



# NGFA

# Newsletter<sup>®</sup>

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## NGFA Convention to Feature Major Open Forum with Lenders on 'Innovative Financing and Risk Management Tools'

The NGFA's annual convention program on Wednesday afternoon, March 26, will feature a major Industry Town Hall Open Forum with several lenders that are developing or offering alternative financing and risk-management tools to commercial grain hedgers.

The session is scheduled for 4:15-5:30 p.m., and is being hosted by the NGFA's Risk Management Committee. This special session has been designed for the convention as one element of the NGFA's response to extraordinary market conditions facing commercial grain hedgers today. Confirmed presenters are: **Peter Arendt**, BOK Financial Corp., Kansas City, Mo.; **John Catizone**, AIG International, Wilton, Conn.; **Brent Grecian**, Wells Fargo Financial Services, Seattle, Wash.; and **Andrew Ward**, Macquarie Commodities, New York, N. Y.

Each presenter will deliver brief comments about today's market environment and about strategies and products designed to provide financing and risk-management flexibility. The session then will be opened for questions and discussion from the audience. Presenters will be available during the convention to answer additional questions.

**Conference Call Planned with Lenders:** In other related actions, the NGFA's Risk Management Committee will conduct a special conference call with lenders prior to the convention. All NGFA-member lenders will be invited to participate. The

goal of the call is to share information with lenders about the capital requirements confronting commercial grain hedgers in today's marketplace; and to explore potential ways to enhance the volume of capital available to the industry to meet today's escalated margining and operating requirements.

### CME Group Meeting Planned:

As an additional element of the NGFA's efforts, a delegation from the Risk Management Committee tentatively will meet with CME Group representatives in Chicago prior to the convention. The committee's intent is to receive an update from the CME Group about progress toward: 1) adopting recommendations of the NGFA's Futures Market Performance Task Force that focused on enhancing convergence; 2) beginning discussion on potential analytical work concerning the NGFA's policy recommendations, as well as impacts of recent CFTC proposals on speculative position limits; and 3) exploring whether there are ways to provide relief to commercial grain hedgers on margining requirements.



## NGFA Convention Hotel and Registration Update

Members who have not yet confirmed a hotel reservation at the sold-out Westin Kierland Resort and Spa Hotel in Scottsdale, Ariz., for the NGFA's 112<sup>th</sup> annual convention are advised to make a reservation at the backup hotel – the **Hampton Inn and Suites Hotel** in Scottsdale at 16620 N. Scottsdale Road, located 1 mile from the Westin Kierland.

The Hampton Inn is offering a special group rate of \$229, plus tax, for standard rooms. A limited number of one-bedroom suites are available for \$259 per night, plus tax. Identify with the "National Grain and Feed Association" to obtain the special rate. Reservations may be made by calling the Hampton Inn Scottsdale direct at **1-480-348-9280**, or by calling toll-free to **1-877-443-7776**. The deadline for doing so is **March 4**. Reservations must be canceled 14 days in advance to avoid forfeiting one night's room deposit.

The NGFA has arranged for free shuttle transportation

between the two hotels; members renting cars and wishing to drive between the two hotels themselves are advised that both hotels offer free general parking, with a \$24 per day charge applying at the Westin Kierland if you use valet parking and leave the car overnight. NGFA members who are on a waiting list for the Westin Kierland are being advised of this backup hotel option in an email from NGFA Meetings Manager Heidi Chapman. If you need further assistance in securing hotel accommodations, please feel free to contact Heidi at [hchapman@ngfa.org](mailto:hchapman@ngfa.org), or by phone at 202-289-0873, extension 21. Thank you for your understanding!

**Check Out Who's Already Registered:** The NGFA has posted the advance registration list on its website at [www.ngfa.org](http://www.ngfa.org), and will be updating it periodically. Members receiving the *NGFA Newsletter* electronically may [click here](#) to see the most recent list.



## U.S. Government: Dow's Inadvertently Released Biotech Corn Event Safe

The three U.S. government agencies with jurisdiction over plant-based biotechnology issued a notice late on Feb. 22 stating that inadvertently released low levels of an unauthorized genetically engineered corn trait produced by Dow AgroSciences is safe for food, feed and the environment.

The accidental release involved an unregistered Dow corn biotech product that contained an unregistered genetically engineered protein trait – Event 32 – that the U.S. government said is “closely related” to another biotech protein trait – Event 22 – already authorized for use in food and feed in the United States and several other major corn importing countries. The three U.S. agencies – the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS), U.S. Environmental Protection Agency (EPA) and Food and Drug Administration (FDA) – said they had been alerted promptly by Dow AgroSciences after the company detected “extremely low levels” of Event 32 in three of its commercial biotechnology-enhanced hybrid corn seed lines marketed under the trade names Herculex® RW and Herculex® XTRA Rootworm Protection.

