NGFA Newsletter®

Volume 60, Number 3, February 1, 2008

NGFA Urges CFTC to Delay, Study Impacts of Proposals to Increase Speculative Position Limits, Grant Hedge Exemption for Funds

The NGFA has submitted two major policy statements urging the Commodity Futures Trading Commission (CFTC) to delay action and further evaluate the impacts of proposals to significantly increase speculative position limits on agricultural futures contracts and to establish a new risk-management exemption for index and pension funds.

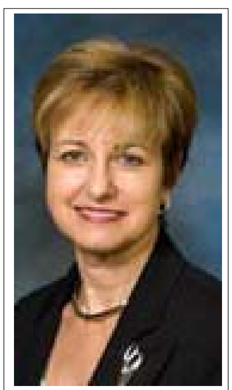
In the separate statements submitted to the CFTC, the NGFA cited major underlying concerns over the predictability of convergence between cash and futures prices in delivery markets during the futures delivery period, as well as problems with hedging and pricing efficiencies, that have dramatically increased the need for grain elevators, feed mills and grain processors to access increased capital to finance margin calls.

Separately, the NGFA also recommended to the CME Group that it not implement any increases at this time in daily price limits on CBOT wheat, corn and soybean futures contracts.

See the attached edition of ***NGFA Issues and Actions*** for complete details on these and other policy statements submitted recently to government by the NGFA.

ADM CEO Patricia Woertz Confirmed as NGFA Convention Keynote Speaker

...Powerful Program Taking Shape for Industry's Premier Annual Event...



The NGFA is extremely pleased that **Patricia A. Woertz**, chairman, chief executive officer and president of Archer Daniels Midland Co., Decatur, Ill., has accepted the invitation to deliver the keynote address at the NGFA's 112th annual convention in Scottsdale, Ariz.

Woertz's address will kick off the convention's Grand Opening General Session on Thursday morning, March 27.

A number of additional high-profile convention speakers have been confirmed. Also on March 27, **Bryan Durkin**, managing director/chief operating officer, CME Group, Chicago, Ill., will deliver remarks. In addition, **Dan Raab**, AIG International, Wilton, Conn., and **Rob Ellis**, Ridgefield Capital Asset Management, Ridgefield, Conn., will head a panel discussion about investment capital in the agricultural marketplace. Other headline speakers include Secretary of Health and Human Services **Michael O. Leavitt**, who has been invited to discuss the major new food and feed safety initiatives being launched by the Bush administration this year.

On Friday, March 28, **Fernando Palacios**, president of Land O'Lakes Purina Feed LLC, will deliver a major industry speech during the morning general session. In addition, NGFA Chairman **Ronald Olson**, vice president, grain operations, General Mills Inc., Minneapolis, Minn., will deliver the chairman's address; and **Chris Standlee**, executive vice president of Abengoa Bioenergy, will participate in a panel discussion on biofuels. Other invited speakers on March 28 include Assistant Secretary of Energy **Andrew Karsner**, the Bush administration's point person on biofuels; and House Agriculture Committee Chairman Rep. **Collin Peterson**, D-Minn.

Major Open Forums! Several interactive Open Forums have been scheduled during the convention, including three special sessions during the afternoon of Wednesday, March 26. Topics will include **agricultural biotechnology** (co-hosted by the North American Export Grain Association), **rail transportation**, and **innovative financing and risk management tools**. Two additional Friday breakfast Open Forums are planned – one on **food and feed safety initiatives** and the other on a **major environmental issue** facing the grain, feed and processing industry. Open work sessions of many NGFA committees also will be conducted on March 26.

Feb. 25 – Important Convention-Related Deadline Date! Feb. 25 is an important deadline date for those planning to attend the convention. First, that's the last day to register at the special money-saving Early Bird rate! Second, that's the deadline for making your hotel reservation at the Westin Kierland Resort and Spa to obtain the NGFA's special room rate! Thereafter, rooms will be **only on a space-available basis, and the rate may be considerably higher** during this prime vacation time! Members receiving the ***NGFA Newsletter*** electronically may make hotel reservations on-line by clicking here.

by Kendell W. Keith
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Forum

What Are Markets Telling Us?

There seems to be no more favorite or urgent topic in our industry today than risk management.

In the last eight days, the NGFA has issued three policy statements, all of which cited a lack of convergence between futures and cash in delivery markets during the delivery period, reduced pricing and hedging efficiency of markets, and severe financial stress for cash market commodity buyers as reasons for **not** changing federal policy in ways that might make a challenging situation even more so. *[See related article on page 1.]*

The NGFA's Risk Management Committee has been working overtime. The NGFA's Country Elevator Committee has been very active giving input into our internal policy-making dialog. And at a recent Executive Committee meeting, roughly half the time was devoted to a discussion on the performance of markets and what the NGFA could do to improve the situation.

It's hard to believe that financial and capital markets and the commodity exchanges would fail to ultimately "fix" the market-performance issues. But it's pretty hard for me to visualize how it could happen soon, either. The process simply takes time, and the NGFA will continue its work in positive ways with exchanges to achieve mutual goals.

The commodity futures markets never would have been authorized by the federal government had they not had a fundamental economic purpose to forward-price grain, and ration grain utilization over the course of a year. And with that central, forward-pricing mechanism, the cash commodity buyers have opened the door to producers and users to forward-price grain. At the very time that producers may have the best opportunity ever to lock in distant prices, cracks are starting to show up in the system.

In the early 1990s we experienced problems with delivery in some of the Chicago contracts. Following three extensive studies – one of which was conducted by Stanford University and funded by the National Grain and Feed Foundation – and considerable debate, the delivery system was redesigned and performed rather well for several years. But now that fund money has entered the market in a big way, there is little question that markets have become more disconnected from fundamentals.

