



NGFA

Newsletter[®]

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USDA Still Clearing Federal Register Notice Containing Additional Details on Post-Katrina Initiatives Designed to Ease Grain Transportation

As the *NGFA Newsletter* went to press tonight (Sept. 29), the U.S. Department of Agriculture's Farm Service Agency still was in the process of obtaining final clearance on a *Federal Register* notice that is to provide additional details concerning initiatives that it said are designed to relieve congestion on the grain transportation system, particularly barge transportation, in the aftermath of Hurricane Katrina.

Once the *Federal Register* notice becomes available, the NGFA will issue an *NGFA E-Alert* publication via e-mail to alert members about additional specifics of the initiatives. If you are not receiving *NGFA E-Alert* and wish to, please send your contact information and e-mail address to Rachel Duran at rduran@ngfa.org, or call 202-289-0873.

Earlier this week, USDA announced it was extending the previously set deadline of Sept. 28 for submitting offers in response to two of those initiatives: 1) Providing "alternative storage" for up to 50 million bushels of bulk grain to ease storage and transportation congestion in areas dependent for grain movement on the Mississippi River/Center Gulf region; and 2) transportation assistance to relocate and discharge barges containing "damaged" corn from the Mississippi/Center Gulf region in an effort to make barges available for transporting newly harvested commodities.

The NGFA has learned that the *Federal Register* notice most likely will be published sometime during the period of Oct. 3-5, and will require that offers be submitted within five calendar days thereafter for each of the two aforementioned initiatives, as well as a third initiative that is to provide transportation differentials to redirect bulk grain and soybeans to specific regions, such as the Great Lakes. Offers are to be submitted by mail, fax or e-mail to: Rick Mashek, P.O. Box 419205, Stop 8758, Kansas City, Mo., 64141-6205; 816-823-1805 (fax); richard.mashek@kcc.usda.gov (e-mail). Previously submitted offers may be rescinded, revised or resubmitted prior to the newly extended deadline.

Some additional detail was provided in a notice to the trade [*BCD-113*] issued on Sept. 22 on each of the initiatives:

► **Barge Movements of "Damaged" Corn:** Prior to announcing the initiative in a press release on Sept. 20, USDA already had entered into agreements to provide transportation assistance to relocate and discharge at least 140 barges (approximately 7 million bushels) of "damaged" corn from the Mississippi/Center Gulf region. USDA told the NGFA that its intent is that these barges be moved north and unloaded, and that this initiative is designed to accelerate barge availability for "areas under harvest pressure."

(Continued on page 7)

USDA Announces Reenrollment, Extensions of CRP Contracts

Secretary of Agriculture Mike Johanns on Sept. 28 announced procedures under which approximately 28.5 million acres in Conservation Reserve Program (CRP) contracts expiring in 2007 through 2010 will be allowed to be reenrolled or extended.

Under the plan, all acres enrolled in expiring CRP contracts will be evaluated based upon their Environmental Benefits Index (EBI) percentile scores **in effect at the time the acres were enrolled in the CRP**. The percentile scores will be grouped into one of five tiers. Acres with an EBI ranking of 80 to 100 percent will be eligible for reenrollment under new contracts of 10 to 15 years at payment rates that will be "updated" by USDA's Farm Service Agency (FSA) over the next few months "to better reflect local market rates for cropland."

The remainder of CRP acres scheduled to expire between 2007 and 2010 will be eligible for CRP contract extensions ranging from two to five years at their existing CRP rental rates based upon the following EBI rankings:

- Five-year extensions for acres with an EBI Ranking of 61-80 percent;
- Four-year extensions for acres with an EBI Ranking of 41-60 percent;
- Three-year extensions for acres with an EBI ranking of 21-40 percent; and
- Two-year extensions for acres with an EBI ranking of 0-20 percent.

The CRP contract renewal and extension process is scheduled to begin next spring, when FSA is to contact in writing

(Continued on page 8)



Congress Approves Reauthorization of U.S. Grain Standards Act

...Ag Committee Chairs Voice Support for GIPSA Using Authority to Utilize Independent, Third-Party Contractors for Exports...

The House on Sept. 28 approved legislation (S. 1752) reauthorizing for 10 years the U.S. Grain Standards Act, the law authorizing the official U.S. grain inspection and weighing system and related programs administered by the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA).

The Senate previously had approved an identical bill on Sept. 22, which means that the legislation will move on to President Bush to be signed into law.

The legislation, which reflects the Bush administration's proposal, does not expressly include the legislative language sought by the NGFA and the North American Export Grain Association (NAEGA) authorizing GIPSA to delegate to independent, third-party entities the responsibility to perform official inspection and weighing at U.S. export grain facilities under 100 percent on-site USDA supervision.

