



NGFA Newsletter

Volume 51, Number 15, July 29, 1999

Exclusive Report for NGFA Members!

USDA Notice Seeking Comment on Uniform National LDP Rate Delayed

...NGFA Seeks Input by Aug. 3 from Members on Disparities in PCPs, Ideas for Improving Current System for 1999 Crops...

The NGFA has learned that issuance of the U.S. Department of Agriculture's notice seeking public comment on its plan to implement a uniform national loan deficiency payment (LDP) rate has been delayed – again.

The latest delay was caused by objections raised by the White House Office of Management and Budget over the narrow scope of the USDA-drafted notice, according to government officials. As drafted by USDA, the notice reportedly only seeks comment on the uniform national LDP rate approach, and provides for only a 30-day comment period. OMB reportedly raised six objections to the notice; one was that it failed to seek comment on other alternatives discussed within USDA and submitted by outside groups (including the NGFA) on ways to improve the current differential/posted county price-based system. OMB also is asking that USDA provide a 60-day comment period.

The PCP-based system is used to determine marketing loan gains and LDPs for producers, and also is used as an

unofficial guide by Commodity Credit Corporation merchandisers for determining local cash values when selling loan collateral forfeited into CCC's ownership.

See Important Request to Members for Information on PCP Aberrations – Page 4!

The NGFA also has learned that OMB is asking USDA to expand the notice to solicit public comment on whether to adjust county loan rates to reflect more current market values. There is considerable evidence that the ability of the current PCP-based system to track local cash values has been impeded by the fact that USDA's county loan rates for 1999 crops of wheat and corn are essentially unchanged from rates in effect for the 1995 crops, which themselves were based on 1993 and 1994-crop PCPs that even at that time were considered to be in need of substantial revision to better reflect local cash market prices.

(Continued on page 4)

Senate Prepares to Consider Emergency Farm Aid on Aug. 2

...Daschle to Offer Democratic Amendment to Ag Appropriations Bill; Republicans Crafting Alternative...

The Senate on Aug. 2 is scheduled to begin consideration of the agricultural appropriations bill (S. 1233) for fiscal year 2000.

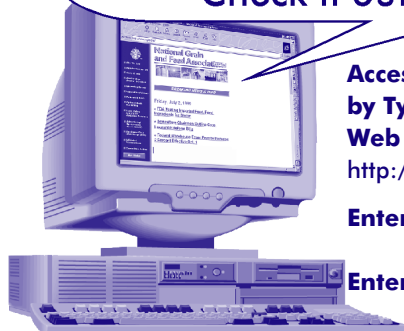
But all eyes will be on the expected introduction of a Democratic amendment to be offered by Senate Minority Leader Tom Daschle, D-S.D., that would allocate more than \$9 billion in emergency farm aid.

Meanwhile, a small group of Republican agricultural leaders, led by Sen. Thad Cochran, R-Miss., were meeting behind closed doors in an attempt to develop an alternative to the Daschle amendment.

Daschle's amendment is expected to exceed the \$9 billion in direct payments to producers for market loss and disaster relief contained in an amendment previously offered by Sen.

(Continued on page 2)

**It's been hot this week!
(The NGFA's web site that is.)
Check it out!**



**Access the Web Site
by Typing the NGFA's
Web Site Address:
<http://www.ngfa.org>**

Enter the User Name: ngfa

Enter the Password: soybean



("Farm Aid" continued from page 1)

Tom Harkin, D-Iowa. Harkin's proposals – which at the time amounted to a \$6.5 billion package – were rejected as being premature when they were considered on June 15 by the Senate Appropriations Committee's Subcommittee on Agriculture, Rural Development and Related Agencies.

Among other things, the Daschle amendment is expected to call for:

- ◆ \$5.6 billion in income loss payments.
- ◆ \$200 million for an "emergency short-term land diversion program."
- ◆ \$400 million for an additional 30 percent discount for crop insurance premiums over current subsidy levels.
- ◆ \$150 million for livestock assistance.
- ◆ \$212 million in emergency conservation programs, which provide cost-share payments to producers to institute conservation practices.
- ◆ \$300 million for the Step-2 payments under the cotton program.
- ◆ \$8 million to implement mandatory price reporting at packing houses and stockyards.
- ◆ \$12 million to implement country-of-origin labeling for imported meat products.

