



## **NGFA, NAEGA Pursue Changes to U.S. Grain Standards Act to Authorize Use of Third-Party Inspection Agencies at Export Facilities**

The NGFA and the North American Export Grain Association joined forces this week to urge Congress to amend the U.S. Grain Standards Act to authorize the use of independent, third-party inspection agencies to perform hands-on grain inspection and weighing at export facilities, under 100 percent on-site supervision from the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA).

Jerry Gibson, regional manager for Bunge North America Inc., Destrehan, La., testified on behalf of both organizations during hearings conducted on May 24 and 25 by the House Agriculture Committee's Subcommittee on General Farm Commodities and Risk Management and the Senate Agriculture Committee, respectively. Gibson serves on both the NGFA Grain Grades and Weights Committee and NAEGA's Grades and Inspections Committee. He also is a member of USDA's Grain Inspection Advisory Committee.

During his testimony, Gibson also reiterated the NGFA's and NAEGA's strong support for reauthorizing the U.S. Grain Standards Act for five years, but opposed any amendment

that would give GIPSA the authority to impose user fees to finance its grain standardization activities. [See the enclosed edition of *NGFA Issues and Actions* for a summary of the testimony.]

In responding to questions posed by congressmen and senators regarding maintaining the integrity of the official grain inspection system, Gibson responded that this was a key industry priority. In his statement, Gibson explained a series of safeguards being recommended by the NGFA and NAEGA, including that GIPSA retain 100 percent physical oversight of inspections conducted by independent, third-party agencies. Further, the approach would be modeled after the successful use of private



*(Continued on page 2)*

## **Johanns Announces BSE Roundtable Discussion for June 9 in Minnesota**

Secretary of Agriculture Mike Johanns announced that USDA would conduct a BSE Roundtable on June 9 in St. Paul, Minn., on the safety of North American beef and the changing infrastructure of the industry as a result of the four confirmed North American cases of bovine spongiform encephalopathy.

The announcement followed an active week in which Johanns highlighted the economic damage to the U.S. beef and packing industries caused by the continuing ban on imports of live cattle and certain beef products from Canada during a visit to a slaughter plant in Hyrum, Utah, that fired 66 employees this year.

"Now it is time to put into perspective for producers, processors and decision-makers the facts and the future implications of the course we are following," Johanns said in announcing the roundtable meeting. He noted that USDA's

Animal and Plant Health Inspection Service (APHIS) on May 31 is scheduled to conclude its enhanced one-year surveillance of the U.S. herd, having already tested more than 362,000 cattle – each of which has been found to be negative for BSE. The enhanced surveillance program targets the population of animals in which BSE is most likely to be detected, including non-ambulatory (downer) animals, animals exhibiting signs of a central nervous system disorder or any other signs that could be consistent with BSE, and animals that die from unknown causes.

The Minnesota event will bring together USDA experts, producers, packers, other industry groups and academia to discuss the science of BSE and the economic impacts on the U.S. beef industry. The roundtable discussion will be open to the public – there is space for 600 persons – and will be conducted from 9:30 a.m. to 2:30 p.m. at the Andrew Boss Laboratory at the University of Minnesota's campus in St. Paul, Minn.



*“U.S. Grains Standards Act” continued from page 1)*

and state agencies to conduct official grain inspections in the domestic market. The NGFA and NAEGA also recommended that: 1) the process for approving a third-party inspection agencies be open and transparent; 2) GIPSA retain the right to revoke the license of third-party agencies at any time for cause; and 3) GIPSA maintain its comprehensive national quality-assurance/quality-control program. Under the change, GIPSA would continue to issue the same official inspection and weighting certificates relied upon by U.S. exporters and foreign customers.

