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U.S. Government to Announce Presumptive Positive Avian Influenza Cases Before Confirmatory Test Results Known

The federal government plans to announce presumptive positive cases of the H5N1 avian influenza virus before final test results are known that indicate whether the virus is the high-pathogenic strain that has been detected in Asia, Africa, Europe and other regions, and has been linked to 98 human deaths worldwide thus far.

Interior Secretary Gale Norton made the announcement during a March 20 press conference in which she and two other Cabinet officers – Secretary of Agriculture Mike Johanns and Secretary of Health and Human Services Michael Leavitt – unveiled a federal interagency strategic plan to significantly increase the surveillance and testing of migratory birds for high pathogenic H5N1. The federal agencies said there likely will be a five- to 10-day lag time between the diagnosis of a presumptive positive case of H5N1 and laboratory test results confirming whether the virus is the low- or high-pathogen version. Confirmatory testing will be performed at the National Veterinary Services Laboratories in Ames, Iowa.

The practice of announcing presumptive positives based on initial screening tests is similar to the procedure employed by

the U.S. Department of Agriculture for bovine spongiform encephalopathy (BSE), in which “inconclusive” test results based on an extremely sensitive quick test are announced before confirmatory laboratory test results are known. But the potential number of presumptive positive H5N1 test results likely will be much greater.

“We anticipate that presumptive H5N1 results may be announced **20 to 100 times this year**,” Interior Secretary Gale Norton said. *[Emphasis added.]* “Those initial tests (will) not tell us whether it is highly pathogenic or whether it is of the low pathogen variety.... We must avoid handling preliminary information in a way that would cause undue concern, while striving for timely, transparent results getting into the hands of responsible people, officials and the public.... Each government agency can initiate its appropriate response based on the circumstances in the particular situations. In many cases, this response may simply be further monitoring....” In response to a followup question from reporters, Norton said, “Our current plan is to release that information at the point we do get presumptive positive results that indicate H5N1. At that point, we (have) to make some careful decisions about the right point
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FDA Clarifies ‘Farm Exemption’ from Bioterrorism Recordkeeping Rules

The Food and Drug Administration (FDA) has requested the NGFA’s assistance in clarifying the exemption for farms that exists under the bioterrorism recordkeeping regulations, which take effect for most commercial firms starting June 9.

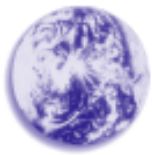
Members may wish to share with their farmer-customers a copy of this article, which is extracted from a comprehensive *NGFA Bioterrorism Recordkeeping Guidance* document to be published in April.

FDA’s bioterrorism recordkeeping regulations require that those who “manufacture, process, pack, transport, distribute, receive, hold (*i.e., store*) or import food into the United States establish and maintain records sufficient to identify the immediate previous source(s) and immediate subsequent recipient(s) of such food. Put simply, it is a one-step-back and one-step-forward product-tracing requirement. Those covered by the regulations are required to maintain records containing information that is “reasonably available,” including information that links inbound deliveries with outbound shipments.

FDA defines farms that are exempt from the recordkeeping requirements as “a facility in one general physical location devoted to the growing and harvesting of crops, the raising of animals (including seafood) or both.” The farm definition covers facilities that pack or store food, provided all food used in such activities is grown, raised or consumed on that farm or another farm under the same ownership, including integrated livestock and poultry operations. The farm exemption also includes facilities that manufacture and process food, again so long as the food that is being manufactured or processed is consumed on that farm or another farm under the same ownership.

So, what is the practical meaning of this farm exclusion?

According to FDA, the exemption for farms covers the activities of grain and oilseed producers who harvest and deliver raw commodities to a grain elevator, feed mill or processor. The preamble to the final rule expressly states that
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USTR Requests Consultation with Canada on Corn Import Duties

The U.S. Trade Representative's Office (USTR) on March 17 requested consultations with the Canadian government concerning its provisional antidumping and countervailing duties on U.S. grain corn.

The action triggered an automatic 60-day consultation period during which the U.S. and Canadian governments will seek to reach a settlement over Canada's claim that unprocessed grain corn originating from the United States and exported to Canada is being unfairly subsidized and dumped on the Canadian market.

Canada imposed provisional countervailing and antidumping duties totaling \$1.65 per bushel on Dec. 15, 2005. *[Note: The duty does not apply to seed corn (used for planting), sweet corn or popcorn.]* However, World Trade Organization (WTO) rules prohibit provisional antidumping and countervailing duties from being imposed unless there is a preliminary finding that the imports have injured domestic producers.

