



USDA to Increase Federal Warehouse Examination Fees by 5 Percent

The NGFA has been notified that the U.S. Department of Agriculture's Farm Service Agency (USDA/FSA) soon will issue a notice increasing annual examination fees for federally licensed warehouses by 5 percent, effective Jan. 1.

The examination fee increase applies to grain, cotton, dry beans and nut warehouses licensed under the U.S. Warehouse Act, and will be pro-rated based upon the warehouse's license renewal date. USDA/FSA said the federal warehouse examination fees were being increased to meet anticipated operating expenses under the program for fiscal year 2006, which began Oct. 1. The most recent federal warehouse examination fee increase occurred effective Oct. 1, 2000; that fee increase varied based upon USDA/FSA's direct costs for warehouse examinations for the given type of warehouse, and amounted to no more than a 2 percent increase. Previously, USDA increased federal warehouse examination fees by 7.5 percent in fiscal 1998 and 10 percent in fiscal 1997.

Importantly, the fee increase does **not affect** non-federally licensed warehouses operating under contract with the Commodity Credit Corporation (such as warehouses operating under the Uniform Grain and Rice Storage Agreement contract).

The annual fee increases for federally licensed grain warehouses are shown in the nearby chart, as are the current fees. USDA/FSA said fees for other license and inspection charges under the U.S. Warehouse Act remain

unchanged. Those include the \$80-per-license fee charged for issuing an original federal warehouse license, or for reissuing or duplicating such a license. Also unchanged is the \$35 fee charged for licensing individuals to inspect, sample, grade or weigh commodities under the authority of the U.S. Warehouse Act.

Federal Grain Warehouse License Fees

(In Bushels)

Licensed Capacity	Annual Fee Per Location with CCC Storage Agreement		Annual Fee Per Location without CCC Storage Agreement	
	Current	New	Current	New
	1-150,000	\$ 145	\$ 155	\$ 290
150,001-250,000	295	310	585	620
250,001-500,000	435	455	865	910
500,001-750,000	590	615	1,175	1,230
750,001-1,000,000	730	765	1,460	1,530
1,000,001-1,200,000	875	920	1,750	1,840
1,200,001-1,500,000	1,020	1,070	2,035	2,140
1,500,001-2,000,000	1,165	1,220	2,325	2,440
2,000,001-2,500,000	1,310	1,375	2,620	2,750
2,500,001-5,000,000	1,450	1,525	2,900	3,050
5,000,001-7,500,000	1,605	1,685	3,205	3,370
7,500,001-10,000,000	1,750	1,840	3,500	3,680
10,000,001+	1,750 ⁺¹	1,840 ⁺¹	3,500 ⁺²	3,680 ⁺³

1 Plus \$50 per million bushels above 10,000,000, or fraction thereof.

2 Plus \$90 per million bushels above 10,000,000, or fraction thereof.

3 Plus \$95 per million bushels above 10,000,000, or fraction thereof.

FDA Updates Compliance Guidance for Bioterrorism Recordkeeping Rules

The Food and Drug Administration (FDA) on Nov. 10 issued an updated and expanded version of its question-and-answer guidance document on final regulations implementing the recordkeeping requirements of the Bioterrorism Act.

The law requires that most commercial firms maintain records that are sufficient to identify the immediate previous source and immediate subsequent recipient of food, feed and other agricultural commodities and ingredients – in essence, a one-step forward, one-step-back recordkeeping. Affected firms are required to maintain records containing “reasonably available” information that links inbound deliveries with outbound shipments.

Among entities covered by FDA's recordkeeping regulations are companies that manufacture, process, store, pack, transport, distribute or import food, feed or feed ingredients, including grain elevators, feed mills, grain processors, grain exporters, pet food manufacturers, railroads, barge lines and truckers. The recordkeeping requirements take effect on Dec. 9, 2005 for companies with 500 or more employees; on June 9, 2006 for firms with 11 to 499 employees; and on Dec. 9, 2006 for companies with 10 or fewer employees. Importantly, the recordkeeping requirements are **not retroactive**, but apply to covered activities (such as grain receiving, storage and load-out; feed manufacturing; and grain processing; etc.) that occur

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Congress Passes Budget Reconciliation; Conference to Negotiate Differences

The House on Nov. 18 passed, by a 217-215 margin, its version of the so-called budget reconciliation bill (H.R. 4241), setting up what appears likely to be a complex and contentious conference committee to resolve differences with the Senate-passed version.

The House measure would reduce federal spending on mandatory programs by \$49.9 billion over the next five fiscal years (fiscal 2006-10). This stands in stark contrast to the \$35 billion in budget reductions approved in the Senate's bill (S. 1932).