Meanwhile, at press time Lugar still was planning to proceed with three days of "comprehensive" hearings from Aug. 3-5 designed to gather information to develop a farm-assistance package that could be acted on by the Senate in September. The hearings are scheduled to feature testimony from USDA and various sectors of agriculture.

"On the basis of these hearings, the (Senate) Agriculture Committee would draft and mark-up authorizing legislation during the first legislative week of September, thus providing to the Senate Appropriations Committee a clear road map for prompt action on farm income," Lugar said in a statement issued July 26. "For the moment, I will proceed, optimistically, with the assumption that we will have good hearings, a better understanding of the reasons for farm-income legislation, and constructive criteria for prospective payments to farmers."

To date, Republican leaders have taken the position that Congress should address the issue in September, after more harvest and price data are known and the White House can make a formal legislative request. That also had been the position of the Clinton administration; that is, until this week when Secretary of Agriculture Dan Glickman issued a statement saying that congressional hearings "...should not stand in the way of efforts...to enact, immediately, emergency farm assistance...." Senate Democrats also do not want to wait for the Appropriations Committee to develop a comprehensive bill, opting instead to use the fiscal 2000 appropriations bill as a vehicle on which to attach a farm-relief package before Congress takes its traditional August recess.

Dairy Issue May Complicate Consideration of Senate Appropriations Bill: The NGFA has learned that the Senate agricultural appropriations bill (S. 1233) for fiscal year 2000 may face another hurdle – dairy policy. Sens. Patrick Leahy, D-Vt., and Jim Jeffords, R-Vt., have indicated they will filibuster the bill if it does not address dairy support payments in the way favored by the Northeast. Sixty senators are required to vote in favor of ending such a debate to allow the Senate to bring the bill to a final vote.

Leaner Crop Insurance Bill Heading to House Floor

The House Agriculture Committee on July 30 is expected to consider – and pass – its version of crop insurance reform.

Committee Chairman Larry Combest, R-Texas, was expected to offer several amendments to the bill (H.R. 2559) in an effort to reduce its estimated cost by about \$2 billion – to \$5.994 billion – just a shade less than the \$6 billion earmarked in the congressionally passed budget bill. Among other things, the Combest bill would increase federal subsidies for crop insurance premiums, and provide for a number of other policy changes designed to increase participation in the program. [See *NGFA Newsletter*, July 2, 1999 for a summary of the bill. The complete bill text is accessible on the NGFA's web site at: <http://www.ngfa.org>. Click on the "Reference Desk" heading, followed by the "Ag Policy" subject icon.]

During the scheduled July 30 markup hearing, ranking committee member Rep. Charles W. Stenholm, D-Texas, was planning to offer an amendment that would take the bill in a substantially different direction. Specifically, Stenholm's amendment would shift a large portion of the funds that Combest has earmarked for insurance, and use it instead for supplemental income payments to producers who are eligible for marketing-assistance loans. Payments would be made on the basis of a "national gross revenue" figure (determined by USDA) for each eligible commodity, a producer's harvested production of the commodity, plus any failed production acreage pursuant to the producer's acreage production history.

Combest intends to bring the bill to the House floor before the August congressional recess.

(Continued on page 3)

Hill Highlights

► **House Renews Normal Trade Relations with China:**

In what has become a summer ritual, the House on July 27 defeated by a 170-260 vote a resolution (H.J. Res. 57) that would have disapproved the president's renewal of normal trade relations status for the People's Republic of China. Last year, a similar resolution was also defeated, by a vote of 166- 274.

► **Sanctions Reform:** Efforts are underway in the Senate between the Agriculture and Foreign Relations Committees to reform economic trade sanctions laws. According to congressional sources, the new bill would permanently exempt food and medicinal products from

U.S. sanctions, and make the application of sanctions more transparent. Committee consideration of the bill is scheduled to occur before the August congressional recess.

► **Notes and Quotes:** Addressing a dinner hosted by the Kansas Grain and Feed Association and the Kansas Chemical and Fertilizer Association, Sen. Pat Roberts, R-Kan., stated that a disaster relief bill for producers was certain, and that he "hoped" it would not contain "anything market distorting."



TECH TALK

by **thomas c. o'connor**
director of technical services

GIPSA to Update Hard Red Spring Wheat Calibration on July 31

The hard red spring (HRS) wheat protein calibration for official near-infrared transmittance (NIRT) instruments will be updated on July 31, the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration announced.

