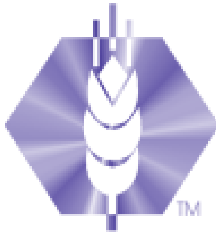

NGFA Newsletter®

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Congress Expected to Resume Consideration in September of Futures Market Speculation, Trading Activity Reporting Bill

...CFTC Ag Advisory Committee Focuses on Potential Steps to Enhance Convergence....

The House is expected to resume consideration in September of legislation (H.R. 6604) that is designed to curb "excessive speculation" in energy and agricultural futures markets.

On July 30, the measure fell short of the two-thirds majority needed for approval on the House floor after Democratic leaders attempted to pass it under a "suspension of the rules" that prohibits amendments. After reaching that threshold initially, 13 Republicans changed their votes to oppose the bill, causing the measure to fail even though favored by a 276-151 vote. House Speaker Nancy Pelosi, D-Calif., said the bill likely will be reconsidered following the month-long August congressional recess under rules that allow for amendments, which would require only a simple majority for passage.

The House bill, approved by the House Agriculture Committee on July 24, includes several provisions to increase transparency and reporting in agricultural futures markets consistent with the NFGA's recommendations, as well as energy markets. Specifically, the bill would require the Commodity Futures Trading Commission (CFTC) to disaggregate the number of positions and total volume of index funds reporting in these markets, and would require detailed reporting of trading activity by index and other passively managed funds, as well as swap dealers. The specific form such reporting should take is not delineated in the bill; instead, it's largely left to the CFTC to develop through rulemaking.

But increased recordkeeping requirements also would be imposed on a number of other market participants. And the bill would provide increased authorities for the CFTC to make "special calls" for information. Required records would need to

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Bush Administration Again Rejects Penalty-Free Early Outs from CRP

Yet another opportunity lost.

In its July 29 decision to again reject the penalty-free early release of acreage from the Conservation Reserve Program (CRP), the Bush administration maintained that recent more promising crop reports and weather conditions, an easing of cash grain prices and the projected expiration of CRP contracts over the next three years made such action unnecessary at this time. A number of observers also believe that the recent federal court decision that placed limits on USDA's program to allow haying and grazing of CRP land because it failed to complete an environmental impact analysis also played a significant role in the decision, as USDA had not yet completed such an assessment for the CRP penalty-free early release concept either.

Of the 34.7 million acres currently enrolled in the CRP, contracts representing approximately 1.1 million acres are due to expire on Sept. 30. Another 3.8 million acres are enrolled in CRP contracts scheduled to expire on Sept. 30, 2009, and 4.4 million acres' worth of CRP contracts are scheduled to expire in 2010. The 2008 farm law reduced the previous 39.2-million-acre ceiling on the CRP to 32 million acres. "So, large blocks of land will be available for other uses – if landowners chose to pursue them," maintained Secretary of Agriculture Edward Schafer.

USDA also said that in April and May, landowners with CRP contracts representing approximately 71,000 acres decided to pay the economic penalty for leaving the program early. Over the last 19 months, USDA said, CRP contracts representing a total of 288,726 acres had been terminated prior to expiration, with penalties being paid. However, USDA did not specify whether these acres represented CRP contracts that were extended in 2006 and represent the least environmentally sensitive land. Paradoxically, it is those extended CRP acres that face the greatest penalty if the contracts are terminated prior to expiration – with landowners required to repay 100 percent of the rental rates received over multiple years covering the original 10- to 15-year CRP contract, plus the renewed contract period, plus interest and liquidated damages.

In response to a reporter's question, Schafer also conceded that the administration had made its latest CRP decision before

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be retained for five years. The bill also would require position limits for exchange-traded energy contracts, as now is required for agricultural futures trading. Further, it requires the CFTC to conduct a study of the effectiveness of establishing positions in over-the-counter markets.

The bill also would require the CFTC to write rules or regulations intended to prevent "excessive speculation," deter market manipulation, ensure sufficient market liquidity for "bona fide" hedgers and ensure that futures markets' price-discovery function is not disrupted. Like a bill under consideration in the Senate, the House measure would direct foreign exchanges trading U.S. commodities to impose speculative position limits.

Several other provisions in the House bill exceed those currently under consideration in the Senate. For instance, the House bill would limit the CFTC's authority to grant hedge exemptions from position limits only for "bona-fide market participants" that actually engage in the commercial use, production or distribution of the physical commodity. The bill's definition of "bona-fide hedging" poses concerns to the NGFA. It also would require the CFTC to establish a "Position Limit Agricultural Advisory Group" comprised of five commercial short hedgers of physical commodities for future delivery; five commercial long hedgers of physical commodities for future delivery; four non-commercial participants; and one representative of a designated futures contract market. The advisory group would be responsible for recommending annually how and by whom (e.g., the exchanges, CFTC or others) futures contract position limits should be administered.