One of the policy statements the NGFA issued this last week opposed an increase in speculative position limits. That was the first time in my career that NGFA chose to oppose such a proposal by either CFTC or the exchanges. In that statement, we didn't say "never again." Instead, we urged a six- to 12-month deferral to permit the market to sort through some of the issues being created by this paradigm shift in the market, and suggested that the CFTC, the exchanges and the grain industry collaborate to analyze the potential impacts such an increase in spec limits could have on futures market performance and capital requirements of traditional hedgers.

On the other hand, while some of the prices on futures markets are indeed extraordinarily high, it's not like we're sitting on a mountain of commodities. Yet, the U.S. Department of Agriculture remains reluctant to do anything of significance to alleviate tight supplies. Maybe after the farm bill debate is over? Maybe after the U.S. starts to import? Maybe when crop conditions deteriorate significantly some year? What will change the direction of markets? We know it's going to happen some time, right? Stay close to your market adviser; I'm not in that business!

And if you're coming to the NGFA's 112th annual convention in Scottsdale, Ariz., don't miss the Risk Management Open Forum on Wednesday afternoon, March 26! It will be the hottest ticket around! Hope to see you there.

Calendar

March 26-28, 2008: NGFA 112th Annual Convention
Westin Kierland Resort, Scottsdale, Ariz.

March 26, 2008: NGFA Executive Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Trade Rules Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Country Elevator Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Grain Grades and Weights Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Marketing and Business Development Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Biofuels Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Risk Management Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA International Trade/Agricultural Policy Committee
Westin Kierland Resort, Scottsdale, Ariz.

March 27, 2008: NGFA Waterborne Commerce Committee
Westin Kierland Resort, Scottsdale, Ariz.

March 28, 2008: NGFA Arbitration Appeals Panel
Westin Kierland Resort, Scottsdale, Ariz.

Joint NGFA Feed Legislative and Regulatory Affairs Committee/
Feed Manufacturing and Technology Committee
Westin Kierland Resort, Scottsdale, Ariz.

NGFA Board of Directors
Westin Kierland Resort, Scottsdale, Ariz.

May 6-7, 2008: Trade Rules Seminar
Marriott St. Louis Airport, St. Louis, Mo.

by Christopher Holdgreve
Director of Legislative Affairs
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House Approves Economic Stimulus Bill as Senate Version Bogs Down

The House on Jan. 29 approved by a 385-35 vote its version of a bipartisan economic stimulus bill following successful negotiations with the White House over the package's scope and substance.

In addition to rebate checks for most American workers, the House bill would provide enhanced opportunities for some businesses to deduct investment expenses in 2008. President Bush immediately called upon the Senate to pass the same bill so he could sign it into law.

But the process in the Senate was delayed until next week after the Senate Finance Committee's voted 14-7 to tack additional rebates and tax incentives onto the House-passed measure.

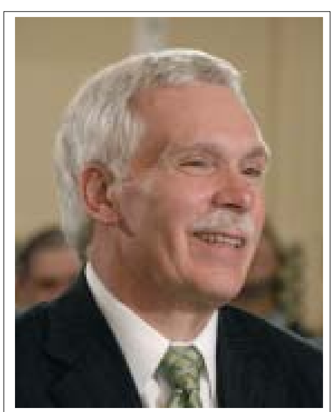
Both the House- and Senate Finance Committee-passed versions of the bill would provide businesses with up to $800,000 in annual revenue with a deduction of as much as $250,000 in Section 179 investments, instead of depreciating them over time. Currently, businesses that earn up to $500,000 in annual revenue are allowed to deduct investments of up to $125,000. Eligible investments include any tangible business purchases, other than buildings.

But the Senate version parts company from the House by adding several other provisions, including one allowing businesses to write off operating losses incurred during the 2006 or 2007 tax years against gains occurring up to five years earlier (versus the two years provided in current law). The Senate bill also allows accelerated depreciation of certain items, with an extra 25 percent allowed to be depreciated in each of the first two years after an item's purchase. Bonus depreciation-eligible items include such things as tangible property being depreciated over less than 20 years, computer software, water utility property and improvements to leased property. Importantly, however, a business would be required to pick just one of the three provisions. For example, if a company chose the increased deduction for Section 179 investments, it would not be eligible to then write off losses against the five-year window.

The Senate version also contains a limited energy tax package that would provide $5.6 billion by extending for one year tax credits and deductions for wind, solar power, energy-efficient buildings and appliances.

When the measure is considered on the Senate floor, Republicans are expected to object to the Finance Committee-passed measure. If that occurs, one possible scenario is that the Senate will consider the House-passed bill and add benefits to seniors whose income source is social security. But in an effort to expedite passage, House leaders, Bush and most Senate Republicans still are urging the Senate to adopt the House-passed version without change so that rebates can begin being mailed by the Internal Revenue Service in May.

Schafer Confirmed as New Agriculture Secretary



Former two-term North Dakota Gov. **Edward T. Schafer**, 61, was sworn in as the nation's 29th secretary of agriculture on Jan. 28, shortly after being confirmed by the Senate.

The Bismarck, N.D., native served as North Dakota's governor from 1992-2000, during which he chaired the Western Governor's Association and the Republican Governor's Association. While in office, he also co-founded and co-chaired the Governors Biotechnology Partnership to enhance public understanding and support of agricultural biotechnology. After leaving office in 2000, he co-founded Extend America, a venture capital-backed company that provided wireless voice and high-speed data services to commercial and residential customers in five rural Midwestern states.

Schafer's confirmation came after an uneventful Jan. 24 hearing of the Senate Agriculture Committee, where he was introduced and endorsed by the entire North Dakota congressional delegation – Democratic Sens. Kent Conrad and Byron Dorgan, and Democratic Rep. Earl Pomeroy.

