



FDA Announces Additional Public Meetings on Bioterrorism Records Rule

...Agency to Issue Compliance Guidance Document in Late May...

The Food and Drug Administration (FDA) this week announced that it will conduct five additional public meetings during the period of June 7-15 to further assist industries in complying with its final regulations implementing the recordkeeping requirements of the Bioterrorism Act.

This is the FDA regulation that requires firms to maintain records that are sufficient to identify the immediate previous source and immediate subsequent recipient of food, feed and other agricultural commodities and ingredients. Among entities covered by FDA's bioterrorism recordkeeping regulations are companies that manufacture, process, store, pack, transport, distribute or import food, feed or feed ingredients. Included are domestic and export grain elevators, commercial feed mills, corn and soybean processing plants, flour and dry corn millers, feed ingredient suppliers and transporters (including railroads, barges and commercial truckers).

FDA's final regulations require that the records contain information that is "reasonably available" to identify the specific source of each product/ingredient used to make every lot of finished product, as well as the transporter. However, in its final rule published in the Dec. 9, 2004 *Federal Register*, FDA also "acknowledges that certain business practices are not amenable to linking incoming ingredients with outgoing product...and (the determination of) what is 'reasonably available' ...will be made on a case-by-case basis...depend(ing) on the particular circumstances" of the firm's operations. The final rule does **not** require identity preservation of inbound or outbound commodities. Rather, the agency acknowledges that for facilities that handle, store and ship commodities on a commingled basis, it will be acceptable to identify the multiple sources of inbound commodities delivered and stored in a commingled mass in a bin or bins during a span of time, as well as to link those bins to outbound shipments.

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USDA Clarifies Application of Beneficial-Interest Requirements to Producer Deliveries of 'Open-Storage' Grain

The U.S. Department of Agriculture's Farm Service Agency (FSA) on April 28 issued a notice (LP-1990) that clarifies how its "beneficial-interest" requirements apply to producer grain delivered for "open-storage" at commercial grain facilities.

Under the beneficial interest requirements, for a commodity to be eligible for either a marketing assistance loan or loan deficiency payment (LDP), the producer is required to retain title, control and risk-of-loss in the commodity. For marketing assistance loans, the producer is required to retain beneficial interest from the time of harvest through the date the loan is redeemed or at such time as USDA's Commodity Credit Corporation takes title to the commodity (in the unlikely event of loan forfeitures). For LDPs, the producer is required to retain beneficial interest from the time of harvest through the date the LDP is requested. Once the producer "loses" beneficial interest, the commodity remains ineligible for a marketing assistance loan or LDP, even if the producer subsequently regains title, control and risk-of-loss.

The NGFA, through its Country Elevator Committee, had requested that FSA provide additional guidance on the application of beneficial interest to "open-storage" grain deliveries because of confusion that arose last harvest season. The committee also discussed the issue with FSA officials at its meeting last December in Denver, Colo., conducted in conjunction with the NGFA Country Elevator Council Conference.

In the notice, FSA defines "open storage" as meaning situations in which commodities are delivered for storage, with no warehouse receipt being issued for the delivered commodity. "The grain is considered (to be) held in an open-storage position until the producer makes a decision to obtain a warehouse receipt (mostly for marketing assistance loan purposes) or sells the commodity," the notice states. Importantly, the FSA notice states that the determination over whether beneficial interest is "lost" on producer grain delivered for "open storage" will vary, depending upon the type of facility to which the commodity is delivered.

(Continued on page 4)



U.S. Grain Standards Act Hearings Scheduled for May 24-25

The House and Senate Agriculture Committee this week announced that they will conduct back-to-back hearings on May 24 and 25 to reauthorize and consider potential amendments to the U.S. Grain Standards Act, which provides the legal authority for the official grain inspection system.

The NGFA and North American Export Grain Association (NAEGA) have been invited to submit joint testimony at both hearings – May 24 before the House Agriculture Committee’s Subcommittee on General Farm Commodities and Risk Management, and May 25 before the Senate Agriculture Committee.

NGFA and NAEGA are proposing an amendment to the U.S. Grain Standards Act under which GIPSA would be authorized – but not required – to designate third-party inspection agencies to perform the official inspection and weighing of grain at export facilities, under 100 percent GIPSA oversight and standards. This approach is modeled after the system that has been used successfully for the past 28 years in the domestic market, where GIPSA designates or delegates official inspection authority to state and/or private agencies that operate under GIPSA review and oversight.

