



NGFA

Newsletter[®]

Volume 57, Number 1, January 6, 2005

FDA Finalizing Proposed BSE-Prevention Feed Rule; Legal Review Next

The NGFA has learned that the Food and Drug Administration's Center for Veterinary Medicine (FDA/CVM) is striving to complete work by Jan. 14 on its proposed rule that would amend the agency's current regulations banning the feeding of certain mammalian material to cattle and other ruminants so that it can be forwarded to FDA's Office of Legal Counsel for review.

During the past few weeks, FDA/CVM has been finishing work on the economic impact analysis associated with the proposed rule, and now has completed that task. After the proposed rule is reviewed by FDA's Office of Legal Counsel and is approved by Acting FDA Commissioner Lester M. Crawford and the secretary of health and human services, it will be forwarded to the White House Office of Management and Budget for final review before being published for comment in the *Federal Register*.

In an advance notice of proposed rulemaking issued on July 14, FDA posed more than 30 questions concerning potentially significant changes to its BSE-prevention feed rule. Most focused on what the agency then described as its intent to propose a ban on the feeding of all so-called "specified risk materials" (SRMs) in all animal feed to enhance existing BSE-prevention safeguards. At that time, FDA said it was considering defining as SRMs as: the skull, brain, trigeminal ganglia, eyes, vertebral column, spinal cord and dorsal root ganglia (nerves attached to the spinal cord) of cattle 30 months or older, as well as the distal ileum portion of the small intestine and tonsils of all cattle. FDA also posed a number of questions on whether other policy responses – including requiring dedicated facilities and equipment, and prohibiting the feeding of poultry litter and plate waste to ruminants – would be necessary if an SRM ban was imposed.

Third-Party Access to Emerson Trust Soft White Wheat Starts Jan. 10

Third-party buyers starting Jan. 10 will be authorized to bid as part of the first invitation from the U.S. Department of Agriculture to purchase 100,000 metric tons (approximately 3,674,333 bushels) of soft white wheat from the Bill Emerson Humanitarian Trust.

As reported first in the Dec. 31 edition of *NGFA E-Alert*, the U.S. Department of Agriculture as expected on Jan. 4 issued a notice to the industry (BCD-87) inviting bids to purchase soft white wheat from the Emerson Trust. Concurrently, USDA issued an invitation (Number 721) soliciting offers to sell to the Commodity Credit Corporation (CCC) an equivalent quantity of soft white wheat for food aid for Sudan. Today, it amended the invitation to expedite the deadline for submitting bids to Jan. 10 by 2 p.m. central time.

USDA's first invitation making soft white wheat available from the Emerson Trust was a buy/sell transaction, in which storing warehouse operators have until Friday, Jan. 7 (4:30 p.m. central time) to enter into negotiated sales with CCC to purchase any or all CCC-owned soft white wheat stored in their locations. Bids are to include the lot number(s), warehouse code, location (city, county and state), and in-store flat-price bid. For purposes of this and future invitations, all CCC-owned soft white wheat grading U.S. No. 2 or better is considered to be Emerson Trust stocks. As of Dec. 3, the Emerson Trust consisted of 725,169 metric tons (26,645,118 bushels) of soft white wheat.

Once bids are opened to third-party buyers on Jan. 10 at 9 a.m. central time, storing warehouse operators will **not** be notified for right of first refusal. Third-party buyers will be restricted to purchasing no more than 35 percent of the quantity stored at a particular location as of Dec. 3, based

(Continued on page 9)

Get NGFA Newsletter by E-Mail

Every-other-Thursday when the *NGFA Newsletter* is published, more than 2,000 persons from NGFA member companies receive it the same night – by e-mail. It, and other inserts included with the *Newsletter*, are sent as PDF files in the same format as the printed version.

But those electronic recipients of the *Newsletter* receive it two to three days before the mailed version. And they help the NGFA save on paper, printing and mailing costs, which allows your association to invest even more of your dues investment on government representation, programs and services to members.

Still receiving the *Newsletter* by regular mail? Like to receive it by e-mail? Please send a request by e-mail to Rachel Duran at rduran@ngfa.org, or give her a call at the NGFA's office at 202-289-0873.



Could Even Adam Smith Have Been Wrong?

It's been a few years since I read the *Wealth of Nations*, Adam Smith's treatise on economics. But I'm tempted to pick it up again.

In an article published on Dec. 24, Professor Darryl E. Ray of the University of Tennessee quoted Mr. Smith as saying that, "public policy prescriptions formulated by manufacturers and merchants 'ought to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but the most suspicious attention.'" Smith went on to rationalize this advice by arguing that the interests of manufacturers and merchants are never exactly the same as those of the public.

Dr. Ray's commentary was in response to the policy paper that the NGFA, the National Oilseed Processors Association, the North American Millers Association and North American Export Grain Association jointly submitted to the U.S. Department of Agriculture regarding the future of the Conservation Reserve Program (CRP). One thing about our policy statement on this matter, it was highly transparent to the public. And it received lots of attention! We are pleased that Dr. Ray and others took the time to consider whether our analysis makes sense for the consumer, the farmer, for other sectors of agriculture and the country as a whole.

In that statement on the CRP, the NGFA and its industry colleagues argued that given strong growth markets – including the meat sector, ethanol and some processed commodities – consideration should be given to downsizing the CRP. We also asserted that local communities with high CRP enrollment had been damaged economically. And we noted that CRP land, particularly whole farms, should not be re-enrolled automatically without having to compete against other environmentally sensitive land for maximization of benefits. Finally, we urged USDA to adopt sound policies regarding the optimal size of the CRP, in recognition that decisions made now will stretch out over several years. In 2007 and 2008, 22 million acres (representing 9 percent of U.S. plantings of seven major crops) come out of CRP, and it would be judicious not to make snap judgments on how much productive acreage to idle based upon current economic conditions. USDA could accomplish this by both allowing early outs and possibly extending for one or two years some of the expiring CRP contracts.