GIPSA said the change was needed to more closely align official HRS wheat NIRT protein results with results obtained using the combustion nitrogen analyzer (CNA), the standard reference method used by the agency to determine wheat protein content.

In its July 28 announcement, GIPSA noted that the current HRS protein calibration was developed in 1993. But based upon a review of more than 3,000 samples, the agency said it decided to update the current calibration to

improve overall calibration accuracy pursuant to the CNA. The new calibration includes all the samples from the existing calibration, as well as additional samples from the 1994-98 crops, GIPSA said.

Anticipated Impact: GIPSA said that the new calibration shows an average change of -0.04 percent protein, with a range from +0.50 percent to -0.37 percent protein. Further, protein results reading less than 13 percent should increase slightly, GIPSA said, while protein results exceeding 14 percent should decrease slightly.

GIPSA also cautioned that the specific effects of the new calibration will vary from sample to sample and based upon testing location. Results for a specific sample at any protein level may be higher or lower with the new calibration than with the old one, the agency noted.

EPA to Propose New Phosphine Rules by Fall

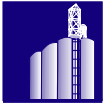
The Environmental Protection Agency is likely to publish its revised "risk-mitigation measures" for aluminum phosphide and magnesium phosphide by Fall, the NGFA has learned.

Before publishing its revamped phosphine rules for public comment, EPA first plans to share a draft by the end of August with USDA's phosphine task force, giving that group 30 days to provide comments to EPA. After receiving USDA's input, EPA plans to formally publish the revised risk-mitigation measures in a *Federal Register* notice for public comment.

The NGFA is aware of unsubstantiated reports that EPA, in response to widespread opposition, it will change

its originally proposed 500-foot buffer zone and 750-foot notification requirement that were part of its initial risk-mitigation measure proposals. Unfortunately, the reports are that EPA plans to retain its 0.03-part per million exposure limit, which is significantly tighter than the 0.3 p.p.m. safety standard issued by the Occupational Safety and Health Administration.

EPA's revised risk-mitigation measures will form the basis for discussions at the stakeholder meetings being planned by the agency for Atlanta, Ga., Kansas City, Mo., and Sacramento, Calif., in late November or early December 1999. EPA previously had stated that it will publish its revised proposals at least 30 days prior to the stakeholder meetings.



(“LDPs” continued from page 1)

It is uncertain at this writing when – or if – the current impasse between USDA and OMB over the contents of the public notice on the uniform national LDP rate can be resolved.

NGFA to Meet with USDA to Improve Current PCP-Based Approach – Seeks Input from Members. In a related development, a task force from the NGFA’s Country Elevator Committee will meet on **Aug. 4** in Kansas City, Mo., with USDA officials to evaluate the current PCP-based system and to determine if there are ways to improve it for 1999-harvested crops.

During its meeting on July 21-22 in Kansas City, the Country Elevator Committee was told by high-level USDA officials that it appears increasingly unlikely that a new uniform national LDP rate will be approved in time to be implemented for **any** 1999-harvested crops. Secretary of Agriculture Dan Glickman previously had announced that a new rate-determination system would not be implemented for spring-harvested 1999-crop wheat.

Given this development, USDA officials invited the NGFA to work with them to determine if there are ways to prevent a recurrence of aberrations in PCP values that occurred last year between states and counties. In some cases, the anomalies were so severe (upwards of 10 cents per bushel) that it provided a government-induced incentive for producers to alter their deliveries of grain, distorting normal grain marketing patterns. The NGFA on Feb. 3

had submitted a series of recommendations to USDA on ways to improve the current system, including proposals to: 1) revise differentials to more accurately reflect current market conditions; 2) reevaluate the application of terminal markets to various geographic areas to determine if they are in need of adjustment; 3) base the LDP rate on the county where the commodity is produced, not where stored; 4) eliminate state borders when setting PCPs; 5) apply a variance factor to reduce intra- or interstate differences in PCPs; and 6) gradually adjust county loan rates and consider establishing wheat loan rates by class.