The proposal contains the following major elements:

◆ GIPSA would designate and approve qualified independent, third-party agencies to perform the hands-on inspection and weighing of grains and oilseeds at U.S. export facilities under GIPSA-developed standards and procedures. The designation process would be transparent, through notice-and-comment rulemaking in the *Federal Register*. Exporters would contract directly with a GIPSA-approved delegated private agency for official grain inspection and weighing services. The fees charged would be negotiated between the exporter and the private agency. **Importantly, the six state agencies that GIPSA already has delegated the responsibility for performing official grain inspection and weighing services at export ports would retain their exclusive authority.**

- ◆ GIPSA would retain 100 percent on-site oversight authority at each export location to continually monitor and audit the performance of the third-party agency, and would assess a fee to the exporter for performing this oversight function. GIPSA would retain the authority to suspend or revoke the authority of the third-party agency for cause.
- ◆ The GIPSA-approved third-party agency would be responsible for hiring the inspectors. GIPSA would license all personnel employed by such third-party agencies.
- ◆ The plan would be phased in over three years, starting with lower-volume export ports where the cost of providing official inspection and weighing service is comparatively more expensive than at higher-volume export facilities.
- ◆ GIPSA personnel would continue to test all export scales and provide stowage examination services.
- ◆ GIPSA would maintain its comprehensive national quality-assurance and control program, including its appeal inspection service.
- ◆ GIPSA would issue final official inspection and weighing certificates based upon the results determined by the delegated third-party agency inspector operating under 100 percent GIPSA supervision.
- ◆ Exporters would be required to install GIPSA-approved automated weighing and handling systems if they choose to contract for official inspection services with a GIPSA-approved designated third-party agency. These devices would provide greater documentation of operations and facilitate GIPSA’s supervision.

This approach holds great promise for maintaining and enhancing the competitive position of U.S. grain and oilseed exports while at the same time retaining the integrity of U.S. inspection results and enhancing the long-term viability of government-based official inspection and weighing services.

Highway Bill Nears Senate Passage

The Senate has agreed to limit debate on its version of highway reauthorization bill and should vote on a final package on May 13 or early in the week of May 16.

The major difference between the Senate version and the version passed by the House on March 10 is the funding level; the Senate’s – at \$295 billion – is \$11.2 billion more expensive. The Bush administration has signaled spending exceeding the House level likely will be vetoed. But that didn’t sway senators, who voted 76-22 to defeat a point of order that would have stricken the increased funds.

A provision in the House bill that has **not** been added to the Senate version yet is a **mandatory** truck fuel surcharge. The provision was a last-minute addition to the House version of the bill. The provision was sponsored by Rep. Roy Blunt, R-Mo., at the behest of the Owner-Operator Independent Drivers Association. Opponents, including the NGFA, the American Trucking Associations and the National Industrial Traffic League, are mounting a full-court press to urge that the provision be deleted during the joint House-Senate conference committee that will develop the final version of the bill.



Under the House bill's provision, any contract or agreement for truckload transportation would be **required** to include a provision that the payer of shipping charges also pay a fuel surcharge that is "no less than the amount of the increased cost of fuel." The surcharge would apply when the current diesel fuel price exceeds a "benchmark" price by 5 cents per gallon. The benchmark price initially would be set at \$1.10 per gallon. The surcharge amount would be determined by subtracting the benchmark price from the current diesel fuel price, and then multiplying that resulting figure by the number of gallons used during the transport movement.

To determine the amount of fuel used, the provision assumes that one gallon of diesel fuel equals five miles of transportation.

The differences between the House and Senate versions of the highway bill will be resolved by a joint conference committee comprised of representatives of the two chambers. The timing could be affected by the Senate's preoccupation next week over how to resolve the battle over President Bush's judicial nominations. If Senate Republicans proceed with plans to amend the Senate rules to prohibit filibusters on judicial appointments, Senate Democrats have vowed to delay action on any legislation not related to national defense or homeland security.

Hill Highlights

There were these other developments on Capitol Hill of interest to the grain, feed and processing industry:

House Ag Chairman Introduces Voluntary Country-of-Origin Labeling Bill: House Agriculture Committee Chairman Bob Goodlatte, R-Va., on May 4 introduced legislation (H.R. 2068) that would provide for voluntary country-of-origin labeling for meat and meat products.

The legislation, which has 33 cosponsors, would permit retailers to label beef, pork and lamb as products of the United States if the source animals were born, raised and slaughtered domestically. The measure is intended to supplant the mandatory country-of-origin labeling approach that was incorporated as part of the 2002 farm law and which is scheduled to take effect on Sept. 30, 2006.

Among other things, the bill would: 1) require USDA to develop a unique label to designate country-of-origin; 2) require participants to maintain records that USDA could use to verify country-of-origin claims; and 3) provide for civil penalties of up to \$10,000 for violators of the program.

House Ag Subcommittee Conducts Crop Insurance Hearing: The House Agriculture Committee's Subcommittee on General Farm Commodities and Risk Management conducted an oversight hearing on the delivery and effectiveness of the crop insurance of U.S. producers. Regulators and crop insurance companies posited differing views on USDA's policies and their potential impact on producers. Several crop insurance company witnesses expressed concern over USDA Risk Management Agency (RMA) policies and the budget cuts to farm programs proposed in the president's budget, and how these proposals may negatively affect farmers. But USDA officials were upbeat in their assessment of RMA policy.

