



## Japan Declines to Set Timetable for Resuming U.S. Beef Imports

Predictably, the weekend meetings in Tokyo between Secretary of State Condoleezza Rice and her Japanese counterpart failed to result in the U.S.-desired timetable for lifting Japan's ban on imports of American beef.

Japanese Foreign Minister Nobutaka Machimura said on March 19 following his meeting with Rice that he could not specifically say when a conclusion to Japan's deliberations will be reached. Rice said she urged the Japanese to "put in place efforts to resolve these issues as quickly as possible, given that there is indeed a science-based standard that is global on this issue (and the fact that) this has gone on for a very long time."

Machimura did brief Rice on how Japan's domestic procedures are expected to unfold in the next several months. He said Japan's Food Safety Commission should reach a final decision its March 28 meeting on whether to recommend a

lifting of Japan's current requirement that all cattle be tested for bovine spongiform encephalopathy (BSE). Once Japan's domestic testing policy is resolved, he said, the next step will be to refer to the Food Safety Commission the issue of whether to reopen the Japanese market to imports of U.S. beef. After receiving a report from a technical subcommittee that has been meeting since last October, the Food Safety Commission will conduct hearings to gather public comment – a process expected to take at least a month. A final report then would be submitted to the Japanese government for approval, which would not occur before May at the earliest.

In a related matter, the director-general of the World Animal Health Organization (known by its acronym, OIE) last week told a visiting U.S. delegation that included the NGFA that he had met with Japan's Food Safety Commission earlier this month and urged that it adhere to international guidelines that focus

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## Free-Trade Congressman Nominated as U.S. Trade Representative

President Bush on March 17 tapped an ardent free-trade congressman, Rep. Rob Portman, R-Ohio, to be the next U.S. trade representative.

If confirmed by the Senate, Portman would succeed Robert Zoellick, who left to become deputy secretary of state. While speculation surrounding Zoellick's successor had centered on a possible downgrade in the rank of the USTR from a cabinet-level position, Bush made it clear that Portman would be a member of his cabinet. In introducing Portman at a White House briefing, Bush said the agency's priorities will be to seek more bilateral trade agreements, and complete the Free Trade Area of the Americas (FTAA) and WTO Doha Development Round negotiations.

Senate Finance Committee Chairman Charles Grassley, R-Iowa, said a confirmation hearing on Portman's nomination would be scheduled after Congress returns from its spring recess on April 4.

Portman, a Cincinnati native, is a member of the Ways and Means Committee and its Subcommittee on Trade, and voted in favor of all major trade agreements during his six-term career. The nomination received a positive bipartisan congressional reaction, and was widely praised by industry. Portman is viewed as an important resource to reach out to members on trade and forge a consensus on issues such as

the Central American Free Trade Agreement (CAFTA). [See related CAFTA article on page 3.] Portman, an international trade lawyer, previously served in the first Bush White House as associate counsel to the president and as director of the White House Office of Legislative Affairs.



*Rep. Rob Portman (left) is shown following President Bush's announcement of his nomination to be U.S. trade representative.*



## Budget Resolutions Unlikely to Lead to Significant Farm Program Cuts

The House and Senate on March 18 adopted different fiscal year 2006 budget resolutions, including agricultural provisions that are unlikely to result in significant changes to U.S. farm programs.

The House-passed \$2.57 trillion budget resolution, approved on a 218-214 party-line vote, calls for reducing mandatory spending by \$68.6 billion over the next five years, with the House Agriculture Committee's share amounting to \$5.3 billion. Meanwhile, the Senate approved a \$2.6 trillion budget resolution by a 51-49 vote that seeks to curb mandatory spending by \$17 billion over five years, including \$2.8 billion from agriculture programs. An amendment offered by Sen. Max Baucus, D-Mont., to strike the agricultural cuts failed by a 54-46 vote. A joint House-Senate conference committee will meet after Congress returns from its spring recess on April 4 to hammer out an agreement on a final budget resolution to be submitted to both chambers. Once approved, the congressional budget resolution imposes a limit on the amount that can be allocated

for various federal programs by the House and Senate Appropriations Committees.

**Instructions for Cuts in Agriculture:** The reductions in agricultural spending contained in the House and Senate budget resolutions are far less than the levels proposed in President Bush's fiscal 2006 budget proposal, which called for \$9 billion in reductions over five years. The Senate resolution includes a "sense of the Senate" provision that recommends that the \$2.8 billion cut be accomplished by reducing producer payment limits. But the Senate Agriculture Committee has sole discretion as to how the savings will be achieved. And its chairman, Sen. Saxby Chambliss, R-Ga., is an ardent opponent of payment limit reductions, and already has indicated that the cuts will come from other areas. House Agriculture Committee Chairman Rep. Bob Goodlatte, R-Va., indicated that everything was on the table: farm programs, conservation, nutrition and food stamp programs. Both chairmen have indicated they will oppose any attempts to alter 2002 farm bill policy.

## Agriculture Committee Hears Testimony on New Cuba Rules

The House Agriculture Committee conducted a March 16 hearing to review the recent regulatory "clarifications" issued by the U.S. Treasury Department's Office of Foreign Asset Control (OFAC) concerning agriculture trade with Cuba.

The OFAC clarification changed the definition of "cash in advance" as used in the Trade Sanctions Reform and Export Enhancement Act of 2000 to mean that payment must be received **before** commodities destined for Cuba leave a U.S. port, rather than the standard industry practice of receiving cash before the title and possession to the goods are transferred to the buyer. The OFAC regulation set March 24 as the deadline for all goods to be shipped under the previous rules, regardless of existing outstanding contracts that extend beyond the deadline. This action has the effect of "cutting across" existing contracts and setting a dangerous precedent of labeling the United States as an unreliable supplier.

