



NGFA

Newsletter[®]

Volume 59, Number 3, February 1, 2007

Major Research Study on Biofuel Impacts Nearing Completion

A major independent research study is nearing completion that will evaluate the likely impacts of biofuels growth on U.S. agricultural markets over the next five years or more.

Financed in part by the National Grain and Feed Foundation, the study is being conducted by a consortium of noted Iowa State University agricultural economists led by Drs. Dermot Hayes and Bruce Babcock operating under the auspices of AgRisk Management LLC. In addition to the **NGFA**, other organizations sponsoring this significant research project are: **American Meat Institute**, **National Chicken Council**, **National Turkey Federation**, **National Cattlemen's Beef Association**, **Food Products Association/Grocery Manufacturers Association of America** (which merged effective Jan. 1), **National Oilseed Processors Association**, **North American Millers Association**, and **National Pork Producers Council**.

The goal of the research project is to obtain factual data on the realistic impact of biofuels production on the U.S. agricul-

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USDA Unveils 2007 Farm Bill Proposal

The 2007 farm bill proposal unveiled by Secretary of Agriculture Mike Johanns on Jan. 31 contains specific recommendations to convert from the current price-based countercyclical farm program to a revenue-based approach, alter the marketing assistance loan program, increase direct payments by \$5.5 billion over 10 years, and tighten payment limits on individual producers.

The proposal also emphasizes development of cellulosic ethanol production, including the use of some Conservation Reserve Program (CRP) acres to grow biomass for bioenergy production.

The Bush administration's 2007 farm bill strategy, which contains very specific recommendations for programs and spending levels, is markedly different from the vague – and ultimately ineffective – “road map” it outlined prior to the 2002 farm bill debate. Johanns indicated that the proposal was based largely on the listening sessions USDA conducted in 48 states throughout 2005. And Johanns today began a series of speeches, starting in California, to build support for USDA's proposals.

NGFA Testifies at STB



NGFA Rail Shipper/Receiver Committee Chairman Dan Mack (left) and NGFA Transportation Counsel Andrew Goldstein are shown reviewing testimony they presented on Jan. 31 at a federal Surface Transportation Board hearing on small rail rate cases. See page 8.

Overall, the administration proposed a \$10 billion reduction over 10 years in farm bill spending compared to expenditures under the 2002 farm bill. While the commodity program would sustain the greatest reductions – down \$4.5 billion over 10 years compared to the current baseline – funding for conservation programs would increase more than \$7.8 billion over 10 years. Meanwhile, funding for biofuels would increase by roughly \$1.5 billion over 10 years. During briefings conducted for industry and producer organizations, including the NGFA, USDA officials stressed that no new energy spending was for corn-based ethanol, but instead focused entirely on advancing cellulosic-based fuel.

Conservation Continues Upward Trend: The 2002 farm bill was touted as the “greenest” farm bill ever, with an 80 percent increase in conservation spending. USDA's proposal attempts to build on that trend with a proposed \$4.2 billion expansion in the Environmental Quality Incentives Program (EQIP), \$500 million more in additional spending for the Conservation Security Program (CSP) and a \$2 billion increase in spending on the Wetland Reserve Program (WRP) – all over 10 years. The

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"Biofuel Study" continued from page 1

ture and food system. The information will be provided to policymakers during the upcoming debate on the 2007 farm bill and energy policy.

The research results are expected to provide realistic estimates of biofuels growth and its potential impacts with a range of potential outcomes on the domestic livestock and poultry industry, other grain users and processors, and exporters; the likely global response to U.S. biofuels expansion; the regional impacts on the location of livestock and poultry production; food price impacts; and how these impacts might be affected by various policy options related to non-environmentally sensitive land currently enrolled in the Conservation Reserve Program (CRP).

The specific research tasks being conducted under the project include the following:

- ▶ Identifying biofuels facilities currently in operation, under construction or that are projected to be completed by 2010, so as to project local supply and demand for feedstocks.
- ▶ Estimating biofuel margins that will determine the ultimate size of the industry by 2010, including biodiesel from animal fats and vegetable oils. Data being gathered will enable the researchers to determine a long-run "break-even" price at

which expansion of biofuels production no longer would occur.

- ▶ Project livestock feed prices, basis patterns, biofuel co-product values and aggregate production of different crops between now and 2010. Researchers also are examining the likely adjustments in U.S. and world agriculture that would be needed to provide the feedstock requirements identified through these projections.
- ▶ Analyze the regional implications of biofuel production growth, with an emphasis on the regional location of biofuels facilities, livestock production impacts, the availability of biofuel co-products and likely sources of CRP acres to support growing demand. The study also will analyze the implications of biofuels production growth on the regional and international competitiveness of beef, dairy, poultry and pork production.
- ▶ Analyze the implications of U.S. grain price increases on wholesale and retail prices for meats and grains, as well as on wholesale and retail food price indices.

The study is scheduled to be completed by the end of February. Dr. Hayes is scheduled to present the findings and respond to questions during his address at the NGFA's 111th annual convention on March 19.

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CRP would remain the largest conservation program, with \$25.656 billion allocated over 10 years – unchanged from the previous baseline.

Overall the administration's proposal offers little change in the CRP. In addition to the CRP biomass provision referenced earlier, the proposal calls for a "focus on the most environmentally sensitive lands." Many of the details on how biomass could be grown on CRP lands while payments remain compliant with U.S. obligations under the World Trade Organization (WTO) have yet to be resolved. Under the USDA proposal, CRP ground that is designated class I to IV (considered suitable for growing crops and currently representing about 27 of the 39 million acres in the program) could be used in part to grow and harvest biomass for cellulosic energy production. Such a program would set specific requirements that harvest could occur only after bird nesting seasons. And rental rates would be limited to income or cost incurred by the producer in meeting conservation needs during years the biomass would be harvested.