In opening the House hearing, Subcommittee Chairman Jerry Moran, R-Kan., stated that one of its responsibilities was to look into potential changes to the U.S. Grain Standards Act that could result in cost savings to the industry and producers. Gary Niemeyer, a member of the National Corn Growers Association (NCGA) Board of Directors, stated during his testimony that “the United States must better manage the cost of (official) inspections, take advantage of modern technologies to enhance efficiency and be flexible enough to respond to a changing industry structure and an increasingly competitive world market.” Niemeyer presented testimony on behalf of NCGA, the American Farm Bureau Federation, American Soybean Association, National Association of Wheat Growers and the National Grain Sorghum Producers. Their joint statement supported the NGFA and NAEGA third-party inspection proposal.

Gibson also noted that the changed structure of the grain export industry, the fierce competitive pressures from foreign countries, the future cost savings that could be achieved and the large number of GIPSA inspectors eligible to retire over the next five years all blend together to make this an ideal time for a phased-in implementation of a system of third-party inspec-

tors operating under GIPSA oversight. GIPSA Acting Administrator David Shipman concurred that “the structure and practices of the grain industry have dramatically changed as exporters developed closer relationships with overseas buyers to deliver the quality and quantity of grain that best meets their end-use needs.” Shipman also noted that the number of complaints from foreign buyers has dropped from 74 in 1985 to just four last year. He praised the “collaborative effort” of the grain industry and federal, state and private inspection personnel in the success of the U.S. grain inspection and weighing system.

Also supporting the change to the use of independent, third-party inspection agencies at export was the American Association of Grain Inspection and Weighing Agencies (AAIGWA). AAIGWA President Tom Dahl testified that the organization “believes GIPSA’s role in the grain industry must keep pace with the fast-changing needs of its customers; that it must anticipate and react quickly to new trends and technology; and that it must become more efficient and effective as the primary monitor of the U.S. Grain Standards Act.”

Gibson’s testimony closed by commending GIPSA for becoming more efficient and responsive and urged Congress to give GIPSA the flexibility to improve the affordability and long-term viability of the official grain inspection and weighing system at grain export locations. The House and Senate Agriculture Committees are expected to draft a bill reauthorizing the U.S. Grain Standards Act in the next few months before its provisions expire on Sept. 30. Members of the NGFA’s Grain Grades and Weights Committee have scheduled a mid-June meeting in Washington to meet with various congressional offices to further explain the industry’s legislative priorities regarding GIPSA.

## Senate Approves Highway Reauthorization Bill

The Senate by an 89-11 vote on May 17 approved its version of the highway reauthorization bill.

But the funding level – at \$295 billion through fiscal year 2009 – is \$11.2 billion more than the \$284 billion House-passed version (H.R. 3), the latter of which is the maximum the Bush administration says it will accept. Next step for the highway bill is a joint House-Senate conference committee to be chaired by House Transportation and Infrastructure Committee Chairman Don Young, R-Alaska. House Majority Leader Tom Delay, R-Texas, already has served notice that the House would not agree to a higher funding level unless the White House agrees. In addition to the debate over the funding level, conferees are expected to tussle over differing provisions in the two bills concerning the percentage of highway fuel taxes generated in each state that would need to be earmarked to highway construction projects in that

respective state. The House bill would require that 95 percent of fuel taxes paid into the Highway Trust Fund by a state be returned to that state in the form of an appropriation for a highway project. The Senate bill calls for a 92 percent rate-of-return to each state.

**NGFA-Supported Hours-of-Service Truck-Driving Exemption Included:** On the positive side, the Senate bill includes the NGFA-supported provision that would make permanent the hours-of-service truck-driving exemption for agriculture. The provision includes language clarifying the definition of agricultural commodities to expressly include feed, livestock, milk and other agricultural products. The agricultural hours-of-service exemption is limited to a 100-air-mile radius from the source of commodities or distribution point of the commodities or farm supplies within each state. States are responsible for determining the duration of any agricultural hours-of-service



exemption. The U.S. Department of Transportation had proposed to revoke the agricultural exemption in a proposed rule issued in May 2000.