In response to the OFAC action, 33 U.S. organizations and exporters, including NGFA, sent a petition to OFAC Director Robert Werner urging that the Treasury Department not apply the "clarification" to existing outstanding contracts involving the sale of commodities to Cuba. The petition urged that the OFAC either grandfather or issue special licenses for all outstanding contracts involving agricultural commodity shipments to Cuba that had been entered into on

or prior to the Feb. 22 issuance of the "clarified" interpretation by OFAC so as to preserve contract sanctity and allow such shipments to occur under the prior rules. At the time the OFAC final rule was issued, U.S. exporters had negotiated contracts for the sale of approximately 950,000 metric tons of U.S. agricultural commodities to Cuba valued at \$250 million. The vast majority of these contracts containing the "unrestricted-cash-in-advance" payment terms were scheduled to ship after the March 24 grace period granted by OFAC. If OFAC does not change its position, such contracts would need to be renegotiated using third-country letters-of-credit, which would represent the largest government-forced renegotiation of agricultural contracts since the Soviet grain embargo of 1980.

Werner testified that while OFAC has the flexibility to adjust the rules, the private-sector petition will not necessarily result in it doing so. Werner stressed that OFAC still allows shipments to Cuba to be financed using third-country letter-of-credit transactions. But this alternative does not solve the existing contract problem and has not yet been proven as a viable alternative for Cuba trade. The committee challenged Werner at every turn, as he deflected question after question about why the action was taken. Supporters of Cuba agricultural trade in Congress already have introduced legislation (S. 328 and H.R. 719) that would revert the "cash-in-advance" definition to its previous meaning – namely, payment in full before transfer of title and release of physical control of the commodities to the Cuban buyer.



## NGFA Testifies on CFTC Reauthorization at House Ag Subcommittee Hearing

NGFA Second Vice Chairman and Risk Management Committee Chairman Tom Coyle responded to questions on why it made sense to decrease the regulation of agricultural contracts during his testimony on reauthorization of the Commodity Futures Trading Commission at a March 9 hearing conducted by the House Agriculture Committee's Subcommittee on General Farm Commodities and Risk Management.

During his testimony, Coyle voiced the NGFA's strong support for legislation reauthorizing the agency, and focused on three specific NGFA priorities: 1) Greater legal clarity for cash contracts, most likely to be pursued through a CFTC regulatory proceeding rather than legislation; 2) a more flexible regulatory environment for U.S. exchanges; and 3) additional regulatory flexibility to aid producers in risk-management strategies, given the possibility of reduced government spending on farm programs. *[See enclosed Issues and Actions for a report on the NGFA's testimony.]*

In response to questions from Subcommittee Chairman Rep. Jerry Moran, R-Kan., on reasons for reducing regulation of agricultural contracts, Coyle responded that users of agricultural contracts today are more educated and sophisti-

cated, and deserve a more level playing field with other contracts. He also commented that most farmers don't use exchange-traded risk-management tools for several reasons, including margin requirements and a higher comfort level in doing business with local grain elevators in managing their risk and marketing their crop. Moran said he is very interested in looking at non-crop insurance risk-management products for farmers, an area of particular expertise for the NGFA. Other organizations testifying at the subcommittee's second hearing included exchanges, self-regulatory organizations and other trade groups (mostly non-agricultural interests).

The Senate Agriculture Committee conducted its own CFTC reauthorization hearings on March 8 and 10. The Senate's witness list closely mirrored the House hearings, including the CFTC, commodity exchanges, self-regulatory organizations and industry organizations representing users of futures markets. As in the House, most organizations testified that a wholesale reopening of the Commodity Futures Modernization Act was unnecessary at this time. The one area in which most witnesses agreed some changes might be needed was in providing the CFTC additional anti-fraud authority to prosecute abuses in the foreign exchange markets.

## Hill Highlights

There were these other developments of interest to the grain, feed and processing industry on Capitol Hill prior to the start of the two-week congressional spring recess on March 18:

► **CAFTA Hearings Scheduled:** The Senate Finance Committee has scheduled a hearing for April 6 on the U.S. Dominican Republic – Central American Free Trade Agreement (CAFTA-DR). This is the first step in the congressional process to approve the accords. A hearing before the House Ways and Means Committee also is expected. Consideration of the agreement has been delayed over concerns that there are not yet enough votes in the House to pass the measure. Supporters, including the NGFA, have been undertaking a considerable education campaign in Congress to highlight the many positives of the agreement. Three Central American nations – Honduras, El Salvador and Guatemala – already have voted to ratify the accord.

**Stressing Grassroots:** The NGFA is urging members to contact their senators and representatives in support of the CAFTA-DR accord during the two-week congressional spring recess, which ends April 4. Most observers believe the outcome of the CAFTA vote will be a precursor for the success or failure of future multilateral trade agreements,

including the World Trade Organization's Doha Round. Contact NGFA Director of Legislative Affairs Chris Holdgreve at [choldgreve@ngfa.org](mailto:choldgreve@ngfa.org) (or by phone at 202-289-0873) for a list of "talking points" for use in visiting with your congressional delegation about the overwhelmingly positive aspects of the CAFTA-DR agreement for U.S. agriculture.

► **Senate Committee to Vote April 13 on Crawford's Nomination to be FDA Commissioner:** The Senate Health, Education, Labor and Pensions Committee has scheduled an April 13 vote on the nomination of Dr. Lester M. Crawford to become commissioner of the Food and Drug Administration. During a March 17 confirmation hearing, senators primarily focused on concerns over FDA's handling of human drug safety issues. Only glancing references were made during the hearing to FDA's implementation of its regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE) in the United States.

In his opening statement, Crawford said he was committed "in particular" to addressing existing concerns over the post-market safety of FDA-regulated products, including medicines and foods, and "remain(ed) focused on bioterrorism and on minimizing the threat of terrorist attack both through heightened food security and through



("Hill Highlights" continued from page 3)

the development of new medical countermeasures." Crawford said his "vision" was to "transform" FDA from "domestic-focused, paper-based processes" to "global, electronic-data driven decisions that apply the latest science." He also said he wanted to place "innovation at the center of everything FDA does." Crawford said the transformation includes the agency's culture, which he said should be one of "transparency, collaboration and cutting-edge thinking." He also highlighted his extensive career in public health, including multiple stints at FDA – including two as acting commissioner – administrator of the U.S. Department of Agriculture's Food Safety and Inspection Service, chair at the University of Georgia's Department of Physiology-Pharmacology and associate dean at its College of Veterinary Medicine, and as director of the Center for Food and Nutrition Policy at Georgetown University and Virginia Tech.