A seven-page summary of the NGFA’s recommendations – and USDA’s unofficial response – is available on the NGFA’s web site at: <http://www.ngfa.org>. Click on the “Reference Desk” section. Then click on the “Warehousing” subject icon to access the document, which is entitled: “*Summary of NGFA’s Recommendations for Improving Loan Repayment Procedures – and USDA’s Unofficial Response.*” Members without internet access may obtain a copy by calling Jackie Congress at the NGFA at (202) 289-0873.

Members’ Input Needed!: Importantly, the NGFA is inviting all members **on or before Tuesday, Aug. 3** to forward examples of situations in which the PCPs for grains and oilseeds may be out of line with local cash market values, as well as other ideas on ways to improve the current system. Please e-mail or fax your examples and suggestions to Kendell Keith at: kkeith@ngfa.org or (202) 289-5388. Thank You!

CCC: Loan Grain Forfeiture Sales Policy Unchanged

U.S. Department of Agriculture officials have confirmed with the NGFA that their policy for selling loan grain collateral forfeited into the Commodity Credit Corporation’s ownership remains unchanged.

There were erroneous reports on July 23 that USDA had issued a “directive” to CCC merchandisers to no longer sell forfeited loan commodities at less than the posted county price (PCP). But USDA policymakers told the NGFA that while CCC merchandisers continue to use the PCP as a “guide” for evaluating local cash values for forfeited loan grain, they continue to sell at less than the PCP where local market conditions warrant.

CCC’s sales policy is governed by Section 165 of the Federal Agricultural Improvement and Reform Act (the 1996 farm law), which states that CCC “may sell any commodity owned or controlled by the (CCC) at **any price** that the (secretary of agriculture) determines will maximize returns to (CCC).” [Emphasis added.] The

1996 farm law removed price triggers that previously had placed certain restrictions on CCC’s ability to sell its grain inventory. In addition, other sections of the 1996 farm law direct USDA to minimize CCC ownership of commodities.

USDA officials said CCC currently is selling wheat, feed grains, rice and oilseeds forfeited into its ownership; however, wheat not purchased before the forfeited loan collateral is recorded into CCC’s inventory by the Kansas City Commodity Office is being retained in CCC’s ownership for potential use as food assistance.

Under USDA procedures implemented in 1998, which continue in effect, Farm Service Agency county offices retain the warehouse receipts for forfeited loan collateral for five business days, during which time the storing warehouse may purchase the stocks. After five business days, the receipts are forwarded to the KCCO; USDA officials said that loan collateral usually is recorded into CCC’s ownership by the KCCO within two to three weeks after forfeiture.

USDA to Allow Extensions of Delivery Period on CCC-681-1 Marketing Authorization Movements

The U.S. Department of Agriculture's Farm Service Agency (FSA) on July 29 issued a notice that authorizes state executive directors of the Farm Service Agency, at their discretion, to extend the delivery period for grain covered by marketing authorization forms (CCC-681-1s) to accommodate situations in which elevators are "unable or unwilling" to accept deliveries of maturing loan collateral.

The marketing authorization form is intended to permit producers to remove and deliver farm-stored loan collateral to a buyer if the proceeds of the sale are used to immediately repay the loan. Its principal purpose is to apprise the warehouse operator that CCC has a security interest in the loan collateral until the loan is repaid. The CCC-681-1 also is designed to be a vehicle to provide financing for the producer to repay his or her marketing-assistance loan.

Last week, the NGFA was apprised by several NGFA-member companies, the Minnesota Grain and Feed Association, Minneapolis, Minn., and the Northwest Agri-Dealers Association, Mankato, Minn., about the pressures being exerted on warehouse operators, particularly in the upper Midwest, by the heavy deliveries of maturing loan collateral covered by CCC-681-1 marketing authorization forms. The surge of loan collateral deliveries, combined with projected tight storage availability, was such that several warehouse operators were unable to merchandise and secure transportation for the commodities before the producer's locked-in 15- or 30-day loan-repayment rate expired. Under its previous procedures, FSA prohibited state or county offices from extending the delivery date listed on the CCC-681-1.