The USTR asserted that the Canadian International Trade Tribunal apparently failed to consider adequately several factors required by WTO rules, such as the Agreement on Subsidies and Countervailing Measures, and the General

Agreement on Tariffs and Trade of 1994 – the predecessor to the WTO – and the accord's antidumping agreement. USTR also alleged that the Canadian tribunal failed to consider that other relevant factors – such as exchange rate movements and comparatively large world corn harvests – were responsible for economic damage sustained by Canadian corn producers. USTR further noted that a GATT dispute panel in 1992 found that prior Canadian countervailing duties on U.S. corn similar to those imposed last December were inconsistent with trading rules under the GATT. As evidence of lack of economic harm, USTR also noted that U.S. grain corn exports to Canada had declined by 42 percent during the last two years.

The Canadian International Trade Tribunal conducted a hearing from March 20-25 in Ottawa on whether U.S. corn grain imports had caused economic injury to Canadian producers or industries. The tribunal is scheduled to announce its final decision on April 18. If it determines no economic injury, the provisional duties would be lifted and importers would receive full refunds. But if it determines that injury has occurred, the Canada Border Services Agency has said that final combined duties of 44 percent would be imposed.

Flexibility Provided in Biotech Labeling Accord under Biosafety Protocol

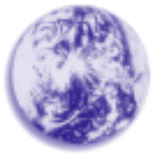
During meetings in Brazil this month, countries that are parties to the so-called Biosafety Protocol reached initial agreement on implementing a key provision concerning the labeling of transboundary movements of biotechnology-enhanced commodities.

The significance of this issue to the grain industry is huge, as the level of specificity in identifying the presence of what the protocol terms "living modified organisms" (i.e., biotechnology-enhanced commodities) on labels (invoices) accompanying commodity shipments could trigger costly testing requirements and liability concerns that could potentially reach the country elevator and farm level.

The Biosafety Protocol is an international environmental treaty signed in January 2000 that is designed to protect against potential adverse effects of "living modified organisms" on the environment or biological diversity of plant species. The phrase "living modified organisms" is used in the protocol to describe biotech-enhanced commodities that are viable seeds capable of, and intended for, propagation in the environment. While the United States is not a signatory to the Biosafety Protocol, U.S. grain exporters potentially are affected by the protocol's recommendation that those countries that are signatories – 132 at last count, including Mexico and Canada – implement controls on transboundary movements to

protect biodiversity and the environment from the unauthorized planting of biotech-enhanced commodities. The mid-March meeting in Brazil was the third such gathering among signatory countries attempting to arrive at consensus approach for transboundary requirements.

According to a report shared with the NGFA by the North American Export Grain Association (NAEGA), the parties agreed to "request" – since the treaty does not impose mandates on signatory countries – that countries that are signatories to the protocol, when trading with one another, include documentation accompanying transboundary shipments of agricultural commodities that: 1) includes a statement that the transboundary movement "contains" living modified organisms (LMOs) if it involves identity-preserved shipments where the identity of the specific biotech-enhanced trait is known; or 2) includes a statement that the shipment "may contain" LMOs if it involves undifferentiated bulk commodities, in which case the shipper would be requested to provide a listing of all approved biotech-enhanced events that are in commercial production in the exporting country that potentially could be found in the shipment. The statement also would include language that such LMOs are not intended for introduction into the environment. Importantly, for countries like the United States that are not signatories to the protocol, the decision of the parties notes that while move-



ment of LMOs between non-parties and parties needs to be consistent with the protocol's objectives, the specific requirements for countries that are parties do not apply to transboundary shipments between parties and non-parties.

The "may contain" language, as well as the provision for non-party countries (both of which were favored by the International Grain Trade Coalition, of which the NGFA and NAEGA are members) were included in the final agreement through the almost single-handed efforts of the government of Mexico. However, the signatory countries to the protocol also agreed to "review and assess" experience gained with the documentation and labeling requirements at its next meeting in 2007, and to consider eliminating the "may contain" language.

Signatory countries also agreed to allow such documentation to be placed on commercial invoices or other documents accompanying the shipment. In addition, the signatory countries to the protocol agreed that adventitious presence of LMOs of a different commodity (such as adventitious presence

of soybeans in a wheat shipment) will not trigger the documentation requirements for either parties or non-parties to the protocol. As noted previously, the signatory countries also agreed not to apply specific LMO documentation requirements to transboundary movements of biotech-enhanced commodities between parties and non-parties to the protocol.

The International Grain Trade Coalition long has contended that biotech-enhanced commodities or processed products derived therefrom that are intended for use in food, feed or for further processing – and either are not capable of propagation as seed or are not intended for introduction into the environment – should not be subject to the same restrictions under the protocol as LMO seeds that are intended for planting. The current decisions by countries that are signatories to the protocol, while yet to be implemented, appear to be much less trade-restrictive than many of the proposals advocated during the recent meeting in Brazil.

