



# National Grain and Feed Association

# NEWSLETTER

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## Dow AgroSciences to Limit 2015 Stewarded Launch of Enlist™ Corn to On-Farm Feeding Use Only

*Enlist® Soybeans to Be Made Available in 2015 for Seed  
Production Only*

[By Randy Gordon, President](#)

Dow AgroSciences' Nov. 12 announcement that it will conduct a stewarded launch of its new Enlist™ biotech-enhanced corn seed trait that requires growers to feed on-the-farm any harvested grain produced from the seed, with no sales permitted into commercial market channels.

Company officials emphasized to the NGFA that the stewarded Enlist corn launch will be accompanied by extensive oversight by Dow AgroSciences throughout the planting, growing and harvest season as the company works to obtain import approvals for the trait from U.S. export markets. Such steps will include third-party audits of growers to verify compliance with the stewardship agreement. No mid-season changes or exceptions will be permitted. The company said producers growing the corn trait will be required to notify Dow AgroSciences representatives before planting and harvest. A 660-foot isolation area adjacent to fields where Enlist corn is planted will be required – the same distance required by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) for field trials while biotech corn traits are under regulated status. In addition, isolation zones will be required to be planted to crops other than corn.

In addition, the Dow AgroSciences announced that the Enlist biotech-enhanced soybean trait will be made available to a limited number of growers in 2015 under its Field Forward® program that requires producers enter into a contract to sell any seed produced only to Dow AgroSciences. As such, grain produced from Enlist soybean seed also will not be allowed to be sold into commercial channels. The company said an "extensive" stewardship protocol will apply – utilizing many

## Arbitration Defaults

This week's default judgments:

- [Case No. 2721](#) – Archer Daniels Midland Company (Decatur, IL) v. MJH Farms, LLC (Shoals, IN) – 9/16/2014 - \$7,275.00
- [Case No. 2724](#) - The DeLong Co., Inc (Clinton, WI) v. PAC Global Solutions, LLC (Bensenville, IL) – 10/10/2014 - \$58,093.25

These and all NGFA Arbitration committee decisions and default judgments are accessible at [ngfa.org/decisions](http://ngfa.org/decisions).

of the same protocols that apply for seed production under regulated field trials. It also said the soybean seed will be made available only in selected geographies. Further, they said that Dow AgroSciences will manage the soybean seed production throughout the season, including handling and storage after harvest.

The two biotech-enhanced traits are being made available following the U.S. Environmental Protection Agency's (EPA) approval in October of the registration for Dow AgroSciences Enlist Duo™ herbicide in several states for the 2015 crop season. The herbicide – a proprietary blend of 2,4-D choline and glyphosate – is part of a new herbicide-tolerant trait system. EPA currently has approved the herbicide for use in Illinois, Indiana, Iowa, Ohio, South Dakota and Wisconsin. In addition, the agency sought public comment by Nov. 14 on whether to allow the herbicide's use in 10 other states where the agency recently completed additional Endangered Species Act determinations: Arkansas, Kansas, Louisiana, Minnesota, Missouri, Mississippi, Nebraska, Oklahoma, Tennessee and North Dakota.

The initial EPA registration for Enlist Duo is limited to no more than six years, and would need to be renewed thereafter. The federal registration on the herbicide expires automatically on Oct. 15, 2019, if more than 100,000 total acres of Enlist corn and soybeans are planted during the 2015 growing season. The registration expires a year later – on Oct. 15, 2020 – if a total of 100,000 or fewer corn and soybean acres are planted in 2015. The initial registration includes label restrictions and requirements similar to those imposed on Bt hybrids and mandatory refuge requirements designed to manage weed resistance to herbicides.

The company said the Enlist corn and soybean seeds will be made available to a select number of growers – a final number of growers has not been determined yet – through Dow AgroSciences seed brands only (e.g., Mycogen, Pfister, Prairie Brand, Brodbeck and Dairyland). The company said it will carefully select sales representatives who will be contacting producers, and will provide extensive advance education and training to facilitate accurate communication of requirements to growers of each of the traits.

Enlist corn and soybeans were deregulated in the United States in September 2014. Dow AgroSciences reported that the Enlist corn trait has been approved thus far for import as food, feed and for further processing by the following countries: Canada, Mexico, Japan, South Korea, Taiwan, Australia, Colombia, New Zealand and South Africa. Applications for import approval still are pending in China, the European Union and other countries.

