



## STB Conducts Hearing on Small Rail Rate Cases

Shippers and railroads offered starkly different approaches as to how the federal Surface Transportation Board (STB) should handle small rail rate cases during a hearing conducted by the STB on April 22.

The hearing focused on the procedures currently used by the STB to process cases involving challenges to the reasonableness of rail rates that are not suitable to be handled under the agency's so-called "constrained market pricing" procedures. At issue are "simplified" procedures adopted by the agency in 1996 that are designed to allow shippers to challenge rail rates without going through the complex process of establishing a rail carrier's stand-alone costs for providing rail service. But under those procedures, if the defendant railroad challenges the shipper's right to bring a rate case, the shipper then may be required under the STB's "simplified" rules to demonstrate why it should not be required to determine the rail carrier's stand-alone cost of transporting the shipment because it would be too costly to do so given the value of the shipment. The result has been that no cases have been brought by shippers under the "small rate case" guidelines in the more than six years that they have been in effect.

To allow shippers to have realistic access to the rate reasonableness remedies intended by Congress, the NGFA proposed during its testimony at the STB hearing that the agency adopt a presumption in favor of the shipper's decision to use the simplified rate methodology, and to shift the burden-of-proof to the rail carrier to demonstrate that it would not be too costly for the shipper to demonstrate a carrier's stand-alone costs.

The NGFA argued that because under "simplified" procedures considerably less money likely is recoverable from the railroad, the shipper would not logically submit a case under those procedures unless it was already convinced that the stand-alone costing would be excessive, given the value of the case. "...[T]he complaining shipper under the STB's 'simplified' procedures faces a complicated task which will require the use of cost experts and other professional assistants to meet the agency's eligibility requirements, to satisfy the other threshold elements of a rate case, including market dominance evidence, and to estimate the outcome of the case to comply with the rules' requirement that the 'full relief sought, including all reparations, as well as the level and duration of any rate prescriptions' be established," the NGFA testified. "If a railroad elects to make such a showing, then

the shipper should be required to submit the basic data necessary for the carrier to complete its challenge to the extent such data are not already disclosed." Such data might include the origin, destination, route, commodity, type of movement (such as single car or unit train), type of equipment (such as company-owned versus rail-owned cars), lading weight per car and annual volume.

But the Association of American Railroads (AAR) objected to the NGFA proposal, telling the STB it would be inappropriate for the agency to adopt a rebuttable presumption in favor of the shipper under the small rail rate case methodology, which it argued was "second best" to the stand-alone-cost method used in other rail rate cases. Instead, the AAR proposed that rail rate cases valued at \$300,000 or less should be subject to compulsory, but non-binding, mediation – a proposal that generated no support from shipper groups, including the NGFA.

Most of the other shipper groups testifying – including The Fertilizer Institute, the American Chemistry Council and the National Industrial Traffic League – urged the STB to develop bright-line tests defining what constituted a small rate case that could be challenged under the simplified methodology, thus averting the situation in which the carrier could force the shipper to do preliminary, costly analysis just to demonstrate a qualification to use the "simplified" STB procedures.

In response to questions posed by STB members, the NGFA said it would support exploring other alternatives that reduced barriers to seeking relief for shippers in small rail rate cases.



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## Amstutz, Penn Conduct Briefing on U.S. Ag Reconstruction Efforts in Iraq

U.S. efforts to reconstruct Iraq's agricultural system initially will focus on ensuring that the food-distribution network is operating, preparations are made for the summer cereal harvest scheduled for mid-May through June, and inputs for rice-planting season are in place, two key officials said during a briefing today monitored by the NGFA.