Dr. Ray concludes that because the current cash price of corn is \$1.63 per bushel (Martin County, Minnesota)

that the size of the CRP (and its contribution to supply control) should remain close to where it is. The fact that Dr. Ray is making policy recommendations on the basis of today's market prices really makes our point about the wisdom of stretching out the decision on the reenrollment of 22 million acres over several years. In the July 26, 2004 edition of *FEEDSTUFFS* – five months before Dr. Ray's comments – Iowa State Professors Robert Wisner and Phil Baumel argued that the trends in Chinese consumption and production and growing demand for corn in ethanol could lead to a need for 4.5 million to 6 million more planted corn acres by 2008, even with upward yield trends.

Have long-term supply demand prospects really changed that much in the last five months?

The real policy question is not about temporary "surpluses" or tight supplies; these will always occur in inelastic commodity markets. The issue is: Will the U.S. ration its agricultural growth potential by poorly timed policy decision-making?

Dr. Ray further suggests that our industry, if it is concerned about growth opportunities, should be lobbying for a reserve stock program to ensure available supplies for the ethanol and livestock sectors. The NGFA does not support such programs for a number of very good reasons. Artificial stocks programs depress farm prices; even when the grain is held off the market, the market knows it can be made available and that reduces average cash prices paid to producers. Artificial stocks programs also distort the seasonal carry in markets, thus reducing private incentive for carrying reasonable stocks. Perhaps most importantly, stocks programs are a conduit for government involvement in the market, sometimes causing unexpected, unpredictable and costly price swings.

In a policy paper last year, USDA economists Edwin Young and Paul Westcott presented what most agricultural economists would consider mainstream thinking about U.S. farm policy. Their main points about what economists think they have learned about farm policy are: 1) supporting prices artificially is self-defeating; 2) supply controls have proved unworkable; and 3) stockholding and reserves distort markets.

So in this next policy debate about the optimal direction of the CRP and farm programs, pick your favorite economist. But as Adam Smith no doubt would counsel, choose carefully. Somebody might be giving the wrong advice!



New Congress Organizes, Selects Committee Chairmen

The new 109th Congress convened officially on Jan. 4, and began the process of organizing committees and establishing rules under which it will operate.

In the House, **Speaker J. Dennis Hastert**, R-Ill., was reelected to a fourth term as speaker – tying him with fellow Illinoisan Rep. Joseph G. Cannon (1873-1923) as the Republican elected speaker the most times. Republicans hold a 232-201 margin in the House, with one Independent and one vacancy following the Jan. 1 death of Rep. Robert T. Matsui, D-Calif., from pneumonia, a complication arising from a rare stem-cell disorder. Matsui was ranking Democrat on the House Ways and Means Committee’s Social Security Subcommittee, and was widely considered the leading pro-trade Democrat in the House.

While the selections for all committees and chairmanships have not been finalized, several key decisions have been made. The House Agriculture Committee will continue to be chaired by **Rep. Bob Goodlatte**, R-Va., while the Democrats selected **Rep. Colin Peterson**, D-Minn., as their ranking member. Peterson had come under fire for not regularly paying dues to the Democratic caucus or helping in the election of other Democrats. But his recent commitments to do so in the future, as well as a sizable donation to the party, shored up his support in the Democratic caucus.

Meanwhile, **Sen. Saxby Chambliss**, R-Ga., will chair the Senate Agriculture Committee. **Sen. Tom Harkin**, D-Iowa, continues as ranking member. The chairmanship became available after current Chairman Thad Cochran, R-Miss., accepted the chairmanship of the powerful Senate Appropriations Committee. Sen. Pat Roberts, R-Kan., next in seniority, demurred on the agriculture committee slot so that he could retain the chairmanship of the Senate Intelligence Committee. Under rules established by the Senate Republican majority, a single senator can hold only one committee chairmanship.

Chambliss, a first-term senator, previously was a member of the House from 1995-2003, where he served on the Agriculture Committee and was involved in the development and passage of the 2002 farm law. The 61-year-old is an attorney, and in the last Congress served on the Senate Agriculture Committee’s Subcommittees on Marketing, Inspection and Product Promotion; and Production and Price Competitiveness – but did not chair either subcommittee. During the deliberations on the 1996 “Freedom to Farm” bill championed by then-House Agriculture Committee Chairman Roberts, Chambliss was one of the so-called “gang of four” southern congressmen who initially held up passage of the measure until an additional \$3 billion in income supports were provided to cotton and rice producers.

Meanwhile, **Sen. Ted Stevens**, R-Alaska, is to succeed Sen. John McCain as chairman of the Senate Commerce, Science

and Transportation Committee, whose broad jurisdiction includes oversight of rail transportation. Other new chairmen of Senate committees include **Sen. Michael B. Enzi**, R-Wyo., who is to succeed Sen. Judd Gregg as chairman of the Health, Education, Labor and Pensions Committee, which among other things oversees the activities of the Food and Drug Administration and Occupational Safety and Health Administration. **Sen. Gregg** will assume the chairmanship of the Budget Committee, replacing the retiring Don Nickles, R-Okla. And **Sen. Arlen Specter**, R-Pa., won his battle to become chairman of the Judiciary Committee, succeeding Sen. Orrin G. Hatch, R-Utah.

New committee chairmanships and assignments are made every two years, with each new Congress. Under rules developed by the Senate Republican Conference, senators generally are allowed to serve as a committee chairman for up to six consecutive years before being rotated off. Sen. Pat Roberts, R-Kan., retained the chairmanship of the Senate Intelligence Committee after the Republican Conference – in recognition of legislation enacted in December reorganizing the U.S. government’s intelligence structure – deleted the eight-year term limit for senators to serve on that panel.

All committee chairmanships and assignments are expected to be finalized by Jan. 7.

House Approves Rule Creating Permanent Homeland Security Committee: The House on Jan. 4 approved a plan to create a permanent standing Homeland Security Committee, but in doing so provided up to 10 other committees with some level of potential jurisdiction.