Insurance representatives took particular issue with RMA's decision to implement policies that encourage companies to offer reduced premium policies, such as those being sold by Crop 1 Insurance – currently the only insurer to offer these policies. They maintained that RMA's action allows insurers to

pick off large farms while leaving the small farmer without affordable coverage. RMA Administrator Ross Davidson countered that two-thirds of Crop 1 Insurance policies are issued to farms with less than 250 acres.

Another major hearing topic was the potential impact of Asian soybean rust on federal crop insurance. Lawmakers were concerned that insurance companies will resist making payments for yield losses that may result from the disease. USDA reiterated previous policy statements that soybean growers will have to prove they have engaged in "good farming practices," when filing insurance claims for Asian soybean rust. Subcommittee Chairman Jerry Moran, R-Kan., stressed to USDA that it should make it clear to farmers exactly what "good farming practices" means; for example using fungicides at the appropriate time. Davidson responded by saying USDA would not initially determine what those practices would be, but would issue rules on due process for disputes between insurance companies and growers over Asian soybean rust claims.

Portman Confirmed as U.S. Trade Representative, Johnson as EPA Administrator: The Senate on April 28 confirmed by a voice vote the nomination of Rep. Rob Portman, R-Ohio, to be U.S. trade representative. He succeeds now-Deputy Secretary of State Robert Zoellick as U.S. trade representative (USTR). The vote came after Sen. Evan Bayh, D-Ind., lifted his "hold" on Portman's nomination in exchange for a pledge by Senate Finance Committee Chairman Charles Grassley, R-Iowa, to conduct hearings on Bayh's bill (S. 593) that would override current law that has been interpreted as preventing the U.S. Commerce Department from applying anti-subsidy laws to nonmarket economies, such as China, that provide government subsidies to support state-controlled or private-sector companies.

In addition, **Stephen Johnson** on May 2 was sworn in as the 11th administrator of the Environmental Protection Agency. The Senate earlier had confirmed Johnson after Rep. Thomas Carper, D-Del., lifted his "hold" that had been placed in retaliation for the Bush administration's refusal to provide information on how to reduce pollution from power plants.



("Beneficial Interest" continued from page 1)

► **Grain Delivered for Storage to Federally Licensed Warehouses with UGRSA Contract:** For federal grain warehouses licensed under the U.S. Warehouse Act that have a UGRSA contract, FSA said that for commodities delivered, including for open storage, the producer retains beneficial interest and remains eligible for LDPs "until some **marketing decision is made** or until such time as the producer relinquishes beneficial interest in the crop as provided by the **terms and conditions of the applicable written or verbal contract.**" [Emphasis added.] For quantities delivered to a federally licensed grain warehouse operating under a UGRSA contract, FSA said the producer may complete the basic (CCC-633) LDP request to obtain an LDP until such time as beneficial interest is lost under the aforementioned conditions.

FSA's notice notes that a field-direct LDP (CCC-709) is available to producers who want to receive the LDP on the delivered commodity based upon the delivery date.

► **Grain Delivered for Storage to State-Licensed or Unlicensed Warehouses with UGRSA Contract:** For commodities delivered to UGRSA warehouses that are state-licensed or unlicensed (such as in California), the FSA notice directs that FSA state and county offices refer to state licensing and other applicable authorities for guidance on whether the producer loses beneficial interest at the time of delivery. "Depending on the applicable state law, restrictions may apply when grain is delivered for open storage," the notice states. "These restrictions may cause the producer to lose beneficial interest in the delivered commodity upon delivery." FSA's notice states that if it is determined that the producer maintains beneficial interest under state law, the producer may submit the CCC-633 LDP request under the same general conditions as outlined previously for federally licensed warehouses having a UGRSA contract. However, FSA said in situations where warehouse receipts are not issued, other forms of acceptable production evidence (such as load summary sheets, scale tickets, etc.) must be provided at the time of the LDP request to document the quantity eligible for LDP. "Additional production evidence may be required to ensure beneficial interest is maintained during the storage period," the FSA notice states.

The NGFA has been advised that FSA intends soon to issue additional information clarifying the status of deliveries to federal- and state-licensed warehouses that do not have UGRSA contracts with CCC.

► **Grain Delivered to Non-Warehouse Facilities:** Importantly, the FSA notice admonishes that producers who deliver commodities to feedlots, feedyards, processors, dairies or ethanol plants **lose beneficial interest at the time of delivery** (if they have not done so prior to that time)

because the producer no longer retains the ability to make all decisions affecting the delivered commodity. Thus, producers delivering to these types of facilities and wishing to obtain an LDP are required to submit a field-direct (CCC-709) LDP request on or before harvest to be eligible for an LDP.