### ► **Senate Committee Approves Increase in Renewable Fuels**

**Mandate:** The Senate Environment and Public Works Committee on March 16 approved legislation that would increase the renewable fuels mandate to 6 billion gallons by 2012, up from the 5 billion gallons proposed when the omnibus energy bill was considered – but not enacted – during the last Congress. The provision, which is to be folded into the broader energy bill, would require oil refiners to utilize at least that level of ethanol and other renewable fuels in motor fuel. Ethanol supporters indicate they may attempt to increase the ethanol mandate to as much as 8 billion gallons by 2012 when the bill reaches the Senate floor. The Senate bill also would eliminate the reformulated gasoline oxygenate standard, enhance reformulated gasoline air quality requirements, and ban the use of MTBE in gasoline by 2010.

Meanwhile, a bipartisan group of senators has introduced legislation that would alter the existing ethanol producer tax credit and extend the tax credit to the biodiesel industry to encourage additional renewable fuel production. Introducing the measure were Sens. Jim Talent and Christopher (Kit) Bond, both R-Mo., and Richard Durbin, D-Ill. The legislation would change the definition of a "small" ethanol producer from 30 million gallons to 60 million gallons per year, an adjustment that the senators maintained more accurately reflects modern ethanol facilities. Small ethanol producers currently are eligible for a tax credit of 10 cents per gallon for up to 15 million gallons of production annually. The credit is capped at \$1.5 million per year per producer. The small producer tax credit was created as an incentive for farmers to invest in ethanol production facilities.

► **Association Health Plan Legislation Marked Up:** The House Education and Workforce Committee on March 16 approved legislation that would allow small businesses

to join together to purchase employee health insurance, also known as association health plans. The measure passed on a party line 25-22 vote, and would exempt association health plans from prohibitive state laws that mandate the coverage of specific treatments and procedures. The NGFA has supported the legislation in an effort to help member companies control the skyrocketing cost of providing employee health insurance. The House passed the measure during the previous Congress; but there are objections in the Senate and action on the bill in that chamber remains unlikely.

### ► **Senate Ag Committee Sets April 6 Confirmation Hearing on Connor's Nomination as USDA Deputy Secretary:**

The Senate Agriculture Committee has scheduled an April 6 confirmation hearing on the nomination of Charles F. (Chuck) Connor to be deputy secretary of agriculture. Connor's long-expected nomination by President Bush to USDA's number two post came on March 11. During Bush's first term, Connor served as special assistant to the president for agriculture, trade and food assistance at the White House National Economic Council. Prior to that, he was president of the Corn Refiners Association, the organization of corn wet millers. Connor also served for 12 years as a staff member for the Senate Agriculture, Nutrition and Forestry Committee; and was the committee's chief of staff during the chairmanship of fellow Indianan Sen. Richard G. Lugar, R-Ind.

If confirmed as expected by the Senate, Connor will succeed another Indianan – James Moseley – who served as USDA deputy secretary in Bush's first term. Moseley submitted his resignation March 4, and has been retained by Secretary of Agriculture Mike Johanns as a special adviser until June 1 to "complete some critical aspects" in rebuilding the agricultural infrastructure in Afghanistan, in which he has been involved extensively.

► **Johnson Nominated as EPA Administrator:** President Bush on March 4 nominated Stephen L. Johnson to become the new administrator of the U.S. Environmental Protection Agency. If confirmed by the Senate, Johnson would be the first career EPA scientist to head the agency. Johnson has served as acting EPA administrator since the departure early this year of Michael Leavitt to head the Department of Health and Human Services. Johnson previously was deputy administrator during a portion of the tours of duty of both Leavitt and former EPA Administrator Christy Todd Whitman. He has been part of EPA for 24 years, and his previous responsibilities included a stint since 2001 as assistant administrator of the Office of Prevention, Pesticides and Toxic Substances, where he was involved extensively in responding to the StarLink™ biotech corn incident. He also served as deputy director of the EPA Office of Pesticide Programs.





*("Japan" continued from page 1)*

testing on higher-risk cattle. OIE's Dr. Bernard Vallat told the U.S. delegation that Japan's Food Safety Commission had responded very positively to his message, and agreed that testing all cattle for BSE is scientifically unjustified since the disease cannot be detected in younger animals. Vallat also said he spoke at a conference attended by more than 200 persons, including representatives of Japanese restaurant and consumer groups, as well as media, and received what he termed a very positive reaction to his message concerning the importance of adopting internationally accepted science-

based standards for animal disease issues like BSE. In that regard, he termed Japan's testing of all cattle to be expensive and unnecessary. During his presentation, he warned that failure to abide by OIE guidelines could result in offending countries being challenged through the World Trade Organization for erecting non-science-based trade barriers.

During her Far East trip, Rice also urged South Korea to lift its ban on imports of U.S. beef and beef products "without further delay."

## Court Action Heats Up on Canadian Beef Border Closing

Court action will be occurring on two separate fronts in coming weeks in the continuing saga surrounding the U.S. Department of Agriculture's bovine spongiform encephalopathy (BSE) minimal-risk final rule that is intended to allow the reopening of the U.S. border to imports of Canadian live cattle and beef and beef products.

The court activity is in response to the March 2 decision issued by U.S. District Court Judge Richard Cebull in Billings, Mont., to grant a preliminary injunction keeping the U.S. border closed to imports of Canadian live cattle and bison younger than 30 months, as well as live sheep and goats less than 12 months of age. The judge's action also stopped USDA's plan to reopen the Canadian border on March 7 to imports 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. The judge's decision was issued in response to the lawsuit filed against USDA by the Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA).