The House Agriculture Committee-passed bill also would authorize appropriations to enable the CFTC to hire 100 new employees to perform enforcement and other manipulation and fraud casework activities. In addition, it would require that the CFTC establish an independent inspector general to oversee its activities.

The bill also would require the CFTC to conduct several studies evaluating: 1) the effectiveness of establishing position limits to prevent "excessive" speculation; 2) the consequences of establishing tighter speculative position limits on physical commodity transactions; 3) the "international regime for regulating the trading of energy commodity futures and derivatives;" and 4) the "effects of speculators on agriculture and energy futures markets and agriculture and energy prices."

Senate Prospects: The Senate remains deadlocked on its version of an energy futures market speculation bill, as Democratic and Republican leaders continue to disagree over how many and what type of amendments may be offered. Republicans continue to insist that they be given an opportunity to vote on their energy agenda, which includes legislative provisions to authorize expansion of offshore drilling and other measures intended to increase oil supplies. A group of "centrist" senators – five Republicans and five Democrats, led by Sens. Kent Conrad, D-N.D., and Saxby Chambliss, R-Ga. – later today are scheduled to unveil a potential road map for a bipartisan energy bill that reportedly would include provisions designed to expedite the transition of motor vehicles to non-petroleum-based fuels, promote conservation and energy efficiency, and permit targeted domestic drilling. The latter provision reportedly would open new areas in the Gulf of Mexico to energy production, and also authorize Virginia, Georgia and the Carolinas to allow oil drilling up to 50 miles off-shore.

CFTC Ag Advisory Committee Focuses on Convergence: Meanwhile, discussions on how to achieve convergence in the Chicago Board of Trade (CBOT) wheat contract took center stage during a July 29 meeting of the CFTC's Agricultural Advisory Committee. CFTC Commissioner Michael Dunn, who chairs the advisory board, opened the meeting by saying that the lack of convergence in the CBOT wheat futures contract had shaken confidence in the futures market as a price-discovery mechanism, and that this lack of confidence had resulted in major problems for those who rely on futures markets to hedge their risk.

NGFA Chairman Tom Coyle, the association's representative to the CFTC Ag Advisory Committee and general manager of Chicago & Illinois River Marketing LLC, Chicago, Ill., was a featured presenter during the opening session on convergence and basis issues. Coyle said convergence is not occurring in wheat because futures prices currently are leading cash prices because of a number of factors, including tight U.S. and world supply/demand fundamentals, higher transportation costs and biofuels demand. But Coyle emphasized the high percentage of wheat futures owned by index funds, which are not responsive to market fundamentals, as the key factor causing a lack of convergence for CBOT wheat futures. Coyle demonstrated the point with a slide showing that, when spread trades are excluded, index traders own 56 percent of wheat open interest – which equates to 145 percent of total U.S. wheat production. He also demonstrated that corresponding ownership shares of index funds for corn and soybeans are much lower.

As potential solutions to help achieve convergence for the CBOT wheat futures contract, Coyle offered a series of policy alternatives, listing pros and cons for each. Among the policy alternatives identified by the NGFA were: 1) increases in storage rates for warehouses regular for delivery; 2) expanding delivery capacity; 3) adopting serial (monthly) futures contracts; 4) modifying delivery terms to provide for "compelled loadout;" and 5) initiating a cash-settled index contract.

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During a subsequent meeting on July 30 with the NGFA's Country Elevator Committee, Dunn commended the NGFA for its "results-oriented" leadership in addressing the convergence issue, and said that "if there was a star" at the CFTC Agricultural Advisory Committee meeting, it was Coyle. He commended the NGFA for identifying a number of possible solutions, with the pros and cons of each. "All of U.S. agriculture owes you (the NGFA) a debt of gratitude" for addressing this issue, Dunn said in his remarks to the Country Elevator Committee.

CME Group Presentation: Dave Lehman, CME Group's director of commodity research and product development, presented the exchange's findings concerning CBOT wheat futures contract convergence. Lehman presented data showing that the CBOT's July wheat contract exhibited poor convergence despite newly increased storage rates and the use of shipping certificates for the first time. Lehman also discussed several potential changes to the wheat contract under consideration by the CME Group to enhance convergence, including: 1) seasonal storage rates; 2) additional safety-valve delivery points (Memphis and Central Ohio); 3) consideration of serial futures; 4) consideration of adding demand-delivery certificates to existing shipping certificates (i.e., compelled loadout); 5) consideration of lowering the vomitoxin limit to 2 parts per million; and 6) researching the potential for a cash-settled index.