The House version, which contains deeper cuts and fewer beneficial provisions, was a tough sell for many moderate Republican lawmakers, and only a series of last-minute concessions and promises cobbled together enough votes to secure passage. House Republican leaders dropped the Arctic National Wildlife Reserve (ANWR) oil-drilling provisions, in hopes of restoring it during the joint House-Senate conference committee; the Senate version includes the provision. Meanwhile, the House reduced its originally proposed cuts in food stamps by \$150 million. Reductions in commodity and conservation

programs, amounting to \$1.07 billion and \$734 million, respectively, which were approved by the House Agriculture Committee, were included in the final House version.

Congress has begun its Thanksgiving Day recess, with the House scheduled to return during the week of Dec. 5 to complete work on the budget savings plan, a tax-cut bill and remaining appropriations bills for fiscal year 2006. The Senate has largely finished business for the year, but will return during the week of Dec. 12 to approve final versions of the budget, tax-cut and appropriations measures that emanate from negotiations with the House. The Senate largely has approved these bills, including a tax bill that would make inflation adjustments to the alternative minimum tax to keep it from applying to most middle-income taxpayers and a provision that imposes \$4.3 billion in additional taxes on oil revenues. But unlike the House tax measure awaiting consideration, the Senate version does not include an extension of the Bush administration's 15 percent rates for capital gains and dividends.

Legislation Authorizing Lock-and-Dam Renovation Delayed

For the second consecutive year, the Senate will be unable to complete floor action on legislation that would authorize the major renovation of the locks and dams on the Upper Mississippi and Illinois Waterway.

Funds for the lock-and-dam reconstruction and ecosystem improvements are included in the so-called Water Resources Development Act (S. 728), which was approved by the House earlier this year. But the congested Senate calendar precluded final action on the measure this year, despite the urging of 44 Senators in a letter to Senate leaders urging them to take up the measure. Supporters of the legislation, including the NGFA, are working with the Senate leadership to gain a commitment to bring the measure to the Senate floor in late February or early March 2006.

While the bill would authorize a number of critical projects in the inland waterways system, Congress has approved appropriations funding for fiscal 2006 to pursue several key projects currently authorized, which is expected to be signed into law by President Bush soon. Key projects that would be financed under the appropriations bill include major construction on the Upper Mississippi Locks 3, 11, 10 and 24. Approximately \$1.5 million was allocated for Lock 3, up from the Bush administration's fiscal 2006 budget request of zero. Meanwhile, Lock 11 would be allocated \$7.58 million, representing a \$300,000 increase from the amount requested in the administration's budget proposal. Lock 19 is set to be funded at \$17.502 million. And Lock 24 would receive \$4.3 million, identical to the Bush budget proposal.

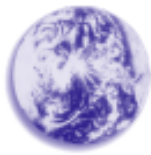
Cuba Provision Stricken from Treasury Appropriations Measure

Congress on Nov. 18 approved a joint House-Senate conference committee appropriations bill to finance the U.S. Treasury, Transportation and Housing and Urban Development Departments after stripping out a provision that would have restored the payment terms for trade with Cuba to what existed before the Treasury Department imposed new restrictions in February 2005.

The new restrictions resulted from what the Treasury Department termed a regulatory "clarification" that changed the definition of "cash in advance" used in the Trade Sanctions Reform and Export Enhancement Act of 2000 to mean that payments for agricultural commodities destined for Cuba

need to be received **before** the commodities leave a U.S. port. Previously, the Treasury Department had recognized the standard industry practice of receiving cash before title and possession of the goods transferred to the Cuban buyer.

The Cuba trade provision, strongly supported by the NGFA, had been included in both the House- and Senate-passed versions of the bill, and would have narrowly precluded the Treasury Department from spending any funds to implement or enforce this restriction. However, even though the provision received overwhelming support in both chambers, conferees removed it after receiving a veto threat.



Crowder Nominated as New Chief Ag Trade Negotiator

President Bush on Nov. 17 nominated **Richard T. Crowder** to be the chief agriculture negotiator at the Office of the U.S. Trade Representative.

If confirmed by the Senate, he would replace Allen Johnson, who already has left the position. U.S. Trade Representative Rob Portman noted that Crowder's appointment "comes at a crucial time in global trade talks..., where negotiations on agricultural reform are key to opening markets worldwide."

Crowder, who has been president and chief executive officer of the American Seed Trade Association since April

2002, served from 1989-92 as undersecretary of agriculture for international affairs and commodity programs. He spent most of the intervening decade as senior vice president, international for DEKALB Genetics Corp., which subsequently was acquired by Monsanto. From 1992-94, Crowder was executive vice president and general manager, international, for meat processor Armour Swift-Eckrich, a division of ConAgra Foods Inc. From 1975-89, he was with the Pillsbury Co. in a variety of senior executive positions. The Virginia native received his undergraduate and masters degrees from the Virginia Polytechnic Institute and State University (Virginia Tech), and his PhD from Oklahoma State University.