CRP currently is reported as a "green box" program under the WTO, which labels it non-trade distorting and therefore not subject to spending caps. But to be eligible for this designation, any payments must not result in the production of "marketable agricultural products." Since under the administration's proposal biomass on CRP land would be harvested for commercial use, the payment mecha-

nism would have to be designed to meet "green box" eligibility under a government environmental, rather than land-retirement program. The USDA proposal did not detail how this would occur, but suggested it could be designed in such a way to remain in the WTO "green box."



The conservation proposal also includes a "sod-saver" provision designed to discourage conversion of grassland to crop production. As such, it is intended to broaden the scope of the current "sodbuster" and "swampbuster" programs that protect highly erodible land and wetlands from agricultural development by denying farm program payments to producers for those acres. The "sod saver" would deny farm program benefits to producers on acres they take out of grasslands and put into row-crop production. In a troubling argument used to justify the provision, USDA notes that "the rate of conversion of grassland to cropland could increase greatly over the next several years as increased production of biofuels boost the demand for corn and other crops." Thus, just as the market is calling for increased production acreage to meet demand opportunities, USDA's proposal is putting these potential



acres – even those not considered highly erodible or wetlands – at a distinct disadvantage by denying them farm program payment benefits. USDA noted that the “major” factor contributing to the reduction in non-federal grasslands is urban development, but nonetheless targets agricultural production.

Farm Income Supports Significantly Altered: USDA outlined a series of significant and complex changes to the way farm program payments would be calculated and distributed to be “equitable, predictable and protected from [WTO] challenge,” while remaining fiscally responsible.

The most significant proposed changes are to the marketing assistance loan program. USDA’s proposal seeks to establish a market-based loan rate at 85 percent of the five-year Olympic average, with maximum rates set at the levels contained in the House-passed version of the 2002 farm bill. USDA believes these changes would encourage producers to base planting decisions more on market prices than potential subsidy payments. The marketing assistance loan program, notified as “amber box” and most trade distorting by the WTO, would be reduced by \$4.5 billion over 10 years, thereby reducing the program’s exposure to challenge by foreign countries at the WTO.

The administration’s proposed loan rates are shown in the nearby table.

Commodity	Units	Current	Average of Proposed Loan Rates over 2008-2012 ^{1/}	Proposed Maximum
Wheat	\$\bu.	2.75	2.58	2.58
Corn	\$\bu.	1.95	1.89	1.89
Sorghum	\$\bu.	1.95	1.89	1.89
Barley	\$\bu.	1.85	1.70	1.70
Oats	\$\bu.	1.33	1.21	1.21
Upland Cotton	\$\$b.	0.52	0.4570	0.5192
ELS Cotton	\$\$b.	0.7977	0.7965	0.7965
Rice	\$\$cwt.	6.50	6.50	6.50
Soybeans	\$\bu.	5.00	4.92	4.92
Other Oilseeds	\$\$b.	0.093	0.087	0.087
Peanuts	\$\$ton	355	336	350
Dry Peas	\$\$cwt.	6.22	5.08	6.22
Lentils	\$\$cwt.	11.72	10.45	11.72
Small Chickpeas	\$\$cwt.	7.43	7.43	7.43
Graded Wool	\$\$b.	1.00	0.55	1.00
Nongraded Wool	\$\$b.	0.40	0.22	0.40
Mohair	\$\$b.	4.20	1.92	4.20
Honey	\$\$b.	0.60	0.60	0.60

^{1/} Proposed loan rates are calculated for each year, 2008-2012, using actual and projected market prices and then averaged over the five-year period.

The proposal also would replace the daily posted county prices (PCPs) used to determine loan deficiency payment rates with a monthly PCP. The monthly PCP would be an average of five daily PCPs on pre-set days during the month. Producers who opted to receive a loan deficiency payment instead of a marketing assistance loan would receive the LDP rate in effect on the day the producer loses “beneficial interest” (title and control) of the commodity.

Under the USDA proposal, the shift from a price- to a revenue-based counter-cyclical payment would save \$3.7 billion over 10 years. Under the revenue-based program, payments “would be triggered when the actual national revenue per acre for the commodity is less than the national target revenue per acre.” The national target revenue would be equal to the 2002 farm bill target price minus the direct payment rate, multiplied by the national average yield for each commodity based on the 2002-06 crop years, excluding the high and low years. The actual national revenue per acre would equal the national average yield for each commodity multiplied by the higher of either the season average market price or the loan rate.

The other substantial change proposed by the administration involves tightening payment limits by eliminating the so-called “three-entity rule” that allows producers to receive payments in excess of what the program originally intended and would cap individual payments at \$360,000. Further, producers would be ineligible for commodity payments if their adjusted gross income, wages and income minus farm expenses and depreciation exceeded \$200,000. USDA noted that those with an adjusted gross income of more than \$200,000 are in the top 2.3 percent of all American tax filers. These combined payment limits are projected to save \$1.5 billion over 10 years.

Continued Focus on Trade: USDA officials strongly endorsed the continuation of trade promotion programs and proposed a \$389 million increase over 10 years for such purposes. The principal focus of the new funding would include: 1) an additional \$250 million over 10 years for the Market Access Program (MAP), with particular emphasis on non-program crops; 2) a \$20 million grant program over 10 years to address international sanitary and phytosanitary (SPS) issues; 3) \$15 million in mandatory funding over 10 years for USDA staff support of international standard-setting bodies like the Codex Alimentarius Commission, International Plant Protection Convention (IPPC) and the World Animal Health Organization; and 4) \$20 million over 10 years for international capacity-building activities. USDA’s trade proposal also would revise the Export Credit Guarantee Program to bring it into compliance with the WTO ruling in the Brazil cotton case by removing the 1 percent cap on fees for the GSM-102 program and eliminating the GSM-103 and the Supplier Credit Guarantee Program. The proposal also would repeal the inactive Export Enhancement Program.