The briefing featured Daniel G. Amstutz, who was designated on April 21 by Secretary of Agriculture Ann M. Veneman to lead the U.S. government's agriculture reconstruction efforts in Iraq, and USDA Undersecretary of Agriculture for Farm and Foreign Agricultural Services Dr. J.B. Penn. In his new capacity, Amstutz will serve as senior ministry adviser for agriculture in the rebuilding effort, and will coordinate U.S. government activities in this regard. The Iraqi agricultural reconstruction plan is being conducted jointly with Australia, which has named former Australian Wheat Board Ltd. President Trevor Flugge to head its efforts. The two are to play the key roles in implementing food aid, trade and market-driven agricultural development policies in Iraq.

Amstutz served as undersecretary of agriculture for international affairs and commodity programs from 1983-87, and as ambassador and chief negotiator for agriculture from 1987-89 as part of the Uruguay Round of the General Agreement on Tariffs and Trade. He is a former member of the NGFA's Board of Directors and Executive Committee, and chaired what now is the NGFA's Risk Management Committee. He also served as president and chief executive officer of the North American Export Grain Association (NAEGA).

Amstutz said that the U.S. Army Corps of Engineers is working on the irrigation issues for Iraqi rice planting, while financial experts are working out payments to Iraqi cereal farmers for harvest. Amstutz noted that Iraqi agriculture had been decimated by the former regime, but production of wheat, barley and rice could be doubled within two to three years. He highlighted the rich cultural history of Iraqi agriculture as a reason for optimism during the reconstruction and rehabilitation phase. Iraq has the necessary resources to maintain a productive farm sector, he said. Amstutz outlined a number of challenges facing a turnaround in Iraqi agriculture, including poor farming techniques and equipment, inadequate inputs and poor infrastructure. Wheat production this year could be as low as 800,000 to 900,000 metric tons, he said, while the livestock sector is practically nonexistent. But he said he was "optimistic" that Iraq could rebuild its animal agriculture industry, focusing on poultry initially but also expanding to sheep, cattle and dairy.

Penn said the longer-term objective will be to transition the Iraqi agriculture sector into a market economy with a flourishing private sector that can be a growing market for agricultural commodities.

Concerning imports, Amstutz said Iraq has the potential to be a significant market but that its current financial and debt situation must be resolved before it can return as a viable cash customer and the need for food aid dissipates.

## Singapore FTA Moves to the Head of Class

The Singapore Free Trade Agreement (FTA) is scheduled to be the first trade agreement to run the congressional gauntlet under the new trade promotion authority that Congress granted to the president last year.

President Bush and Singaporean President S.R. Nathan are scheduled to sign the agreement on May 6. The U.S. Trade Representative's (USTR) Office then will work with Congress to develop implementing legislation to be submitted to the House and Senate for consideration.

Prior to the Iraq war, it was believed that the first free trade agreement to be submitted to Congress would be the one consummated between the United States and Chile. But that agreement has been delayed, in part because of Chile's lack of support in the U.N. for the U.S. effort in Iraq. Singaporean Trade Minister George Yeo was quoted as saying that it was "a dubious honor to be the first goat to cross the minefield," trepidation stemming from the expected onslaught of rhetoric from anti-free trade

interests and congressional critics. Despite these sentiments, the Singaporean and Chilean free trade agreements enjoy widespread support, and are expected to be approved.



### Calendar

- May 12:** **Rail Shipper/Receiver Committee**  
Hilton Garden Inn, Washington, D.C.
- June 9-10:** **Executive Committee**  
Renaissance Grand Hotel, St. Louis, Mo.
- June 11:** **Country Elevator Committee**  
Embassy Suites KCI Airport, Kansas City, Mo.
- June 12:** **Joint NGFA Grain Grades and Weights Committee/NAEGA Committee on Grades and Inspection**  
NGFA/NAEGA Conference Room, Washington, D.C.
- June 30-July 1:** **Animal Agriculture Committee; Feed Legislative and Regulatory Affairs Committee; Feed Manufacturing and Technology Committee**  
ConAgra Training Center, Omaha, Neb.



