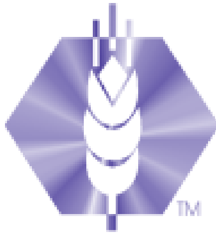

NGFA Newsletter

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House Agriculture Committee Completes Consideration of 2007 Farm Bill

The House Agriculture Committee late tonight completed consideration of its version of the 2007 farm bill (H.R. 2419).

As approved by the committee, the commodity provisions would "rebalance" commodity price supports by increasing target prices and loan rates for wheat, soybeans, barley and oats. Target prices would increase 23 cents per bushel for wheat, 49 cents for barley, 30 cents for soybeans and 6 cents for oats compared to 2002 farm law levels. Meanwhile, marketing assistance loan rates would increase 19 cents per bushel for wheat, 6 cents for oats, 10 cents for feed barley and 65 cents for malting barley. Direct payments would remain unchanged from 2002 farm law levels. *[See accompanying table.]*

Commodity	Target Price		Loan Rate		Direct Payment	
	2002 Farm Law	*House 2007*	*2002 Farm Law*	*House 2007*	*2002 Farm Law*	*House 2007*
Wheat	**$3.92**	**$4.15**	**$2.75**	**$2.94**	$0.52	$0.52
Barley	**2.24**	**2.73**	**1.85**	**2.50(malt)/1.95(feed)**	0.24	0.24
Oats	**1.44**	**1.50**	**1.33**	**1.39**	0.024	0.024
Corn	2.63	2.63	1.95	1.95	0.28	0.28
Soybeans	**5.80**	**6.10**	5.00	5.00	0.44	0.44
Sorghum	2.57	2.57	1.95	1.95	0.35	0.35
Upland Cotton	**0.724**	**0.70**	0.52	0.52	0.0667	0.0667
Rice	10.50	10.50	6.50	6.50	2.35	2.35

Two Counter-Cyclical Payment Options: The House Agriculture Committee's bill also would provide producers with an option to choose between a revenue-based and price-based counter-cyclical payment program. Under the revenue-based approach, the national payment rate would be determined based on the difference between the national revenue target per acre and the national actual revenue per acre. As an example, the bill would establish a national target revenue of $344.12 per acre for corn and a national payment yield of $114.4 bushels per acre. The target revenue for soybeans would be

(Continued on page 4)

Syngenta Provides Update on Japanese Review of Agrisure RW Corn

In response to a request from the NGFA, Syngenta Seeds Inc. this week provided an update on the status of the Japanese government's review of the firm's Agrisure RW MIR 604 biotechnology-enhanced corn trait.

Syngenta said that the "upper committees" of Japan's Ministry of Health, Labor and Welfare, and Ministry of Agriculture, Forestry and Fisheries, respectively, have completed their scientific reviews and sign-offs concerning the food and feed safety of the product. Both of the reviews now are open for public comment, which is scheduled to be completed by the end of July.

Following that, Syngenta noted that an administrative sign-off is required by the Japanese government giving final approval. "Specific timing for the final administrative sign-off has not been provided by Japan regulatory authorities," Syngenta said. "In the meantime, it is important that growers continue to implement their grower commitments to direct grain from Agrisure RW corn to domestic markets."

Separately, the Japan Feed Trade Association (JAFTA) has advised the North American Export Grain Association (NAEGA) that it estimates that final approval of Agrisure RW MIR 604 corn will occur for feed between the middle and last half of September, while approval for food use is anticipated during the last half of August or first half of September.

JAFTA notes that Syngenta's application for food approval in Japan is for the single-stack event only, and that application for the double-stack Agrisure event likely will occur following the end of the public comment period. JAFTA estimates that the double-stack event could be approved by mid-October, since a separate comment period will not be required.

The NGFA and NAEGA earlier this year had urged Syngenta not to commercialize Agrisure RW MIR 604 corn because of marketability considerations, since it had not received regulatory approval for food or feed use in Japan, Mexico, Canada or other U.S. export markets.

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APHIS Seeks Comments on Potential Changes to Biotech Regulations

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) on July 17 issued a ***Federal Register*** notice requesting comments on a host of potential changes to its regulatory framework for biotechnology-enhanced commodities.

APHIS, under the authority of the Plant Protection Act of 2000, is responsible for regulating biotech-enhanced organisms to ensure they are not plant pests and do not adversely affect plants or the environment. The Food and Drug Administration oversees the safety of biotech-enhanced commodities for food and feed use, while the Environmental Protection Agency has jurisdiction over biotech-enhanced commodities with pesticidal properties.

In a draft environmental impact statement issued in conjunction with the notice, APHIS posed a series of 10 major issues on which it is seeking public comment by Sept. 17. The agency's ***Federal Register*** notice cited several major changes under consideration:

- **Establish a Multi-Tiered Permitting System:** The agency said it is considering adopting a multi-tiered permitting system under which it would classify various biotech-enhanced events based upon their potential environmental risk and the familiarity of agency scientists with the trait. The degree of confinement and regulatory oversight would be risk-based, and would allow for commodities to shift to lower or greater tiers as new information becomes available. The agency said a multi-tiered permitting system would be able to accommodate: 1) plants that have a higher plant pest or noxious weed potential; 2) plants engineered to express biotech traits with which the agency's scientists are less familiar – such as those with pharmaceutical or industrial properties; and 3) plants engineered to express traits likely to pose a hazard to human health and the environment – as an example, APHIS cited biotech-enhanced plants designed to remove heavy metals from contaminated soil, which could be a potential hazard if the metals bioaccumulate in the plant.

  Currently, APHIS utilizes only two categories – notifications (an expedited permitting process for biotech-enhanced plants considered to be of low risk) and permits (which apply to all other biotech-enhanced plants).