But importantly, the legislative history of the bill, as reflected in the *Congressional Record*, includes a Sept. 21 letter from Secretary of Agriculture Mike Johanns stating unequivocally that USDA already has legal authority "to contract with a person to provide export grain inspection and weighing services at export port locations." Further, the record includes affirmative statements by both Senate Agriculture Committee Chairman Saxby Chambliss, R-Ga., and House Agriculture Committee Chairman Bob Goodlatte, R-Va., stating that they "fully expect USDA to use this authority in a manner that improves competitiveness of the U.S. grain industry, maintains the integrity of the federal grain inspection system and provides benefits to (GIPSA) employees who may be impacted. Further, the two chairman specifically cite testimony presented by the NGFA and NAEGA calling on USDA to utilize independent, third-party entities to provide inspection and weighing activities at export facilities with 100 percent USDA oversight, using USDA-approved standards and procedures. They also note that the testimony was supported by a wide array of major farm and commodity organizations (including the American Farm Bureau Federation, American Soybean Association, National

Association of Wheat Growers, National Corn Growers Association and National Grain Sorghum Producers), as well as the American Association of Grain Inspection and Weighing Agencies.

Johanns' letter, which was in response to questions posed in a letter from Sen. Chambliss and Rep. Goodlatte, noted that GIPSA has the authority to "supplement the current federal workforce if the workload demand exceeded the capability of current staffing. Johanns also said GIPSA had considered using the authority to address future attrition within the agency, and to respond to expanded demand for service following the decision of several delegated state agencies to cancel their agreements with GIPSA to perform official inspection and weighing service.

Johanns further stated that he envisioned using this authority, in accordance with federal contracting requirements, "to contract with person(s) (defined as any individual, partnership, corporation, association or other business entity) to provide inspection and weighing services to the export grain industry. The person(s) awarded the contract would adhere to all applicable provisions of the (U.S. Grain Standards) Act to ensure the integrity of the official inspection system during the delivery of services to the export grain industry." He also indicated GIPSA would comply with White House Office of Management and Budget rules that apply when replacing or displacing federal inspectors.

The NGFA and NAEGA appreciate the strong leadership of Chairmen Chambliss and Goodlatte in working with Secretary Johanns to clarify that USDA's existing legal authority is sufficient to enable the agency to continue to pursue initiatives to improve efficiencies and better manage the agency's costs, while fully preserving the integrity of the official U.S. grain inspection and weighing system. The two organizations pledge to continuing working with USDA to implement such initiatives, and look forward to the positive contribution such changes will make in maintaining the competitiveness of U.S. grain and oilseed exports.



Senate Approves Fiscal 2006 Ag Appropriations Bill

The Senate on Sept. 22 approved by a 97-2 vote a \$100.7 billion agricultural appropriations bill to fund the operations of the U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA) for fiscal year 2006, which begins Oct. 1.

The bill includes two BSE-related amendments. One, spearheaded by Sen. Ben Nelson, D-Neb., and approved by a 72-26 vote, would prohibit USDA from expending funds to pursue a rulemaking that would open the U.S. market to imports of Japanese beef unless and until the president certifies that Japan has reopened its market to U.S. beef. In a related action, the Senate also adopted a nonbinding resolution sponsored by Sen. Wayne Allard, D-Colo., that urges the U.S. government "not to permit the importation into the United States of beef from Japan until the government of Japan takes appropriate actions to permit the importation into Japan of beef from the United States."

A second amendment, sponsored by Sen. Daniel Akaka, D-Hawaii, would ban USDA from using funds to approve for human consumption any cattle, sheep, swine, goats, horses, mules or other equine that are unable to walk unassisted when presented for slaughter or rendering, or for use in packing and meat-canning operations. In essence, this amendment would codify – but expand – USDA's existing interim final rule that prohibits the use of nonambulatory (downer) ruminants in human food. Neither of these amendments are included in

\$100.3 billion House-passed version (H.R. 2744) of the appropriations bill approved in early June.

The Senate version of the appropriations bill sidestepped two other contentious issues that will be the focus of a joint House-Senate conference committee to resolve differences between the two measures. The House bill includes a provision that would delay for another year – until October 2006 – implementation of mandatory country-of-origin labeling for meat products sold in the United States. The House-passed version also includes a provision that would prohibit FDA from enforcing restrictions on importing prescription drugs from Canada and other countries where they are sold at a lower price. The White House has said the prescription drug language could trigger a presidential veto.