Another plus is that the Senate-passed bill does **not** include the mandatory truck diesel fuel surcharge provision that was a last-minute addition to the House-passed highway bill. That House provision would **require** truckers to impose diesel fuel surcharges on all customers, including shippers of grains, oilseeds, feed, feed ingredients and other agricultural products, if diesel fuel prices exceed a benchmark trigger of \$1.10 per gallon by more than a nickel. The House provision

would set the surcharge amount by law at the difference between the current diesel fuel price and the \$1.10-per-gallon benchmark.

The NGFA will be working with other agricultural and shipper groups during the conference committee to urge that the diesel fuel surcharge provision not be included in the final version of the bill. Congress again is racing the clock, since the current temporary extension of legislation authorizing surface transportation spending expires May 31. Another short-term extension of the existing bill through the July 4<sup>th</sup> recess already is being discussed in Congress.

## Hill Highlights

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

► **Bush Nominates Reuben Jeffrey to Serve as CFTC Chairman:** President Bush on May 17 nominated **Reuben Jeffrey III** to serve a five-year term as a member of the Commodity Futures Trading Commission (CFTC), and to become its chairman if confirmed by the Senate. Jeffrey currently is special assistant to the president and senior director of international economic affairs at the White House National Security Council. He previously was an investment banker with Goldman, Sachs & Co., in Paris, London and New York. With the Bush administration, he previously served as representative and executive director of the Washington office of the Coalition Provisional Authority for Iraq, where he navigated the bureaucracy and dealt with Capitol Hill on the Iraq reconstruction effort. He also previously coordinated federal aid designed to reconstruct lower Manhattan following the Sept. 11, 2001 terrorist attack. Jeffrey's received his undergraduate degree from Yale University and a masters and law degree from Stanford University. If confirmed by the Senate, Jeffrey would fill the lone vacancy on the five-member CFTC. The agency currently is headed by another Bush appointee – Acting Chairman Sharon Brown-Hruska.

► **House Appropriations Committee Approves Major Funding for Inland Waterways Projects:** The House on May 24 approved spending \$365.3 million in fiscal year 2006 toward the completion of lock-and-dam renovation projects on the nation's inland waterways system. Major renovation projects specifically targeted in the bill include lock and dam 11 on the Upper Mississippi River in Iowa and Wisconsin (\$7.2 million); lock and dam 19 on the Upper Mississippi River in Iowa (\$17.5 million); and lock and dam 21 on the Upper Mississippi River in Illinois and Missouri (\$4.3 million).

► **House Appropriations Panel Approves Fiscal 2006 Spending Bill; Extends Voluntary Country-of-Origin Labeling:** The House Agriculture Appropriations Committee's Agriculture Subcommittee on May 16 approved its version of a fiscal 2006

spending bill. The bill freezes discretionary spending at the fiscal 2005 level of \$16.8 billion, which is still \$93 million more than proposed in President Bush's budget. The legislation also includes language that would prohibit USDA from using federal funds to implement or enforce mandatory country-of-origin labeling (COOL) for meat and meat products through Sept. 30, 2006. Among provisions of interest are: 1) \$24 million for USDA's Grain Inspection, Packers and Stockyards Administration and Agricultural Marketing Service with **none** of the proposed user fees for grain standardization or for other functions; 2) a \$37 million decrease in conservation spending – to \$794 million – which still is \$26 million more than the president's budget request; 3) a \$20 million budget increase for USDA's Food Safety and Inspection Service – to a total of \$837 million – \$127 million more than the president's budget request, with none of the \$139 million in new user fees proposed by the administration; 4) a \$16 million increase for USDA's Animal and Plant Health Inspection Service (APHIS) activities – to \$829 million – \$32 million less than the administration's proposal, with none of the \$11 million in proposed new user fees; 5) \$90 million for activities designed to prevent bovine spongiform encephalopathy (BSE), identical to a year ago and consistent with the administration's request; 6) a \$30 million increase for the Food and Drug Administration – to \$1.48 billion – \$30 million more than a year ago and \$20 million less than requested; and 7) a total of \$1.124 billion for USDA's Agricultural Research Service, \$164 million more than a year ago and \$63 million more than proposed by Bush.