However, in the loan program notice (Notice LP-1692) issued July 28, FSA provides two tools for addressing situations in which producers are "unable to complete delivery of commodities before expiration of CCC-681-1s because elevators are unable or unwilling to accept any deliveries":

- ▶ The FSA state executive director now is authorized to extend the delivery date specified on the CCC-681-1 for a "reasonable amount of time until elevators are accepting deliveries."
- ▶ For producers with loans maturing on July 31 and Aug. 31, 1999 who are unable to complete deliveries because elevators are unable or unwilling to accept deliveries, the FSA county office is required to allow such producers to repay the quantities listed on the CCC-681-1 at the lesser of: 1) the locked-in rate shown on the

CCC-681-1; or 2) the repayment rate in effect on the date repayment is received. In effect, this will permit affected producers to repay the loan without providing delivery evidence to FSA, which allows the loan to be repaid by any person (for example, the producer's lender, the warehouse operator or another party) before delivery of the loan collateral occurs. Importantly, loans that mature on July 31 for which repayment is made after Aug. 2 will be required to be repaid at principal plus interest, the FSA notice said.

While the loan program notice grants relatively broad discretion to FSA state executive directors, FSA officials told the NGFA that their intent is that the state director examine each situation on a case-by-case basis.

FSA Examining Lock-In Rate Provision. Another CCC-681-1 issue being examined by USDA concerns the practice of some producers to change their locked-in loan repayment rate by selecting an alternative buyer, to the detriment of the producer's normal buyer listed on the original CCC-681-1.

USDA's current procedures state that only one CCC-681-1 may be approved for the same loan to the same buyer for the same delivery period. However the producer is allowed to request approval of two or more CCC-681-1s for the same loan to different buyers during the same delivery period. This feature is being used by some producers to select alternative buyers for the sole purpose of changing the loan repayment rate previously locked in with the producer's normal buyer.

The NGFA has been notified by member companies and State/Regional Grain and Feed Associations of multiple cases in which the producer's normal buyer – designated on the initial CCC-681-1 – has "lost" loan collateral deliveries from traditional farmer-customers simply because the producer has obtained a new CCC-681-1 and locked-in a new loan repayment rate by designating an alternative buyer. This disadvantages and discriminates against the original buyer, because USDA's current procedures do not permit the locked-in loan repayment rate to be changed on the initial CCC-681-1 form on which the original buyer's name has been designated.

The NGFA's Country Elevator Committee discussed this issue with FSA officials during its meeting on July 21-22 in Kansas City, Mo. The NGFA plans to present recommendations to FSA by early August on how to address it.

USDA Agrees to Pay Storage on Forwarded CCC-Owned Grain

The U.S. Department of Agriculture has notified the NGFA that it will modify its previous policy that assessed a partial financial penalty against warehouses that utilize "forwarding" provisions to reposition CCC-owned stocks to accommodate storage demand.

In a July 22 letter to the NGFA, USDA Deputy Administrator for Commodity Operations Vicki Hicks wrote that for warehouse operators entering into forwarding agreements **on or after July 19**, CCC will remove the storage payment waiver that previously required warehouse operators to forego the CCC storage payment for one-third of the time – with a 30-day minimum – that the grain was in the forwarded position.

In a June 8 letter to Thomas L. Grau, deputy under-secretary of agriculture for farm and foreign agricultural services, the NGFA had urged USDA to make the full storage payment on forwarded CCC-owned stocks that are repositioned through physical or paper movements to alleviate congested storage conditions. The NGFA had noted that in addition to being penalized financially by USDA, the "forwarding" warehouse operator also incurred the storage cost charged by the warehouse to which the grain was relocated.

In response to the NGFA's letter, Hicks wrote that warehouses will need to verify that "space/harvest congestion" is the reason for the use of forwarding to be eligible for the full payment from CCC. Under the forwarding provisions, USDA allows the origin storing warehouse to enter into a forwarding agreement to reposition CCC-owned grain for up to 120 days (unless extended by CCC) to another warehouse that has a Uniform Grain and Rice Storage Agreement contract with CCC. Warehouses are not allowed to forward into facilities with outstanding forwarding agreements of their own, or when a warehouse examination is in progress at the origin warehouse. Forwarding of different classes of grain also is prohibited.

Warehouse operators also are permitted to forward grain pledged by producers as collateral for a marketing assistance loan by contacting the FSA office where the loan is disbursed.

While commending USDA for its policy change, the NGFA has asked that the July 19 effective date be reconsidered because it discriminates against warehouse operators who already have entered into forwarding agreements to accommodate anticipated 1999-crop harvest needs. In the absence of such a change, these warehouse operators' sole alternative may be to cancel existing forwarding agreements and enter into new ones if they meet USDA's "space/harvest congestion" criteria.

