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August 2021

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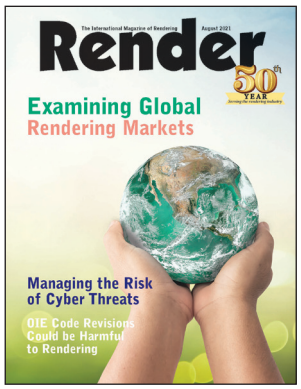

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Renderers from around the world share the challenges and opportunities they face in today's markets. **p. 10**

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Departments

Editorial staff

Editor and Publisher
Tina Caparella

Associate Editor
Ron Kotrba

Magazine Production
Sierra Publishing

RENDER
The International Magazine of Rendering

Phone: (530) 306-6792
editors@rendermagazine.com
www.rendermagazine.com

Contact the North American Renderers Association
500 Montgomery St., Ste. 310, Alexandria, VA 22314
(703) 683-0155 Fax (571) 970-2279
info@nara.org • www.nara.org

Render (ISSN 0090-8932) is published bimonthly under the auspices of the North American Renderers Association by Sierra Publishing as a public service to the North American and global rendering industry. It is intended to provide a vehicle for the exchange of ideas and information pertaining to the rendering and associated industries. *Render* is distributed free of charge to qualified individuals upon written request. Publisher reserves the right to determine qualification. Periodical postage paid for at Collinsville, OK, and additional mailing offices.

POSTMASTER: Send address changes to
Render, PO Box 856, Collinsville, OK 74021-0856

Rendertorial

Brown hazy skies give the summer sun an eerie glow as fire season in the western United States once again flares up. It has arrived much earlier than usual in the Inland Northwest (northeastern Washington and northern Idaho) due to a dry winter and early summer heat.

This year has seen record-breaking heatwaves in areas that traditionally do not experience hot weather—121 degrees in the village of Lytton, British Columbia, in late June, which is a new world record for the most extreme high temperature ever observed north of 45 degrees latitude. Lytton's record temp tied with Death Valley, California—traditionally scorching hot in summer—for that day's highest temperature in North America. Washington and Oregon coastal cities, normally a refreshing escape, also sweltered in record temps well over 100 degrees, even reaching 116 in Portland, Oregon.

With this heat and arid conditions come explosive wildfires that, so far, have destroyed hundreds of thousands of acres in the drought-stricken western United States with more dry months ahead before the rainy season will bring any relief. As of mid-July, Oregon is experiencing one of its largest wildland fires that is 606 square miles.

On the flip side, incredible flash floods have ravaged through towns in the United States and Europe, taking lives and property. Agree or not, these historical weather events mean the Earth's climate is changing, as it has done for millions of years. One bright spot is that renderers can be a part of the climate solution today, and in the years ahead.

By upcycling inedible meat products and used cooking oil, rendering avoids at least 90 percent of potential greenhouse gas (GHG) emissions compared to industrial composting or landfilling. The resulting animal fats and yellow grease are increasingly being used to make alternative fuels, which also reduce GHG emissions by up to 85 percent compared to fossil fuels.

As global extreme weather events continue to emerge, rendering's beneficial environmental impact must be included as part of the climate discussion. **R**

By Tyson Redpath, The Russell Group

Ag Competition and Lapsed Trade Authority

A broad executive order issued July 9 by President Joe Biden renews previous efforts to break perceived market control among a handful of companies over several industries, including agriculture. The Executive Order on Promoting Competition in the American Economy is the fifty-second order issued during Biden's seven months in office, and it focuses primarily on three sectors: information technology (IT), pharmaceuticals, and agriculture.

Among the 72 initiatives announced, the order creates a White House Competition Council to include the secretary of agriculture. In turn, the secretary and agencies within the United States Department of Agriculture (USDA) are required to consider using their authorities, with particular attention to the influence of any of their respective regulations, on concentration and competition in the industries under their jurisdiction; and the potential for their procurement or other spending to improve the competitiveness of small businesses and businesses with fair labor practices.

USDA is required to pursue rules that better define "Product of the USA" meat labels to "ensure consumers have accurate, transparent labels that enable them to choose products made in the United States." Further, the department will consider initiating a rulemaking to define the conditions under which the labeling of meat products can bear voluntary statements indicating that the product is of United States origin, such as "Product of USA."

The order also calls for three rules under the Packers and Stockyards Act to clarify violations, including conduct that is unfair, deceptive, or unjustly discriminatory as well as to reinforce USDA's position that a violation of the act does not have to demonstrate harm or likely harm to competition to be a violation. Much of the spadework on these rules had already been developed by President Barack Obama's administration then later shelved under President Donald Trump.

Importantly, the executive order does not carry the force of law and almost all of the actions are conditioned upon the existing legal authority of the 12 agencies covered by the action. Throughout much of the order, the direction of the president is conditioned upon words like "encourages" or "pursue" or "seek to address." As executive orders have become more commonplace in federal policymaking, most experts agree that virtually all are reversed by subsequent presidents of a different party or by legal action.

Alongside the presidential order, USDA announced the availability of a half-billion dollars to increase meat processing capacity. Making the announcement in Council Bluffs, Iowa, Agriculture Secretary Tom Vilsack said, "We can no longer rely on a handful of processing companies to do the job, to make the market competitive, to do right by farmers [and] to ensure as well that we have a resilient food supply." Additionally, the department said $150 million will be made available for existing small and very small processing facilities struggling "to contend with the ongoing pandemic" and more than $55 million for "strengthening existing capacity." The funds are not expected to be made available until the start of the government's new fiscal year beginning October 1, 2021.

The executive order does not carry the force of law and almost all of the actions are conditioned upon the existing legal authority of the 12 agencies covered by the action.

Trade Promotion Authority Runs Out

The United States celebrated its 245th birthday with customary salutes and a return to 4th of July celebrations missed during last year's COVID-19 pandemic outset. As America celebrated with an inward focus, the seminal trade and foreign policy authority for any president, Trade Promotion Authority (TPA), lapsed without any fireworks and seemingly superficial commentary.

TPA is a time-limited authority that Congress uses to establish trade negotiating objectives, notification, and consultation requirements of the administration, and procedures to consider implementing legislation for trade agreements. TPA, also known as "fast track," is so named because the trade agreements submitted under its authority must be approved or rejected by Congress, without amendment or filibuster, under rules providing strict deadlines. Rarely is Congress bound by such deadlines making TPA without equal and virtually irreplaceable for presidential administrations seeking new trade deals and a restored prominence for diplomatic footing.

The Biden administration has so far remained silent on when or even if it will seek TPA reauthorization from Congress. Worker-centric trade policy, not necessarily new agreements, thus far has been the cornerstone of the new administration's policy stance. When TPA ran out July 1, so too did billions of dollars and authority for the Trade Adjustment Assistance (TAA) for Workers Program. TAA provides federal assistance to workers who involuntarily lost their jobs due to foreign competition and has customarily been reauthorized alongside trade expansion policies like TPA for decades. It is the essence of "you scratch my back, I scratch yours" for lawmakers who frequently cite the need for good compromise. That assistance seems to be exactly the type of building block for Biden's worker-centric approach. To date, only one member of the president's cabinet, Vilsack, has been outspoken for reupping these authorities.

During a conference earlier this year, Vilsack encouraged Congress to "get serious about resuming and extending Trade Promotion Authority, which will then give us the opportunity to complete negotiations with the UK [United Kingdom] potentially." For her part, US Trade Representative Ambassador

Katherine Tai has been less forthcoming. During testimony on the topic during her Senate confirmation process and when questioned by the House Ways and Means Committee in May, she gave no timetable for when the administration might formally request reauthorization.

Any effort to craft a new bill before the 2022 elections, although highly unlikely, would have to be led by Senate Finance Committee Chair Ron Wyden (D-OR) and House Ways and Means Committee Chair Richard Neal (D-MA). Wyden voted for the 2015 TPA bill while Neal opposed it. Despite Democrats' loathsome disgust with Trump administration policy, the fact remains that "America first" trade policy flipped the script for many congressional Democrats who long championed get-tough enforcement and stronger tariffs to support American laborers.

Prior to expiration, TPA was most recently used by Congress to ratify the United States-Mexico-Canada Agreement. In 2019, the Trump administration notified Congress that it planned to enter negotiations with the European Union, Japan, and the UK for potential trade agreements under TPA. The United States and Japan signed two bilateral agreements not formally considered by Congress under TPA.

US agriculture in 2020 generated $145.7 billion in global exports. Nearly 20 percent of rendered product is sold overseas annually, and not by accident in those markets where the United States has trade agreements in place, including Mexico, Chile, and Singapore. Not surprisingly, when TPA is requested by the Biden administration, rendering interests will play a role advocating for its renewal.

USDA Under Secretary for Marketing and Regulatory Programs Nominated

Former California Department of Food and Agriculture (CDFA) Deputy Secretary and current CDFA Undersecretary Jennifer (Jenny) Moffitt has been nominated by Biden to serve as the Under Secretary for Marketing and Regulatory Programs at USDA. From this position, she would lead this critical USDA mission area covering the Agricultural Marketing Service and the Animal and Plant Health Inspection Service. Combined, the mission area oversees a budget of more than $2.5 billion and a workforce of more than 10,000 employees.

Prior to public service, Moffitt spent 10 years as managing director at Dixon Ridge Farms, her family's organic walnut farm and processing operation. Additionally, she served on California's Central Valley Regional Water Quality Control Board from 2012–2015 and worked for American Farmland Trust from 2002–2005. Moffitt is a graduate of Brown University and the California Agricultural Leadership Program. She resides in Davis, California, with her husband and daughter. **R**

By Tina Caparella

Updates on Infrastructure, Trade, and Shipping

Since United States (US) renderers still cannot meet with their congressional representatives in Washington, DC, as they traditionally have each summer, the North American Renderers Association (NARA) held several webinar briefings to update its members on key matters surrounding the industry. The first briefing focused on rendering issues in Congress where Andrew Harker of The Russell Group informed attendees that the infrastructure bill under discussion on Capitol Hill for quite some time has made progress but still has a long way to go. Guest speaker Representative Dusty Johnson (R-SD) shared that he is excited about the increasing dairy industry in South Dakota and his engagement in biofuels in Congress. He is seeing bipartisanship in Congress on agriculture and biofuels.

"Rendering does not get enough credit for its role in renewable diesel," Johnson stated. "Thanks for your leadership there." He noted that as more members of Congress now come from suburban areas, it has become more complicated for them to understand ag and more difficult to build large, bipartisan coalitions. There is lots of discussion in Congress on what "infrastructure" is and whether President Joe Biden's $2.7 trillion plan is focused enough on just that. There is bipartisan agreement that infrastructure is capital investment in roads, bridges, railways, and waterways, but not other things included in the proposal, such as day care.

"If we don't bring about some common-sense solutions, we could get damaging policies in place," Johnson said.

Randy Russell of The Russell Group agreed that Congress needs to look at solutions that are reasonable, including meat packing industry issues such as pricing transparency, packer concentration (the top five US packers have not increased capacity, but foreign ownership is becoming a bigger concern), and labor shortages (15–20 percent in the meat industry). Kim Broekemeir, Tyson Fresh Meats, said the labor shortage is a true concern and not just in meat plants, but also in transportation. "We see it every single day," she stated.