The Canadian government approved Enlist corn and soybean traits for food, feed and environmental release (cultivation) in October 2012. The Enlist Duo herbicide also has been approved by Canadian regulators. Enlist corn was

## Upcoming Events

**Dec. 7-9 43<sup>rd</sup> Annual Country Elevator Conference & Tradeshow**  
Indianapolis, Ind.  
JW Marriott Indianapolis  
Downtown

[Additional information](#)

[Registration](#)

**Jan. 13 How to Prepare for an OSHA Inspection**  
With Nebraska Grain and Feed Association  
Location TBD

- **Jan. 15 How to Prepare for an OSHA Inspection**  
With Kansas Grain and Feed Association  
Salina, Kansas

**Jan. 27 How to Prepare for an OSHA Inspection**  
With Montana Grain Elevator Association  
Great Falls, Mont.

**Mar. 15-17 Annual Convention**  
San Antonio, Texas  
Hyatt Regency  
  
Registration opens December

**July 28-30 NGFA/Grain Journal Elevator Design Conference**  
Kansas City, Mo.  
Sheraton at Crown Center  
  
Registration opens March

**Aug 4-5 Ag Transportation Summit**  
Chicago, Ill.  
Westin O'Hare  
  
Registration opens March

For a full listing of events, go to [ngfa.org/events](http://ngfa.org/events)

planted on about 20 total sites in Ontario and Quebec, Canada, under the company's "Field Forward" program in 2014, with about two-thirds of the corn utilized as silage and the remainder directed to feed use. Dow AgroSciences said the same 660-foot isolation requirement that it will apply to the U.S. on-farm stewarded launch of corn in 2015 was used in Canada in 2014.

## Syngenta to Make Agrisure Duracade™ Corn 'Broadly Available' in 2015

[By Randy Gordon, President](#)

Syngenta has announced plans to make Agrisure Duracade™ corn "broadly available" throughout the United States for planting in 2015.

The company said Duracade will be sold in two trait stacks in 2015 – Agrisure Duracade 5222 E-Z Refuge® and Agrisure Duracade 5122 E-Z Refuge®. Syngenta says it will offer "qualifying farmers" an unspecified "per-unit stewardship premium" to be paid at harvest for 2015-crop corn containing the Duracade trait. To qualify for the premium, Syngenta said producers growing the trait will be required to complete and submit a "destination form" to Gavilon Grain LLC specifying the location where the harvested corn will be delivered. Syngenta also says growers "should confirm their grain marketing plans" with Gavilon (via a Gavilon-provided call center) before harvest. "In addition, farmers will receive consultative services through Gavilon to help them appropriately steward and market their 2015 Agrisure Duracade grain at harvest through an extensive network of accepting destinations," the company said in a [press release](#).

Agrisure Duracade has not been approved yet for import as food, feed or for further processing in more than a dozen U.S. export markets, including China and the European Union. Syngenta said the Duracade trait has received cultivation approval in the United States and Canada, as well as import approval in Japan, Korea, Mexico, Taiwan, Australia and New Zealand – the same status as existed this year.

The company has not said yet whether it will market Duracade corn seed for planting in Canada in 2015. Syngenta Canada Inc. announced in March 2014 that it would not proceed with commercial sales of Agrisure Duracade hybrids for planting in that country, and directed that any such seed that had been shipped would not be sold. Noting at the time that

import approvals still were pending in China and Europe, Syngenta Canada Inc. said, “we want to ensure the acceptance of any trait technology grown in Canada meets end-market destination requirements.”

For its U.S. business, Syngenta said it is repeating the same planting, harvesting, storage and grain-handling **recommendations** for Duracade in 2015 that it utilized in 2014. These include recommendations that producers:

- 1) plant the trait adjacent only to corn fields managed by the producer or next to only non-corn fields;
- 2) plant border rows and place signs on fields planted with the trait;
- 3) harvest corn fields containing Duracade separately and flush combines;
- 4) deliver the trait only to previously arranged delivery points;
- 5) segregate grain storage; and
- 6) confirm end-use destinations to Gavilon if the producer is not selling or delivering the corn to a Gavilon facility.

In “certain geographies with a high percentage of exports” (shown in the U.S. map below provided by Syngenta), “grain containing Agrisure Duracade **should** be fed on farm,” Syngenta said. *[Emphasis added.]* “In all other geographies, Gavilon will provide consultative services to help (farmers) handle your grain.” The specific counties designated in the map below are available by clicking [here](#).