The confirmation hearing generated the normal parrying of questions by the nominee, who in keeping with tradition avoided answering specific policy questions. Schafer was praised by committee members as he committed to provide a fresh perspective to the current difficulties involved in finishing a long-sought farm bill. There was a universal call from Senate Agriculture Committee members of both parties

(Continued on page 4)

by Christopher Holdgreve
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for the new secretary to become fully engaged in the farm bill process quickly, and to add his influence to efforts underway to negotiate a farm bill compromise that could win House and Senate approval and be signed into law by Bush. "I just hope that as the new kid on the block, I can come into it with a fresh perspective and hope to reduce that gap (between Congress and the administration), because I know the president wants to sign a farm bill," Schafer responded.

But Schafer said during his subsequent swearing-in ceremony that the Bush administration would not compromise on using tax measures to pay for increased farm bill spending. He was less equivocal in defending the administration's proposal to limit farm program payments to producers with an annual adjusted gross income of $200,000 or less. On the payment-limit issue, he said there are many "intricacies" given higher production and input costs for certain commodities.

Referring to the farm bill during his opening statement at Schafer's confirmation hearing, Committee Chairman Sen. Tom Harkin, D-Iowa, noted, "Unfortunately, we do not yet have the support of the president for funding the critical, forward-looking investments crafted by the Agriculture Committees and approved by the House and the Senate. We have a good deal of hard work and negotiation with the White House ahead of us on the new farm bill. Yet I am hopeful that we can approach this challenge reasonably and cooperate to reach agreements. Governor Schafer, we look forward to working with you, and we are counting on your help in working out differences in order to enact a sound new farm bill for our nation."

Ranking Member Sen. Saxby Chambliss, R-Ga., stated, "In addition to implementing the farm bill, the secretary must represent the interests of American agriculture in the negotiation of free-trade agreements; work tirelessly to further open foreign markets to our agricultural products; support international economic development through the provision of food aid; and expand job opportunities for our citizens in rural America. I fully trust that Gov. Schafer is the right man to take on the challenges that characterize this Cabinet position."

Meanwhile, Sen. Pat Roberts, R-Kan., during the confirmation hearing stressed the importance of the administration protecting both direct farm program payments and federal crop insurance, calling them the only safety nets producers have if they sustain a crop failure. Schafer said he concurred, noting the reliance of North Dakota producers on such programs.

Country/Terminal Corner

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

Thompson Named New Director of USDA Price Support Division

The NGFA is offering its heartiest congratulations to **Candace Thompson**, who was appointed as the new director of the U.S. Department of Agriculture Farm Service Agency's (FSA) Price Support Division, effective Jan. 10.

In this new capacity, she will report to FSA Deputy Administrator for Farm Programs John A. Johnson, who announced the appointment in an email to FSA staff members on Jan. 10. Thompson currently is pursuing a Senior Executive Service accreditation in which she has been detailed to USDA's Agricultural Marketing Service for several months. Since February 2004, Thompson has served as assistant to the deputy administrator for commodity operations at FSA. She also served from 2001-04 as deputy director of FSA's Warehouse and Inventory Division.

During her nearly 27-year USDA career, Thompson has served previously with the FSA Price Support Division, having been chief of its policy and procedures branch in the late 1990s, where she was responsible for the nonrecourse marketing assistance loan and loan deficiency payment program for wheat, feed grains, oilseeds, cotton and rice, as well as miscellaneous market-loss payment programs and the farm storage facility loan program. Prior to that, she was the Price Support Division's User Requirements Branch chief, where she was responsible for implementing and maintaining the agency's information-management systems.

Thompson is a native of St. Joseph, Mo., and is a graduate of Missouri State University in Springfield, Mo., with a degree in accounting.

by Jess McCluer
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OSHA Clarifies Potential Changes to Fall Protection Regs Unlikely in 2008

...Agency Contradicts Assertion in Press Article Implying Action Imminent...

Contrary to a guest article published in the January 2008 edition of ***Feed and Grain*** magazine, the Occupational Safety and Health Administration (OSHA) has confirmed with the NGFA that it is not scheduled until later this year to begin the process of collecting information for determining whether or how to revise its walking and working surfaces regulations related to fall protection, including at rail and truck receiving and load-out areas.

The information – conveyed to the NGFA by senior OSHA officials during a meeting earlier this week, as well as in an OSHA-provided PowerPoint® presentation – directly contradicts the statements of Bob Babin, product manager of Fall Protection Systems Inc., who wrote in a ***Feed and Grain*** article entitled "OSHA to Change Regs" that OSHA's existing fall-protection regulations would be revised and implemented in "early 2008." Babin, who noted in the article that his company sells fall-protection systems related to truck and railcar inspections, maintained that his information had been based upon conversations with "OSHA's senior level management."

But the three OSHA officials – Deputy Director of the Directorate of Standards and Guidance Bill Peery, Director of the Office of Safety Systems Don Pettinger and Occupational Safety and Health Specialist Ginny Fitzner – with whom the NGFA met this week said that OSHA's senior-level management had no recollection of any such conversations about the fall-protection proposed rule or the article's statements alleging that the agency planned to repeal its 1996 compliance directive that currently allows grain industry employees to operate atop rail cars without fall protection devices when such cars are away from the facility. In fact, the OSHA officials said the agency was unaware of the guest article until the NGFA provided it to the agency recently and asked if it accurately portrayed the agency's intentions. The three OSHA officials constitute the agency's core staff members who are addressing the fall-protection rulemaking process.

In the ***Feed and Grain*** article, Babin specifically wrote that the existing fall protection regulations would be revised and implemented in "early 2008." Babin also wrote that the 1996 OSHA fall protection compliance directive would be repealed and that the agency, "will attempt to eliminate the special allowances that certain industries, including the grain industry, have had since 1996."