► **Chief Ag Trade Negotiator to Resign:** The NGFA has confirmed reports that Allen Johnson, chief agriculture negotiator for the Office of the U.S. Trade Representative (USTR), plans to resign later this year. Johnson has performed a crucial role in negotiating the agricultural components of key regional trade agreements, and has been involved intimately in the U.S. government's positions and strategies for agricultural trade liberalization under the Doha Development Round of the World Trade Organization.



## Registration Underway for Free FDA Public Meetings on Bioterrorism Recordkeeping Rule

Registration now is open for a series of five public meetings scheduled for early June by the Food and Drug Administration (FDA) to further assist industry segments in complying with the agency's 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 recordkeeping regulations are companies that manufacture, process, store, pack, transport, distribute or import food, feed or feed ingredients. Included are commercial feed, feed ingredient and pet food manufacturers; country, terminal and export grain elevators; grain processors; flour and dry corn millers; and transporters (including commercial truckers, railroads and barge lines). 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.

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>; scroll to the bottom of this website link to

access the registration form.

FDA's bioterrorism recordkeeping regulations take effect for inbound and outbound shipments and storage and manufacturing activity that occur starting on **Dec. 9, 2005** for larger companies; on **June 9, 2006** for firms with 11 to 499 employees; and on **Dec. 9, 2006** for firms with 10 or fewer 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.

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](http://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.

## CFTC Approves Increase to Grain, Oilseed Speculative Position Limits

The Commodity Futures Trading Commission (CFTC) on May 11 issued a final rule implementing, effective June 10, significant increases in speculative position limits for all single-month and all-months-combined futures positions.

The action applies to futures contracts for corn, wheat, soybeans, soybean oil, soybean meal and oats traded at the Chicago Board of Trade, as well as to hard winter wheat futures traded at the Kansas City Board of Trade, hard red spring wheat futures traded at the Minneapolis Grain Exchange and New York Board of Trade cotton No. 2

futures contracts. The changes are identical to those proposed by the CFTC on March 15. The agency at that time said it was proposing significant increases in speculative position limits in lieu of a proposal from the exchanges seeking a repeal of the limits altogether. However, the CFTC in its final rule reiterated a statement in its proposed rule that it intends to "further evaluat(e) the merits of retaining federal speculative position limits." Members receiving the NGFA Newsletter electronically may click here to access the **Federal Register** announcement.





## USDA Extends Comment Period to July 6 on 'Discussion Paper' for Phasing In Mandatory National Animal I.D.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) on May 20 announced a 30-day extension – to July 6 – in the deadline for comments on its "discussion paper" that details the agency's current plan for phasing 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 Administrator Dr. Ron DeHaven told a May 17 meeting of the Animal Agriculture Coalition attended by the NGFA that the agency's singular focus with animal I.D. is to establish the basis for effective animal disease monitoring, surveillance, control and eradication programs – particularly for highly contagious diseases like foot-and-mouth and hog cholera. He noted that U.S. trading partners increasingly are insisting on such traceability as a prerequisite to maintaining market access. 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.

The discussion paper includes 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. The NGFA's Animal Agriculture Committee and Feed Legislative and Regulatory Affairs Committee will be taking the lead in reviewing the APHIS discussion paper. The NGFA also will be consulting with livestock and poultry organizations as part of the Animal Agriculture Coalition in preparing comments on the plan. Members receiving the *NGFA Newsletter* electronically may access the APHIS discussion paper by clicking here.

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.