Canadian International Trade Tribunal Proceeding with Antidumping Case Against Unprocessed U.S. Corn Imports

The Canadian International Trade Tribunal on Nov. 15 issued a preliminary determination that there is a "reasonable indication" that **unprocessed** corn imports from the United States are being dumped and subsidized, and stating that its investigation will continue.

However, the Canadian agency found there was insufficient evidence that **processed** corn imports from the United States were being unfairly dumped or subsidized, and discontinued that portion of its investigation. The Canadian tribunal defined unprocessed corn as including raw corn and corn that has been "milled to a limited

degree." The tribunal is to provide its reasoning within 15 days after issuing the preliminary determination – or on or about Dec. 1.

The investigation was launched in response to a complaint filed by three Canadian corn producer organizations – from Ontario, Quebec and Manitoba – that alleged U.S. corn subsidies are "causing price erosion, price suppression, decreased incomes, increased burdens on government support programs" and reduced corn planted acreage in Canada.

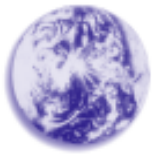
USDA to Propose Reopening Border to Older Canadian Cattle

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is scheduled soon to propose modifications to its regulations to permit imports of live cattle 30 months and older from countries that are classified as being a "minimal risk" for bovine spongiform encephalopathy (BSE).

Currently, Canada is the only country so classified. APHIS Administrator Dr. Ron DeHaven first revealed plans for the rulemaking in an address to the National Association of Farm Broadcasters on Nov. 11, which was attended by the NGFA. At that time, DeHaven said that while there was no timeline for issuing the proposal, "it will be fairly expeditious – it has a booster rocket attached to it and we're devoting a lot of resources to it." This week, following testimony at a congressional hearing on avian

influenza, DeHaven said USDA hoped to issue a proposed rule by mid-2006 that would be open for public comment.

After prevailing in a court challenge brought by the Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA), USDA on July 18 resumed allowing U.S. imports of Canadian live cattle so long as they are slaughtered while less than 30 months of age, as well as sheep and goats slaughtered at less than 12 months of age. USDA also permitted imports of Canadian meat derived from bovines (including veal), sheep, goats, bison and cervids (deer, elk, caribou, moose and reindeer), as well as certain other animal byproducts, including bovine livers and tongues, gelatin and tallow.



Bush Discusses Reopening of Beef Trade with Japan Prime Minister

President Bush on Nov. 16 said the United States and Japan continue to make progress on reopening beef trade. He made the remarks at a joint press briefing with Japanese Prime Minister Junichiro Koizumi following meetings in advance of the Asia-Pacific Economic Cooperation Forum in South Korea on Nov. 18-19. Japan's Food Safety Commission on Nov. 2 formally approved a recommendation from its Prion Expert Committee that concluded that the risk of bovine spongiform encephalopathy (BSE) in U.S. beef is "extremely small" and comparable to the risk posed by Japanese beef. The commission now is in the midst of a public comment period, including public meetings, that concludes Nov. 29 concerning whether to approve reopening Japan's market to imports of U.S. beef products derived from cattle 20 months or younger if certain control measures are met, including a requirement that the brain, spinal cord and heads of such cattle be effectively removed prior to processing. If eventually approved, projections are that Japan's market could reopen to U.S. beef from cattle 20 months and younger by year's end.

A day prior to the Bush-Koizumi meeting, the National Cattlemen's Beef Association and American Meat Institute sent a joint letter to Bush stating they were "very concerned" about Japan limiting imports to U.S. cattle 20

months or younger. The two organizations cited USDA estimates that such cattle represent only 7 to 8 percent of U.S. domestic production, and that there was no scientific justification for a 20-month-old age restriction. "Thus, it is critically important for you to press for immediate access under the current agreement and to request that the government of Japan's process for allowing beef from cattle over 20 months of age begin immediately," wrote NCBA Chief Executive Officer Terry Stokes and AMI President and Chief Executive Officer Patrick Boyle.

A group of 21 U.S. senators has introduced a bill (S. 1922) that would call for the imposition of \$12.7 billion in trade sanctions against Japan effective Dec. 31 if Japan fails to certify by Dec. 15 that it no longer bans imports of U.S. beef. The legislation would allow the U.S. Trade Representative's Office to choose which Japanese products to subject to punitive tariffs.

Meanwhile, the government of South Korea, another major U.S. beef export market, has scheduled a Nov. 29 meeting to make what the Ministry of Agriculture characterized as a final decision on whether to reopen its market to U.S. beef. The meeting is to involve a group of health experts, veterinarians, government officials and consumer representatives.