Under the plan, approved when the House adopted a resolution (H.R. 5) adopting rules to govern its operations, the Homeland Security Committee under Chairman Christopher Cox, R-Calif., will have primary jurisdiction over the Transportation Security Administration, border security, infrastructure protection (such as rail security) and some Customs functions. But the Transportation and Infrastructure Committee, to be chaired by Rep. Don Young, R-Alaska, will have jurisdiction over the U.S. Coast Guard (except some aspects of port security) and the Federal Emergency Management Agency – both of which also are part of the U.S. Department of Homeland Security. Meanwhile, the House Judiciary Committee, under likely Chairman Rep. James Sensenbrenner, R-Ohio, will have authority over immigration policy and immigration law enforcement. The Energy and Commerce Committee, chaired by Rep. Joe Barton, R-Texas, will retain jurisdiction over some critical infrastructure, including chemical-plant security and first-responders. The Financial Services Committee is to retain oversight of money laundering and terrorist financing, while the Government Reform Committee will oversee some cybersecurity issues.

(Continued on page 4)



("New Congress" continued from page 3)

The reorganization plan adopted by the House also includes provisions – called “legislative history” – that could allow chairmen of other committees to request referrals on specific homeland-security-related bills. Legislative history does not have the force of law, but is used by the House parliamentarian to establish whether a committee has a history of addressing certain issues. That could come into play particularly if the new Homeland Security Committee

proceeds with its plan to enact an annual authorization bill for the Department of Homeland Security.

Previously, the House had a “Select” Committee on Homeland Security, chaired by Cox, that did not have permanent status and whose authority had been questioned. The reorganization plan was among the recommendations contained in the final report of the presidential commission that investigated the Sept. 11 terrorist attacks.

The Year Ahead...in Congress

The NGFA has identified a long list of legislative priorities for 2005. This legislative session is sure to offer up something old (such as an energy, highway and water resources development bills) and something new (including budget pressure on farm programs and Commodity Futures Trading Commission (CFTC) reauthorization).

Here’s a preview of some of the major front-burner issues important to the industry:

► **The Budget:** President Bush pledged to cut the budget deficit in half by 2009 to \$260 billion. And conservatives in Congress, buoyed by the ascension of “budget hawk” Sen. Judd Gregg, R-N.H., to the chairmanship of the Budget Committee, have vowed to make that happen. To make headway in reducing the deficit – given spending pressures for the war in Iraq, homeland security and the upfront costs associated with Bush’s proposed reform of Social Security – Congress may pass a budget reconciliation bill that would require all committees, including agriculture, to contribute by reducing expenditures for existing programs. While farm payments likely will be among the last to suffer cuts, conservation, rural development and research will be primary targets.

► **Inland Waterways Bill:** The Water Resources Development Act (WRDA) authorizes water projects for the U.S. Army Corps of Engineers and generally is done every two years. However, Congress has not passed a WRDA bill since 2000 after negotiations broke down in 2002. NGFA’s priority for this measure is the authorization to fund the extensions of locks on the Upper Mississippi and Illinois River Waterway to enhance the efficiency of commercial barge transportation. Last year, the House passed a version. And the Senate version, that included authorization for the Upper Mississippi projects, made its way through committee. But a lack of time to agree on a final package “killed” the measure. Despite being so close to passage, the bill will have to be started from scratch in 2005. The NGFA will continue its efforts to promote grassroots contacts to Congress by a wide swath of NGFA members and is optimistic the authorization can be achieved this year. The project would provide for new locks and dams at 20, 21, 22, 24 and 25 on the Upper Mississippi River, and LaGrange and

Peoria on the Illinois River. In addition, the navigation plan calls for extensions at locks 14 to 18, switch boats at locks 11 to 13 and moorings at locks 12, 14, 18 and 24.

► **FGIS Reauthorization:** The NGFA will be seeking to amend the U.S. Grain Standards Act to authorize the U.S. Department of Agriculture’s Grain Inspection, Packers and Stockyards Administration (GIPSA) to delegate to disinterested third parties the authority to provide official grain inspection and weighing services at export elevators with on-site government oversight. The U.S. Grain Standards Act, up for renewal by Sept. 30, authorizes the operations of GIPSA and its Federal Grain Inspection Service (FGIS). Congress is expected to begin the process of conducting hearings and drafting legislation in early spring, culminating in the reauthorization of GIPSA at or near its expiration date.

In addition, the NGFA will continue its long-standing opposition to administration proposals that would authorize the assessment of approximately \$4 million annually in user fees on grain exporters to finance USDA/GIPSA standardization activities that maintain the U.S. grain standards. While Congress has rejected similar proposals – which have been offered up for each of the past 20 years by succeeding administrations of both political parties – budget pressures this year are expected to make the challenge even more difficult.

► **Trade:** Legislation – known as trade promotion authority – that allows the president to enter into trade agreements with other countries was approved in 2002, but is required to be extended by the president this year. President Bush is expected to do so, but Congress under the law has the opportunity to pass a resolution disapproving the extension. The president also is required this year to renew U.S. membership in the World Trade Organization, with Congress given the opportunity to pass a resolution of disapproval. While Congress is highly unlikely to do so in either case, both issues will provide an opportunity for a debate laced with anti-trade rhetoric. A more contentious debate is expected over legislation ratifying the Central American Free Trade Agreement (CAFTA) completed last year. That vote is expected to be extremely close, and

(Continued on page 5)





Republican leaders do not yet have the votes to support passage. In addition to the usual opposition from environmental and labor groups, the sugar and textile industries also oppose the CAFTA agreement.

The NGFA has been a vocal supporter of free trade in the past and strongly supports the extension of trade promotion authority, continued U.S. membership in the WTO and the passage of implementing legislation for CAFTA. The NGFA will continue work independently and through various agricultural and business coalitions to encourage Congress to support these free trade initiatives.

► **Highway Bill:** The previous law (TEA-21) governing highway construction expired on Sept. 30, 2003, but has been extended in bits and pieces since then to keep funds flowing to highway construction projects. An omnibus measure is expected to be considered again this year. The NGFA's principal objective is to codify the agricultural exemption to the Department of Transportation's (DOT) hours of service truck driver rules. The agricultural exemption is a long-standing part of the highway authorization statute; however, the way the exemption is written has led to its curtailing over the years by DOT. The provision attached to the highway bill during the previous Congress would clarify the intent of the

original exemption, expand it to include feed deliveries and prohibit DOT from weakening the exemption. The NGFA is working closely with the Agricultural Retailers Association and others to advocate passage of this measure.