The company has issued a [brochure](#) describing these and other plans for its expanded commercial release of Agrisure Duracade in 2015. The standard stewardship agreement issued by Syngenta Seeds Inc., which was revised

most recently in June 2013, is available [here](#).

## NGFA Contests RR Statements in Reply Comments to STB on Rail Revenue Adequacy Proceeding

[By Randy Gordon, President](#)

In reply comments submitted Nov. 4 to the federal Surface Transportation Board (STB) in response to the agency's proceeding on rail revenue adequacy, the NGFA contested several mischaracterizations from railroads regarding the degree to which a competitive rail marketplace currently exists.

The NGFA noted that it had not filed opening comments with the STB in the rail revenue adequacy proceeding (Ex Parte No. 722) since it already had addressed the topic to a substantial degree in its extensive opening comments submitted in the grain rail rate proceeding (EP 665-1). But NGFA found it necessary to submit reply comments after the Association of American Railroads and several individual carriers used the revenue-adequacy proceeding as an opportunity to oppose points raised by NGFA in the grain rail rate proceeding, as well as to misstate and mischaracterize the degree to which "competition" exists in the agricultural rail marketplace.

The NGFA pointed out that both the Staggers Rail Act of 1980 and the STB's rules and precedents constrain railroads' ability to price their services differentially to captive shippers once the carriers have reached revenue adequacy. "Having finally reached revenue-adequate status for the most part, the railroads now argue that finding them revenue adequate should not result in any changes to the status quo regarding the STB's regulation of railroad rates and service," the NGFA said in its statement, noting that the BNSF Railway and other carriers contend that rail rate levels already are disciplined by competitive market forces.

"The competitive railroad market envisioned by the framers of the Staggers Act (and its successor and predecessor statutes) has not existed for at least a decade or more," the NGFA said. "Railroad parties continue to leave the false impression that truck transportation is a viable competitive alternative, regardless of the size of shipment or distance traveled. Further, competition from barge transportation is available...only in certain specific geographic areas, and even then is highly dependent upon navigation restrictions or interruptions.

"Most significantly," the NGFA continued, "the consolidated U.S. rail

marketplace today consists of regional duopolies within which the major Class I railroads exercise substantial market power, which has reduced competitive options significantly for many rail shippers and receivers of agricultural products, as well as the degree to which meaningful rail-to-rail competition occurs even where it is physically possible.”

The NGFA concluded by reiterating that, given the revenue-adequate standing of most Class I railroads, the time is right for the STB to consider and act upon the simplified approach the association has proposed to give captive shippers and receivers of agricultural products the opportunity to challenge rates they believe are unreasonable.

“If the rail marketplace were as truly and universally competitive as the rail carriers portray, they will continue to respond to the strong demand for service by attempting to maximize revenues by increasing the volume of traffic that is competitively served,” the NGFA said, noting the rail industry is enjoying record profits derived from both competitive and captive traffic. “Implementing simplified rate-challenge procedures for captive traffic that incorporate a revenue-adequacy component should provide better protection for captive shippers against abuse of rail market power while still generating more-than-adequate revenues to rail carriers to invest in increasing rail capacity, while providing adequate rates-of-return.”

## What’s Up Next For Congress

[By Jared Hill, Director of Legislative Affairs](#)

The nation’s capital is still abuzz with talk of the recent elections that saw Republicans take control of the Senate and increase their majority in the House. There continues to be a debate in the media over whether this recent election counts as a “Republican wave.” Regardless, Republicans will control both chambers for the first time since 2006.

The ink was not dry on news stories about Republican victories when many in the media turned their attention to the 2016 elections. Despite the excitement that comes with every election cycle — in particular cycles that involve a presidential race — the current Congress still has work to do.

Below breaks down what is likely to come up in Congress in the lame duck session and the new 114th Congress that convenes in January.

### **Lame Duck Session**

The term “lame duck” did not originate as a political term. Originally, it was an 18th century reference to stockbrokers who could not pay their debts. Now, it is used most often to describe politicians whose term in office is about to end, which is precisely where the 113th Congress sits. Congress came back into session Nov. 12, and while there are many who want to see it use the last month and a half of 2014 to move legislation, it seems unlikely the Democratically controlled Senate and the Republican-controlled House will suddenly find common ground on a wide array of issues. But there are a few issues likely to be addressed in the lame duck session.