## Senate Committee Clears Energy Bill for Floor Vote

The Senate Energy and Natural Resources Committee on April 30 completed work on its version of a massive energy bill, clearing the measure for consideration on the Senate floor perhaps as early as the week of May 5.

During floor consideration, the Senate is expected to debate several contentious issues. Unlike the energy bill (H.R. 6) passed by the House last month, the Senate version does not contain a provision authorizing oil exploration in the Arctic National Wildlife Refuge (ANWR). The energy bills also contain different levels of energy tax incentives – \$18.7 billion in the House version and \$15.5 billion in the Senate package.

The Senate and House bills are similar in their treatment of renewable energy sources, such as ethanol. The Senate bill would require an increase in refineries’ annual use of ethanol to 5 billion gallons by 2012, while the House version would mandate such an increase by 2015. Those levels compare to the current annual usage of approximately 2.7 billion gallons. The Senate bill also would phase out the use of MTBE over four years, while providing \$250 million a year in relief for MTBE producers.

Both the House and Senate versions would eliminate the 4.3-cent-per-gallon federal excise tax on rail and barge fuel. Also included in the Senate bill is a provision that would allow farmer-owned cooperatives to distribute as dividends

to producers the 10-cent-per-gallon tax credit provided to small ethanol plants. The provision also would increase the eligibility for the subsidy to ethanol plants producing up to 60 million gallons annually, compared to the current limit of 15 million gallons. The Senate bill also includes a biodiesel subsidy amounting to a 1-cent reduction in the diesel fuel excise tax for each percentage of biodiesel blended with petroleum diesel up to 20 percent.

Differences between the House and Senate versions would need to be reconciled by a joint House-Senate conference committee before being returned to each chamber for final approval, which is where the bill bogged down last year.

Meanwhile, the major issue confronting Congress upon return from its spring recess on April 28 was determining the size and scope of a tax-cut reconciliation bill before the next recess scheduled to begin May 23. The scope of the tax cut is being vetted in the Senate Finance and House Ways and Means Committees to fit within the \$350 billion limit imposed in the Senate and \$550 billion agreed to by the House. Senate Finance Committee Chairman Charles Grassley, R-Iowa, has floated a plan that would eliminate the dividend tax relief, but the administration and business interests are urging some tax relief on dividends. Meanwhile, House Ways and Means Chairman Bill Thomas, R-Calif., is exploring \$234 million in tax cuts by creating two top income tax rates on capital gains and dividends.



## Court Affirms ‘Fiduciary Duty’ Claim Against Elevator in HTA Case

On April 15, the U.S. Court of Appeals for the Eighth Circuit based in St. Louis, Mo., issued a mandate that finalizes its March 24 ruling affirming a district court finding that hedge-to-arrive (HTA) contracts were outside the scope of the Commodity Exchange Act and that a jury “reasonably concluded” the existence and breach of a fiduciary duty between a grain elevator and a producer who had entered into such contracts. [See *NGFA Newsletter*, April 17, 2003].

The case [*Top of Iowa Cooperative v. Schewe*, No. 01-2859/2863], involved a suit brought by a Minnesota producer (Schewe) who had entered into five HTA contracts for corn with an Iowa cooperative (Top of Iowa Cooperative) in 1995. The HTAs ultimately were rolled on various occasions prior to Schewe’s cancellation of the contract in May 1996. Top of Iowa claimed that Schewe breached the HTAs, and sought damages corresponding to the amount Top of Iowa paid in margin calls. Schewe

counterclaimed that the HTAs were illegal off-exchange futures contracts in violation of the Commodity Exchange Act (CEA), and that Top of Iowa’s actions constituted negligence, breach of fiduciary duty and breach of contract. On pre-trial motion, the judge ruled that the HTAs were **not** illegal futures contracts, but rather were valid “cash forward” contracts. The jury later returned a verdict in favor of Top of Iowa for \$60,900 on the breach-of-contract claim. The jury also ruled against Schewe on his breach-of-contract claim. But the jury found in favor of Schewe on his counterclaim of breach of fiduciary duty for \$3,400.