Several of NARA's briefings focused on agriculture trade. Dr. Joe Glauber with the International Food Policy Research Institute, who began his career in the US Department of Agriculture's fats and oils research division, said the United States will see record agriculture exports this year ($164 billion is forecasted, of which $35 billion will go to China). He stated that in 1990, the top US ag export destination was the European Union (EU), with Japan taking the number one spot in 2000. From the early 2000s onward, Canada was the largest US market followed by Mexico. In 2001, China joined the World Trade Organization and began importing, especially soybeans.

In 2011, China became the top US market, sharing the coveted spot off and on with Canada until 2017 when new tariffs caused US ag exports to China to plummet until 2019 when a new trade agreement was reached. Between 2018–2020, US agriculture exports averaged $140 billion a year, with 44 percent of exports being soybeans, according to Glauber. Although animal fats and tallow are a small percentage of overall ag exports, they are still important to the US rendering industry, averaging $800 million per year.

Reports indicate that ocean carriers are charging US exporters upwards of $20,000 per container due to high demand from overseas exporters, especially in Asia.

Ambassador Darci Vetter, former chief agricultural negotiator at the US Trade Representative and deputy under secretary at USDA, said that Biden's approach to trade is still focused on America, but more so on how to make the gains from trade go farther for Americans, especially as they relate to worker wages, climate, and human rights.

Peter Friedman, executive director of the Agriculture Transportation Coalition, of which NARA is a member, briefed renderers virtually on the continued shipping challenges US exporters are experiencing, whether with ocean carriers or domestic rail and truck. He explained that each shipping container equals one semi-truck and 20,000 containers per ship are often put through US ports, with many not having the capacity to handle this large volume. Reports indicate that ocean carriers are charging US exporters upwards of $20,000 per container due to high demand from overseas exporters, especially in Asia. Products manufactured in and exported from the United States cannot sustain that high charge so overseas buyers are canceling US imports and purchasing from other countries. Friedman said this struggle is more pronounced in the Midwest.

A second issue for exporters is that carriers are charging high demurrage and detention fees when a container does not arrive at the shipping terminal on time. Estimates are that $250 million in these penalties were charged in the first half of 2021. Friedman shared that one carrier just announced a $1,000 per container surcharge because sending empty containers back to Asia is preferred for a faster turnaround to bring goods back to the United States that consumers demand post-COVID-19. Friedman, who participated in a roundtable in mid-July with Agriculture Secretary Tom Vilsack, Secretary of Transportation Pete Buttigieg, and other supply chain representatives, stated that cabinet secretaries in the White House are paying attention to the shipping challenges.

Industry has seen shipping situations like this before, so the big question is how long will this one last? Friedman said the problem is that a huge volume of imports is coming into the United States where supply chains to handle it are lacking. He shared that the purchasers and inventory managers for large companies (e.g., Walmart, Home Depot, Wayfair, etc.) are predicting May 2022 before US consumer demand slows down and inventories catch up with purchasing, thus leveling out the shipping situation. **R**

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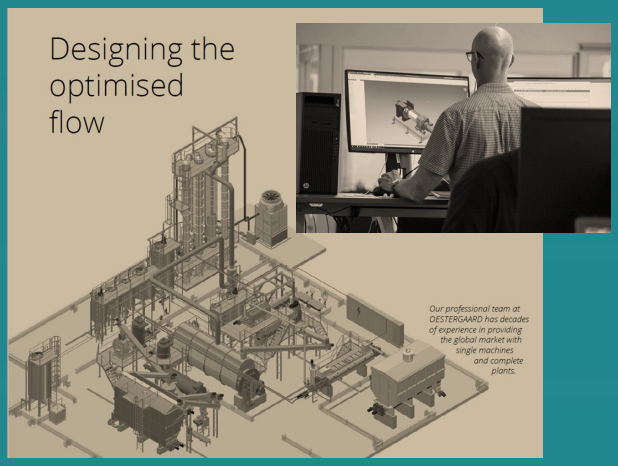

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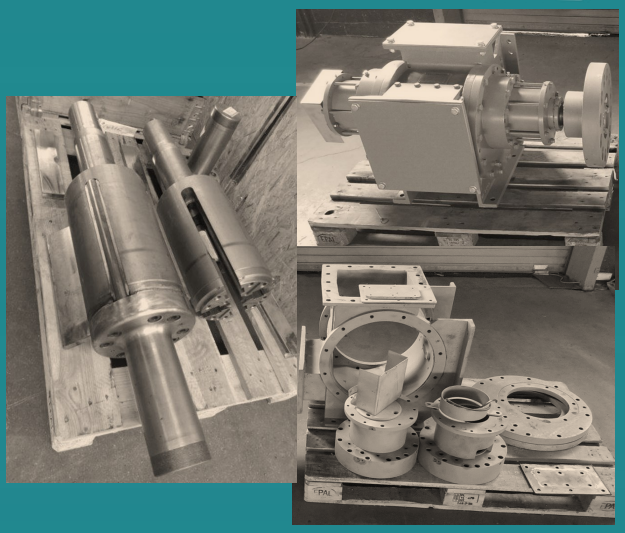

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EXAMINING GLOBAL RENDERING MARKETS

As the worldwide rendering industry continues to deal with various disruptions caused by the global COVID-19 pandemic for a second year, several individuals provided updates to their region's rendering production and any challenges or opportunities seen for the rest of this year and into 2022.

Australia Outlook Changed One Year Later

Little did Australian renderers know at this time last year that one year later the biggest issue would still be COVID-19 and the ongoing impact that state governments have put on business with state border closures and city and state lockdowns, reported Dennis King, Australian Renderers Association (ARA) executive officer. Fortunately, the rendering industry has retained its essential industry classification and is able to operate as close to normal as possible with social distancing. There is hope that the vaccination rollout picks up and Australia can soon return to a new normal not too different from the old one. The restriction on travel has hindered the opportunity to engage with potential new customers, work on opening new market opportunities, and restore lost markets.

ARA's hygienic rendering training course resumed in July after a 12-month hiatus but with reduced numbers, due to the restrictions. The association expects to be back to full attendance for its second course in September. The ARA Board of Directors continues working hard to develop and implement the Australian rendering industry core strategies to ensure the future of the industry.

As predicted, livestock slaughter numbers in Australia have continued to decline, due not only to the reduced herd numbers but also a remarkably wet first half of this year, with many parts of Australia now out of drought. This has led to a drop in animal protein meals produced to 640,000 metric tons (MT) over last year's 650,000 MT, with tallow and oil production around 610,000 MT, down from 620,000 MT previously. Meat and Livestock Australia revised up its predictions of the cattle herd in 2020, which finished at 24.5 million head, 1 million head higher than earlier predictions, and 2021 is expected to see the herd at 25.9 million. The strong availability of pasture will accelerate the rebuild affecting the cattle available for slaughter in the short term, but this should see the herd return to 28 million in 2023. Sheep flock size is expected to grow by 6.3 percent to 68 million head, and by 2023 it is predicted to be 75.4 million.

Poultry production continues to grow due to high beef and lamb prices pushing consumers to buy more chicken. Slaughter for 2021 is expected to be 665 million birds, up 7 million from last year, with production to rise to 678 million birds into 2022. These predictions all point to an ongoing opportunity for the rendering industry with improved production and demand along with strong prices for protein meals and oils.

With this bright outlook into 2022, ARA looks forward to welcoming delegates to Brisbane in sunny Queensland for its 16th International Symposium to be held September 27–30, 2022. Start planning your trip now.

Brazil Seeing Ups and Downs

Lucas Cypriano, technical manager of the Brazilian renderers group ABRA, and Lucas Portela, ABRA business intelligence analyst, reported that Brazil's renderers process raw material from slaughterhouses, meat packers, and retail establishments, but they cannot collect raw material from farms. The country's rendering production has full traceability, from collection to the finished product delivered

to the customer as renderers are inspected by the country's official health authorities. As elsewhere in the world, the biggest challenge in Brazil in 2020 was COVID-19, which caused financial difficulties for a large part of the population, yet meat production grew. That led to an increase in rendered product output both in volume (3.7 percent) and revenue (64 percent), showing that Brazil's rendering industry is mature and continues its sustainable growth.

Responsible for around 50,000 direct jobs, Brazil's rendering industry also contributes to the country's environmental sustainability, the result of the work of 263 companies located in nearly every territory in the country. ABRA figures show that the industry recycled 32 percent of the total weight of the country's slaughtered animals in 2020 (table 1). The 13.6 million MT of animal by-products rendered in Brazil last year produced about 5.8 million MT of animal protein meals and fats, a net growth of 3.7 percent over 2019. The primary markets are livestock feed, 58 percent; biodiesel and pet food, 13 percent each; hygiene and cleaning, 10 percent; and exports, 5 percent. Brazil's animal protein meal market is primarily livestock feed, whereas around 36 percent of animal fats are sold to the bioenergy sector.

Table 1. Brazil slaughter and rendering figures

Species	Live weight at slaughter (MT)	By-product rendered (MT)	By-product rendered (%)
Ruminants	20,097,713	7,662,023	38
Poultry	16,244,800	4,654,085	29
Swine	5,517,413	1,081,413	20
Fish	469,916	211,462	45

Source: ABRA, 2021

Exports of Brazilian rendered products suffered little impact during 2020. Around 113,780 MT of rendered products were exported last year, with 71 Brazilian rendering companies exporting animal protein meals or fats to more than 40 countries, about 97 percent of 2019 export volumes. ABRA believes the "no COVID impact" was possible due to a well-established industry, skilled entrepreneurs, and a well-settled production chain that responded quickly to the unexpected challenges of lockdowns, labor force availability and change on demand, and customs port activities.

Brazil's animal protein meal trade balance in 2020 had a surplus of nearly US$90 million and 181,600 MT. The trade balance of animal fats, on the other hand, had a deficit of more than US$61 million and 86,110 MT. About 86 percent of the country's rendered product exports last year was protein meal. Despite meat and bone meal being the most produced in the country (61 percent), poultry meal was the most exported meal last year, with a share of 68 percent.

European Rendering Numbers on Hold

Due to continuing COVID-19 restrictions, the European Fat Processors and Renderers Association (EFPRA) again postponed its annual congress scheduled for early June in Portugal to 2022. In addition, many European Union (EU) countries have not yet reported their rendering production figures for 2020 so the annual statistical snapshot of the EU industry for last year is not available. Dirk Dobbelaere, EFPRA secretary general, did report that the EU agrifood sector has continued its recovery following the gradual reopening of food services and the lifting of restrictions on the movement of people and goods associated with COVID-19. Despite the improvement in meat prices, the spread of African swine fever (ASF) and avian influenza (AI) along with high feed prices continues to affect the recovery of the meat sectors, which had suffered significantly due to the closure of hotels, restaurants, and other food establishments. Concerning trade with the United Kingdom (UK), the negative effects of the new relationship established after the end of the transition period (April 1, 2021) started to become visible in 2020; however, imports were more affected than exports.