► **CFTC Reauthorization:** The statute governing the Commodity Futures Trading Commission (CFTC) also is set to expire on Sept. 30. Congress is expected to begin the process of holding hearings and drafting legislation in early spring. The NGFA continues to identify industry priorities for the measure, and supports greater legal clarity for cash grain contracts, exchange-based risk-management tools and increased efforts to expand farmers' use of all risk-management tools.

► **Energy Bill:** Congress is expected to make another attempt at passing a comprehensive energy bill after falling just two votes short in the Senate last year. Bolstered by an increased majority, Republican leaders are confident of passage in some form in the 109th Congress. The new bill is expected to be more narrowly focused than the omnibus energy bill debated last year, emphasizing boosting U.S. domestic energy production and improving the reliability of the U.S. energy grid. Renewable fuels mandates continue to be a popular and again likely will be included in any energy legislation ultimately passed.

Johanns' Confirmation Recommended by Senate Ag Committee

The Senate Agriculture Committee late today unanimously recommended to the Senate that it confirm the nomination of Nebraska Gov. Mike Johanns to be secretary of agriculture.

The action came following a non-confrontational confirmation hearing today that focused heavily on reopening the Japanese market to U.S. beef trade and concerns voiced by some senators that reopening the U.S. border to Canadian beef imports could undermine that objective (see related article on page 6).

Johanns repeatedly said that restoring U.S. beef trade with Japan was his "number one priority" and would receive his "immediate attention from the very moment I become secretary." Several senators renewed their call for the appointment of a special envoy to Japan to resolve the issue, and urged that President Bush, Vice President Cheney and all cabinet officers raise the beef issue in every meeting or conversation they have with Japanese officials. Informed in a written question posed by Sen. Chuck Grassley, R-Iowa, that officials with Japan's Ministry of Agriculture, Fisheries and Forestry want to delay negotiations over reopening Japan to U.S. beef trade because of the change in the U.S. secretary of agriculture, Johanns vowed that there would be "no slow down...no let up" in USDA's efforts because of the transition, arguing that the necessary scientific and

technical work has been completed to justify Japan reopening its borders to U.S. beef.

Johanns also was peppered by a wide variety of questions, ranging from his commitment to conservation programs – he assured senators that his "strong commitment" to such programs was demonstrated by his record as Nebraska governor – to future negotiations to liberalize agricultural trade under the World Trade Organization, to animal disease prevention programs, to biodiesel and renewable fuels programs, to his views on implementing country-of-origin labeling for imported meat products.

On conservation, Sen. Tom Harkin, D-Iowa, ranking member of the committee, urged Johanns to review the regulations and payments to increase participation in the Conservation Security Program that provides funds for implementing conservation practices on working farmland. Incoming Senate Appropriations Committee Chairman Thad Cochran, R-Miss., who chaired the Agriculture Committee in the last Congress, called on Johanns to request sufficient appropriations to adequately fund conservation programs. And Sen. Mark Dayton, D-Minn., urged Johanns to announce soon that all expiring contracts in the Conservation Reserve Program will be extended; Johanns did not respond directly, saying that he "realized there are some issues" associated with the CRP renewal and reiterating his "strong support" for conservation programs.





Congress Plans Hearings on USDA Final Rule Reopening Border to Imports of Certain Canadian Live Cattle and Beef Products

Both the House and Senate Agriculture Committees plan to conduct hearings on the U.S. Department of Agriculture's final rule that classifies Canada as a "minimal-risk" region for bovine spongiform encephalopathy (BSE) and would reopen the border to imports of certain Canadian live cattle and beef products on March 7.

Newly designated Senate Agriculture Committee Chairman Saxby Chambliss, R-Ga., made the announcement during his opening round of questions during today's confirmation hearing on the nomination of Nebraska Gov. Mike Johanns to become secretary of agriculture. Chambliss did so at the request Sen. Conrad Burns, R-Mont. Chambliss said the hearing would be scheduled prior to the expiration of the 60 legislative days (days that Congress is in session) after the rule was published in the Jan. 4 *Federal Register*. Under the Congressional Review Act, Congress can revoke a federal rule if it enacts a joint House-Senate resolution during that time period. Separately, there were indications that the House Agriculture Committee also would conduct a hearing on the USDA final rule.

USDA's final rule establishes criteria under which different countries and regions can be classified as "minimal risk" for BSE, and recognized Canada as the first and only country thus far to meet those criteria. Under the final rule, live Canadian cattle younger than 30 months, as well as sheep and goats less than 12 months old, would be eligible to be imported. The final rule also authorizes the importation of meat from cattle, sheep, goats and cervids (deer, elk, moose, caribou and reindeer), as well as other beef products and byproducts (including bovine livers, tongues, gelatin and tallow), regardless of the animal's age.

USDA's Final Rule Safeguards: Under USDA's final rule, the following safeguards apply to live cattle less than 30 months old imported from Canada:

- ▶ feeder cattle will be required to be permanently branded ("C/N") to identify the region before entering the United States;
- ▶ cattle must be individually identified with an ear tag before entering so that the animal can be traced to its birth herd;
- ▶ information must be included on the Canadian animal health certificate concerning the cattle's identification, origin, destination and the names of responsible parties;
- ▶ cattle must be moved to U.S. feedlots in sealed containers;
- ▶ imported Canadian cattle must go to only one designated feedlot;
- ▶ all imported Canadian cattle will be required to be

slaughtered before reaching 30 months of age – those that aren't will be considered to be in violation of the rule and prohibited from entering the food or feed chain;

- ▶ specified risk materials from imported Canadian cattle will be removed at slaughter in accordance with USDA Food Safety Inspection Service regulations, and will not be allowed to enter the human food chain;
- ▶ Breeding cattle will not be allowed to be imported; and
- ▶ cattle, sheep and goats imported from a BSE minimal-risk region will be required to have been subject to a ruminant-to-ruminant feed rule equivalent to the one imposed by the Food and Drug Administration. Significantly, APHIS dropped its earlier proposal that would have prohibited imports of ruminants that might have consumed blood and blood products.