- **Low-Level Presence of Unauthorized Biotech-Enhanced Traits:** APHIS said it is considering establishing scientific risk-based regulatory criteria to determine the extent to which it takes "remedial action" against the low-level presence in the commodity stream of biotech-enhanced events not yet deregulated by the agency. Such safety criteria also would be considered when designing field-testing and confinement requirements for the commodity, APHIS said. The agency noted that unintentional low-level presence of unauthorized biotech-enhanced events can result from cross-pollination, commingling from shared equipment and facilities, and human error. "In addition, such incidents will inevitably result from the importation of seeds and commodities from countries where such material has been fully approved, but has not completed all U.S. reviews," the agency said. APHIS' current regulations do not address or expressly allow for such low-level presence of unauthorized biotech-enhanced events.

- **Oversight of Pharmaceutical and Industrial Products:** The agency said it had made a "preliminary determination that under stringent conditions and with rigorous oversight, including due consideration of substantive food safety issues, food crops can be safely used" to produce pharmaceutical and industrial products. In addition to the concept of creating a new multi-tiered permitting system, APHIS said it was seeking input on whether additional regulatory confinement requirements are appropriate to address food safety issues associated with such crops.

- **Expanding Scope of Regulations:** APHIS indicates it has made a "preliminary determination" that it should expand the scope of its regulations in three ways: 1) to address biotech-enhanced organisms that have the potential to be noxious weeds; 2) to encompass biotech-enhanced organisms engineered to control insect pests; and 3) to include "nonviable" plant material, such as plant stems and leaves, remaining after field trials are conducted if such material poses a potential risk to the environment if allowed to remain in the field.

- **Nonregulated Status:** APHIS said it is considering developing a process in which biotech-enhanced organisms could be either fully deregulated and removed from agency oversight, or be granted conditional approval with some degree of regulatory oversight preserved. "This would accommodate commercialization while continuing, in some cases, to regulate the organisms based on minor unresolved risks to plant health," APHIS said.

- **Imports of Biotech Organisms:** APHIS said it is considering developing a new "regulatory mechanism" governing the import and subsequent environmental review of biotech-enhanced products not yet approved in the United States so long as they are for food, feed or processing use (**not** for planting). Such products still could require FDA and EPA approval prior to entry, the agency noted.

- **Interstate Movement of Biotech Organisms:** In addition, APHIS said it was considering expanding its current exemption for interstate movement to apply to biotech-enhanced traits that have been well studied and which represent a low-risk. Currently, APHIS requires permits for interstate movement of all biotech-enhanced events that still are subject to agency regulation, except for one small

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flowering plant variety related to cabbage and mustard that it said is well understood and used extensively in research. The agency said it would still require shippers to notify APHIS when moving low-risk biotech-enhanced events in interstate commerce, but would not need an agency response before doing so.

Submitting Comments: The APHIS draft concepts are being reviewed by the NGFA's Biotechnology Committee, chaired by Jim Stitzlein, manager of market development for Consolidated Grain and Barge Co., Chesterfield, Mo., which will take the lead in preparing the NGFA's comments. APHIS said it is planning to conduct several public meetings – the dates and locations have not been announced yet – on the draft concepts. Member companies interested in submitting comments are encouraged to contact NGFA Director of Legislative Affairs Chris Holdgreve at choldgreve@ngfa.org or at 202-289-0873, Ext. 13. Comments may be submitted to: Docket No. APHIS-2006-0112, Regulatory Analysis and Development, Plant Protection Division, APHIS/USDA, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, Md., 20737-1238. APHIS requests that four copies be provided.

BASF 'Supports' BIO Policy on Introducing New Biotech-Enhanced Events

German-based BASF Plant Science has notified the NGFA that it "supports the principles" contained in the Biotechnology Industry Organization's (BIO) policy that encourages its member companies to obtain authorizations in key countries that have functioning, science-based biotech-approval systems before commercializing new biotech-enhanced traits.

In a letter dated June 15, BASF Plant Science President and Chief Executive Officer Hans Kast and Executive Vice President Reiner Emrich wrote that it: "…intends to work with the value chain to meet the regulatory requirements when appropriate in key markets, such as the United States, Canada and Japan, prior to any commercialization of certain products in the United States or Canada." The two officials wrote further that, "[a]s BASF moves forward with the development and commercialization of recombinant DNA plant materials, it intends to conduct market and trade assessments to address regulatory issues in advance of commercial launches, and to establish appropriate product stewardship practices for its products to address and prevent regulatory concerns that may arise in various countries. Such product stewardship practices and activities will include establishing best seed quality practices, establishing reliable detection methods and tests for its crop verification, and establishing product launch communication policies for stakeholders and the public."

Previously, Bayer Crop Science LLP, Dow AgroSciences, DuPont/Pioneer Hi-Bred Intenational Inc., Monsanto Co. and Syngenta Seeds Inc. wrote to the NGFA pledging their intent to abide by BIO's policy. BIO announced its "Product Launch Stewardship Policy" on May 21, stating that its Food and Agriculture Section had developed the policy in an effort to "minimize the number of asynchronous authorizations" that occur in key export markets that are "most likely to produce or import the seed or products derived from new biotech-enhanced plant products." Asyncrhonous authorizations refer to situations in which different countries approve, deregulate or authorize biotech-enhanced crops at different times.

Among the provisions of BIO's policy is a commitment by biotech providers to meet applicable regulatory requirements in key markets – it cites as a minimum that these include the United States, Canada and Japan – before commercializing new biotech-enhanced products in commodity corn, soybeans and canola in the United States and Canada. The BIO policy states that Mexico will be added to this list of countries from which regulatory approvals should be obtained once it establishes a "pattern of regularly authorizing biotech-enhanced events under defined timelines and processes." The BIO policy does provide an exception in cases where the biotech provider determines such regulatory approvals are not needed after consulting with the "value chain" for the given commodity or crop.

