



## **Judge Blocks Reopening of U.S. Border to Canadian Cattle, Beef Trade**

### **...Senate Approves Resolution Disapproving USDA's Minimal-Risk BSE Rule; Bush Vows Veto...**

In a stinging rebuke to the U.S. Department of Agriculture, a federal district judge on March 2 granted a preliminary injunction keeping the U.S. border closed to imports of Canadian live cattle younger than 30 months, as well as to most beef and beef products derived from Canadian cattle.

In a 28-page decision, U.S. District Court Judge Richard Cebull, based in Billings, Mont., faulted USDA for what he termed "numerous procedural and substantive shortcomings" in the development of its final rule that classified Canada as a minimal-risk country for bovine spongiform encephalopathy (BSE) and which would have reopened the U.S. border to imports of live Canadian cattle and bison less than 30 months of age, effective March 7. Imports of live sheep and goats under 12 months of age also would have been permitted under the USDA final rule. Imports also would have been allowed of certain bovine meat, meat byproducts and further processed meat products, such as cooked or cured meat, hot dogs, sausages, pepperoni, hamburger, bone-in beef and boneless beef, from animals less than 30 months of age, as well as sheep and goat meat, meat byproducts and meat food products from such animals younger than 12 months.

Judge Cebull faulted USDA's Animal and Plant Health Inspection Service for issuing a rule based upon what he

termed "subjective conclusions" that Canada presented a "low" or "very low" risk of BSE transmission. "...APHIS appears to have applied...an arbitrary approach to a decision that subjects the entire U.S. beef industry to potentially catastrophic damages and that presents a genuine risk of death for U.S. consumers," the judge wrote following a three-hour hearing. "...[t]he evidence demonstrates, in all probability, that USDA's failure to conduct a proper risk assessment, and its failure to articulate any standards by which it has judged the risks of those potentially fatal outcomes to be acceptable renders its action arbitrary and capricious, and unsupported by the record. It is particularly critical that USDA provide not only its conclusions that its action carries an acceptable risk to public health, but also the specific basis for that conclusion and the data on which each of the agency's critical assumptions is based. In light of the lack of information indicating that USDA has fulfilled its statutory mandate to protect the health and welfare of the people of the United States, the plaintiff has a substantial likelihood of prevailing on the merits and demonstrating that the final rule violated the (Administrative Procedures Act)."

The judge's decision also challenged USDA for its alleged failure to consider whether its determination of Canada being a minimal risk for BSE should be reconsidered given a variety of

*(Continued on page 2)*

## **USDA Developing Coordinated Approach to Combat Soybean Rust**

### **...First Case of Overwintering of Soybean Rust Confirmed in Florida...**

The U.S. Department of Agriculture is working to establish a coordinated framework among federal and state governments, as well as producers, academia and industry, to minimize the potential impact of any U.S. soybean rust outbreaks in 2005.

During a February meeting in Indianapolis, Ind., in which the NGFA participated, USDA's Animal and Plant Health Inspection Service (APHIS) said it has been designated as the lead federal agency to address soybean rust for the 2005 crop. But APHIS officials said they envision transitioning to greater

state and industry involvement in future years. Thus far, soybean rust has been detected in nine states: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, South Carolina and Tennessee.

Meanwhile, the first overwintering of soybean rust – detected in the leaves of kudzu, a host plant – has been confirmed through PCR testing in Dade City, Fla. (Pasco County), just south of the state's frost line and the southernmost confirmation of soybean rust in the state to date. The detection initially was made on Feb. 23, and an announcement

*(Continued on page 5)*



*("Canadian Border" continued from page 1)*

factors, including: 1) the two most recent cases of BSE in Canada; 2) the effectiveness of Canada's BSE-prevention feed rule; 3) the "possible" transmission of BSE through feeding of blood or tallow; and 4) whether removal of all specified risk materials results in no risk of BSE transmission to humans. The judge's decision also faults USDA's "failure to give careful consideration to the benefits and costs of mandatory (BSE) testing" of all imported Canadian cattle.

"The facts strongly suggest that USDA, ignoring its statutory mandate to protect the health and welfare of the people of the United States, established its goal of reopening the border to importation of live beef from Canada and thereafter attempted to work backwards to support and justify this goal," the judge wrote. "The serious and irreparable harm that will occur when Canadian cattle and meat enter (the United States) and commingle with the U.S. meat supply justifies the issuance of a preliminary injunction preventing the expansion of imports allowed under the final rule pending a review (of the case) on the merits," he continued. The judge ordered that the parties to the case – USDA and the Ranchers-Cattlemen Action Legal Fund (R-CALF) United Stockgrowers of America – develop a proposed schedule within 10 days for a full trial in the case, including expert testimony and cross-examination on R-CALF's request for a permanent injunction to keep the border closed.

A separate federal court – the U.S. District Court for the District of Columbia – has not yet issued a ruling following a Feb. 23 oral hearing conducted on a petition seeking a preliminary injunction that would have the opposite effect – reopening the U.S. border to imports of Canadian cattle 30 months or older. That petition was filed by the American Meat Institute, which represents the U.S. meat processing industry, and whose members have sustained severe economic damage because of the ban on Canadian cattle imports for slaughter in the United States.

► **Senate Adopts Resolution Disapproving USDA Final Rule:**

Meanwhile, in a related action, the Senate today by a 52-46 vote adopted a resolution (S.J. Res. 4) disapproving of USDA's BSE minimal-risk rule. Shortly before the vote, the administration issued a statement vowing that President Bush would veto the measure in the unlikely event that the House adopts an identical resolution (H.J. Res. 23) introduced by Reps. Stephanie Herseth, D-S.D., and Barbara Cubin, R-Wyo. "USDA's rule is the product of a multi-year, deliberative, transparent and science-based process to ensure that human and animal health are fully protected," said the statement issued by the White House. "S.J. Res. 4... would cause continued serious economic disruption of the U.S. beef and cattle industry, undermine U.S. efforts to ensure that international trade standards are based on science, and impede ongoing U.S. efforts to reopen

foreign markets now closed to U.S. beef exports."