The appellate court let the decision stand after neither party requested a rehearing by the three-judge panel, a hearing by the entire Eighth Circuit bench or a stay pending a petition for certiorari to the U.S. Supreme Court. A second and more recent case remains before the same appellate court involving nearly identical HTA contract issues [*ASA-Brandt, Inc. v. Farmers Coop. Society (Wesley, Iowa)*, No. 02-3274].



## CRP Sign-Up Scheduled for May 5-30

Secretary of Agriculture Ann M. Veneman used the observance of "Earth Day" on April 22 to announce that the next enrollment in the Conservation Reserve Program will be conducted from May 5-30.

It will be the first general signup in the CRP since enactment of the 2002 farm law, which increased the maximum acreage in the CRP to 39.2 million acres, compared to 36.4 million acres previously. As of Feb. 28, the most recent data available, there were approximately 34 million acres enrolled in the CRP. The last general signup occurred during a four-week period in early 2000, and resulted in 2.3 million acres being enrolled.

USDA said current CRP participants with contracts expiring Sept. 30, 2003 (representing 1.6 million acres) or Sept. 30, 2004 (representing 3.2 million acres) will be eligible to make new CRP contract offers during signup 26. To be eligible, the applicant generally is required to have owned or operated the land for at least 12 months prior to the close of the CRP signup period. In addition, the cropland (including field margins) being offered for enrollment is required to have been planted or considered planted to an agricultural commodity in four of the previous six crop years (1996-2001). It also is required to meet one of the following criteria: 1) have a weighted average erosion index of 8 or higher; 2) be expiring CRP acreage; or 3) be located in a national or state CRP conservation priority area.

As with past general signups, CRP offers will be evaluated and ranked using USDA's environmental benefits index (EBI), with decisions on the EBI cutoff to be determined after the signup ends and the bids are evaluated. Those whose acres had qualified for CRP enrollment under previous EBI criteria will not necessarily qualify under this signup, USDA said. Those submitting successful offers during this signup will have the flexibility to choose whether the 10- to 15-year CRP con-

tracts take effect on Oct. 1, 2003 or Oct. 1, 2004. USDA also said one other general CRP signup will be offered between now and 2007.

USDA said it was reserving 2 million of the CRP acres for environmentally sensitive land that can be enrolled automatically through the continuous sign-up program. Of those, 500,000 acres are being set aside for bottomland hardwood tree planting to enhance wildlife habitats and air quality; signup for that program is to begin after the general signup concludes. As of Feb. 28, approximately 2.3 million acres representing 136,667 farms had been enrolled under the CRP's continuous signup provisions. To be eligible, land enrolled under the CRP continuous signup must be eligible and suitable for certain conservation practices, such as riparian buffers, filter strips, wildlife habitat buffers, wetland buffers or shelterbelts.