Lehman said the CME Group will be working through detailed proposals with market participants over the next 30 days to draft specific contract changes for implementation, with an industry meeting planned in mid-September to present proposed wheat contract changes. He said the CME Group will work closely with the CFTC to determine how quickly contract changes could be implemented for wheat.

Other Ag Advisory Committee Presenters: In other presentations before the CFTC Agricultural Advisory Committee, Terry Reinhart, representing Advance Trading Inc., Bloomington, Ill., recommended significant increases in CBOT futures contract storage rates to achieve convergence. Mark Bagan, president, Minneapolis Grain Exchange, presented information concerning the MGE's cash-settled index contracts, and cited financial settlement of grain futures contracts as a new model to accommodate all market participants and ensure convergence. Jeff Borchardt, president, Kansas City Board of Trade, reviewed the Kansas City, Minneapolis and Chicago exchanges' coordinated efforts on wheat price limits earlier this year.

Steve Hurst, Merchants' Group, Chicago, Ill., reported on that group's progress toward implementing an exchange-cleared Margin Credit Swap instrument that could inject additional liquidity to help grain hedgers with margining needs. CoBank Executive Vice President Phil DiPofi discussed efforts to provide additional capital for commercial grain hedgers, including a new concept to provide loan guarantees to lenders that could help free liquidity for working capital and/or margining purposes.

A third panel discussed agricultural swaps and agricultural trade options. CFTC Division of Market Oversight official Don Heitman announced the agency's staff will recommend that the CFTC revoke regulatory requirements that have stifled use of agricultural trade options, replacing such requirements with rules that would treat agricultural trade options consistently with other trade options, thereby allowing eligible commercial participants like grain elevators and producers to use ag trade options in the course of their business activities. Meanwhile, Lehman and Julie Winkler with the CME Group discussed an exchange proposal to allow exchange-clearing of agricultural swaps, a proposal on which the CFTC is soliciting comments by Aug. 21.

Next Steps: The NGFA is working to structure an internal process to intensely analyze the pros and cons of different policy options for enhancing convergence in CBOT wheat, as well as potentially for corn and soybean futures. Led by the Risk Management Committee, with input from other segments of the NGFA's membership, the NGFA recommendations to the CME Group are expected to be finalized within the next 30-45 days.

NGFA Country Elevator Committee Chairman Bryce Wells (left), president and chief executive officer of West Plains Co., Kansas City, Mo., and NGFA President Kendell Keith (right) are shown with Michael Dunn, who chairs the Commodity Futures Trading Commission's Agricultural Advisory Committee. The NGFA Country Elevator Committee on July 30 discussed with CFTC representatives the impact that the lack of convergence between futures and cash market values during the delivery period and current capitalization challenges are having on country elevator operations and farmer-customers.

"CRP" continued from page 1

knowing the results of USDA's National Agricultural Statistics Service's resurvey of corn and soybean acreage to assess the impact of flooding. "But we've got a lot of anecdotal information; we've got a lot of crop reports, eyesights," Schafer said. "We talked to local or state commissioners (secretaries) of agriculture….[W]e don't know what the numbers are going to be, but the sense is that they are going to be better than we originally thought they were going to be."

Another reporter asked if the Bush administration was comfortable with 5 percent-plus food price inflation, to which Schafer responded that the administration recognizes stocks are tight and "realize(s) we're in a situation that can change rapidly and quickly." As a result, he said, the administration would continue to evaluate crop production and supply-demand conditions, and might revisit the CRP decision. "We are making this call at this point in time," he said. "I think it's an appropriate call. If something changes in the future, we may be back revisiting the issue."

NGFA Expresses Disappointment in Administration Decision: In a statement issued following the announcement, the NGFA expressed disappointment in the Bush administration's decision and encouraged it to keep the door open to reassessing the situation. The NGFA reiterated its view that CRP penalty-free early outs represented a "prudent" policy response that is necessary to give producers the flexibility to help relieve the precariously tight supply situation confronting grain and oilseed markets. The NGFA for the past two years has urged repeatedly that USDA exercise its legal authority to waive the CRP penalty to provide the market with an additional tool to meet growing world demand for food, feed, exports and biofuels.

"The CRP simply is the most readily available tillable acreage to produce more grains and oilseeds," said NGFA President Kendell W. Keith. "There is exploding demand globally for food, feedstuffs and biofuels that the United States can no longer ignore. We believe the administration should adopt policies that signal that the United States still wants to compete internationally in grain, livestock and meat to help feed a hungry world."