## FDA Posts Animal Feed Safety System Presentations on Website

The Food and Drug Administration's Center for Veterinary Medicine recently posted presentations and transcripts on its website from the Animal Feed Safety System (AFSS) meeting conducted on April 5-6 in Omaha.

The information is available at: <http://www.fda.gov/cvm/AFSSMtg042005.htm>. As reported in the April 28 *NGFA Newsletter*, the team of FDA and state feed control officials working on the AFSS hopes to digest the information gathered at the meeting and present a framework for the system to senior FDA management by early fall. The heart of the proposed system is a risk-ranking model that the agency is developing to semi-quantitatively rank the health risks to animals and humans associated with undesirable substances that may be present in feed or feed ingredients. At the April meeting, FDA provided an overview of its proposed risk-ranking model. Within the model, "hazards" would be identified but then evaluated and ranked based upon their respective level of danger. This "danger level" would be determined by considering the degree of exposure to animals or humans, and factors within the feed or feed ingredient manufacturing process, distribution, and use that either reduce or amplify the hazards. During the April meeting, FDA officials stated that they have identified 175 potential feed contamination hazards to process through the model, but did not publicly share the list.

As FDA shares more information about the AFSS in the coming months, the NGFA will be focusing on the mechanics of the model and its potential outcomes. Thus far, FDA has been very receptive to NGFA's input. The NGFA was the only organization to provide written comments to FDA on its AFSS draft plan prior to the Omaha meeting, and several of its points were included in FDA's remarks during the meeting.



### 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.

**June 14-15, 2005: NGFA Grain Grades and Weights 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)





## Supreme Court Upholds Constitutionality of Beef Checkoff

In a 6-3 split decision issued on May 23, the U.S. Supreme Court upheld the Constitutionality of the nationwide beef checkoff.

The High Court found that the Beef Promotion and Research Act and the Beef Promotion and Research Order did not violate the U.S. Constitution's First Amendment free-speech clause insofar as cattle producers were required to pay assessments to fund generic advertising with which they disagreed. A majority of the court concurred that because the beef checkoff was funding the U.S. Government's own speech, it was not vulnerable to the First Amendment challenge.

The Supreme Court agreed to consider the beef checkoff case last May, when it granted the petitioners' writs of certiorari in two cases – *USDA v. Livestock Marketing Assoc.* (No. 03-1164) and *Nebraska Cattle-men Inc. v. Livestock Marketing Assoc.* (No. 03-1165). These cases were consolidated for oral argument last December. The U.S. Court of Appeals for the Eighth Circuit previously had upheld lower-court rulings in these cases that found the beef checkoff represented an unconstitutional infringement on free speech. The Supreme Court has decided other cases before about governmental authority to enforce checkoff programs, including separate rulings that upheld a tree fruit checkoff and struck down a mushroom checkoff. But the High Court had not previously addressed the issue that was the focus of the beef checkoff case: namely, whether advertising funded by such checkoffs is "government speech" given that the USDA administers the program and approves the advertising.

In its decision, the Supreme Court recognized that the Beef Promotion and Research Act established a federal policy of promoting and marketing beef to be implemented by USDA. As the High Court noted, the program includes a \$1-per head checkoff on all sales and imports of cattle and a comparable assessment on imported beef products, which has funded promotional projects such as the familiar slogan "*Beef. It's What's for Dinner.*" The Court distinguished the "speech" in this case from that in the mushroom checkoff case and other cases that had been determined to be unconstitutional. According to the Court, the beef checkoff did not involve truly "compelled speech" in which an individual is obliged personally to express a message with which he/she disagrees. Nor did it involve a "compelled subsidy" in which an individual is required to subsidize a message with which he/she

disagrees that is expressed by a private entity. In the mushroom checkoff and other cases, either the speech was made by a private entity or the government speech defense had not been raised. The Supreme Court decided that the beef promotions in this case were sufficiently established and controlled by the federal government to constitute government speech.