Mexican Legislature Votes to Keep HFCS Tax

Mexican lawmakers on Nov. 14 granted a one-year extension of the tax on soft drinks and syrups made with sweeteners other than cane sugar, such as high fructose corn syrup (HFCS), and rejected a provision that would have exempted those sweeteners made with Mexican-produced corn.

The Mexican law, originally passed in January 2002, levied a 20 percent tax on the sale and distribution of beverages containing HFCS, while exempting beverages containing Mexican cane sugar.

A recent World Trade Organization (WTO) panel report sided with the United States, which challenged the Mexican tax as illegal under World Trade Organization (WTO) rules.

The tax effectively has halted U.S. exports of HFCS to Mexico since early 2002, resulting in an industry-estimated loss in sales of \$944 million annually.

As a first step in implementing the WTO panel's findings, a tariff-rate quota (TRQ) of 250,000-metric-tons for U.S. HFCS exports to Mexico has been established. Since the tax will remain in effect for at least another year, U.S. exporters will have to compete for the small 250,000 metric ton access.

The U.S. government thus far has granted 100,000 metric tons of the quota, and intends to allocate the rest as requests are submitted. The North American Free Trade Agreement calls for fully liberalized sweetener trade by 2008.





Sen. Durbin Introduces Bill to Revise BSE-Prevention Feed Regulations

Sen. Richard Durbin, D-Ill., on Nov. 14 introduced legislation (S. 2002) that would make sweeping changes to federal regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE) and other prion diseases in the United States.

Importantly, the legislation is not expected to receive serious consideration in this session of Congress; it has only two co-sponsors, Sens. Charles Schumer, D-N.Y., and Daniel Akaka, D-Hawaii, and the congressional calendar is full.

But the bill is notable in that it would far exceed the Food and Drug Administration's (FDA) proposed changes to its BSE-prevention feed regulations. FDA's proposal would ban brain and spinal cord from cattle 30 months or older from all animal feed to address what scientists believe to be a very low risk of BSE in the United States; these tissues carry upwards of 90 percent of any potential infectivity that may exist in an infected animal.

◆ **SRM Restrictions:** For starters, Durbin's bill would require that FDA expand the list of specified risk materials prohibited from use in all animal feed to include the entire vertebral column and dorsal root ganglia of cattle and bison 30 months or older, as well as from sheep, goats, deer and elk 12 months or older. It also would ban from all animal feed the use of the entire intestine of any ruminant of any age. Durbin's bill also would exceed currently existing or proposed requirements by banning the use of plate waste, poultry litter, and blood and blood products in feed intended for use in food-producing ruminants (with an exclusion for the use of blood and blood products in bovine biologics).

Further, it would require FDA to initiate a regulatory proceeding if it receives a petition from "any person" that cites "scientifically credible evidence" for expanding the list of mammalian tissues that should be prohibited from use in feed. In addition, it would require FDA to annually reevaluate its BSE-prevention regulations to determine if modifications are warranted.

◆ **Registration and Animal I.D.:** The bill also would require registration by all animal feed manufacturers, transporters, on-farm mixer-feeders and other animal-related businesses that are subject to FDA's BSE-prevention feed regulations. And it would require USDA within one year to implement an animal identification system capable of tracing within 48 hours of detection of "any reportable

animal disease" in a given animal all herdmates or other animals that may have been exposed.

◆ **Animal Testing:** The bill also would require that rapid screening tests for prion diseases (such as BSE, chronic wasting disease and other transmissible spongiform encephalopathies) be conducted on all cattle and bison 30 months or older, and on all sheep, goats, deer and elk 12 months or older, that are presented for slaughter and intended for human consumption. Mandatory testing also would be required of all so-called "downer" (nonambulatory) ruminants, including those exhibiting neurological symptoms, when presented for slaughter or disposal. Further, the bill would require that such tests be conducted on younger animals if "scientifically credible research" indicates that such testing is warranted. The bill would require federal compensation to veterinarians for collecting and processing neurological samples, and would waive diagnostic laboratory charges for determining test results in ruminants and mink. USDA also would be directed to develop a program to compensate renderers or producers for each cattle head not already being tested that is submitted to a certified lab for BSE testing. Under the bill, any ruminant tested would be required to be excluded from use in any animal feed until the test result confirms it is negative for BSE, which reflects current practice. All ruminants exhibiting neurological symptoms would be banned from use in human food, regardless of the BSE test result.

◆ **Animal Disposal:** In addition, the bill would require the U.S. Department of Agriculture within one year to issue regulations governing the disposal of dead and nonambulatory ruminants on farms or ranches to prevent the "recycling" of prion diseases. All renderers and others involved in hauling dead, dying, disabled or diseased livestock or portions of carcasses of livestock that die other than by slaughter would be required to register with FDA.