FSA notice LP-1990 further advises state FSA committees to: 1) establish guidelines for instances in which additional production evidence is required to document the quantity of delivered commodities eligible for LDPs. An example cited by FSA is to require FSA county offices to obtain copies of existing state licensing laws or other state rules and regulations to determine if beneficial interest is lost upon delivery of grain to state-licensed facilities upon delivery. The notice also advises county offices to consistently apply any requests for additional production evidence. It also requires state price support specialists to review existing state warehouse laws before harvest, and to notify FSA county offices of any restrictions that may apply to commodities delivered for open storage.

In essence, FSA's notice means that in situations where a producer delivers commodities to warehouses that are either federally or state-licensed (unless state law or regulation restricts the treatment of "open-storage" grain) – or to an unlicensed warehouse with a UGRSA contract – the producer retains beneficial interest until such time as he or she makes an affirmative marketing decision or enters into a written or verbal contract under whose terms the producer relinquishes beneficial interest (i.e., title, control or risk-of-loss in the commodity). For NGFA members receiving the *NGFA Newsletter* electronically, click here to access FSA's notice LP-1990.

In a NGFA *Government and Grain* article published Sept. 30, 2004, the NGFA presented several questions on different types of cash grain contracts and whether the producer would continue to retain beneficial interest. The information provided on page 5 may be useful as grain warehouse operators and grain merchants review their contract language in light of the clarification provided in FSA's notice concerning grain deliveries and open storage.



Calendar

June 7-8, 2005: NGFA Executive Committee
The American Club, Kohler, Wis.

June 8-9, 2005: NGFA Country Elevator Committee
NGFA Conference Room, Washington, D.C.

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



Beneficial Interest and Impacts on Cash Grain Contracting

(Excerpted from *NGFA Government and Grain*, Sept. 30, 2004)

1. **NGFA:** Grain buyers frequently enter into forward contracts in which the producer agrees to deliver a specific **quantity** of grain during a specific delivery period in the future. For instance, a warehouse operator may forward contract for spring delivery of commodities several months prior to harvest, with no payment made up front. In these types of forward-contract situations, is the producer still considered to have retained beneficial interest in the grain?

USDA/FSA: Yes, under the circumstances you just outlined. "Beneficial interest" is retained by the producer until such time as: 1) title has transferred; **or** 2) the commodity has been delivered for sale (such as F.O.B. farm for shipment to the buyer); **or** 3) the producer has received payment (either advance, partial or in full) for the commodity; **or** 4) the producer has lost control of the commodity (for instance, the date warehouse receipts are delivered to the buyer); **or** 5) the producer has relinquished risk of loss or damage to the commodity. If any of these conditions occurs, the producer loses beneficial interest on the earliest applicable date.

2. **NGFA:** Do the same rules apply to other types of purchase contracts, such as price-later or advance-sales contracts?

USDA/FSA: Yes. A sales contract, including advance sales contracts, contracts to sell, price-later contracts and contracts for future delivery, give the buyer an interest in the commodity at a time specified in the contract or at a time implied by law. If the producer has or will receive a payment in return for the sales contract, "beneficial interest" is lost when the payment is made or when the producer loses control, risk of loss, or title to the commodity.

3. **NGFA:** What about delayed-price or deferred-payment contracts?

USDA/FSA: In a credit-sale contract, such as a delayed-price or deferred-payment contract, legal title and physical possession of the commodity have transferred. Thus, the producer has lost beneficial interest for the quantity sold under such contracts.

4. **NGFA:** Other than a forward contract or other type of sales contract in which title does not transfer or payment is not received, is there any way for a buyer to enter into an agreement with the producer to eventually purchase the commodity while still preserving the producer's beneficial interest?

USDA/FSA: Yes. The buyer can enter into an "option-to-purchase" agreement with the producer. An "option to purchase" is an agreement that allows the buyer, at its option, to enter into a contract at a later date to buy the

commodity while still giving the producer the opportunity to place the commodity under loan or to receive an LDP. The option to purchase does **not** give the buyer any interest in the commodity. And it expires at a specified time.

5. **NGFA:** Under an "option-to-purchase" agreement, is there any way for a producer to obtain a payment from the warehouse operator and still retain beneficial interest?

USDA/FSA: Yes. The producer can receive a payment. However, such payment must be **exclusively** for the "option to purchase" and **not** for the commodity itself. In such cases, the "option to purchase" is invalid unless it is executed **before** the sales contract. Producers lose beneficial interest if they receive any payment that gives the buyer rights to, or a share in, the equity of the commodity.

Additional Note on Option to Purchase: As described in the previous questions-and-answers with USDA officials, the **risk to producers of losing beneficial interest is minimal in the case of forward contracts or other types of sales contracts in which title does not pass or payment is not received by the producer.**

The "option to purchase" agreement which allows the buyer, at the buyer's option, to enter into a contract with a producer at a later date to buy the commodity while still giving the producer the opportunity to obtain a loan or LDP. The "option to purchase" expires at a specified time and does **not** give the buyer any interest in the commodity. If a producer has entered into an "option to purchase," the producer may receive a payment while still retaining beneficial interest in the covered commodity **provided the payment is exclusively for the right to enter into the option to purchase and so long as the option to purchase includes the following written provision:**

"Notwithstanding any other provision of this option to purchase, title, risk of loss and beneficial interest in the commodity, as specified in 7 CFR Part 1421, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: 1) the maturity of any CCC price support loan which is secured by such commodity; 2) the date CCC claims title to such commodity; or 3) such other date as provided in this option."