All meat prices are clearly higher than last year and above the five-year average. High feed costs are a main challenge for food animal producers. Falling pork prices in China are also a concern, given the sensitivity of the sector following last year's significant drop in prices. In certain parts of the EU, such as Latvia and Spain, the livestock sector continues to be vulnerable in the face of reduced production and increased input costs that lower producers' income.

EU beef production is expected to decline in 2021, mainly due to a reduction of cow herds in the beef and dairy sectors combined with lower demand from food services. Exports to high-value markets should continue to increase due to recent trade agreements (e.g., Canada and Japan) while other destinations show a small drop, despite the shortage of beef globally.

EU pork production is predicted to continue increasing in 2021 as additional production in some EU countries more than compensated for the decrease due to ASF in Germany. Although exports to the UK are strongly reduced, overall EU pork exports should grow again in 2021.

As AI hits major EU poultry producers, including Poland, production is expected to decline this year. Demand is not anticipated to rebound sharply with the reopening of food service establishments, and overall exports should decrease. Despite high prices, margins are under pressure because of high feed costs.

The EU sheep meat market faces strong global and domestic supply shortages (EU production being stable), leading to relatively high prices. Exports from New Zealand are partly redirected to Asia, while also facing higher shipping costs. The current trade situation between the EU and UK adds downward pressure on exports and imports.

Processed Animal Proteins Making a Comeback in Europe?

The European Commission has long planned for the use of swine processed animal proteins (PAPs) in poultry feed and poultry PAPs in swine feed (plus insect meal in both feed types) to be reauthorized, according to Bruce Ross, Ross Gordon Consultants and European regional director for the North American Renderers Association. A proposal to allow this is before the European Council and Parliament, with approval possible in early autumn if all goes well. The authorization would go into effect almost immediately.

It will clearly take time for PAP usage in these feeds to grow. Feed companies will need to adapt facilities to meet channelling requirements and adjust formulations. Retailers

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and consumers may not accept use of non-ruminant PAP immediately. In order to help prepare the market for this, EFPRA has issued white papers explaining the nutritional benefits of using PAPs.

This move comes in addition to other recent changes to EU legislation that makes it easier to export organic fertilizers and soil improvers containing category 2 PAP, and that allow limited quantities of tallow to go to the United Kingdom for combustion. These are just the latest examples of a decades-long strategy of gradual easing of restrictions on the use of rendered products in Europe when the scientific evidence allows it, and under strict conditions, following a continual decline in numbers of bovine spongiform encephalopathy (BSE) cases to nearly zero.

In other news, the EU is busy updating its renewable energy policy in order to meet the higher climate change targets it has set—greenhouse gas emissions reductions of 55 percent compared to 1990, and climate neutrality by 2050. All aspects are being reviewed in a package of measures entitled "Fit for 55." The future of renewable transport fuel targets, covered by the EU Renewable Energy Directives, is uncertain as are the incentives currently enjoyed by used cooking oil (UCO) and animal fats as biofuel feedstocks. This could affect future exports of United States (US) and Canadian rendered products and UCO. All is still "up for grabs," however, given the EU's tortuous decision-making processes.

On the topic of trade, better relations have been restored with the United States over recent months. This has been an EU aim for several years and the first steps have begun. On June 15, EU and US leaders met and agreed on several measures. These include an agreement to suspend the application of retaliatory tariffs stemming from World Trade Organization disputes over government subsidies to aircraft manufacturers Airbus and Boeing. There is hope this spirit can be replicated in more technical discussions, perhaps involving rendered products.

Mexico Experiencing Growth

Mexico's rendering industry annually produces approximately 300,000 MT of proteins and fats of bovine origin. The primary objective for rendering in Mexico is to be an essential activity in the value chain of the livestock industry and participate in health control actions, while contributing to the use of animal by-products as a reliable supplier to the oleochemical and animal feed production industries. Mexico produces 36.5 million MT of feed per year—sixth largest in the world— with animal feed production increasing more than 4 percent in 2020 over the previous year.

There are 92 rendering plants in Mexico with registration granted by the national animal health authority. Operations are regulated by federal law on animal health, the regulations of this law, and by the official Mexican Standard NOM-060-ZOO-1999, "Animal health specifications for the transformation of animal offal and its use in animal feed." The country's rendering industry also meets the international guidelines contained in the *Terrestrial Animal Health Code* of the World Organization for Animal Health, which has allowed Mexico to be classified as negligible risk status for BSE.

As a mixture of agri-food industries, Mexico's economy has shown that resilience is necessary to overcome the challenges of the global COVID-19 pandemic. National agriculture and fisheries production for 2021 is predicted to be 3.6 percent higher than 2020. By subsector, forecasts for this year are all positive, with agriculture up 3.8 percent, livestock 2 percent higher, and aquaculture growing by 1.3 percent. Meat production in 2021 is expected to overall be 2.4 percent more than last year, with specific sector growth as follows: bovine, 2.3 percent; pork, 4.2 percent; poultry, 2.1 percent; sheep, 3.8 percent; goat, 5.7 percent; and turkey, 5.4 percent.

Mexico's beef trade balance continues to be a surplus, with exports increasing 9.7 percent while imports dropped 15 percent. Beef ended 2020 with a growth of 2.6 percent in production amidst the same consumption as 2019. Livestock inventory shows more than 32 million head of beef-producing cattle, 18 million pigs, 160 million laying birds, and 1.5 million broiler chickens produced per year in 120 federally inspected type plants, 154 private sector plants, and 904 municipal slaughterhouses.

Fernando Mendizábal Acebo, president of Mexico's renderers association, said it is essential to continue strengthening the association as well as the synergy of the rendering industry with Mexican government entities, Mexican feed producers, and international organizations related to this activity. **R**

MANAGING THE RISK OF CYBER THREATS

Cybersecurity experts say every company, no matter the size, is at risk of a cyberattack.

By Sharla Ishmael

The recent cyberattack on JBS, one of the world's largest meat processors and a North American Renderers Association member, was no doubt a wake-up call for many involved in agriculture, including those in the rendering business. The ransomware attack affected JBS servers in North America and Australia and not only temporarily shut down much of the company's beef processing operations in the United States (US), but also caused disruption to supply chains and cattle markets. The attack led to the company paying $11 million in ransom.

According to a company press release, JBS had mitigation protocols, including redundant systems and encrypted backup servers, that enabled the company to quickly recover and resume production. Do not assume, however, that only large corporations are at serious risk for ransomware and other cybercrimes like business email compromise, insider threats, intellectual property theft, social media manipulation, and more. Small to mid-size companies that may not have robust cybersecurity protocols are just as vulnerable as larger ones. During the 2021 CyberAg Symposium in May, a panel of US Federal Bureau of Investigation (FBI) agents and a representative of Perdue Farms discussed cyber threats in food and agriculture.

"When it comes to the targets of these types of attacks, most people think they're going to be after the so-called big fish, or really large organizations that have a lot of money," said David Ring, FBI cyber division section chief. "But in reality, cybercriminals seek out targets of opportunity and, oftentimes, those mid and small companies tend to be opportunistic targets for these folks." He provided a glimpse into the scale of cybercrimes against businesses.

"The Internet Crime Complaint Center at IC3.gov is a website where individuals and businesses can report these types of attacks," Ring explained. "In 2020, IC3 reported about 20,000 business email compromise reports . . . and an adjusted loss of more than $1.8 billion."

Keep in mind those are just reported cases and are likely to be a very small fraction of the actual number of cyberattacks carried out that year. With ransomware attacks, the ransoms that are being demanded—and paid—have gone up significantly. Ring stated that monetary losses to ransomware were up 225 percent globally in 2020.

"There are probably a lot of reasons why the amounts have gone up," he said. "But at the end of the day, it's very simple. It is a malicious actor getting into your system and paralyzing it; basically, taking it hostage and not releasing it until they are paid. And so, it's a significant threat, maybe not in the number of instances of things like business email compromise, but when you talk about it from a financial standpoint . . . in some really bad scenarios, the entirety of your business' capability to operate, taken out for a significant period of time, can absolutely destroy an organization."

Another problem for renderers and affiliated businesses stems from both the increased sophistication of hackers' technology as well as the early victims of these cyberattacks—healthcare organizations, energy companies, government entities, and so on—hardening their systems against further intrusion. So, the cybercriminals move on to easier targets. In addition, the inherent nature of the rendering industry makes it extra vulnerable without even considering the threat posed by radical animal-rights activists determined to take down animal agriculture by any means necessary.

"The food and agriculture industries are certainly significant targets," Ring stated. "Why would somebody potentially target a farmer or smaller business? Disruption is a significant part of what ransomware actors and other types

of criminals are trying to execute. The reason for that is the likelihood of paying a ransom. So, if you attack an industry that is critical to the safety and life of a society, it's more critical to pay that ransom in a lot of cases, right? There is access and vulnerability and impact. Where opportunity lies, they will exploit that."

Decreasing Risk Starts at the Top

While no system is foolproof, there are basic measures all companies can take to limit exposure to cyber threats. First, a key aspect is understanding that cybersecurity cannot be seen as just an information technology (IT) problem. It is partly an organizational culture problem. Retired Colonial John Hoffman is a senior research fellow with the Food Protection and Defense Institute (FPDI) at the University of Minnesota. FPDI researches and identifies vulnerabilities of the global food system and works with stakeholders, both public and private, to educate and train them on assuring product integrity, supply chain resiliency, and brand protection.

"We don't go in and work on your network or your cloud," Hoffman explained. "We focus on changing the culture of the company. Changing the mindset of management all the way down to OT [operational technology] workers on the production floor. We educate management and teach them to set the example and change the posture of the company."

Most attacks happen at the OT, not management, level, according to Hoffman. "Sometimes they might get into payroll or something, but it's usually on the processing floor from operational techs," he said. "Typically, risk comes from human factors—somebody clicked on a link or opened an email they shouldn't have. We want to get people to think about cybersecurity the same way they think about HACCP [hazard analysis and critical control point]—identify the hazards, critical control points, etc. That's also why employees at all levels need to be trained, so they understand how to talk to the IT folks about what they need to protect the company."

For instance, many companies use industrial control systems (ICS) that have outdated software and operating systems or programs with custom code written before cybersecurity was a problem. A white paper written by FPDI, *Adulterating More than Food: The Cyber Risk to Food Processing and Manufacturing,* goes into more detail about its research on ICS vulnerabilities. It found it was very common to see companies using systems that (a) cannot be updated, and (b) are connected to the company's entire network for convenience.

Suppose a hacker finds a device on the production floor, like a water pressure valve or a security camera that is connected to the company-wide network and not protected sufficiently. That can give the hacker a foothold into the company's system, which they can use to escalate privileges and ultimately encrypt the company's data to hold it hostage for ransom. It is quite possible the IT department was not aware the connected water valve existed, which is a prime example of why IT and OT personnel must work together more closely.

Business email compromise is another cyber threat that everyone in the organization with access to email must be trained to avoid. Even though most employees think they know how to avoid an email scam, hackers are getting better at tricking people. Following is an example.