Total spending in the Senate bill would increase by more than 18 percent compared to fiscal 2005, with most of the increase resulting from mandatory spending on farm programs and food stamps. But the Senate version includes \$17.3 billion in discretionary spending – nearly \$500 million more than the \$16.8 billion in the House version – for such things as research, Farm Service Agency programs, rural development and emergency food aid. Still additional spending on agriculture is scheduled to be approved in October in the form of a disaster-assistance bill for weather-related crop and livestock losses caused by Hurricanes Katrina and Rita, and the drought in the eastern Corn Belt.

Supporters Press for Inland Waterways Bill Passage

Industry and congressional supporters of the legislation (S. 728) that would authorize the construction of lock-and-dam improvements on the Upper Mississippi and Illinois Waterway are pressing the Senate leadership to bring the measure to the floor as soon as possible.

The legislation has been approved by the Senate Committee on Environment and Public Works, as well as by the full House.

The lock-and-dam projects are included in a water resources development bill that generally is approved every two years. It also includes other authorizations for locks and dam construction and major rehabilitations; port projects; flood-control projects; and beach renourishment. The bill also would authorize some of the largest and unprecedented ecosystem restoration efforts in the world, such as Louisiana Coastal Restoration and the Everglades. It also would codify reforms implemented by the U.S. Army Corps of Engineers concerning its studies and recommendations.

A group of nearly 300 associations and companies with an interest in the legislation, including the NGFA, on Sept. 21 sent

a letter to the Senate leadership noting that it has been five years since such legislation was last passed, leaving many projects in limbo or languishing.

In addition to the industry effort, senators supporting the legislation sent a letter to leadership urging that Senate floor time be granted to consider the measure before the current congressional session ends later this year. The Senate letter stated, "this legislation is needed to support our nation's vital waterways and ports – key components of our national transportation system and our economy." In addition, the senators cited the importance of the legislation given the lessons learned from Hurricane Katrina: "Hurricane Katrina taught the nation a tragic lesson: maintain and improve our aging flood control and water resources infrastructure or risk the ruin and destruction of our communities. This bill moves us in the right direction toward addressing and preventing these grave threats to public safety."

Senate passage is the last major hurdle for the bill. If passed, it is expected to be quickly reconciled with the House version and sent on to the president to be signed into law.



FDA Expected to Propose BSE-Prevention Feed Rule Changes in October

The NGFA has learned that the Food and Drug Administration on Sept. 21 submitted its proposal to amend its 1997 feed regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE) to the White House Office of Management and Budget for final clearance.

OMB's review of the FDA proposed rule is expected to be relatively brief, since it has been involved in extensive interaction with the agency on the matter for several months. If that holds true, FDA's proposal could be published in the *Federal Register* by early October. FDA officials previously have indicated that a 75-day comment period will be provided once the proposal is published.

The NGFA continues to understand that the proposal will call for a ban on the use of brain and spinal cord from cattle 30 months or older from all animal feed, as well as banning the

use of all dead stock of any age from all feed. If FDA does propose a ban on brain and spinal cord from cattle 30 months or older, it would be consistent with the NGFA's policy recommendations submitted in response to the agency's July 2004 advance notice of proposed rulemaking seeking comments on various BSE-prevention policy options. The NGFA's comments pointed out that the best currently available science and risk assessments show that removal of brain and spinal cord from cattle 30 months or older would further reduce, by up to 90 percent, what already is believed to be an extremely low level of BSE infectivity that potentially may be circulating in the U.S. and Canadian cattle herds, and would do so at a fraction of the environmental and economic impact that would result from a more expansive ban.

It also is believed that such a policy would have the best chance of ensuring a continued harmonization of BSE-prevention feed rules between the United States and Canada.

NGFA Cooperates with Texas A&M in Offering Training on Voluntary HACCP

The NGFA is cooperating with Texas A&M University in offering a HACCP training workshop course for feed manufacturers on Jan. 3-5, 2006 at College Station, Texas.

The training is designed to equip feed manufacturers, ingredient suppliers and allied industry personnel with the skills necessary to build and implement a HACCP plan at their respective facilities. The workshop particularly is appropriate for personnel responsible for quality assurance, production, ingredient purchasing and receiving, nutrition and engineering at feed manufacturing and ingredient operations. The workshop is an interactive experience, in which participants work as teams to develop a HACCP plan for feed manufacturing operations. The workshop is accredited by the International HACCP Alliance. Dr. Tim Herrman, director of the Office of the Texas State Chemist and professor at Texas A&M, will serve as the lead instructor. Participants receive certificates of attendance and have their names included in an international registry.