The first court venue involves a hearing schedule set to

begin **July 27** in Cebull's federal district court on whether to grant a permanent injunction to keep the Canadian border closed. Cebull granted the hearing schedule developed jointly by USDA and R-CALF.

The second court venue involves an appeal filed on March 17 with the U.S. Court of Appeals for the Ninth Circuit, located in San Francisco, Calif., by the U.S. Justice Department on behalf of USDA seeking to overturn Cebull's preliminary injunction. If the U.S. government's appeal is successful, trade with Canada would be reestablished for beef products and live cattle less than 30 months of age. In a statement, USDA said its minimal-risk BSE rule was the "product of a multiyear, deliberative, transparent and science-based process to ensure that human and animal health are fully protected."

In a related matter, the ninth circuit U.S. appellate court already has agreed to hear an emergency petition filed by the National Meat Association (NMA) seeking to intervene in the R-CALF vs. USDA case. NMA's brief is due today (March 21), while USDA and R-CALF's response is due March 28. Cebull previously rejected NMA's motion to intervene; NMA contends that its packer members are being materially harmed by the continued closure of the Canadian border to imports of live cattle.

## Johanns Earmarks Additional Funds for BSE Research

Secretary of Agriculture Mike Johanns on March 18 announced that nearly \$2 million in additional funds have been redirected by the U.S. Department of Agriculture's Agricultural Research Service toward research on BSE.

Johanns said the additional research funds will be used for new BSE projects and facilities, and are in addition to the additional \$7.3 million proposed in President Bush's fiscal year 2006 budget. The newly funded projects include international collaborations with the Veterinary Laboratory Agency in Great Britain to study the biology of the BSE

agent; the Italian BSE Reference Laboratory to evaluate present diagnostic tools for detecting atypical BSE cases; and the University of Santiago de Compostela in Spain to compare North American and European BSE strains.

About \$750,000 of the additional funds will be directed toward a biocontainment facility now under construction at the ARS National Animal Disease Center in Ames, Iowa. These facilities are to enable USDA to eventually conduct long-term studies on BSE infection in cattle and other large animals, which can take a decade or more.





## GAO Report Criticizes FDA on BSE-Prevention Feed Rule

The Government Accountability Office (GAO) – the investigatory arm of Congress – on March 14 issued a report critical of certain aspects of the Food and Drug Administration's implementation of its 1997 regulations designed to protect against the establishment or spread of bovine spongiform encephalopathy (BSE).

GAO credited FDA with making a number of "needed improvements" in its management and oversight of the BSE-prevention feed rule in response to GAO's initial report in 2002. Those improvements include implementing a uniform method for conducting compliance inspections and for training FDA and state inspectors, as well as implementation of new data-entry procedures that more reliably track inspection results. "But program weaknesses continue to limit the effectiveness of the (BSE-prevention feed rule) and place U.S. cattle at risk of spreading BSE," GAO alleged.

The report charged FDA with "overstating industry's compliance" and "understating the potential risk of BSE for U.S. cattle in its reports to Congress and the American people" because its inspection data do not reflect the inspection of all potentially regulated firms. GAO also heavily emphasized the need for FDA to use feed sample testing to a much greater extent to determine compliance with the regulations, instead of relying on visual inspections and examination of records.

FDA, in a written response included in the GAO report, objected to several of the report's findings and recommendations, and stated that "[w]hile GAO has raised a few areas to further strengthen the (BSE-prevention feed rule) program, FDA does not believe that material weaknesses were identified that support GAO's view" that U.S. cattle are at risk of spreading BSE. The agency also said it is "obligated to set priorities for inspecting" the large number of firms potentially subject to the BSE-prevention feed rule because of the agency's limited resources.

The alleged deficiencies cited by GAO, as well as its recommendations and FDA's responses, are as follows:

▶ Develop uniform procedures to identify additional firms that may be subject to the BSE-prevention feed rule. GAO said FDA has not developed a systematic approach for identifying additional non-licensed feed mills that may be subject to the BSE-prevention feed rule. Further, it noted that FDA has identified "only a small percentage of the thousands of transportation firms that may haul cattle feed," and "does not have a strategy for ensuring" that on-farm mixer-feeders that feed cattle are in compliance. FDA said it already had revised its investigational operations manual to accomplish this recommendation by directing that inspectors verify distribution patterns for the inspected firm's products.

▶ Require firms to notify FDA if they utilize mammalian material prohibited from being fed to cattle or

other ruminants. GAO said it found 2,833 firms – or about 19 percent of the total identified by FDA as being subject to the BSE-prevention feed rule – that have not been reinspected in the last five years. Most of those – more than, 2,100 – are farms that feed ruminant animals or mix their own feed, while 377 are commercial feed mills and 386 are other types of firms, such as distributors and retailers. GAO alleges that "several hundred" of those "are potentially high risk" because they may have converted to utilizing prohibited mammalian materials. It said FDA should seek legal authority to require such notification if it believes it lacks it currently. FDA objected to this recommendation, saying it would create another major database for it to manage, and saying that it believed its current collaboration with state feed control agencies enables it to keep abreast of changes firms may make in their use of prohibited mammalian material. It also noted it has begun reviewing the registration information provided by firms in response to FDA's bioterrorism-preparedness regulations to determine if there are additional establishments handling prohibited mammalian material that should be added to its inspection database.

▶ Develop guidance for inspectors to routinely sample and test feed and feed ingredients using feed microscopy and/or polymerase chain reaction (PCR) to detect the presence of prohibited mammalian material as a way to augment and verify compliance with the BSE-prevention feed rule. GAO repeatedly recommends such a step to confirm the adequacy of a firm's procedures for preventing cross-contamination of equipment and transportation conveyances. FDA objected to this recommendation because of the scientific limitations that preclude current tests from accurately and reliably detecting prohibited mammalian material, or to detect the infectious prion believed to cause BSE.