USDA Rejects Proposal to Pay Receiving Charges for Warehouse-Stored Loan Forfeitures: Concerning another matter raised in its July 8 letter to USDA, the department rejected the NGFA's proposal that CCC pay the receiving charges for warehouse-stored loan collateral forfeited into its ownership while the warehouse receipts are still in the Farm Service Agency county office.

CCC does not pay the receiving charge for warehouse-stored forfeited loan collateral during the five-day period when the warehouse receipts are at the FSA county office, even when the receiving charge is not included in the warehouse operator's cash bid. However, once the warehouse receipts are transferred to USDA's Kansas City Commodity Office, the storing warehouse can purchase the forfeited loan collateral and receive the in-charge. The NGFA had urged CCC to pay the receiving charge on forfeited loan collateral regardless of whether the warehouse receipt was located at the FSA county office or at KCCO.

But in response, Hicks said USDA had determined not to change its existing policy concerning the payment of receiving charges on forfeited loan collateral. "When selling CCC-owned stocks, we determine what we believe to be a fair market value for those stocks," she wrote. "Included in our price determination are such factors as quality, location, freight, handling and, just as important, sales of same or similar CCC-owned stocks in the local area. Accordingly, we believe our current policy is in keeping with the (1996 farm law), which states, in part: '...(CCC) may sell any commodity owned or controlled by (CCC) at any price that the secretary (of agriculture) determines will maximize returns to (CCC).'" [Emphasis added.]

NGFA Calendar

- Aug. 2-3:** Feed Industry Committee Meeting, Doubletree Downtown Hotel, Omaha, Neb.
- Sept. 12-13:** NGFA Board of Directors Meeting, Eldorado Hotel, Santa Fe, N.M.
- Sept. 14-15:** Feed Quality Assurance Workshop, Mankato, Minn.
- Dec. 4:** Leadership Conference, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5-6:** Feed Industry Council, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5-6:** NGFA Trade Show, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 6-7:** Country Elevator Council Meeting, Regal Riverfront Hotel, St. Louis, Mo.
- March 29-31, 2000:** NGFA's 104th Annual Convention, Hotel Del Coronado, San Diego, Calif.



Grain Inspection Agency May Be Liable to Independent Contractor

“Ordinarily, the employer of an independent contractor may not be held liable for injuries that have been personally sustained in the performance of the contract by the contractor.”

That’s one of the findings of the South Dakota Supreme Court in a May 26 ruling that found the Aberdeen Grain Inspection Agency Inc. (Aberdeen) may face liability arising from the death of an independent contractor. The court, however, upheld a trial court ruling dismissing claims asserted against the grain elevator.

The case arose from fatal injuries suffered by David Clausen, who fell from the top of a railcar while sampling grain. Clausen was an independent contractor hired by Aberdeen to inspect railcars at a grain elevator owned by South Dakota Wheat Growers Association. Clausen’s widow filed a negligence action against both Aberdeen and the grain elevator based upon the alleged failure of both to provide safety training or fall-protection equipment for persons working on top of railcars. The trial court granted summary judgment for both defendants, finding that neither had liability for negligence under South Dakota law.

In reversing the trial court’s decision with respect to Aberdeen, the South Dakota Supreme Court found there was evidence in the record that would create a genuine

issue of material fact as to whether Aberdeen retained control over Clausen’s (the independent contractor’s) work. Specifically, the appellate court said there was evidence that: 1) Clausen was trained by another independent contractor for Aberdeen and with its knowledge and approval; 2) Clausen was given a grain inspection handbook by Aberdeen; 3) Clausen was given two training examinations by Aberdeen in the three years he contracted with the company; 4) Aberdeen provided Clausen with “Conflicts of Interest and Standards of Conduct” reminders; 5) Aberdeen supervisors monitored Clausen’s work on several occasions; 6) Aberdeen supervisors corrected Clausen’s technique when he was not probing correctly; and 7) Aberdeen provided Clausen with equipment to do his job. As a result, the South Dakota Supreme Court remanded the claims asserted by Clausen’s widow against Aberdeen to the trial court for trial.