Both the House and Senate joint resolutions were introduced under the authority of the Congressional Review Act, which gives members of Congress 60 days after a final regulation is issued by a federal agency to enact a "joint resolution of disapproval." If such a resolution is enacted, it has the effect of revoking the final regulations issued by the affected federal agency and, importantly, prevents the federal agency from reissuing the regulation in "substantially the same form."

► **USDA Finds Canada Effectively Implementing its BSE-Prevention Feed Regulations:**

In another related development, USDA on Feb. 25 issued the results of its review of Canada's performance in implementing its BSE-prevention feed regulations, finding that overall compliance by Canada's feed mills and rendering facilities is good and that the measures are reducing the risk of transmitting the BSE agent through feed. A joint technical team comprised of representatives of USDA's Animal and Plant Health Inspection Service and the Food and Drug Administration reviewed the Canadian Food Inspection Agency's electronic records on inspections conducted during the past three years, and did on-site inspections with CFIA officials of seven commercial feed mills and three rendering plants. Each of the feed mills and rendering plants visited handled prohibited mammalian material and distributed feed and feed ingredients across three Canadian provinces.

The U.S. delegation's review of CFIA's inspection data found that approximately 85 percent of Canadian feed mills achieved full compliance with Canada's BSE-prevention feed regulations during 2002-04. Most of the 14.8 percent found to be out of compliance were cited for minor documentation and recordkeeping infractions (examples include not retaining the feed purchaser's name and address or having incomplete documentation of operating procedures). That non-compliance rate was down significantly from the 24.9 percent found in 2002. Applying the same inspection classification criteria as used by FDA for U.S. facilities, only 5.8 percent, 1 percent and 3.8 percent of Canadian feed mills would have been classified as having relatively significant infractions – termed as "Official Action Indicated (OIA)" by FDA – during the years of 2002-03, 2003-04 and 2004-05, respectively. Thirteen of the 86 tasks that comprise a full commercial feed mill inspection are related to compliance with Canada's BSE-prevention feed regulations. Meanwhile, the noncompliance rate among Canadian renderers has declined from 9.7 percent to 2.7 percent over the same three-year period; again, the violations detected were mostly for inadequate recordkeeping and documentation of operating procedures. Since 2002, CFIA has been conducting annual inspections of all commercial feed mills and rendering plants; prior to that, commercial feed mills were inspected once every three years, but rendering plants have been required since 1999 to pass an annual inspection before renewing their operating permits.



## Congressional Ag Budget, Appropriations Process Heats Up

Congress has begun what promises to be a contentious process to arrive at a fiscal 2006 budget, in light of the Bush administration's stated goal of halving the federal budget deficit by 2009.

Agriculture spending is at the forefront of the inter-party squabbles as the House and Senate Budget Committees look to enact a budget resolution that incorporates the Bush administration's farm program cuts, while the Agriculture Committees aggressively defend the 2002 farm law and its authorized spending levels. There is no clear-cut direction to move forward, but Agriculture Committee members already are examining alternatives to cutting farm program spending, such as food stamps, conservation and rural development.

The House and Senate Budget Committees tentatively are scheduled to meet during the week of March 7 to draft a fiscal 2006 budget resolution, which essentially would set the spending parameters for the congressional appropriations committees. To meet the president's commitment to reduce the deficit, the budget resolution likely will contain a set of "reconciliation instructions," which direct the authorizing committees to find a prescribed amount of savings in mandatory programs. The House and Senate Agriculture Committees are expected to be tasked with finding \$5.4 billion in cuts over a five-year period. Senate Agriculture Committee Chairman Saxby Chambliss, R-Ga., already has been quoted as saying he cannot vote for a budget that includes instructions to meet the cuts proposed in the president's budget, which amount to a \$4 billion reduction in farm payments over the five-year period. Meanwhile, House Agriculture Chairman Bob Goodlatte, R-Va., also has argued strongly to maintain current farm program spending levels. House Budget Committee Chairman Rep. Jim Nussle, R-Iowa, and his Senate counterpart, Sen. Judd Gregg, R-N.H., are squeezed by a strong faction of fiscal conservatives that are demanding significant budget cuts and the parochial interests of others concerned with the negative impacts those cuts will have in

their state or district. The outlook for a congressional budget resolution and reconciliation instructions remain unclear as members of Congress are only just beginning to coalesce around competing outcomes.

While the congressional budgeters are beginning to draft the fiscal 2006 resolution, the appropriations committees are conducting hearings involving various government agencies concerning their spending priorities for the next fiscal year. The House Appropriations Agricultural Subcommittee already has received testimony from Secretary of Agriculture Mike Johanns regarding the overall USDA budget. It also heard from the USDA undersecretary for food safety on March 2 and the undersecretary for farm and foreign agricultural services on March 3. On March 9, the Food and Drug Administration is scheduled to testify, followed by USDA's Marketing and Regulatory Programs Division (which includes the official grain inspection program) on March 16. Once these hearings conclude and the committee is assigned a spending allocation, the appropriators will begin drafting a spending plan that fits the allocation. The allocation is again likely to squeeze a variety of farm bill programs, including conservation, nutrition and rural development.

As the appropriations process advances, the NGFA is most intently focused on the administration's proposal to authorize \$4 million in new user fees for official grain inspection standardization activities – a proposal offered by every administration since the early 1980s that has been rejected repeatedly by Congress. But the desire to reduce the budget deficit and the limited "targets" for spending cuts makes defeating this and other user fees a much more difficult challenge this year. Indeed, appropriators last year rejected the proposed fees, but noted they would consider them if the authorizing committees gave GIPSA the authority to collect fees for this type of activity. This could happen as the U.S. Grain Standards Act is up for reauthorization this year. But the NGFA will urge that GIPSA **not** be given this authority.

