



NGFA

Newsletter[®]

Volume 57, Number 14, July 7, 2005

FDA BSE-Prevention Feed Rule Back in the Spotlight

The recent announcement that the United States has detected its second case of bovine spongiform encephalopathy (BSE) – and the first involving a native-born animal – has generated renewed attention on whether, and how, the Food and Drug Administration (FDA) will amend its BSE-prevention feed rule.

FDA's Center for Veterinary Medicine several months ago forwarded a proposed rule to the FDA commissioner's office, where it remains under review by FDA's Office of General Counsel. It is the NGFA's understanding that the proposed rule, as submitted by FDA/CVM, calls for expanding the 1997 ban on feeding certain mammalian material to cattle and other ruminants to include a targeted ban on so-called specified risk materials (SRMs) in all animal feed – limited to a ban on brain and spinal cord of cattle 30 months or older. Scientists believe would eliminate the vast majority of any potential infectivity that might be present in an BSE-infected animal. That position closely parallels the recommendations provided by the NGFA in response to FDA's request for comments to an advance notice of proposed rulemaking that was published in 2004.

On June 24, the same date the U.S. Department of Agriculture announced the positive BSE test result, FDA issued a one-paragraph statement lauding the effectiveness of existing safeguards implemented by USDA and FDA that "have proven extremely effective." FDA added, "...the American public should feel secure knowing that the current animal feed rule already provides significant protection against the spread of BSE." Concerning potential changes to its 1997 feed rule, FDA said then that it would "continue to work closely with USDA on this important public health issue and evaluate every option to strengthen the 1997 animal feed ban."

But FDA officials told the NGFA this week that there has been some renewed impetus within the agency to expedite the review of the yet-to-be-published proposed rule. While issuance of a proposed rule is not imminent, FDA officials said the renewed activity has been spurred by several factors: 1) the continued uncertainty over whether the type of BSE detected in the Texas cow is different from the type present in the four other confirmed cases of BSE found in North America,

(Continued on page 8)

Syngenta Providing More Data to FDA on Bt10 Corn

The NGFA has learned that Syngenta AG is in the process of generating additional scientific data requested by the Food and Drug Administration (FDA) as part of its formal request for a consultation to verify the safety of the Bt10 corn biotech event.

Syngenta officials said the additional biochemical and molecular data sought by FDA should be compiled and submitted to the agency by the end of July. FDA officials have told the NGFA that they anticipate that the review can be completed fairly expeditiously once the additional data are submitted by Syngenta. That is consistent with the statement made by FDA Center for Food Safety and Applied Nutrition Director Dr. Robert Brackett at a June 14 Senate Agriculture Committee hearing. At that time, he had said that the agency had placed Syngenta's dossier at "the very top of the list" and that the agency "will move as quickly as we can" to perform its customary comprehensive scientific review.

Completing the formal FDA consultation process is significant because it would enable the agency to post Bt10 on its official website "List of Completed Consultations." That list is relied upon by some foreign governments to verify that FDA has conducted a formal safety review of biotech-enhanced commodities for use in food and feed. For instance, it is

expected that such a listing for Bt10 could encourage Japan to implement a provision of its regulations that authorize a 1 percent tolerance for the presence of imported biotech-enhanced commodities for use in feed even though the trait has not been formally approved under Japan's biotech regulatory process. Currently, a zero tolerance exists on the presence of Bt10 in U.S. corn shipments to Japan, which has triggered demands from Japan that the United States certify that U.S. corn is free of Bt10 prior to shipment and implement an extensive domestic sampling and PCR-based testing protocol.

The inadvertent release of the Bt10 corn event was announced publicly for the first time on March 21 by Syngenta after the company said it had detected the unapproved event in five Bt corn breeding lines in the United States, three of which were used between 2001 and 2004 primarily for "pre-commercial" development. Syngenta AG said seeds produced using the Bt10 lines potentially could have been planted on an estimated 37,000 acres in as many as eight U.S. states. But the Bt10 corn event was not submitted for "official" approval by the U.S. government until now because Syngenta said it never intended to release it for commercial use.



July Hill Fireworks Headlined by Contentious House Vote on CAFTA-DR

Of all the issues on the agenda when Congress returns July 11 from its July 4th recess, none is likely to be subjected to the lengthy rhetoric, backroom dealing and arm-twisting that will mark the House vote on the U.S.-Central American Free Trade Agreement (CAFTA-DR).

Nor are any of the votes in July expected to be as close – within a one- to three-vote margin – as supporters and opponents scratch and claw to find the 218 votes needed for passage.

The stage was set when the House Ways and Means Committee on June 30 approved the CAFTA-DR implementing legislation (H.R. 3045) by a 24-11 margin and the Senate approved the measure by a 54-45 vote. The accord would encompass the Central American nations of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, as well as the Dominican Republic. During House debate on CAFTA-DR, it is expected that congressmen will demand consideration of other separate legislation designed to address a host of other trade issues, including China's alleged currency valuation manipulation, illegal dumping and intellectual property theft. A potential scenario could be a vote (or a promised vote) on a bill focused on China trade issues followed by a CAFTA-DR vote.

Under the trade promotion authority law (so-called "fast-track"), the House will have 15 days to vote on the trade pact's implementation following the date that the Ways and Means Committee actually files its report. The report is expected to be filed shortly after lawmakers return from their July 4th holiday break.

Senate Approves CAFTA-DR: The Senate vote came after the Bush administration garnered the support of a sufficient number of wavering senators in a series of behind-the-scenes negotiations, despite continued opposition from most sugar interests. The bill had been approved on June 29 by the Senate Finance Committee by a voice vote. During the negotiations, the Bush administration committed to keep U.S. imports of foreign sugar below the 2002 farm law's threshold level of 1.532 million short tons until the law expires in 2007 by using Commodity Credit Corporation-owned commodities or funds as incentive payments to foreign producers not to export sugar to the United States. It also committed to conduct a study on the feasibility of increased federal subsidies to encourage the use of sugar for ethanol production. Those commitments were sufficient to secure the support of Senate Agriculture Committee Chairman Saxby Chambliss, R-Ga., and Sen. Norm Coleman, R-Minn.

Meanwhile, the administration also committed to enhance enforcement and monitoring of labor and environmental standards in Central American countries, and pledged to seek \$30 million per year for five years starting in fiscal 2007

to aid subsistence farmers in Guatemala, El Salvador and the Dominican Republic. Those steps won over Sens. Jeff Bingaman, D-N.M., and James Jeffords, I-Vt. The administration also pledged to seek \$40 million a year from fiscal 2006-09 to assist CAFTA-DR countries in monitoring and enforcing labor and environmental standards.

Senators voting **against** the accord included the following **12 Republicans**: **Conrad Burns**, Montana; **Susan Collins**, Maine; **Larry Craig**, Idaho; **Mike Crapo**, Idaho; **Mike Enzi**, Wyoming; **Lindsay Graham**, South Carolina; **Richard Shelby**, Alabama; **Olympia Snowe**, Maine; **Arlen Specter**, Pennsylvania; **Craig Thomas**, Wyoming; **John Thune**, South Dakota; and **David Vitter**, Louisiana. All other Republicans voted for CAFTA-DR.

The following **10 Democrats** voted in favor of CAFTA-DR: **Jeff Bingaman**, New Mexico; **Maria Cantwell**, