the specified minimum concentration.

Finally, Deziel noted that companies with 50 or more facilities that may find themselves covered by the standard based upon the types and quantities of chemicals of interest they handle may utilize a streamlined "bulk-upload" registration process to reduce the time required to register those facilities individually with DHS. If companies choose to use this "bulk-upload" process, he said, DHS will provide them with a spreadsheet to complete and return to the Chemical Security Assessment Tool (CSAT) Help Desk to expedite the facility-registration process. Deziel said thus far, approximately 15,000 total facilities across all industry sectors had registered with DHS, while 1,500 of those had completed the Top-Screen process. He estimated that about 70 companies had registered about 8,000 total facilities using the "bulk-upload" process. The help desk may be contacted toll-free at 1-866-323-2957.

See the **NGFA Newsletter** published Nov. 20, 2007 (pages 5-6) and **NGFA Government and Grain** published Nov. 8, 2007 for extensive information and discussion of DHS's "chemicals of interest" most relevant to the grain, feed and grain processing sectors. In addition, information on how to register with DHS and complete the Top Screen process is available from DHS's website by [clicking here](#).





USDA to Consider Additional Barter Exchanges in 2008

The U.S. Department of Agriculture (USDA) likely will consider additional barter exchanges utilizing Commodity Credit Corporation (CCC)-owned commodities to meet domestic and international food assistance needs in 2008, according to USDA officials who briefed the NGFA's Country Elevator Committee on Dec. 9 in Chicago, Ill.

USDA Farm Service Agency (FSA) officials noted that CCC has acquired about \$52.6 million worth of food products under the barter-exchange program, exceeding the \$50 million goal set by then-Secretary of Agriculture Mike Johanns when he announced the initiative on July 6. Approximately \$42 million (80 percent of the total) has been utilized for domestic food aid.

Currently, CCC is in a position to acquire another \$50 million worth of food products utilizing its remaining available inventory – which **excludes** 33.6 million bushels of CCC-owned wheat earmarked for the Bill Emerson Humanitarian Trust. As of early December, CCC owned approximately 4 million bushels of excess wheat, 1,987 hundredweight of rice, 125 bales of cotton and 32 tons of peanuts. Another \$13.1 million is available through “barter-delivery obligations” resulting from previous CCC transfers of title to CCC-owned cotton to an independent company called “The Seam” that USDA says now handles all cotton transactions.

In other remarks, USDA officials provided the following information:

- ▶ By early 2008, FSA plans to consider transitioning away from sealed bids to contracting by negotiation for both

domestic and export procurement programs to comply with federal acquisition regulations that apply to all federal agencies. Compliance with the federal acquisition regulations also means that the agency within “the next couple of months” will be changing the timing on its payment of invoices for international procurements. Specifically, FSA officials said that if contract terms require delivery to a specified international location, payment will not be made until delivery occurs and proof of delivery, including a report of any damage and loss, has been received. Depending upon the delivery terms, such as the Foreign Agricultural Service load port involved, FSA said between 30 to 60 days could elapse before the contract is paid.

- ▶ A total of 364.1 million bushels of temporary storage and 188.7 million bushels of emergency storage has been approved at federally licensed grain warehouses by early December. Emergency storage (ground piles) has been approved in 23 states, with Kansas (48.4 million bushels), Iowa (35.4 million), Nebraska (28.6 million), South Dakota (15.9 million), Illinois (8.9 million), Colorado (8.5 million), Minnesota (7.4 million) and Idaho (6.9 million) leading the list. Meanwhile, temporary storage has been approved at federally licensed warehouses in 24 states, topped by Iowa (89.7 million bushels), Minnesota (49.3 million), Illinois (39.6 million), South Dakota (37.4 million), Nebraska (33 million), Indiana (29.2 million), Kansas (14.4 million), North Dakota (11 million), Washington (10.4 million), Missouri (10.2 million), Colorado (8.4 million) and Michigan (5.1 million).



U.S. Signs Food, Feed Import Safety Agreement with China

Chinese companies shipping specific designated food, feed and ingredients to the United States will be required to register, undergo annual inspections and be certified by China's agricultural inspection agency that their products meet U.S. standards under the memorandum of agreement (MOA) on food and feed safety signed by the U.S. and Chinese governments on Dec. 11.

The accord, which is scheduled to be in force for five years and is renewable in five-year increments thereafter, will apply first to four categories of Chinese products that have “high import refusal rates” in the United States. Agricultural products initially deemed to be “designated covered products” subject to the requirements are: 1) low-

acid canned products or acidified foods; 2) pet food and pet treats of plant or animal origin; 3) food and feed ingredients (such as wheat gluten and rice protein); and 4) all aquaculture farming products other than molluscan shellfish. Factors to be used in determining whether additional Chinese products warrant inclusion on the list are: 1) the potential or actual (direct or indirect) risk posed to public health based on product testing, inspection results or other relevant information; 2) the rate of rejection of the product by the receiving country; and 3) the prevalence of fraudulent or deceptive labeling – or substitutions or additions of product – that reduces the ingredient's quality or artificially increases its value.

(Continued on page 11)



Feed Facts

by Randall C. Gordon
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The MOA also obligates China's General Administration of Quality, Supervision, Inspection and Quarantine (AQSIQ) to: 1) implement a system to enable the tracing of designated covered products from "the source of production or manufacture to exportation to assist in containing and resolving safety problems"; and 2) monitor the safety of designated covered products through a testing program that provides a "high level of statistical confidence in the quality" of Chinese products exported to the United States.