Importantly, inserting this clause into a sales contract does **not** mean the producer retains beneficial interest if a payment is received from the buyer under the contract. If a producer has or will receive a payment from the buyer in return for a sales contract, beneficial interest is lost on the date the payment is made.





("Recordkeeping Rule" continued from page 1)

FDA's bioterrorism recordkeeping regulations take effect for inbound and outbound shipments, as well as storage and manufacturing activity, that occurs starting on **Dec. 9, 2005** for larger companies and **June 9, 2006** for smaller firms with 11 to 499 employees. The recordkeeping regulations are **not retroactive** to activity or shipments that occur before those effective dates. Further, by both law and regulation, FDA does **not** have routine access to these records. Instead, the Bioterrorism Act and the agency's implementing regulations state that FDA's authority to access such records is contingent upon the agency receiving a "credible threat of serious adverse health consequences or death" to humans or animals. If FDA receives such a "credible threat" against a particular segment of the food or feed chain and requests access to available records, firms are required under the final rule to make such records available within 24 hours.

FDA officials also have told the NGFA that they plan later this month to publish an extensive compliance guidance document in a question-and-answer format concerning its final bioterrorism recordkeeping regulation. The guidance document is to consist of FDA's responses to questions raised during and subsequent to a series of public meetings conducted by the agency earlier this year. FDA officials said an effort will be made in the guidance document to provide more specificity on the kind of information that it will consider to be "reasonably available" for grain handling facilities, commercial feed and flour mills, and grain processing plants that handle inbound and outbound products on a commingled basis. The agency said it also will attempt to respond to other questions that have been raised seeking more specificity concerning implementation of the final rule.

Dates and Locations for Public Meetings: As reported in the May 4 edition of *NGFA E-Alert* (the NGFA's electronic news summary), the NGFA was successful in convincing FDA to

schedule two of the public meetings at Midwest locations – Kansas City, Mo., and Minneapolis, Minn.

Importantly, while the FDA public meetings are free, **advance registration is required and attendance is limited to 300 per location.** Registrants are to provide their name, title, company name, address, telephone and fax numbers, and e-mail address, as well as the meeting location they plan to attend. Registration may be sent by fax to Isabelle Howes at 202-479-6801, or be done online at <http://www.cfsan.fda.gov/dms/fsbtac26.html>. However, FDA said the online registration capability is not expected to be activated until sometime during the week of May 16.

Here's the schedule for the public meetings, each of which will be conducted from 9 a.m. to 1 p.m. local time:

- **June 7, Kansas City, Mo.:** KCI Airport Marriott Hotel, 775 Barsilia Ave.
- **June 8, Los Angeles, Calif.:** Los Angeles International Airport Marriott Hotel, 5855 W. Century Blvd.
- **June 9, College Park, Md.:** FDA's Center for Food Safety and Applied Nutrition, Harvey W. Wiley Bldg., 5100 Paint Branch Pkwy.
- **June 14, Minneapolis, Minn.:** Minneapolis Airport Embassy Suites Hotel (Bloomington, Minn.)
- **June 15, Atlanta, Ga.:** Renaissance Waverly Hotel, 2450 Galleria Pkwy.

For more information on the FDA bioterrorism recordkeeping regulation, see the NGFA/GEAPS Facility Security website that is found on the NGFA homepage at www.ngfa.org. Once the public meetings are concluded, the NGFA will be publishing additional guidance for the grain, feed and processing industry on complying with FDA's bioterrorism recordkeeping regulations.

APHIS Finds Feed Ingredients Linked to Four Canadian-Born BSE Cases 'Extremely Unlikely' to Have Been Fed to U.S. Cattle

Based upon distribution patterns and shipping records, it is "extremely unlikely" that any feed materials emanating from the presumed source of the exposure to bovine spongiform encephalopathy (BSE) in Canada were incorporated into feed intended for cattle in the United States.

That was one of the major findings contained in an epidemiological report issued on April 29 by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). The findings of the report, prepared by a four-member APHIS epidemiological team that studied the four confirmed cases of BSE in North America – all of

which emanated from Alberta, Canada – also suggest that only 3.4 percent of known or possible birth cohorts from the four BSE cases are believed to have entered the United States. Further, the report notes that even during the height of BSE infection in the United Kingdom, it was "extremely rare" to have more than one animal in the same herd infected with BSE. "USDA believes it is unlikely that any of the imported cattle would have been infected," the report stated.