**Schedule of CRP Contract Expirations**  
(By State and Year; As of Feb. 28, 2003)

| STATE <sup>1</sup> | 2003 <sup>2</sup> | 2004  | STATE <sup>1</sup> | 2003 <sup>2</sup> | 2004  |
|--------------------|-------------------|-------|--------------------|-------------------|-------|
| U.S. Total         | 1,591,689         | 3,183 | Missouri           | 154,195           | 74    |
| Alabama            | 28,905            | 193   | Montana            | 71,638            | 0     |
| Alaska             | 0                 | 0     | Nebraska           | 51,591            | 8     |
| Arizona            | 0                 | 0     | Nevada             | 0                 | 0     |
| Arkansas           | 15,625            | 0     | New Hampshire      | 0                 | 0     |
| California         | 3,589             | 0     | New Jersey         | 62                | 0     |
| Colorado           | 22,776            | 0     | New Mexico         | 1,260             | 0     |
| Connecticut        | 0                 | 0     | New York           | 4,361             | 0     |
| Delaware           | 0                 | 0     | North Carolina     | 8,149             | 0     |
| Florida            | 6,185             | 0     | North Dakota       | 26,459            | 51    |
| Georgia            | 23,992            | 0     | Ohio               | 78,371            | 33    |
| Hawaii             | 0                 | 0     | Oklahoma           | 27,603            | 0     |
| Idaho              | 58,384            | 0     | Oregon             | 10,915            | 0     |
| Illinois           | 121,053           | 145   | Pennsylvania       | 2,699             | 0     |
| Indiana            | 57,143            | 443   | Puerto Rico        | 0                 | 0     |
| Iowa               | 167,407           | 505   | South Carolina     | 8,466             | 0     |
| Kansas             | 59,511            | 7     | South Dakota       | 23,582            | 29    |
| Kentucky           | 20,593            | 1     | Tennessee          | 25,553            | 0     |
| Louisiana          | 6,382             | 37    | Texas              | 165,873           | 0     |
| Maine              | 849               | 0     | Utah               | 1,772             | 0     |
| Maryland           | 1,327             | 0     | Vermont            | 6                 | 0     |
| Massachusetts      | 0                 | 0     | Virginia           | 2,940             | 0     |
| Michigan           | 92,803            | 21    | Washington         | 51,492            | 0     |
| Minnesota          | 63,848            | 374   | West Virginia      | 8                 | 0     |
| Mississippi        | 42,125            | 122   | Wisconsin          | 81,993            | 1,140 |
|                    |                   |       | Wyoming            | 202               | 0     |

<sup>1</sup>State in which land is located.

<sup>2</sup>About 100,000 acres under contracts recorded as expiring in 2002 or earlier are assumed to be contracts that were extended by one year and will not expire until 2003.

Note: Contacts expire at the end of the fiscal year (September 30th).





## Report Questions Adequacy of Post-Market Oversight of Biotech Crops

A report issued April 24 by the Pew Initiative on Food and Biotechnology cites what it calls several potential vulnerabilities to the U.S. government's post-market oversight of agricultural biotechnology.

While these so-called "gaps in post-market oversight" have not resulted in widespread noncompliance with U.S. government regulatory requirements or any known food safety or environmental problems, the report states that they will become increasingly problematic given continued development of biotech crops with pharmaceutical and industrial properties that will require tighter regulatory control. "...[T]here are some serious questions about whether the current regulatory regime is prepared for what lies ahead," said Michael Rodemeyer, executive director of the Pew Initiative.

Referencing both the StarLink™ and Prodigene corn biotech contamination incidents, the report cites the following as "potential vulnerabilities in post-market oversight" of biotech crops under the current U.S. government regulatory framework:

▶ The lack of authority by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service to impose conditions on the planting of biotech crops once experimental field trials have been completed satisfactorily and permit conditions end. The report notes APHIS cannot require biotech developers to monitor the crops' impact on the environment once they have been approved for commercial planting. The study poses a question as to whether potential environmental risks warrant post-commercial validation testing and environmental monitoring.

▶ The legal interpretation by the Environmental Protection Agency that it is precluded from directly requiring producers to comply with the restrictions and standards (insect-resistance management systems, such as buffer zones) imposed by the agency on biotech crops with plant-incorporated protectants, such as *Bt* varieties. Instead, EPA "insulates farmers from direct legal accountability to EPA for compliance with restrictions," and relies upon its regulatory oversight of biotech providers to enforce the agency's restrictions on growers. The report also faults the absence of official EPA standards as to what constitutes an adequate degree of compliance as well as the lack of government audits to determine the level of producer compliance with such restrictions. The study asks if EPA's reliance on private contractual obligations with biotech providers is sufficient for the long term to ensure compliance by producers.