Registration fee is \$450, and includes comprehensive written training materials, lunches and breaks. Click here for information on the workshop and a registration form. Or check the NGFA's website at www.ngfa.org.

As an information resource for the feed industry, the NGFA has developed a comprehensive guide to assist feed manufacturers in understanding the principles and

concepts that comprise a HACCP approach to feed quality assurance. This copyrighted, 50-page booklet contains:

- ▶ An overview of existing laws and regulations that apply to the animal feed and feed ingredient sectors.
- ▶ Current initiatives underway within the Food and Drug Administration and the Association of American Feed Control Officials with respect to feed quality assurance.
- ▶ A discussion of the background of HACCP and its seven principles.
- ▶ The steps involved in implementing a HACCP approach in feed mills.
- ▶ A discussion of what's involved in HACCP certification, as well as references to additional resources.

The NGFA's publication also contains process flow diagrams for each step of the feed manufacturing process – purchasing, order entry, product receiving, grinding, mixing, pelleting, bagging, warehousing and delivery — each of which is a component of a HACCP plan. It also includes sample Standard Operating Procedures for mills; a hazard-evaluation grid; sample product description forms and templates; sample hazard critical control point procedure forms and templates; and a critical control point procedure decision tree. Contact NGFA director of feed services Dave Fairfield at dfairfield@worldnet.att.net or (712) 243-4035 for more information.





Canada Launches Trade Investigation into U.S. Corn Imports

The Canada Border Services Agency (CBSA) on Sept. 16 announced it has launched an investigation into the “alleged injurious dumping and subsidizing” of U.S. corn and corn products (excluding seed corn, sweet corn and popcorn).

There are reports that punitive duties could reach as high as \$1 per bushel if the Canadian inquiry ultimately rules against the United States.

It is important for U.S. exporters of corn to Canada to consider responding to requests from the CBSA for information concerning the “injury” phase of the investigation. See the nearby article for more information.

The investigation was initiated in response to a complaint filed by three corn producer organizations – from Ontario, Quebec and Manitoba – that alleged U.S. corn subsidies are “causing price erosion, price suppression, decreased incomes, increased burdens on government support programs” and reduced planted acreage. The Canadian government said it had conducted an “extensive analysis and evaluation” of research data and information provided by the Canadian producer organizations, and had found “sufficient evidence of dumping, subsidization and injury to warrant an investigation.”

U.S. corn subject to the investigation includes whole kernel field corn and corn that has been further processed “in a limited way by cracking, crushing, rolling, grinding or flaking.” The category includes ground corn, such as corn flour; corn grits; corn meal; corn bran; sharps and other residues; corn that is hulled, sliced or kibbled; corn “mixed with other grains and oilseed (such as millet) which can be separated from the grain

corn after importation”; and white dent corn.

The CBSA said it will issue a decision in the case by Dec. 15.

Meanwhile, during the CBSA’s investigation, a separate entity – the Canadian International Trade Tribunal – will begin a preliminary inquiry to determine whether U.S. corn imports have injured Canadian producers. The industry sectors that import U.S. corn into Canada will be submitting a petition in an attempt to show that such imports have not economically harmed Canadian corn producers. Likewise, the U.S. corn industry is preparing a petition and economic analysis to be submitted by Oct. 19 that documents that U.S. corn exports to Canada do not injure Canadian producers. **This “injury phase” represents the best opportunity during the investigation to have the complaint rejected.** The Canadian tribunal’s decision is to be issued by Nov. 15. As part of its deliberations, the tribunal has the option to decide that anti-dumping or countervailing duties can be applied against U.S. corn retroactive to Sept. 16 if it determines there is “a large increase in harmful imports.”

The specific reasons for the investigation are to be published on the agency’s website on or about Oct. 3, and will be available at that time by clicking here.

U.S. Secretary of Agriculture Mike Johanns and U.S. Trade Representative Rob Portman responded immediately by issuing a joint statement saying they were “very disappointed” with the Canadian decision, and stating they did not believe sufficient evidence had been presented to warrant an investigation. They pledged the U.S. government would be “actively engaged” in the

(Continued on page 6)

U.S. Corn Exporters Encouraged to Reply to Information Request during ‘Injury’ Phase of Canadian Investigation

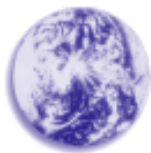
While doing so is a business decision each company needs to make, U.S. corn exporters are being encouraged to consider responding to surveys from the Canada Border Services Agency requesting information during the “injury” phase of its investigation into whether U.S. corn exports to Canada are unfairly subsidized or dumped.