> *A hacker gets into an employee's email inbox undetected through phishing or compromising log-in credentials. This particular bad actor sets a rule for the inbox to forward all messages to another email that he or she controls, then sits back and monitors the communications coming through that inbox until an opportunity arises. Now say this employee sends an invoice to a vendor. The hacker can take over the email, still undetected, and send instructions from the legitimate email address to the vendor asking payment to be sent to a new bank account. The sent email is hidden from the employee.*
>
> *The employee never saw that email, the vendor had no reason to suspect a hacker had taken over the account because the email address is the same that has always been used, and now the money is gone. The fraud is only discovered later when the employee contacts the vendor about a missed payment. If the vendor's employee had been made aware of this type of threat, they could have made one phone call to verify the change of banking information and stopped this attack.*

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Cyber Threats *Continued from page 15*

"Think about going through an airport," Ring said. "On every door you see physical security. Every individual in your organization that has access to any of your systems is a door. And there are not enough sentries to post at all these virtual doors. A lot of this is good cybersecurity and cyber hygiene training. Every organization, no matter how big or small, needs to make every individual aware of these vectors of entry that can be exploited by cyber criminals and taught to be their own point of protection for your organization."

The FBI does not recommend paying ransoms. There is no guarantee the hacker will release the data once the money is paid and it encourages the bad guys to keep committing this crime. Furthermore, there is something called "double ransom," where a company may have its backup data secured and be able to get up and running without paying a ransom. If the seized information is sensitive, however, the hackers may threaten to post it online to either ruin the company's reputation or make trade secrets public. Again, even if the ransom is paid, criminals may not take down the information.

Whether or not a ransom is paid, the FBI emphasizes it is important to report the crime to a local field office. At the very least, agents may be able to obtain evidence to identify and hopefully arrest the cyber criminals responsible. If it is possible, preserve any infected computers or devices and records to be inspected, but unplug them from the company network. Even if fraud has not occurred but an intrusion has been detected, let the FBI know. In some cases, authorities have been able to freeze the stolen funds before the hackers got away with the money.

There are both paid and free resources available to help companies with cybersecurity plans. A good place to start is the Cybersecurity and Infrastructure Security Agency (CISA) under the US Department of Homeland Security. The website at cisa.gov has guides on all kinds of cyberthreats, information on current attacks, and resources for cyber hygiene services. CISA even offers scanning and testing services at no cost to federal, state, local, tribal, and territorial governments, as well as public and private sector critical infrastructure organizations.

The FBI's website at IC3.gov also has helpful resources, industry alerts, and guidance documents in addition to taking complaints for Internet crime. Ring suggested following FBI on social media channels to receive bulletins and the latest info released by the bureau.

As for paid cybersecurity consultants, these types of business can offer more customized training and assessments, including simulated attacks, to help harden a company's networks. FPDI also offers training, both online and in-person. Visit foodprotection.umn.edu for more information.

Kyle Waggoner, director of information security for Perdue Farms, wrapped up the discussion at the CyberAg Symposium with the following insight.

"Over the next year or two, if you are in business long enough, you will probably experience some type of cyberattack. The worst thing to do is try to figure it out when it happens rather than be prepared. Know what to do when it happens, who to call and bring in so you are not panicking or trying to solve the situation on the fly. Have a very clear path so you can say, 'This is how we get out of this situation.'" **R**

Cyber Defense

Best Practices from the FBI

- Regularly back up data and verify its integrity. Ensure backups are not connected to the computers and networks they are backing up.
- Focus on awareness and training. Since end users are targeted, employees should be made aware of the threat of ransomware, how it is delivered, and trained on information security principles and techniques.
- Patch the operating system, software, and firmware on devices. All endpoints should be patched as vulnerabilities are discovered.
- Ensure antivirus and antimalware solutions are set to automatically update and that regular scans are conducted.
- Implement the least privilege for file, directory, and network share permissions.
- Disable macro scripts from Microsoft Office files transmitted via email.
- Implement software restriction policies or other controls to prevent the execution of programs in common ransomware locations, such as temporary folders supporting popular Internet browsers and compression/decompression programs.
- Employ best practices for use of remote desktop protocol (RDP) including auditing the network for systems using RDP, closing unused RDP ports, applying two-factor authentication whenever possible, and logging RDP log-in attempts.
- Implement application whitelisting. Only allow systems to execute programs known and permitted by the security policy.
- Use virtualized environments to execute operating system environments or specific programs.
- Categorize data based on organizational value and implement physical and logical separation of networks and data for different organizational units. For example, sensitive research or business data should not reside on the same server and network segment as an organization's email environment.
- Require user interaction for end-user applications communicating with websites uncategorized by the network proxy or firewall. For example, require users to type information or enter a password when their system communicates with those websites.

Source: Internet Crime Complaint Center at IC3.gov

Research Finds Cattle Not Raised for Their Hides

The number of cattle raised for meat and dairy production would remain the same even if people stopped buying leather, according to new research, but the environmental impact would be significant. The burning or disposal in landfills of 33 million unused hides in the United States (US) would generate more than 750,000 metric tons of carbon dioxide emissions every year and fill all US landfill sites within four years. Globally, this would mean 300 million hides wasted and 6.6 million tons of surplus emissions every year.

The US leather industry is helping cattle ranchers target zero waste by recycling 85 percent of cattle hides produced compared to a worldwide estimate of just 60 percent. Alongside the immediate impact of disposing of waste hides are the indirect environmental impacts created as alternative materials are sourced, not only from the petrochemical industry but also from new crops and materials.

The report,-*Quantifying the Relationship Between US Cattle Hide Prices/Value and US Cattle Production*, was commissioned by the Leather and Hide Council of America (LHCA) and led by Dr. Gary W. Brester, professor emeritus at Montana State University, and Dr. Kole Swanser, a leading agricultural economist. It used 25 years of government price data for premium US steer hides that produce some of the most valuable leather in the world. Those hides averaged $36 per piece, or 2.2 percent of the total value of the animal in recent years. Due to price, these hides were thought to have an influence on cattle numbers, but no evidence was found.

"The results, tracked over 25 years, tell us that hides are a by-product and exert no direct influence on cattle numbers," Brester said. "Indirect impacts can be calculated and are less than 0.3 percent." Data showed that despite hide prices falling by more than 50 percent over the past 25 years, cattle numbers are unchanged.

Asked what would happen if leather use stopped entirely, Brester stated, "We would have an environmental problem." LHCA President Steve Sothmann explained why the report was commissioned. "As global populations become more urbanized, we have less understanding of how farming works. This results in misconceptions, for example, that not producing leather would be good for the environment and [would] mean smaller dairy and meat industries. Or at an extreme, that there are 'leather farms' that raise cattle purely for leather purposes."

Sothmann added, "This report economically establishes that hides are a by-product of the dairy and meat industries, not a driver. It also shows that ending the use of leather would not stop cattle production. In fact, there is a strong case to be made that the carbon footprint of the hide starts at the point of purchase from the suppliers. Indeed, one might argue that processing hides into leather delivers a net carbon saving against alternative means of disposal."

With the industry's ongoing investment in traceability in the supply chain, quality standards in manufacturing developed with nongovernmental organizations, including the National Wildlife Federation and World Wildlife Fund, and new technologies to reduce chemical use, Sothmann looked to the future. "Cutting out leather will damage the environment, cause more waste, more greenhouse gas emissions, and more demand for cheap, often polluting, substitutes. We need to put sustainability at the heart of our approach to tackling fast fashion and delivering on our ESG [environmental, social, and corporate governance] responsibilities. There are no perfect solutions, but there is a shared responsibility for honest and informed discussion and for finding the best way forward."

A new infographic from LHCA illuminates the environmental costs of using imitation products and synthetics, mostly made from plastics and other nonrenewable sources, as opposed to real leather in finished consumer goods. US Department of Agriculture data indicate approximately 33 million head of cattle were processed for food in 2020. Export data and industry estimates suggest that approximately 28.2 million of the 33 million available US cattle hides were used in domestic and global leather production. This means nearly 4.8 million hides, or 14.5 percent of total US hide production, were either destroyed or discarded in landfills, according to LHCA. This figure is less than the 17 percent of hides that failed to enter the US leather supply chain in 2019, though adjustments in export trade data at the end of December 2020, along with improving prices for lower-value hides, largely accounted for the marginal reduction observed in unused hides.

Despite this slight statistical improvement compared to 2019, a significant share of a natural, sustainable by-product is being wasted. Those 4.8 million discarded or destroyed hides could have instead been used to produce leather for approximately 86.4 million pairs of shoes, 96 million footballs, or 1.6 million sofas, for instance.

Processing hides from livestock into leather is one of the oldest forms of recycling. Not only do products that use real leather last longer, but they are also naturally biodegradable, often decomposing in less than 50 years, according to LHCA. Synthetics derived from petrochemicals, however, could take as many as 500 years to break down. **R**

Pet Ownership Grows During the Pandemic

An estimated 70 percent of households in the United States (US) now own a pet, up from 67 percent before the COVID-19 pandemic, according to the American Pet Products Association (APPA) biennial National Pet Owners Survey. The 2021–2022 survey revealed that millennials were the largest group of pet owners at 32 percent, followed closely by baby boomers at 27 percent, and Gen Xers at 24 percent.

This year's survey was expanded to include new content and additional insights on topics like online purchasing behavior, preferred method of purchasing, pet product development, and coronavirus-specific questions to understand how pet acquisition was impacted by COVID-19. In addition, the survey contains a lifestyle and media study, which examines what motivates pet ownership and relationships with pets, along with habits such as internet usage, travel, work, and other demographic criteria.

Key findings from the study include:

- Pet spending increased during the past year, with 35 percent of pet owners stating they spent more on their pet/pet supplies—including food, wellness-related products, and other pet care items—in the past 12 months than in the preceding year.
- Fourteen percent of total respondents (pet owners and non-pet owners) obtained a new pet during the pandemic. Additionally, at least one in four new pet owners shared that their recent pet acquisition—including saltwater fish (60 percent), dogs (47 percent), birds (46 percent), small animals (46 percent), cats (40 percent), freshwater fish (34 percent), reptiles (27 percent), and horses (27 percent)—was influenced by the pandemic.
- Online shopping by pet owners increased from 72 percent the prior year to 86 percent of responses in this year's study. Before the pandemic, 60 percent of pet owners usually purchased pet products in person at brick-and-mortar stores. During the pandemic, in-person shopping dropped to 41 percent, aligning more closely with the 46 percent of pet owners who prefer to purchase online with purchases shipped to their home.
- Fifty-one percent of pet owners are willing to pay more for ethically sourced and eco-friendly products.

Since 1988, APPA has collected and published a comprehensive consumer research study every other year about pet ownership, pet care practices, and preferences in the consumption of product and services by America's pet owners.