◆ **Import Restrictions:** The bill also would impose restrictions on imports of food, feed, feed ingredients, nutritional supplements, medicines, cosmetics, fertilizer and other products containing ruminant-derived material that poses a risk of transmitting BSE from any country not in compliance with the World Animal Health Organization's BSE guidelines. It also would require labeling of all such imported products to indicate whether it contains regulated animal-derived materials, including the country of origin.





GAO Critical of FDA BSE Feed Sample Investigations

The Government Accountability Office – the investigatory arm of Congress – has issued a report citing alleged deficiencies in the Food and Drug Administration's (FDA) program that tests and analyzes feed samples for the presence of prohibited mammalian material as part of the agency's overall strategy for enforcing its regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE) in the United States.

GAO's major allegation is that for nearly half (473) of the 989 feed samples analyzed, it took laboratories longer than 30 days from the date the sample was collected until the test results were available – including 21 samples that took longer than 100 days and 17 samples that took 61 to 100 days. The GAO report said that FDA laboratories identified 215 of the 989 samples as potentially violative, 28 of which were missing labels and ingredient lists. But upon followup investigation, FDA district offices found that only one of those samples contained prohibited mammalian material in violation of the BSE-prevention feed rule. That one sample involved feed labeled as poultry feed, but which contained cattle hair. In this case, the GAO said, the FDA district's investigation found that a renderer that supplied poultry meal to the feed mill previously had processed prohibited mammalian material and failed to use adequate clean-out procedures to prevent commingling or contamination; FDA subsequently issued a warning letter to the renderer.

GAO also criticized FDA for not requiring district offices to document follow-up reviews they conducted in response to tests that indicated the potential presence of prohibited mammalian material. "Although the districts

may have conducted vigorous follow-up and exercised sound judgment," GAO wrote, "the basis for their decisions cannot be reviewed and confirmed." Therefore, GAO said, it could not determine how much time elapsed once the sample test results were in before FDA district offices initiated followup action. In addition, GAO was critical of managers at FDA headquarters for allegedly not adequately overseeing the feed sampling and testing program. It stated that FDA managers "did not receive periodic reports or have other oversight controls in place."

To correct these alleged deficiencies, GAO recommended that FDA: 1) fully implement a June 2005 FDA field management directive and assignment memorandum that includes requirements that district offices document followup actions taken in response to potentially violative feed sample results; 2) ensure that FDA district offices and labs adhere to stricter time limits (20 working days or less) for completing analysis of collected samples; and 3) require sufficient oversight by managers at FDA headquarters.

FDA responded to the GAO report by noting that the feed sampling and testing program is a small part of the agency's overall BSE enforcement strategy, and challenged GAO's assertion that FDA submitted insufficient documentation to enable GAO to prepare a full report earlier. FDA officials have said that thousands of staff hours have been devoted to responding to multiple congressionally requested GAO investigations of its BSE-prevention activities. A copy of the GAO study and FDA's response is available by [clicking here](#).

House, Senate Ag Committees Conduct Hearings on Avian Influenza

Both the House and Senate Agriculture Committees on successive days (Nov. 16 and 17, respectively) conducted hearings on avian influenza featuring testimony from Dr. Ron DeHaven, administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS).

Both hearings focused on issues related to the prevention, detection and eradication of the disease, with an emphasis on the animal health aspects of avian influenza. "USDA's poultry health safeguarding programs are more important than ever," DeHaven testified. "These programs are based on preventative regulatory and anti-smuggling measures designed to mitigate the risk of the virus entering the United States; targeted, aggressive disease surveillance in domestic poultry; and emergency response capabilities to ensure

coordinated action with our partners in the event of detection."

DeHaven said that APHIS conducts more than 1 million tests a year for avian influenza, and has distributed an effective rapid test for the disease to National Animal Health Laboratory Network labs throughout the country. He said state-level emergency response teams have been assembled that are capable of being on-site within 24 hours of a presumptive positive diagnosis of any significant foreign animal disease, including avian influenza. He said destruction and disposal of affected flocks, as well as implementation of quarantines and movement restrictions would be the primary response if the disease were detected, followed by disinfection of the premises. Surveillance testing also would be conducted in the





quarantine zone(s) to ensure complete eradication, he said. DeHaven also noted that the World Animal Health Organization – known by its French acronym, “OIE” – had amended its avian influenza guidelines in May to require worldwide reporting of all positive diagnoses of high pathogenic and H5 and H7 strains of the disease. The OIE code also was modified to limit trade restrictions imposed on countries that experience the disease to specific zones where affected birds are located. The OIE’s guidelines do not recommend imposing trade restrictions on countries with non-H5 or H7 low pathogenic subtypes, and states that properly cooked poultry meat and pasteurized egg products are considered safe to trade for human consumption.