In a Sept. 16 letter, the Canadian agency requested the following information within a week from companies that may have exported U.S. corn to Canada: 1) the full name and mailing address of the company; 2) contact information (including the company’s telephone and fax numbers, as well as the e-mail address of the company’s designated contact person for the investigation; 3) the type of business the company is engaged in (*e.g., producer, distributor, country elevator, etc.*); and 4) the name and contact information for the

legal counsel if one has been retained by the company to represent its interests in the investigation.

In addition, some companies that account for the majority of U.S. corn exports to Canada will receive a lengthy survey from CBSA in the form of a “request for information.” While burdensome, it is extremely important for firms receiving this survey to consider completing it. That’s because if it is determined that U.S. corn has been “dumped” and provisional duties become applicable, the level of duties applied to exports by firms receiving the survey will be based upon the weighted average margins of dumping for the sampled exporters that respond. Those not responding will be assessed what is termed the “all-others rate,” which is the **highest possible level** of duty applied.





"Trade Investigation" continued from page 5

countervailing duty portion of the investigation to "defend the interests of U.S. corn producers and exporters." They also noted that Canada had conducted two prior investigations of U.S. corn imports, in which the Canadian government revoked a countervailing-duty order in 1992 after an adverse ruling by an international trade panel. A finding of "no injury" also was rendered in a second investigation in 2001.

Canadian government officials maintained that the investigation is not linked to the bitterly contested softwood lumber dispute that has embroiled the two countries. A World Trade

Organization panel recently found in favor of a 2004 U.S. International Trade Commission (ITC) ruling that imposed countervailing duties on Canadian softwood lumber exports to the United States. While the WTO's written decision won't be issued until later this year, it contradicts a North American Free Trade Agreement panel ruling that dismissed the ITC's claims that Canada's softwood lumber exports are subsidized illegally. Canada maintains that the NAFTA ruling supercedes the WTO finding, and is taking the case to the U.S. Court of International Trade. Canada has said it intends to push for enforcement of the binding NAFTA ruling.

Codex Biotech Task Force to Pursue Safety Assessment Projects on Transgenic Animals, Nutritionally Enhanced Plants

The Codex Alimentarius Commission's newly rechartered *ad hoc* Intergovernmental Task Force on Foods Derived from Biotechnology initially decided to pursue the development of a framework for assessing the safety of transgenic animals and nutritionally enhanced plants during its Sept. 19-22 meeting in Chiba, Japan.

Codex, established in 1963 by the United Nations, develops science-based international food safety standards designed to protect human health, while facilitating trade in food, feed and agricultural products.

The project to develop a science-based framework for assessing the safety of transgenic animals is to be chaired by Australia and host country Japan, while the project to assess the safety of nutritionally enhanced plants is to be chaired by Canada. The United States will be a member of work groups assisting with both projects. Work on both projects is to begin early next spring.

The Codex task force rejected for the time being a proposal from the United States and several other countries to develop a science-based approach that countries could use to assess the safety of inadvertent, low levels (adventitious presence) of biotechnology-enhanced commodities or ingredients that might be present in commodity shipments or grain/oilseed-based products. The task force also rejected proposals to develop safety-assessment protocols for biotech-enhanced plants containing "stacked genes," as well projects on food produced from cloned animals. However, the task force reserved the right to reconsider animal cloning as part of the transgenic animal project.

One of the main goals of the U.S.-proposed project on adventitious presence was to address the situation posed by "asynchronous approvals" of biotech-enhanced grains, in which a biotech-enhanced commodity has been assessed and found to be safe for use in food and feed in one country but has not been assessed or approved in

others. Another situation involves the presence of older biotech-enhanced events – commonly termed "legacy" events – that no longer are commercially planted, yet remain in the food/feed supply at low levels. The concept proposed by the United States and several other countries was for the Codex task force to develop a science-based framework that identified appropriate factors (such as the allergenicity or toxicity of a given protein) most important to assessing the safety of biotech-enhanced commodities. Once developed, such a framework then could be used by different countries within their own regulatory systems to make science-based self-determinations on whether to permit the presence of inadvertent, low levels of biotech-enhanced events in commodities or products, including whether to rely on another country's completed safety assessment.

While pursuing a project on adventitious presence initially generated support from the European Commission and delegations from some other countries, delegations from several other countries reportedly had difficulty in understanding the scope and objectives of such a project. Still other countries and consumer-oriented non-governmental organizations charged that the project was designed to "legitimize contamination" of biotech-enhanced commodities. The European Commission later withdrew its support for the adventitious-presence project after several European Union member countries voiced disapproval, as well as over concern that "unapproved" biotech commodities, such as those subject to experimental field trials, might be considered for inclusion under the project. Still other countries expressed a desire to use the project to set specific numeric thresholds to define "low level."