Dow AgroSciences said seed containing low levels of the unregistered Event 32 inadvertently was sold to farmers by its affiliate Mycogen Seeds, and was planted in seven U.S. corn-producing states on approximately 19,000 acres in 2006 and 53,000 acres in 2007. The U.S. government agencies estimate that no more than 0.0002 percent (two ten-thousandths of 1 percent) of the 2007 corn crop may have contained Event 32. In a separate statement, Dow AgroSciences said its investigation concluded that the inadvertent release “must have originated within a single, small Dow AgroSciences research plot...” Dow AgroSciences said the 2008 U.S. corn crop will not be affected because it had recalled all of the affected seed shipped to dealers for the 2008 planting season and “all potentially affected seed has now been secured.” The company said that, “[w]hile this low-level adventitious presence does not present safety concerns, you can be assured that we regret its occurrence and are reviewing relevant processes and procedures to ensure we prevent a reoccurrence.”

The U.S. government statement said that EPA had determined that the introduced proteins produced by Event 32 are “identical” to those approved for Event 22, and therefore are covered by an existing tolerance exemption (EPA food safety clearance). FDA concluded there were no food or feed safety concerns because corn containing Event

32 is present only at very low levels, if at all. Further, neither corn type – Event 32 or Event 22 – contains an antibiotic resistance marker, Dow AgroSciences said. APHIS said its scientific analysis concluded that Event 32 poses no plant pest or environmental concerns. Dow AgroSciences said the two events contained identical genetic material, but that material was inserted at different points in the corn genome.

**U.S. Outreach to Foreign Governments:** USDA’s Foreign Agricultural Service was in the process of conducting informational briefings on the incident with the governments of major U.S. corn-importing countries, as well as the European Union. In a statement, APHIS said U.S. trading partners are being encouraged to “use regulatory flexibility and to take steps appropriate to the level of risk identified” with Event 32 (i.e., no food or feed safety concerns). “In addition, we hope that our quick action to bring this unregistered event to the attention of our partners will help assuage concerns,” APHIS said.

According to Dow AgroSciences, as of July 2007, Herculex® RW and Herculex® XTRA biotech-enhance corn are approved for cultivation in the United States and Canada. Meanwhile, Dow said Herculex® RW corn is approved for import as food and feed in Japan, Korea, Mexico, the Philippines, Australia, New Zealand, China, Taiwan and the European Union, while Herculex® XTRA corn is approved for import in Japan, Australia, New Zealand, Mexico and Korea.

**Testing for Event 32:** USDA’s Grain Inspection, Packers and Stockyards Administration said it is in the process of verifying the results of Dow AgroSciences’ test for Event 32. Once validated, the PCR test would be able to identify Event 32 at a 0.1 percent detection level, GIPSA said. Dow AgroSciences maintained GIPSA’s validation has been completed, and said it has retained a “qualified laboratory” to conduct PCR testing as needed. But GIPSA said it is unlikely that the test would detect the trait given the extremely low level at which it is believed to exist in U.S. corn. And Dow AgroSciences said ELISA strip tests cannot differentiate between Event 32 and Herculex® RW corn because both events produce the same protein.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access a question-and-answer fact sheet prepared by APHIS on Event 32.



## Congressional Ag Leaders Zero In on Spending Level for New Farm Bill

Key congressional leaders on the farm bill negotiations met this week in an attempt to reach a consensus on a spending level for the measure, just weeks before the March 15 expiration of the 2002 farm law.

The congressional leadership meeting appeared to be productive, with an agreement on a spending figure for a new farm bill that is \$10 billion more than the \$597 billion budget baseline over 10 years. The tentative figure is about \$4 billion more than an offer tabled previously by the leadership of the House Agriculture Committee, and several billion dollars less than a counteroffer presented by Senate Agriculture Committee Chairman Tom Harkin, D-Iowa, which he estimated at \$12.5 billion more than the baseline but the administration calculated at \$23 billion more. The tentative spending figure reportedly does not include standing agricultural disaster-assistance authority, which would be handled separately and is expected to be less than the \$5 billion version in the Senate-passed farm bill. Further, the spending level for nutrition programs and tax credits for energy and conservation reportedly still are under discussion. Finance Committee Chairman Max Baucus, D-Mont., and Ways and Means Committee Chairman Charlie Rangel, D-N.Y., were assigned the job of identifying the necessary offsets to reach the \$10 billion level by Feb. 29.