The APHIS team visited the Canadian Food Inspection Agency's headquarters from Jan. 24-28 to conduct what the agency called a "thorough review" of Canada's epidemiologi-





cal investigations following the four confirmed BSE cases in Canadian-born cattle, one of which involved a cow in Washington state that became the first and only BSE case confirmed in the United States thus far. USDA subsequently has tested nearly 350,000 U.S. cattle as of May 8 in an enhanced one-year surveillance program scheduled to conclude May 31, each of which has been negative for BSE. The APHIS epidemiologists evaluated: 1) the possibility of a common source of the exposure to BSE in the Canadian-born cattle; 2) the likelihood that other "high-risk" animals from Canada currently were present in the United States; and 3) any feed issues that could have resulted in the exposure of U.S. cattle to the agent believed to cause BSE. The team's report concluded that the geographic and temporal proximity of the Canadian BSE cases to one another suggests that the animals likely were exposed to the BSE agent from a common feed source – a single renderer is believed to have been the source of contaminated meat and bone meal in three of the four BSE cases, and distributed the product primarily to Canadian feed mills and farms within its local distribution area.

However, the report notes that two feed mills – one in British Columbia near the U.S. border and the other in the U.S. Pacific Northwest – also received potentially contaminated product from same renderer during 1996-97, when the index cases were believed to have been exposed. Imports of Canadian meat-and-bone meal was limited, APHIS said, because of the expense of transporting the product and the large price differential that existed between U.S. and Canadian meat and bone meal between 1994 and 2001. Nonetheless, seven separate shipments of meat and bone meal from the principal Canadian renderer are believed to have been imported into the United States during that time frame, based upon

APHIS import records. While the 1996 shipments were not traced further, those that occurred in 1997 – which APHIS believes is the time period most closely related to the potential exposures to BSE through feed of three of the four BSE cases in Canadian-born cattle – revealed that approximately 99 percent of the U.S. imports were exported to Asia. The remaining 1 percent was used in poultry meal for feeders in the Pacific Northwest. "The (U.S.) distributor has not produced any product intended for cattle consumption," the APHIS report said. The report also "strongly suggests" that the four confirmed BSE cases in Canadian-born cattle were believed to have been exposed through feed manufactured **before** BSE-prevention feed regulations banning the feeding of certain mammalian protein to cattle and other ruminants took effect in both Canada and the United States in October 1997.

In presenting the report, APHIS Deputy Administrator for Veterinary Services Dr. John Clifford said the agency's technical team "found that Canada's epidemiological efforts were not only appropriate, but exceeded levels recommended by an international team of BSE experts" who investigated all four North American BSE cases. The results of the team's reports, as well as an assessment of Canada's implementation of its BSE-prevention feed regulations issued earlier this year by APHIS, "confirm that Canada has a system of effective safeguards in place to protect animal health from BSE," the USDA statement said. "USDA remains confident that these measures, in conjunction with domestic safeguards (such as the removal of so-called specified risk materials from cattle 30 months or older from the human food chain in both Canada and the United States), provide the utmost protection to U.S. consumers and livestock," USDA said. To access the APHIS report, [click here](#).

Japanese Commission Recommends Dropping 100 Percent BSE Testing

Japan's Food Safety Commission on May 6 officially recommended that the country exempt cattle younger than 21 months from the requirement to be tested for bovine spongiform encephalopathy (BSE).

The action was a necessary precursor before Japan could consider the resumption of imports of U.S. beef from cattle 21 months or younger under certain conditions as part of a framework agreement negotiated last October. [See *NGFA Newsletter*, April 28, 2005.] The Japanese Food Safety Commission's recommendation now will be reviewed by the Ministry of Agriculture, Fisheries and Forestry and Ministry of Health, Labor and Welfare, which are expected to approve it. Next, the commission is to consider the conditions under which resumption of U.S. beef imports would be allowed. As an aside, each of Japan's 47 prefecture (state) governments have

indicated that they intend to continue requiring 100 percent testing of all Japanese cattle on a voluntary basis. Funds for such testing will be provided by the Japanese Health, Labor and Welfare Ministry for up to three years even though the central government ends mandatory BSE testing. Japan earlier this week confirmed another case of BSE in its native cattle herd.

In a related development, a Japanese technical team is scheduled to arrive in the United States this weekend to tour slaughter plants to examine again the carcass-grading methods proposed by the U.S. Department of Agriculture as a method for determining cattle ages. In addition, USDA officials have indicated that Secretary of Agriculture Mike Johanns plans to meet with Japanese Prime Minister Junichiro Koizumi in early July to discuss the beef trade issue.



Feed Facts

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USDA Issues Plan for Phase In of Mandatory National Animal I.D. System

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) on May 5 issued a discussion document proposing to phase in a national animal identification system by January 2009.

The goal of the program is to be able to identify all covered animals and premises that have had contact with a foreign or domestic animal disease of concern within 48 hours of discovery. "APHIS is focusing on animal identification for one reason: to establish the animal disease monitoring, surveillance, control and eradication programs," the agency said in its discussion paper. USDA currently is planning to include the following animal species under the program: cattle (beef and dairy), deer and elk, horses, goats, poultry, sheep, swine, bison, and alpacas and llamas.