### ***Keystone Pipeline***

The Keystone pipeline has moved to the top of the legislative to-do list for Congress during this lame duck session. The House recently approved legislation addressing the construction of the pipeline. It is scheduled for a vote on Nov. 18 in the Democratically controlled Senate. This is the ninth time the House has voted on legislation to approve the pipeline construction; but to date, the Senate has been unwilling to approve similar legislation. Even if the Senate approves the legislation this go-around, it is unclear if President Obama will sign the bill.

### ***Spending Measure***

Congress will have to take up a spending bill before Dec. 11 if it wants to avoid another government shutdown. The question is whether Republicans will want to pass a long-term spending bill to fund government through the end of the next fiscal year (Sept. 30, 2015) or pass a short-term measure that gets them into next year when they control both chambers.

### ***Tax Extenders***

“Tax extenders” is the term used for legislation that extends many of the tax credits for businesses and individuals. Tax credits include the deduction for equipment depreciation, deductions for state and local sales tax, and energy tax credits, such as the ones enjoyed by the biodiesel and wind energy industry. There is bi-partisan support for the legislation. However, some Republicans are arguing the credits should be considered as part of a broader tax-reform package when the new Congress convenes in 2015.

### ***Immigration***

If the president follows through with his recent threats to act unilaterally on

halting deportations of people in the United States illegally, the Republican House almost surely will take up legislation to address the president's actions. However, with Democrats still in control of the Senate for the next month and a half, it seems unlikely the Senate would take up any House-passed measures on the issue.

### **2015 Congress**

Looking ahead to 2015, here are some issues the new Congress is likely to debate and possibly act on.

#### ***Regulatory Reform***

A Republican-led Congress will be eager to limit the regulatory reach of the Obama administration. The business and agriculture communities have faced an ever-growing increase in regulations and will push Congress to step in and put a check on administrative agencies.

#### ***Infrastructure Spending***

Congress will be faced with the dilemma over how to fund repairs and maintenance of the nation's transportation infrastructure. Funding is needed for roads, bridges and waterways infrastructure.

#### ***Rail Legislation***

With limited time before the lame-duck session ends, there is almost no chance the Congress will take up the Surface Transportation Board reauthorization legislation introduced by Sens. John Rockefeller, D-W.Va. and John Thune, R-S.D. However, with Thune likely taking the chairmanship of the Senate Committee on Commerce, Science and Transportation in the new Congress, it is expected he will push for consideration of the legislation in 2015.

#### ***Trade Legislation***

As the president pushes to complete the Trans-Pacific Partnership (TPP) trade negotiations, Congress faces a choice on whether to enact legislation giving the president trade promotion authority – the tool needed to complete the task. The last trade promotion authority legislation expired in 2007. Congress will have to pass new trade promotion authority legislation if any trade agreements are to be finalized in 2015. Despite the fact Republicans typically have supported trade promotion authority in the past, debate has been stirring among some Republicans about whether they want to cede



negotiating authority to President Obama. If TPP negotiations are completed without trade promotion authority in place, it will make for an interesting stand-off between the president and Congress.

### ***Comprehensive Tax Reform***

Tax reform also will be an area of focus in 2015. The House and the Senate have been sharply divided on how to reshape the U.S. tax code in recent years. With Republicans in control of both chambers for the next two years, it's likely they will take a shot at reforming the code.

### ***Committee Leadership***

The next Congress also will see many of the congressional committee chairmanships change. Below lists the likely chairman and ranking member of committees with jurisdiction over issues important to the grain, feed and processing industry. (Note: Official selections will not occur until later this year.)

- **Senate Agriculture, Nutrition and Forestry Committee:** Chairman Pat Roberts, R-Kan., and Ranking Member Debbie Stabenow, D-Mich.
- **Senate Commerce, Science and Transportation Committee:** Chairman John Thune, R-S.D., and Ranking Member Bill Nelson, D-Fla.
- **Senate Finance Committee:** Chairman Orrin Hatch, R-Utah, and Ranking Member Ron Wyden, D-Ore.
- **Senate Health, Education, Labor and Pensions Committee:** Chairman Lamar Alexander, R-Tenn., and Ranking Member Patty Murray, D-Wash.
- **House Agriculture Committee:** Chairman Mike Conaway, R-Texas, and Ranking Member Collin Peterson, D-Minn.
- **House Education and Workforce Committee:** Chairman John Kline, R-Minn., and Ranking Member Bobby Scott, D-Va.
- **House Transportation and Infrastructure Committee:** Chairman Bill Shuster, R-Pa., and Ranking Member Peter DeFazio, D-Ore.
- **House Ways and Means Committee:** Chairman Paul Ryan, R-Wis., and Ranking Member Sander Levin, D-Mich.