## Hill Highlights

► **House Agriculture Subcommittee Begins Hearings on CFTC Reauthorization:** The House Agriculture Committee's Subcommittee on General Farm Commodities and Risk Management today conducted the first of two scheduled hearings on reauthorization of the Commodity Futures Trading Commission (CFTC). The lone witness, CFTC Chairman Sharon Brown-Hruska, said the law under which the agency currently is operating – the Commodity Futures Modernization Act of 2000 – functions exceptionally well. She noted three areas on which Congress might focus during

reauthorization: 1) evaluating whether clarifications are needed for the legal framework for exempt markets; 2) suggesting ways to avoid duplicative burdens on markets; and 3) reviewing whether the CFTC has adequate authority to police retail fraud, especially incidents involving foreign exchange. The lone reference during the hearing to agricultural issues came when Rep. Randy Neugebauer, R-Texas, noted that the commodity exchanges wanted more flexibility over federal speculative position limits on exchange-traded agricultural futures contracts. The prevailing view is that Congress would prefer



# On Capitol Hill

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a quick, simple reauthorization of the agency given other priorities. NGFA Second Vice Chairman and Risk Management Committee Chairman Tom Coyle is scheduled to testify at the subcommittee's next hearing on March 9, and plans to focus on the need for greater legal clarity for cash contracts and on the potential benefits enhanced flexibility would bring to exchanges and users of agricultural contracts. Coyle is general manager of Chicago & Illinois River Marketing LLC, a subsidiary of Nidera Inc., Chicago, Ill.

► **Highway Bill Moves Through House Committee; Includes HOS Ag Exemption Provision:** The NGFA's principal objective in the highway bill, to codify the agricultural exemption to the U.S. Department of Transportation's (DOT) hours-of-service truck driver rules, was included as the House Transportation and Infrastructure Committee approved a highway reauthorization measure this week. The agricultural exemption is a long-standing part of the highway law, but the way the exemption is written in current law has led to its

application being curtailed by DOT over the years. Reps. Jerry Moran, R-Kan., and Collin Peterson, D-Minn., reintroduced the NGFA-supported legislation on Feb. 2 and were successful in getting the provision included on the highway bill, which is now scheduled to be considered on the House floor the week of March 7. The provision would clarify the intent of the original hours-of-service exemption, expand its application to feed deliveries and make it more difficult for the DOT to negatively alter the exemption.

The House committee-approved six-year highway reauthorization bill proposes to earmark \$283.9 billion in federal funds for highway, bridge and other infrastructure construction and rehabilitation through fiscal year 2009, identical to the funding level proposed in the Bush administration's budget released Feb. 7. In the Senate, Environment and Public Works Chairman James Inhofe, R-Okla., has agreed to introduce a highway reauthorization bill that mirrors the funding levels specified in the House bill.



# Rails, Rivers and Roads

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## Canadian National to Decrease Fuel Surcharge Effective April 1

The Canadian National Railway (CN) has become the first Class I railroad to announce that it will adjust the method used to assess fuel surcharges in such a way as to reduce the surcharge level currently being charged.

Specifically, effective April 1 for all new carload and bulk shipments, CN said it will calculate its fuel surcharge monthly instead of quarterly under new tariff 7401. The surcharge will be based on the monthly average price for West Texas Intermediate (WTI) crude oil of the second calendar month prior to the month in which the surcharge is applied, which the CN said will allow the surcharge to respond more quickly to changes in the WTI crude oil price and enable it to provide a 20-day advance notice before the adjusted surcharge takes effect. The CN cited as an example that the surcharge applied in April 2005 will be calculated on the basis of the WTI crude oil price for February. In addition, the CN said the fuel price range to which the surcharge is applied will be decreased from the current \$5 increments to \$1 increments, which it said will allow prices to track more closely with fluctuations in WTI crude oil prices. The effect of the changes will be to "reduce customers' fuel surcharge expense" compared to its current formula, the CN said.

For intermodal shipments, the CN said its new policy would apply to traffic renewed after March 31, 2006.

The NGFA, National Industrial Traffic League (NIT-League) and Forest Products Association of Canada had met with CN officials in February regarding several concerns about the carrier's method for assessing fuel surcharges. The Fertilizer Institute (TFI) also is a part of the group of shipper organizations addressing the fuel surcharge issue.

The NGFA and the other organizations have been encouraging rail carriers to reconsider the formulas they use for assessing rail fuel surcharges so that they:

- are based upon public fuel prices that reflect actual market fuel cost increases to which the carrier is exposed; and
- are applied in a way that bears some relationship to the mileage of the shipment, because mileage is likely to more closely relate to the fuel costs actually incurred than are the rates for a given movement.

While not addressing all of the concerns expressed by the NGFA and the other organizations, the action taken by the CN does reduce the rate of escalation of fuel surcharges at higher levels of crude oil prices, and will reduce the surcharge assessments compared to the carrier's previous formula.

The NGFA, NIT-League and other organizations are seeking similar meetings with other rail carriers to discuss a more equitable, cost-based approach for assessing fuel surcharges.





(“Soybean Rust” continued from page 1)

based upon a preliminary screening test was issued on Feb. 28. [As reported in *NGFA E-Alert*, March 1, 2005.] In response, the North American Plant Disease Forecast Center, based at North Carolina State University, today forecast a “strongly moderate risk” for the spread of soybean rust to susceptible plants in central and northern Florida, except for the Panhandle, based upon the potential for airborne transport of spores. The center said that details still are forthcoming, but “active sporulation is occurring.” Importantly, the center said its forecasts “only represent estimates of pathways spores are likely to travel from confirmed sources.” The soybean rust forecast signals the start of spore-spread projections that will be issued for North America three times a week (on Mondays, Wednesdays and Fridays) from now through October. For members receiving the *NGFA Newsletter* electronically, you can access the North American Plant Disease Forecast Center web site by clicking here.