Babin's article took by surprise many within the grain industry and government, including high-level U.S. Department of Agriculture Federal Grain Inspection Service officials, who questioned why OSHA would be taking precipitous action to address the fall-protection issue without soliciting comments from affected industries and the public. That led the NGFA to contact OSHA to schedule a face-to-face meeting with senior staff members from the agency's Directorate of Standards and Guidance.

In addition, the OSHA officials told the NGFA that they took exception to the guest author's assertion that OSHA inspectors are "eagerly awaiting the new standard and plan to aggressively enforce it with companies who have not addressed the fall protection issue." The OSHA officials said that the agency's field employees and inspectors often are not as involved in the rulemaking process nor aware of the potential substance of the rule as the article maintained.

In response to the NGFA's inquiries, OSHA also provided the Association with a PowerPoint® presentation that describes the current status of the rulemakings for Subparts D&I – Walking and Working Surfaces and Fall Protection Systems. The PowerPoint presentation notes that a notice of proposed rulemaking (NPRM) – the first step in the rulemaking process – for fall-protection systems currently is undergoing the internal review process within OSHA. Further, according to the Unified Regulatory Agenda published in the Dec. 10, 2007 ***Federal Register***, the NPRM is not scheduled to be published until April 2008. *[Note: The Unified Regulatory Agenda is the federal government's regulatory schedule and is published twice annually in the* ***Federal Register****.]*

After the NPRM is published, OSHA will receive public comments and conduct an analysis of the rulemaking record. Only after that analysis and evaluation of comments is completed will the agency determine what, if any, changes to make when issuing a final rule. OSHA emphasized that the purpose of the proposed rule is to collect information to make a reasonable decision. A copy of the OSHA PowerPoint® presentation is available by clicking here, or by contacting NGFA Director of Regulatory Affairs Jess McCluer at jmccluer@ngfa.org.

Industry Impacts and Timing: Thus, based upon these direct NGFA conversations with OSHA officials, it appears that Babin's guest article asserting that the fall-protection rule will be issued and implemented "in early 2008" is inaccurate and should not be relied upon as the basis for making decisions. Based upon the NGFA's meeting with senior OSHA staff members, it appears likely that it will take up to two years before the fall-protection final rule is completed.

Obviously, employee safety is an extremely important issue. The NGFA has worked closely with OSHA in the past to address critical safety issues, such as grain dust fires and explosions, and NGFA-member companies are

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encouraged to continue purchasing equipment they believe is warranted to provide a safe workplace environment and to comply with current federal OSHA standards.

However, until OSHA publishes its NPRM, currently scheduled for April 2008, the grain, feed and processing industries will not have an indication of OSHA's even preliminary thinking about how such standards may apply to these industry sectors. Even once those preliminary indications are known, they can – and often do – change based upon the results of the public comment period, which as noted earlier still is months, if not years, away. Further, once a final regulation is issued, agencies frequently provide a time period for industry sectors to come into compliance.

Iowa Environmental Agency Approves New Air Permitting Rules

The Iowa Environmental Protection Commission (EPC) on Jan. 15 adopted regulations that establish new air-permitting requirements for all grain elevators in Iowa.

As reported in the Jan. 3 edition of the ***NGFA Newsletter***, the new EPC-approved air-permitting regulations are the outcome of more than two years of negotiations between the industry and the Iowa Department of Natural Resources (IDNR) over the content of the proposed program. IDNR formally initiated the development of the regulations in September 2005, when it proposed to industry an air-permitting template for "small country grain elevators." The proposed template was based upon National Ambient Air Quality Standards and air quality dispersion modeling techniques, instead of using standard Environmental Protection Agency (EPA) emission thresholds and established EPA factors to project annual emissions. The originally proposed template would have placed severe operating restrictions on grain elevators that would be much more burdensome than the requirements contained in existing air-permit programs already implemented in other major grain-producing states.

In response to the originally proposed program, the Agribusiness Association of Iowa's (AAI) Grain Committee established three industry working groups to develop and present reasonable alternative air-permitting programs to the IDNR. The NGFA and the Grain Elevator and Processing Society (GEAPS) worked closely with AAI and NGFA-member companies with operations in Iowa to provide technical support and input throughout this process.

Components of the Program: The new air-permitting program defines each type of grain elevator facility. It also specifies for each type of grain elevator the permitting options, emissions calculation methodology, emissions reporting and recordkeeping, and best management practices (BMPs) for controlling air pollution. Major components of the program include:

- Establishing four permitting groups for grain elevators, based upon their potential-to-emit (PTE) particulate matter of 10 microns (PM 10) in size or less, as indicated in the nearby table:

  The regulations require the use of an IDNR-developed calculation tool that determines the type of grain elevator as defined within the regulations and calculates PTE by considering volumes of grain handled, EPA emission factors, and control equipment and/or practices in use at the facility.
- Requiring all grain elevators, regardless of emission levels, to comply with BMPs designated within the rule. The BMPs address practices associated with: 1) general maintenance, upkeep and repair; 2) grain receiving, handling and loading equipment operations; 3) operation of grain dryers; and 4) recordkeeping requirements.
- Requiring air-construction permits for "feed mill equipment" operating at grain elevators. Under the proposed regulations, "feed mill equipment" includes, but is not limited to, grinders, crackers, hammermills and pellet coolers located at grain elevators.
- Establishing an emission limit of 0.1 grain per dry standard cubic foot of air discharge from grain bin vents constructed, modified or reconstructed on or after March 31, 2008 at "country grain terminal elevators" and "grain terminal elevators," as defined in the proposed regulations. To meet this standard, effected facilities will be required to install control devices on grain bin vents constructed, modified or reconstructed on or after March 31, 2008.