## NGFA Commends Proposal to Correct Major Problems With CFTC Customer-Protection Rules

*Adoption Would Remove Threat of Pre-Margining of Hedging Accounts*

[By Todd Kemp, Vice President of Marketing and Treasurer](#)

NGFA recently commended the Commodity Futures Trading Commission (CFTC) for unanimously approving publication of a proposal that would correct major problems with its customer protection rule issued last year.

The so-called residual-interest provision, adopted in November 2013 despite strong opposition from the NGFA and a broad coalition of national agribusiness and producer groups, likely would have forced futures commission merchants (FCMs) to require pre-margining of futures customers' hedge accounts for market moves that might never occur, and would put more customer funds at risk if another futures commission merchant (FCM) insolvency like MF Global occurred.

The NGFA strongly supports CFTC's new proposal, which was published in the *Federal Register* on Nov. 14 for a 60-day public comment period. The new proposal would remove a requirement that FCMs' calculation of residual interest (the FCM's own funds contributed to "top up" hedge accounts) occur at 9 a.m. on the day following the futures trade. Instead, the proposal would keep the residual interest calculation at 6 p.m. on the day following the trade unless the CFTC takes additional action.

FCMs have told customers that the 6 p.m. deadline would not force pre-margining.

"We commend CFTC Chairman Timothy Massad and his fellow commissioners for listening to the concerns of the agricultural sector regarding the agency's customer-protection rules, and for their willingness to expeditiously propose revisions to resolve those issues that still pose a problem to U.S. agricultural producers and agribusiness hedgers," the NGFA said in a statement.

"We believe this proposal is a substantial improvement and truly will fulfill the agency's objective of protecting futures customers while removing the threat of pre-margining their hedge accounts for market moves that may never occur," the NGFA said. "That will enable our industry's firms to use their resources for hiring and improving their businesses, rather than having funds tied up in

response to an unnecessary regulatory requirement. It also reduces, possibly by as much as half, the amount of futures customer money potentially put at risk if another futures commission merchant insolvency like MF Global occurs. We look forward to working with the commission to support and finalize these changes as soon as practicable."

The commission's action mirrors a section of a CFTC reauthorization bill passed by the U.S. House earlier this year and supported by the NGFA. The Senate has yet to act on a companion bill.

The CFTC also approved publication of a proposal that would formalize relief from recordkeeping requirements that had been imposed on companies that are members of a commodity exchange. The new proposal would remove the requirement that such firms maintain records of written communications leading to a futures transaction in a manner identifiable and searchable by transaction. Capturing and maintaining such records, especially for text messages, is technologically infeasible at present, the NGFA noted.

CFTC Commissioners' statements, background information, and the text of the residual interest proposal can be accessed [online](#).

## NGFA's Todd Kemp Answers Questions from Reuters on Recent CFTC Proposal

NGFA's Todd Kemp, vice president of marketing and treasurer, recently participated in a question-and-answer forum with Thomson Reuters on futures market regulatory policy issues.

The Global Ag Forum is an online chat room for global grain traders and analysts. For more information, contact [Christine Stebbins](#) or see more at [Thomson Reuters](#).

Below is a transcript of the session, in which he shared his insights on the Commodity Futures Trading Commission's (CFTC) latest proposals on margining, tape recording and forward contracting rules that were recently passed. It is reprinted with permission from Thomson Reuters.

**Q: The CFTC recently proposed some minor changes to three of its rules to ease the regulatory burden on smaller futures market users:**

- 1. One involves the time at which the amount of money clients need to put up as a security when entering a futures contract is calculated each day.**

2. **Another eased some reporting requirements for those who use the phone or text messages that are not easy to archive.**
3. **The last proposed changes are in regards to the way CFTC looks at forward contracts in which the volume of the deliverable commodity is not precisely set.**

**You've been closely tracking financial regulation rules since Dodd-Frank and attended a recent CFTC meeting. Could you share your thoughts on CFTC's latest decisions and what the significance of the proposals means to the U.S. grain industry?**

**A:** We are encouraged that this commission has new leadership that seems willing to roll back some of the bad ideas that got through previously. Your No. 1 above is the residual interest provision that caused all of agriculture so much heartburn last November when it was adopted as part of the so-called "customer protection" rule.