House Agriculture Committee Chairman Collin Peterson, D-Minn., indicated last week that he objected to the Senate farm bill's proposed tax credits to finance some of the energy

and conservation provisions, since that would make those programs subject to jurisdiction by the congressional tax-writing committees – the House Ways and Means Committee and the Senate Finance Committee – rather than the Agriculture Committees. But he said he found it less objectionable to have the congressional tax-writing bodies overseeing a permanent disaster-assistance program, since they have been involved in *ad hoc* disaster-assistance bills enacted previously by Congress.

Peterson on Feb. 22 also said he would let the permanent agriculture laws take effect to force passage of a farm bill this year rather than support a long-term extension of the 2002 farm law. He reasoned that enacting a new farm bill in the first year of a new presidential administration would be problematic, and that resorting to the permanent farm law would cause such consternation that it would force Congress to act. Peterson said he would support a short-term extension of the 2002 law if an agreement on a new farm bill largely had been reached.

Peterson has indicated he does not want to end up with a bill the president will veto, but other sources have told NGFA that without further cooperation from the Bush administration that may not be possible. Congressional farm bill leaders may be resigned to writing a bill that they hope a wide majority of Congress will support, but without assurances that it will be signed by the president.

## House Approves Repeal of Tax Credits for Oil, Gas Industry

The House on Feb. 27 approved by a 236-182 vote a bill that would repeal \$18 billion in tax credits and incentives to the oil and gas industry and shift those funds to further incentives on renewable energy and energy conservation.

The legislation, which also passed the House last year but was not enacted by the Senate, includes a renewable fuels section that would: 1) create a new production credit of 50 cents per gallon for cellulosic biofuels; 2) extend the biodiesel tax credit through Dec. 31, 2010; 3) extend the \$1 per gallon credit for diesel created from biomass; and 4) eliminate the requirement that production be through the thermal depolymerization process. In addition, the bill would extend

and increase the credits for gasoline stations to install alternative fuel pumps. Those credits would be extended through 2010 and increase from a cap of \$30,000 to \$50,000.

The measure also clarifies that the credits are intended for biodiesel produced and consumed in the United States. This provision would take effect on Dec. 31, 2008. While the bill passed the House largely along partisan lines, there again is little chance it will be approved by the Senate. In addition, President Bush has pledged to veto the measure in the unlikely event it reaches his desk over what is viewed by most Republicans as a tax increase for the oil and gas industry.



## STB Sets April 24 Public Meeting on RR Common-Carrier Obligation

The federal Surface Transportation Board (STB) on Feb. 22 issued a notice [STB Ex Parte No. 677] announcing it would conduct an April 24 public hearing on railroads' common-carrier obligation under the Staggers Rail Act of 1980.

The common-carrier obligation ostensibly requires railroads to provide transportation service upon reasonable request. The STB said its hearing will "seek to highlight the importance of the common-carrier obligation, provide a better understanding of it, and assist the agency in its monitoring and compliance work."

Among other things, the STB said the hearing will focus on the following topics: 1) service limitations resulting from a rail capacity-constrained environment; 2) cost and safety issues related to the transportation of hazardous materials, especially toxic inhalation hazards; 3) carrier-imposed requirements for infrastructure investments by shippers; 4) the impact of volume requirements or incentives on the rail common carrier obligation; 5) economically motivated rail service reductions and metering of the demand for service; 6) the "proper" use of rail

embargoes; 7) the conditions under which it "becomes necessary" to obtain abandonment authorization from the STB; and 8) the entities to which the common-carrier obligation applies. The hearing also will address the role of the agency's Office of Compliance and Consumer Assistance in "ensuring that carriers meet their common-carrier obligation."

**Testifying and Submitting Statements:** The public hearing is scheduled for 9 a.m. on April 24 at the STB's headquarters at 395 E St., S.W., in Washington. The NGFA plans to participate in the proceeding. Notices of intent to participate in the hearing are due by March 25. Meanwhile, April 17 is the deadline for the STB to receive written testimony of speakers, as well as written submissions from parties not wishing to appear at the hearing. Those wishing to testify or submit statements should do so by sending an original and 10 copies of the filing to: Surface Transportation Board, Attn: STB Ex Parte No. 677, 395 E Street, S.W., Washington, D.C., 20423-0001. Members receiving the *NGFA Newsletter* electronically may obtain more information on the proceeding by [clicking here](#).

## STB Seeks Comments on Methods for Determining Railroad Cost of Capital

The federal Surface Transportation Board (STB) on Feb. 13 issued a *Federal Register* notice seeking public comment by April 14 on whether it should add a second modeling approach to the new methodology now used to calculate the railroad industry's cost of capital.

The agency's calculation of the rail sector's cost of capital influences a host of regulatory proceedings, including whether railroads are considered to be revenue adequate under the Staggers Rail Act of 1980 and therefore subject to rail rate challenges from shippers. The STB also uses the cost-of-capital figure in cases involving the reasonableness of a carrier's freight rate, feeder-line applications, rail line abandonment proposals, compensation cases involving trackage rights, and rail merger proposals.