Of the 144 potential strains of the virus, DeHaven noted that the agency focuses its concern on highly pathogenic strains, as well as low pathogenic strains of H5 and H7 because of their potential to mutate into highly pathogenic versions of the disease. The strain currently circulating in Asia is H5N1, which is unique in that it is the first strain known to be transmitted from birds to humans through extensive direct contact. Highly pathogenic strains of avian influenza have been detected in the United States in 1924, 1983 and 2004. The 1983 outbreak was the largest, ultimately resulting in the destruction of 17 million birds in Pennsylvania and Virginia before being eradicated. By contrast, an isolated strain detected in Texas was eradicated quickly in 2004, resulting in the destruction of 6,600 birds. Members receiving the *NGFA Newsletter* electronically may access DeHaven’s complete testimony by clicking here.

Canada Reports Detection of Low-Path Avian Influenza:

In a related development, the Canadian Food Inspection Agency (CFIA) on Nov. 19 reported that the strain of avian influenza detected in a duck on a 6,000 duck and goose farm in British Columbia was confirmed as the low pathogenic H5 strain found in North America – and not the more dangerous H5N1 strain circulating in Asia. Nevertheless, CFIA officials said the flock is being depopulated to prevent the spread of the virus to other commercial operations, consistent with OIE guidelines.

Further, CFIA said scientists at Canada’s National Centre for Foreign Animal Disease in Winnipeg are examining whether there is any link between the single infected duck and the avian influenza virus found in migratory birds during a recent survey of seven provinces. In that survey, wild birds from Quebec, Manitoba and British Columbia were tested and found to be free of the highly pathogenic forms of the disease believed responsible for poultry and human deaths in Southeast Asia. But the wild birds did identify the presence of low-

pathogenic North American subtypes H5N3 in Quebec birds, H5N1 in Manitoba, and H5N9 and H5N2 in British Columbia. Each of these subtypes has been observed previously in North America, CFIA said, and none are of significant concern to animal or human health.

Samples also were collected from wild birds in Nova Scotia, New Brunswick, Ontario and Alberta. CFIA said Ontario has completed preliminary screening and samples identified as H5 now are undergoing confirmatory testing. No results have been reported yet for the other Canadian provinces.

Poultry Industry Unveils Website on Avian Influenza: In a related development, three major poultry trade organizations have launched a new website to address questions related to avian influenza. The website, established by the National Chicken Council, National Turkey Federation and Egg Safety Center, highlights the fact that that avian influenza is not a food safety issue and notes that the highly pathogenic strain of the disease – H5N1 – currently does not exist in the United States. The website consists of a series of brief articles, question-and-answer documents and news releases, and is geared to consumers and public audiences. Members receiving the *NGFA Newsletter* electronically may access the website by clicking here.



Calendar

- Dec 4-6, 2005:** NGFA Country Elevator / Feed Industry Conference & Trade Show
Hyatt Union Station, St. Louis, Mo.
- Dec 4, 2005:** NGFA Country Elevator Committee
Hyatt Union Station, St. Louis, Mo.
- Dec 6, 2005:** NGFA Feed Legislative and Regulatory Affairs Committee
Hyatt Union Station, St. Louis, Mo.
- NGFA Feed Manufacturing and Technology Committee
Hyatt Union Station, St. Louis, Mo.
- Dec 13, 2005:** NGFA/GEAPS Grain Grades & Weights Committee
NAEGA Grades & Inspections Committee
NGFA/NAEGA Conference Room, Washington, D.C.
- March 5-7, 2006:** NGFA's 110th Annual Convention
Charleston Place Hotel, Charleston, S.C.
- May 9-10, 2006:** NGFA's Trade Rules Seminar
Kansas City Airport Marriott, Kansas City, Mo.





"Bioterrorism Recordkeeping" continued from page 1

on or after the effective dates. Most facilities in the grain and grain processing industry are required to retain records for two years, although feed and pet food manufacturers are required to maintain records for one year. Importantly, FDA has access to such records only if there is evidence of adulteration of the product or if the agency receives a "credible threat of serious adverse health consequences or death" to humans or animals.

FDA's updated guidance document includes responses to several new questions that are pertinent to the grain, feed and processing industry. Several of the questions involve situations concerning the responsibility of the seller of agricultural commodities or feed to keep records of the transporter if the buyer or broker is the entity that arranges for and contracts with the transporter. FDA responded that in these situations, it plans to exercise "enforcement discretion" to allow the seller to keep records identifying the buyer (the next subsequent recipient of the commodity), in lieu of the identity of the transporter, if it is the buyer that contracts for the transporter used to haul the agricultural commodity or product. A separate, but similar, question raises a situation in which a feed mill buys feed ingredients from a supplier, with the vendor arranging transportation to the manufacturer's facility. FDA responds that it "intends to exercise enforcement discretion...if the feed manufacturer identifies (as the transporter) the vendor that made the contractual arrangement for the transport of the feed...."