Justice Ruth Bader Ginsberg – one of the justices who concurred with the majority decision – rejected application of the government-speech defense in this case, but upheld the checkoff as a permissible economic regulation. The majority opinion was authored by Justice Antonin Scalia, and was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Stephen Breyer and Clarence Thomas. The three dissenting justices – David H. Souter, John Paul Stevens and Anthony Kennedy – found that the beef checkoff did not constitute government speech because the government did not put that speech forward as its own, thereby making itself politically accountable. This case will now go back to the district court for resolution of issues other than the First Amendment challenge.

**Impact on Other Checkoffs:** Supporters of the beef checkoff had urged the Supreme Court to consider that a decision against the program would threaten numerous well-established federal and state research and promotion programs involving a range of commodities. The Supreme Court's decision this week will indeed have an impact far beyond this particular case. The U.S. Court of Appeals for the Ninth Circuit had been delaying further action in another case also involving the beef checkoff – *Charter v. USDA* – pending resolution of what it termed the "identical question" by the Supreme Court. Still before the U.S. Supreme Court are similar appeals of a ruling by the U.S. Court of Appeals for the Sixth Circuit rejecting the pork checkoff on similar grounds – *Michigan Pork Producers Assoc. v. Campaign for Family Farms* (No. 03-1043) and *USDA v. Campaign for Family Farms* (No. 03-1180). In yet another checkoff case – *Cochran v. USDA* – the U.S. Court of Appeals for the Third Circuit ruled against a dairy checkoff, but stayed the effect of its ruling to permit an appeal to the Supreme Court, as well. In this week's decision, the Supreme Court itself identified similar checkoff programs for numerous other agricultural commodities – cotton, potatoes, watermelons, popcorn, peanuts, blueberries, avocados, soybeans, honey, eggs and lamb – that presumably could have been jeopardized had the challenge of the beef checkoff been successful.



## New “*Despacho Previo*” rules become effective June 1, 2005

“*Despacho Previo*” refers to the process of clearing southbound rail shipments for entry into Mexico. US rail carriers for several years have published *Despacho Previo* rules that, among other things, specify the time periods allowed to complete the documentation enabling export to Mexico. In March 2005, the Burlington Northern and Santa Fe Railway (BNSF) and the Union Pacific Railroad (UP) announced major changes to these rules, which become effective June 1, 2005.

Under the new BNSF rules (New item 3150 of BNSF 6001-A) (revised and reissued on April 29), the free time allowed for completion of documentation is reduced from 72 hours to 48 hours. Additional free time for Sundays and holidays is only permitted until Sept. 1, 2005. Significantly, the document delay charge that follows the expiration of free time under the new rules is increased from \$50 to \$5,000 per train, per day, or fraction thereof. The BNSF is simultaneously implementing an incentive program effective until June 1, 2006, whereby customers receive \$45 per car if the entire train is documented within 48 hours after the shuttle train is released loaded. The new BNSF rules also provide exceptions whereby charges will not be assessed if the free time has expired but the train has not passed four specific southerly locations.

On Mar. 28, the UP also announced changes to its *Despacho Previo* rules (UP Agricultural Products Bulletin 2005-077). The UP rules will temporarily continue to provide for 72 hours of free time for all unit train shipments (75 and 100 car

shipments). On Sept. 1, the free time will be reduced to 48 hours. Additional free time is not permitted for weekends or holidays. After the expiration of free time, document delay charges of \$50 per car, per day, or a fraction thereof, will be assessed for the first ten chargeable days until all cars have cleared customs and are released for entry into Mexico. After the tenth chargeable day, the charges increase to \$150 per car, per day. The UP will pay an incentive of \$50 per car if the entire train is documented and cleared within 48 hours after the unit train is released loaded. This incentive will be reduced to \$25 per car on June 1, 2006, and eliminated entirely on June 1, 2007.

