



**COMMENTS OF
THE RENEWABLE FUELS ASSOCIATION**

Advance Notice of Proposed Rulemaking

**Docket No. RIN 0580-AB00
Federal Register, Vol. 72, No. 139, July 20, 2007, pages 39762-39764**

Introduction

The Renewable Fuels Association (RFA) appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) RIN 0580-AB00 regarding "The Role of USDA in Differentiating Grain Inputs for Ethanol Production and Standardizing Testing of the Co-Products of Ethanol Production."

RFA is the national trade association representing the U.S. ethanol industry. Ethanol has become an essential component of the U.S. motor fuel market. Today, ethanol is blended in more than 50 percent of the nation's fuel, and is sold virtually from coast to coast and border to border. The almost 5 billion gallons of ethanol produced and sold in the U.S. last year contributed significantly to the nation's economic, environmental and energy security. Today's ethanol industry consists of 127 biorefineries located in 19 different states with the capacity to process more than 2 billion bushels of grain into 6.7 billion gallons of high octane, low carbon, clean burning motor fuel, and more than 12 million metric tons of livestock and poultry feed (distillers grains). The 78 plants under construction and expansion will increase industry capacity by an additional 6.7 billion gallons of ethanol and 12 million tons of co-product by the end of 2009.

Distillers grains are an often overlooked yet equally important co-product of ethanol production. While ethanol production consumes the grain's starch, the protein, minerals, fat and fiber are concentrated during the production process to produce a highly valued and nutritious livestock feed used predominantly in beef and dairy markets. A growing percentage of distillers grains is being fed into swine and poultry markets, as well. As the production of ethanol increases, so will the availability of this valuable co-product.

As the debate over the use of corn for food or fuel swirls, many critics fail to assign an appropriate value to the role distillers grains play in satisfying the livestock feed market. Rations for ruminant feed (beef and dairy cattle) allow up to 40 percent of the mixture to

be distillers grains. It provides an important protein source and, because it is not animal based, it also alleviates concerns about the spread of mad cow disease. Rations of distillers grains in poultry and swine (non-ruminants) markets are lower, in the range of 10 to twenty percent. In 2006, more than 85 percent of distillers grains was fed to ruminant animals (dairy and beef cattle), 9 percent to swine, and 3 percent to poultry. Continuing research is underway to better understand the optimal ration of distillers grains in poultry and swine feed. The result of this research may very well show higher ratios of distillers grains in all livestock feed provide better nutritional results.

In addition to domestic livestock feed, distillers grains are becoming a growing component of our export market, helping to satisfy feed needs in other countries, such as China, Japan and Mexico.

RFA's comments respond to specific questions posed by the Grain Inspection, Packers and Stockyards Administration (GIPSA) in the ANPR. RFA does not address all seven questions, or parts of questions, put forth in the ANPR; rather, RFA addresses the questions pertaining to issues in which RFA has direct involvement or market knowledge.

ANPR Questions

Questions #1: What should GIPSA's role, if any, be in standardizing the testing of inputs and outputs of ethanol co-product processing?

At this time, RFA does not perceive a need for GIPSA to be involved in standardizing the testing of inputs and outputs of ethanol co-products. GIPSA's role is to "facilitate the marketing of livestock, poultry, meat, cereals, oilseeds, and related agricultural products, and promote fair and competitive trading practices for the overall benefit of consumers and American agriculture." If GIPSA were to take on this role, there is doubt within the industry that GIPSA would be prepared to handle the demands of such a role, and be able to implement such a testing program in a timely manner and still be able to achieve GIPSA's stated mission to facilitate trade. To this point, it is noted in the July 20, 2007 Federal Register notice that the ANPR has been determined not to be significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB). RFA believes there would be a significant cost associated with the ANRP and therefore, should be reviewed by OMB. As mentioned previously, the quantity of GIPSA inspectors (and costs associated with those personnel increases) required to implement testing in a timely manner to a growing industry would be considerable.

Question #2: What factors are currently assessed on the input grains for ethanol conversion? Please list the factors by specific grain. What other factors would you test input grain for, if a test were available?

In 2006, GIPSA conducted an ethanol survey, contacting over 94 ethanol facilities. GIPSA received only 23 responses – less than 25 percent -- and not all 23 respondents

answered every question included in the survey. It is disturbing to RFA that some of the generalizations and questionable assumptions made by GIPSA in the ANPR, and the need for standardized testing of ethanol co-products are based on such rudimentary and inadequate survey results that can hardly be assumed to represent the ethanol industry and that are not statistically valid and cannot be supported. The 2006 survey results should **not** be considered reflective of overall industry attitudes and practices because of the structure of the survey and low response rate from the industry.