In Canada, an online survey of 1,509 randomly selected adults in April commissioned by Purina Beyond uncovered that 3.7 million (10 percent) of Canadians adopted, purchased, or fostered a new cat or a dog during the pandemic. With such a surge in pet ownership, Purina hosted a virtual expert panel in June featuring four pet industry experts in conversation about everything Canadians need to know about pet parenthood and ingredient traceability. The panel experts included Dr. Bryan Gelman, a Toronto-based veterinarian; Deena Cooper, a dog behaviorist; Stacy Lynn Morley, a pet nutrition specialist; and Charlotte Langley, a Marine Stewardship Council ambassador, traceability expert, and chef. **R**

Canada BSE Designation Elevated

In late May, Canada was officially recognized by the World Organization for Animal Health (OIE) as a country with negligible risk for bovine spongiform encephalopathy (BSE). By obtaining this recognition, Canada has achieved the most preferred status under OIE's three-tiered categorization system for evaluating a country's risk of BSE. This recognition puts Canada at the lowest level of risk for the transmission of BSE alongside the United States, which attained its negligible risk status in 2013. To achieve negligible risk, a country must demonstrate the last case of classical BSE was born more than 11 years ago and effective control measures and surveillance systems are in place. Canada's last case was born in 2009.

By achieving and maintaining negligible risk status for BSE, Canada enhances its negotiation position in efforts to gain access to additional export markets for Canadian cattle, beef, and beef products among countries that require products to originate from countries with negligible BSE risk status. A large number of Canada's major export markets have already approved all Canadian beef based on Canada's previous controlled risk status.

"Other than Canada now with negligible risk status for BSE, nothing has changed with respect to Canadian rendered products and market access," said Ridley Bestwick, executive director at West Coast Reduction Inc. in Vancouver, British Columbia. However, "in May 2021, the Canadian Meat Council (CMC) submitted recommendations to the Canadian Food Inspection Agency (CFIA) that in summary asked for harmonization with specified risk material (SRM) rules in the United States. The Canadian Renderers Association and Animal Nutrition Association of Canada endorsed the CMC recommendations. To date, CFIA has made no changes to the SRM rules, nor has CFIA announced there will be any changes to the SRM rules in the near future."

Canada's first case of BSE was discovered in May 2003 and led to international borders closing to Canadian beef, a significant impact as 50 percent of Canadian beef was exported. Although difficult to fully quantify the direct economic impacts of BSE, between just 2003 and 2006, losses were estimated to be Can$4.9–$5.5 billion and an estimated 26,000 beef producers exited the industry between 2006 and 2011. **R**

By Nancy Foster, President
North American Renderers Association

Rendering: A Sustainability Superhero

With plans to retire at the end of this year, I would like to share some thoughts about the North American Renderers Association (NARA) during my time as president and chief executive officer (CEO). This will be my last "personal" column since the October *Render* is traditionally a year-in-review report on the association's activities and programs. The December *Render* will feature NARA Chairman Doyle Leefers' speech at the association's annual convention in October.

During nearly eight years as NARA's president and CEO, I am thankful to have been given the opportunity to partner with outstanding NARA chairmen carefully chosen by the nominating committee. Each chairman led the association through challenges (some anticipated and some not) and surprises, such as the COVID-19 pandemic, through which current chairman Leefers of National Beef Packing successfully guided NARA.

When Ridley Bestwick, West Coast Reduction Ltd., was chairman in 2017–2019, he and the NARA staff and its members faced great uncertainty not knowing if approximately $1.7 million in federal grants from the United States Department of Agriculture (USDA) for foreign market development would continue when the federal government shut down over a funding stalemate. NARA developed contingency plans if faced with a massive loss of funding for the association and its foreign offices in hopes they would not be needed. Luckily, in the end, they were not.

Other challenges required visionary leadership, such as Bestwick's recognition of the need to change the association's name, which had been the National Renderers Association (NRA) since it was founded decades ago. NRA is also the well-known acronym of the National Rifle Association. In addition to some public misunderstandings about our acronym related to incidents of public shootings, many renderers felt the NRA acronym made it nearly impossible to find the rendering association in online searches. Nearly 20 pages of Google search results for NRA returned information on the rifle association before rendering's NRA was even mentioned. This was stifling our association's online presence. In 2019, after much discussion among its members, rendering leadership adopted the association's current name and its more unique acronym, NARA.

Opportunities for internal improvement included 2015–2017 Chairman Tim Guzek's, Sanimax, leadership to transform NARA's antiquated and laborious dues structure into a simple and transparent one everyone could live by and understand. That may sound simple, but it was not. Prior to that, J.J. Smith of Valley Proteins was the go-to person who explained NARA's extremely complicated dues formula to renderers, and I thank him for that.

As the first chairman with whom I worked with after joining NARA in 2013, Ross Hamilton, Darling Ingredients, had the unenviable task of orienting and teaching this writer about rendering and the association. He was patient, explaining things in a clear and thoughtful way. Hamilton also showed by example how important it is to understand people and build from there. He also initiated a bold new strategic plan for the rendering industry centered around sustainability. That plan has since been refreshed, but its basic commitment to rendering's sustainability remains strong today.

I owe each of these outstanding chairmen a sincere thank you for the opportunity to serve this great industry together.

I was honored when Smith, chairman of NARA's Selection Committee, invited me to move from apples to rendering, leaving my prior position as president of the national association representing apple growers to become NARA's new president and CEO in 2013. I was thrilled to have the opportunity to rebrand rendering around sustainability, which those hiring for this position said was a top priority, and to build upon my predecessor's hard work to position the industry's reputation in a more highly positive and public way. The good news was that NARA leaders reversed course more than a decade ago and decided to stop being "the invisible industry." Instead, they strategically aligned NARA's funding and staff to start telling the incredibly powerful story about the vital role the rendering industry plays in the nation's food chain and its contribution to a sustainable environment.

NARA was in the right place at the right time. It was clear that promoting rendering's positive sustainability would increase the industry's recognition and pride in its contribution to American agriculture, the quality of people's lives, and the nation's economy. The growing interest among liberal Washington, DC, policymakers in environmentally friendly, green practices was also evident, while conservatives liked rendering's pro-business contributions to the country.

Joining NARA as a rendering outsider, it took several years to "get" the industry more like an insider. Rendering is a tight community, with layers of knowledge and relationships built over decades. It takes time to learn, build trust, and belong.

When rendering was recently called a secret sustainability "superhero" by the American Meat Science Association (AMSA), it was clear how far the industry has come in the past eight years. Even many in agriculture have not understood the true value of rendering and now NARA is presenting a speech at AMSA's 74th Reciprocal Meat Conference. Featured will be how rendering supports all three pillars of sustainability (environmental, social, and economic), the prevalence of rendered products in consumers' daily lives, and how rendering contributes to the livestock industry's ability to provide more than just meat for human consumption. These are key findings from a peer-reviewed article published in June called "How Agricultural Rendering Supports Sustainability and Assists Livestock's Ability to Contribute More Than Just Food" in the animal science journal *Animal Frontiers* (volume 11, issue 2). The article was co-authored by NARA's Communications Director Anna Wilkinson and Senior Vice President for Scientific Services Dr. David Meeker.

As part of NARA's rebrand to upscale and draw attention to rendering's sustainability, the association launched and publicized a clean, fresh, new website and blog two years ago. New, simple, and bright infographics were created to introduce rendering, explain the basics, and share rendering's high sustainability to those who know little about the industry. NARA posts regularly to LinkedIn, Facebook, Twitter, and other social media. These are highly successful tools for outreach to Congress, presidential administrations, and other groups. NARA's sustainability program continues to grow with the launch of a new podcast later this year called, "The Invisible Industry: What Happens to the Meat We Don't Eat."

Synergies between NARA and the rendering industry's research organization, the Fats and Proteins Research Foundation (FPRF), also strengthen the industry's sustainability brand. This is an opportunity for future growth. NARA produced and publicized a recent interview with Clemson University's Dr. Kevin Finneran about his FPRF-funded research and patented technology using rendered products and brown grease to clean up hazardous waste sites. Rendering is now not just sustainable, but it also helps clean up the environment. This innovative research was made possible through the FPRF-supported Animal Co-Products Research and Education Center at Clemson.

In addition to rebranding rendering around sustainability, NARA continues to offer other high-value membership benefits and highly experienced staff ready to provide advice on company problems. I am confident the incoming president and CEO will have excellent staff and consultants to lead and carry forward NARA's strong programs in international market development, science and regulations, political advocacy, communications, membership, and meetings.

Looking Ahead—New Leadership

In early 2014, I wrote my second *Render* column on millennials and their importance to the rendering industry. These millennials, and now the Gen Zers born after them, are moving up in ranks of the job market. NARA's leadership is made up of senior leaders of its member companies. For the future strength of the association, NARA can consciously dedicate effort to recruit more young people into its membership ranks and provide them with growth and leadership opportunities. Many millennials and Gen Zers have different motivations and priorities than their supervisors that can be confounding to both sides. Hiring people who question tried-and-true ways of doing business can be frustrating, but when given the opportunity, they may have creative ideas of how to do it better. Staying open to possibilities can have its benefits.

To transition smoothly to younger renderers in NARA's leadership, seasoned industry members can consider mentoring these up-and-coming individuals and pay close attention to what they want and need to stay motivated and highly productive. That is one reason Leefers selected futurist and demographer speaker Ken Gronbach for a deep dive into generational differences and opportunities as NARA's keynote speaker at the opening general session during this fall's annual convention. Be sure not to miss this outstanding presentation!

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By Ron Kotrba, *Biobased Diesel Daily*

Supreme Court Stretches Definition of "Extension"

In June, the highest court in the United States (US) issued its much-anticipated decision on small refinery exemptions (SREs) under the Renewable Fuel Standard (RFS) in the *HollyFrontier Cheyenne Refining LLC Et. Al. v. Renewable Fuels Association* case. To the disappointment of biofuels advocates, the US Supreme Court reversed a previous ruling by the US Court of Appeals for the Tenth Circuit, which determined in January 2020 that the US Environmental Protection Agency (EPA) could not extend SREs to petitioners whose earlier, temporary exemptions had lapsed. After hearing oral arguments on the SRE case in late April, the Supreme Court opinion hinged on a single word: extension.

Six of nine justices decided in June that the word "extension" does not require unbroken continuity. Since this key word is not defined in the RFS statutory language, the majority opinion—delivered by Justice Neil Gorsuch and joined by Justices Clarence Thomas, Stephen Breyer, Samuel Alito, and Brett Kavanaugh, along with Chief Justice John Roberts—found that the lower court "erred by imposing such a requirement here and concluding that a small refinery is permanently ineligible for an extension once an exemption lapses."

Justice Amy Coney Barrett filed the dissenting opinion joined by Justices Sonia Sotomayor and Elana Kagan. "The question in this case is straightforward: Does this provision limit EPA to prolonging exemptions currently in place, or does it enable EPA to provide exemptions to refineries that lack them?" Barrett wrote. "The statute's text and structure direct a clear answer: EPA cannot 'extend' an exemption that a refinery no longer has. Because the Court's contrary conclusion caters to an outlier meaning of 'extend' and clashes with statutory structure, I respectfully dissent."