Complete information on the BIO policy was published in the May 24 edition of the ***NGFA Newsletter***, available by clicking here. The June 7 ***NGFA Newsletter*** reported on and contained hyperlinks to letters received from other biotech providers, and is available by clicking here.

Calendar

July 25, 2007: NGFA Feed Manufacturing and Technology Committee
Holiday Inn KCI Airport Hotel, Kansas City, Mo.

July 26, 2007: NGFA Feed Legislative and Regulatory Affairs Committee
Holiday Inn KCI Airport Hotel, Kansas City, Mo.

July 31-Aug. 1, 2007: NGFA/GEAPS Grain-Quality Management Seminar
Marriott St. Louis Airport Hotel, St. Louis, Mo.

Aug. 9, 2007: NGFA/NAEGA/GEAPS Joint Agroterrorism-Prevention and Facility Security Committee
NGFA Conference Room, Washington, D.C.

Sept. 10-11, 2007: NGFA Board of Directors
Fairmont Chateau Frontenac, Quebec City, Canada

Dec. 9-11, 2007: NGFA's 36th Annual Country Elevator and 11th Annual Feed Industry Conference
Chicago Marriott Miracle Mile Hotel, Chicago, Ill.

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"Farm Bill" continued from page 1

$231.87 per acre with a national payment yield of 34.1 bushels per acre. For wheat, the national target revenue would be $149.92 per acre with a national payment yield of 36.1 bushels per acre. The payment rate then would be divided by the national payment yield. Then, that figure would factor in the farm's base acres and payment yields. When triggered, counter-cyclical payments based on either the price or revenue approach would be capped at $65,000 per year. Producers would have a one-time choice on which of the two counter-cyclical approaches would apply to their farms for the duration of the five-year bill.

Payment Limits: The bill would establish a new payment limit. Individuals with a three-year average adjusted gross income greater than $1 million would be ineligible for farm program payments, with no exceptions. That limit is considerably greater than the Bush administration's $200,000 proposal, but represents a reduction from the up to $2.5 million producers currently can receive under the farm program. Individuals with a three-year average adjusted gross income between $500,000 and $1 million also would be ineligible unless two-thirds of their income is related to agricultural production. The payment limit on direct payments would be increased to $60,000 from the current $40,000 level.

Perhaps most significantly, the bill would eliminate the so-called "three-entity" rule – meaning that producers could qualify for farm program benefits for only one business entity, not as partial participants in up to three such enterprises. The bill also would require direct attribution of payments to specific individuals in an effort to better trace farm program payments to the ultimate beneficiary. The bill would remove the current limit on marketing assistance loan benefits (thereby making generic certificates unnecessary as a means for avoiding a separate payment limit).

Conservation: The bill would retain the current cap on the size of the Conservation Reserve Program (CRP) at 39.2 million acres. Significantly, it would allow producers and landowners, with the concurrence of USDA, to terminate CRP contracts prior to contract expiration without penalty provided the land was in the program for at least five years. Also adopted was an amendment offered by Rep. Jerry Moran, R-Kan., that would require USDA to allow dryland crop production on any lands enrolled for water-conservation purposes in the Conservation Reserve Enhancement Program (CREP). Such acres would be ineligible for federal crop insurance coverage; further, CREP payment rates would be reduced somewhat based upon the income generated by sale of crops from such land. Also approved was a Moran amendment that would allow for the production of biomass for cellulosic biofuels on CRP acres.

In a provision sure to draw the ire of Senate Agriculture Committee Chairman Tom Harkin, D-Iowa, the House bill would prohibit new contracts under the Conservation Security Program for working farmlands for the duration of the five-year bill.

Trade and Humanitarian Reserve: The bill would: 1) extend the Bill Emerson Humanitarian Trust at a level of up to 4 million metric tons of wheat, corn, sorghum and/or rice to meet international humanitarian food-assistance needs; 2) repeal the USDA Supplier Credit Guarantee Program and remove the 1 percent origination fee cap for export credit guarantee programs; 3) authorize an additional $25 million per year for the Market Access Program, with most of the additional funds directed to fruit and vegetable programs; and 4) enhance USDA staff support to international standards-setting bodies like the Codex Alimentarius Commission, the International Plant Protection Convention and the World Animal Health Organization.

Energy: The House bill would provide loan guarantees of up to 90 percent for loans used to finance the development, construction and retrofitting of biorefineries and biofuels production plants designed to demonstrate the commercial viability of converting biomass to fuel. It also would authorize $1 million to study the feasibility of creating a dedicated ethanol pipeline to transport fuel. An amendment offered by Rep. Virginia Foxx, R-N.C., that would have required the pipeline study to examine the impacts of an ethanol pipeline on food and feed prices was withdrawn after generating significant opposition.

Further, the bill would create a Biomass Energy Program to promote the production of alternative feedstocks that can be converted to cellulosic ethanol or other biofuels, provided funding can be identified. Eligible acres would be those "currently being tilled for the production of a crop for harvest"; land enrolled in the Grassland Reserve Program and Wetlands Reserve Program would be ineligible.

Disaster Assistance: The bill would provide permanent authority for USDA to offer emergency agricultural disaster-assistance programs.