▶ The lack of an affirmative post-market inspection or compliance program by the Food and Drug Administration for foods derived from modern biotechnology. The report questions whether the agency has the detection methods it needs, the capacity to conduct large-volume sampling and testing, and adequate legal tools, such as the authority to examine food industry records, if there is an incident involving cross-contamination by a pharma biotech trait. The study asks whether food safety or other consumer-protection issues warrant FDA developing resources for post-market oversight of biotech products, and whether technological constraints (such as sampling and testing) can be overcome.

The report also analyzes issues concerning how the government should address the unintended, low-level (adventitious) presence of pharma or industrial traits in a conventional or other biotech commodity approved for human and animal consumption, as well as the government's role, if any, in establishing identity preservation and traceability systems. Among other things, the report asks whether the U.S. government should mandate identity preservation and product tracing for biotech crops and foods – either for those that currently are commercialized or those in the developmental pipeline.

In designing appropriate post-market oversight, the report recommends that the core objectives be to ensure compliance with any regulatory restrictions and conditions of use that may apply to biotech commodities, and maintain public confidence in the safety and integrity of the U.S. food supply.

"Our report raises questions about the future preparedness of the post-market oversight program to achieve its traditional objectives, including the enforcement of regulatory restrictions and the detection and correction of unanticipated health or environmental problems," said the study's chief author, former FDA and USDA official Michael R. Taylor, who currently serves as a senior fellow at Resources for the Future, an independent, bipartisan research institute that analyzes natural resource and environmental issues. "There almost certainly will be a need to enhance the resources devoted to post-market oversight and to consider strategies that effectively harness public and private resources to ensure that consistent and credible compliance with regulatory requirements is achieved. The time is ripe to address these issues – before a crisis occurs."





## Kansas City Southern to Become NAFTA Rail

The Kansas City Southern (KCS) and Grupo TMM, S.A. (TMM) announced on April 21 an agreement to place Kansas City Southern Railway Co. (KCSR), the Texas Mexican Railway Co. (Tex-Mex), and TFM, S.A., de C.V. (TFM) under the common control of a new single transportation holding company, NAFTA Rail.

KCS said it would change its name to NAFTA Rail but remain headquartered in Kansas City, Mo. In addition, KCSR will remain headquartered in Kansas City; Tex-Mex in Laredo, Texas; and TFM in Mexico City. Under the agreement, TMM will receive 18 million shares of NAFTA Rail representing approximately 22 percent of the new company, \$200 million in cash and a potential incentive payment of as much as \$180 million based on the resolution of future contingencies. The transaction is expected to close in the third or fourth quarter of 2003.

“Common control of these three railroads, which are already physically linked in an end-to-end configuration, will enhance competition and give shippers in the NAFTA trade corridor a strong transportation alternative as they make their decisions to move goods between the United

States, Mexico and Canada,” said Michael R. Haverty, chairman, president, and chief executive officer of KCS, who will serve as chairman, president, and chief executive officer of NAFTA Rail. Meanwhile, Jose Serrano, chairman and chief executive officer of TMM said, “These transactions will be pro-competitive and allow Mexico to strengthen its position in the North American economy. NAFTA Rail will provide a viable rail alternative, while still preserving existing competitive gateways at the border between Mexico and the United States.” Serrano is to serve as vice chairman of NAFTA Rail and chairman of TFM, while also joining the NAFTA Rail Board of Directors along with Javier Segovia, president of TMM. The remainder of the 10-person board will be comprised of existing KCS directors.

The agreements were approved by KCS’ and TMM’s respective Boards of Directors, but are subject to shareholder and governmental approval, including by the Mexican Competition Commission, the Mexican Foreign Investment Commission and the U.S. Surface Transportation Board.

## DOT Revises Hours-of-Service Truck Driving Rules

### ...Ag Exemption Retained...

The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration on April 28 issued new final regulations implementing major changes to the hours-of-service rules applying to commercial truck drivers.