Because the congestion and delay at the U.S.-Mexico border gateways for southbound rail shipments is widely attributed, at least in part, to requirements under Mexican law that documentation on shipments must be completed prior to the car entering Mexico, as well as questionable availability of inspection and customs services on weekends and holidays on the Mexican side of the border, the NGFA is engaging in dialogue with representatives of the U.S. government. Already, NGFA has corresponded with USDA Secretary Johanns, and last week, a delegation from the USDA’s Animal and Plant Health Inspection Service (APHIS) completed an extensive on-site tour of the major U.S.-Mexico gateways. The APHIS delegation met with officials from its Mexican counterpart (SAGARPA), and is keeping NGFA advised. The UP is also joining with the NGFA in an effort to address these issues on an industry-wide basis.



## Tech Talk

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## APHIS Proposes Removing Ban on Wheat from Countries with Flag Smut

The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) proposed in the May 20 *Federal Register* to remove the ban on wheat and related articles imported from countries infested with flag smut, a highly infective fungus that reduces wheat yields, but not quality.

Under the proposal, APHIS would amend its current regulations to remove the prohibitions, but would require the national plant protection organizations of affected countries to request that APHIS conduct a country-specific risk assessment before removing that country from the list of nations prohibited from exporting wheat seed or related articles to the United States. APHIS currently bans certain wheat-related articles, including seed, plants, straw, chaff and milling products other than flour (bran, shorts, etc.) from 49 countries because of the disease. APHIS said it believes the risk and economic impact of such a change would be negligible on the United States, given the minimal quantity of U.S. wheat imports and the country-specific risk assessment that still would be required.

Flag smut, which severely stunts wheat plants and produces an excessive number of tillers, first was characterized in 1868 in Australian wheat. It was discovered in the United States for the first time in 1919, and was a significant U.S. wheat disease until the 1930s. Currently, ARS said, U.S. flag smut is confined to wheat in the Pacific Northwest when the seed is sown in late August and early September at depths of more than two inches.

**Submitting Comments:** The NGFA’s Grain Grades and Weights Committee will be evaluating the proposal. Members receiving the *NGFA Newsletter* electronically may access the APHIS proposal by clicking [here](#). The deadline for submitting comments is July 19. Comments sent by mail should include four copies and be sent to: Docket No. 02-058-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 18, Riverdale, Md., 20737-1238. The docket number should be referenced in the comments.



# Membership Matters

by Todd Kemp  
Director of Marketing/Treasurer

## New “Marketing Menu” Will Whet Your Appetite!

Each year, through conferences, publications, web site and other vehicles, the NGFA makes available many excellent marketing opportunities for NGFA-member companies. A newly designed “Marketing Menu” for 2005-06 was mailed to large slices of the NGFA’s membership this week. It is designed to help NGFA members take fullest advantage of opportunities to reach customers in the grain, feed and processing industry.

By giving advance notice of such opportunities, members will have more time to plan and budget for sponsorships, advertising, trade shows and more. The “menu” will be updated and distributed annually.

Whether your goal is to draw attention to your products or

services – enhance name recognition throughout the industry – or simply show your company’s support for the NGFA – there are many ways to do so. It doesn’t take a lot of money – opportunities are available at a wide range of levels.

When your “Marketing Menu” arrives, please take a few minutes to browse through it. You may find a number of colleagues and competitors already are involved – and you may want to “place an order” of your own. If an event or item is of interest – whether it’s immediately available or not – contact Todd Kemp at [tkemp@ngfa.org](mailto:tkemp@ngfa.org). We will work to craft an effective approach for you.

Other ideas about a sponsorship or promotion that doesn’t appear on the menu? We’d like to hear your ideas!

## Onion Update!

Don’t forget – every sponsor of a new member during May will receive a 25-lb. box of Walla Walla sweet onions! They truly are delicious. Get those applications FAXed in immediately! Thanks to Northwest Grain Growers Inc., Walla Walla, Wash., for sponsoring the onion promotion!



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