U.S. Ag Benefits from EU Enlargement Compensation Agreement

The United States and the European Union on March 22 signed a bilateral trade agreement that reduces several agricultural and industrial tariffs – particularly for corn gluten meal and pork – to offset tariff increases that the EU implemented as a result of its enlargement from 15 to 25 countries.

The agreement also gives the United States access to expanded tariff-rate quotas (TRQs) for a wide range of agricultural products. The EU concessions take effect when published in the EU's Official Journal – its version of the *Federal Register* – but in no case later than July 1.

Under the final agreement, the EU is to open new, country-specific tariff-rate quotas for U.S. exports of boneless ham, poultry and corn gluten meal. It also is to expand existing global tariff-rate quotas for fructose, pork, rice, barley, wheat, corn, pet food, beef, poultry, live bovine animals and sheep, preserved fruits, fruit juices, food preparations, pasta, chocolate, and various cheeses and vegetables. Further, the EU is to permanently reduce tariffs on protein concentrates, fish (hake, Alaska Pollack and surimi), and certain chemical and industrial products. Finally, the agreement obligates the EU to extend to the United States any most-favored nation concessions that third countries like China, Japan, Brazil, Canada and Australia are able to negotiate with the EU.

For corn gluten meal, the EU is to open a new quota available only to the United States for 10,000 tons per year. Prior to the agreement, the EU maintained a prohibitive tariff of 340 Euro per ton on corn gluten meal. Tariffs within the new quota will drop to 16 percent. The agreement also includes provisions to account for volumes of crystalline fructose that had been sold into the 10 new member states of the EU without

restriction prior to enlargement. The global quota for crystalline fructose is to increase to avoid any overall trade loss. In addition, 6,215 tons would be added to the TRQ for barley, 6,787 tons for common wheat and 242,074 tons for maize.

Benefits to the meat sector include an additional 4,003 tons to the EU tariff rate quota for frozen, boneless meat of bovine animals and frozen edible offal of bovine animals. The TRQ for "live bovine animals weighing 300 kg. or less intended for fattening" would be adjusted to 24,070 head at an in-quota rate of 16 percent. On poultry, the United States is allocated a TRQ of 16,665 tons and the EU TRQ for "chicken cuts, fresh, chilled or frozen" would increase by 4,070 tons. The TRQ for frozen turkey cuts would increase by 2,485 tons and the agreement would give the United States a country allocated TRQ for "frozen boneless hams and loins" of 4,722. The agreement also opens a TRQ of 2,058 tons for U.S. exports of dog and cat food.

The concessions were made as part of the EU's obligations under the General Agreement on Tariffs and Trade – the predecessor to the World Trade Organization – following the May 1, 2004 enlargement. When enlargement took effect, the EU's 10 new member states were required to change their tariff schedules to conform to the EU's common external tariff schedule, resulting in increased tariffs on certain imported products. The EU-U.S. negotiations were designed to offset several of those tariff increases through tariff reductions and reduced tariff-rate quotas. The EU's enlargement encompassed the following 10 new member states: Estonia, Latvia, Lithuania, Poland, Slovakia, the Czech Republic, Slovenia, Hungary, Cyprus and Malta.



Railroads Likely to Request Infrastructure Tax Incentives

Sen. Trent Lott, R-Miss., soon is scheduled to introduce legislation being advocated by the Class I rail carriers that would provide Class I carriers and shippers with a 25 percent tax credit for investments designed to expand rail capacity.

The 25 percent investment tax credit would apply to new qualifying freight rail infrastructure property where that property does not currently exist and for additional locomotive property. To be eligible, new locomotives would be required to add to the overall horsepower capacity of the carrier's fleet. Examples of new freight rail infrastructure that would qualify for the 25 percent tax credit are adding new track to existing rights of way, such as a second main line; adding new or extending sidings on existing rights of way; building new intermodal or transload facilities; and installing new, technology-based expansion, such as signaling dark territory. Excluded under the rail carrier proposal would be rail cars and projects involving existing infrastructure, such as fixing existing track.

In addition to the tax credit, the measure also would allow for the **100 percent expensing of capital freight rail infra-**

structure expenditures in the first year. Current law allows for a seven-year depreciation period. Qualifying property reportedly includes, among other things, railroad grading, tunnels, track, bridges, terminals, roadway buildings, fuel stations, signals, communication systems, and intermodal transfer or transload facilities. This provision would not extend to additional locomotive power.

The tax credit would be creditable against the corporate alternative minimum tax (AMT), and amounts expensed would not be within the scope of the AMT.

The Association of American Railroads has projected that Class I railroads will spend a combined total of more than \$8 billion on infrastructure in 2006, a 21 percent increase from 2005's record level.

Meanwhile, short line and regional railroads are advocating extension of existing law scheduled to expire in 2007 that provides tax credits for track improvements. The tax credit, which was enacted in 2005, amounts to 50-cents for each dollar of investment on track improvement, up to a maximum of \$3,500 per mile.