The NGFA said continuing to rely on perpetual good weather in the United States is not a prudent policy response, particularly given strong domestic and world demand for grain-based products, including meat. The NGFA noted that if corn yields were to decline just 7.5 percent from trend yields, which USDA data show occurs 22 percent of the time, 2008/09 year-ending stocks would be cut nearly in half, to 456 million bushels based upon USDA's July 11 projections. A similar 7.5 percent yield decline in trend yields for soybeans, which occurs every fourth year, theoretically would result in negative carryover stocks. While such low stock levels are unlikely to occur, this calculation suggests severe rationing of crops may be necessary with any significant crop-production disruptions that might occur before harvest.

The NGFA also noted that even steeper food price inflation is likely in coming months. It noted that the 5.3 percent increase in the consumer price index registered in June compared to a year ago lagged the 8.3 percent increase in the producer price index over the same period. Normally, these two price indices are 99 percent correlated.

Legislation Introduced to Overturn Judge's Decision Limiting USDA's CRP Haying and Grazing Program: Meanwhile, in a related development, legislation was introduced this week that would overturn a federal judge's decision limiting USDA's "critical feed use" program allowing haying and grazing of CRP land. Judge John Coughenour of the U.S. District Court for the Western District in Washington state, had ruled on July 24 that USDA would be allowed to resume the program, but imposed restrictions on the eligibility and duration for which such use could be granted after determining that USDA had acted "arbitrarily, capriciously and unreasonably" when it decided not to conduct a full-fledged economic impact analysis on the program before proceeding.

Legislation introduced in the Senate by Sens. Pat Roberts and Sam Brownback, both R-Kan., and James Inhoffe, R-Okla., and in the House by Rep. Jerry Moran, R-Kan., would allow producers to hay and graze CRP acres under USDA's original criteria announced in May. However, prospects for the legislation are less than promising, as Senate Agriculture Chairman Tom Harkin, D-Iowa, issued a statement supporting the federal court's decision in the matter.

The judge's ruling allowed CRP participants who, prior to the court's issuance of a temporary restraining order on July 8, already had applied and been approved by the Farm Service Agency (FSA) to hay and graze to do so immediately until the original deadline of Nov. 10. However, CRP participants who had submitted applications that had not been approved by July 8 when the temporary restraining order was imposed will be required to complete all haying by Sept. 30 and all grazing by Oct. 15 <u>if</u> their applications are approved by FSA. The third component of the judge's ruling states that USDA cannot consider any new applications submitted after July 8 to hay or graze pursuant to the critical feed use program unless applicants can demonstrate that they: 1) already had invested $4,500 toward haying or grazing equipment or made other preparations; <u>and</u> 2) declare that they had relied on USDA's issuance of the program notice in making such investment decisions. These new applicants, if approved, also will be subject to the Sept. 30 haying and Oct. 15 grazing deadline. Finally, the judge ordered that USDA no longer allow haying and grazing of CRP land except under the managed schedule

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imposed as a result of a previous lawsuit filed by the National Wildlife Federation against USDA during Secretary of Agriculture Mike Johanns' tenure. A copy of the judge's decision is available by clicking here.

Wildlife groups indicated pleasure at the court's decision, stating that USDA had been rebuked for violating the National Environmental Policy Act by failing to conduct an adequate environmental impact assessment, and that USDA's initial goal of making up to 24 million acres of the CRP available for haying and grazing now likely would be trimmed to 1.7 million to 3 million acres. At press time, neither of the principals in the court case – USDA and the National Wildlife Federation – had indicated if it planned to appeal the district court's ruling.

USDA Nears Issuance of Final Rules Implementing 2008 Farm Law

The NGFA has learned that the U.S. Department of Agriculture's Farm Service Agency (FSA) in the next few weeks plans to issue final rules implementing many of the commodity provisions of the 2008 farm law.

In a meeting July 31 with the NGFA's Country Elevator Committee, USDA officials said they have 266 separate regulations to issue as a result of the new farm law. They said a priority is being placed on implementing the provisions pertaining to commodity programs and conservation.

Members of the NGFA's Country Elevator Committee gather outside the Capitol during their July 30-31 meeting in Washington, during which the committee conducted meetings with key staff of the House and Senate Agriculture Committees and other congressional offices. The committee also met with officials of the U.S. Department of Agriculture and other federal agencies.

One of the final rules expected to be issued soon – which currently is being reviewed for clearance by top USDA officials – concerns the farm law's provision that gives FSA the authority to change the way posted county prices (PCPs) are calculated for marketing assistance loan commodities. The law gives USDA two options for calculating PCPs: 1) using a PCP rate based upon average market prices during the preceding 30-day period that will minimize discrepancies in marketing and loan benefits across state and county boundaries; or 2) using an alternative method (which ostensibly could include the current practice of setting PCPs on a daily basis) that will minimize loan forfeitures, CCC stocks accumulation, CCC storage costs, and discrepancies between state and county boundaries, as well as allow U.S. commodities to be marketed freely and competitively. The law also authorizes USDA to modify the loan repayment rate on a short-term, temporary basis "in the event of a severe disruption to marketing, transportation or related infrastructure," such as occurred following Hurricane Katrina. It is expected that USDA will make some change from the current system of setting PCPs on a daily basis, given USDA's farm bill proposal to establish a monthly PCP rate comprised of a weekly average of PCPs during the preceding month, and opposition to allowing producers to pick the date for LDP payments.