What we most opposed about that residual interest change was the time when futures commission merchants (FCMs) would be required to make their residual interest calculation. As it stood, it eventually would have moved to 9 a.m. on the day following the futures trade (known as T + 1). We feared that FCMs would be compelled to require customers to pre-margin their hedge accounts against market moves that might never come. The commission's action is a proposal that would freeze the residual interest calculation time at 6 p.m. on T+1 instead of automatically moving to 9 a.m. on T+1. It would require a commission rulemaking and public comment before moving from 6 p.m.

The proposal would head off the need for pre-margining, which would allow futures customers to keep those funds instead of essentially doubling up on margin to the FCM. The proposal will be subject to a 60-day public comment period, but we are hopeful it will be adopted quickly after that. The commission voted 4-0, which is promising.

No. 2 and No. 3 above also are important. No. 2 basically would formalize no-action relief that the commission granted earlier this year. It would remove the requirement that exchange members keep records of written communications that could lead to a futures transaction, and that those records be kept identifiable and searchable by transaction. The technology challenges of doing that for texts is especially daunting. Again, it is encouraging the commission recognized that.

No. 3 might be more important in the energy space – but perhaps also applicable to some grain/oilseed purchase contracts that contain what they

call volumetric optionality. Essentially it is the right to purchase larger quantities following an initial purchase. The commission is recognizing that these are legitimate cash forward contracts exempt from CFTC jurisdiction, instead of being defined as swaps.

**Q: On No. 2, is the proposal just about "written communications" or does it also ease some of the "tape recording" rules?**

**A:** The recording side largely was resolved when CFTC approved the final rule last year. For some reason – intentional or not, I don't know – they neglected to fix the recordkeeping provisions relative to written communications. This proposal also would solve the written piece.

**Q: Can you clarify how/if No. 2 applies to cash grain firms if they are NOT members of an exchange?**

**A:** No. 2 only applies to firms that are members of a designated contract market (i.e., members of an exchange). Generally, the final rule last year wrote everyone else out of the recording/recordkeeping requirements. That was a pretty big win for our industry – and now CFTC is looking to fix the final piece.

**Q: What are your members most concerned about regarding these rules? Are the tweaks enough?**

**A:** Our biggest issue of the three has been the residual interest problem – it would affect every hedger. We worked very hard with the commission and improved the final rule last November, but didn't fully succeed in fixing it. We also were successful in getting a provision in the House version of CFTC reauthorization earlier this year that would have set the time of the calculation at 6 p.m. on T+1 – as you know, the Senate hasn't yet moved on a bill. It's gratifying to see efforts of NGFA and other organizations in our broad agriculture coalition paying off.

**Q: When you refer to 6 p.m. on T+1 – what do you mean?**

**A:** That's shorthand for 6 p.m. on the day following the futures trade. In other words, under the CFTC proposal, the timing of FCMs' residual interest calculation would move as scheduled this month to 6 p.m. on T+1 and stay there unless the commission moved it under a formal rulemaking.

**Q: What's the next step regarding these proposals?**

**A:** For No. 1 and No. 2, they will be published as proposed rules in the *Federal Register* where there will be a 60-day public comment period, following which

(we hope) they will be adopted. However, we will have to wait until after comments are evaluated, and a final rule is drafted to know exactly what they will say. I should also make the point that No. 3 above was not a proposal – the CFTC was adopting an interpretation, so that is happening now.

**Q: How has the new CFTC Chairman Timothy Massad been to work with compared to former Chairman Gary Gensler?**

**A:** We've found Chairman Massad – and all the commissioners – very eager to learn about the grain, feed and processing industry and what's important to us. Chairman Massad was kind enough to meet with our Board of Directors in September. Commissioner Giancarlo was out in the countryside last week and has met with our "aggie" coalition here, and Commissioner Bowen recently visited a grain elevator. Of course, we have worked well with Commissioner Mark Wetjen the last several years and he always is ready to listen. I won't editorialize too much on the previous regime at CFTC, but we have found a new and real willingness to go back and fix things that hadn't been properly resolved the first time. We have met and gotten to know each of the commissioners, and I am convinced we will work well with all of them.

Of course, there is a vacancy on the commission now. We have been making the case aggressively that it should be filled by someone who is knowledgeable about the futures industry and has a solid background/knowledge of U.S. agriculture and agribusiness. I expect it will be after the first of the year, but we hope to see someone who fits those requirements nominated soon.