USDA’s current draft of a coordinated framework for addressing soybean rust consists of the following four elements:

► **Surveillance and Monitoring Network:** Sentinel plots are to be established in various states and regions to gauge potential soybean rust spore production and overwintering, as well as in soybean growing areas to provide an early alert on where the yield-robbing fungus might emerge during the growing season. USDA’s current plans call for establishing five to 15 sentinel plots in each of the Southeastern and all major Midwest soybean-producing states, as well as in Texas, Pennsylvania, New Jersey and West Virginia. Each of the sentinel plots would be checked at least weekly; the frequency would be increased to every three days if modeling or actual observations indicated a threat of soybean rust emerging. In addition, six mobile field-monitoring teams will be established and stationed in different regions to respond to suspected outbreaks of soybean rust by confirming whether the disease exists and calibrate model spore deposition from predictive models. Further, USDA plans to organize a monitoring effort by university extension agents, agronomists, crop consultants and individual producers. An international monitoring effort involving Mexico and the Caribbean nations also is planned.

► **Web-Based Information Dissemination System:** USDA by mid-March plans to establish a USDA Soybean Rust Monitoring and Prediction System web site that enables participants to enter soybean rust surveillance and monitoring information, as well as to track the progress and severity of any rust infections. Initial suspected detections would need to be confirmed

through USDA’s laboratory in Beltsville, Md., before being posted. USDA said it is striving to have its Beltsville lab complete its analysis of suspected submitted samples within 48 hours.

► **Decision Criteria for Applying Fungicides:** USDA said it will provide guidance to producers on when, where and how to apply fungicides to control soybean rust. Thus far, USDA said, it appears that three fungicides – chlorothalonil, strobilurin and triazole – have been most effective in combating soybean rust in Brazil and Argentina. No product totally eradicates the fungus, but each can help control the disease, USDA said. Chlorothalonil and strobilurin have protective properties, but must be applied prior to the emergence of the fungus. Triazole has some curative properties, according to USDA, but must be applied before infection reaches 10 percent of a field for maximum effectiveness. USDA said that based on South America’s experience with soybean rust, it appears that two applications of fungicides will be required if the fungus is suspected to occur in a given area. The first application would occur early during the growth stage of the soybean plant, while the second would be timed for 14 to 20 days later. More than two applications have not been shown to provide much additional protection.

► **Predictive Models for Soybean Rust:** A fourth, but likely somewhat less useful, part of USDA’s framework is its collaboration with Pennsylvania State University and North Carolina State University to develop a predictive computer model designed to forecast the potential spread of soybean rust based upon wind currents and other factors. North Carolina State already has developed a prototype – the earlier-mentioned North American Disease Forecast Center – and is making it available to USDA. Iowa State University also reportedly is planning on developing such a rust-prediction tool. However, the utility of these predictive models as a soybean rust control tool – particularly for the 2005 crop year – appears questionable, given the less-than-satisfactory performance of similar models in South America. Further, such predictive models would require calibration based upon North American criteria. For these reasons, it appears that reliance upon sentinel plots and human surveillance and observation will play a more important role at least for 2005.

Encouragingly, there were reports during the meeting that Brazilian producers have learned to detect soybean rust infections during their infancy stage – at 0.2 percent infectivity of a field – which has provided two weeks’ advance warning of an impending outbreak to provide ample time for spraying.





## USDA to Begin Process of Evaluating Future CRP Enrollment Policies

The NGFA has learned that the U.S. Department of Agriculture within the next month will begin the process of evaluating the comments received in response to its request for input on the future of the Conservation Reserve Program (CRP).

USDA on Aug. 4 issued a notice requesting comments on long-term policies that should govern the CRP. Currently, approximately 36 million acres are enrolled in the CRP, representing 13 percent of U.S. cultivated land. Congress authorized enrolling up to 39.2 million acres as part of the 2002 farm law. Approximately 27 million acres enrolled in existing CRP contracts are scheduled to expire during the period 2007-09; of those, CRP contracts representing 16.1 million acres are set to expire during 2007.

USDA contracted with an outside firm to develop a comparison of the comments received by USDA in response to the notice. USDA officials told the NGFA that they anticipate starting an initial review of those comments within the next two weeks. But it likely will be several months, they said, before the comments are distilled and specific recommendations are developed and submitted for consideration to Secretary of Agriculture Mike Johanns and his key staff. Since the notice issued last August was a request for comments, rather than a rulemaking, it is unclear at this stage whether USDA will issue a proposed rule soliciting further feedback later this year on its preferred course of action.

The issues on which USDA solicited comments were: 1) how to manage the large acreage subject to expiring CRP contracts; 2) how to manage future CRP enrollments and acreage; 3) how to evaluate the CRP's environmental effectiveness, which currently is heavily weighted to

wildlife benefits; 4) how to better utilize information technology, such as geographical information systems, to evaluate the eligibility of acreage for CRP enrollment; and 5) how to improve the CRP, including the Conservation Reserve Enhancement Program, through partnerships that better address local environmental issues.

The NGFA, North American Export Grain Association, North American Millers Association and National Oilseed Processors Association submitted an extensive joint statement to USDA last December in response to its request for comments. The organizations urged substantial changes to the CRP to allow U.S. agriculture to capture growth opportunities and to sustain the growing demand for grains and oilseeds from the ethanol, livestock, poultry and other sectors. The NGFA's principal objectives have been to: 1) Revise the CRP cap downward from the current 39.2 million acres authorized, and not to treat the cap as a mandate; 2) move away from enrolling whole farms in the CRP; 3) require reenrolled acres to meet a more stringent environmental benefits index that gives more weight to improving water quality and reducing soil erosion than to wildlife benefits; 4) review the purported 25 percent cap on the amount of acreage that can be enrolled from individual counties, a limit that has reached 40 percent or more in some counties and has had a devastating impact on the livelihood of rural communities; 5) focus future CRP enrollments on their contribution to enhancing water quality (such as buffer and filter strips); and 6) provide flexibility in future CRP contract enrollments, providing producers with the option to exit the CRP without penalty prior to contract expiration in response to market demand, as well as provide for short-term CRP contract extensions (rather than 10- to 15-year contracts) to "feather" the market impact of expiring acres and enable the program to be more responsive to markets.