▶ Collect feed test results from states that sample feed to help verify compliance with the BSE-prevention feed rule. GAO's survey found that such tests are performed by 18 of 38 states that have partnership agreements with FDA to conduct BSE compliance inspections; but only 11 share those test results with FDA. GAO's report said that states tested more than 1,500 feed samples during 2003; but ironically, GAO concedes that **no** contaminated cattle feed was found through these state tests. FDA did provide data on 660 of its own test samples that showed 145 potential violations, one-third of which involved cattle feed and "several" of which contained evidence of mammalian matter. But it was unknown whether the mammalian matter detected was prohibited mammalian protein because of the possible presence of exempt material (such as ruminant blood and blood meal) and the limitations of the tests in differentiating





between ruminant and nonruminant mammalian material. FDA objected to this recommendation, saying that until the agency and states develop a standard for sampling procedures, analytical techniques and enforcement strategies – which would require additional resources – such shared data would be “skewed and potentially misleading.” However, the agency said it was incorporating the collection of samples into its feed manufacturing/BSE state contracts, under which states will submit samples directly to FDA laboratories to support the agency’s efforts in surveying the industry.

- ▶ Develop a sample design for FDA’s inspectors to use for sampling finished feed and feed ingredients that will enable FDA to more accurately generalize about compliance with the BSE-prevention feed rule from the test results. FDA objected to this recommendation, stating that tests alone cannot be used as a basis to generalize compliance, since currently available tests are not definitive in detecting prohibited mammalian material.
- ▶ Seek legislation to enable FDA to require that the BSE caution statement be present on feed or feed ingredients intended for export. GAO noted that the “export exception” in the current federal Food, Drug and Cosmetic Act may limit FDA’s authority to require the presence of the BSE caution statement on feed or feed ingredients intended for export, but voiced concern that such products could be illegally diverted into domestic commerce. FDA responded that it would need to evaluate this recommendation further to determine whether it could be issued as guidance, and whether doing so would be consistent with the law’s export exception.
- ▶ Develop a system for routinely and promptly notifying

USDA and states if FDA or state inspectors detect instances when feed or feed ingredients containing prohibited mammalian material may have been fed to cattle or other ruminants. FDA agreed with this recommendation.

- ▶ Modify the BSE inspection form to include questions inspectors can use to document whether firms that process or handle cattle feed or feed ingredients have procedures to ensure the cleanliness of all vehicles used to transport ruminant feed and feed ingredients. GAO notes that FDA has not identified or inspected many of the transportation firms that haul cattle feed or feed ingredients. FDA said it would consider this recommendation.
- ▶ Ensure that inspection results are reported in a “complete and accurate context.” GAO alleged that FDA has misrepresented compliance data because not all potentially regulated firms have been inspected; have not been reinspected in the past five years; or may have begun utilizing prohibited mammalian material since their most recent inspection. GAO also alleged that FDA was not including all serious violations in its compliance-rate calculations once the firms had corrected the infractions. FDA strongly objected to GAO’s findings and characterizations.

Following issuance of the GAO report, the NGFA issued a statement to the media reiterating the association’s support of FDA’s science- and risk-based approach to developing and implementing its BSE-prevention regulatory policies and compliance and enforcement activities. The NGFA also defended the extraordinary level of industry compliance with the BSE-prevention feed rule. The NGFA statement also outlined NGFA’s positions on the report’s concerns that most directly relate to feed manufacturing and distribution. *[See the enclosed Issues and Actions for a report on the NGFA’s statement.]*

## FDA Issues Updated BSE-Prevention Feed Rule Compliance Data

The most recent inspection data issued by the Food and Drug Administration (FDA) on March 17 show that compliance with the agency’s 1997 regulations designed to prevent the establishment or spread of BSE stands at 99.7 percent among active firms that handle mammalian materials prohibited from being fed to cattle or other ruminants, based upon their most recent inspection.

Of the 3,804 active firms handling so-called prohibited mammalian material, which include renderers, feed manufacturers, protein blenders and other firms, 13 (0.3 percent) were classified as having a substantive violations that warranted an “official action indicated” (OAI) designation. Infractions classified as OAI include having insufficient clean-out procedures to prevent cross-contamination of prohibited mammalian material in ruminant feeds. Another 95 firms (2.5 percent) had relatively minor technical violations that were

classified as “voluntary action indicated” (VAI). These violations include minor recordkeeping lapses and conditions involving non-ruminant feeds.

For feed manufacturers, of the 2,187 total active firms handling prohibited mammalian material based upon their most recent inspection, five (0.2 percent) were classified as OAI. Another 39 firms (1.8 percent) were classified as VAI. The violation rate was slightly higher among licensed feed mills than non-licensed mills. For renderers, of the 169 active firms handling prohibited mammalian materials, one (0.6 percent) was classified as OAI while six (3.5 percent) were classified as VAI.

Members receiving the *NGFA Newsletter* electronically may access the FDA report by clicking here.



## FDA to Conduct Meeting on New Animal Feed Safety System in April

The Food and Drug Administration (FDA) will conduct a pivotal meeting on April 5-6 in Omaha, Neb., to discuss and seek feedback on its plans for developing a comprehensive, risk-based approach to animal feed and ingredient safety.

FDA's so-called "Animal Feed Safety System" (AFSS) initiative is the most fundamental rethinking of the agency's approach to feed regulation in the last 30 years. Members of NGFA's three principal feed-related committees – the Feed Legislative and Regulatory Affairs; Feed Manufacturing and Technology; and Animal Agriculture Committees – were involved extensively in a previous FDA public meeting conducted in September 2003 at which the initiative was launched, and will be again at the April confab. The NGFA also has submitted three major official statements to the agency concerning the development of the AFSS, the most recent of which was sent on March 11.