Implementation Period: The new air-permitting regulations require Iowa grain elevators to submit by March 31 the appropriate permit registration or application to the IDNR. The new regulations also require: 1) Group 1 and Group 2 elevators to implement BMPs and have any control devices used in determining PTE operating by March 31, 2009; and 2) Group 3 and Group 4 elevators to obtain air construction permits and implement BMPs, as specified within the permit.

Members receiving the ***NGFA Newsletter*** electronically may click here for more information about the Iowa air-permitting program and the PTE calculation tool.

Air-Permitting Groups for Iowa Elevators

Group	Potential to Emit PM-10 (tons per year)	IDNR-Estimated Number of Facilities
1	< 15	~ 700
2	≥ 15 and < 50	~ 70
3	≥ 50 and <100	~ 20
4	≥100	

by Charlie Delacruz
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New Hazard Materials Shipping Regulations Issued for Ethanol Blends

The U.S. Department of Transportation (DOT) on Jan. 28 issued final regulations governing transportation of hazardous materials that include new shipping-identification requirements for fuel blends composed of ethanol and gasoline.

The regulations, issued by DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) and published in the ***Federal Register***, add a new entry to the Hazardous Materials Table for ethanol and gasoline blends containing more than 10 percent alcohol (such as E-85). The rule also revises the former table entry for fuel blends to provide for its use for gasoline and ethanol blends with not more than 10 percent ethanol.

The agency maintained that its changes "will enhance the effectiveness of hazard communication and response by aligning the classification scheme with emergency response protocols." As a blend of 85 percent ethyl alcohol (ethanol) and 15 percent petroleum (gasoline), the agency said E-85 and other fuel blends with high ethanol concentration are flammable liquids that, because they mix with water, will degrade the effectiveness of firefighting foam that is not alcohol-resistant and hence pose "unique hazards that must be communicated and understood immediately in the case of a transportation incident." The agency said the new shipping-description requirements are designed to assist emergency responders in utilizing the most effective emergency-response procedures for incidents involving fuel blends composed of ethanol and gasoline in various concentrations, since they use different fire-extinguishing materials based upon the relative concentration of ethanol in a blended fuel.

The DOT agency's final regulations also include an amendment that clarifies a provision concerning agricultural products – specifically pesticides and fertilizers – by replacing the term "vehicle" with "motor vehicle." Amendments of numerous additional provisions are incorporated in the agency's rules, including those referring to the transportation of "marine pollutants," "household wastes," dry ice, compressed gas, detonator assemblies and explosives.

The agency is providing an additional two-year transition period – until Oct. 2, 2010 – in an attempt to minimize the cost of transitioning to the new requirements and to facilitate compliance with the new shipping-document provisions applicable to ethanol fuel blends. Until then, the requirements for fuel blends previously in effect may continue to be utilized. Otherwise, the effective date of the amendments issued on Jan. 28 is Oct. 1, 2008. Voluntary compliance with these new requirements already is allowed, but the industry should be aware that future appeals may result in the agency's re-evaluation and revision of this otherwise final rule.

Members receiving the ***NGFA Newsletter*** electronically may link to the DOT final regulations by clicking here. Affected companies interested in further information are advised to contact DOT's Cameron Satterthwaite at 202-366-8553, or the Pipeline and Hazardous Materials Safety Administration's Office of Hazardous Materials Standards at DOT headquarters at 1200 New Jersey Ave., S.E., Washington, D.C., 20590-0001.

STB Issues Final Decision to Revise Cost-of-Capital Methodology Governing Rail Rate Reasonableness

The federal Surface Transportation Board (STB) on Jan. 17, 2008, issued a final decision revising its method for calculating the railroad industry's cost of capital.

The STB uses the cost-of-capital calculations in evaluating the adequacy of individual railroads' revenues each year, and in various types of regulatory proceedings (such as determining the reasonableness of a challenged rail rate, considering a proposal to abandon a rail line, or valuing a particular railroad operation in certain other types of cases).

In its final decision in these proceedings – *Methodology to be Employed in Determining the Railroad Industry's Cost of Capital (STB Ex Parte No. 664)* – the STB changed its method for calculating a key component of the cost of capital—the cost of equity. The STB will henceforth use a Capital Asset Pricing Model (CAPM), rather than the single-stage discounted cash flow (DCF) method that it has applied since 1982. As stated by the STB in its decision, CAPM is a well-known, widely used and theoretically sound model that is simple and transparent compared to other approaches to calculating the cost of equity. The NGFA supported the STB's proposal to move from the DCF method to a CAPM method as "a needed and welcome step" in comments filed with the agency in September and October 2007.

In its final decision, the STB stated that "additional delay in determining the cost of capital for 2006 would constrain the agency from addressing several important matters before us that require that figure ... [and] further delay is unnecessary because, as this extensive record has made clear, CAPM provides an acceptable and widely used method ..." But the STB agreed it would consider additional arguments for future purposes, and the agency announced its intention to initiate a separate proceeding to gather additional information on methods for calculating cost of capital for possible future use in conjunction with CAPM.

by Charles M Delacruz
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Another Lawsuit Calls for Greater Regulatory Scrutiny of Biotech Crops

Attorneys representing various special-interest organizations on Jan. 23 filed a complaint with a federal district court in California challenging the decision by the U.S. Department of Agriculture (USDA) to deregulate a variety of sugar beet genetically engineered to resist glyphosate – the active ingredient found in Monsanto Co.'s Roundup® herbicide.

In their complaint, the plaintiffs – the Center for Food Safety, Organic Seed Alliance, Sierra Club and High Mowing Organic Seeds – contended that given the alleged environmental impacts associated with Roundup Ready® crops, wind-blown pollen from the Roundup Ready® sugar beet variety will result in "contamination" of "conventional and organic varieties" of sugar beets. The plaintiffs also contended that large-scale cultivation of Roundup crops eventually breeds Roundup-resistant weeds, and the efforts required to control these alleged "super weeds" result in further claimed "ill effect on the environment, workers and consumers."