FDA also responds to a question concerning whether a retail feed store with 10 or fewer full-time employees is exempt from the recordkeeping requirements if it sells feed to another business or to an entity that feeds the product to food-producing animals. FDA notes that such facilities are exempt only if the primary function is to sell feed directly to end-consumers, and not to entities that feed the products to food-producing animals. Under the final rule, the litmus test to determine if retail feed or food stores are exempt depends on whether the actual monetary value of sales of food/feed products directly to consumers exceeds the monetary value of food/feed products sold to all other buyers.

Concerning another aspect of the final rule, FDA notes that access to records is to be provided as soon as possible, but in no case more than 24 hours after the agency notifies a company. In the case of seasonal or remote locations where records may not be accessible within this 24-hour requirement, FDA advises that the company "should consider maintaining the records on-site or at a reasonably available offsite location" that is accessible within 24 hours.

In its updated guidance document, FDA also provides the following clarifications:

- ▶ Manufacturers, processors and others are required to

maintain records of the lot/code number or other identifier to the extent such information exists, even if such information currently is not being used as part of their current business practice.

- ▶ vertically integrated companies subject to the recordkeeping requirements are required to identify independent transporters used to haul agricultural commodities or products, even if the movement involves a transfer between two facilities owned by the same company.

- ▶ a company's freight brokerage division and the independent carrier with which it contracts for transportation both are considered "transporters" and legally subject to the recordkeeping requirements.

- ▶ transporters that deliver agricultural commodities or products from a firm to multiple destinations are required to identify each destination, even if multiple destinations are owned by the same company.

- ▶ transporters are to establish and maintain records that specify every transfer of the agricultural commodity/product between different vehicles owned by the transport firm (including the location where it occurs) for as long as the product remains within the transporter's possession.

Members receiving the *NGFA Newsletter* electronically may click here to access the updated 51-page version of FDA's guidance document.

FDA's Procedures for Accessing Records: In a related development, FDA issued a separate guidance document clarifying the circumstances under which it can legally access and copy records under the Bioterrorism Act, as well the type of records it can access. FDA noted that the records to which it may seek access include those pertaining to the manufacture, processing, packing, transporting, distribution, receipt, storage or import of food (which includes raw and processed agricultural commodities, as well as feed, feed ingredients and pet food). It noted that by law, it does not have access to recipes, financial, pricing, personnel or research data, or to sales data other than shipment data regarding sales. By law, farms and restaurants are exempt from the recordkeeping requirements. The agency said that since the circumstances of a specific adulteration or agroterrorism event likely will be case-specific, "the scope of a record request will vary on a case-by-case basis." FDA notes that the records "may be in any format (including paper and electronic formats) and at any location, so long as access is provided as soon as possible and in no case later than 24 hours after requested. The agency also outlines the procedures it will use to request access to records. Members receiving the *NGFA Newsletter* electronically may access the guidance document on FDA's records-access procedures by clicking here.





USDA Awards Incentive Payments for Discharging Hurricane-Stranded Barges in New Orleans Area

The U.S. Department of Agriculture (USDA) on Nov. 18 told the NGFA that it has entered into agreements to provide \$2.7 million in incentive payments to three companies to discharge 90 barges containing a total of 139,702 short tons in response to the agency's Nov. 7 *Federal Register* notice that offered to provide incentive payments to discharge agricultural commodities from barges that had been loaded and shipped to the New Orleans, La., region before Hurricane Katrina came ashore.

USDA officials said discussions with a fourth company that submitted an offer to discharge 26 barges containing 41,000 short tons of commodities still were ongoing as the *NGFA Newsletter* went to press today (Nov. 22). The additional agreements entered

into thus far by USDA involve discharging 103,869 short tons of corn, 18,377 short tons of corn gluten feed pellets, 16,044 short tons of soybeans and 1,412 short tons of rice. The barges are to be unloaded by Dec. 1, unless extensions are granted in writing.

USDA said it received offers from four companies for a total of 116 barges containing 180,702 short tons of commodities by the Nov. 14 deadline for submitting bids. USDA said it subsequently entered into additional bid negotiations with each of the parties. Prior to the latest awards, USDA had spent nearly \$10.7 million to relocate upriver and discharge a total of 198,168 short tons of damaged corn from barges.

Mexico Announces New Procedures to Alleviate Rail Shipment Delays

The Mexican Ministry of Agriculture on Nov. 19 announced several major changes designed to enhance the process for clearing southbound rail shipments destined for Mexico in an effort to alleviate congestion and delays at border crossing points.