Importantly, the Codex task force left open the possibility of reconsidering the adventitious presence project when it conducts its next full meeting in November 2006 in Japan. At that time, the United States or another country could present a discussion paper proposing a revised version of the project.





"Federal Register" continued from page 1

USDA said its Commodity Credit Corporation is **not** taking title to the corn, and is **not** imposing any restrictions on its ultimate disposition. USDA said only funds for transportation assistance to "relocate barges and facilitate barge availability" is being provided under this one-time initiative.

Information USDA said would be required in the proposals includes: 1) the number of barges (quantity of corn) for which the company is seeking transportation assistance; 2) the current location and proposed destination for the barges; and 3) and the amount per ton of transportation assistance requested.

► **Payments for Alternative Grain Storage:** This initiative involves a one-time offer to provide alternative storage for **up to 50 million bushels** of bulk grain to "facilitate producers' delivery of newly harvested commodities." USDA noted CCC already has entered into agreements with some operators to store grain in such "alternative" storage. USDA officials told the NGFA that offers will be considered from any entity whose proposal(s) to provide alternative storage would contribute most to easing harvest storage congestion and facilitating transportation. **But USDA will require that the storage be provided within a specified mileage radius the Mississippi River and its major tributaries (which are expected to include the Illinois and Ohio Rivers).** USDA also told the NGFA that it will **not** require that the entity submitting offers be federally or state licensed. Nor will entities be required to have a Uniform Grain and Rice Storage Agreement (UGRSA) contract with CCC.

USDA also said it does **not** intend to impose restrictions on the type of "alternative" storage space offered, but will require that such space be used for storing company-owned grain. Emergency and temporary storage space are among the types of space that can be offered, **but USDA is expected to stipulate that payments will be made only for grain that exceeds the quantity stored in such space over the previous 12-month period.** USDA said a **one-time payment** will be made to successful offers in exchange for providing the alternative storage, and CCC will not be responsible for any quality or quantity losses. Among other things, the payment will be based upon the relative need for additional storage in the area, as well as the quantity of grain being placed in alternative storage under the specific offer received. The payment will **not** be a monthly storage payment based on the length of time such storage may be used. The following is among the information that USDA is expected to require from those submitting offers: 1) The location and description of the alternative storage being offered; 2) the quantity of grain that would be placed in such storage; 3) information on the severity of storage/transportation congestion in the geographical area and how the proposal would help relieve such

congestion; and 4) the payment amount requested for placing grain in alternative storage. USDA said it will require entities submitting successful offers to place the agreed-upon quantity of grain in alternative storage, and such entities will be subject to spot-check verification site audits.

► **Transportation Differential for Relocating Grain to Alternate Ports:** The *Federal Register* notice also will seek bids – in the form of a transportation differential payment – to redirect bulk grain and soybeans to "specific geographic locations, such as the Great Lakes...." USDA said bids will be analyzed and awarded to grain movements with the lowest cost through locations other than the Center Gulf.

Importantly, USDA officials previously told the NGFA that each of these three initiatives will be short-term in nature, and that consideration of proposals would be discontinued once the desired objectives are achieved. Those objectives include providing for adequate logistics to support orderly marketing of grains, oilseeds and grain products in the aftermath of the disruption caused by Hurricane Katrina.

The fourth initiative announced by USDA, as reported in the Sept. 15 *NGFA Newsletter*, provides producers with corn marketing assistance loans that mature on Sept. 30 and Oct. 31 with an additional 60 days, respectively, from the loan maturity date to decide whether to purchase the corn from CCC at the posted county price. In a notice (LP-2005) posted on its website on Sept. 26, FSA said any corn producer with a marketing assistance loan maturing in September or October is eligible. Under this initiative, which amounts to a *de facto* two-month extension of maturing 2004-crop marketing assistance loans, CCC will not be "calling" these maturing loans and setting up a delivery schedule until the 60-day period ends.

In its notice, FSA said that producers will be required to contact CCC before loan maturity to indicate their intention to either: 1) settle the outstanding loan by forfeiting the commodity to CCC; or 2) purchasing the corn within 60 calendar days of the maturity date. The settlement value of the loan will be based on U.S. No. 2 corn; premiums and discounts will not apply.

Previously, as reported in the Sept. 15 *NGFA Newsletter*, USDA announced that it will allow the nationwide use of on-ground farm storage for all farm program commodities, including grains and oilseeds, harvested in 2005 and 2006. In essence, this means that ground storage on-the-farm will be considered by USDA to be approved storage for commodities pledged as collateral for marketing assistance loans or deemed for loan deficiency payments.