When granted, SREs provide oil companies a temporary reprieve from their obligations under the RFS to blend certain volumes of biofuels or purchase renewable identification number credits. The number of SRE petitions granted ballooned under Scott Pruitt and Andrew Wheeler—fossil-friendly EPA administrators nominated by former President Donald Trump—representing billions of renewable identification number credits and an appreciable share of an already compromised market. Volume requirements under the RFS have been consistently less than what the industry can produce, and the latest proposal is long overdue. The Trump EPA never released a draft rule for 2021 conventional, cellulosic, and advanced biofuel volumes, along with 2022 biomass-based diesel volumes, required under the RFS by mid-2020 nor a final rule by November 30, 2020.

Although the Supreme Court decision somewhat deflated the biofuels industry's elevated mood after the Tenth Circuit's January 2020 ruling, the ousting of the previous administration, and President Joe Biden's new biofuel ally EPA chief Michael Regan, not everything about the June decision meant bad news for the sector. Certain aspects of the lower court's ruling were left unchallenged and not reviewed by the Supreme Court.

The Tenth Circuit ruled that EPA's exemption decisions must reconcile the agency's consistent findings that all refineries recover the costs of compliance with the RFS, and that EPA may only use hardship caused by the RFS to justify granting exemptions. The Supreme Court decision, however, did not address this. Thus, EPA must still resolve those other aspects of the Tenth Circuit ruling.

While the heart of the recent Supreme Court ruling is disappointing on its face to biofuels groups, other key parts of the Tenth Circuit's decision still restrict future SREs. In addition, under EPA's new leadership, the agency reversed its previous position in February and announced surprising support for the Tenth Circuit decision, which bodes well for fewer SREs being granted in the future despite the Supreme Court's recent majority opinion.

Blenders Tax Credits Introduced

Bipartisan, bicameral legislation was introduced in Congress in late May to extend the $1 per gallon blenders tax credit for biodiesel and renewable diesel through 2025. Currently, the incentive expires at the end of 2022.

Senators Chuck Grassley (R-IA) and Maria Cantwell (D-WA) introduced the Biodiesel Tax Credit Extension Act of 2021 in the Senate while Representatives Cindy Axne (D-IA) and Mike Kelly (R-PA) introduced a companion bill in the House of Representatives. The biodiesel tax credit kickstarted commercial biodiesel production in 2005 from a niche market to a multibillion-gallon industry. The US biodiesel and renewable diesel industry supports 65,000 domestic jobs and more than $17 billion in economic activity each year, according to the National Biodiesel Board (NBB). Every 100 million gallons of production supports 3,200 jobs and $780 million in economic opportunity.

A number of other bills have been recently introduced in Congress to incentivize blending of sustainable aviation fuel (SAF) beyond the current $1 per gallon blenders tax credit. On May 20, Representative Brad Schneider (D-IL) introduced the Sustainable Skies Act to create a blenders tax credit starting at $1.50 a gallon for SAF demonstrating a minimum of 50 percent greenhouse gas (GHG) reduction compared to conventional jet fuel. Eligible fuels would need to follow the sustainability criteria established by the International Civil Aviation Organization, or methodology EPA determines equally stringent. To incentivize greater GHG reductions, the legislation provides an additional credit of one-cent per gallon for each percentage over 50 that the SAF reduces GHG emissions.

Although the SAF blenders tax credit would begin at $1.50 a gallon when the blenders tax credit is in effect, this would be lowered to $1.15 a gallon if the credit were to expire, which has happened numerous times since its enactment in 2005. As the bill is currently worded, the SAF tax credit would expire at the end of 2031.

Also in May, Senator Sheldon Whitehouse (D-RI) introduced the Sustainable Aviation Fuel Act, for which companion legislation was reintroduced in the House by Representative Julia Brownley (D-CA) in February. Like Schneider's bill, the act would also establish a blenders credit for SAF of between $1.50 and $1.75 a gallon. To prevent double dipping, SAF would no longer be eligible for the existing blenders tax credit. Whitehouse's bill would also require EPA to establish an aviation-only low carbon aviation fuel standard that regulates jet fuel producers and importers. The measure would create a grant program authorized at $1 billion over five years to expand the number of facilities producing SAF and build out infrastructure. In addition, the bill would require the US defense department to use 10 percent SAF in 2024, provided the fuel is "cost-competitive with fossil jet fuel and readily available." Whitehouse's bill also directs the US energy and agriculture departments to research cover crops for SAF feedstock, and seeks to expand the existing energy investment tax credit to include SAF production facilities and related infrastructure.

Concerns exist about what an SAF blenders credit would do to feedstock availability for methyl ester producers, particularly the smaller ones. Furthermore, like the existing blenders tax credit, the SAF credit would apply to qualified imported fuel. Some would prefer to see the SAF blenders tax proposal changed to a domestic SAF production credit.

The higher SAF credit proposal is justified, sources say, because SAF costs more to produce, distribute, and implement in the marketplace than biodiesel or renewable diesel.

"Although there is a lot of interest in SAF, actual use in 2020 in the US was only 4.6 million gallons," one source said. "So, in an 11 to 18 billion-gallon US aviation fuel market, that's not a big number. As these companies actually look to embrace SAF and not just make headlines, I believe they need help moving product into the marketplace, and also from a cost perspective since it's more expensive."

The most likely avenue for implementation of an SAF-specific blenders credit is through modification of the existing credit, *U.S. Code* Title 26, Section 40A.

Northeast States Pass Biofuel Bills for Heating

The state legislatures of New York, Connecticut, and Rhode Island passed bills recently to create new biofuel blending standards for all liquid heating fuel sold in each state. The New York bill calls for liquid heating fuel sold throughout the state to contain at least 5 percent biodiesel (B5) or renewable diesel by July 1, 2022, 10 percent in 2025, and 20 percent in 2030. The state already requires all liquid heating fuel sold in Westchester County and Long Island to contain 5 percent biodiesel. New York City also requires B5 and was scheduled to increase its minimum blends in the coming years. The new, more robust bill would replace these requirements and broaden them to the entire state.

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Biofuels *Continued from page 23*

The Connecticut and Rhode Island bills are even more aggressive. Connecticut's bill implements a minimum blend of 5 percent biodiesel by July 1, 2022, 10 percent in 2025, 15 percent in 2030, 20 percent in 2034, and 50 percent in 2035. Rhode Island, which already has a B5 standard for liquid heating fuel, would increase its minimum blend to 10 percent by July 1, 2023, 20 percent in 2025, and 50 percent in 2030. Rhode Island's existing blending standard would be expanded to include renewable diesel as well.

Pandemic Aid for Producers

In mid-June, Agriculture Secretary Tom Vilsack announced additional aid to agricultural producers and businesses as part of the USDA Pandemic Assistance for Producers initiative. Biofuel producers were offered one of the largest sums to a single sector under this aid package—$700 million for those who endured hardship from the pandemic's economic downturn that began in March 2020.

Biodiesel Board Lays Out Policy Priorities

NBB delivered a letter to congressional leaders June 22 signed by more than 50 companies, including the North American Renderers Association, outlining the industry's policy priorities, which include maintaining tax incentives for low-carbon biofuels, supporting infrastructure to deliver more clean fuels to consumers, and optimizing RFS policy to maximize environmental benefits. The letter was delivered as dozens of industry representatives prepared for the annual NBB Advocacy Day Fly-in June 23, which was held virtually this year.

"As Congress develops legislation to address the nation's infrastructure, climate, and economic priorities, we ask that you support continued growth of the biodiesel and renewable diesel industry," the letter states. "US biodiesel and renewable diesel producers are meeting America's need for better, cleaner transportation fuels right now. We are also generating economic, environmental, and health benefits for many states and communities."

The letter highlights the $17 billion annual economic impact of the biodiesel and renewable diesel industry and the carbon reduction benefits it delivers. In 2020, the United States used 3 billion gallons of renewable diesel and biodiesel, which achieves an average 74 percent reduction in carbon emissions compared to petroleum diesel.

Biodiesel Seminars are Back

NBB's Exploring Biodiesel Regional Seminars (XBX) are back this year after a pandemic hiatus and are being held in Boston, Massachusetts, September 23, and Madison, Wisconsin, September 30. Now in its fourth year, XBX is designed to educate fuel wholesalers, distributors, retailers, marketers, fleets, municipalities, and other end users on the benefits and opportunities surrounding the integration of low-carbon liquid fuels—including biodiesel and renewable diesel—throughout the national supply chain. XBX Madison will conclude with an optional tour at Renewable Energy Group Inc.'s biodiesel plant in nearby DeForest, Wisconsin. The events are free to attendees. For registration and details, visit exploringbiodiesel.com.

More Domestic Renewable Diesel Projects Announced

The PBF Chalmette petroleum refinery near New Orleans, Louisiana, is studying the possible conversion of a long-idled hydrocracker unit to produce renewable diesel. The refinery's parent company, PBF Energy, would make a $550 million capital investment to retrofit the unit. The project would also include construction of a pretreatment unit to allow use of a broader spectrum of feedstock, including fats, oils, and grease. The state of Louisiana is offering a number of incentives and tax exemptions to close the deal. PBF is one of the largest independent refining companies in the United States. In addition to its Louisiana facility, PBF operates two refineries in California and three others in Ohio, Delaware, and New Jersey.

In Alabama, Vertex Energy is acquiring the Mobile Chemical LP Refinery for $75 million with plans to convert the complex's hydrocracking unit to manufacture more than 150 million gallons per year (mgy) of renewable diesel by the end of 2022. By mid-year 2023, Vertex expects to increase production capacity to nearly 215 mgy. Once operable, the unit will be capable of processing a wide range of pretreated feedstocks, including soybean and corn oil, tallow, and waste vegetable oils. Vertex expects to source feedstock through a multiyear agreement with Synergy Supply and Trading, a subsidiary of Bunker Holding Group, and potentially from its planned Myrtle Grove pretreatment facility in Belle Chasse, Louisiana. Vertex intends to enter into a long-term offtake agreement under which Idemitsu Apollo Corp., a wholly owned California-based subsidiary of Idemitsu Kosan, will purchase 100 percent of the plant's renewable diesel volumes.

Howard Energy Partners (HEP) has executed long-term agreements with Diamond Green Diesel (DGD), a 50/50 joint venture between Valero Energy Corp. and Darling Ingredients Inc., and plans to significantly expand its Port Arthur, Texas, terminal facilities to support DGD's new 470 mgy renewable diesel production at Valero's Port Arthur refinery. Engineering, permitting, and construction on HEP's facility expansion has begun, with an in-service date coinciding with the startup of DGD's new plant in 2023. HEP will provide DGD with logistic solutions for renewable diesel feedstock and finished product through the construction of more than 24 million gallons of tank storage, three pipelines and associated connections to Valero's Port Arthur refinery, seven miles of rail track and associated loading and unloading facilities, truck facilities, and a Panamax-capable deep-water dock. Once complete, HEP's Port Arthur facility will consist of nearly 80 million gallons of refined product storage capacity, 16 miles of rail track with unit train and manifest service from two railroads, three barge docks, two ship docks, and pipeline connectivity to local refiners and major refined product distribution hubs.