FSA also is working on a rule implementing the farm law's dramatic expansion of the farm storage facility loan program. The law increases to 12 years (compared to the current seven years) the maximum term of such loans, and also increases the maximum amount of a loan to $500,000. Previously, the limit was set at $100,000 per producer. It also expands the list of eligible commodities to include cold-stored products.

Given the late passage of the new farm law, Congress authorized USDA to proceed to final rules for all of Title I of the measure, which includes these and most of the other commodity provisions. This allows USDA to circumvent the normal opportunity given for public comment, as well as the requirement to conduct economic assessments of rules needed to implement this section of the law. USDA already has issued notices implementing the farm law's new farm program payment limitations and payment eligibility rules.

Country/Terminal Corner

by Randall C. Gordon
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University of Illinois Article Addresses Producer Contract Performance

NGFA members and others engaged in the buying and selling of grain should be aware of a highly informative article published recently by the University of Illinois that addresses a variety of timely contracting issues.

The article, published in the July 30, 2008 edition of ***Agricultural Law and Taxation Briefs*** by the University of Illinois' Department of Agricultural and Consumer Economics, addresses a variety of issues arising when farmers lose crop production because of flooding, or when market prices rise significantly compared to previously negotiated contract prices.

Entitled, ***"Grain Contracts, High Prices, Floods and Failure to Deliver,"*** the article discusses questions such as the legal effect of a written confirmation of an oral agreement; special rules that may apply in bankruptcy or when an elevator loses its grain dealer license; and the remedies that may be available for breach of contract (e.g., attorneys fees in some situations). While the article has some elements that focus on Illinois state law, the authors (a professor, assistant professor, and law student with the University's Agricultural Law Group) also discuss issues that have relevance across grain-growing regions given the current market environment. These include such questions as, "Is a grain contract binding if it was never signed by the farmer?" and "What damages might be assessed against a farmer who fails to deliver grain as required by a contract?"

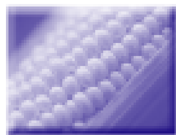
NGFA members are encouraged to read the article, and may wish to consider distributing it to farmer-customers and trading partners when contracting for grain. Members receiving the ***NGFA Newsletter*** electronically may obtain the article by clicking here. For convenience, the article also is attached to this edition.

EPA Delays Decision on Amending RFS Mandate Until August

It will be early August before the U.S. Environmental Protection Agency (EPA) makes its determination about whether to modify the renewable fuels mandate that requires 9 billion gallons of ethanol to be blended into gasoline in 2008.

EPA Administrator Stephen Johnson made the announcement on July 22, saying the agency would not meet the July 24 deadline for making a decision because of the time needed to complete a decision document explaining the technical, economic and legal rationale for its decision, as well as to complete the required consultation with the U.S. Departments of Agriculture and Energy.

He said more than 15,000 comments had been submitted on EPA's request for comments on a petition from the state of Texas formally requesting that EPA grant a waiver from the renewable fuels standard. Several of the comments had raised "substantive issues and included significant economic analysis" that required further review by the agency, Johnson said.



Biotechnology

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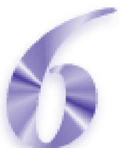
Monsanto Announces Additional International Regulatory Approvals for Roundup Ready 2 Yield™ Soybeans

Monsanto Co. announced July 24 that it had received regulatory approvals for Roundup Ready 2 Yield™ soybeans for food and feed in Mexico, Australia and New Zealand.

That brings to eight the number of countries that have approved the product for food and feed, with the United States, Canada, Japan, Taiwan and the Philippines previously approving the biotechnology-enhanced soybean trait. In addition, Monsanto said the European Union's Food Safety Authority had "issued a positive scientific opinion" concluding that Roundup Ready 2 Yield™ is safe for import as food and feed, a precursor to the European Commission's consideration of the trait.

"These regulatory decisions by Mexico and Europe represent significant steps forward in delivering Roundup Ready 2 Yield soybeans to our customers," said Monsanto Executive Vice President of Global Commercial Business Brett Begemann. Monsanto said it was "working diligently to achieve regulatory clearance" in other foreign markets in anticipation of making the new biotech soybean variety available for planting by U.S. producers in 2009. Monsanto said it plans to introduce the Roundup Ready 2 Yield soybeans on 1 million to 2 million acres for the 2009 planting season as part of a "controlled commercial release." That will be followed by a large-scale product launch of 5 million to 6 million acres scheduled for 2010.



by David A. Fairfield
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Canadian Food Inspection Agency Finalizes Distillers Grain Policy

The Canadian Food Inspection Agency (CFIA) on July 22 published a final regulatory guidance document designed to clarify how the agency's existing feed regulations apply to distillers grains produced as co-products from fuel ethanol production.