The MOA is reciprocal in that it also authorizes China to establish similar performance measures for U.S. food, feed and agricultural commodities of concern that could be designated as "covered products" under the accord. Both countries also are required to notify each other within two calendar days if they become aware of food, feed or agricultural products covered under the agreement that pose "significant risks to public health related to product safety, manufacturing conditions, recalls or other instances that involve imminent or significant danger to health" or the "gross deception of consumers...."

The MOA requires AQSIQ to implement the registration, inspection and certification regime that will apply to all Chinese firms exporting such "designated covered products" to the United States. AQSIQ is required to submit a list of such exporters to the U.S. Food and Drug Administration (FDA), and to notify FDA within two calendar days if Chinese exporters to the United States fail inspection, or when revoking, denying or suspending the Chinese firms' registrations, as well as the reasons for such actions. The MOA also obligates registered Chinese exporters to notify AQSIQ within three calendar days after detecting any violation of FDA safety standards, or any contamination, major defect or "any other safety concern" with a covered product. In such instances, AQSIQ is to notify FDA within three calendar days after it receives notification from a Chinese firm. FDA is to maintain a web-based list of registered Chinese suppliers of products to the United States, posting such information within 15 calendar days of receiving the list from AQSIQ.

Under the MOA, AQSIQ's China Entry-Exit Inspection and

Quarantine Bureau is to issue a certificate for covered products eligible for export to the United States that contains a "unique identifying number" and attests that the shipment meets FDA requirements. An annex to the agreement provides for further consultations between the two parties concerning amending the accord to "reflect the role of recognized third-party testing and certification promoting product safety." U.S. officials previously had told the NGFA that the Chinese government strenuously objected to recognizing non-governmental third parties to perform such functions during negotiations on the MOA. To address counterfeiting or falsification of information, U.S. and Chinese technical experts are to develop a secure electronic or other system to transmit such certificates and receive information.

The MOA also allows FDA to request that China's AQSIQ investigate any covered-product export that FDA has "reason to believe may pose a health or safety risk to public health or safety of U.S. citizens." In such instances, the MOA requires AQSIQ to share the results of its investigation within three days of completion. The MOA also authorizes FDA to conduct an unannounced inspection – within five days of notifying AQSIQ – of any registered Chinese establishment shipping covered products to the United States.

Further, the MOA requires that a working group be established within 30 calendar days consisting of policy and technical experts from the two countries who are to develop a 12-month work plan that further details the actions each party is to take under the accord and to develop additional performance measures to evaluate progress. Among the working group's tasks are to develop "appropriate regulatory cooperative activities," including joint training programs and scientific exchanges that include: 1) developing laboratory and risk-assessment methodologies; 2) identifying and discussing significant differences in maximum residue levels of veterinary drugs used in food-producing animals; and 3) exchanging information on mandatory, pre-market review and approval of food ingredients.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access a copy of the U.S.-China MOA.

Canada Confirms New Case of BSE

The Canadian Food Inspection Agency (CFIA) on Dec. 18 confirmed its latest case of bovine spongiform encephalopathy (BSE), this one involving a 13-year-old beef cow from Alberta.

The Alberta beef cow – the 11th to be diagnosed with BSE in Canada – was identified on a farm through Canada's national BSE surveillance program, which has tested about 190,000 animals since its inception in 2003. In making the announcement, CFIA stressed that the cow's age is within the range of

previous cases detected in Canada, and that the animal was born prior to Canada's 1997 implementation of restrictions on feeding ruminant protein to ruminant animals. An epidemiological investigation is underway to identify the animal's herdmates at the time of its birth, as well as the pathways through which it may have become infected. CFIA noted that it expects to detect a small number of additional BSE cases over the next 10 years as it eradicates the disease from its cattle herd.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

NGFA Membership – Gearing Up for Early '08

Each year, roughly half of the NGFA's new member companies are recruited and signed between Jan. 1 and the annual convention in March.

Clearly, that makes the next 90 days or so a critically important period for a successful membership year!

At this date, conditions appear to be ripe for a very strong finish and a very strong overall performance for the 2007-08 membership campaign. Here are current membership statistics:

- New Members: 44
- Non-Renewals: 30

New Year's Resolution: How about this one: "Be it resolved that each NGFA member contact at least one prospective member and invite them to join the NGFA!" Let NGFA's staff know who you're working on, and follow-up materials and a phone call to your prospect will be made in support of your efforts.

Why Recruit? Here are just a few good reasons:

- Qualify for fabulous cash and merchandise prizes at the NGFA's annual convention (need not be present to win).

Watch this space for prize package details (last year, a trip to Hawaii was involved!) – and watch your next *NGFA Newsletter* for current standings on the NGFA Leaderboard, which tracks our annual recruiter competition.

- Help ensure the future effectiveness of the NGFA. New member companies contribute new talent, energy and resources for the good of the entire industry.
- It's FUN and rewarding! Don't believe it? Ask any NGFA member who's signed a new member. They'll tell you what a good feeling it is to support the organization that supports you! (And, of course, there are the prizes and recognition with your peers.)
- **February Frenzy!** In addition to the convention prizes, each successful recruiter during February will qualify for a major grand-prize drawing. Again, watch your *NGFA Newsletter* for more details on the *Frenzy* and the prize.

Questions? Want to know how you can get more involved, and who you might recruit? Contact NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org. Thanks!!!



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