## Total Emerson Trust SWW Sales Reach Nearly 5 Million Bushels

The U.S. Department of Agriculture told the NGFA today (March 3) that it had entered into transactions to sell 1,417,130 bushels of soft white wheat as of the close of business on March 2 in response to its second invitation (BCD-91), issued on Feb. 10, to purchase 100,000 metric tons (approximately 3,674,333 bushels) of soft white wheat from the Bill Emerson Humanitarian Trust.

Concurrently on Feb. 10, USDA issued an invitation (Number 733) soliciting offers to sell to the Commodity

Credit Corporation (CCC) an equivalent quantity of soft white wheat for food aid for Sudan. CCC has completed its purchases of 200,000 metric tons of soft white wheat in response to that invitation.

All but one of the sales thus far in response to the latest invitation have been to storing warehouse operators.

Of the 1,417,130 bushels sold since the second invitation was issued, the first 123,168.46 bushels were





applied to close out sales of soft white wheat made by CCC under the first invitation (BCD-87) issued on Jan. 4.

**Total Emerson Trust Sales:** Cumulatively, USDA said that as of March 2 in response to both Emerson Trust buy/sell transaction invitations, CCC had sold 4,968,295 bushels of soft white wheat – 2,849,317 bushels to six different storing warehouse operators, and 2,118,978 bushels to four third-party buyers. That leaves 2,380,373 bushels of soft white still available for purchase out of the approximately 7.35 million bushels released from the Emerson Trust.

**Emerson Trust Sales Procedures:** As was the case with USDA's first invitation issued on Jan. 4 making soft white wheat available from the Emerson Trust, USDA again is utilizing buy/sell transactions. Storing warehouse operators had exclusive rights to enter into negotiated sales with CCC to purchase any or all CCC-owned soft white wheat stored in their locations until 9 a.m. (central time) on Feb. 16, at which time the purchase rights were opened to all interested bidders, including third parties. Bids are to include the lot number(s), warehouse code, location (city, county and state), and in-store flat-price bid.

Once the bids were opened to all interested buyers, storing warehouse operators are **not** notified by CCC for right of first refusal. As was the case with the first invitation, third-party buyers were restricted to purchasing no more than 35 percent of the quantity of soft white wheat stored at a given location as of Dec. 3, 2004, based

upon the CCC warehouse code. That 35 percent limit includes any quantity previously purchased by the storing warehouse operator. In its notice, USDA provided a table of warehouse code locations where CCC-owned soft white wheat eligible for purchase is stored. Warehouse codes showing zero or a relatively small quantity indicate that the 35 percent limit has been nearly reached, or has been met or exceeded.

Bids are 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 are required to be bid upon in their entirety, except one partial lot purchase will be permitted to achieve the maximum quantity allowed at each warehouse code. CCC allows storing warehouse operators to purchase a quantity in excess of the 35 percent maximum level, provided the bid does not result in CCC exceeding the 200,000 metric ton maximum release authorized from the Emerson Trust. USDA again said that if it discovers that attempts are being made to circumvent the bid limits through pre-arranged 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 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 then-Secretary of Agriculture Ann M. Veneman. All CCC-owned soft white wheat grading U.S. No. 2 or better is considered to be Emerson Trust stocks and is being made available for the transactions.

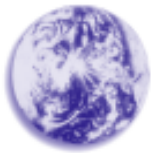
## USDA Announces Second Partial Counter-Cyclical Payments

The U.S. Department of Agriculture on Feb. 15 announced it would begin issuing second partial counter-cyclical payments for 2004-crop wheat, soybeans, corn, sorghum, barley, oats, upland cotton, rice and peanuts.

USDA noted that the second payment would not be made to wheat producers who received first partial payments, since the first partial payment rate exceeded the authorized amount now that market prices have increased. Wheat producers who elected not to receive the first partial payment will be eligible for 1.4 cents per bushel under the second partial payment. The second partial payment rates for the other commodities are: 1) 28 cents per bushel for corn (out of a total projected counter-cyclical payment rate of 40 cents per bushel); 2) 18.9 cents per bushel for sorghum (out of a total projected payment of 27 cents); 3) 10.5 cents per bushel for barley

(out of a total projected payment of 15 cents); 4) 18.2 cents per bushel for soybeans (out of a total projected payment of 26 cents); and 5) 1.12 cents per bushel for oats (out of a total projected payment of 1.6 cents per bushel). The second counter-cyclical payment rate for rice is 52.5 cents per hundredweight (out of a projected total payment of 75 cents), while the payment rate for upland cotton was set at 9.61 cents per pound (out of a total projected payment of 13.73 cents).

Final counter-cyclical payments are determined after the end of the 2004-05 marketing year for each commodity, which is May 31 for wheat, barley and oats; July 31 for rice, upland cotton and peanuts; and Aug. 31 for corn, sorghum and soybeans. Members receiving the *NGFA Newsletter* electronically may access the USDA announcement by clicking here.



## Japan Requiring NAEGA-Negotiated BSE-Prevention Clauses in U.S. Grain Shipment Contracts

Japan's Ministry of Agriculture, Food and Fisheries (MAFF) has expanded its requirement that the use of contract clauses developed by the North American Export Grain Association (NAEGA) and Japanese importer organizations designed to protect against possible residues of animal proteins in grain-hauling vessels be incorporated in contracts for shipments of U.S. wheat.