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Energy Reaps Spoils of Headline Popularity: Johanns and other USDA officials in follow-up briefings stressed the importance of biofuels for U.S. agriculture, and touted the proposal's provisions to expand federal research and expand programs with the goal of producing and commercializing cellulosic-based ethanol as soon as possible. The administration's farm bill energy proposals include: 1) a \$100 million temporary direct support program over 10 years for producers of cellulosic ethanol; 2) reauthorization and \$210 million in funding over 10 years for the Renewable Energy Systems and Energy Efficiency Improvements loan guarantee program; 3) reauthorization and \$500 million in funds over 10 years for the Renewable Energy Systems and Energy Efficiency Improvements grant program; 4) changing the Biomass Research and Development Act of 2000 to provide \$150 million in funding over 10 years, with a focus on cellulosic ethanol; 5) creation of a Bioenergy and Bioproducts Research Initiative that would allocate \$500 million over 10 years focusing on the cost effectiveness of bioenergy; and 6) \$150 million over 10

years to fund Forest Service research on utilizing woody biomass for energy production.

Next Steps: While Johanns will be on the road promoting USDA's proposals, including an appearance at the NGFA's 111th annual convention on March 19, attention now shifts to the House and Senate Agriculture Committees to respond and continue honing their own farm bill proposals. It is expected that the congressional agriculture committees will resist most if not all of the administration's proposed revisions to the commodity provisions of the farm bill. Further, the administration's proposals are expected to generate opposition for not allocating even more spending on conservation and energy. Early reaction from Congress was focused particularly on the overall funding level, which is considered too low by most farm state legislators. The payment limitations provision was met with positive reactions from many fiscally conservative and Midwest farm state legislators, but southern lawmakers and some national producer groups are strongly opposed.

Bush Begins Push to Renew Trade Promotion Authority

President Bush on Jan. 31 officially launched the administration's efforts to secure congressional approval of legislation that would extend trade promotion authority (TPA) during an address at Federal Hall in New York City.

TPA, which expires on June 30, allows the president to negotiate trade deals that Congress is required to approve or reject, but cannot amend. The president has been operating under the current authority since it narrowly passed Congress in 2000. Prior to TPA's passage at that time, the United States had completed just one bilateral free trade agreement, with few prospects for more. Since that time, Congress has approved nine new trade agreements with three soon to be pending before Congress and five still currently under negotiation.

Most importantly TPA is seen as an absolute necessity for successful completion of the World Trade Organization's multilateral Doha Round negotiations.

The current Congress is believed to be even more tepid in its support of TPA than the last one. House Ways and Means Committee Chairman Rep. Charles Rangel, D-N.Y., and Senate Finance Committee Chairman Sen. Max Baucus, D-Mont., previously have signaled support for a TPA extension, but only with significant caveats protecting labor rights and the environment. Any renewal almost certainly will be linked to improved trade adjustment assistance programs that help workers transition to new jobs in other industries.

House Moves Forward with Funding Long-Term Continuing Resolution

The House this week passed, by a 286-140 vote, a continuing resolution that would fund federal government activities for the remainder of fiscal year 2007, which ends Sept. 30.

Unable to complete all but two of the annual appropriations measures last year, the Republican-led Congress punted and passed a continuing resolution in December that is scheduled to expire on Feb. 15. The newly elected Democratic Congress decided to pursue a path of least resistance by funding a continuing resolution rather than trying to approve the remaining individual spending bills or an even larger omnibus bill that combined the remaining measures.

The House-passed continuing resolution would provide \$463.5 billion for the remainder of fiscal year

2007. The House version would provide increased funding for veteran's health care, Pell education grants, the National Institutes of Health and the global HIV/AIDS programs. The measure also would block a congressional pay raise from taking effect. Republicans were not given opportunities to offer amendments, but opposition was reduced by a general sense that fiscal year 2007 funding needs to be completed and taken off the agenda as soon as possible. As reported in a previous *NGFA Newsletter* the continuing resolution process can have detrimental effects on certain programs and agencies, particularly those slated for a substantial increases due to an identified policy need.

The Senate is scheduled to consider its version of the continuing resolution bill during the week of Feb. 5.





In Memoriam – Donald G. Brouillette

The NGFA was deeply saddened to learn of the death on Jan. 27 of former NGFA President **Donald G. Brouillette**, who was 76.



Brouillette served as the NGFA's top industry officer from 1984-86, after having chaired the Country Elevator Committee from 1978-82. He also served as a member of the NGFA's Board of Directors and as a member and chairman of the Executive Committee. In addition, he was a member of NGFA's Transportation and Commodity Exchange Committees. He also served on the NGFA's Fire and Explosion Research Council,

which spearheaded the industry's efforts in the late 1970s and 1980s to identify and fund practical research to identify the causes and ways to prevent such incidents, thereby saving lives and property. He also served as the top industry officer of the Indiana Grain and Feed Association during his distinguished career.

"Don was an innovative and very popular leader in the grain industry, and brought those same talents and qualities to his dedicated and tireless service with the NGFA," said NGFA President Kendell W. Keith. "He was a deeply caring and giving person, and had a very positive influence on all those fortunate enough to know him. He will be deeply missed and will be remembered with great fondness. We extend our deepest sympathies to his wife, Marilyn, and his wonderful family."