But the South Dakota Supreme Court -- in upholding the dismissal of claims against the grain elevator, albeit on different grounds than the trial court -- said that Clausen was not injured by a dangerous condition of the land or any structure affixed to it. Instead, he was injured by ice on a movable railcar, which the court ruled was not a “fixture” of the land or elevator owned by South Dakota Wheat Growers Association Inc. The court said that there was nothing in the record to indicate who owned or had control over the railcar.



FDA Issues Compliance Guide on Electronic Records, Signatures

The Food and Drug Administration on July 21 issued a compliance policy guide [Section 160.850] representing its “current thinking” on how to comply with its regulations for electronic records and electronic signatures.

While the notice states that the agency’s regulations on electronic records and signatures [21 CFR Part 11] apply to “all FDA program areas,” there is considerable uncertainty over whether such rules were intended to apply to feed manufacturing establishments. The proposed rule on electronic records and signatures was proposed in 1994 and was finalized in 1997. The sole reference to feed in either rulemaking was to “medicated feed applications” (now called “licenses”) in the preamble of the regulations. Under the final rule, firms using electronic signatures are required to file a written certification of compliance with FDA. The NGFA’s Feed Industry Committee will be discussing this matter with FDA officials during its meeting on Aug. 2-3 in Omaha, Neb.

FDA’s Compliance Policy Guide: FDA’s compliance

policy guide states that decisions on whether to pursue regulatory actions will be based on a case-by-case evaluation that considers:

- ▶ **the nature and extent of the noncompliance.** FDA says deviations from the rules will be considered to be more significant if they are numerous, if they make it difficult for the agency to audit or interpret data, or if they undermine the integrity of the data or the electronic system.
- ▶ **the effect of the noncompliance on product quality and data integrity.** For instance, the agency said, “...lack of operational system checks to enforce event sequencing would be significant if an operator’s ability to deviate from the prescribed order of manufacturing steps results in an adulterated or misbranded product.”
- ▶ **the adequacy and timeliness of planned corrective measures.**
- ▶ **the compliance history of the firm, especially with respect to data integrity.**



MEMBERSHIP MATTERS

by todd kemp
director of marketing

Membership Madness Spins into Cyber-Space!

To accommodate the needs of today's electronically connected membership recruiter, the NGFA's 30 days of *Membership Madness* now is on the web!

Point your browser to the NGFA's web site at www.ngfa.org. Then, click on "Membership/Member Services" heading and the "Membership Madness" subject icon will appear at the top of the page. By clicking on the *Membership Madness* icon, recruiters can access information on the NGFA's 30-day membership drive and read about the fabulous prize package for which all successful recruiters through Aug. 15 will be eligible.

In addition, the site contains: 1) frequently asked questions that prospects ask of recruiters, as well as some suggested responses; 2) the NGFA's "Top 250 list" of prime membership prospects, featuring companies like those surrounding our frenzied recruiter above; and a personal appeal by JoAnn Brouillette, chair of the NGFA's Membership Recruiter Network, to make recruiting a priority during *Membership Madness*. Membership applications and other useful information also may be accessed and downloaded from the Membership/Member Services page.

Letter from the Chair: The same personal letter from Brouillette appears as an insert in this edition of the *NGFA Newsletter*. Please take a few minutes to review the letter

and make a commitment to follow through on JoAnn's challenge.



Membership Madness Results: Since July 15, nine new NGFA members have been recruited, already nearly surpassing the total from last year's Membership Month. Since the last edition of the *NGFA Newsletter* was published, the following new members have signed on (sponsors listed in parentheses):

- **Apache Hose and Belting**, Cedar Rapids, Iowa (Mark Herick, Cargill Inc.)
- **Agro Distribution LLC**, Sioux City, Iowa (Dennis Wendland, Cenex Harvest States)
- **Furst McNess Co.**, Freeport, Ill. (Mike Malecha, Kraft Foods)
- **Furst McNess Ltd.**, London, Ontario, Canada (Mike Malecha)
- **Strategic Diagnostics Inc.**, Newark, Del. (Charles Mihaliak, Dow AgroSciences)
- **American Brokerage Co.**, Amarillo, Texas (Jack Goldfield, Nathan Segal & Co.)
- **Feed Services Inc.**, Lubbock, Texas (Jack Goldfield)
- **Premier Tech Packaging**, Riviere-du-Loup, Quebec, Canada (TBD)

Call Todd Kemp or Rhonda Warren at the NGFA at (202) 289-0873 for information or to report on your recruiting progress!