"CRP Contracts" continued from page 1

those with CRP contracts expiring on Sept. 30, 2007 to discuss whether their contracts will be eligible for reenrollment or extension, based upon the acreage's EBI ranking. CRP participants then will have an opportunity to indicate whether they are interested in having current CRP acres reenrolled or extended. If they express interest, a compliance check will be conducted by USDA. USDA said 15-year CRP contracts expiring on Sept. 30 will not be eligible for reenrollment or extension.

Deputy Undersecretary for Farm and Foreign Agricultural Services Floyd Gaibler estimated that "potentially up to 20 percent" of currently enrolled CRP acreage will not be renewed under the plan. He also said USDA did not project regional shifts in CRP acreage occurring as a result of the announcement. Gaibler also said USDA expects that CRP acres enrolled in national conservation priority areas – such as the so-called "Prairie Pothole" region of the upper Midwest – will be more likely to qualify for 10- to 15-year reenrollment rather than two- to five-year extensions.

The NGFA had urged that USDA not automatically reenroll expiring CRP contracts, but instead subject all such acres to a competitive-bidding process, including an evaluation of **both** their EBI scores and rental rates. The NGFA expressed concern that USDA's decision not to competitively evaluate CRP rental-rate bids could lead to non-environmentally sensitive acres being reenrolled or extended. The NGFA also expressed disappointment that USDA did not provide for early, penalty-free opt-outs of existing acres from the CRP prior to contract maturity.

USDA did say it will reconsider how it administers the 25-percent limit on CRP reenrollments in each county. More than 75 counties currently exceed the 25-percent cap, in some cases reaching levels exceeding 40 percent. The NGFA will continue to urge USDA to update county data on which the 25-percent limit is based to reflect current normal cultivated acreage.

USDA Resumes Additional Emerson Trust Wheat Sales

In response to a recent request to provide additional emergency food assistance for Africa, the U.S. Department of Agriculture on Sept. 22 issued a notice to the trade [*BCD-112*] announcing that it will sell an additional 189,190 metric tons (approximately 6.95 million bushels) of wheat from the Bill Emerson Humanitarian Trust.

The sales will complete the 500,000 metric ton release of wheat from the Emerson Trust authorized by Secretary of Agriculture Mike Johanns on June 22. As with previous sales, USDA is making **all classes** of CCC-owned wheat receipted as U.S. No. 2 or better eligible for purchase. Wheat forfeited by producers under the marketing assistance loan program also is credited toward the Emerson Trust sales.

As of the close of business on Sept. 28, USDA reported that it had sold 1,399,967 bushels (38,101.25 metric tons) of wheat in response to its latest invitation. Of that quantity, 451,745 bushels (12,294.63 metric tons) had been sold to storing warehouse operators, who had exclusive rights to make such purchases until close of business on Sept. 27. The remainder has been sold to third-party buyers, who became eligible to purchase on Sept. 28. The totals include wheat forfeited to CCC during the sales period.

Under USDA's sales procedures, third-party buyers are permitted to purchase up to 15,000 metric tons (551,150 bushels) during a single transaction; provided that the maximum total quantity sold at any particular CCC warehouse code is limited to 40 percent of the CCC-owned wheat stored at that code location as of June 28. Importantly, that quantity is **inclusive** of the amount that may have been purchased by the storing warehouse operator during earlier rounds of this 500,000 metric ton Emerson Trust release. There is one exception – third-party buyers are allowed to purchase all or a portion of CCC-owned wheat totaling less than 30,000 bushels at a particular warehouse code location. Third-party buyers again are limited to bidding for wheat at three separate warehouse codes per call. In addition, USDA again is allowing storing warehouse operators to purchase a quantity in excess of the 40 percent maximum level, provided the bid does not result in CCC exceeding the 500,000-metric-ton maximum authorized under the latest Emerson Trust release.

USDA said the additional Emerson Trust sales were triggered by a recent request from the U.S. Agency for International Development to provide 100,000 metric tons (3,674,333 bushels) of soft white wheat for Eritrea and 89,190 metric tons (3,277,138 bushels) of hard red winter wheat for Ethiopia. To access USDA's notice, [click here](#).





STB Schedules Oct. 7 Hearing on 25th Anniversary of Staggers Rail Act

The federal Surface Transportation Board (STB) announced that it will conduct an Oct. 19 public hearing in Washington "to examine the effectiveness and the future of the Staggers Rail Act of 1980."