Tech Talk

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APHIS Amends Karnal Bunt Regulations

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) on March 14 issued final regulations amending its requirements for deregulating fields or areas that have been infected with Karnal bunt.

Under the final regulation, which takes effect April 13, fields previously infected with Karnal bunt, as well as surrounding non-infected fields, are eligible for deregulation if at least once per year for a total of five years – rather than the current requirement of five consecutive years – it has been tilled and either planted with a crop or left fallow. If planted with a host crop, the field is required to test negative for Karnal bunt through the absence of bunted kernels. The agency had said there was no scientific justification for a five consecutive-year requirement, since there would be no increase in the Karnal bunt spore load if a field was left untilled and fallow, or planted using no-till techniques during a given year.

The final regulation also amends APHIS' previous rules by clarifying that a field that is permanently

removed from crop production no longer is considered to be subject to regulation for Karnal bunt. The agency said its previous regulations could have been misinterpreted to mean that fields would be deregulated if they temporarily were removed from production. In its final regulation, APHIS rejected a comment that argued that regulated fields in California be deregulated since the landowners had sold water rights for the land to the city of Los Angeles for more than 10 years. APHIS rejected the comment, stating that unless the fields were tilled at least once annually for a total of five years, there "may be only a minimal reduction in the spore load of the soil. "...[S]o, once the fields were put back into production, even after 10 years, it is possible that Karnal bunt could once again be present in a host crop grown on that land," APHIS said.

Karnal bunt is a fungal disease of wheat and triticale that reduces yields and can reduce flour quality if present in sufficient quantities. But it does not pose a danger to human or animal health.





"Avian Influenza" continued from page 1

to release information. That allows people to begin preparation because at that point, we would not know whether it is high path(ogen) or low path(ogen). We want to make it clear to people that just by saying that does not indicate that we have the strain that is causing so much concern in Asia at this time."

Based upon their areas of jurisdiction, the Department of the Interior would make the announcement of test results involving migratory birds, while USDA would do so in cases involving domestic poultry flocks and the Department of Health and Human Services would make announcements involving any human illnesses resulting from high pathogenic H5N1. In some cases, states or veterinarians may make the announcement if it involves migratory birds or domestic flocks, the officials said. A low-pathogenic form of the H5N1 virus already has been detected in migratory birds in Canada within the last 12 to 18 months, USDA officials said.

During the joint press conference, which was monitored by the NGFA, the three Cabinet officers said priority will be placed on monitoring and testing bird migration flyways through Alaska and elsewhere in the Pacific Flyway and Pacific Islands because scientists believe that is the main route through which the high pathogenic H5N1 virus affecting Southeast Asia would enter North America. Next priority will be placed on migratory birds in the Central, Mississippi and Atlantic flyways, they said. In 2006, USDA and other federal and state cooperating agencies plan to collect 75,000 to 100,000 samples from live and dead wild birds nationwide. The agencies also plan to collect 50,000 samples of water or feces this year from what they characterized as "high-risk" waterfowl habitats across the United States.

Since 1998, Johanns said USDA had tested more than 12,000 migratory birds in the Alaska flyway. Since 2000, another nearly 4,000 migratory birds have been tested in the Atlantic flyway. All tested negative for the H5N1 high pathogen virus. In addition, since 2005, Norton said the Department of Interior has been working with Alaska to sample migratory birds in the Pacific flyway, conducting more than 1,700 tests on samples collected from more than 1,100 migratory birds. Of those tests, 22 avian influenza isolates had been identified but none were highly pathogenic.

The enhanced surveillance strategic plan's five components include: 1) investigation of disease-outbreak events in wild birds; 2) expanded monitoring of live wild birds based upon state-specific sampling plans, which

would include which bird species and populations should be targeted, survey methods to be utilized and geographic areas to be surveyed; 3) targeted sampling of hunter-killed birds at checkpoints operated by the U.S. Fish and Wildlife Service and state natural resource agencies; 4) use of sentinel animals, such as backyard poultry flocks, to monitor for the disease; and 5) environmental sampling of water and bird feces from waterfowl habitat.

"We are closely monitoring the rapid spread of the H5N1 virus overseas, and we now believe it is likely that we will detect it within our borders in the United States," Johanns said. In a stark, post-Hurricane Katrina admission, Secretary Leavitt called local preparedness "the foundation of pandemic readiness," adding that, "any community that fails to prepare – with the expectation that the federal government can offer a lifeline – will be tragically wrong." He said that his department is conducting a series of pandemic planning summits in all 50 states, half of which have been completed and the remainder of which will be done in the next two months. In addition, he said HHS is providing checklists to local and state governments, businesses, schools, community and faith-based organizations, and others.