Arbitration: An amendment offered by Rep. Michael Rogers, R-Ala., was approved that deleted the bill's ban on mandatory arbitration clauses in livestock and poultry contracts. Instead, the amendment calls on USDA to

(Continued on page 5)

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develop parameters governing **poultry and livestock** arbitration. Among the factors USDA is to address are: 1) a convenient venue for the producer; 2) allowing an opt-out if the claim is small enough to be settled in small claims court; 3) requiring arbitrators to submit full disclosure of any relationships they may have with the parties; 4) the number of arbitrators used; and 5) requiring the corporation/integrator in the dispute to cover a larger percentage of the arbitration costs. The amendment was adopted after a very spirited 45-minute debate, during which Rep. Bob Goodlatte, R-Va., the ranking member of the committee, doggedly defended pre-dispute arbitration clauses in contracts, arguing that it generally was in the best interest of the "little guy" to arbitrate rather than face a team of corporate lawyers in court. House Agriculture Committee Chairman Collin Peterson, D-Minn., sided with Goodlatte. The architect of the ban – Rep. Leonard Boswell, D-Iowa – adamantly opposed the Rogers amendment, and was joined by Reps. Stephanie Herseth, D-S.D., John Barrow, D-Calif., and Kirsten Gillebrand, D-N.Y. Ultimately, six Democrats joined 20 committee Republicans to pass the amendment by a 26-17 vote.

The NGFA will provide an update in a future edition of ***NGFA E-Alert*** on the House Agriculture Committee's farm bill action once the legislative language has been finalized.

Congress Takes Actions on Fiscal 2008 Appropriations Bills

The House and Senate Appropriations Committees on July 19 approved an agricultural appropriations bill for fiscal 2008 that includes $18.8 billion and $18.7 billion, respectively, in discretionary spending for the U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA).

Importantly, the House version includes a provision that directs USDA to fully implement mandatory country-of-origin labeling for meat and poultry by Sept. 30, 2008. The provision was included in the 2002 farm law, but has been delayed each year by Congress because of potential costs, implementation difficulties and questions over its usefulness to consumers. The House measure would allocate $2 million of $8 million estimated to be needed to implement the program.

The $18.8 billion House bill is $1 billion more than requested in the Bush administration's budget proposal. It includes $17 billion for USDA, $879.5 million more than the Bush request. FDA would receive $1.7 billion, $55 million more than requested by the administration. Meanwhile, the Senate version includes $1.75 billion for food and drug safety enforcement, $186 million more than last year. The Senate bill also would earmark $11 million to FDA to establish a "rapid-response" team to address food-contamination incidents.

The other major policy initiative included in the measure is a provision that requires FDA to submit to Congress with next year's budget request a plan outlining a "new approach" to how the agency handles food safety issues. Subcommittee Chairman Rep. Rosa DeLauro, D-Conn., is a frequent FDA critic and has supported proposals to transform the food safety inspection process by creating a single food safety agency. The measure does increase appropriations for FDA's food safety work by $28 million beyond the administration's budget request.

The bill also would prohibit USDA from spending money to inspect horse meat and the certification of dead horses. The measure is an attempt to prevent horse slaughter for meat.

$1.1 Billion in Earmarks Added to Energy and Water Appropriations: In other appropriations action, the House approved the fiscal year 2008 Energy and Water Appropriations bill by a 312-112 vote. The measure includes report language approved by the House Appropriations Committee that adds $1.1 billion in earmarks.

The measure's $31.6 billion-funding level is $1.1 billion more than proposed by the Bush administration. The White House has threatened a potential veto since the funding exceeds the president's request. Most of the spending would be directed to the U.S. Department of Energy. But the measure includes $5.584 billion for U.S. Army Corps of Engineers' civil works projects (such as waterways and port projects). That is $713 million more than proposed by the Bush administration and a modest $246 million increase over fiscal year 2007 spending levels. It is estimated that it would take more than $8 billion annually to fully fund pending civil works projects. While falling far short of that mark, lawmakers' willingness to increase funding levels recognizes the importance of the waterway infrastructure. Meanwhile, the legislation that would authorize the funding of lock replacement and expansion on the Upper Mississippi and Illinois Waterway currently is pending in a joint House-Senate conference committee.

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Bush Establishes Interagency Working Group on Import Safety

Responding to a spate of recent incidents and heightened activity in Congress, President Bush on July 18 established a Cabinet-level working group to "identify actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products…."

The panel will be headed by Secretary of Health and Human Services Michael Leavitt, and also will consist of Cabinet or senior executive level representatives of the secretaries of agriculture, state, treasury, commerce, transportation and homeland security, as well as the attorney general, director of the Office of Management and Budget, U.S. trade representative, Environmental Protection Agency administrator, Consumer Product Safety Commission chairman and others appointed by Leavitt.

Among other things, the working group is to review current procedures and methods designed to ensure the safety of products exported to the United States. This is to include reviewing existing cooperation with foreign governments, foreign manufacturers and other entities in the exporting country's private sector regarding their inspection and certification of exported goods and factories producing exported goods. The group also is to consider whether additional initiatives should be undertaken with respect to exporting countries or companies.

In addition, the panel is to identify potential means to promote "all appropriate steps" by U.S. importers to enhance the safety of imported products. These include identifying best practices by U.S. importers in selection of foreign manufacturers, inspecting manufacturing facilities, inspecting goods produced on their behalf (either before export or before distribution in the United States), identifying product origin and safeguarding the supply chain.

The panel also is charged with surveying authorities and practices of federal, state and local government agencies regarding the safety of imports to identify best practices and enhance coordination among agencies.

Bush directed that the working group prepare a report with recommendations within 60 days unless Leavitt requests an extension. "It's important for the American people to know their government is on top of this situation and constantly reviewing procedures and practices," Bush said after his first meeting with the group.