International Biofuel News

The Canadian government launched a Can$1.5 billion Clean Fuels Fund (CFF) to help reach net-zero emissions by 2050 and to support the nation's Clean Fuel Standard, which is set to go into effect December 2022. The fund was kicked off with a call for project proposals. CFF supports building new or expanding existing clean fuel production facilities, including renewable diesel and SAF. It also supports feasibility and front-end engineering and design studies. The call for proposals is open until September 29. Natural Resources Canada will provide funding through conditionally repayable contribution agreements of up to 30 percent of total eligible project costs, to a maximum of Can$150 million per project.

Germany's Biodiesel Quality Management Association recently published its Biodiesel Quality Report 2020, which demonstrates that biodiesel from Germany and Austria is of the highest quality. The report, published annually since 2010, was based on three sampling campaigns and shows the results of unannounced sampling at producers and warehouse operators throughout the year. Out of 1,562 analysis data obtained, only four instances of off-spec parameters were found. Of particular note, metals content was well below the limit, helping make the case for higher blends of biodiesel—particularly in new diesel vehicles featuring sensitive aftertreatment systems.

Maire Tecnimont subsidiary NextChem has been awarded a contract by French multinational energy company Total Energies to carry out a front-end engineering design and provide its technical knowledge to implement an SAF plant in Grandpuits, France, capable of processing approximately 136 mgy. "Projet Galaxie" will produce SAF by primarily treating animal fats from Europe and used cooking oil (UCO). The plant is expected to be operational in 2024.

Home furnishings giant IKEA aims to hit carbon-emissions free deliveries in the United Arab Emirates (UAE) by 2025 and is leveraging Neutral Fuels B100 Net Zero Biofuel to help get there. IKEA UAE has been using locally produced biodiesel made from UCO since 2019 to transport goods from the Jebel Ali port to its local distribution centers in Dubai and Abu Dhabi.

In international marine biofuel news, Anglo American has successfully trialed the use of a biodiesel blend to power a chartered capesize ship, the *Frontier Jacaranda* owned by Japanese shipping company NYK Line, during a voyage from Singapore to South Africa. The biodiesel was made by Singapore firm Alpha Biofuels, which converted UCO from the city-state's food industry. The trial was instrumental in verifying the fuel's stability and performance. Toyota Tsusho Petroleum supplied the 7 percent biodiesel blend. This was among many similar trials conducted of late, such as that of chemical tanker *Stolt Inspiration*, which recently completed a transatlantic voyage from Rotterdam, the Netherlands, to Houston, Texas, partly powered by waste-based marine biofuel. *Stolt Inspiration* bunkered the biofuel, made from UCO, tallow, and waste animal fats, in Rotterdam this spring.

Green Fuels Research, in partnership with the School of Chemical Engineering at the Hà Nội University of Science and Technology, has been awarded grant funding by the Innovate UK agency to conduct a feasibility study into the conversion of catfish mortalities and processing waste into sustainable biodiesel for distributed power generation. Project leaders hope to find a pathway toward energy security for Vietnamese fish farms. Outcomes expected include assembly of a demonstration plant, development of a commercially viable business plan and value chain for future commercialization, and opportunities for industry and community engagement.

People


Jeff Earl

NBB recently hired Jeff Earl as director of state regulatory affairs. He is a new addition to the association's state regulatory staff, led by Floyd Vergara in Sacramento, California, and Stephen Dodge in Boston, Massachusetts. Earl will serve the industry from NBB's headquarters in Jefferson City, Missouri, covering the Midwest states on behalf of the group. He will engage in technical analysis of issues associated with biodiesel and represent the interests of NBB members to state regulatory bodies, legislatures, and environmental organizations. Earl comes from the Missouri governor's office where he was legislative director. He earned a bachelor's degree in political science and mass communications from Southeast Missouri State University. **R**

Association *Continued from page 21*

Standing Strong—Together

While there are significant differences among renderers large and small, packers and independents, much more unites than divides the industry. For NARA's success to continue as an impact player promoting and defending renderers, the industry must use its strong asset of being united to speak with one voice to government, regulators, and the media on industrywide issues. Importantly, the Food and Drug Administration, USDA's Animal Plant Health Inspection Service, and other federal agencies look for one position from the entire rendering industry, not conflicting messages, when making decisions. NARA is committed to winning for its members and does that best when renderers stand strong together.

A renderer friend was talking about my upcoming retirement and said that after all the work and time spent at our jobs, it is the people in rendering that count. Other renderers who have retired also say "it's the people" they miss. I will also miss the rendering family, but I know that you will carry on superbly in the industry's proud tradition. I look forward to seeing many of you in person to say goodbye at this year's annual convention October 18–22 at the Ritz Carlton Reynolds, Lake Oconee, in Greensboro, Georgia. **R**

OIE Code Revisions Could be Harmful to Rendering

The World Organization for Animal Health (OIE) is considering revisions to bovine spongiform encephalopathy (BSE)-related chapters of its *Terrestrial Animal Health Code* that sets voluntary standards for world trade of animal commodities. Lucas Cypriano of Brazil, the newly appointed president of the World Renderers Organization (WRO), informed members that some of the proposed changes would have negative consequences for rendering worldwide. Cypriano and WRO's Scientific Advisory Panel worked to develop technical comments that were submitted to OIE, which will be addressed by the Code Commission in September. WRO encouraged its members to contact their own government animal health officials to urge opposition to the portions of the recommended changes that would be adverse to rendering interests.

In its submitted comments, WRO noted that it evaluated the proposed code changes and understood the new chapters will focus BSE's mitigation tools on five key actions:

- The risk of classical BSE being recycled in the cattle population has been demonstrated to be negligible (ruminant-to-ruminant feed ban is the key action to be guaranteed)
- No BSE cases, or only atypical cases, or classical cases in cattle born more than eight years ago, or subsequent investigations, have confirmed that the risk of recycling has continued to be negligible
- Classical BSE cases, if any, have not entered the feed chain
- Surveillance is implemented
- Training program for all stakeholders is implemented

WRO is concerned with some proposed changes and commented to OIE that it objects to three of them:

- That atypical BSE may be a factor for the risk analysis of the member country
- Bovines born before a country receives negligible risk status for BSE will be classified as a BSE-risk animal for its entire life if this animal will be used for cattle-derived protein meal production
- Commodities (protein products, food, feed, fertilizers, cosmetics, pharmaceuticals, and medical devices) from a negligible-risk country prepared using skull, vertebral column, brain, and spinal cord of bovines older than 30 months and born before a country receives a negligible risk status for BSE should not be traded

The North American Renderers Association (NARA) agrees with WRO and worked with United States (US) Department of Agriculture personnel, who concurred that the recommended changes could be harmful and will present the official US position to OIE. NARA's objections include:

- Adding more restrictions to trade is unnecessary because ruminant feed bans work well and BSE is under control
- Adding atypical BSE to classical BSE when considering negligible risk is a problem because atypical BSE is recognized as spontaneous, very rare, and therefore hard to control
- Standards that rendered ruminant meals shall only be traded if they come from areas acknowledged as being at negligible BSE status at the time of birth unnecessarily restricts trade

WRO Officers Announced

The WRO voted in new officers for the next two years. Cypriano, technical manager of the Brazilian renderers association ABRA and WRO first vice president since 2019, was elected president. Cypriano brings a 19-year career in the rendering sector, the past 10 years at ABRA working to develop the country's industry and meet the needs of its members.


Lucas Cypriano

Voted in as first vice president was Doyle Leefers, director of variety meats and rendered products at National Beef Packing Company in Kansas City, Missouri. Leefers previously served as WRO second vice president and is currently NARA chairman.


Doyle Leefers

Added to the WRO leadership were two second vice presidents: Damian Evans of Australia, and Lars Krause-Kjaer of Denmark. Evans is based in Sydney, Australia, and has been involved with the trading, transportation, and logistics of rendered products since joining his family's company, Colyer Fehr Tallow, in January 1993. He was appointed a director of the Australian Renderers Association in July 2014.


Damian Evans


Lars Krause-Kjaer

Krause-Kjaer began his career in the food ingredient industry where he held several positions within sales and marketing. In 2009, he was named chief executive officer for the Danish rendering company Daka. In 2012, the SARIA Group took over the majority of Daka and since 2015, Krause-Kjaer has been a member of the company's executive board responsible for rendering activities in Scandinavia, eastern Europe, Russia, and Belarus, as well as business development in other countries.

Founded in 1999 and now with more than 26 members in 24 countries, WRO is "the voice and ears" of the global rendering industry, representing its members to international groups such as OIE. **R**

THE RITZ-CARLTON REYNOLDS, LAKE OCONEE

MEMORIES ARE ALREADY IN THE MAKING FOR NARA'S 88TH ANNUAL CONVENTION

The industry's response to our 2021 Annual Convention has been nothing short of extraordinary, with sponsorships and hotel rooms being secured at an unprecedented rate. Please join your colleagues as we make new memories at The Ritz-Carlton Reynolds, Lake Oconee in October. This laidback lakeside resort is far and away one of the most relaxed and restorative locations to host our event. Visit our convention website for meeting information, hotel reservation details, and online registration. New and creative sponsorship opportunities are still available to showcase your company, and our acclaimed Tabletop Reception & Exhibit offers a unique opportunity to reach the industry's top decision-makers.
We look forward to seeing you in October.

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By Mark A. Lies II and Adam R. Young
Seyfarth Shaw LLP

COVID-19 Driving OSHA Whistleblower Activity

Editor's note—Mark A. Lies II is an attorney and partner in the Workplace Safety and Environmental Group in the Chicago, Illinois, office of Seyfarth Shaw LLP. He focuses his practice in the areas of product liability, occupational safety and health, workplace violence, construction litigation, and related employment litigation.

Adam R. Young is an associate attorney in the Workplace Safety and Environmental Group of Seyfarth Shaw who focuses his practice in the areas of occupational safety and health, employment law, and associated commercial litigation. Individual circumstances may limit or modify this information.

In fiscal year 2020 (ending September 30, 2020), the number of Occupational Safety and Health Act whistleblower claims filed increased a whopping 25 percent. The increase was largely driven by employee anxiety related to COVID-19 precautions and protocols, and perceived exposure to COVID-19 hazards. As many employers pull masking and distancing precautions to which employees have become accustomed, we anticipate increased safety complaints to the Occupational Safety and Health Administration (OSHA) and many new whistleblower complaints.

As of 2021, OSHA investigates employee complaints brought under 25 separate statutes. About 73 percent of these claims are filed under Section 11(c) of the act itself. Other whistleblower statutes address industries such as aviation, trucking, heavy equipment, railroads, pipelines, and barges. OSHA operates a dual structure, with (a) compliance safety and health officers investigating complaints and issuing safety and health citations, and (b) employment investigators receiving and investigating a growing number of whistleblower statutes.

Elements of Prima Facie Case of Retaliation

The federal whistleblower statutes protect employees who have filed complaints with federal agencies, participated in federal investigations, or even filed internal safety complaints. These employees then allege that their employer issued them an adverse omegative employment action, such as a discharge or suspension, on account of the alleged protected activity. Accordingly, a prima facie case of employment retaliation generally requires the complainant to prove (1) protected activity, (2) an adverse employment action, and (3) a causal connection between the protected activity and the retaliation. The employer can then rebut the prima facie case with a legitimate nondiscriminatory reason for the adverse action. The complainant then needs to show that reason for the adverse employment action was a pretext, meaning a false reason.