The STB notice, published in the Sept. 20 *Federal Register*, said the hearing was intended to provide "an opportunity...to address broad issues regarding the Staggers Act generally,"

and not to discuss pending cases. Those interested in presenting an oral statement at the hearing are to notify the STB no later than Oct. 7 indicating the name of the party testifying and the length of time requested. Each speaker is to submit written testimony by Oct. 12, as are those not speaking who wish to present views in writing. A published list of speakers and time allocations will be published by Oct. 14, the STB said.

Canadian National Announces Reduction in Rail Fuel Surcharge

The Canadian National Railway announced that effective Oct. 1, it will reduce its fuel surcharge in tariff 7401.

The railroad said its action – the second announced reduction since April 2005 – would make its fuel surcharge "the lowest in the rail industry." However, the CN continues to apply the fuel surcharge as a percentage of the freight rate, rather than using a cost-based formula for the given shipment.

Under the reduction, the CN fuel surcharge based upon WTI crude oil at \$60 a barrel will decline from 12 percent

currently to 10.3 percent. The CN said "all current agreements" covered by the tariff will benefit from the surcharge reduction, as will new line-haul rate publications for all carload traffic. It said contractual agreements and line-haul rate publications subject to CN's fuel surcharge tariff 7400 will remain in effect until they expire or are altered by mutual agreement.

Once posted on or about Oct. 1, the CN's rail fuel surcharge tariff will be available by clicking here.



EPA Proposes Changes to Ease TRI Reporting Burden

The U.S. Environmental Protection Agency (EPA) on Sept. 21 announced it will propose revisions to its Toxic Release Inventory (TRI) reporting to provide for the expanded use of the Form A certification statement.

Specifically, EPA will propose that facilities may use Form A to report persistent, bioaccumulative and toxic (PBT) chemicals – except for dioxin or dioxin compounds – if they have no disposal or other releases to the environment, and do not manage more than a total of 500 pounds of the chemical by treatment, energy recovery or recycling. Currently, EPA does not allow the use of Form A reporting for PBT chemicals at all.

The agency also is proposing that facilities with non-PBT chemicals be able to use Form A reporting, provided they manage no more than 5,000 pounds (in total) of the chemical by disposal or other releases to the environment, by treatment, energy recovery or recycling. Currently, facilities may use Form A only if they manage or release no more than 500 pounds of such chemicals. One condition that will remain in effect under

the proposal is that all facilities using Form A must meet a 1-million-pound threshold for manufacture, processing or other use of the chemical. Members receiving the *NGFA Newsletter* electronically can click here to access a 78-page advance copy of the EPA proposal, which is scheduled for publication in the *Federal Register* soon.

In a significant related development, EPA also announced that it will initiate a rulemaking proposing to reduce the frequency of TRI reporting to every-other-year. Under the Emergency Planning and Community Right to Know Act, the agency is required to delay proposing such a rule until 12 to 24 months after notifying Congress of its intent to do so. The agency said it would use the funds saved through alternate-year reporting to improve its electronic reporting software; conduct more analysis of TRI data to make it more useful to communities and citizens; and create an Internet-based method for reporting TRI data. A seven-page advance copy of this EPA proposal, which also is expected to be published soon, is available by clicking here.





NGFA Meets with CFTC Commissioners ...Presses for Enhanced Reporting on Fund Trading...

The NGFA's Risk Management Committee on Sept. 22 met with four of the five commissioners of the Commodity Futures Trading Commission in Washington.

During the meetings, the NGFA reiterated its request that the agency provide greater transparency in reporting on index or hedge fund trading in agricultural contracts at the Chicago Board of Trade. The Risk Management Committee's meetings with the CFTC commissioners built upon previous activity on the same issue that was initiated during the NGFA's annual convention last March. At that time, the NGFA asked the CBOT to work with the CFTC to determine whether a new, separate category encompassing fund trading in agricultural contracts could be reported, perhaps in the CFTC's Commitments of Traders report or some other report.

Since that time, indications are that the CBOT and CFTC are willing to do so, and that the information needed to report fund activity is available.

The reporting issue has come to the forefront as a result of significantly increased activity in agricultural markets by funds this year. Some traditional market users have been concerned that grouping funds into the "commercial" hedge category used by the CFTC could distort signals being sent to the market. The NGFA has advocated additional transparency by reporting fund activity separately from traditional market users. Such information would enhance the market's ability to differentiate between supply/demand fundamentals and potential market moves caused by large fund trading.

A second major issue discussed with CFTC commissioners was the NGFA's advocacy of enhanced legal clarity for cash contracts used in the grain, feed and processing industry. The NGFA will continue working with the agency on a process to limit the legal risk confronted by those companies offering innovative cash contracts that help producers manage risk and enhance income from the market.



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