Senate Bill Would Impose User Fees on Imports to Help Fund FDA Inspections, Research

Legislation introduced in the Senate on July 12 would impose user fees on a wide range of food and feed imports to help finance an expansion of the Food and Drug Administration's (FDA) inspections of imported products.

Introduced by Sen. Richard Durbin, D-Ill., long-time advocate of a single food safety agency, the bill (S. 1776) would apply a $20 assessment to each "line item" of imported food, which would encompass food, food ingredients, animal feed, feed ingredients, live animals intended for food use, and dietary supplements or dietary ingredients. The fee would be adjusted so that the total collected generally equals the funding appropriated by Congress for food import inspections and research programs.

The bill would require routine physical inspection by FDA of all foods, food and feed ingredients, and animals entering the United States to ensure that they are safe, properly labeled and in conformance with other provisions in the bill. It also would require FDA within two years to develop a system for certifying foreign governments or foreign food establishments before they are allowed to export such products to the United States. Prior to being granted such certification, the foreign establishment or government would be required to demonstrate to FDA's satisfaction that they have standards for food safety, inspection, labeling and consumer protection that are at least equivalent to the standards applicable to food produced in the United States. Prior to granting certification, FDA would be required to review, audit and certify the foreign government's food safety program, including all statutes, regulations and inspection authority. The certification would be valid for no more than five years, and FDA would be required to audit foreign governments and foreign food establishments every five years to ensure continued compliance.

The U.S. Department of Agriculture currently has such equivalence authority for regulating imports of meat, poultry and egg products.

Finally, the bill would require FDA to utilize up to 50 percent of the funds generated by the user fee to develop

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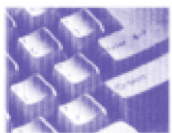
rapid tests (with results available within an hour) and sampling methodologies to determine whether food and feed imports are adulterated with microorganisms, pesticide chemicals or other contaminants. The bill would direct FDA to give priority to research on tests suitable for inspection at ports of entry. In addition, FDA would be required to give priority to research to develop tests for detecting the presence of pathogens like *E. coli*, salmonella and listeria.

Hearings Underscore Congressional Concern: Growing congressional concern over FDA's ability to regulate food and feed safety, particularly imports, was on full display during a July 18 hearing conducted by the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations. The committee's investigative staff criticized FDA for its lack of import inspections and for allegedly not cooperating with its investigation. Meanwhile, committee members voiced concerns about FDA's as-yet unannounced plan to reorganize its food safety efforts on a more risk-based framework and its plan to close down and reorganize several of its testing laboratories. Several committee members also supported legislation to grant FDA mandatory recall authority. FDA Commissioner Dr. Andrew von Eschenbach responded that while he believed the current system of voluntary recalls had worked well during the melamine-related contamination incidents, he agreed that it would be advisable for FDA to have mandatory recall authority.

Prospects for Food, Feed Safety Legislation: It is widely expected that Congress either late this year or next year will consider a comprehensive food and feed safety bill derived from legislation either already approved or introduced in the Senate, as well as other concepts yet to be introduced. One of those "missing" provisions is likely to be legislation granting FDA mandatory recall authority for food and feed products. The Senate earlier this year approved a Durbin-sponsored amendment to a prescription drug user fee bill that would require FDA to develop additional regulations for pet food and launch an "adulterated food registry." *[See **NGFA Newsletter**, May 10.]* But House Energy and Commerce Committee Chairman Rep. John Dingell, D-Mich., has signaled his desire for a standalone food and feed safety bill rather than including such extraneous legislation as part of the prescription drug user fee bill. The NGFA is working actively with other agricultural and food organizations, including the Pet Food Institute, with which the NGFA has a strategic alliance, to address the legislation.



Newsletter

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NGFA Futures Market Performance Task Force Begins Work

An NGFA task force established to analyze futures market performance and potentially offer recommendations for improvements to exchange-traded instruments began its work this week.

The 12-person task force is comprised of representatives from the NGFA's Country Elevator Committee, Risk Management Committee and other knowledgeable market participants from a broad user group. NGFA First Vice Chairman Tom Coyle, general manager, Chicago & Illinois River Marketing LLC, chairs the task force.

The task force was established by the NGFA Executive Committee to address changes in futures market participation that have resulted in a lack of convergence between cash and futures. The task force will explore pending and additional potential changes to the Chicago Board of Trade's rules to help restore and ensure convergence, and to protect the viability of CBOT contracts as price-discovery mechanisms and as effective hedging tools for traditional users of the futures markets.

Initially, the group's work will involve analysis of the current situation and sharing of views among task force members, each of whom has been asked for thoughts and ideas on: 1) whether reasonable convergence exists; 2) causes of deterioration in convergence; 3) whether lack of convergence is a short-term issue that will correct over time; and 4) ideas to correct the situation. The group will continue its work next week to identify areas of consensus and areas of strong disagreement; and to determine data the task force would find useful in its deliberations on the current market situation or for use in considering policy alternatives.

A physical meeting of the task force is expected to be scheduled soon. The NGFA will keep members informed of future developments.

Country/Terminal Corner

by Randall C. Gordon
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USDA Begins Bartering Commodities for Domestic, International Food Aid

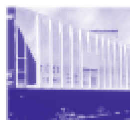
The U.S. Department of Agriculture's Farm Service Agency (FSA) has begun the process of bartering up to $50 million worth of Commodity-Credit Corporation (CCC)-owned bulk commodities to U.S. food processors in exchange for food products for donation through USDA domestic and international food-assistance programs.

The bartering arrangement was announced on July 6 by Secretary of Agriculture Mike Johanns. Domestic food-assistance programs are scheduled to receive 80 percent of the value of commodities stored by USDA. The remainder will be earmarked for the McGovern-Dole International Food for Education and Child Nutrition Program.