Under the timetable proposed by USDA, the first priority will be to establish voluntary premise identification – locations that hold and manage livestock with the national unique, seven-character premises identification number. By early 2008, USDA said it anticipates implementing regulations that would require owners of covered animal species to identify their premises and animals. That's when animals leaving a premises would need to be identified with either an animal identification number or group/lot identification. By January 2009, USDA envisions

requiring the collection and reporting of defined animal movements.

USDA's discussion paper also addresses three of the most controversial aspects of the plan: 1) maintaining data confidentiality so that it is not accessible to other government agencies or subject to Freedom of Information Act disclosure; 2) whether the program should be mandatory or voluntary; and 3) which entity should control the data – the private sector or government.

Submitting Comments: APHIS is seeking comments on its discussion paper by June 6. NGFA members receiving the *NGFA Newsletter* electronically may access the APHIS document by clicking here. Others, please contact Jackie Congress at the NGFA at 202-289-0873.

The NGFA's Animal Agriculture Committee and Feed Legislative and Regulatory Affairs Committee will be taking the lead in reviewing the discussion paper for the NGFA. The NGFA also will be consulting with livestock and poultry organizations as part of the Animal Agriculture Coalition. NGFA members wishing to submit comments may do so by mailing four copies to: Docket No. 050-15-1, Regulatory Analysis and Development, PPD, APHIS, USDA, Station 3C71, 4700 River Road, Unit 118, Riverdale, Md., 20737-1238.



Rails, Rivers and Roads

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STB Conducts Hearing on Rail Rate Challenges

The federal Surface Transportation Board (STB) conducted a public hearing on April 26 to address rail rate challenges under the so-called "stand-alone cost" (SAC) standard [*Ex Parte 657*].

Under the SAC methodology, railroads may charge rates that exceed the maximum threshold of 180 percent of variable costs established in the Staggers Rail Act of 1980, so long as the rate is not higher than the rate an efficient, hypothetical competitor would charge to serve the shippers in a logical customer group, assuming coverage of all relevant costs and a reasonable return on investment. Only extremely large rate claims involving high-volumes of traffic remotely justify the expense and complexity required to pursue cases under the SAC methodology. Most rate disputes, including agriculture-related claims, do not justify this expense and complexity. Indeed, at the outset of the hearing, STB Commissioner Francis Mulvey questioned whether the SAC process served the public interest, given that it is infeasible for the vast majority of rail customers.

During the hearing, shipper and railroad representatives debated the procedures and methodologies implemented

under the SAC process. Shipper representatives expressed despair with the cost, complexity and length of the SAC process, particularly given a pattern of results skewed heavily in favor of the carriers. Railroad representatives countered by alleging that the cases lost by shippers demonstrated consistent defects, and should never have been pursued. Of most direct relevance to the agriculture industry, one of the shipper witnesses urged that before engaging in further proceedings regarding the SAC cases, the agency should proceed with improving the process for addressing small rail rate cases. The STB's last official action in that regard [*Ex Parte 646 - Rail Rate Challenges in Small Cases*] occurred last July 21, when the agency conducted a hearing to consider ways to streamline procedures. The NGFA provided testimony in conjunction with other shipper organizations at the 2004 hearing and at an earlier STB proceeding in 2003. Evidence that the STB's current small rail rate case procedures are flawed is evidenced by the fact that not a single case has been initiated. Following the July 2004 hearing, it was anticipated that the STB would propose new procedures for small rate cases. But to date, the agency has taken no further action.





Research Project Being Developed to Justify EPA Granting Tolerance for StarLink Cry9C Protein

A research project is being considered in an effort to provide the evidence necessary for the U.S. Environmental Protection Agency to establish a tolerance for the presence of the StarLink Cry9C protein in food and feed.

For the past six months, the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) has not detected the presence of StarLink corn in any samples of U.S. corn submitted to the agency for verification. In addition, routine testing done by commercial dry corn millers on inbound corn has documented the precipitous decline over the years in the presence of StarLink in U.S. corn – to the point that it is rarely, if ever, detected.

Now, StarLink Logistics (SLLI) has contracted with an international firm that conducts risk and exposure analysis to

design a research project that would scientifically characterize the minimal exposure levels of Cry9C protein that still may linger in U.S. corn. Under the research protocol, GIPSA would collect approximately 1,000 samples over a four-month period. The samples would be analyzed at USDA's laboratory in North Carolina. The test results then would be analyzed and an estimate developed on the underlying exposure to the Cry9C protein in U.S. corn. The findings then would be submitted to an EPA Scientific Advisory Panel for review, perhaps as early as late fall.

Contingent upon the recommendation of its Scientific Advisory Panel, EPA then would propose a tolerance for the presence of Cry9C in food and feed sometime in early 2006. The tolerance, if proposed, would be established under the Federal Food, Drug and Cosmetic Act's provision that allows EPA to set a tolerance for minor unavoidable residues.