Brouillette began his grain industry career in 1953 after returning to his native Benton County in northwestern Indiana following three years of service in the U.S. Air Force. He went into business with his late father, Frederick Brouillette, and managed what then was the Freeland Park Grain Elevator. After purchasing his father's portion of the business in 1961, he acquired additional grain elevators and in 1973 merged them into Demeter Inc. – named for the Greek goddess of the fruitful

Earth. The company would grow to encompass more than 20 country elevators and grain storage facilities stretching from west central Indiana through northern and eastern Illinois and southern Wisconsin. One of his joys was to see the company passed on to the next generation of his family. His daughter, JoAnn, is partner of Demeter LP, and currently serves on the NGFA's Board of Directors and Executive Committee.

Don Brouillette was extremely active in local and state civic affairs, and received Indiana's highest civilian honor – the Sagamore of the Wabash – in 2001. Among other things, he served on the boards and councils of Hanover College, Purdue National Bank, Bank One-Lafayette, the Indiana Agricultural Leadership Institute, St. Elizabeth Medical Center, Benton Community School Corp., Benton County Catholic School's Educational Trust, Junior Achievement, Purdue University's Agricultural Advisory Council, and as a member of the Agricultural Advisory Committee to former Sen. Dan Quayle, R-Ind., who later became vice president under President George H.W. Bush.

In addition to his wife, Marilyn, and daughter, JoAnn, he is survived by four other children, six grandchildren and six sisters. He was preceded in death by one son, Frederick (Ric) George Brouillette II. In lieu of flowers, memorials may be made to the Benton County Catholic School Educational Trust (107 E. Main Street, Fowler, IN 47944) or the Benton Community Foundation (P.O. Box 351 Fowler, IN 47944).



Calendar

Feb. 13-14, 2007: NGFA Animal Agriculture Committee Meeting
NGFA Library/Conference Room, Washington, D.C.

March 18-20, 2007: NGFA's 111th Annual Convention
Westin St. Francis, San Francisco, Calif.

June 10-11, 2007: NGFA Executive Committee Meeting
Graves 601 Hotel, Minneapolis, Minn.

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.





NGFA Engages CBOT in Further Dialogue on Wheat Futures Contract

On Jan. 26, the NGFA's Risk Management Committee provided additional input on five concepts under consideration as potential changes to the Chicago Board of Trade's (CBOT) wheat futures contract.

During a conference call, NGFA committee members and CBOT officials discussed potential marketplace implications of the changes, and committee members posed several questions to obtain clarification on CBOT concepts under consideration.

While the NGFA has given no formal endorsement or opposition to the five concepts, elements of the call included the following:

- ▶ CBOT officials believe that shifting to shipping certificates as the delivery instrument for the wheat futures contract would result in operational efficiencies for delivery warehouses, particularly more efficient utilization of storage space and transportation resources. They also believe shipping certificates would assist in the process of convergence.
- ▶ An NGFA committee member suggested that the CBOT consider "seasonal" storage rates to reflect higher storage value around harvest time, with rates being reduced to a lower level at some point after harvest. This approach would be consistent with results of the CBOT's wheat study undertaken last fall. CBOT officials said they would give the idea additional study.

- ▶ The CBOT concept of adjusting load-out requirements for warehouses regular for delivery in Toledo, Ohio, is designed to put load-out rates for those warehouses on an equivalent footing with other delivery warehouses. CBOT officials said they will continue to seek input from affected warehouses on the practical considerations of such a change.
- ▶ Generally, there was agreement that reducing vomitoxin requirements from 4 parts per million (p.p.m.) to 3 p.p.m. would bring the contract more in line with the commercial trade and end-user preferences. But there was consensus that further reductions in the vomitoxin limit could introduce significant risk to the load-out elevator.
- ▶ CBOT officials explained that their concept of increasing speculative position limits is designed to provide additional liquidity on the short side of the market by removing speculative limit constraints on speculative traders. They said this could provide balance to index funds and other investors that largely take long-only positions.

The NGFA will remain closely engaged with the CBOT as the five concepts are refined through mid-February. At that time, the CBOT staff intends to finalize its recommendations for consideration by the CBOT Board of Directors at its March meeting.

Tanner to Become New USDA KCCO Director Effective Feb. 18

Steven N. Tanner is scheduled on Feb. 18 to begin his duties as the new director of the Kansas City Commodity Office (KCCO), the operational arm of the U.S. Department of Agriculture's Farm Service Agency. His first day of official duty actually will be Feb. 20, given the federal President's Day holiday.

Among other things, KCCO implements USDA programs and policies related to warehouse examinations, as well as the procurement and transportation of commodities and products for international food assistance and domestic feeding programs, including the school lunch program.

The KCCO director post has been filled by various officials in an acting capacity since the retirement of George Aldaya, who had served as director since August 2000. Tanner is well-known to the NGFA, having served since 1994 in Kansas City as director of the Technical Services Division for USDA's Grain Inspection, Packers and Stockyards Administration. In that capacity, he developed, managed and coordinated the agency's research, technical training and analytical services for grain quality characteristics. Since 1988, he has served as chair of the Codex Alimentarius Commission's Committee on

Cereals, Pulses and Legumes, which is charged with developing science-based international standards for grain and processed grain products. Codex, established in 1962 by the UN's Food and Agriculture Organization and World Health Organization, is responsible for establishing science-based standards and guidance to protect human and animal health while facilitating international trade.

Tanner has been with GIPSA and its predecessor – the Federal Grain Inspection Service – since 1988, having also served as staff assistant to the agency's administrator. He began his USDA career in 1976 as a laboratory manager testing processed grain products for compliance with USDA specifications prior to shipment to foreign countries. He received his undergraduate degree in chemistry and later received a masters in business administration.

In another FSA personnel-related matter, the NGFA understands that the appointment of a new deputy administrator for commodity operations also is near. That position is responsible, among other things, for overseeing USDA's activities concerning the federal warehouse program for grains and other commodities; and the Uniform Grain and Rice Storage Agreement.