FSA officials told the NGFA this week that it would make available all 1 million bushels of CCC-owned corn, 1 million bushels of CCC-owned soybeans and 10,200 bales of CCC-owned cotton for exchange under the barter program. In addition, up to 7.3 million bushels of the 40.9 million bushels of CCC-owned wheat will be exchanged under the initiative; 33.6 million bushels are dedicated to the Bill Emerson Humanitarian Trust. But in making CCC-owned wheat available for barter, prospective bidders will be able to select from **all** available CCC-owned wheat inventory until 7.3 million bushels are committed.

For the McGovern-Dole international food-assistance program, USDA will be bartering CCC-owned commodities for milled and unmilled rice, beans and vegetable oil. USDA's Foreign Agricultural Service already has an agreement to provide food assistance to one country, and the first invitation for bartering was issued on July 18 and involved an exchange of soybeans for vegetable oil. For members receiving the ***NGFA Newsletter*** electronically, that USDA invitation is available by clicking here.

Meanwhile, FSA officials told the NGFA that bartering for the 80 percent of CCC-owned commodities to be directed to domestic food-assistance programs likely will begin in mid-to-late August. USDA's Food and Nutrition Service currently is surveying states to determine food-assistance needs of domestic food banks and other food-aid groups. For the domestic food-assistance programs, USDA said the commodities would be exchanged for canned chicken, canned beef, canned pork, chunky beef stew and canned vegetables, such as spinach, tomatoes, green beans and carrots. The canned meat products will take precedence, FSA said, followed by canned vegetable products and perhaps dry cereals if requested.



Rails, Rivers and Roads

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

Congressional Committees Adopt Bills to Increase Freight Rail Oversight

Congressional committees in both the House and Senate in the last week adopted legislation that would require studies of the freight rail industry.

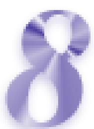
In addition, the Senate Appropriations Committee adopted an amendment offered by Sen. Byron Dorgan, D-N.D., that would cap filing fees for pursuing rate reasonableness challenges at the federal Surface Transportation Board (STB) at $350, the same fee that applies when filing a civil complaint in federal district court. Currently, the STB imposes a $178,200 filing fee for shippers bringing a rate challenge under the stand-alone cost methodology.

The filing-fee amendment was attached during consideration of the fiscal 2008 transportation appropriations bill by the Senate Appropriations Committee.

Dorgan also succeeded in attaching an amendment that would require the U.S. Department of Transportation's (DOT) inspector general to conduct an investigation of rail service disruptions that have occurred since 2004. The DOT inspector general would be required to report the results to Congress within 90 days after the bill becomes law, along with recommendations on regulatory and legislative changes that might be warranted to address freight rail service disruptions and improve rail service in the future. Dorgan's amendment specifically requires that the investigation into rail service disruptions encompass commodities such as coal, wheat, ethanol and lumber.

Meanwhile, the House Agriculture Committee today during its consideration of the 2007 farm bill considered an amendment offered by Rep. Tim Walz, D-Minn., that would require the secretary of agriculture to undertake a comprehensive study of rail transportation issues affecting U.S. agriculture.

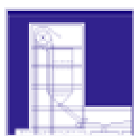
As originally proposed, Walz's amendment would require the secretary of agriculture – within six months after the farm bill is signed into law – to submit a report and recommendations to Congress concerning the adequacy of rail capacity,



competition and service reliability in rural America, as well as the accessibility of rail customers to federal forums to resolve disputes with rail carriers.

As originally offered, the Walz amendment also would require that the USDA report assess the importance of freight railroads on: 1) the location of grain elevators, ethanol plants and other agricultural facilities; 2) the movement of agricultural commodities and products to market; 3) the delivery of equipment, seed, fertilizer and other products important to agricultural production; 4) the delivery of ethanol and other renewable fuels; 5) the delivery of domestically produced resources for use in generating electricity in rural areas; 6) the development of manufacturing facilities in rural areas; and 7) the vitality and economic development of rural communities.

During the House Agriculture Committee's consideration of the amendment, several members asked that its scope be broadened to include barge and truck transportation. In addition, USDA officials voiced concern that the study would require longer than six months to complete. Walz was instructed to approach Rep. James Oberstar, D-Minn., chairman of the House Transportation and Infrastructure Committee, to ensure that including the amendment in the farm bill would not create jurisdictional disputes with the transportation panel. Consideration of the Walz amendment was pending as the ***NGFA Newsletter*** went to press tonight.



Tech Talk

by Jess McCluer
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Growers Urge Tightening of Soybean Foreign Material Limits

The American Soybean Association (ASA) was among organizations calling for a reduction in foreign material limits for U.S. number 2 yellow soybeans in comments submitted to the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA).

ASA's statement, accompanied by supportive statements from several of its state associations, was among 16 comments filed by 11 different organizations in response to GIPSA's advance notice of proposed rulemaking on the U.S. soybean standards. Every five years, the agency conducts a review of its various grain standards and seeks comments on whether changes are warranted. GIPSA's Federal Grain Inspection Service, under the authority of the U.S. Grain Standards Act, establishes and maintains quality standards to facilitate the marketing of many U.S. grains and oilseeds. While GIPSA posed 17 specific questions, six of them pertained to the definitions and procedures used to determine foreign material in soybeans.

In its statement to the agency, ASA urged that the foreign material limit for U.S. number 2 soybeans be reduced to 1 percent from the current 2 percent limit. It cited a 2005 study conducted by Iowa State University that indicated that foreign material in U.S. soybean exports consistently is around 2 percent, while Brazilian shipments typically contain 1 percent foreign material. "Over the medium and long terms, ASA believes that U.S. soybean farmers will experience higher revenues if the United States is able to build a preference for U.S. soybeans among foreign buyers," ASA wrote. It noted that the foreign material limit disparity had been cited by foreign buyers.