The H5N1 highly pathogenic strain of avian influenza has never been detected in the United States. Other highly pathogenic strains have been detected in U.S. domestic poultry in 1924, 1983 and 2004, but no human illnesses were reported as a result of those outbreaks. The 2004 outbreak, which involved the H5N2 virus, was confined to one flock and was eradicated.

Members receiving the *NGFA Newsletter* electronically may access a new federal interagency website on pandemic flu by [clicking here](#).

FDA Bans Use of Two Antiviral Drugs in Poultry: In a related development, the Food and Drug Administration (FDA) on March 22 issued a final rule banning, effective June 20, the extralabel use in poultry of two classes of approved human antiviral drugs in treating human flu. The final rule prohibits the extralabel use by veterinarians of the anti-influenza drugs adamantane (amantadine and rimantadine) and neuraminidase inhibitor (oseltamivir and zanamivir) in chickens, turkeys and ducks. While neither drug currently is used to treat influenza A in U.S. poultry, FDA said it was taking preemptive action to ban the drugs because of concerns that their use in poultry could lead to the emergence in humans of resistant strains of type A influenza, including the H5N1 high pathogenic virus that thus far has been linked to 98 human deaths worldwide, mostly in Southeast Asia.





USDA to Continue Enhanced Surveillance for BSE 'Until Further Notice'

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has decided to continue "until further notice" its enhanced surveillance and testing program for bovine spongiform encephalopathy (BSE) in the United States.

APHIS officials made the revelation during a March 20 briefing on the Bush administration's fiscal year 2007 budget proposal with the NGFA and other members of the Animal Agriculture Coalition. Secretary of Agriculture Mike Johanns later confirmed the decision, saying it was an interim measure to assist in the reopening of beef trade with Japan and other countries. USDA also had received vociferous criticism from several members of Congress for announcing it would proceed with previously announced plans to reduce BSE surveillance of cattle to a maintenance level recognized as adequate by the World Animal Health Organization (OIE) after the detection of the third confirmed U.S. case of the brain-wasting disease on March 13. USDA's budget pro-

posal for fiscal 2007, which covers the period of Oct. 1, 2006 through Sept. 30, 2007, had envisioned spending about \$17 million to test 40,000 cattle for BSE.

USDA launched its enhanced surveillance and testing program for BSE on June 1, 2004 with the intent of examining as many "high-risk" cattle as possible, including nonambulatory (downer) and dead animals. As of March 12, 652,697 such cattle had been tested for BSE, with two confirmed cases detected; the December 2003 confirmed BSE case involving a Canadian-born cow in Washington state was diagnosed prior to the enhanced surveillance. In addition, another 21,216 clinically normal cattle over 30 months of age were tested, all of which were found to be negative for the brain-wasting disease. Currently, APHIS tests approximately 7,000 to 9,000 cattle a week for BSE under its enhanced surveillance program, at a cost of roughly \$1 million per week. APHIS is utilizing unappropriated, off-budget funding from USDA's Commodity Credit Corporation to finance the enhanced surveillance testing.

USDA Continues Investigation into BSE Case Involving Alabama Cow

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) today said that its epidemiological investigation is continuing into the case of an "at least" 10-year-old Alabama cow that was diagnosed with bovine spongiform encephalopathy (BSE) on March 13.

As of March 30, APHIS said 14 locations and 44 movements of cattle have been examined, with investigations of 39 of those movements being substantially completed. Additional investigations are continuing of locations and herds where the BSE-infected cow or her offspring may have lived. The movements include any arrivals or departures of the cow or her herdmates from those locations.

On March 23, APHIS had reported that an approximately year-and-a-half-old black bull calf that was a second offspring of the BSE-infected cow had died at an Alabama stockyard and was buried in a landfill. APHIS said remains of the calf could not be identified, and declined to disclose the landfill's location. The calf had been born in 2005 and was taken to a local stockyard in Alabama in July 2005, where it died. The agency previously had located another calf that was an offspring of the BSE-positive cow. The calf was approximately six-weeks old when the agency took possession of the animal and relocated it to the National Veterinary Diagnostics Laboratories in Ames, Iowa, for observation.

APHIS still has not definitively announced the origin and breed of the BSE-infected cow, which became the United States' third case of BSE. The agency initially reported that the BSE-infected cow was a Santa Gertrudis breed, but

later amended that statement to say that it may have been a red crossbred, possibly crossed with a Santa Gertrudis or similar breed.

The Food and Drug Administration is working with APHIS and state authorities to investigate the origin of the animal feed that may have been consumed by the cow. But FDA officials told the NGFA today there was nothing to report yet on the results of the feed investigation.