As reported in the June 6 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 said it intended to conduct a safety evaluation of such distillers grains and to use the resulting information to develop distillers grains products' definitions representative of the products currently being produced, as well as a comprehensive policy document on distillers grains from fuel ethanol production.

To develop its regulatory guidance document, CFIA conducted two meetings with industry members and invited written stakeholder comments. The NGFA actively monitored these meetings and submitted an extensive statement to CFIA on April 1 in response to an initially proposed policy draft.

The final version of CFIA's regulatory guidance document sets forth the agency's policy concerning distillers grains produced as co-products of ethanol manufacturing that are distributed in Canada as livestock feed. The policy applies both to distillers grains manufactured in Canada, and those imported into Canada.

In its final guidance document, CFIA incorporated several recommendations made by the NGFA, including the following:

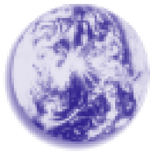
- Recognition that fermentation and processing additives formally evaluated and approved by the U.S. Food and Drug Administration (FDA) are acceptable for use in production of distillers grain products distributed in Canada. But the final policy does not consider as approved those additives whose generally recognized as safe (GRAS) status has been determined on the basis of self-affirmation and those that have not been formally evaluated or confirmed by FDA.
- Removal of CFIA's original proposal that would have required maximum sulfur content to be stated on labels of distillers grains products. Instead, in its final policy, the CFIA agreed with comments submitted by the NGFA related to sulfur, stating, "Impaired performance and adverse health consequences may occur in livestock when the total dietary intake of the animal reaches an excessive level. When balancing livestock diets, producers and nutritionists need to consider all sources when determining overall intake."
- Eliminating the initially proposed requirement to include maximum sodium and maximum phosphorus guarantees on labels of distillers grains products.

CFIA's final version of its regulatory guidance establishes the following definition for distillers grains derived from fuel ethanol production:

> *"_______ distillers grains dehydrated (or dried _______ distillers grains) is the byproduct obtained after the removal of ethyl alcohol (ethanol), for the production of human beverage or fuel, by distillations from the yeast fermentation of _______ or a whole grain mixture in which _______ predominates by separating the resultant coarse grain fraction of the whole stillage and drying it by methods employed in the ethanol production industry. The fermentation and production processes shall be conducted using approved grains and processing additives. It shall be labeled with guarantees for minimum crude protein, minimum crude fat, maximum moisture and maximum crude fibre."*

Concerning antimicrobials, the CFIA policy allows for the use of specific sources and inclusion rates of penicillin, streptomycin and virginiamycin during the ethanol fermentation process. That differs from FDA's position, which only allows for the use of Lactrol, a virginiamycin source. CFIA acknowledged this discrepancy in its policy, stating: "Canadian ethanol manufacturers wishing to export their feed distillers grains products to the United States will also need to meet U.S. requirements. It is the business decision of the fuel-ethanol manufacturer to choose to use only additives (such as antimicrobial agents) that are approved in the United States for use in fuel-ethanol production of feed distillers grains, to facilitate export to the United States."

Members receiving the ***NGFA Newsletter*** electronically may access the latest CFIA policy by clicking here.



International Trade

by Christopher Holdgreve
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Latest Round of WTO Talks Ends in Failure

"It is no use beating around the bush. This meeting has collapsed."

With that utterance, World Trade Organization (WTO) Director-General Pascal Lamy brought to a close a nine-day marathon negotiating session in Geneva among trade ministers that were intended to provide the framework for a final agreement of the Doha multilateral trade negotiations.

Lamy noted that while significant progress had been made on a variety of issues, participants were unable to "bridge their differences" on the remaining outstanding issues. The primary stumbling block that led to an end to the current round of negotiations was the differences between China, India and the United States on a special safeguard mechanism to address import surges in farm products. The mechanism would allow so-called "developing countries" the ability to increase tariffs if a significant increase of imports "flooded" their markets to the detriment of domestic producers. China joined India in demanding that an import surge in imports and a drop in prices as low as 10 percent should trigger the safeguards, while U.S. Trade Representative Susan Schwab insisted the threshold be set at 40 percent so as to "distinguish between the legitimate need to address exceptional situations involving sudden and extreme import surges and a mechanism that can be abused." Schwab maintained that under a 10 percent safeguard trigger, China would have been authorized to impose tariffs on imports of U.S. soybeans in eight out of every 10 years. Indian Commerce Minister Kamal Nath countered, "this (the Doha Round) is a round where we're supposed to be getting, not giving…." Nath also said he was "deeply concerned" over how the Doha Round outcomes would affect poor and subsistence farmers.