In a significant final decision [STB Ex Parte No. 664] issued on Jan. 17, the STB changed its method for calculating a key component of railroads' cost of capital – the cost of equity. The STB said henceforth it would use a "Capital Asset Pricing Model" (CAPM), rather than the single-stage discounted cash flow (DCF) method that it had relied upon since 1982. As stated in its decision, the STB said that 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 decision, calling it a "needed and welcome step" in comments filed with the agency in September and October 2007.

But in its latest *Federal Register* notice, the agency

is seeking comments on whether to use a multi-stage discounted cash-flow model to "complement" the use of CAPM in determining rail cost of capital. While noting the proceeding record "was insufficient" to adopt a discounted cash-flow model, the agency said it did not "want to foreclose the possibility of augmenting the CAPM" with such an approach. As a result, the STB said it was soliciting comments on an appropriate multi-stage discounted cash-flow model and whether it would yield more precise results when used in combination with the CAPM than using the CAPM methodology alone. It said the proceeding record had brought to the forefront several key issues on which it seeks comment regarding a discounted cash-flow model, including the following:

- ▶ it should be a multi-stage one to avoid overstating the cost of equity;
- ▶ it should not focus exclusively on dividend payments, but rather should incorporate broader measures of cash flow or shareholder returns;
- ▶ it should be limited to those firms that meet the screening criteria; and
- ▶ it should enhance the precision of the resulting cost-of-equity estimate when used in combination with the CAPM.

In addition to these criteria, the STB requested comments identifying and addressing any other criteria it should consider in evaluating a multi-stage discounted cash-flow





model. In this regard, the agency solicited comments on how a multi-stage discounted cash-flow model would account for “atypically large capital investment” by railroads to avoid skewing the analysis. “If we are not ultimately persuaded that use of a particular multi-stage discounted cash-flow model would improve the (agency’s) cost-of-equity calculations, we will terminate this proceeding,” the STB concluded.

The STB notice can be accessed by [clicking here](#). Member companies wishing to submit comments may do so by sending an original and 10 copies referencing STB Ex Parte No. 664 (Sub-No. 1) to: STB, 395 E St., S.W., Washington, D.C., 20423-0001.

## Industry Input Solicited for STB Study on Rail Competition Issues

The consulting firm hired last fall by the federal Surface Transportation Board (STB) to conduct a study on freight rail competition currently is looking for input from “industry stakeholders,” including shippers, rail carriers and “other interested parties.”

The study, entitled “Report to the U.S. STB on Competition and Related Issues in the U.S. Freight Railroad Industry,” was spurred by an October 2006 report by the Government Accountability Office (GAO) – the investigatory arm of Congress – that expressed concerns over competition and shipper captivity in the rail industry. The GAO recommended that the STB conduct a rigorous analysis of competition in the industry and consider actions to address problems associated with abuses of market power. The STB responded by contracting with Madison, Wis.-based Christensen Associates to develop a study that provides “a comprehensive analysis of a wide range of issues including competition, capacity and the interplay between the two.” The agency said the study also is to examine “various regulatory policy alternatives.”

The study is expected to cost approximately \$1 million and be completed and made public in the fall of 2008. Specifically, Christensen is soliciting comments on the following topics: rail rates, service quality, capacity constraints, capacity investments, railroad revenue adequacy, competition, captivity, commodity-specific (*i.e. grain*) issues, proposed railroad-related legislation, and STB policies and procedures.

As part of its research effort, Christensen has created “an electronic forum for anyone interested in the state of competition in the U.S. freight railroad industry to visit and participate.” Members receiving the *NGFA Newsletter* electronically may access the Christensen web-based forum by [clicking here](#). Once participants have registered for the forum, they can select the amount of information about themselves that will be displayed to other participants in the forum. Forum participants also can send comments directly to Christensen that will not be associated with specific forum participants.

## Report Reaffirms Economic Validity of Inland Waterways Renovation

The U.S. Army Corps of Engineers has issued an updated interim report that reevaluates and reaffirms the economic validity of the major lock replacement projects authorized by Congress for the Upper Mississippi and Illinois Waterway in legislation approved last November.

The interim report, issued in December, for the first time evaluated the congestion on the U.S. highway and rail systems, and how that might affect the need for increased waterway capacity. Specifically, the report examined the Upper Mississippi and Illinois Waterway project from the standpoint of: 1) the Corps’ traditional cost-benefit analysis, but with the benefit of more detailed forecasting data and methods than available previously – including a global grain model that used a range of possible future barge grain traffic; 2) regional economic benefits; 3) environmental quality and social effects; and 4) reduced congestion on the nation’s transportation system.