**Q: What is the latest on the position limit rule that redefines "bona fide hedging?"**

**A:** As you know, the NGFA has had major concerns about the proposed position limit rule. First, it is very important to get position limits right. But an even bigger concern is the CFTC's effort to redefine "bona fide" hedging. The way I think about it, CFTC has drawn a box – a very small box – around what they might think is bona fide hedging. Unfortunately, that definition would exclude a number of very commonly used hedging strategies in our industry from being considered bona fide hedges.

**Q: Where is that rule within the rulemaking process, i.e. how close is to becoming effective?**

**A:** That rule has been placed somewhat on the back burner. I believe that, through industry communications and a roundtable hosted by CFTC, the commissioners now understand better how important it is to get this right. I

believe the commissioners have concluded that the original draft was much too restrictive. My hope is that we will see a rewrite of that definition before consideration of a final rule. Not sure at this point what the timing of that effort is going to be. NGFA will be very active providing advice and resources to help the commission get it right. Chairman Massad told the NGFA Board it is more important to get it right than to get it fast – I couldn't agree more.

**Q: Following up on your comments about finding someone with an ag background to fill the open spot on the commission – do you have any sense whether that will be a priority in the search?**

**A:** We made that case – NGFA and a broad coalition of ag groups – last go-round when Chairman Massad and Commissioners Giancarlo and Bowen were confirmed. At that time, we weren't successful. However, we've been assured our message was heard. Based on recent conversations, I feel confident we will get someone who fits the bill.

**Q: We really appreciate you joining us this morning and sharing the latest on CFTC rules. Are there any other comments, insights you would like to share with us?**

**A:** Maybe I have my rose-colored glasses on, but I'm excited about the opportunities we have in front of us. Sitting through the recent CFTC meeting, it struck me what a change of tone has occurred. There is a real willingness to listen, and to try to do what's right for agricultural and agribusiness hedgers, who had absolutely nothing to do with the financial crisis but were caught up in several years of time-consuming regulatory nonsense that has increased the costs of hedging. I'm hopeful we can fix some of the problems and get on with it!

## **USDA Begins Producer Signup for 2014 Farm Law Crop Coverage Safety Net**

*Producers have Until March 31, 2015, to Choose Program Best for Their Operation*

While most producers are expected to wait until much closer to the March 31 deadline, the U.S. Department of Agriculture (USDA) has announced that sign up for the 2014 farm law's crop coverage safety net program will begin Nov. 17.

That is when producers can select which of the two crop-coverage safety-net

programs they will elect to rely upon for the 2014-18 crop years covered by the five-year farm law:

- The **Agriculture Risk Coverage (ARC) Program**, a revenue-based program under which producers elect revenue protection on either a county or individual-farm basis. Even though the choice is a one-time election, farmers are required to enroll their farms annually to be eligible for coverage.

Under the county-based coverage, payments are issued when the actual county crop revenue of a covered commodity is less than the county guarantee. The county guarantee equates to 86 percent of the previous five-year national marketing year average price, excluding the high- and low-price years, multiplied by the five-year average county yield (again, excluding the high- and low-yield years). Further, the payment is equal to 85 percent of the base acres of the commodity, multiplied by the difference between the county guarantee and the actual county crop revenue for the commodity.

Meanwhile, under the individual-farm based coverage, payments are triggered when current-year revenue for all covered commodities planted on the farm declines to less than 86 percent of the farm benchmark revenue guarantee. Payments then are determined by multiplying an ARC payment rate by the total base acres for the farm(s) by 65 percent.

- The **Price Loss Coverage (PLC) Program**, under which payments are issued when the effective price of a commodity is less than the commodity's reference (target) price as mandated in the 2014 farm law. The effective price equals the higher of the market year average price or national average loan rate for the commodity.

Covered commodities include corn, soybeans, wheat, sorghum, barley, canola, large and small chickpeas, crambe, flaxseed, lentils, mustard seed, oats, peanuts, dry peas, rapeseed, long grain rice, medium grain rice (which includes short grain rice), safflower seed, sesame and sunflower seed. Upland cotton is not covered under ARC or PLC programs. USDA has published an [11-page fact sheet](#) on the ARC and PLC programs, as well as the process farmers can use to reallocate historical base acres.