Investigatory Process of an OSHA Complaint

Employers who receive a whistleblower complaint will face a potentially disruptive and years-long investigation and enforcement process, regardless of the merits of the complaint. After receiving a complaint from an employee, the OSHA retaliation investigator will first send a letter to the employer outlining that a complaint has been filed and providing a written summary of the online complaint or written transcription of a telephonic complaint. The letter will request a written response to be filed within 20 days of the date of the letter. The agency, however, is almost always amendable to reasonable extensions of time. Employers should strive to be truthful, complete, and persuasive in their response to OSHA—employers may need to engage outside counsel and take more than 20 days to do a competent investigation and draft a persuasive response.

After receiving the employer's response letter, OSHA will forward it to the complainant and ask for a response. Many complainants do not respond to OSHA's follow-up inquiry, and the complaint will be summarily dismissed. In other cases, OSHA investigators read the response letter and convince complainants to voluntarily dismiss meritless complaints. Because of the backlog and limited resources to investigate and tryretaliation cases, OSHA will make an effort to negotiate settlements with complainants. If the case proceeds, OSHA will conduct an investigation, request additional documents, and interview witnesses. Due to a large backlog in retaliation complaints, employers may not hear from OSHA for 18 months or longer after filing their response letter. OSHA dismisses more than 95 percent of complaints. There is no private cause of action for employees to bring a claim under OSHA Section 11(c); OSHA's attorney, the Solicitor of Labor, would bring any litigation in United States District Court.

OSHA's Desk Aid and Protected Activity

In 2019, OSHA released an updated Investigator's Desk Aid to the Occupational Safety and Health Act Whistleblower Protection Provision, intended as the agency's "summary of the scope of coverage and protected activity and procedures for handling investigations under Section 11(c) of the Occupational Safety and Health Act (OSH Act)." The desk aid is notable, as it reflects OSHA's views on numerous hot-button issues surrounding whistleblower complaints.

OSHA's desk aid provides a checklist for retaliation investigators and concentrates on the various forms of protected activity under Section 11(c):

A. Filing occupational safety or health complaints with OSHA or other agencies
B. Filing occupational safety or health complaints with management
C. Instituting or causing to be instituted any proceeding under or related to the OSH Act
D. Providing testimony relating to occupational safety or health
E. Exercising any right afforded by the OSH Act

F. Refusing to perform a dangerous assigned task under certain circumstances
G. Complying with and obtaining benefits of OSHA standards and regulations
H. Participating in an OSHA inspection
I. Requesting information from OSHA
J. Refusing to inform an employer of the identity of the person who complained to orcontacted OSHA

The broad, catch-all form of protected activity is (E) above, "Exercising any right afforded by the OSH Act." OSHA understands this to include reporting an injury, requesting a safety data sheet, and communicating about safety and health issues included as part of the employee's duties. Without citation to a recognized statutory section, OSHA takes the position that communication about health and safety matters with "co-workers" is protected activity. This means that an employee could file an OSHA claim premised only on complaints made to co-workers, of which no supervisor or manager was made aware. This is not a right "afforded by the OSH Act," and is contrary to the requirementof employer knowledge necessary for alleged intentional retaliation and we believe thisinterpretation is not legally supported.

Refusal to Perform

OSHA's desk aid importantly addresses whistleblower claims founded on an employer's action against an employee who refuses to perform his job on account of an alleged safety concern. An employee's right to refuse to perform is limited and specific—it must be founded on an objectively reasonable belief that the action the employee refuses to perform represents a safety hazard. The desk aid further articulates necessary elements laid out in 29 *Code of Federal Regulations* Standard No. 1977.12(b)(2): "An employee has the right to refuse to perform an assigned task if he or she:

1. Has a reasonable apprehension of death or serious injury, and
2. Refuses in good faith, and
3. Has no reasonable alternative, and
4. Has insufficient time to eliminate the condition through regular statutory enforcement channels, i.e., contacting OSHA or a state OSHA, and
5. Where possible, sought from his or her employer, and was unable to obtain, a correction of the dangerous condition.

All elements listed above must be satisfied."

In practice, very few employees who refuse to perform satisfy each of these elements and do not have the basis for a whistleblower claim. A generalized fear of COVID-19 and refusal to perform work rarely qualifies as protected activity.

Right to File Complaint or Participate in OSHA Investigations

The agency rightly includes in its list of protected activities the employee's right to file complaints and participate in OSHA inspections, typically through on-site interviews. Employees have a right to file complaints and, for this reason, company management should not investigate who filed the complaint that led to the inspection and should not make comments that give an appearance of impropriety with regard to an OSHA complainant. In preparation for an interview during an OSHA inspection, employees should be reminded of their right to communicate with OSHA and that no negative outcome will occur as a result.

Takeaways

Much like other employment claims, OSHA retaliation claims are normally brought by employees and former employees disgruntled by an adverse employment action. To minimize OSHA retaliation liability, as with all other employment claims, employers mustaddress and confront an employee's grounds to allege pretexts. To do so, employers should document the bases for a discipline or discharge decision. If faced with retaliation complaints, employers should consider promptly contacting counsel to prepare a response in order to properly assert their defenses. **R**

3D Corporate Solutions Acquires All American Pet Proteins

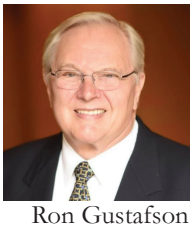
3D Corporate Solutions, a manufacturer of specialty proteins and fats used in premium pet food, has acquired Colorado-based specialty protein manufacturer All American Pet Proteins (AAPP). AAPP manufactures fresh and frozen proteins such as beef, lamb, bison, and buffalo, serving premium pet food brands in North America. 3D Solutions operates a network of six facilities in the United States. The combined company is set to offer a full range of proteins and processing capabilities.

Industry Loses Pioneers


Thomas Weihe

Long-time rendering industry member Thomas B. Weihe passed away June 12 at the age of 82. After teaching and coaching high school football, he joined the family business, Norfolk Rendering in Nebraska, in 1966 where he developed several lines of pet food, including Mighty Dog. Weihe served as executive director of the National Renderers Association in 1989 and was involved with the group's board of directors and International Marketing Committee for many years after.

In 1989, he joined Inland Products and, in 1999, started Thomas Enterprises and Thomas Tanks. Weihe's legacy is associated with a range of companies, from restaurant franchises to pellet fuel manufacturing. He enjoyed mentoring other entrepreneurs, participating in the development of numerous ventures over the years, and serving on a variety of boards. Weihe is survived by his wife of 62 years, Gwen, two children, two grandsons, a brother, and a sister.


Ron Gustafson

Ronald "Ron" Rieder Gustafson, president of Coast Packing Company and third-generation patriarch of the family business founded in 1922, died June 25 at the age of 78. He was instrumental in transforming Coast Packing into a leading supplier of edible fats and oils and the top supplier of animal fat shortenings in the western United States.

Gustafson began working at Coast Packing at the age of 12, packaging bacon for retail and supermarket chains. After graduating from California State University, Los Angeles, he was drafted and spent two years in the United States Army. In 1970, he returned to the family business that he led for more than 50 years. Gustafson served as a director of Western States Meat Association and National Meat Association, the predecessor trade groups of the North American Meat Institute. He also served on the board of the Institute of Shortenings and Edible Oils for more than 10 years. Gustafson is survived by his wife of 47 years, Nadya, two children, and six grandchildren.

Prestage Farms Announces New Facility

Prestage Farms of South Carolina plans construction of a new processing facility located at the Governor's Hill Industrial Park in Camden. This is the company's second facility in the state. Prestage Farms makes pork and poultry products with facilities in seven states. The $150-million investment will create 292 new jobs.

"We are proud and excited to announce the expansion of our operations here in South Carolina, where we've been doing business since 1994," said Ron Prestage, company president. "We are grateful for the strong state and local support we've received for this project, and we look forward to success with all of our partners for many years to come."

Officials expect the facility to be complete by end of 2022, with hiring to begin in the third quarter that year.

Cresswell Retires from New Zealand Renderers

Kevin Cresswell has retired from his executive support role with the New Zealand Renderers Group (NZRG). He joined the Meat Industry Association (MIA) in 2003 in a technical position that included overseeing the renderers group. Richard McColl will be taking over Cresswell's role for NZRG. He joined the meat industry in 1984 and has had a number of plant, corporate accounting, and commercial positions. In 2008, McColl joined the MIA as innovation program manager.

Cresswell's work with the rendering Industry was respected and admired. Members remember his joint NZ-Australian mini-symposiums as informative, educational, and interesting topics. In 2011, Cresswell started a rendering training workshop for operators and supervisors that was so popular it has become an annual event with attendees from both New Zealand and Australia.

Cresswell has seen the rendering industry move from the challenges of bovine spongiform encephalopathy to the current issues of sustainability and climate change. He believes the challenges for the next generation will be to increase the profitability of the industry by expanding utilization of proteins and fats from rendered material directly into human food.

New Beef Plant Planned in Iowa

Cattlemen's Heritage, a group of cattle producers, announced plans in June for a 1,500 head-per-day packing plant in western Iowa. The group will build the $325 million facility in Mills County, about 15 miles south of Council Bluffs and the Omaha metro area. With construction to begin in spring 2022, the plant would open to process cattle in late 2023. The facility would employ up to 750 workers.

Smithfield Foods Names New President, CEO

Shane Smith, a two-decade veteran of Smithfield Foods Inc., was named president and chief executive officer (CEO) in June, succeeding Dennis Organ. In 2019, Smith became executive vice president of Smithfield's European operations, overseeing the company's capital investments, expansion into new markets, and mergers and acquisitions abroad. In late 2020, Smith was promoted to chief strategy officer, where he helped develop, execute, and sustain the company's efforts to achieve growth through its own resources, as well as through mergers and acquisitions. He oversaw Smithfield's hog farming operations, as well as Smithfield Renewables, the platform that unifies the company's carbon reduction initiatives. R

August

American Meat Science Association 74th Reciprocal Meat Conference
August 15–18, Reno, NV • www.meatscience.org

American Feed Industry Association Purchasing and Ingredient Suppliers Conference
August 17–19, Orlando, FL • www.afia.org

National Institute for Storage Tank Management 23rd Annual Aboveground Storage Tank Conference and Trade Show
August 31–September 2, Orlando, FL • www.nistm.org

September

Pet Food Alliance Annual Meeting
September 20–21, Kansas City, MO • www.fprfalliance.agsci.colostate.edu

Petfood Forum
September 22–24, Kansas City, MO • www.petfoodforumevents.com

October

Poultry Protein and Fat Council Seminar
October 6–7, Nashville, TN • www.uspoultry.org

American Fats and Oils Association Annual Conference
October 13–14, Nashville, TN • www.fatsandoils.org

Leather and Hide Council of America Annual Meeting and Convention
October 13–15, Chicago, IL • www.usleather.org

North American Renderers Association 88th Annual Convention
October 18–22, Greensboro, GA • www.nara.org

Visit www.rendermagazine.com for a complete updated list of industry events.

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