The report’s analysis that focused on regional benefits, environmental quality and other social effects found “overwhelmingly positive” benefits for the Upper Mississippi-Illinois Waterway project. Even with the use of the more sophisticated models and inputs, the cost-benefit analysis “remained

conclusive,” according to Richard Astrack, the Corps’ St. Louis District Project manager and leader of the evaluation team. Under the range of barge grain traffic calculated, the study found that the cost-benefit ratio could be as high as 1.3, representing a net annual gain of \$54.8 million under a high-traffic scenario; to a low of 0.4, equating to a net annual loss of \$98 million under a low-traffic scenario. The interim report concluded that not implementing the first increment of construction on the waterway project is riskier than proceeding with a project that possibly may include some overbuilding. The interim study also for the first time estimated potential waterway traffic increases resulting from the planned expansion of the Panama Canal and growing concern over highway congestion and resulting environmental impacts. The Corps estimates that current barge grain transportation along the Upper Mississippi-Illinois Waterway generates \$1 billion in transportation cost savings annually, compared to annual operation and maintenance costs of \$115 million. The interim report points out that the inland waterways are 7.5 times more economical than shipping by truck.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access a copy of the 124-page interim report.





## EPA Reiterates Intent to Proceed with Rulemaking on Application of Clean Air Act Permits for Certain Temporary Storage Systems

During a Feb. 21 meeting in Washington, U.S. Environmental Protection Agency (EPA) officials reiterated to the NGFA that the agency does not intend to further clarify or rescind its tentative position that certain types of temporary grain storage structures should be classified as permanent storage for air-permitting purposes until it completes a rulemaking on the issue later this year.

The EPA officials rebuffed a delegation of NGFA industry member experts and staff that presented additional information to demonstrate that the agency's tentative position concerning the regulatory treatment of certain temporary storage systems – articulated in a Nov. 21, 2007 letter – was misguided and illogical in terms of its potential impact on grain quality, technological advancement and the environment. The NGFA was joined at the meeting by a U.S. Department of Agriculture (USDA) official who explained the history of its decision to begin licensing temporary grain storage systems in 1981 – several years after Congress enacted the Clean Air Act New Source Performance Standards (NSPS) in 1977.

How the issue ultimately is resolved is extremely important, since classifying certain types of temporary storage as permanent space could cause affected facilities to be considered a “major source” of emissions under the NSPS standards and hence subject to air permitting requirements for grain dust emissions. If EPA's tentative conclusion stands, it could cause hundreds of facilities – including many country elevators – to be classified as a “major source” of emissions and hence subject to air-permitting requirements for grain dust emissions. Under the NSPS [40 CFR 60 Subpart DD], any commercial grain elevator built after 1978 that has a permanent storage capacity exceeding 2.5 million bushels is required to comply with stricter air-permitting and emissions standards. The requirement also applies to any facility that has been modified since 1978 to expand its permanent storage capacity to more than 2.5 million bushels; it is this latter requirement that would be triggered by EPA's new tentative interpretation regarding certain types of temporary storage, most of which has been added since 1978. *[Importantly, these designations exclude grain handling facilities located at feed mills, pet food manufacturers, cereal manufacturers, breweries and livestock feedlots.]*

Congress enacted the law in response to numerous public comments submitted to EPA by the NGFA and others that stated it was unreasonable to require small country elevators to obtain air permits because they typically were located in rural areas, emitted a small amount of total emissions, and would be economically devastated by the requirement. Also subject to the standard are grain storage elevators with a permanent storage capacity exceeding 1 million bushels that

are located at any wheat flour mill, wet or dry corn mill (for human consumption), rice mill or soybean oil extraction plant.

The NGFA is vigorously opposing EPA's tentative policy stance and had asked the agency to reverse and rescind its tentative position. The NGFA has argued that such a position is particularly advisable given EPA's plan to conduct a rulemaking to clarify the matter.

**EPA's Tentative Policy Stance:** In a letter dated Dec. 21 and received on Dec. 26, EPA Compliance Assessment and Media Programs Division Director Michael Alushin wrote that the agency “understands the functional, practical and USDA regulatory differences” between temporary and permanent grain storage, and stated that these issues “could potentially be brought up” during a notice-and-comment rulemaking currently being considered by the agency's Office of Air and Radiation.

During the Feb. 21 meeting, EPA staff from both the Office of Air and Radiation and the Office of Enforcement and Compliance Assistance said they had reviewed the NSPS rulemaking history regarding grain elevators. Further, they emphasized that their tentative policy decision had been based upon their belief that “elaborate (storage) structures, such as those featuring permanent aeration towers, met the definition of permanent storage capacity.” EPA further stated that if a facility was truly a “country elevator,” then it would not exceed 2.5 million bushels of storage capacity.