The Association of American Feed Control Officials (AAFCO) definitions are broad, yet suitable for the industry given that such information as to what factors are currently assessed on the input grains for ethanol conversion is proprietary information. Additionally, new distillers grains products are consistently being introduced into the marketplace as the result of new and emerging technologies. The existing definitions will likely be applicable to these new products, while any new, more proscribed definitions put forth by GIPSA may unintentionally exclude these new products.

The National Grain and Feed Association (NGFA) and the American Feed Industry Association (AFIA) also of late convened task forces to review the AAFCO definitions and concluded that the current definitions are appropriate.

Question #3: What analytes or factors are currently assessed on co-products of ethanol production? Please list the factors by specific co-product type. What other factors would you test for, if a test were available?

Ethanol co-products that are sold into the feed market are tested and labeling according to existing FDA regulations and guidelines developed by AAFCO. Purchasers of distillers grains may also require additional analytes that would be part of a private contract with the seller. There is a concern within the industry that further actions by GIPSA in the regulation of analytes would impede the market's ability to function by limiting the ability of private industry to produce and market specialty distillers grains products.

Further, there is great concern within the industry about the effectiveness of existing GIPSA-certified "quick tests" for mycotoxins in distillers grains. Before GIPSA looked for other analytes to test, it would be most useful to first focus on improving the reliability of the tests that are already available to the industry for mycotoxins.

Question #4: The industry lacks agreement on reference methods for analysis of co-product attributes. Should GIPSA play a role in the standardization of reference methods? If so, what should that role be?

In fact, the industry does **not** lack agreement on reference methods for analysis of co-product attributes. In February 2007, a report jointly funded by RFA, the National Corn Growers Association (NCGA), and AFIA on new guidelines for the analysis of distillers grains was released. RFA and AFIA working groups oversaw the project, while Dr. Nancy Thiex, chair of AAFCO Lab Methods Committee and laboratory manager of the

Olson Biochemistry Laboratories at South Dakota State University, served as the primary consultant to the project.

Specifically, the report, the result of a year-long study, offers recommended test methods for determining the moisture, crude protein, crude fat, and crude fiber content of distillers grains. These factors are viewed as the key determinants of the market value of the product. Historically, the lack of “standard” empirical distillers grains test methods has led to results that vary significantly from laboratory to laboratory, causing product uncertainty for producers, marketers, nutritionists, regulatory bodies and -- most importantly -- distillers grains customers. RFA believes the widespread voluntary adoption of recommended test methods will reduce market confusion and add more structure to the distillers grains marketplace.

The report had been anxiously awaited by the industry and has been extremely well received since its release. It would be the preference of RFA that GIPSA support the voluntary use of the standard test methods recommended by RFA, NCGA and AFIA.

Question #5: Secondary or rapid methods are used by the official inspection system to determine product quality. Should GIPSA play a role in the validation or standardization of secondary or rapid methods? Should we limit our participation to validating the performance of test kits? Are there rapid tests in existence other than test kits of which you are aware?

There is a true need for quick determination of certain attributes at the grain offloading locations; however, the economic impact from the lack of precision of these test methods is having a greater impact. As stated previously, RFA believes it would be most useful to the industry to improve upon the existing, but poorly functioning “quick tests” that GIPSA has certified for mycotoxins. The industry would be happy to participate in such an endeavor and would also be willing to provide samples of distillers grains for the process.

Question #6: Should we work on developing reference methods for tests of specific traits in grains, such as fermentable starch content? Should GIPSA pursue standardized, secondary tests for the presence of specific traits in grains, such as fermentable starch content?

RFA does ***not*** believe GIPSA should move forward to develop reference methods, standardized or secondary tests of specific traits in grain.

As seed companies develop new ethanol-specific or distillers grains-specific traits, we anticipate that the seed companies will continue their practice of working with the industry to ensure the necessary testing and analytical needs pertaining to those traits are sufficiently met; however, RFA does not believe it is appropriate for seed companies to develop the tests for their own traits. There may be an opportunity for GIPSA to work in conjunction with the seed companies to develop appropriate tests for new traits.

As an example, NCGA has been working with the primary manufacturers of hybrids with high fermentable starch content to develop a “neutral standard” near infrared spectroscopy calibration for distillers grain using the reference methods recommended by the RFA/NCGA/AFIA working group. There is not currently a high demand for this calibration by the industry, but the industry is working to develop the neutral standard now so that it will be available when the demand is there.

Conclusion

RFA believes both the domestic and international markets for distillers grains are functioning appropriately, and issues are being addressed proactively in a timely manner by the industry as they develop. RFA does not see a need for GIPSA or other USDA agencies to increase their involvement in issues related to differentiating grain inputs for ethanol production or the testing and marketing of ethanol co-products.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bob Dinneen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bob Dinneen
President and CEO

November 30, 2007