The final rule retains the so-called agricultural exemption, which allows states to exempt commercial truck transportation of agricultural commodities and farm supplies from the driving-time limits, if such movements occur within a 100-air-mile radius of a farm or distribution point during planting or harvesting season, as defined by each state. The NGFA and the Agricultural Retailers Association are working in Congress to support legislation (H.R. 871) introduced by Rep. Doug Bereuter, R-Neb., that would expand the agricultural exemption to include feed, poultry and other agricultural products. The legislation also would apply to farm supply and commodity businesses (including crop input dealers, custom harvesters and farmer-owned cooperatives).

Under the new hours-of-service driving rules, which take effect Jan. 4, property-hauling commercial truck drivers will be allowed to drive 11 hours after 10 consecutive hours off-duty (compared to the 10-

hours on-duty, eight-hours off-duty standard that applied previously). In addition, commercial truck drivers are limited to a 14-hour duty period that cannot be extended with off-duty time for meals and fuel stops. Similar to the existing rules, drivers also may not drive after being on-duty for 60 hours in a seven-consecutive-day period, or 70 hours in an eight-consecutive-day period. Short-haul drivers – those who routinely return to their place of dispatch after each duty tour and then are released from duty – may have an increased on-duty period of 16 hours once during any seven-consecutive-day period.

In another important development, the agency dropped its proposal that would have required commercial truck drivers to use electronic on-board recording devices to keep records of their driving time in lieu of driver-prepared paper log books. The final rules state that electronic systems for maintaining driving logs will be allowed at the motor carrier’s option. Further, the agency said it plans to expand its research on the feasibility of electronic on-board recorders and other technologies, including an evaluation of ways to encourage or provide incentives for their use for hours-of-service recordkeeping and compliance.





## Bush Administration Eases Restrictions on Use of Non-Fat Dry Milk in Livestock Feed Assistance Program with States

Bush administration officials on April 30 finalized a new agreement with states that will reduce previously imposed restrictions on the use of Commodity Credit Corporation-owned non-fat dry milk being distributed to producers through nine states and tribal governments as drought relief under the 2003 Livestock Feed Program.

Under the new agreement, which was negotiated during a series of conference calls with states over the last week, CCC will allow producers to sell, barter or exchange the non-fat dry milk to acquire feed containing the product for use in foundation livestock feed. When first announcing the program on April 11, CCC said it would require that the product be used only in foundation herds for beef, bison, sheep and goats. Under the new agreement, feed manufacturers and other third parties that come into possession of the CCC-owned non-fat dry milk from the state or eligible producer will be allowed to use the product in feed for **any species** so long as the non-fat dry milk or feed containing the product:

- ▶ is **not** used as a replacement for whey or whey products;
- ▶ is **not** processed or used for human consumption; and
- ▶ is **not** consumed outside the eligible state.

CCC's agreement with the states allows the non-fat dry milk to be processed and manufactured into feed in a state that is different from the eligible state where the non-fat dry milk was originally shipped, so long as the feed containing the product is only shipped to and consumed in one of the nine eligible states. Further, consumption of the non-fat dry milk by livestock normally housed in an

eligible state will be considered to be consumption in the state even if the herd is temporarily located outside the state, CCC said. CCC's agreement with the states also obligates feed manufacturers and other third parties that may receive the non-fat dry milk by being listed as a distribution point by the state, or through sales or barter, to comply with the aforementioned restrictions and to agree, upon request, to certify how the product was used.