The NGFA countered that many “country elevator” facilities have temporary storage with a permanent aeration-tower feature and still have a total storage capacity of less than 2.5 million bushels. Further, the NGFA challenged the agency on how it could enforce its tentative interpretation when its definition of temporary storage conflicts with those used by both the Iowa Department of Natural Resources and the Indiana Department of Environmental Management. EPA merely responded that it stood by its Nov. 21, 2007-articulated tentative policy and would not recognize Iowa or Indiana's definition of temporary/permanent storage.

**EPA's Plans for Rulemaking:** The EPA officials said they are targeting July 2008 for publication of proposed changes to the grain elevator NSPS that would update the definition of temporary and permanent storage. The agency noted it is required by law to review the existing NSPS standards every eight years, but has not done so for the grain elevator section since 1984. They said a 400-word abstract of potential proposed changes has been drafted, and will be reviewed by EPA's Steering Committee prior to publication in the *Federal Register*. The agency also is developing an economic impact analysis that will accompany the proposal.





# Tech Talk

by Jess McCluer  
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Importantly, even though EPA asserts it does not recognize the permanent storage definitions of Iowa and Indiana, it appears that the federal agency will **not** be actively enforcing its tentative interpretation of temporary storage since it would complicate the pending rulemaking process. The NGFA also has learned that the Illinois EPA does not plan on enforcing the agency's interpretation of permanent storage until the rulemaking process is completed.

**NGFA Continues to Ask Members to Keep It Informed:** However, during this period of continued uncertainty, the NGFA again requests that if your company confronts an enforcement action or notification by either federal EPA or a state or regional EPA office, that you contact Jess McCluer, Randy Gordon or Kendell Keith at the NGFA at 202-289-0873. Depending upon the facts and circumstances of any particular enforcement activity, the NGFA may consider what supportive action may be appropriate to protect the overall interest of the industry. Regardless of the NGFA's decision on involvement in individual situations that could have broader implications

industrywide, the NGFA believes the assimilation of data on any enforcement activities could prove useful.

## Mark Daniels of CHS Elected New GEAPS Leader



The NGFA offers heartiest congratulations to **Mark Daniels**, director of health and safety for CHS Inc., Inver Grove Heights, Minn., for being elected as president and chairman of the Grain Elevator and Processing Society (GEAPS) during its annual meeting on Feb. 23-27 in Omaha, Neb.

Daniels served as chairman of the joint NGFA-GEAPS Safety, Health and Environmental Quality Committee from 2004-2007, and continues to serve as a member of the committee. He also is a current member of the NGFA's Board of Directors.



# From the Bench

by Charles M Delacruz  
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## Registration Open for Trading, Trade Rules and Dispute Resolution Seminar!

It's that once-every-two-year chance to take advantage of a one-of-a-kind professional development and educational opportunity for merchants of grains, oilseeds, feed ingredients, barge freight and rail freight!

That, of course, is the **NGFA's Trading, Trade Rules and Dispute Resolution Seminar**, which is scheduled for **May 6-7 in St. Louis, Mo.** at the St. Louis Airport Marriott Hotel. Seminar registration is now open, and all NGFA-member companies are encouraged to send their managers and employees – both new hires and seasoned veterans – that are involved in your company's trading operations. **Given market conditions, this year's event is a must!**

This year's seminar is addressing topics of current and critical value. As in the past, the seminar will cover contracting, trade practices and the NGFA Trade Rules and Arbitration System. We see repeated mistakes – either from lack of knowledge or misapplication of these rules and principles – that cost companies money and unintentionally limit access to the NGFA's arbitration process. The NGFA's Arbitration System currently is experiencing very heavy use. While gratifying to see its continued high relevance, the upswing in cases may be

an indication that the industry needs a refresher on how to avoid trade disputes in the first place. Just like preventive maintenance of machinery and equipment, investing in human capital to avoid "breakdowns" that lead to arbitration or litigation can pay huge dividends.

And this year we are offering much more, with several "hot" and timely topics featuring: 1) a **Secondary Rail Freight Trading Workshop**, including these newly implemented NGFA Trade Rules, as well as the basics and an introductory discussion of the trading in this increasingly significant market; 2) a forum on the potential for new **Trading Rules for Ethanol**; 3) the latest on **Cross-Border Trading** featuring the recently completed Spanish translation of the NGFA rules, and the potential application of trading rules and arbitration in Mexico; and 4) a session on **Managing Contract Disputes and Trading Practices** – from an insider's perspective – given the volatility in current markets.

Additional **conference information** and a **registration form** will be transmitted via e-mail to the NGFA membership tomorrow. Watch you mailbox!