The clauses, which previously were recommended by MAFF for U.S. shipments of feed grains and soybeans, was developed by NAEGA in cooperation with the Japanese Feed Trade Association and Japanese Oils and Fats Industry Association. The organizations developed the clauses after MAFF issued guidelines on Sept. 16, 2003 to protect against potential cross-contamination with animal proteins in imported products as part of efforts to prevent further transmission of bovine spongiform encephalopathy (BSE).

MAFF reportedly announced recently that wheat should be among the commodities covered by the BSE-prevention guidelines because of the potential use of bran as a feed ingredient. MAFF's guidelines, which apply to imports of products arriving in Japan on or after April 1, encourage commercial sellers and buyers to agree to the contract clause voluntarily.

The clauses, which were issued by NAEGA in a Notice to the Trade on Jan. 24, read as follows:

► **For FOB Contract(s):** *"Seller does not knowingly handle animal protein commodities (as defined by MAFF guidelines) at a facility where contracted cargo will be loaded in consideration of the Guidelines for Prevention of Contamination of Animal Origin Proteins in Ruminant Feeds dated 16<sup>th</sup> September, 2003 effective from April 1, 2005 (New Guidelines) as amended revised or replaced. In the case animal proteins that are prohibited under MAFF guidelines are handled at facilities preceding to handling or loading of the contracted cargo, Seller shall wash down the relative part(s) where cleaning by washing is technically applicable and appropriate. Seller shall clean the remaining relative part(s) by using U.S. FDA-recognized cleanout methods, provided however that the materials used for flushing or sequencing shall not contain any animal proteins as defined by the Clause II-3 of the New Guidelines."*

► **For C&F Contract(s):** The following clauses should be added to the above clause for FOB contracts and seller should advise name of last cargo. *"Vessel's last cargo is not to be any animal protein prohibited under MAFF guidelines. If those cargoes loaded or might be loaded as last cargo, owners to wash down vessel's holds to remove cargo residue of those and dry up prior to loading at their risk and expense."*

## Cuba Reacts to Treasury Department Ruling Requiring Payment Prior to Shipment of U.S. Agricultural Commodities

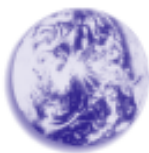
Cuba's import agency – ALIMPORT – has reacted strongly to the U.S. Treasury Department's announcement that it will require U.S. exporters to receive full payment for U.S. agricultural commodities sold to Cuba **before** such shipments leave U.S. ports.

In its statement, ALIMPORT said that the Treasury Department's new procedures would make it "highly unreliable" to purchase U.S. agricultural commodities. "This (Treasury Department) measure would represent an escalation designed to hinder the American food and agricultural sales (to Cuba) that are already subjected to numerous restrictions imposed by the United States," ALIMPORT said. "Under this procedure, (U.S.) goods earmarked to the Cuban people could apparently be liable to court-ordered seizures in the United States to satisfy legally groundless claims against the Republic of Cuba... While the American suppliers are recognized for their quality products and efficiency, to purchase from the U.S. under the new measure would be highly unreliable... (and) the procurement of input materials for other food

items would be placed at risk."

ALIMPORT was responding to a decision by the Treasury Department's Office of Foreign Assets Control (OFAC) to amend the Cuban assets control regulations to "clarify" the meaning of the phrase "payment of cash in advance" as used in Section 908(b)(1) of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000. That law prohibits U.S. exporters from providing payment or financing terms for U.S. agricultural commodities sold to Cuba other than through "payment of cash in advance" or through certain financing arrangements via third-country financial institutions. Until recently, the law had been interpreted in a way that allowed U.S. agricultural products to be in-transit to Cuba before cash payment was received, so long as transfer of title and control of the shipment did not occur before full payment was received. Under the new interpretation, U.S. exporters will be required to receive full cash payment before agricultural products are shipped to Cuba, essentially requiring prepayment by Cuban buyers.





OFAC said that to “mitigate” the impact of its new interpretation on sales that already may be in progress, it would provide a 30-day period – expiring on March 24 – during which it will allow U.S. exporters to continue to engage in licensed transactions under financing terms resembling cash payments against documents. However this interim procedure applies only to agricultural shipments loaded on or before March 24; it also requires that full payment be received by the U.S. banking institution within 30 days, and by no later than March 24 in any event, as well as before transfer of title and control of the agricultural shipment to the Cuban buyer.

There is concern that the Treasury Department’s new rules cut across existing U.S. agricultural contracts with Cuban buyers, and complicate new business. In anticipation of the Treasury Department’s stance, legislation (S. 328) was introduced on Feb. 9 by Sen. Larry Craig, R-Idaho, and 19 other influential cosponsors (including Senate Foreign

Relations Committee Chairman Richard Lugar, R-Ind., and Senate Intelligence Committee Chairman Pat Roberts, R-Kan.) that among other things would interpret the “payment-of-cash-in-advance” phrase as requiring payment in full **before transfer of title and release of physical control** of the commodities to the Cuban buyer. An identical bill (H.R. 719) was introduced Feb. 9 in the House by Rep. Jerry Moran, R-Kan. “There is nothing in either the (TSREEA) or its legislative history to support the view that Congress intended payment to be made in advance of the shipment of goods from this country to Cuba,” the Senate bill’s preamble states. Another provision of the bill would amend the TSREEA to authorize Cuban buyers to make direct payments for agricultural commodities to U.S. banks, rather than routing such payments through third-country banks. The U.S. government currently prohibits direct payment to U.S. banks from Cuba for Cuban agricultural commodities financed through lending institutions.

## Award-Winning Guide to Wheat and Flour Testing Methods Now Available

A new award-winning guide designed to inform domestic and foreign wheat buyers, flour millers and others about wheat and flour testing methods and their correlation to flour and end-product quality is being made available to NGFA members.

A major goal of the publication is to provide information on wheat and flour quality tests used by the wheat industry worldwide to promote orderly marketing. The 71-page book provides an introduction to the analysis of wheat and flour, and is divided into two major sections.