Technical Discussions to Reopen Japan to U.S. Beef Make Limited Progress: There were reports today that a U.S. Department of Agriculture technical team made some limited progress in discussions on March 28-29 with Japanese officials in responding to questions on steps taken by USDA to prevent a recurrence of the U.S. veal shipment containing banned bone material and offal that caused Japan to reinstitute its ban on U.S. beef imports. In particular, officials said, the U.S. delegation was able to explain to Japan's satisfaction why banned cattle backbone found its way into the Japanese-bound shipment. The U.S. delegation also conceded that improvements could be implemented, including more detailed meat-processing procedures that include additional training of meat processing personnel. But a high-ranking Japanese government official was quoted as saying that Japan still is not convinced that U.S. beef exports generally are safe. USDA Acting Undersecretary of Marketing and Regulatory Programs Charles Lambert, who led the USDA delegation, also told Congress today that additional visits to U.S. meat processing plants by Japanese technical teams would be required before beef trade is restored.





House Subcommittee Considers Maritime Security Legislation

A congressional subcommittee today (March 30) approved legislation that would direct the Department of Homeland Security (DHS) to develop and implement a strategic plan to enhance maritime transportation security.

The legislation (H.R. 4954) was approved by the House Homeland Security Committee's Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity. The legislation, introduced by subcommittee chairman Rep. Dan Lungren, R-Calif., and Rep. Jane Harman, D-Calif., focuses primarily on cargo/container security.

But it also could affect port operations and potentially the efficiency of the bulk grain-handling industry. Among other things, it would: 1) require states to submit names and biographical information on current and future employees that have access to secured areas of seaports as a check against terrorist watch lists; 2) establish within DHS a director of cargo security policy to coordinate the agency's cargo security policies and programs with other federal agencies; and 3) authorize a port security grant program to allocate federal funds to U.S. ports for security enhancements based upon risk- and needs-assessments. Funds from the bill's grants program could be used for such things as implementing Area Maritime Transportation Security Plans, remedying port security vulnerabilities, hiring additional security personnel for state and local agencies, compensating for the purchase and maintenance of security-related equipment, and training for port security personnel.

Next step for the bill is consideration by the full committee during the week of April 3. It likely will be considered on the House floor before the end of April.

A similar bill (S. 2008) has been introduced in the Senate, and is sponsored by Sens. Patty Murray, D-Wash., and Susan Collins, R-Maine. The Homeland Security and Government Affairs Committee, chaired by Collins, tenta-

tively is scheduled to conduct a hearing on the bill during the week of April 3.

Both measures have been endorsed by the American Association of Port Authorities and would authorize about \$800 million annually for maritime security through 2012.

Another transportation security bill (S. 1052) introduced by Senate Commerce, Science and Transportation Committee Chairman Ted Stevens, R-Alaska, would require DHS to develop standards and procedures for inspecting and screening cargo in foreign ports that is intended for shipment to the United States. The bill also would direct DHS to establish joint operational centers for security at all Tier I U.S. ports, as well as require the Maritime Administration to identify foreign assistance programs that could facilitate implementation of antiterrorism security measures at foreign ports.

Yet another bill (H.R. 4881) introduced in the House by Rep. Duncan Hunter (R-Calif.) and 29 cosponsors would prohibit any cargo transported by truck or vessel from Canada or Mexico from entering the United States unless it has been inspected to ensure compliance with all U.S. laws. The Hunter bill, a direct reaction to the Bush administration's initial decision to allow DP World to manage operations at several U.S. ports, also would prohibit a corporation from owning or being authorized to manage or operate any system or asset considered to be a national defense critical infrastructure unless it met certain criteria. Those criteria include requirements that the company: 1) be organized under the laws of the United States; 2) have a majority of its board of directors consist of U.S. citizens; 3) have its board chairman and chief executive officer be U.S. citizens; 4) have more than 50 percent of its board members approved by the secretary of defense (after consultation with the secretary of homeland security); and 5) have a majority of shares owned by U.S. citizens.

Immigration Reform Elicits Strong Reactions on Capitol Hill

The most bruising debate in Congress this year currently is taking place over immigration reform issues.

Hanging in the balance is the status of the reported 12 million to 15 million workers who are in the country illegally, but represent a critical worker pool that supports many sectors of the U.S. economy, including agriculture. Last December, the House passed legislation (H.R. 4437) that focused exclusively on border protection and enforcement. But the version of the bill passed on March 27 by the Senate Judiciary Committee would include a guest-worker program.

The primary debate centers on that guest-worker provision, as supporters argue it is necessary to avoid potential shortages of workers in certain sectors and others argue it is the right thing to do for humanitarian purposes. Opponents argue it represents an amnesty for those entering the country illegally and that the United States should focus exclusively on border security and enforcement of immigration laws. The issue has elicited passionate debate in Congress and across the country as both sides hold rallies and demonstrations.