On behalf of Mexico's Agriculture Ministry – SAGARPA (Secretaria de Agricultura, Ganaderia, Desarrollo Rural, Pesca y Alimentacion) – announced the changes to the rules during the 13th annual forum conducted by APPAMEX and the North American Export Grain Association (NAEGA) in Ixtapa-Zihuatanejo, Mexico. APPAMEX (Asociacion de Proveedores de Productos Agropecuarios Mexico A.C.) is the trade association comprising Mexican grain importing companies. The announcement was made in a presentation by Francisco J. Sandoval, underdirector of border points and director of phytosanitary inspection for SENASICA-SAGARPA.

Under the new procedures, SENASICA-SAGARPA and APPAMEX have unofficially agreed upon the preliminary acceptance of non-original phytosanitary certificates and services for holidays and weekends at the border. According to the unofficial transcript of the agreement, the effective date of the new procedures, Oct. 1, corresponds with implementation of new rules for "free-time allowance" on railcars for export to Mexico by U.S. railroads. The Union Pacific Railroad Co. and Burlington Northern Santa Fe Railway Co. had instituted major changes to their *Depacho Previo* rules that, among other things, significantly reduced the time periods allowed to complete documentation for export to Mexico, and substantially increased the document delay charges that follow the expiration of free time. Congestion and delay at the U.S.-Mexican border widely was recognized as being attributable at least in part to documentation requirements under Mexican law, and the questionable availability of inspection and customs services on weekends and holidays on the Mexican side of the border. The NGFA joined ongoing efforts by APPAMEX and NAEGA to resolve the issue earlier this year with high-ranking SAGARPA officials.

New Procedures: Specifically, under the new procedures, SENASICA-SAGARPA will accept a copy or fax of a phytosanitary certificate issued by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS), in lieu of the original, to process a preliminary import phytosanitary certificate prior to arrival of the referenced shipment at the border. However, the copy or fax of the USDA/APHIS phytosanitary certificate is required to be delivered to the Mexican Agricultural Health Inspection Offices (OISAs) with a "commitment letter" that obligates the responsible party (the Mexican customs broker or legal representative) to subsequently deliver the original certificate within two business days. If the importer subsequently fails to provide an original certificate, it will be prohibited from further use of this process.

Also, at the request of the importer, the OISAs will offer special service at five strategic border gateways – Brownsville, Laredo, Eagle Pass and El Paso, Texas, as well as Nogales, Ariz. – to process import phytosanitary certificates on non-working days and holidays. This special service applies to shipments in-transit with a minimum of 24-hours advance-notice-of-arrival. To avoid to the greatest extent possible that these services are provided unnecessarily, the importer is required to cancel any special requests for services in a timely manner if, for unforeseen reasons, the shipment is not to be completed as originally anticipated.

Implementation of the agreement may take some time. Members are encouraged to contact Charlie Delacruz at the NGFA at cdelacruz@ngfa.org or at 202-289-0873 if they have questions concerning implementation. The NGFA has obtained, courtesy of APPAMEX, an unofficial English translation it prepared of the original Spanish version of the changes to the *Depacho Previo* rules. Both versions are available electronically or by fax by contacting Mr. Delacruz.





GIPSA to Propose Changes to U.S. Soybean Test Weight Standards

Changes to the U.S. soybean standard's test weight provisions are planned by the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA).

In its regulatory agenda for the next six months, GIPSA announced it planned to revise the soybean standards to change the minimum test weight per bushel from a grade-determining factor to an informational factor. In addition, the agency said it would propose to change the reporting requirements for test weight so that it is reported to the nearest tenth of a pound. Currently, the standards require that soybean test weight be reported by whole and half pounds, with a fraction of a half pound disregarded. GIPSA did not project when the proposal would be issued.

GIPSA Issues Final Rule Allowing Parties to Specify Factors Subject to Appeal Inspection: In another development, GIPSA on Nov. 15 issued a final rule that, effective Dec. 15, will allow

interested parties to specify which quality factor(s) are to be redetermined as part of an appeal inspection or Board appeal inspection for grade.

Under the final rule, GIPSA official personnel will retain the right to review any of the pertinent factors deemed necessary to ensure issuance of an accurate grade, even if the parties do not specifically request it. Currently, GIPSA requires that both appeal and Board appeal inspections for grade require a complete review or examination of all official factors that may determine the grade. GIPSA noted that this practice is inefficient, time consuming and can be costly. "Further, a detailed review of the preceding inspection is not always needed to confirm the quality of the commodity," the agency said.

Members receiving the *NGFA Newsletter* electronically may [click here](#) to access the GIPSA final rule.



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