Likewise, sheep and goats less than 12 months old allowed to be imported from Canada will be required to be: 1) permanently marked with a brand ("C") to identify them as Canadian-origin animals; 2) individually identified with an ear tag allowing the animal to be traced to the premises of origin; 3) accompanied by animal health certification attesting to their origin, destination and responsible parties; and 4) moved to a single feedlot in sealed containers.

All live animals eligible for import into the United States will be required to enter through one of 20 designated ports of entry. Because of pent-up demand, USDA Chief Economist Dr. Keith Collins estimated that approximately 2 million Canadian live cattle will be imported by the United States in 2005, up from the average of 1.3 million head imported prior to closure of the Canadian border to such imports in May 2003.

USDA officials stressed that the criteria for designating countries or regions as "minimal risk" are science-based and founded on the guidelines established by the World Animal Health Organization – known by its French acronym OIE (which stands for Organization for International Epizootics). Those criteria include: 1) regions in which BSE-infected animals have been diagnosed, but sufficient regulatory measures have been implemented to make introduction of BSE into the United States extremely unlikely; or 2) regions that have implemented effective regulatory measures to prevent BSE or that have never detected the disease, but cannot be judged to be BSE-free. USDA said Canada met these criteria because it has: 1) banned the use of so-called specified risk materials in human food; 2) implemented import restrictions sufficient to minimize risk exposure to BSE (Canada in 1990 implemented bans on imports of live

(Continued on page 7)





ruminants, ruminant products and rendered protein products from countries that had detected BSE in their native herds, as well as countries that are considered to be at significant risk for BSE); 3) conducted surveillance of its domestic cattle population at levels that meet or exceed OIE guidelines (Canada initiated its surveillance in 1992, and the number of cattle tested for BSE has exceeded OIE guidelines for the past seven years); 4) implemented (in 1997) a ban on feeding certain mammalian material to cattle and other ruminants; and 5) conducted appropriate epidemiological investigations, risk assessments and risk-mitigation measures in response to confirmed BSE cases.

Importantly, in response to a question posed by the NGFA, USDA/APHIS officials said additional rulemaking and solicitation of public comment taking up to two years or longer would be needed to authorize other countries or regions to be designated as "minimal-risk" regions for BSE. USDA said it already had received inquiries from some additional countries seeking such a designation, but did not identify them.

AMI Files Lawsuit Challenging USDA Ban on Importing Older Canadian Live Cattle: The American Meat Institute on Dec. 30 filed a lawsuit seeking a declaratory order and injunction that would prohibit the U.S. Department of Agriculture from restricting imports of Canadian live cattle to those younger than 30 months.

AMI's lawsuit challenges USDA's May 2003 interim rule that closed the U.S. border to imports of Canadian live cattle, calling such action "arbitrary and capricious" and a violation of the Administrative Procedure Act [5 U.S.C Section 706]. AMI, which represents U.S. meat packers and processors, said there is no legal or scientific justification for USDA continuing to ban imports of live Canadian cattle 30 months and older now that it has "made the determination that beef products from these same animals may enter the (United States) for sale." USDA/APHIS officials said during a briefing for the NGFA and other industry groups on Dec. 30 that USDA's Office of General Counsel contends that allowing the importation of Canadian cattle 30 months or older would

require an additional rulemaking. In its second proposed rule issued in March 2004, USDA/APHIS proposed to eliminate the requirement that beef and beef products imported from BSE minimal-risk countries be derived solely from cattle less than 30 months old if appropriate safety measures had been implemented. But USDA/APHIS said in that same rulemaking that it still was considering an appropriate approach regarding the ages of live cattle imports, and would address the issue in a future rulemaking.

In the lawsuit, filed in the U.S. District Court for the District of Columbia, AMI cited the irony of USDA allowing the importation of beef and beef products from Canadian cattle 30 months or older processed by Canadian packing plants, but not allowing import and slaughter of those same animals in U.S. packing plants. "There is no scientific basis for distinguishing between live cattle and processed beef in this way, especially because APHIS has acknowledged that Canada's BSE risk-mitigation measures are equivalent to those adopted...in the United States," AMI said in its legal brief. AMI said USDA's closing of the border to imports of live cattle from Canada since May 2003 had caused a fundamental restructuring of the meat packing industry on both sides of the border, with Canadian industry building new plants and expanding existing capacity, while U.S. plants struggle to remain economically viable because of reduced cattle slaughter.

R-CALF Considering Legal Action: Meanwhile, Ranchers-Cattlemen Action Legal Fund (R-CALF USA) said it was considering filing another lawsuit and seeking an injunction to prevent USDA from implementing its final rule on schedule. It was R-CALF USA that filed a successful court challenge against USDA's initial plan in August 2003 to allow imports of Canadian beef products, including bone-in, ground beef and processed meats, under a permit system following the diagnosis of Canada's first BSE case in May 2003. Subsequently, USDA and R-CALF entered into a settlement agreement under which USDA initiated the rulemaking that ultimately led to the issuance of the Dec. 29 final rule.

Alberta Farm Identified as Site of Confirmed Canadian BSE Case

A farm near Barrhead, Alberta has been identified as the location for what Canadian officials have confirmed to be the third case of bovine spongiform encephalopathy (BSE) in North America.

Canadian Food Inspection Agency officials on Jan. 2 announced that birth records of the dairy cow indicated it was eight-, rather than the preliminarily estimated 10-

years-old. The most recent case means that all three of the North American BSE cases involve dairy cows originating in Alberta, Canada. And importantly, each was born before the implementation by Canada and the United States of BSE-prevention feed regulations in 1997 that prohibit the feeding of certain mammalian materials to cattle and other ruminants.