In the case *[Center for Food Safety, et al. v. Charles Connor, Acting Secretary, USDA, et al., U.S. District Court for the Northern District of California, Case No. 3:08-cv-00484]*, the plaintiffs argued that USDA's decision to deregulate Roundup Ready sugar beets violated various federal laws, including the requirements for an environmental assessment under the National Environmental Policy Act (NEPA). The plaintiffs requested that the federal court vacate USDA's decision, order the agency to undergo a full environmental impact assessment, and, in the interim, enjoin any planting, sale or dissemination of the Round Ready sugar beets.

Earlier Case: The latest lawsuit follows the decision in an earlier case before the same federal district court – referred to by some attorneys involved in that case as "precedent-setting" and a "turning point" in the regulation of biotech crops. In that case, Judge Charles R. Breyer issued an order on May 3, 2007, vacating USDA's decision to deregulate alfalfa genetically engineered to resist the Roundup herbicide. *[Geertson Seed Farms, et al. v. Mike Johanns, Secretary, U.S. Department of Agriculture, et al., U.S. District Court for the Northern District of California, Case No. C 06-01075].*

Breyer's order in that case required USDA to prepare a full environmental impact statement and reconsider the petition to deregulate the Roundup Ready® alfalfa. In the interim, all future planting of Roundup Ready® alfalfa was prohibited, and certain conditions were imposed on the handling of alfalfa crops already planted. Breyer determined that USDA had violated federal law by failing to prepare an environmental impact statement before deregulating the alfalfa. In granting motions filed by the plaintiffs – various alfalfa growers and special interest associations – the court referred to "the potential significant environmental impact of gene transmission; specifically, the acknowledged risk that the genetically engineered gene will 'contaminate' organic and conventional alfalfa." He also ruled that USDA had failed to consider adequately the impact of its decision upon the development of Roundup-resistant weeds.

Breyer's ruling also was notable because it followed a decision in a separate case – issued in February 2007 – by a judge in another federal district court who ordered USDA to more closely scrutinize applications to plant experimental genetically engineered crops. That case *[International Center for Technology Assessment, et al. v. Mike Johanns, Secretary, U.S. Department of Agriculture, et al., U.S. District Court for the District of Columbia, Case No. 03-00020]* concerned field tests of an experimental grass that was engineered genetically to withstand the Roundup® weed killer. This ruling was significant not only because it required APHIS to reconsider the applications at issue in that case, but because the judge also more broadly ordered that other applications in the future be given greater scrutiny, consistent with this opinion. Both the alfalfa and grass decisions followed yet another case from 2006, in which a judge in yet another federal district court, in a case involving field trials of corn and sugarcane crops engineered to produce pharmaceuticals, similarly ruled that USDA had not assessed adequately the possible impacts on the environment and on endangered species *[Center for Food Safety, et al. v. Mike Johanns, Secretary, U.S. Department of Agriculture, et al., U.S. District Court for the District of Hawaii, Case No. 03-00621].*

At the time of last year's decisions, it was anticipated that those cases could have an impact beyond those specific plant varieties, including the increased likelihood of challenges from special consumer and farmer-interest organizations to the introduction of biotech plant varieties. Both Monsanto and USDA are pursuing an appeal in the case involving the Roundup Ready® alfalfa, which currently is pending before the U.S. Court of Appeals for the Ninth Circuit. The plaintiffs have filed motions to "relate" this case together with the latest lawsuit involving sugar beets for a joint resolution, which is opposed by USDA and Monsanto, both of which emphasized the lack of commonality among the parties, transactions and events at issue in the two cases. The recently filed lawsuit is currently assigned to a different judge – Jeffrey S. White. Monsanto is not named as a party in the recent case, but at press time, the company reportedly was considering what steps, if any, it would take.

by David A. Fairfield
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AAFCO Task Force Presents Draft HACCP 'Standard'

...NGFA and Others Ask for Suspension of Work, Public Discussion...

During this week's meeting of the Association of American Feed Control Officials (AAFCO) in San Antonio, Texas, a task force led by Dr. Tim Herrman, director of the Office of the Texas State Chemist, presented a draft hazard analysis and critical control point (HACCP) "standard" and auditing system for the feed industry designed to "facilitate uniform adoption among feed manufacturers pursuing the voluntary adoption of HACCP."

Herrman said the draft "standard" developed – but not formally approved – by the task force would be posted on the AAFCO website for comment during the next few months leading up to the organization's annual meeting in late July. The AAFCO Board of Directors, which sanctioned the task force, said it plans to direct the task force to make a formal presentation on the plan during a general session at the annual meeting.

The Board of Directors of AAFCO – the professional organization of state and federal feed regulatory officials – authorized Herrman to establish a HACCP task force during a meeting last year. The NGFA, Pet Food Institute (PFI), and National Oilseed Processors Association (NOPA) subsequently submitted a joint letter to the AAFCO Board urging that it suspend the task force's activities immediately pending the outcome of a full and open discussion of the merits of such a project at a public general session involving AAFCO members, industry advisers and other interested parties. Separately, the American Feed Industry Association also objected to the task force's formation.

During AAFCO's meeting this week, all four organizations again reiterated their concerns over the formation of the task force, and asked that it be disbanded – with the draft document referred to the AAFCO Feed Manufacturing Committee for deliberation during open meetings to allow participation by all AAFCO members, industry and consumer advisers, and other parties.

HACCP is a science- and risk-based approach to ensuring food safety through the use of a systematic program designed to identify, evaluate and control food safety hazards. Implementing HACCP within a manufacturing process requires extensive documentation and recordkeeping associated with standard operating procedures, hazard identification and analysis, monitoring of identified process-control points that are deemed "critical" to safety, corrective action procedures, and verification procedures to ensure the effectiveness of the HACCP program. Currently, FDA mandates the use of HACCP programs for seafood and juice sold as or used in beverages. In addition, the U.S. Department of Agriculture requires the use of HACCP programs for meat and poultry. There currently are no HACCP regulations for the U.S. feed industry.