FDA, AAFCO Pose Safety Questions about Distiller's Grain Products

Feed regulatory officials from the Food and Drug Administration's Center for Veterinary Medicine (FDA/CVM) and the Office of Indiana State Chemist raised a variety of safety-related questions concerning the production of distiller's grains products and their use as a feed ingredient during a biofuel co-products symposium conducted on Jan. 16 in conjunction with the Association of American Feed Control Officials' (AAFCO) mid-year meeting in Savannah, Ga.

AAFCO is the professional organization of state and federal feed regulatory officials, with which the NGFA interacts extensively.

Speaking on behalf of FDA/CVM, Dr. Linda Benjamin, a chemist with the Office of Surveillance and Compliance, stated that the agency currently is investigating production practices used by ethanol plants that are producing the growing supply of distiller's grains co-products widely used as an ingredient in livestock and poultry feeds, as well as pet foods. Specifically, FDA/CVM noted that processing aids, such as the yeasts, enzymes and antibiotics, used during the ethanol production process potentially could result in residues of these products being present in the resulting distiller's grains, which, depending upon the levels present, could pose feed safety issues.

Regarding the use of antibiotics by ethanol plants, Dr. Benjamin noted that FDA/CVM provided a letter of "no objection" to a drug manufacturer in 1993 to allow the use of virginiamycin with lactose to control the unwanted growth of bacteria during the fermentation process. She also noted that the letter subsequently was revised in 1994 to provide for the use of virginiamycin with dextrose, instead of lactose. But in describing the contents of the letter, she said that FDA/CVM authorized the distiller's grains industry to use virginiamycin with dextrose when the antibiotic: 1) is added during the fermentation phase; 2) is used at a rate of 2 to 6 parts per million (p.p.m.); and 3) has a maximum residue level of 0.2 to 0.5 p.p.m. in the resulting co-product, with the maximum value dependent upon the addition rate. She also said FDA/CVM based the letter on a safety assessment that assumed a 20 percent maximum inclusion rate of distiller's dried grains with solubles (DDGS) in an animal's diet.

Importantly, Dr. Benjamin stated that the safety assessment upon which the FDA letter of "no objection" was based was **not** conducted using the virginiamycin type A medicated article approved under a new animal drug application (NADA). As such, she said, the FDA/CVM letter does **not** provide for the use of feed-grade virginiamycin during the ethanol-fermentation phase. She also noted that FDA/CVM has not authorized the use of other antibiotics during the fermentation process because of two potential concerns. First, there potentially may be a negative interaction between any residual antibiotic remaining in the co-products after the fermentation process and other antibiotics that may be present in the feed compo-

nents consumed by the animal. Second, potential residues from the unauthorized antibiotic in co-products could degrade to toxic metabolites, adversely affecting the safety of the feed product. Another concern regarding unauthorized antibiotics, the agency said, is that they may result in residues in DDGS being used as feed ingredients that may persist and result in detectable residues in food-producing animals.

Meanwhile, Brett Groves, chief inspector for the Office of Indiana State Chemist and AAFCO's distiller's products investigator, posed safety-related questions about distiller's grains products from the perspective of state feed regulatory officials. Major issues raised by Groves included:

- ▶ **Mycotoxins:** State feed control officials have questions about the inspection and testing programs that ethanol plants have in place to evaluate mycotoxin content in inbound raw corn and outbound distiller's grains products. Several states monitor mycotoxin content in distiller's grains products through testing programs, he noted, since any mycotoxins present in raw corn used during fermentation are magnified by a factor of three in the resulting DDGS co-product.
- ▶ **Sulfur:** The sulfur content in DDGS may be a safety concern if other feed and/or water sources significantly add to the overall sulfur intake of the animal consuming the co-product. Specifically, excessive sulfur intake in ruminants can lead to a fatal condition called polioencephalomalacia (PEM). In response to high sulfur content in groundwater, the South Dakota Department of Agriculture in 2004 revised its state feed rules to require that the label accompanying distiller's grains products and corn gluten feed state the maximum sulfur content in these products. North Dakota currently is considering a similar revision to its state feed rules.
- ▶ **Salt:** Because of the potential variability of salt content in DDGS, some poultry producers, including those in Indiana, have indicated a desire to have the co-product label contain a salt guarantee. As a result, some state feed regulatory officials are questioning whether a salt guarantee should be required on DDGS labels, he noted.
- ▶ **Flow Agents:** He said state feed regulatory officials also are interested in learning more about the ethanol industry's use of flow agents to improve the handling characteristics of DDGS. Specifically, state officials have questions about what types of flow agents are being used, and if product labels of distillers grain products include the identity of the flow agent.

The NGFA is in active discussions with member companies involved in ethanol production, as well as other industry organizations, to appropriately address the safety-related questions being posed by federal and state feed regulatory officials.



NGFA Urges STB to Ease Restrictions that Preclude Ag Shippers from Challenging Excessive Rail Rates

The NGFA on Jan. 31 urged the federal Surface Transportation Board (STB) to provide a realistic mechanism that agricultural shippers can use to challenge excessive rail freight rates.

In testimony presented at a hearing conducted by the agency, NGFA Rail Shipper/Receiver Committee Chairman Dan Mack urged the STB to “do everything within its power to ensure that there is a financially realistic and worthwhile remedy available” to shippers to challenge excessive rail rates, as envisioned by Congress when it enacted the Staggers Rail Act of 1980. “We know of no other (regulatory) proceeding since the Staggers Act was passed that has garnered this much public attention, as it has become clear that current rules make regulatory review of rates beyond the reach of agricultural shippers,” said Mack, vice president, transportation, for CHS, St. Paul, Minn.