Also supporting a reduction to 1 percent in the foreign material limit for U.S. number 2 soybeans was the Taiwan Vegetable Oil Manufacturers Association, which contended that U.S. soybean market share would rebound to late 1990s levels if such a change were made.

But opposing any change in foreign material limits was the Japan Oilseed Processors Association (JOPA), which wrote that doing so would economically penalize Japanese soybean crushers. However, JOPA urged GIPSA to utilize soybean size as a grade-determining factor.

As noted in the July 5 edition of ***NGFA Issues and Actions***, the NGFA, North American Export Grain Association and Grain Elevator and Processing Society opposed any change in the foreign material limit, arguing that foreign or domestic buyers are free to contractually specify lower foreign material limits based upon their needs. "Virtually all customers indicate they do not want to pay more for lower foreign material (limits)," the groups wrote. "A tightening of the (limits) would force the commercial market to establish stricter commercial grading practices to meet such standards across the board, and competitive marketing margins likely would reflect the additional risk the buyer faces in meeting the tighter definitions." The groups said the existing U.S. grain standards for soybeans are serving the market well, and should be retained without change.

Other organizations submitting comments to GIPSA were: the Japan Oil & Fat Importers & Exporters Association (JOPA); the Mexican Association of Oilseed Crushers & Edible Oils and Shortening Producers; the Soon Soon Group of Companies (Malaysia); and Dr. Lowell Hill, professor emeritus, University of Illinois.

by Charles M Delacruz
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Enforcing Arbitration Awards in Canada

[Note: The NGFA occasionally receives inquiries about the enforcement of arbitration decision awards issued under the NGFA Arbitration Rules, particularly when such awards involve claims against non-NGFA members. NGFA Bylaws provide for expulsion from the NGFA of a member that fails to comply with a NGFA arbitration award, but obviously that penalty is not relevant to non-members. Questions also arise when the non-member resides outside of the United States (e.g., is a Canadian firm).

The NGFA does not provide legal assistance or advice in this capacity. But recently, a long-time member of NGFA's Trade Rules Committee, Dean O'Harris of Parrish & Heimbecker Inc., Oxford, Mich., asked attorney Jeff Baigrie [*] *of the Pitlado LLP law firm in Winnipeg, Manitoba, Canada, to consider the issue. Both O'Harris and Baigrie graciously agreed to permit the NGFA to interview Baigrie concerning the potential enforceability of NGFA arbitration awards in Canada. This article presents the results of that interview.*

On behalf of the NGFA and its members, we extend our appreciation to Messrs. Baigrie and O'Harris for the valuable information conveyed herein. For a copy of Baigrie's complete report, click here.] [**]

Q *1. **NGFA:** How did you come to review the NGFA Arbitration System?*

A **Baigrie:** Dean O'Harris of Parrish & Heimbecker asked us to consider whether an award made pursuant to the NGFA Arbitration Rules could be enforceable against a party resident in Canada. After communicating with NGFA, examining its rules and procedures, and reviewing the relevant statutory and case law, we provided Mr. O'Harris with a report of our findings.

Q *2. **NGFA:** Were you able to determine whether there are ways to attempt to enforce an arbitration award from a U.S.-based forum in Canada?*

A **Baigrie:** Generally speaking, yes, there are various methods by which a foreign arbitral award may be enforced against a party resident in Canada. Most provinces in Canada have enacted legislation that allows for the recognition and enforcement of foreign arbitral awards, provided the prescribed statutory procedures are followed and there are no available defenses. Alternatively, it may be possible to enforce an award pursuant to common law if the award has been elevated to a judgment by a court of competent jurisdiction and certain prerequisites to recognition, as enunciated by the Supreme Court of Canada, have been established.

Q *3. **NGFA:** The legislative approach sounds interesting. Would you elaborate on how legislation enacted in Canada might apply to a NGFA arbitration award?*

A **Baigrie:** Assuming that an NGFA arbitration award is final (i.e. there is no outstanding appeal of any kind), the award may be enforced against a Canadian resident (person, corporation or association), provided the residence is in a Province or Territory that has adopted, by legislative act – the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). The Convention is a uniform code for the recognition and enforcement of foreign arbitral awards that has been adopted by the United States and most provinces and territories in Canada. Under the Convention, the "contracting state" agrees to recognize and enforce certain arbitral awards.

Q *4. **NGFA:** Are there limits on what can be awarded?*

A **Baigrie:** Under the Convention, the term "arbitral awards" is defined in a way that does not restrict the kind of arbitral award that may be enforced, including monetary awards. However, it is not clear whether this definition extends to equitable awards (e.g., an award compelling a party to do – or not to do – something beyond simply paying monetary damages).

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[*] Mr. Baigrie is a partner at Pitblado LLP, a major business law firm in Winnipeg, Manitoba, Canada. His practice is in commercial litigation, with a strong emphasis on the agribusiness industry. Mr. Baigrie's experience includes arbitrations before the Winnipeg Commodity Exchange representing Canadian and multi-national agri-business. He can be reached at (204) 956-3558 or baigrie@pitblado.com.

[**] Disclaimer: This discussion is for informational purposes only; it does not constitute legal advice. No warranties, guarantees or assurances concerning this information are made, and any responsibility for the use of this information is disclaimed. Competent legal and other experts should be consulted on matters covered herein. Further, the information presented in this discussion does not represent official positions or views of the NGFA or any individual or NGFA-member company.