## AAFCO Conducts 'Summit' with Stakeholders on New Strategic Plan

The Board of Directors of the Association of American Feed Control Officials (AAFCO) – the professional organization of federal and state regulatory agencies – this week conducted a very beneficial “summit” with stakeholder organizations, including the NGFA, to discuss priorities that should be considered for inclusion in its new 2010-14 strategic plan.

AAFCO's current 2004-09 strategic plan focuses heavily on a food and feed safety component that includes the development of process-control regulations for animal feed, as well as organizational growth, promoting and enhancing membership participation, and promoting the organization internationally as an authority on animal feed regulation, labeling and standard-setting.

The NGFA's suggestions to the AAFCO Board for consideration in its new strategic plan focused on building upon the organization's founding purposes and core competencies, including: 1) providing educational activities to encourage broader adoption of AAFCO's Model Law and Regulations to increase uniformity between State feed laws and regulations; 2) improving the operation and timeliness of AAFCO's ingredient-definition process, which is relied upon by FDA and industry to evaluate the safety and marketability of animal feed ingredients; and 3) creating a reputation for being the go-to organization for professional development and training of feed regulators and inspectors.

To further enhance AAFCO's operations and long-term viability, the NGFA offered a series of recommendations for streamlining the organization's committee structure,

developing annual priorities to be accomplished and specific assignments for ensuring completion; improving the content and functioning of AAFCO meetings; and developing alternative revenue sources to ensure AAFCO's long-term financial future. Concerning the organization's feed safety priorities, the NGFA recommended that AAFCO channel its activities into serving a role in implementing the Food and Drug Administration's (FDA) Animal Feed Safety System (AFSS) initiative. The AFSS, currently under development, is a comprehensive, science- and risk-based approach for evaluating various potential feed hazards, as well as identifying strategies for mitigation risks that subsequently are identified. The NGFA also recommended that AAFCO complete work on – and encourage adoption of – good manufacturing practice regulations for feed and feed ingredients that have been under development for several years. In addition, the NGFA encouraged AAFCO to enhance its communications outreach both within the organization and with outside publics, such as producers, industry and consumers.

To facilitate the accomplishment of each of these recommendations, the NGFA and other organizations encouraged AAFCO to consider establishing and filling a new position of executive director to coordinate the organization's activities and Board-set priorities.

AAFCO's Board of Directors will conduct subsequent meetings with AAFCO committee chairpersons and other stakeholders in developing its next strategic plan, which is scheduled to be adopted in August 2009.

## Canada Confirms Another BSE Case

The Canadian Food Inspection Agency (CFIA) on Feb. 26 confirmed the positive diagnosis of bovine spongiform encephalopathy in a six-year-old dairy cow in Alberta, Canada.

CFIA said the animal was detected under the country's BSE surveillance system. No part of the infected cow entered the human or animal food chain. An epidemiological investigation is underway to identify the animal's herdmates at the time of the infected cow's birth in 2001 or 2002, as well as potential pathways by which it might have become infected.

It marks the 13<sup>th</sup> case of BSE detected in Canada, which does not include the December 2003 diagnosis of BSE in a Canadian-born cow in Washington state that became the United States' first case of BSE. It is the seventh BSE case in a cow born after CFIA implemented its feed regulations in 1997 that ban the feeding of ruminant-derived protein to ruminant animals. Most scientists believe that BSE is triggered by consumption of contaminated animal feed containing an infectious abnormal protein prion. The incubation period is lengthy – averaging four to six years, although it can be longer – before clinical signs of the disease become evident in a ruminant animal.





## Canadian Food Agency Issues Proposed Regulations for Distillers Grains

The Canadian Food Inspection Agency (CFIA) on Feb. 15 issued a draft policy paper to initiate public comment on the agency's proposed regulations for distillers grains produced as co-products from fuel ethanol production.

As reported in the Jan. 3 edition of the *NGFA Newsletter*, CFIA previously issued a notice to the Canadian feed industry stating that distillers grains co-products derived from fuel ethanol production are not considered to be approved for use in animal feed under current Canadian feed regulations since "the manufacturing processes which generate fuel ethanol products differ from those of alcohol for human consumption; the differences stem from the use of non-food grade starting materials, different sources of enzymes, or processing aids." In doing so, CFIA also stated its intent to conduct a safety evaluation of such distillers grains and use the resulting information to develop distillers grains definitions representative of the products currently being manufactured, as well as a comprehensive policy document on distillers grains derived from fuel ethanol production.

The draft policy paper issued by CFIA reflects discussions that occurred between Canadian industry representatives and the agency during a Dec. 6 stakeholder meeting. Key components of the draft policy include:

► **CFIA's Role in Regulating Ingredients for Use in Livestock and Poultry Feed:** The draft policy reiterates CFIA's authority to regulate the manufacture, import and sale of animal feeds in Canada. Based upon this authority, the proposed policy states that all additives used in the production of distillers grains products to be fed to livestock, poultry and pets must be approved for use in feed by the CFIA.