STB Vice Chairman W. Douglas Buttrey in his opening statement cited the “Herculean task” that the rate case proceeding has become, and expressed major concerns about shippers having access to meaningful rate relief.

Among other things, the Staggers Act established a legal threshold of 180 percent of variable costs before a freight rate could be challenged by a shipper. Subsequently, Congress passed legislation in 1995 that directed the newly created STB – the successor to the former Interstate Commerce Commission – to develop “simplified guidelines” to govern rate cases that are too expensive, given the value of the case involved, for shippers to utilize a full “stand-alone” cost methodology normally required when challenging a rate.

The NGFA noted that based upon a review of agricultural shipments in 2005, the most recent year for which data were available, only 7.5 percent of agricultural commodities were shipped at rates exceeding 300 percent of the railroad’s variable costs. However, it said, “tens of thousands” of carloads of raw agricultural commodities were shipped at rates exceeding 180 percent of variable cost, “and the number is increasing rapidly.”

The STB hearing was part of its ongoing rulemaking [*STB Ex Parte No. 646 (Sub. No. 1)*] initiated July 28 under which it proposed to adopt “simplified guidelines” governing rate complaints. The agency proposed to retain three methodologies for categorizing rate cases under its “simplified guidelines,” with eligibility criteria determined based upon the “maximum value of the case.” The STB proposed that the most expeditious process – which it dubbed the “three-benchmark” method under which it would issue a decision within nine months (270 days) after a case is filed (not counting

subsequent judicial appeals) – would apply to shipments where the maximum value of the case is \$200,000 or less.

The NGFA strongly urged the STB to increase this \$200,000 limit, noting that it is overly restrictive and would make regulatory relief to challenge unreasonable rates “virtually non-existent” for all but a few facilities shipping “miniscule” volumes of grain and grain products.

“We believe that the eligibility standards for this ‘three-benchmark’ method may be the most significant single matter” to be addressed by the STB in determining whether shippers have access to meaningful relief to challenge an unreasonable rail rate, the NGFA’s Mack said. He noted that the U.S. Department of Agriculture and U.S. Department of Transportation, in statements submitted to the STB, also had criticized the \$200,000 limit for being too restrictive.

The NGFA noted that the lowest estimated cost for bringing a rate challenge even under this simplified, three-benchmark method would amount to \$115,000, which does not include the internal costs companies would incur in preparing a case. Adding legal fees to this figure “virtually assures that the theoretical \$200,000 maximum payoff from such litigation could not reasonably be expected to cover the expense of bringing a case,” Mack testified.

But the NGFA noted that if improvements were made, the “three-benchmark” method would be “much more likely to be useful to agricultural shippers” than a second method – dubbed “simplified stand-alone-cost” procedures – that the STB proposed to apply if the maximum value of a rate case was between \$200,000 and \$3.5 million. Mack said cost experts estimate that bringing a simplified stand-alone-cost case would be at least \$1 million, and likely much greater, making it “very unlikely” that any agricultural shipper would ever utilize that method.

Under the STB proposal, shippers whose maximum value of the case exceeded \$3.5 million would not qualify for the simplified guidelines under the STB’s original proposal, and instead would need to bring any rate challenges under the full “stand-alone cost” methodology. Both railroad representatives and shipper cost experts said during the hearing that the cost for bringing a full “stand-alone” cost case would exceed \$3.5 million each, with a shipper cost expert citing one case in which a shipper spent more than \$4.5 million on such a case.

The NGFA said it did not anticipate a rash of rate cases being filed with the STB if the agency provided improved access to meaningful rate relief, since the costs of bring a case still would be substantial.





STB Rules Rail Fuel Surcharges Based on Percentage of Rate Illegal

The federal Surface Transportation Board's (STB) Jan. 26 decision on rail fuel surcharges yielded mixed results for shippers.

On the positive side, the STB ruled that railroads that compute fuel surcharges as a percentage of the base freight rate are engaging in an "unreasonable practice" under federal law. Further, the STB directed that carriers adjust their fuel surcharge programs, generally within 90 days, to a mileage-based or other approach more closely correlated to the actual fuel costs incurred on specific shipments. "...[I]f a carrier chooses to use a fuel surcharge program, it must be based upon attributes of a movement that directly affect the amount of fuel consumed," the STB decision stated. "In other words, there must be a reasonable nexus to fuel consumption." The agency said it would consider requests from carriers for additional time to make adjustments in their fuel surcharge programs, but said it would require that they request an extension and "be prepared" to justify it.

But on the negative side, the STB decision is **not retroactive**, absolving carriers of liability for past fuel surcharge practices. The agency said that the decision can be used prospectively by shippers and receivers to "support **future complaints** challenging individual rate-based surcharges...." [Emphasis added.]

The decision, which largely upheld a preliminary ruling issued by the agency last August, was the culmination of a major effort by the NGFA and other shipper organizations that participated extensively in the STB rulemaking on this matter. The NGFA for more than two years has been urging rail carriers to adopt more equitable approaches for assessing rail fuel surcharges to reflect the increased fuel costs actually incurred on individual shipments. The STB's decision potentially means six of the seven Class I rail carrier fuel surcharge programs will be subjected to substantial changes. The sole exception likely is BNSF Railway's fuel surcharge programs for grain and coal, which already utilize a mileage-based approach that attempts to reflect the increased fuel costs incurred on shipments. All other Class I rail carriers compute a percentage surcharge index that is applied to the rail freight rate, which the STB decision found to be an "unreasonable practice."