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Q **5. NGFA:** *In the United States, consent to arbitration commonly is deemed to mean the existence of an arbitration clause in the contract. How does the Convention address arbitration-consent issues?*

A **Baigrie:** Similarly. The Convention recognizes an "agreement in writing" under which the parties undertake to submit to arbitration any or all differences that have arisen or may arise between them with respect to a defined legal relationship, whether contractual or not, concerning a dispute capable of settlement by arbitration. The term "agreement in writing" includes an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

Q **6. NGFA:** *Does the party against whom enforcement is sought have defenses available?*

A **Baigrie:** The Convention gives the court discretion to refuse recognition and enforcement of an arbitration award under prescribed circumstances, such as in cases in which one of the parties was under some "incapacity"; where the party against whom the award is invoked was not given proper notice of the arbitration proceedings; or where the award deals with matters beyond the scope of the matter submitted to arbitration.

Before initiating enforcement proceedings against a Canadian resident under the Convention, it is important to consider the defenses available. Further, it is important to emphasize that the legislation is not uniform in all provinces. Accordingly, a party seeking to enforce an arbitration award would need to determine the province where the other party's business resides, whether the party's home province has adopted the Convention by legislative act and, if so, what steps need to be taken to enforce the arbitral award pursuant to the particular law in question.

Q **7. NGFA:** *You mentioned "most" jurisdictions in Canada have adopted the Convention. What about the others?*

A **Baigrie:** Most Canadian Provinces have adopted the Convention. One notable exception is Ontario, which instead has adopted the UNC1TRAL Model Law pursuant to The International Commercial Arbitration Act. This model law is similar to the Convention, but there are some differences that should be considered before initiating enforcement action in that jurisdiction.

Further, it's important to note there are alternative legal means to enforce a foreign arbitral award in Canada. For instance, in Manitoba, The Reciprocal Enforcement of Judgments Act allows for the registration of a monetary judgment or order by a court in a civil proceeding. This includes "an award in an arbitration proceeding" if the award or order, under the law in force in the state where it was made, has become enforceable in the same manner as a judgment given by a court in that state. Other Provinces have legislation similar to The Reciprocal Enforcement of Judgments Act. Before initiating enforcement proceedings, one would have to determine where the resisting party resides in Canada, and examine the specifics of the applicable law.

Q **8. NGFA:** *Of these approaches, do you recommend one more than the other?*

A **Baigrie:** We usually do not recommend proceeding under The Reciprocal Enforcement of Judgments Act because of the broad defenses available, including many broad "limitations on registration." For example, no order for registration is permitted if the court in Canada determines that the original court acted without jurisdiction. Nor is such an order permitted if the party resisting enforcement "did not voluntarily appear or otherwise submit during the proceedings," was not duly served, or "would have a good defence if an action were brought on the judgment." This last point is especially problematic because it may allow the resisting party to re-litigate the judgment simply by asserting a "good defence."

Q **9. NGFA:** *At the outset, you also mentioned a common law approach – one not based upon a particular statute – but based upon prior cases and precedent. Could you elaborate?*

A **Baigrie:** Final, monetary judgments emanating from the U.S. commonly are recognized and enforced in Canada, provided the U.S. court properly exercised jurisdiction according to its own rules; there was a "real and substantial" connection between the subject matter of the litigation and the jurisdiction; and there were no vitiating circumstances, such as fraud or "violation of natural justice or public policy." The Canadian Supreme Court confirmed, in a case enforcing a default judgment by a Florida court against an Ontario resident, that absent evidence of fraud or a violation of natural justice or of public policy, the court in Canada is not interested in the substantive or procedural law of the foreign jurisdiction. As a result, Canadian residents who ignore U.S. civil proceedings do so at great risk.

Procedurally, following this common-law approach, the party seeking to enforce the judgment simply would sue based upon the court judgment. The advantage is that defenses available to the resisting party are few when compared to defenses available under the Convention and The Reciprocal Enforcement of Judgments Act.

Membership Matters

by Charlie Delacruz
Counsel for Public Affairs

Membership Month Begins!

…Major Prize Drawing on Aug. 31…

The NGFA's annual Membership Month promotion has begun!

From July 16 through Aug. 31, NGFA members are urged to make membership recruiting part of their job description. The NGFA relies on new members for new resources, new people, new ideas – membership is the lifeblood of **your** organization!

Every year, this concentrated recruiting period yields a bonanza of new NGFA members. Who can you call? Call your local ethanol producer, who should be **very interested** in NGFA Trade Rules, arbitration and rail arbitration services. Call your equipment/services providers, who should be interested in the networking and marketing opportunities that can be leveraged through the NGFA – including at the upcoming December Country Elevator/Feed Industry Conference. Call your fellow state Association member who isn't yet an NGFA member, but should be. But call somebody!

Here's another reason to call: All recruiters who sign up a new member by close of business on Aug. 31 will be entered in a Grand Prize Drawing for a fabulous ***Hoosier Holiday*** consisting of:

- Airfare for two to Indianapolis;
- Two nights at the Indianapolis Marriott Downtown Hotel;
- Dinner for Two at the renowned St. Elmo Steak House; and
- Indianapolis Colts tickets – Featuring all-world quarterback Peyton Manning!

Sign up two new members, get two chances at the Hoosier Holiday – each new member means your name goes in the hat again!

Membership Network: The NGFA Membership Network is a collection of nearly 400 dedicated individuals who believe in the NGFA. The Network's members are on the front line of recruiting efforts – they receive regular updates on membership prospects and strategies.

To be added to the Membership Network e-mail list and to receive information that will enhance your chances of winning the Hoosier Holiday, simply e-mail tkemp@ngfa.org and say "Add me to the Membership Network!"

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TIME SENSITIVE