(Continued on page 8)



During a Jan. 3 media briefing monitored by the NGFA, CFIA officials said the origin farm of the BSE-infected animal was a small operation that currently has less than 200 dairy cows and a few beef animals. All of those cattle were placed under quarantine. CFIA now is in the midst of its trace-back investigation to identify other herd mates that were born within one year before through one year after the infected cow. CFIA said its investigation into the source of contaminated feed that may have triggered the disease also was underway; but given the age of the animal, the elapsed time and the volume of feed and feed ingredients imported by Canada, they said it may be impossible to definitively identify the specific feed source as the origin of the infection.

Canadian officials also said they had alerted the U.S. Department of Agriculture on the initial discovery of what then was a suspect case of BSE hours before USDA on Dec. 29 announced its final rule categorizing Canada as a minimal-risk country for BSE and opening the U.S. border effective March 7 to imports of Canadian live cattle less than 30 months of age, as well as other Canadian beef and beef products.

Dr. Ron DeHaven, administrator of USDA's Animal and Plant Health Inspection Service (APHIS), issued a statement on Jan. 3 reiterating USDA's commitment to its final rule. "The extensive risk assessment conducted as part of USDA's rulemaking process took into careful consideration the possibility that Canada could experience additional cases of BSE," DeHaven said. "USDA remains confident that the animal and public health measures that Canada has in place – including the removal of specified risk materials from human food, a ruminant-to-ruminant feed ban, a national surveillance program and import restrictions, combined with existing U.S. domestic safeguards and the additional safeguards announced as part of USDA's minimal-risk rule – provide the utmost protections to U.S. consumers and livestock."

DeHaven's statement was reinforced by outgoing Secretary of Agriculture Ann M. Veneman, who following a speech this week celebrating the U.S. Forest Service's 100th anniversary said it would be "hard for me to envision at this point in the process not moving forward" with a reopening of the Canadian beef trade.

AAFCO to Discuss 'Low Starch/Low Carb' Label Claims for Feed

During its midyear meeting scheduled for Jan. 23-26, the Association of American Feed Control Officials (AAFCO) is scheduled to begin discussions on how to approach the issue of low starch/low carbohydrate claims on animal feed labels.

States currently do not have labeling regulations or policies that provide a mechanism for approving the use of labels containing "low-carb" claims and guarantees, even though such labels have been utilized in the marketplace, particularly for horse feeds. One of the core founding purposes of AAFCO, the professional organization of state and federal feed regulatory officials, is to develop uniform policies and approaches governing the regulation of feed and feed products in the United States. Currently, AAFCO's sole policy statement on the matter, last amended in 1963, is that carbohydrate guarantees have little or no value to consumers.

AAFCO's Feed Labeling Committee, chaired by Ricky Schroeder, supervisor of product registration for the Office of the Texas State Chemist, has formed a task force to identify and discuss options for how to address the issue. One of the conundrums to be confronted by the AAFCO task force is that the current AAFCO Model Bill

requires that all substances or elements for which claims are made on feed labels are required to be determinable by laboratory methods, such as those published by the Association of Analytical Communities (AOAC) International, based in Gaithersburg, Md. While AOAC International has an approved analytical method for determining starch content, it does not have a method recognized by regulatory laboratories for determining carbohydrate content. Further, AAFCO and other regulatory authorities do not recognize starch as a nutrient that can be guaranteed, even though AOAC has an approved analytical method for determining starch content.

Some states have attempted to address the issue in a piecemeal fashion. For instance, an interim set of labeling guidelines implemented by the Commonwealth of Kentucky allows for the approval of labels that identify the feed product as containing reduced or lower levels of starch, with the starch guarantees expressed as a maximum percentage of starch; the starch values used by Kentucky were derived from published literature, and not through analytical methods. Kentucky thus far has not approved any feeds labeled with a "low carbohydrate" or "reduced carbohydrate" claim.



("Emerson Trust" continued from page 1)

upon the CCC warehouse code, inclusive of any quantity previously purchased by the storing warehouse operator. Bids will be limited to three separate warehouse codes, per telephone call, and the maximum quantity CCC will sell per call will be 551,150 bushels. USDA said lots will be required to be bid upon in their entirety, except one partial lot will be permitted to achieve the maximum quantity allowed at each warehouse code. Importantly, USDA said that if it discovers that attempts are being made to circumvent the bid limits through prearranged third-party sales, the transaction(s) will be suspended and the names of both the third party and storing warehouse allegedly involved will be referred to USDA's Office of Inspector General for investigation.

The invitation to purchase soft white wheat from the Emerson Trust was issued after USDA officials were informed by U.S. Agency for International Development (USAID) of its desired Feb. 1 through March 22 shipping schedule to the Sudan. USDA officials told the NGFA again today that they had not determined yet the dates and quantities for future Emerson Trust tenders, or whether those invitations will involve buy/sell or swap transactions. The release of up to 200,000 metric tons (approximately 7.35 million bushels) from the Bill Emerson Humanitarian Trust was announced on Dec. 3 by Secretary of Agriculture Ann M. Veneman. When first announcing the release of soft white wheat from the Emerson Trust on Dec. 9, USDA tentatively had scheduled its first invitation for Dec. 15 for 50,000 metric tons (approximately 1.836 million bushels) of soft white wheat, with additional invitations for an equivalent quantity tentatively slated to be issued on Dec. 29, Jan. 12 and Jan. 26. But that schedule was delayed by discussions between USAID and the United Nations' World Food Programme on the desired shipping dates for the wheat.

The procedures USDA intends to use to meet the USAID requests under both buy/sell and swap transactions were spelled out in a Dec. 9 notice to the trade (*BCD-82*), as follows:

► **Buy/Sell Transaction Procedures:** Under buy/sell transactions such as the one being utilized under this invitation, storing warehouse operators are given three business days after the date of the tender notice to purchase CCC-owned wheat. Thereafter, all CCC-owned soft white wheat at all locations will be available to third-party buyers (without prior notification to the storing warehouse), with the following restrictions: 1) The maximum quantity sold for the entire release at a given warehouse, based upon the warehouse code, will be 35 percent of the CCC-owned soft white wheat stored at that warehouse code as of Dec. 3. This quantity is to include any quantities previously purchased or swapped by the storing warehouse operator; and 2) third-party buyers may purchase up to 15,000 metric tons (551,150 bushels) during a single transaction. USDA noted that CCC reserves the right to adjust the third-party purchase limits if necessary to meet USAID program needs.