Important ARC and PLC dates that farm owners and producers need to know follow (also portrayed graphically in the table below):

- **Now through Feb. 27, 2015:** Farm owners may update their crop yield history and/or reallocate base acres at their local Farm Service Agency office.
- **Nov. 17, 2014 to March 31, 2015:** Producers may make a one-time election between ARC and PLC for the 2014-18 crop years.
- **Mid-April 2015 through Summer 2015:** Producers sign contracts for the 2014 and 2015 crop years.
- **October 2015:** Payments issued for 2014 crop year, if needed.

<b>Now through Feb. 27, 2015</b>	<b>Nov. 17, 2014, to March 31, 2015</b>	<b>Mid-April through Summer 2015</b>	<b>October 2015</b>
Farm owners make base reallocation/ yield updates	Producers choose either ARC or PLC	Producers sign 2014 and 2015 crop year contracts	Payments issued for 2014 crop year, if needed

**Web-Based Tools Available:** USDA provided funds to help create online tools that producers can use to determine which of the two programs may best meet their crop planting plans. The tools enable landowners and producers to enter information about their operation and then view projections on whether the ARC and/or PLC will yield the most potential protection under various possible future scenarios. Farm owners and producers may access the online resources, available at [www.fsa.usda.gov/arc-plc](http://www.fsa.usda.gov/arc-plc). In addition, the new web tools producers and landowners may use to evaluate the ARC and PLC programs are available at [www.fsa.usda.gov/arc-plc](http://www.fsa.usda.gov/arc-plc). To learn more about upcoming educational meetings, farmers can contact their local Farm Service Agency county office at <http://go.usa.gov/pYV3>

## NGFA, Organizations Across the U.S. Ask EPA to Withdraw ‘Waters of the U.S.’ Proposal

[By Jess McCluer, Director of Safety and Regulatory Affairs](#)

NGFA and more than 340 organizations – from all 50 states – signed onto comments developed by the U.S. Chamber of Commerce challenging the proposed rule “Waters of the U.S.,” which extends federal jurisdiction over most waters of the states and ditches, ponds and land near water and ephemeral streams – areas that most would describe as land.

The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers' proposed the rule that the organizations believe dramatically expands the scope of federal authority over water and land uses across the United States and have called for it to be withdrawn.

According to the comments, "the proposed rule is really about the agencies' overreaching attempt to replace long-standing state and local control of land uses near water with centralized federal control. In light of the overwhelming evidence that the proposed rule would have a devastating impact on businesses, states, and local governments without any real benefit to water quality, the agencies should immediately withdraw the waters of the U.S. proposal and begin again. The current proposed rule is simply too procedurally and legally flawed to repair."

The comments detail several examples of the impacts of the proposed rule, including:

- Maps prepared by EPA show the rule could expand federal jurisdiction over waters from 3.5 million river and stream miles to well over 8 million miles.
- The rule would make most ditches into "tributaries." Routine maintenance activities in ditches and on-site ponds and impoundments could trigger permits that can cost \$100,000 or more.
- These permitting requirements would likely trigger additional environmental reviews that would add years to the completion time for ordinary projects.
- Even if a project can get a permit, firms often will have to agree to mitigate environmental "damage" with costly restoration/mitigation projects.
- The proposal likely also would result in more stringent storm-water management requirements, which would affect retailers, companies with large parking lots, "big box" stores, etc.

## **NGFA's Model Feed Quality Assurance Program Courses Available Online**

[By Heather McElrath, Director of Communications](#)

NGFA's Model Feed Quality Assurance Program courses are now available online. Each course costs \$50 for members (\$100 for non-members).

Since 1994, the program has served as a resource on how to develop, implement and enhance feed quality assurance practices at hundreds of feed mills.

It is designed for use by feed mill managers to train existing and new mill operators, as well as other personnel (such as administrative and sales staff), on feed safety regulatory requirements and feed quality assurance practices.

The six courses – each approximately 45 minutes – can be taken individually or as a set. Courses are:

- Current Good Manufacturing Practices;
- Purchasing and Receiving of Grains and Feed Ingredients;
- Feed Manufacturing and Process Control;
- Pelleting;
- Finished Feed Control and Product Investigations/Recalls; and
- Hazard Analysis and Critical Control Points (HACCP).

For more information, go to [ngfa.org/fqacourses](http://ngfa.org/fqacourses).

### Getting Started

The following will help you:

- **Access courses:** [Create an account on DigitalChalk](#) (the online service provider). This will be a separate account from the ngfa.org site.
- **Select courses:** Once you have logged into the site, click on "Catalog" and select "Courses." From there, add the courses to your cart, and proceed to checkout. (Note, you will not see the member discount until you get to check out.)