The April public meeting will be devoted to a discussion of a new FDA-developed draft framework document to guide the development of the AFSS. [*Members receiving their NGFA Newsletter electronically can access the FDA draft framework by [clicking here](#).*] The agency said it will be "particularly

interested in thoughts on the application of hazard analysis and critical control point (HACCP) – either mandatory or voluntary – to any or all segments of the industry; development of risk standards for contaminants; revising existing current good manufacturing practices (cGMPs) to make them more risk-based; development of GMP-type regulations and/or guidance for producers of feed ingredients and nonmedicated feeds; extending regulatory control to users of feed (on-farm); and the role of state and first-party inspections" as part of a new feed safety approach. The public meeting also will feature breakout groups to discuss the following topics: 1) safe feed ingredients; 2) limits for feed contaminants; 3) assessing risks that may be present in feed and developing a model for ranking the risks of various hazards; 4) process controls; 5) regulatory oversight; and 6) the benefits of an AFSS approach.

NGFA members interested in attending should contact NGFA Vice President for Communications and Government Relations Randy Gordon at rgordon@ngfa.org, or at 202-289-0873. The meeting is scheduled for 8:30 a.m. to 5 p.m. on April 5, and from 8 a.m. to 12:15 p.m. on April 6 at the Crowne Plaza Hotel, 655 N. 108<sup>th</sup> Ave., in Omaha.

## USDA Issues Reminder to Feed Dealers Participating in 2004 NDM Feed Assistance Program; Advises States of Intent to End Program

The U.S. Department of Agriculture's Farm Service Agency (USDA/FSA) has issued a reminder to feed dealers participating in the agency's 2004 non-fat dry milk (NDM) feed assistance program of their obligations to help ensure that feed containing NDM provided by the Commodity Credit Corporation is not directed to unapproved uses.

Under a restricted-use sales agreement (Form CCC-334) entered into with CCC, participating feed dealers are obligated to take "reasonable and practicable measures to ensure that the NDM is only used for foundation and feeder livestock feed." The agreement goes on to define "reasonable and practicable" as meaning "...obtaining written certification from the producer attesting that the producer is eligible and that the NDM will only be used for eligible livestock...."

In a March 7 letter to feed dealers participating in the program, USDA/FSA Deputy Administrator for Commodity Operations Bert Farrish said the agency's compliance examinations of participants in the 2004 NDM program had "uncovered misuse of NDM...." Under the NDM program for 2004, only foundation and feeder livestock feed for beef cattle, bison, goats and sheep in eligible states and counties qualify to receive the feed containing CCC-provided NDM. Such NDM-containing feed is prohibited from being used for dairy, poultry, swine or fish; the 2004 program defines "dairy" as cattle of any age or sex that are part of or owned by a dairy operation. In addition,

USDA said the NDM-containing feed cannot be used outside eligible states; CCC must be repaid for any misused NDM at a rate of 50-cents-per-pound; and participating feed dealers are required to permit inspection of inventory and related records by USDA examiners for up to six years to ensure compliance. The nine eligible states in 2004 were: Arizona, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah and Wyoming.

"USDA will take immediate action, including initiating compliance reviews, stopping NDM shipments to non-complying companies, and coordinating compliance efforts with USDA's Office of Inspector General to prevent the misuse of any NDM sold under the 2004 initiative," Farrish wrote. "Non-compliance with the provisions will not be tolerated."

Meanwhile, in a subsequent letter issued on March 15 to state departments of agriculture, USDA advised that given CCC's reduced inventory of surplus NDM and CCC's priority to make NDM available for humanitarian assistance and domestic and foreign food aid, it is "unlikely" to make any additional NDM available for livestock disaster assistance in the near future. USDA noted CCC's NDM inventory has declined from a high of approximately 1,300 million pounds as recently as October 2002 to less than 300 million pounds – all of which is committed to other uses – and said that it does not project substantial NDM purchases by CCC in the "foreseeable future."





## NGFA-Supported Hours-of-Service Ag Exemption Included in Highway Bill

In a major victory, the House on March 10 gave overwhelming approval to its version of a highway reauthorization bill (H.R. 3) that includes a NGFA-supported amendment to codify and expand the agricultural exemption from the U.S. Department of Transportation's (DOT) hours-of-service truck driving restrictions.

The agricultural hours-of-service exemption amendment was sponsored and spearheaded by Rep. Jerry Moran, R-Kan. Among other things, the amendment clarifies that states have the authority to determine appropriate periods of the year, such as during planting and harvesting seasons, that agricultural truck drivers can exceed DOT's hours-of-service limits. **For the first time, in a provision incorporated at the request of the NGFA, the exemption also applies to delivery of feed and feed ingredients,** as well as to livestock, milk and other farm products. The NGFA was active in mobilizing member support for the Moran amendment, which would expressly preclude DOT from rolling back or revoking the hours-of-service exemption as it has attempted to do in recent years. The Moran amendment passed on a 257-167 vote, and the highway bill subsequently was approved by a 417-9 margin.

The House version of the highway bill authorizes \$283.9 billion for a record 3,676 highway construction, public transportation and road safety projects through fiscal year 2009. The bill also includes provisions that would ensure that states that contribute to federal trust funds in the form of

gasoline taxes would receive a 90.5 percent rate of return on their tax contributions; but that rate may be increased during negotiations with the Senate on a final version of the bill.

**Senate Committee Approves Highway Bill:** Meanwhile, the Senate Environment and Public Works Committee on March 16 begrudgingly approved a highway reauthorization bill that funds highway construction projects over the next 10 years at the same \$284 billion level approved by the House, with the concurrence of the Bush administration. Senate Majority Leader Bill Frist, R-Tenn., previously warned Committee Chairman James Inhofe, R-Okla., that he would not allow a measure that authorized spending exceeding \$284 billion to be considered on the Senate floor. While the Senate has not scheduled floor action on the bill yet, it widely is expected that it will be considered during a two-week period beginning April 18, when there likely will be a major push to increase funding. The current extension to the highway construction authorization expires May 31.

Two other Senate committees have jurisdiction over the bill, including the Commerce, Science and Transportation Committee, which is responsible for highway safety programs. That committee is scheduled to consider its provisions shortly after Congress returns from its spring recess on April 4. That is when the NGFA and other supporters of the hours-of-service agricultural exemption will be working to include language similar to that passed by the House that would codify the exemption and expand the definition of agricultural commodities to include feed deliveries.