Official Samples Needed if Phytosanitary Certificates Required for Containerized High-Quality Specialty Grains

In a clarification of a report published in the April 28 *NGFA Newsletter*, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) requires that official samples be collected if a foreign country requires that phytosanitary certificates be issued by APHIS on containerized shipments of high-quality specialty grains.

Under a policy announced on April 28, USDA's Grain Inspection, Packers and Stockyards Administration amended its regulations to provide an interim waiver from mandatory official inspection and weighing for high-quality specialty grains exported in containers. [See *NGFA Newsletter*, April 28, page 7.] GIPSA changed its policy in an effort to promote

the marketing of high-quality specialty grains in containers. The cost of official inspections of container shipments – at approximately \$1.80 per ton – far exceeds the average 34-cent-per-bushel official inspection fee assessed for bulk commodity exports.

While the same interim-waiver policy also applies to containerized shipments for which phytosanitary certificates are required, APHIS does require that the sample on which the phytosanitary certificate is based be obtained by official GIPSA personnel or by an delegated or designated agency approved by GIPSA to perform official services.

USDA Dedicates \$1.2 Million to Monitor, Manage Soybean Rust in 2005

Secretary of Agriculture Mike Johanns today (May 12) announced that the U.S. Department of Agriculture would earmark \$1.2 million in contingency funds to help monitor, report and manage soybean rust for the 2005 growing season.

USDA's Animal and Plant Health Inspection Service will use the funds for soybean rust surveillance and monitoring; predictive modeling of where rust might emerge; Internet-based information dissemination; finalizing fungicide treatment criteria; and other communications and outreach activities. The majority of the funds – \$800,000 – will be devoted to establishing and monitoring soybean sentinel plots in 35 states

and Puerto Rico previously announced by Johanns on April 14. An additional \$180,000 is being transferred to USDA's Cooperative State Research, Education and Extension Service to support mobile survey units that would be dispatched to quickly identify the disease and report surveillance data. Another \$210,000 will be spent to update and maintain USDA's soybean rust website (<http://www.usda.gov/soybeanrust>), which was launched in April.

Thus far, the Asian species of soybean rust has been detected in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, South Carolina and Tennessee.





The Value of NGFA Membership

by Todd Kemp
Director of Marketing/Treasurer

What are your trade association memberships worth? For NGFA members, there are tangible, bottom-line results. Here are just a few examples – each a solid business reason to support NGFA:

- **Federal vs. State Warehouse Programs:** For the last couple years, NGFA industry and staff have expended countless hours and much effort to preserve regulatory choice for grain warehouse operators to be federal- or state-licensed. If ultimately successful, this initiative will preserve the ability of warehouse operators to choose between strong federal and state systems that best serve their business needs. **VALUE:** Clear regulatory choice – freedom to choose state or federal licensing – in some states, thousands of dollars in savings annually.
- **Other Regulatory Representation:** The NGFA works hard to urge federal agencies like OSHA, EPA, USDA and FDA to ensure any regulatory programs are truly necessary, accomplish their intended purposes, and are workable and cost-effective. Remember a few years back when NGFA sponsored research on grain dust emissions? That work still is paying off! When EPA accepted the NGFA's research – which replaced EPA's old outdated information – grain dust emission factors were reduced by up to 98 percent! As a result, most grain handling, feed manufacturing and processing facilities today are exempt from obtaining permits – no costly fees, no time-consuming paperwork. **VALUE:** An estimated \$20 million annually industrywide – that's about \$1,500 per facility each and every year!
- **Rail Arbitration Services:** The NGFA is the only organization or industry segment with which rail carriers have entered into binding arbitration for resolving certain types of shipper-carrier

disputes. **VALUE:** Merely having access to NGFA arbitration provides leverage for resolving disputes equitably. And if even one dispute eventually is submitted to NGFA Arbitration – rather than resorting to the Surface Transportation Board or courts – the savings will more than pay your dues for many years!

- **Access to Government Decision-Makers:** The NGFA's experienced and knowledgeable staff can provide a strong assist when you need quick access to the right people in government. Staff can offer guidance on how to approach issues, provide advice on what can be accomplished, and help open the right doors. **VALUE:** Solve one big problem – pay for many years of membership dues!
- **Business Information:** Do FDA's bioterrorism recordkeeping rules require identity preservation? Do I really need to make that investment to comply with OSHA railcar fall-protection regulations? How can I help my producers retain beneficial interest and stay eligible for LDPs? What's happening with these rail fuel surcharges? The NGFA not only can answer – but more than likely is influencing the outcomes on – those and many other questions. **VALUE:** Virtually all NGFA members need this kind of information, sometimes urgently. Value depends on the issue, of course, but information clearly has business-planning value.

If an issue touches your business, chances are good that the NGFA is working on it and can help. Take full advantage of the services, information and advocacy provided by your NGFA membership. And thanks for your support!



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