The shipper groups' position on the inequity of fuel surcharges based on a percentage of the freight rate was reflected in the STB's decision, when the agency said: "Because railroads rely on differential pricing..., a surcharge that is tied to the level of the base rate, rather than to fuel consumption for the movement to which the surcharge is applied, cannot fairly be described as merely a cost-recovery mechanism. Rather, a fuel surcharge program that increases all rates

by a set percentage stands virtually no prospect of reflecting the actual increase in fuel costs for handling the particular traffic to which the surcharge is applied....For carriers to continue to apply fuel surcharge programs that are calculated as a percentage of the base rate – when practical alternatives are available – would permit them to continue to mislead their customers and would be unfair." Further, the STB rebuked the contention of rail carriers that challenged its authority to regulate fuel surcharge programs on grounds that such surcharges were a component of the freight rate. "...[W]e are not limiting the total amount that a rail carrier can charge for providing rail transportation through some combination of base rates and surcharges," the STB said in its decision. "Rather, we are only addressing the manner in which railroads apply what they label a fuel surcharge."

This latter point, however, raises an important issue for rail shippers and receivers. **While requiring carriers to shift their fuel surcharge formulas to a mileage- or similar approach that approximates actual fuel costs for individual shipments, the STB decision does not prohibit carriers from responding by shifting some of their fuel costs to their base freight rates, much like the Norfolk Southern Railway did last year. Thus, it will be extremely important for grain, feed and processing companies that use rail service to be vigilant as to how their carriers respond to this ruling in the next few months, and to carefully consider language related to transportation costs when entering into contractual commitments for grain, feed and grain products.**

Here are several other important aspects of the STB's 15-page decision, which members receiving the *NGFA Newsletter* electronically may access by [clicking here](#):

- ▶ **Double Dipping:** The STB ruled that the railroads' practice of "double-dipping" – applying to the same shipments both a fuel surcharge and a rate increase based on a cost index that includes a fuel-cost component [such as the railroad cost adjustment factor (RCFA)] – also is an unreasonable practice and directed that railroads stop doing it.
- ▶ **Mandatory Reporting to STB:** The STB retained its proposed requirement that Class I railroads submit monthly reports on their fuel expenditures and consumption to allow the agency to "better monitor" the industry's fuel surcharge practices. However, it said it would not require carriers to submit ton-mile revenue information or how it shares fuel surcharge revenues with Class II and III carriers. In a proposed rule issued today (Feb. 1), the agency said it is seeking comments by April 2 on a proposal to require

(Continued on page 10)





carriers to submit a monthly report containing the following information: 1) total monthly fuel cost; 2) gallons of fuel consumed during the month; 3) increased or decreased cost of fuel over the previous month; and 4) total monthly revenue from fuel surcharges. The STB proposes to require the first report 90 days after publication of a final rule.

► **Fuel Benchmark:** The STB decision did rescind its proposal that carriers utilize a single, uniform fuel index – the U.S. Department of Energy’s Energy Information Agency’s (EIA) “U.S. No. 2 diesel retail sales by all sellers” index – to measure changes in fuel costs. The majority of STB commissioners said that while they “encourage” carriers to utilize the aforementioned index – and stated that doing so would give carriers a “safe harbor” that they could rely upon – they did not want to preclude the agency from responding “nimble” if a superior index is identified in the future. However, they cautioned carriers that any alternative index they use could be challenged as unreasonable on a case-by-case basis, and as such should “meet or exceed

the standards of accuracy, transparency, availability and neutrality of the EIA index, should closely correlate with other indices, and should reflect fuel price changes quickly.”

► **Exempt and Contract Traffic:** In another change from its preliminary decision, the STB said it will not impose the surcharge requirements on traffic that either is exempt from STB regulation or covered under contracts with carriers. Instead, the decision applies only to regulated, common-carrier traffic, the agency said. But the STB warned that “if a railroad enters into a contract that ignores the potential for significant increases in fuel costs, it cannot remedy that situation by engaging in an unreasonable practice as to other traffic over which we do have regulatory authority. Railroads would be well-advised to focus on improving their contracts to clearly allocate the costs of contingencies, such as fluctuating fuel costs, rather than attempting to pass on the costs of ineffective contract drafting to non-contract customers.”

STB Upholds BNSF Charges Against Private Car Owners, Lessors

The federal Surface Transportation Board (STB) on Jan. 24 issued a decision dismissing a complaint filed by the North American Freight Car Association and 10 of its members against the BNSF Railway Co. challenging the carrier’s right to impose storage and demurrage charges on empty shipper-supplied rail cars held on BNSF property following the expiration of a “free-time” period.

The case involved the BNSF’s publication in July 2001 of storage charges for empty private industrial cars (generally tank cars) and demurrage charges for empty private covered hopper cars used to transport grain, grain products and sugar. For the covered hopper cars, private car owners on average were provided two days to accept empty cars after constructive placement under the BNSF assessment.

Disturbingly, the STB ruled against each of the arguments presented by the North American Freight Car Association, including its contention that the BNSF should not be allowed to apply the charges if they were the result of “erratic service.” Instead, the STB accepted BNSF’s argument that “service variability is a necessary part of rail service to and from many shipper locations that cannot support scheduled unit-train service.” Wrote the STB: “In light of the complexity and variety of many private car movements, it would be inappropriate to hold that a railroad’s tariffs are unlawful because they do not penalize the railroad for service variability unrelated to fault.” Further, the STB said the parties bringing the complaint had not explained adequately “why they are not prepared to receive their empty cars before charges accrue.” As a result, the agency concluded that the “complainants have

shown no basis for us to find that the lack of a provision for service variability unrelated to fault constitutes an unreasonable practice or requires an adjustment to the free time allowed before charges accrue.”