In their joint letter to the AAFCO Board of Directors, the NGFA, PFI and NOPA cited the following major concerns:

- The process used by the AAFCO Board to determine that this extremely significant policy initiative would be pursued lacked the transparency required of a member-driven organization, and was contrary to the founding principles and regulatory philosophy of AAFCO. The letter noted that the AAFCO membership and industry advisers had not been formally notified – nor been given the opportunity to discuss and provide input on the merits – of this significant activity before approval by the AAFCO Board.
- Importantly, AAFCO is not the appropriate body for developing a HACCP standard – voluntary or otherwise – for the feed industry. The letter stated that AAFCO itself on several previous occasions had discussed and subsequently determined that it is ill-equipped to conduct science- and risk-based determinations of feed hazards or to develop process-control (HACCP) standards for the feed industry. Further, the letter noted that NGFA, PFI and NOPA strongly oppose the development of a HACCP regulatory standard for the feed industry, and are concerned that a voluntary standard could "morph" into just such a regulation.
- The task force, as constituted by Herrman, does not reflect the necessary breadth of the feed industry.

Herrman's proposal for developing the HACCP "standard" included: 1) writing a HACCP standard for feed that will enable uniform adoption and provide a basis for equivalency when evaluating such programs; 2) creating an auditing system to verify conformance of HACCP plans against the AAFCO standard; 3) creating a framework for an educational program that includes auditor training and HACCP-plan verification, which he said would be the intellectual property of himself and other faculty; and 4) providing guidance on the use of the HACCP standard and auditing system for plan certification by competent authorities and other third-party auditors. Thus far, the AAFCO Board has approved only the first two components of Herrman's proposal.

by Randall C. Gordon
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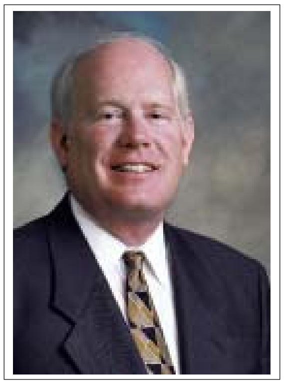
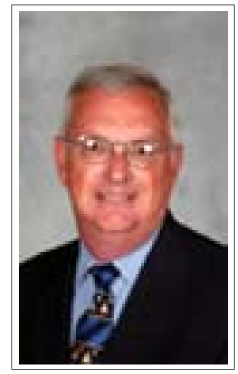
NGFA Members Receive Honors, Recognitions, Appointments

Several industry leaders with NGFA-member companies – and one individual formerly from an NGFA-member firm – have received distinguished honors, recognitions and appointments in recent months.



Paul DeBruce, founder, chairman and chief executive officer of DeBruce Grain Inc., Kansas City, Mo., has been appointed deputy chairman for 2008 of the Federal Reserve Bank of Kansas City's Board of Directors, which meets monthly to confer on economic and banking developments and advise the bank on its operations and policies. Among other things, the nine-member board establishes the bank's discount rate, subject to review and determination by the Federal Reserve Board. Six of the Federal Reserve Bank of Kansas City's Board of Directors are elected by member banks in the seven states of the 10th Federal Reserve District, while three are appointed by the Board of Governors of the Federal Reserve System in Washington to represent the public. The 10th Federal Reserve District includes the states of Colorado, Kansas, Nebraska, Oklahoma, Wyoming, western Missouri and northern New Mexico. DeBruce, who has served on the NGFA's Board of Directors, Executive Committee and Strategic Issues Committee, previously was a member of the Federal Reserve Bank's Economic Advisory Council.

Meanwhile, **David Geers**, president of Michigan Agricultural Commodities, on Jan. 15 received the Distinguished Service Award of the Michigan Agri-Business Association during its annual winter conference. The award, sponsored by the Michigan Farm Radio Network, recognizes contributions to the agribusiness industry, the association and agriculture as a whole. Geers has served on several Michigan Agribusiness Association committees, as well as its Board of Directors and Executive Committee. He served as the organization's chairman in 2006. Long active in the NGFA, Geers has served on the NGFA Board of Directors, Executive Committee and Country Elevator Committee. David Geers father, Herm, received the same award in 1996 – making this the first father-son team to be so honored in the organization's 100-plus-year history.



Ken Klemme, formerly a vice president with Demeter LP, Indianapolis, Ind., has been named deputy director of the Indiana State Department of Agriculture. He previously served as assistant director for economic development within the department, a position he has held since May 2005. Klemme will continue to oversee the economic development team in addition to his new duties serving under State Agriculture Director Andy Miller. Klemme served with Demeter LP from 1979-96. After the company's sale to Archer Daniels Midland in 1996, he joined ADM as vice president of the Demeter and Tabor Grain Divisions. He returned to Indiana in 1999 and managed investments in start-up and early stage companies until joining the Indiana State Department of Agriculture in May 2005. His involvement with the NGFA included service on the Safety, Health and Environmental Quality, and Grain Grades and Weights Committees, as well as the Grain Warehouse and Insurance Task Forces.