► **Maximum Approved Antimicrobial Inclusion Rates for Use in Fermenters:** The CFIA-proposed policy would set the following maximum inclusion rates for approved antimicrobials:

- Penicillin: 1 parts per million (p.p.m.)
- Streptomycin: 2.7 p.p.m.
- Ampicillin: 4 p.p.m.
- Virginiamycin: 6 p.p.m.

If a manufacturer wishes to use other antimicrobial drugs in the fermentation process, CFIA would need to evaluate the safety of those antimicrobial drugs as residual contaminants. The draft regulations also specifically state that monensin sodium and tylosin tartrate are **not** approved for use during the production of distillers grains.

The proposed policy would require all ethanol facilities that use antimicrobials in their fermentation process to initially test for antimicrobial residues levels in all types of distillers grains products produced at their facilities using accredited test methods. Once baseline antimicrobial residue data are established, the policy would require intermittent testing thereafter.

► **Label Guarantees for Distillers Grains Products:** The draft regulations would require that labels of distillers grains products derived from fuel ethanol production contain guarantees for: 1) minimum crude protein; 2) minimum crude fat; 3) maximum moisture; 4) maximum crude fiber; 5) maximum sulfur; 6) maximum sodium; and 7) maximum phosphorous.

► **Approved Fermentation Microorganisms and Enzymes, and Processing Aids:** The CFIA-proposed policy states that all fermentation microorganisms and enzymes and processing aids used during the production of distillers grains products must be assessed and approved by a Canadian government body. Such approved products currently can be found in: 1) Schedule IV or V of CFIA's Feed Regulations; 2) Health Canada's Food and Drug Regulations; and 3) Environment Canada's Domestic Substance List.

► **Plant Products Considered to be Novel Feed Ingredients:** The draft regulations would require a mandatory pre-market assessment and authorization from CFIA for plant products used in the fermentation of ethanol production that are considered to be "novel feeds." The CFIA defines a "novel feed" as a feed comprising an organism or organisms, or part or products thereof, that: 1) is not approved for use in feed; and 2) contains a "novel trait" that intentionally has been selected, created or introduced into the feed through a specific genetic change, and, based upon valid scientific rationale, is not substantially equivalent in terms of its specific use and safety both for the environment and for human and animal health to any characteristic of a similar feed that is found in Schedule IV or V of CFIA's Feed Regulations.

► **Proposed Ingredient Definition:** The proposed policy would establish the following ingredient definition: "Distillers grains dehydrated derived from fuel ethanol is the byproduct containing the coarse grain mixture obtained from the yeast fermentation process for the production of fuel grade ethanol which has been dried by methods employed in the grain distilling industry. The fermentation and post-production processes shall be conducted using approved ingredients that do not contain a novel trait. If the label bears a name descriptive of kind or form of grain, the product shall correspond thereto. It shall be labeled with guarantees for minimum crude protein, minimum crude fat, maximum moisture, maximum crude fiber, maximum sulfur, maximum salt and maximum phosphorous."

**Submitting Comments:** CFIA will accept public comment on the proposed policy until April 1, after which it intends to finalize the regulations. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the proposed regulations on the CFIA website.



# Membership Matters

by Todd Kemp  
Director of Marketing/Treasurer

## February Frenzy Morphs Into March Madness!

### ...Promotion Yields 28 New Members...So Far...

Twenty-eight days into the *Frenzy*, NGFA recruiters' efforts have produced twenty-eight new members – an excellent haul!

It's going so well that this year, *February Frenzy* will be extended until the NGFA Annual Convention, which begins on March 26. Thus, the NGFA introduces its own version of *March Madness* (with apologies to the NCAA).

All sponsors of the twenty-eight new members mentioned above, and all sponsors of new members through March 24, will qualify for the "*Austin Escape*" Grand Prize drawing:

- Airfare for two to Austin, TX – Sponsored by **Pioneer, a DuPont Co.**

- Two nights luxury accommodations – Provided by the **Renaissance Austin Hotel**

Already, we have equaled last year's total of 84 new members – with more than three weeks to go in the membership year. The goal: at least 100 new members – something not accomplished since the 1999-2000 membership year!

Let's keep the *Frenzied* recruiting pace going through March! Call a prospective member today – a colleague, competitor, supplier, customer – and call on the NGFA staff to back you up with materials and other follow-up. Contact Todd Kemp at (202) 289-0873 or [tkemp@ngfa.org](mailto:tkemp@ngfa.org) for any assistance you might need or ideas about potential members.



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