In its initial 30-day allocation under the program, USDA has designated distribution of the non-fat dry milk or feed containing the milk to 122 counties in: Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, South Dakota, Utah and Wyoming. USDA is providing the CCC-owned non-fat dry milk at a cost of \$1 per semi-truckload (approximately 42,000 pounds), with free transportation. USDA plans to deliver the non-fat dry milk in shrink-wrapped, 55-pound bags on pallets to feed manufacturers and other distribution points designated by states and tribes. The allocation of non-fat dry milk for a county is based on a renewable 30-day supply, if the county remains eligible. The initial 30-day allocation is for approximately 218 million pounds of CCC-owned non-fat dry milk, and is based upon two pounds of non-fat dry milk per day for beef cattle and buffalo, and one-half pound per day for sheep and goats. To be eligible, counties or portions of a county either must be located in a: 1) D4-Exceptional category on the U.S. drought monitor at any time on or between Sept. 3, 2002 and March 11, 2003, and on the March 11 monitor be located in at least the D3-Extreme or D-4 area; or 2) D-4 Exceptional area on March 11.

## FDA to Propose Rules on Recordkeeping Under Bioterrorism Law

The Food and Drug Administration has announced it will publish prior to May 7 proposed regulations implementing two additional sections of the congressionally enacted Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (bioterrorism-prevention law).

The two new sets of regulations will address the maintenance and inspection of records, as well as the law's provisions that authorize FDA to detain shipments of food, feed, feed ingredient and other food articles if it has credible evidence of a bioterrorism threat. Both proposed rules will be the subject of a May 7 satellite downlink conference being hosted by FDA at several

locations around the country. In addition, Leslye Fraser, deputy director of regulations at FDA's Office of Regulations and Policy, is scheduled to meet with the NGFA and other food and agricultural organizations at a briefing to be hosted May 14 by the National Food Processors Association.

Earlier this month, the NGFA and the North American Export Grain Association (NAEGA) submitted joint statements to FDA on two other significant proposed rules issued by the agency to implement the bioterrorism-prevention law concerning registration of food and feed facilities, including grain elevators, feed mills, processing plants and flour and corn mills; and issuance of prior notices of imported food and feed products.



# Membership Matters

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## NGFA, PFI to Conduct Bioterrorism Seminar on Aug. 1 in Denver

### ...Important Service to All Feed, Grain and Processing Companies...

The NGFA and its strategic partner, the Pet Food Institute, this week announced they jointly will conduct a seminar on "**How the Bioterrorism Rules Will Affect You**" on Aug. 1 in Denver, Colo.

The seminar, scheduled for 1-5:30 p.m. at the Hilton Denver Tech South Hotel, will focus on the four sets of regulations being issued by the Food and Drug Administration to implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The law and FDA's implementing regulations require that all grain elevators, commercial feed mills, corn and soybean processing plants, flour mills, pet food manufacturers, feed ingredient manufacturing facilities and others register with the agency by Dec. 12. FDA's regulations also require that U.S. purchasers, importers or their agents provide prior notice to FDA concerning the importation of food or food articles (including feed and feed ingredients) into the United States. Additional regulations to be proposed shortly by FDA will lay out the recordkeeping requirements for affected facilities, as well as the procedures whereby FDA will be authorized to administratively detain food and feed articles if it has credible evidence of a bioterrorism threat.

The seminar will immediately precede the annual meetings of the Association of American Control Officials, a gathering of

industry representatives and state and federal government officials that regulate the animal feed, pet food and feed ingredient industries, as well as the pesticide and fertilizer industries.

The seminar will be a unique chance for the wide array of affected facilities to learn about their compliance obligations under the new regulations, which are scheduled to be finalized by Oct. 12. It also will be a forum for FDA to seek feedback from affected industry sectors on different regulatory alternatives or approaches being considered before the final rules take effect. It also will allow industry members to learn how different U.S. government agencies are integrating their bioterrorism-prevention efforts with the Department of Homeland Security.

**Save the Date!** Hotel reservations should be made directly with the Hilton Denver Tech South by calling (303) 779-6161. [Be sure to ask for the AACO \$86 room rate; reservation deadline is **July 7.**]

**Register Now and Save!** The seminar registration fee is \$65.00 until July 15, and \$85 following July 15. To register, visit the NGFA web site at [www.ngfa.org](http://www.ngfa.org) and click on the blue banner at the top of the home page.



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