Meanwhile, several NGFA members were appointed last fall to the federal Surface Transportation Board's (STB) 23-member Rail Energy Transportation Advisory Committee. The group was formed by the STB to provide guidance and to serve as a forum for discussing emerging issues regarding rail transportation of energy resources, with an emphasis on coal, ethanol and other biofuels. NGFA-member shipper and biofuels company representatives selected were **Mark Huston**, director of North American Transportation for Louis Dreyfus Commodities, Kansas City, Mo.; **James Redding**, vice president, external relations for Aventine Renewable Energy Inc., Pekin, Ill., and **Darrell Wallace**, vice president, Transportation Commodities Group, Bunge North America, St. Louis, Mo. Agricultural representatives of NGFA-member rail-related companies selected were: **Paul Hammes**, vice president and general manager, agricultural products, Union Pacific Railway, Omaha, Neb.; **David Rohal**, vice president, RailAmerica, Boca Raton, Fla.; and **Jay Wileman**, president and chief executive officer, GE Equipment Services, Chicago, Ill.

Congratulations also are in order for recently appointed chief executive staff officers of several state and regional grain and feed associations affiliated with the NGFA:

(Continued on page 11)

by Randall C. Gordon
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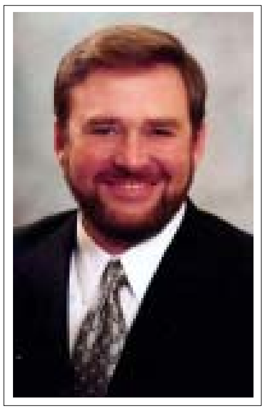
Chris Herr last fall became the new executive vice president of **PennAg Industries Association**, Harrisburg, Pa. He previously served as assistant vice president of PennAg, working primarily with its Poultry Council. Prior to that, Herr spent more than 15 years with the Pennsylvania Department of Agriculture, including a stint as its deputy secretary for regulatory programs. Herr succeeds **Walt Peechatka**, who served 10 years in the post and is being retained as a consultant to the organization.



Steve Taylor today (Feb. 1) becomes executive director of the **Missouri Agribusiness Association** (MO-AG). Since 2001, he has served as chief executive officer of the Environmental Resources Coalition, a trade association that assists agricultural producers in implementing environmentally sustainable herbicide and nutrient-management practices. Previously, he worked as a program director for the Missouri Corn Growers Association, was a unit chief at the Missouri Department of Natural Resources, and was a seedstock manager for Cargill Inc. Taylor succeeds **Jim Russell**, who relinquished the Mo-Ag presidency after nearly 25 years, but is remaining as a legislative consultant to the association.

Rick Zimmerman, who has been executive director of the **Northeast Ag and Feed Alliance** since last fall, is about to conduct his organization's 83rd annual Seminar and Tea Party on Feb. 11-12 in Boston, Mass., at the Marriott Copley Place Hotel. NGFA President Kendell W. Keith is one of the featured speakers. Based in Albany, N.Y., Zimmerman has been involved in the agricultural industry for nearly 25 years, having served most recently for seven years as deputy commissioner of agriculture and markets in New York state. Prior to that, he was director of government relations for the New York Farm Bureau Federation. He succeeded Bill Bell, who retired in August after serving 25 years as the organization's executive director.

White House Review Extended for BSE Feed Rule

Food and Drug Administration (FDA) officials today (Feb. 1) told the NGFA that the White House Office of Management and Budget (OMB) has been given an additional 30 days to review its final rule that would amend the agency's feed regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE).

FDA said it had requested the additional time so it could resolve several enforcement-related matters with its sister agency at the U.S. Department of Agriculture – the Food Safety and Inspection Service (FSIS). OMB received the final rule changes from FDA on Nov. 1. OMB review, which typically is restricted to 90 days, is the last step in the regulatory-clearance process.

FDA's proposed changes to its BSE-prevention feed regulations, issued on Oct. 6, 2005, would ban the use in all animal feed of brain and spinal cord from live cattle 30 months or older that are presented for slaughter. In addition, FDA proposed to prohibit the use in all animal feed of all nonambulatory (downer) and dead cattle unless brain and spinal cord were removed.

Significantly, it is believed FDA changed portions of its original proposal concerning nonambulatory and dead stock by including an exemption to the requirement to remove brain and spinal cord for cattle younger than 30 months if the animal's age can be verified by a suitable means. The anticipated change is a science-based effort by FDA to reduce the economic impact of the rule by decreasing the number of cattle that likely would need to be disposed because of the impracticality and cost of removing brain and spinal cord – particularly from dead cattle.

In comments to FDA in December 2005, the NGFA strongly urged the agency to change its proposed rule to allow the use in non-ruminant feed of nonambulatory cattle less than 30 months of age without requiring removal of brain and spinal cord. The NGFA generally supported other substantive aspects of the FDA proposal as a science-based approach to further reduce the already very low risk of BSE in the United States.

by Todd Kemp
Director of Marketing/Treasurer

February Frenzy Begins!

...Major "Austin Escape" Grand Prize...

One lucky NGFA membership recruiter will have his/her name pulled out of the hat on March 24 to win the fabulous "Austin Escape!"

That's the grand prize up for grabs during this year's ***February Frenzy*** membership-recruitment extravaganza. The prize consists of:

- Airfare for two to Austin, Texas, sponsored by Pioneer, a DuPont Co.
- Two nights' luxury accommodations, provided by the Renaissance Austin Hotel.

The grand-prize drawing will culminate the NGFA's annual February Frenzy! Each successful recruiter from Feb. 1 to March 24 will be entered in the drawing. Clearly, there will be an element of "March Madness" in this year's prize, too!

Recruiting Strategy: With this year's tight stocks, high prices and volatile markets, the NGFA Trade Rules and the NGFA Arbitration System are compelling recruiting talking points. The only way to ensure access to NGFA Arbitration to resolve a dispute with commercial trading partners or producers is to be an NGFA member.

Let your prospects know that NGFA Arbitration is quick, simple and inexpensive compared to court proceedings or other arbitration systems. There is a good reason why companies have wanted access for 112 years!

If you're interested in receiving more information about NGFA prospective members, recruiting tips, February Frenzy! campaign updates and such, contact NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org to be added to the NGFA Membership Network.

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