► **Swap Transaction Procedures:** If swaps are utilized in a future invitation, interested parties are to be allowed to offer soft white wheat at U.S. port locations delivery f.o.b. vessel in exchange for CCC-owned soft white wheat stored in: 1) their own facilities, with no quantity limits; or 2) one or more facilities controlled by other warehouse operators, provided that soft white wheat stored in their own facilities is used in exchange for at least 10 percent of the offered quantity, provided stocks are available and the 35 percent limit on sales from the given warehouse code has not been reached. USDA noted that bidders will be required to swap 100 percent of any available CCC-owned soft white wheat in their facilities if that quantity is less than 10 percent of the offered quantity. No advance notice will be provided to storing warehouse operators. Consistent with the buy/sell process, the maximum quantity that will be swapped out of a single location, based upon the warehouse code, will be 35 percent of CCC-owned soft white wheat stored at that location as of Dec. 3, inclusive of any quantity previously bought or swapped by the storing warehouse operator. The limit will be waived at locations where the storing warehouse operator agrees, USDA said.

Tsunami-Relief Food Aid Impact on Emerson Trust Expected to be Minimal

U.S. Department of Agriculture officials told the NGFA today (Jan. 6) that the mobilization of food aid relief for South Asian countries devastated by the tsunami emanating from the Indian Ocean earthquake is expected to have a minimal impact on the Bill Emerson Humanitarian Trust, at least in the near term.

Indications received thus far from the United Nations' World Food Programme is that it is seeking primarily monetary donations to purchase food aid relief in as close a proximity to the devastated countries as possible. USDA officials said they had not received a request yet from the U.S. Agency for International

Development to authorize additional releases of wheat from the Emerson Trust for buy/sell or swap transactions for wheat to be shipped to the region. Following the most recent release of 200,000 metric tons of soft white wheat as food aid for the Sudan, the Emerson Trust consists of 1,415,349 metric tons (approximately 52 million bushels). Further, the \$87 million in funds currently held in the Emerson Trust that were generated from previous congressional appropriations and reimbursements from P.L. 480 Title I and II programs must be used to purchase U.S.-origin commodities.



DOT Proposes to Defer to FDA, USDA on Regulations Governing Sanitation of Conveyances Hauling Food, Feed, Ag Commodities

Nearly 15 years after passage of the Sanitary Food Transportation Act of 1990, the U.S. Department of Transportation (DOT) has proposed to defer to existing and future regulations issued by the Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) to govern the cleanliness of trucks and rail cars used to haul food, feed, feed ingredients and other agricultural commodities, rather than promulgating additional regulations if its own.

In a supplemental notice of proposed rulemaking issued Dec. 21, DOT's Research and Special Programs Administration said that after consultations with the two federal agencies, it concluded that the expertise for ensuring the safety of the nation's food supply, including transportation, resided with FDA and USDA, making it unnecessary for it to develop additional regulations. As examples, DOT cited USDA's development of hazard analysis and critical control point (HACCP) regulations that apply to food processors that handle meat, poultry or egg products; USDA's regulations require transport vehicles to be "reasonably free of foreign matter and free of chemical residues." USDA's Food Safety and Inspection Service (FSIS) also has developed guidelines recommending that transport conveyances be designated and marked "for food use only" when transporting foods, and, when feasible, restricted for use to haul a single commodity. As for FDA, DOT cited the agency's HACCP regulations for juice processors, as well as FDA's current good manufacturing practice regulations and guidance documents pertaining to human food and medicated animal feed.

DOT's new proposal is a marked departure from its initial May 1993 proposal that would have required that tank cars be dedicated to hauling either food or non-food products. For other motor vehicles and rail cars, DOT's 1993 proposal would have prohibited hauling food, feed and other agricultural commodities in the same conveyances as poisons, infectious substances, and hazardous and solid wastes, including fertilizer. But given existing USDA and FDA regulations, **DOT's new proposal asserts that the department's appropriate role is to develop procedures for conducting transportation safety inspections "for the purpose of recognizing suspected incidents of contamination or adulteration of food, (as well as to) train DOT personnel in the appropriate use of the procedures."** Thus, DOT proposes to prohibit the use of motor vehicles or rail cars to transport food or food

products (as broadly defined under the federal Food, Drug and Cosmetic Act) except as permitted under USDA and FDA regulations governing such transportation.

Importantly, DOT proposed a broad definition for transportation, applying to "any movement of property in commerce by motor vehicle or rail car." *[Emphasis added.]* Thus, DOT's definition would encompass both intra- and interstate movements. DOT's proposed definition of "motor carriers" would apply to a "vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used on the highways for the transportation of passengers or property." DOT's proposal also states that persons who offer for transportation or who transport food or food products by motor vehicle or rail cars "should" utilize guidance documents and materials developed by FDA and USDA that pertain to the sanitation of conveyances.

DOT also outlined a series of cooperative endeavors it would undertake with USDA and FDA, including: 1) "promptly notify(ing) FDA or USDA of any instances of potential food contamination or adulteration" identified during safety inspections of trucks or rail cars; 2) developing a joint memorandum of understanding to "ensure that the agencies work together effectively to assure that the nation's food supply is safe and secure, particularly in the distribution channels involving transportation"; 3) developing a program to protect against vulnerabilities to trucks and rail car sanitation; and 4) developing standardized training for transportation inspectors on how to recognize suspected incidents of contamination, adulteration or other potential food safety or security concerns encountered during inspections.