## Nominations to Inland Waterways Users Board Reopened; Due April 22

The U.S. Department of the Army has reopened nominations for individuals wishing to serve on the U.S. Army Corps of Engineers' Inland Waterways Users Board.

Nominations, which now are due by April 22, are for six appointments or reappointments to serve two-year terms scheduled to begin after June 14. The Corps previously sought nominations in a *Federal Register* notice issued on Jan. 14, and those candidates' nominations remain under consideration. Five of the six members whose terms are scheduled to expire are eligible for renomination. In addition, four of the vacancies are to be derived from barge carrier representatives, while one is to represent a shipper and one a carrier/shipper. The nominees or renomees are to represent the following geographic regions: 1) the Upper Mississippi River and its tributaries above the mouth of the Ohio River; 2) the Lower Mississippi River and its tributaries below the mouth of the Ohio River and above Baton Rouge, La.; 3) two members representing the Ohio River and its tributaries; 4) the Gulf Intracoastal Waterway in Louisiana and Texas; and 5) the Gulf Intracoastal Waterway east of New Orleans and

associated fuel-taxed waterways, including the Tennessee-Tombigbee Rivers and the Atlantic Intracoastal Waterway below Norfolk, Va. Those interested in serving should obtain more information by contacting NGFA Director of Technical Services Thomas C. O'Connor at toconnor@ngfa.org, or 202-289-0873, extension 13.



### 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 GEAPS)





## CFTC Proposes to Increase Speculative Position Limits

The Commodity Futures Trading Commission (CFTC) on March 15 proposed to increase federal speculative position limits for all single-month and all-months-combined positions for agricultural commodity futures contracts.

The speculative position limit increases, which are significant, would apply to all single-month and all-months-combined positions for Chicago Board of Trade (CBOT) futures contracts

for corn, soybeans, wheat, oats, soybean oil and soybean meal. Similarly, the increases would apply to Kansas City Board of Trade (KCBT) hard winter wheat futures contracts, as well as to the Minneapolis Grain Exchange's (MGE) hard red spring wheat futures contracts and the New York Board of Trade's cotton No. 2 contract. [See accompanying chart.] All spot-month limits would remain unchanged.

### CFTC-Proposed Speculative Position Limits

[By contract]

Contract	Spot month	Single month		All months	
	No change	Current	Proposed	Current	Proposed
<b>Chicago Board of Trade</b>					
Corn & Mini-Corn .....	600	5,500	13,500	9,000	22,000
Oats .....	600	1,000	1,400	1,500	2,000
Soybeans & Mini-Soybeans .....	600	3,500	6,500	5,500	10,000
Wheat & Mini-Wheat .....	600	3,000	5,000	4,000	6,500
Soybean Oil .....	540	3,000	5,000	4,000	6,500
Soybean Meal .....	720	3,000	5,000	4,000	6,500
<b>Minneapolis Grain Exchange</b>					
Hard Red Spring Wheat .....	600	3,000	5,000	4,000	6,500
<b>New York Board of Trade</b>					
Cotton No. 2 .....	300	2,500	3,500	3,500	5,000
<b>Kansas City Board of Trade</b>					
Hard Winter Wheat .....	600	3,000	5,000	4,000	6,500

The CFTC said it was proposing the significant increases in lieu of the exchanges' proposals last year seeking a repeal of CFTC's setting of federal speculative position limits. In essence, the CFTC proposal adopts an alternative proposed by the CBOT of basing the federal speculative position limits on the maximum levels that would be permitted if the agency were to apply the open-interest formula found in its regulation 150.5 to set all-months combined totals, and to adjust the single-month limits to reflect the existing ratio of single-month to all-months-combined levels. The CFTC said that a "strict application" of the open-interest formula would have resulted in somewhat lower speculative position limits than those being proposed. But the agency said it believed there "is merit in the argument that maintaining the existing ratios between single-

month and all-months-combined speculative limit levels is of benefit to the marketplace...."

In addition, the CFTC proposed to maintain parity for KCBT and MGE wheat contracts with the levels proposed for CBOT wheat futures contracts, rather than to establish different limits based upon open-interest formula for each contract.

**Submitting Comments:** Comments on the CFTC proposal are due by April 14, and should be submitted to: Jean A. Webb, secretary, CFTC, Three Lafayette Centre, 1155 21<sup>st</sup> St., N.W., Washington, D.C., 20581. Comments also may be faxed to 202-418-5521, or e-mailed to secretary@cftc.gov. Comments should reference the phrase "proposed revision to federal speculative position limits."

## USDA Announces Sign-Up for Conservation Security Program

The U.S. Department of Agriculture announced on March 17 that nationwide sign-up for the Conservation Security Program will be conducted from March 28 to May 27.

Approximately 235,000 producers in 220 watersheds representing more than 185 million acres will be eligible for enrolling in the 2005 program, which provides payments for implementing various levels of conservation practices on working farmland. The 2005 Conservation Security Program enrollment encompasses the 202 watersheds announced by

USDA on Nov. 2, 2004, as well as the 18 pioneer

watersheds from the fiscal 2005 sign-up. USDA noted that the \$202 million provided by Congress for the program in fiscal year 2005 will allow the enrollment of an estimated 12,000 to 14,000 contracts. The program also includes a renewable-energy component, with eligible producers receiving compensation for converting to renewable energy fuels, such as soy biodiesel and ethanol; for recycling 100 percent of on-farm petroleum-based lubricants; and for implementing solar, wind, geothermal and methane production. Producers with a current CSP contract are ineligible for the 2005 enrollment.



## EPA Proposes Revisions to TRI Reporting for Dioxin

The Environmental Protection Agency (EPA) on March 7 proposed revisions to the reporting requirements under the Toxic Release Inventory (TRI) for the dioxin and dioxin-like compounds (dioxin) category.

Specifically, EPA proposed three potential options to revising the dioxin reporting obligations for TRIs. One option would require the additional reporting of so-called "toxic equivalents" (TEQs) only. TEQs are weighted quantity measures based upon the toxicity of each member of the dioxin family of compounds to the most potent member.