The guest-worker program would allow those in the



United States illegally the opportunity to apply for a six-year conditional non-immigrant visa. After six years, the worker could apply for permanent residence status if they paid a \$1,000 fine, were able to pass a background check and showed efforts to learn English and U.S. civics. The provision is largely the work of a bipartisan group led by Sens. John McCain, R-Ariz., Edward Kennedy, D-Mass., and Lindsey Graham, R-S.C. The measure also includes an agricultural worker amendment introduced by Sen. Diane Feinstein, D-Calif., that would provide opportunities for illegal farm workers to change their status and join a temporary work program. These workers would earn "blue cards," which would allow them to stay in the United States if they can prove they worked in the U.S. agriculture industry for 150 days during a two-year period prior to Dec. 31, 2005. Those proving they worked jobs in U.S. agriculture for 150 days per year for three years or 100

per year for five years would be eligible for permanent residency status.

The measure also would authorize the addition of 12,000 new border patrol agents by 2011, up from the current total of 11,000.

Complicating matters is a measure similar to the House version introduced and supported by Senate Majority Leader Bill Frist, R-Tenn., which beefs up security without a guest-worker provision. Frist and Senate Judiciary Committee Chairman Arlen Specter, R-Pa., have agreed to conduct a simultaneous debate beginning today on the Senate floor over the two competing measures. That debate is expected to take at least two weeks, and pending the outcome could lead to a bruising conference committee with the House to iron out any differences in each chamber's respective versions of the bill.

Harkin Introduces "Competitive and Fair" Ag Market Bill

Sen. Tom Harkin, D-Iowa, has introduced legislation (S. 2307) that among other things would give producers the right to walk away from certain "production contracts" and permit parties to avoid contractual obligations to arbitrate disputes involving livestock and poultry.

The bill is a revised version of legislation that Harkin and others have introduced over the last several years. Thus far, cosponsors of this year's bill are Sens. Charles Grassley, R-Iowa, Michael Enzi, R-Wyo., and Craig Thomas, R-Wyo.

For agricultural contracts, defined under the legislation as a "marketing contract or a production contract," the bill would void the contract if it contains a confidentiality clause other than for trade secrets. In addition, for livestock and poultry contracts, the bill would require arbitration only if both parties agree through written notification **after** the dispute occurs. The bill's anti-arbitration provision would not extend to grain contracts. For "production contracts," defined under the bill as a "written agreement for the production of an agricultural commodity by a contract producer" or "the provision of a management service relating to the production of an agricultural commodity by a contract producer," contract producers would have three days after the date the production contract is executed to cancel the contract.

The measure also would create an Office of Special Competition Matters within the U.S. Department of Agriculture that would be tasked with investigating and prosecuting violations of the Packer and Stockyards Act, acting as liaison with the Department of Justice and Federal Trade Commission on competition and trade practices involving food and agriculture, and maintaining a professional staff of attorneys. In

addition, the bill would require dealers, handlers, contractors, processors or commission merchants of agricultural commodities with annual sales exceeding \$100 million to file annual reports with USDA describing domestic and foreign activities, strategic alliances, ownership in others, joint ventures, subsidiaries, brand names and interlocking boards with others. The bill would require USDA to hold such reports in confidence.

The legislation includes a lengthy section on prohibited unfair or deceptive practices, with a particular focus on businesses not interfering with associations of producers. The measure prohibits the aforementioned group of businesses from interfering with the right of a producer to join an association of producers, refuse to deal with a producer because of their affiliation with such a group, discriminate against a producer with respect to price, quantity, quality or other terms of purchase because of their membership in such a group, or coerce a producer into leaving an association of producers or to interfere with the formation or administration of an association of producers.

The bill also would mandate the issuance of contract cover pages that "disclose provisions of the agricultural contract," such as: duration, termination, renewal and renegotiation standards, responsibility for environmental damage, factors determining payment, responsibility of complying with permitting regulations, assignability, effect of oral modifications, remedies for breach and other rules or provisions incorporated in the contract by reference.

The measure is unlikely to gain enough support to move forward at this stage.





"Farm Exemption" continued from page 1

such harvesting and transportation activities are considered "incidental to traditional farming activities." The exemption also applies to farms that mix, grind or manufacture feed on-farm, provided the feed is consumed by animals on that same farm or another farm under the same ownership.

The same treatment applies to livestock, dairy and poultry operations. For instance, FDA states that it "considers milking cows and collecting eggs from chickens to be 'harvesting' when applied to animals, because these activities are akin to harvesting crops." Thus, beef cattle, dairy, broiler, layer and other animal production operations whose activities are strictly limited to raising and delivering meat, milk, eggs or fish to processors are exempt from the recordkeeping requirements.

In addition, the farm exemption is size neutral, and integrators under the final rule are considered to be farms "to the extent that these operations are devoted to raising animals for food, the growing of crops, or both, and otherwise engage in only those activities included in the farm definition."