Lamy lamented that the benefits that had been "left on the table" were more than two or three times what had been achieved in previous multilateral trade negotiations. He estimated that WTO-member countries "have let slip through their fingers…a package worth more than $130 billion in tariff savings annually by the end of the implementation period, with $35 billion savings in agriculture and $95 billion in industrial goods." Lamy urged members to "let the dust settle" before making any broad statements about how any further negotiations should proceed, since emotions still are running high. He indicated that on a 20 point "to-do" list, trade ministers had "converged" on 18 but ran into the stumbling block on number 19 – the special safeguard mechanism. That stopped further progress on any other outstanding issues, and left in question how to capture the trade commitments that had been made thus far.

For its part, Schwab indicated that the United States could agree to reduce trade-distorting domestic subsidies to $14.5 billion annually – down from the recent U.S. offers of $17 billion and $15 billion, respectively. She said that would remain on the table, contingent upon other countries "coming forward with ambitious offers that will create new market access." Currently, the United States has a $19.1 billion annual cap on so-called "amber box" trade-distorting domestic supports, and is allowed to spend $48 billion annually on all domestic farm supports.

Most reactions from ministers expressed regret that a final deal could not be reached, and raised serious concerns that the current setback could delay any further progress for perhaps years. The intense and long negotiating period was widely viewed as the last gasp for the Bush administration to get a deal completed before it leaves office in January. The next steps likely are to be left to the next administration, which will want to put its own stamp on U.S. negotiating positions – leaving the process up in the air and most trade-negotiating issues now focused on bilateral and regional trade deals.

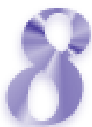
Collapse of the talks also may result in Brazil and other countries resuming the WTO case in which it has prevailed against U.S. cotton subsidies. Brazilian sugarcane growers also have begun investigating a challenge against the U.S. ethanol import tariff of 54 cents per gallon. Further, there is an increased likelihood of similar challenges of alleged trade-distorting impacts of other U.S. farm programs recently reauthorized in the 2008 farm law.

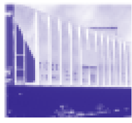
Calendar

Aug. 12-13, 2008: Joint NGFA/GEAPS Safety, Health and Environmental Quality Committee
NGFA Library/Conference Room, Washington, D.C.

Sept. 5-6, 2008: Board of Directors
Hyatt Regency, Newport, R.I.

Dec. 7-9, 2008: Country Elevator and Feed Industry Conference & Trade Show
Marriott Renaissance Grand Hotel, St, Louis, Mo.





Rails, Rivers and Roads

by Charlie Delacruz
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STB Decisions on First Small Rail Rate Case Challenges Appealed in Court

On July 15, CSX Transportation Inc. filed petitions for court review of the recent decisions by the federal Surface Transportation Board (STB) in the first rail rate challenges resolved under the agency's small rail rate dispute-resolution process adopted in 2007.

As reported in detail in the July 2 edition of the ***NGFA Newsletter***, the STB decided the three cases against CSX in favor of the shipper, DuPont. Within the three cases, the STB declared that rates were unreasonably high in six of seven separate rail movements. The agency ordered CSX to provide rate relief ranging from 5 to 40 percent of the original rate. As a result, DuPont stands to be compensated up to a maximum of $3 million over a five-year period, depending upon the volume of shipments occurring. In the DuPont rate challenge that the STB denied, the agency found that the chemical company failed to meet its burden of proof that CSX was in a market-dominant position on the movement. Barge transportation was available for a large percentage of the rail shipments occurring in that particular movement, the STB determined.

Either party was entitled to appeal the STB decisions in federal court. And on July 15, CSX filed petitions for review in three actions before the U.S. Court of Appeals for the District of Columbia Circuit *(CSX Transportation Inc. v. STB, et al, Case Nos. 08-1246, 1247, 1248)*. In these very preliminary filings, CSX generally asserts that the STB's decisions were erroneous, arbitrary, capricious and an abuse of the agency's regulatory discretion. The court's schedule in these actions requires more definitive filings from the parties in the coming weeks.

From the Bench

by Charles M Delacruz
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Judicial Panel to Address Cases with Potential Jones Act Implications

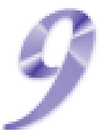
The U.S. Judicial Panel on Multidistrict Litigation on July 31 conducted a hearing in San Francisco, Calif., to consider the centralization of various lawsuits filed against shipping lines that have potential implications for the Jones Act.