Options two and three would require reporting of the mass quantity of each individual dioxin compound, and differ from current requirements primarily in whether EPA or

the facility would perform the TEQ computation. EPA said that the new information would be in addition to the total grams data currently reported for the entire dioxin category and would replace the current reporting of a single distribution of the members of the dioxin category. The agency said it prefers options two or three, and is seeking comment by May 6.

NGFA members whose operations are required to submit TRI reports (feed mills and processing plants), are encouraged to contact NGFA Director of Technical Services Tom O'Connor at [toconnor@ngfa.org](mailto:toconnor@ngfa.org) or at 202-289-0873 for a copy of EPA's *Federal Register* notice and to provide any input on the impact of EPA's proposed options on your company's TRI reporting burden.

## North American Group Reviews Karnal Bunt, Soybean Rust

During a March 10 meeting in Raleigh, N.C., attended by the NGFA, the North American Plant Protection Organization's (NAPPO) Grains Panel reviewed a U.S.-developed assessment of the risk of introduction of Karnal bunt and discussed a harmonized approach to managing soybean rust.

NAPPO is the regional plant protection organization of the International Plant Protection Convention that coordinates the efforts of Canada, the United States and Mexico to protect their plant resources from the entry, establishment and spread of regulated plant pests, while facilitating intra- and inter-regional trade. The Grains Panel is one of several commodity-specific panels that review and make recommendations to the NAPPO Executive Committee on phytosanitary matters related to imports and exports from NAPPO-member countries.

**Karnal Bunt:** The panel discussed a draft pest-risk analysis prepared by USDA's Animal and Plant Health Inspection Service (APHIS) that analyzed the risk to importers of infection with Karnal bunt if the United States deregulated the disease. Importantly, the analysis found that the risk of infection in such a deregulated environment from spillage during transit to milling or byproducts (e.g., millfeed) fed to animals is insignificant. Flour already has been determined to be an unsuitable pathway for Karnal bunt infection, U.S. officials noted.

APHIS and Foreign Agricultural Service representatives plan to meet with plant health officials from Bolivia, Columbia, Ecuador and Peru on April 10-16, during which the results of the analysis will be presented as part of the overall U.S. strategy to achieve international acceptance that Karnal bunt is a quality, but not a quarantine pest, issue.

**Soybean Rust:** Originally, the NAPPO Grains Panel was charged with developing a standard to prevent the introduction of soybean rust in NAPPO countries. But with the discovery of the disease in the United States, the panel has redirected its efforts toward developing a harmonized approach to managing the disease.

Canada reported that it has completed its pest-risk analysis on soybean rust and determined not to regulate soybean imports for the disease. Mexican government officials said that country has not completed its analysis yet, and therefore continues to regulate soybean imports for the disease. In this regard, the United States offered to assist Mexico in completing its analysis, including surveying the Yucatan Peninsula for rust.

Mexico's current import regulations on soybean rust consist of the following: 1) For soybean imports from Brazil, Argentina and Paraguay, a phytosanitary certificate must accompany the shipment; a private recognized company must attest that foreign material content is 1 percent or less; visual inspection must be conducted at point of entry; and the shipment must be treated with phosphine or methyl bromide at import, followed by laboratory analysis for viable spores; 2) For U.S. soybeans imports, a phytosanitary certificate must accompany the shipment; origin official certification must show that that foreign material is 2 percent or less; the shipment must be fumigated at point of entry or origin; and a letter of commitment must be provided by the importer that the soybeans are for processing and all residue will be destroyed. When asked by U.S. representatives for data on the efficacy of methyl bromide and phosphine treatments in killing soybean rust spores, Mexican officials said they could not provide any hard quantitative data supporting such use, but maintained that the matter is being investigated.



# Membership Matters

by Todd Kemp  
Director of Marketing

## Major Membership Prizes to be Awarded in San Diego

A number of fabulous membership prizes will be awarded on April 1 to leading membership recruiters at the NGFA's 109<sup>th</sup> annual convention in San Diego, Calif.

▶ **Nootbaar Prize:** A random drawing for the annual Nootbaar Prize, endowed through a generous contribution from NGFA Past President Herb Nootbaar, will award a lucky winner \$1,000 in cash! All membership sponsors over the past year are eligible!

In addition, the three leading recruiters in the NGFA's Individual Competition and the leading recruiter in the Affiliate Competition will vie for the following:

▶ **Windy City Weekend:** Consisting of: 1) airfare for two to Chicago, sponsored by R.J. O'Brien, Chicago, Ill. and Demeter LP, Fowler, Ind.; 2) two nights' lodging at the GATX corporate apartment (Talbot Hotel), provided courtesy of GATX Rail, Chicago, Ill.; and 3) two tickets for a Chicago Cubs' baseball game, courtesy of ABN AMRO Inc., Chicago, Ill.

▶ **Golden Gate Get-Away:** Consisting of: 1) airfare for two to San Francisco, sponsored by J.W. Nutt Co., North Little Rock, Ark.; 2) two nights' lodging, courtesy of the Westin St. Francis, San Francisco; and 3) a Napa Valley wine train excursion, sponsored by Monsanto Co., St. Louis, Mo.

▶ **Low Country Luxury:** Consisting of: 1) airfare for two to Charleston, S.C., sponsored by Feed Management Systems, Brooklyn Center, Minn.; 2) two nights' lodging, courtesy of the Charleston Place Hotel; and 3) dinner at the "High Cotton" Restaurant, sponsored by QuickFarm, Charleston, S.C.

▶ **Southwestern Sojourn:** Consisting of: 1) airfare for two to Phoenix, Ariz., sponsored by Arizona Grain Inc., Casa Grande, Ariz.; and 2) two nights' lodging and golf, courtesy of Wild Horse Pass Resort, Phoenix, Ariz.

**Thanks to all membership prize sponsors!** It's not too late to qualify – make sure your prospect Faxes in his/her membership application now!



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