Farms also may be exempt from the recordkeeping rule when they process, grind and manufacture products from their own production, provided these further-processed products are used only for their own farming production. However, if these further-processed products (such as feed mixed/manufactured on-farm, hay/silage, hulls, etc.) are sold to another farm, feed store, business or customer that is not under the same ownership as the farm, then the farm's processing, grinding or manufacturing facility no longer is exempt and is required to maintain records of those transactions.

This scenario is illustrated by the following question-and-answer from FDA's guidance document accompanying the final rule:

Question-and-Answer

Q: "A farm grows, dries and chops alfalfa before releasing it to another person for use as animal feed. Is the farm still exempt from this regulation?"

FDA: "No. Traditional farming activities, such as harvesting of grains, are covered under the farm exemption. However, this question implies that the drying and chopping are post-harvest activities, which would be considered manufacturing/processing and therefore are subject to this rule. Therefore, the facility drying and chopping alfalfa must establish and maintain records of the food's receipt (immediate previous source) and release (immediate subsequent recipient)...."

Likewise, if the livestock, dairy, poultry or other animal production operation is involved in the further processing or manufacturing of food-producing animals into milk or eggs, those processing-related activities no longer are exempt. This

includes, for instance, livestock or poultry integrators that also operate a meat or poultry processing plant that further processes animals they produce for subsequent sale to consumers; in this case, the processing facility is required to establish and maintain records. The same goes for facilities that may be operated by dairy farms to pasteurize milk for subsequent sale. FDA says it still is evaluating its response to a question as to whether chicken layer operations are required to keep records if they pack eggs into cartons, since packaging is covered under the bioterrorism recordkeeping regulations.

One other note: Persons or facilities that manufacture, process, pack, transport, distribute, receive, hold (store) or import food in the United States that is within the exclusive jurisdiction of the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act, Poultry Products Inspection Act or the Egg Products Inspection Act are excluded from all of the recordkeeping requirements with respect to that food while it is under the exclusive jurisdiction of USDA.

USDA Sets April 15 as Deadline for Utilizing Emergency Storage for 2005

The U.S. Department of Agriculture's Commodity Credit Corporation today (March 30) issued a notice (BCD-131) setting April 15 as the final deadline for relocating CCC-interest grain from emergency storage.

CCC said that in response to requests from Uniform Grain and Rice Storage Agreement (UGRSA) warehouse operators, it previously had extended the traditional Jan. 31 deadline to March 15. However, it said it had received requests from some UGRSA warehouses to extend the deadline again. USDA officials told the NGFA that as of March 15, a total of 16 UGRSA warehouses had requested extensions of the emergency storage deadline, representing a wide geographic area. Thirteen of those UGRSA warehouses were federally licensed, while three were state-licensed, USDA said.

But CCC in today's notice stated that "[n]o further extensions will be granted" beyond the April 15 deadline. "Any warehouse operators found to have CCC-interest grain stored in unapproved storage space after April 15 will be removed from the CCC list of approved warehouses," CCC's notice stated. "Warehouse operators who currently are approved to use emergency storage space can expect a warehouse examiner to be at their facility after April 15 to confirm the grain has been moved to CCC-approved storage space."





Preventive Maintenance for Your Firm's Human Capital

The NGFA's vaunted Arbitration System – a trusted means of resolving trade disputes in the grain, feed and processing industry for 110 years – currently is experiencing very high caseloads.

Isn't that good? Wasn't the system designed as a valuable business service to the industry, and an important membership benefit? Don't we want member firms to arbitrate their disputes?

All good questions, and all can be answered "Yes." But maybe with a qualified "Yes."

This upswing in cases may be an indication that the industry needs a refresher course on how to avoid trade disputes in the first place! Just like preventive maintenance of machinery and equipment, investing in your firm's human capital to avoid "breakdowns" leading to arbitration or litigation can pay huge dividends.

The NGFA sees repeated mistakes – either from lack of knowledge or misapplication of critically important rules

and principles – that cost companies money and unintentionally limit access to the NGFA arbitration process.

Register Now! You can make an investment in your human capital by registering your employees with purchasing, trading or merchandising responsibilities for the NGFA Seminar on Trading, Trade Rules and Dispute Resolution. The seminar will be conducted May 9-10 in Kansas City.

The 1½-day seminar is excellent training for new employees or those with new responsibilities, and a valuable refresher course for more experienced personnel. Plus, the seminar offers sessions on hot topics like bioterrorism compliance, managing mycotoxins, and the potential for new trade rules for DDGs.

See the enclosed flyer for more details and a registration form. And visit www.ngfa.org for complete program information, speakers and schedule. Then, sign up yourself and your valued employees, and make plans to be with us in K.C.!



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