The agency also roundly rejected the private freight car organization’s arguments that the BNSF charges constitute an unreasonable practice on the following grounds:

- The BNSF has market power over affected shippers. To the contrary, the STB ruled, “it is not an abuse of market power for BNSF to seek to recover from private car suppliers the costs associated with storing those suppliers’ empty cars on its system; to the contrary, it is consistent with the individual pricing principles advanced by Congress in the Staggers Act.”
 - The BNSF, by imposing the charges, wrongly blames private car owners and lessors for rail congestion. The STB said that BNSF did not need to justify its new practice of charging for empty private cars before imposing the charges, and that those bringing the challenge bore the burden of proof that the charges were unreasonable.
 - The BNSF charges, in effect, force shippers to add industrial track space to store private cars. Instead, the STB found that the charges “give incentives to private car owners to make more efficient use of their cars.”
 - The BNSF fees violate its car-service obligations. To the contrary, the STB said since there is “nothing inherently
- (Continued on page 11)*



wrong with a carrier's determination to assess charges when private parties use its track longer than necessary, there is no basis for finding that the practice, by itself, violates BNSF's car-service obligations."

But the STB went further by stating that under the Staggers Rail Act, "railroads are encouraged to independently price their services so as to eliminate cross-subsidies and improve track and equipment utilization....Recovering the cost of empty private car

storage from the suppliers of those cars advances several aspects of the (national) rail transportation policy, including allowing the demand for service to establish rates, fostering sound economic conditions in transportation, encouraging efficient management of railroads and encouraging individualized ratemaking."

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the STB decision.

DHS Issues Rule on Requirements for TWIC Biometric Security Cards

The U.S. Department of Homeland Security (DHS) on Jan. 25 published a final rule under which it will proceed to require that most merchant mariners and employees working at U.S. maritime facilities—including grain elevators located at U.S. ports and inland waterways—undergo a security threat assessment and receive biometric credentials before being granted unescorted access to secure areas of vessels and maritime facilities.

The biometric credentials—known as transportation worker identification credential (TWIC) cards—will be required by no later than Sept. 25, 2008 for all employees who wish to be granted unescorted access to vessels or secure areas at regulated maritime facilities. DHS said the requirement will be phased in for affected facilities at each U.S. Coast Guard captain of the port zone over the next 20 months. The specific implementation date for each zone will be announced at least 90 days in advance in a notice published in the *Federal Register*, DHS said.

Importantly, though, DHS said owners and operators of affected facilities—at least for now—will **not** be required to purchase costly TWIC card readers; that issue will be addressed in a future rulemaking subject to public comment. DHS said it was this card-reader requirement that generated the most intense opposition among the approximately 1,770 comments—including a joint statement from the NGFA and North American Export Grain Association—submitted to the agency in response to its May 2006 proposal. Instead, for the time being, Coast Guard personnel will institute periodic, unannounced checks using handheld readers to confirm the identity of facility employees possessing TWIC cards.

DHS was required to issue regulations implementing transportation security cards to prevent individuals from entering vessels and secure areas of regulated port

facilities under a 2002 law passed by Congress. The agency said it had considered delaying implementation of "this entire project" in response to objections raised in public comments, but determined that the "security risk associated with such a delay is not acceptable."

Under the final regulations, persons working at Coast Guard-regulated port or inland waterway facilities who do not possess TWIC cards will be required to be accompanied side-by-side by a TWIC-carrying escort before being allowed access to secure areas of the facility. DHS said the biometric TWIC cards will provide an "added layer of security" to check an individual's criminal history and immigration status, something it said is not being done currently under the Coast Guard's procedures.

Here are several other important aspects of the DHS final rule:

- ◆ Affected employees will be required to fill out a Transportation Security Administration security threat assessment and provide biographic and biometric information when applying for a TWIC card.
- ◆ The cost of the TWIC card will range from \$107 to \$159 per covered employee, and will be valid for five years. DHS is seeking comment on whether to increase to \$60 from the originally proposed \$36 the fee charged to replace a lost, stolen or damaged TWIC card.
- ◆ Newly hired covered employees will be allowed to access secure areas of a facility for up to 30 consecutive days, provided they have applied for the TWIC card and are accompanied by another TWIC-credentialed employee. The Coast Guard is allowed to extend the access for new hires for an additional 30 days if there is a delay in processing the TWIC application.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

February Frenzy Lives Up to Its Name

...And Its Only Just Begun!...

Two weeks ago, the NGFA's annual *February Frenzy* membership recruiting promotion was announced.

Effective on that date, all sponsors of a new NGFA member qualify for a Grand Prize Drawing for a fabulous **Windy City Weekend!** That prize features:

- ▶ airfare for two to Chicago;
- ▶ two nights at the luxurious Talbott Hotel, provided courtesy of GATX Rail; and
- ▶ dinner for two at Ditka's Restaurant, also provided courtesy of GATX Rail.

Our "rolling start" to *February Frenzy* already has paid big dividends, generating 11 new member companies! And 10 hard-working recruiters (one has signed up two new member firms) have gotten their names in the hat for the Windy City Weekend prize.

The Challenge: All NGFA members are asked to set aside a small amount of time for membership recruiting during Febru-

ary. Please make best efforts to contact two potential members prospects. Invite them to join and give them a couple of good reasons to do so. Then, you can turn the job over to the NGFA staff! Send your prospects' contact information to NGFA Director of Marketing/Treasurer Todd Kemp at tkemp@ngfa.org or call him at 202-289-0873, extension 16, and they will receive an information kit and a follow-up telephone call. It's easy!

The Goal: 20 more new member firms by the close of business on Feb. 28!

Year-to-Date Membership Statistics:

- ▶ New Members: 56
- ▶ Non-Renewals: 37 (includes mergers and "out of business")

We are a dozen new members ahead of last year's pace, with a lot of recruiting activity underway! Together, we can make it happen!



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