▶ Section 1 provides basic information on standardized testing procedures used to determine wheat and flour quality characteristics, as well as dough properties. Basic information is provided on chemical testing (to determine moisture, ash and protein content, as well as falling numbers); physical testing (to determine flour color analysis and the single-kernel characterization system specified by wheat processors); and laboratory milling tests (to determine the milling performance of wheat). For each test, the guide provides information on the testing method, how results are determined, and the importance of the quality characteristics determined through the test. This section of the publication also explains how the test results apply to processing performance and end-product quality. Additional information is provided on tests used to evaluate dough and gluten strength properties.

▶ Section 2 of the publication provides an overview of laboratory product tests for a variety of wheat products used in different parts of the world. Formulas and process-

ing steps are described, and finished-product attributes are presented. The finished product formulations and processes described are laboratory-testing protocols that are used to evaluate flour quality. The product tests included in this section are for pan bread, hearth bread, flat bread, Asian steamed bread, sugar snap cookies, sponge cake, extruded pasta and Asian sheeted noodles. The formulations and processes described are model systems that may be used to predict commercial production for common uses of wheat flour worldwide.

The publication was developed by the Wheat Marketing Center Inc., Portland, Ore., with the assistance and support of the North American Export Grain Association, utilizing funds from the U.S. Department of Agriculture’s Market Access Program. It received the Distinguished Award – the highest award category – from the Society for Technical Communication, besting entries from high-tech companies, hospitals and many other organizations. The book has been entered in the society’s international competition, which is awarded in May.

**Ordering a Copy:** While supplies last, NGFA members can receive copies of the publication, entitled “*Wheat and Flour Testing Methods...A Guide to Understanding Wheat and Flour Quality*” for \$13 each for one to nine copies, or \$10 each for 10 or more. You may order by credit card by calling or emailing Tammy Elliot at the NGFA at [telliott@ngfa.org](mailto:telliott@ngfa.org) or by calling her at 202-289-0873. Or, mail payment in advance to: *Wheat and Flour Testing Methods Guide*, National Grain and Feed Association, 1250 I St., N.W., Suite 1003, Washington, D.C., 20005. Make checks payable to National Grain and Feed Association.





## NGFA/GEAPS Develop New Facility Security Website

A new facility security website is under development by the NGFA that will be accessible soon on both the NGFA and Grain Elevator and Processing Society's (GEAPS') websites to provide current bioterrorism- and facility security-related information relevant to the grain-handling, feed manufacturing and grain processing sectors.

The web site was the brainchild of the NGFA/GEAPS Joint Safety, Health and Environmental Quality Committee, chaired by **Mark Daniels**, director of health and safety for CHS in St. Paul, Minn. Input for the site was provided by a task force co-chaired by Grain Subcommittee Chairman **Stacey Schmidt**, director of safety, health and environmental protection for The Andersons, Maumee, Ohio; and Feed Subcommittee Chairman **Paul Luther**, Land O Lakes Purina Feed LLC, St. Louis, Mo. Also assisting as part of the task force were **Larry Bongle**, operations manager, ConAgra/Peavey Co., Omaha, Neb.; and **Rick Treeman**, vice president and safety and environmental manager for Johnston Enterprises, Enid, Okla. Input also was received from NGFA Food Safety Committee Chairman **Arvid L. Hawk**, grain handling coordinator for Cargill Inc., Minneapolis, Minn.; and NGFA/GEAPS Joint Grain Grades and Weights Committee Chairman **Robert C. Smigelski**, Agriculture Group operations manager for The Andersons, Maumee, Ohio.

The website contains four separate sections with current information on:

- ▶ **Security Alerts and Notices** that may be issued from time-to-time by the U.S. Department of Homeland Security (DHS) or other government agencies that are specific to grain elevators, feed mills, corn and soybean processing plants, flour mills, and grain export facilities.
- ▶ **Federal government security requirements** that apply to grain-handling, feed manufacturing and processing operations. Included are requirements issued by the U.S. Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), DHS, U.S. Coast Guard and U.S. Department of Transportation (DOT). The section provides an NGFA-prepared summary of each of the requirements, as well as portals for direct access to the source documents developed by each agency.
- ▶ **Facility security compliance guidance and training materials** developed by NGFA and GEAPS on how to conduct a facility vulnerability assessment and how to develop and implement a facility security plan.
- ▶ A special section that can be used to determine **which federal security requirements apply to your specific type of grain, feed or processing facility.**

A prototype of the facility security website was unveiled March 1 during the 2005 GEAPS Exchange in Albuquerque, N.M. After incorporating input received on the prototype, the NGFA and GEAPS plan to launch open access to the website later this month.

## GIPSA Issues Rules Governing Hard White Wheat

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) on Feb. 18 issued final regulations amending the U.S. grain standards for wheat to remove the designation of hard white wheat as a contrasting class in hard red winter and hard red spring wheat.

Instead, under the change, hard white wheat will be considered "wheat of other classes" and the grade limit, which is based upon visual assessment, will remain unchanged. As such, for kernel identification, hard white wheat will continue to include the dark colored, amber and white wheat kernels pursuant to the agency's Grain Inspection Handbook. GIPSA also amended the standard to specify the quantity of wheat upon which sample-grade factor determinations are made.

The agency stopped short of establishing a separate set of subclasses for hard white wheat and hard amber white wheat, saying that there was a "lack of consensus among stakeholders" and "no market need at this time" for such a designation. GIPSA said it would continue to maintain the hard white wheat

color line and, as is currently done, continue to certify, upon request, that the sample color exceeds or is lighter than the color line. Members receiving the *NGFA Newsletter* electronically may access the GIPSA rule by clicking here.



### Calendar

**March 30-April 1, 2005: NGFA 109th Annual Convention**  
Hotel Del Coronado, San Diego, Calif.

**April 27-28, 2005: NGFA Feed Quality Assurance Workshop**  
(Joint workshop with California Grain & Feed Association and California Department of Food & Agriculture), Tulare, Calif.