The Jones Act (formally known as *The Merchant Marine Act of 1920*) is the U.S. law regulating maritime commerce in U.S. waters and between U.S. ports. The law contains provisions on cabotage (transport of goods or passengers between two points in the same country), as well as provisions regarding seamen's rights. The cabotage provisions in the law restrict the carriage of goods or passengers between U.S. ports to U.S.-built and U.S.-flagged vessels. In addition, the law severely restricts the percentage of foreign crewmembers and foreign repair work allowed on U.S.-flagged vessels, largely preventing U.S.-flag ships from refurbishing at overseas shipyards. The law commonly is criticized by the NGFA and other shipper groups as a protectionist measure that has resulted in significantly higher transport costs for shipping cargoes between U.S. ports, as well as foreign food aid shipments. It also has been faulted for making the U.S. shipbuilding industry and U.S.-flagged international shipping fleet uncompetitive.

The pending court cases involve allegations of federal antitrust violations – price-fixing practices and collusion to fix rates and fuel charges – by shipping lines operating under the Jones Act. The charges were brought by shippers in federal courts in Florida, California and Puerto Rico against several shipping lines that allegedly dominate the domestic shipping markets. In one such case – *Yoly Industrial Supply v. Horizon Lines, et al., Case No. 3:08-434, U.S. District Court, Middle District of Florida* – the plaintiff on April 30 filed a class-action complaint on behalf of "at least, thousands…" against several companies engaged in the business of "ocean cabotage" (along with their subsidiaries and yet "unnamed co-conspirators"). The complaint specifically refers to recent investigations of the defendants conducted by the U.S. Justice Department's Antitrust Division.

This case – and numerous similar actions filed in other federal court jurisdictions – will be considered for centralized proceedings by the Judicial Panel on Multidistrict Litigation (MDL Panel). As a special judicial body created by Congress in 1968, its principal role is to determine whether actions pending in different federal districts involve one or more common questions of fact such that the actions should be transferred to one federal district for coordinated or consolidated pretrial proceedings. The MDL Panel also selects the judge or judges and the court assigned to conduct such judicial proceedings. The purposes of this transfer – or "centralization" – process are to avoid duplication of discovery, to prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel and the judiciary. Transferred actions not terminated in the transferee district are remanded to their originating transferor districts by the MDL Panel at or before the conclusion of centralized pretrial proceedings. The MDL Panel consists of seven sitting federal judges, who are appointed to serve by the chief justice of the U.S. Supreme Court.

This litigation and the underlying federal investigation is viewed by some authorities in this area as having the potential to lead to revelations regarding abuses under the existing structure of the Jones Act, and the need for revising the current law.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

Membership Year Off to a Fast Start

With the NGFA's 2007-08 membership year now one-third gone, it is shaping up to be another very fruitful campaign for the NGFA's dedicated membership recruiters!

Since the Scottsdale, Ariz., annual convention in March, 34 companies have applied for NGFA membership. **That is 20 new members beyond last year's Aug. 1 tally!**

As dedicated readers of this column of the ***NGFA Newsletter*** know, the period following Jan. 1 and extending to the next annual convention historically has been the most productive period for recruiting. If that holds true again for the current membership year – and given this year's fast start – last year's total of 104 new members could be threatened!

Why are new members coming through the door at a rapid clip this summer? During a recent membership-recruiting trip through southwestern Minnesota, a number of potential members cited access to the NGFA Arbitration System as their top reason to consider membership. With volatile markets, challenging circumstances related to contract performance sometimes arise. And NGFA arbitration is a very affordable insurance policy – especially compared to legal costs that could be incurred from trying to enforce contract performance.

Old Prospect, New Opportunity? A number of companies that had been considering membership for many years, but had never quite pulled the trigger, now have made the decision to join the NGFA. If you have "stubborn" prospects out there that have told you "no thanks" several times, this just might be a good time to pay a visit and remind them of the tangible benefits of NGFA membership – like trade rules and arbitration services. Resolving one contract dispute likely will save your prospect enough to pay many years' dues!

Save the Date!

Information on the NGFA's always popular Country Elevator/Feed Industry Conference and Trade Show will be hitting the street soon! This year's events will convene at the Marriott Renaissance Grand in St. Louis, Mo. Be on the lookout for trade show sign-up, program information and registration materials. For now, reserve these dates on your calendar:

- **Sunday, Dec. 7:** Trade Show opens at 4 p.m.; Welcome Reception; Country Elevator Committee meets.
- **Monday, Dec. 8:** Morning and afternoon programming; three show sessions; evening reception.
- **Tuesday, Dec. 9:** Morning programming; conference adjourns by noon.

This conference is well-known for delivering high-quality business information you can take home and put to use right away. Make plans now to attend and to bring along your key employees.

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