"Taken together, USDA and FDA regulations and implementing guidance adequately address the overarching ... goal of protecting food and food products from contamination during transportation," DOT said. "Substantive DOT regulations in this area are, therefore, not necessary. Accordingly, ... we propose to reference the USDA and FDA regulations and state that persons who offer for transportation or transport food or food products must comply with the USDA and FDA regulations applicable to such transportation. This approach maintains current food safety responsibility with the agencies that are best equipped to meet that responsibility."



GIPSA Issues Procedures for Exporting Grain in Containers

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) has issued procedures for the sampling, inspection, weighing and certification of bulk grain exported in containers.

The procedures, which are contained in GIPSA Directive 9180.78, apply to bulk grain exported in containers to all destinations except Mexico, which are covered under Directive 9180.59.

In the directive, GIPSA noted that the U.S. Grain Standards Act mandates the official inspection and weighing of all grain sold by grade and exported from the United States. The directive reiterated GIPSA's existing policy of providing waivers from the mandatory official inspection and weighing requirements for grain exported by rail or truck to Mexico and Canada, as well as for facilities that export less than 15,000 metric tons of grain per year. Procedures for obtaining exemptions and waivers from mandatory official services are addressed in GIPSA Directive 9020.1.

Container Policy: GIPSA said that bulk grain lots exported by container are to be inspected and weighed as individual lots, except when the contract contains specifications for certification based upon a composite sample. For composite samples, GIPSA said that official personnel should sample and inspect containers as a combined lot based on the contract specifications.

► **Sampling:** Under Directive 9180.78, GIPSA said that containers can be sampled either: 1) directly after loading using a probe; 2) as the grain is being loaded into the container using an on-line sampling device (e.g., Ellis cup, pelican sampler or diverter sampler); or 3) prior to loading the container by sampling the grain while it is in another storage container, provided the inspection certificate so states.

The directive also provides guidance when sampling for composite sample analysis. GIPSA said there is no time limit for composite sampling, but cautioned that the sample must represent the condition of the grain if the samples are collected over long periods.

Containers found to be infested must be fumigated to remove the infested designation from the inspection certificate, GIPSA said.

► **Inspection:** The directive permits official personnel to base an export certificate for a container or group of containers on a domestic certificate if the condition of

the grain has not changed since the domestic inspection. However, GIPSA said, the domestic lot must not have a "bottom-not-sampled" conditional statement if it is to be used for export purposes.

The directive allows certification based upon a composite sample or the mathematical weighted average of multiple samples.

► **Weighing:** The directive said that official weights on containerized shipments can be certified on the basis of an individual container or combined weights, provided that the individual containers are listed on the weight certificate. GIPSA allows official personnel to transfer weights from another carrier or source to the container when the grain has been officially weighed, provided official personnel confirm that the weights have not changed by checking seals and other information.

Other Issues: The directive covers the statements official personnel are to use on official certificates when certifying container shipments, as well as letterhead statements when containers represented by one inspection or weight certificate ships overseas on more than one vessel.

The directive can be obtained from GIPSA's web site at:

<http://www.usda.gov/gipsa/reference-library/directives/9180-78.pdf>.



Calendar

- Jan. 22, 2005: NGFA 8th Annual Feed Industry Council Conference and Trade Show**
Memphis Downtown Marriott Hotel, Memphis, Tenn.
- Jan. 23, 2005: NGFA Feed Legislative and Regulatory Affairs Committee**
Memphis Downtown Marriott Hotel, Memphis, Tenn.
- Jan. 23, 2005: NGFA Feed Manufacturing and Technology Committee**
Memphis Downtown Marriott Hotel, Memphis, Tenn.
- Feb. 15-16, 2005: NGFA Animal Agriculture Committee**
NGFA Conference Room, Washington, D.C.
- March 30-April 1, 2005: NGFA 109th Annual Convention**
Hotel Del Coronado, San Diego, Calif.



Membership Matters

by Todd Kemp
Director of Marketing/Treasurer

New Year Brings New Happenings at NGFA!

There is a lot going on right now with your association!

As the new year begins, here is a menu of several important events and occurrences coming soon:

► **Feed Industry Council Conference and Show:** The NGFA's 8th annual Feed Industry Council Conference will convene in Memphis on Jan. 22. For the first time, the conference is being conducted jointly with the Association of American Feed Control Officials (AAFCO). A strong, business-focused program is on tap – register by visiting www.ngfa.org for a printable form, or call the NGFA at (202) 289-0873.

► **Tabletop Show:** In conjunction with the Feed Industry Conference, a tabletop trade show will be conducted on Jan. 22-23. A very limited number of tablespots still are available at just \$475. For more information, contact Todd Kemp, NGFA's director of marketing/treasurer, at tkemp@ngfa.org or (202) 289-0873.

► **February Frenzy:** This annual membership recruiting challenge to the entire NGFA membership again will be conducted during February. Traditionally, about half the new members each year are recruited between Jan. 1 and the annual convention in March. February Frenzy is a great incentive to get active on the recruiting trail – because each sponsor of a

new member will qualify for a fabulous Grand Prize drawing at the end of the month, and more prizes at our San Diego convention! Watch for the prize package to be announced shortly – and start warming up your best membership prospects.

► **NGFA Annual Convention:** The NGFA's signature event of the year, the 109th annual convention will be conducted **March 30-April 1** at NGFA members' favorite convention spot: the fabulous Hotel del Coronado in San Diego! Check the insert in this edition of the *NGFA Newsletter* for more information, or visit www.ngfa.org for more details. San Diego is the perfect spot to bring the entire family – especially our closing "Banquet-on-the-Beach" closing party! Register now!

► **Ag Village:** At the convention, a small number of tabletop exhibit spaces will be offered to NGFA members only. This is a unique opportunity to gain exposure for your products and services with a key slice of the NGFA's leaders and membership. More information is available from Todd Kemp.

This is only a smattering of the excitement happening at the NGFA. Plenty of additional events and activities are on tap for 2005, in addition to all the valuable member services delivered by the NGFA. Check future *NGFA Newsletters* and visit our web site at www.ngfa.org frequently to keep up!



National Grain and Feed Association
1250 Eye St., N.W., Suite 1003
Washington, D.C. 20005-3922

TIME SENSITIVE