**July 27-28, 2005: Operations, Management & Technology Seminar - "Grain Quality Management"**  
Airport Marriott Hotel, Kansas City, Mo.  
(Joint Seminar Series with the Grain Elevator and Processing Society)



## APHIS Amends Karnal Bunt Import Regulations

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) on Feb. 18 issued final regulations amending its rules that govern the importation of wheat, durum wheat and triticale from countries or regions known to be infected with Karnal bunt.

APHIS noted that its intent in amending its import regulations, which take effect March 21, was to make them consistent with its Karnal bunt regulations that apply to U.S. regions where the fungal disease has been detected, as well as with the requirements of the International Standards for Phytosanitary Measures developed by the International Plant Protection Convention of the UN Food and Agriculture Organization. The APHIS regulations specifically list the foreign regions affected by Karnal bunt – Afghanistan, India, Iran, Iraq, Mexico (specifically the states of Chihuahua, Guanajuato, Jalisco, Michoacan and Queretaro), Nepal, Pakistan and South Africa – and specify the conditions under which wheat and related articles from countries can be imported. Such conditions include having a phytosanitary certificate issued by the respective country's national plant protection organization with the following declaration: *"These articles originated in an area where Karnal bunt is not known to occur, as attested to either by survey results or by testing for bunted kernels or spores."* The conditions

also include a ban on commingling with commodities from areas where Karnal bunt is known to occur.

The amended regulations also list the regulated articles, which include conveyances; plant parts from all wheat, durum wheat and triticale; mechanized harvesting equipment used in the production of wheat, durum wheat or triticale that has tested positive for Karnal bunt based upon the presence of bunted kernels; and seed conditioning and storage/handling equipment used for wheat, durum wheat or triticale that is found to contain Karnal bunt spores. Further, the regulations ban the importation of conveyances, mechanized harvesting equipment, storage and handling equipment, and seed conditioning equipment from regions where Karnal bunt is known to exist unless such equipment has been cleaned by removing all soil and plant debris using methods specified in the APHIS final rule.

APHIS' final rule retained existing regulations that prohibit the import of wheat from areas infected by flag smut, a highly infective fungi. The lone exception is if such wheat is to be used for experimental or scientific purposes. Members receiving the *NGFA Newsletter* electronically may access the APHIS final rule by clicking here.

## OSHA Reform Bills Reintroduced in House

Rep. Charlie Norwood, R-Ga., has reintroduced four bills that would reform different aspects of the Occupational Safety and Health Administration (OSHA).

The House approved each of the NGFA-supported measures last year, but they died in the Senate. Norwood anticipates more support this year in the Senate following the ascension of newly elected Sen. Johnny Isakson, R-Ga., as the new chairman of the Senate Employment and Workplace Subcommittee of the Health, Education, Welfare and Pensions Committee. Isakson, who served three terms in the House, supported the four OSHA reform bills and has pledged to conduct hearings early during the congressional year.

The four bills include:

◆ **The Occupational Safety and Health Small Business Day in Court Act (H.R. 739)**, which would give small businesses longer than 15 days to respond to an OSHA citation. The intent is to avoid situations in which companies forfeit their opportunity to challenge OSHA citations based upon a technicality.

◆ **The Occupational Safety and Health Review Commission Efficiency Act (H.R. 740)**, which would expand the size of the OSHA Review Commission to five members (up from the current three) to ensure that cases are reviewed in a timely manner. The current review commission occasionally has failed to achieve a quorum.

◆ **The Occupational Safety and Health Independent Review of OSHA Citations Act (H.R. 741)**, which would clarify that the review commission's decisions – rather than the secretary of labor's positions – are given deference by the courts when reviewing OSHA citations. There are instances in which the review commission overturns or modifies the severity of OSHA citations. Supporters believe that this was the original intent when the OSHA law was enacted in 1970.

◆ **The Occupational Safety and Health Small Employer Access to Justice Act (H.R. 742)**, which would allow small employers to be awarded attorneys' fees and court costs when they contest OSHA citations and subsequently prevail in court.



# Membership Matters

by Todd Kemp  
Director of Marketing

## Haugeberg Wins St. Louis Getaway!

### ...More Fabulous Prizes on Tap in San Diego...

The annual *February Frenzy* of recruiting activity came to an end on Feb. 28, with **13 new member companies** swelling the ranks of the NGFA – a very solid performance.

As a result, 12 hard-working and deserving recruiters (one recruiter got two new members, therefore two chances) qualified for our **St. Louis Getaway** grand prize drawing. In keeping with the recent Academy Awards...the envelope please...and the winner is:

**Jarvis Haugeberg, DakotaLand Feeds LLC, Huron, S.D.!**

It's always great to see a deserving recruiter win the big prize – and Jarvis deserves it. He is an annual fixture on the NGFA Leaderboard – a faithful recruiter – and has served in a number of committee and leadership positions within the NGFA. Jarvis sponsored the membership application of Quality Liquid Feeds, Dodgeville, Wis. He wins our St. Louis Getaway comprised of:

- ◆ Airfare for two to St. Louis – Co-sponsored by **CSX Transportation Co.**, Jacksonville, Fla.
- ◆ Two nights' lodging – Courtesy of the **Hyatt Regency Union Station**.
- ◆ Dinner at the hot new Eleven Eleven Restaurant – Sponsored by **GATX Rail**, Chicago, Ill.
- ◆ St. Louis Cardinals tickets – Sponsored by **Monsanto Co.**, St. Louis, Mo.

Thanks to our sponsors and all of our recruiters who helped make *February Frenzy* a big success!

**More Big Prizes!** Our membership year ends on March 31 with the official opening of the NGFA's 109th annual convention in San Diego. We need a big finish to the year – so keep up the good work! Every successful recruiter will qualify for more fabulous prizes to be awarded in San Diego! Call those prospects now!



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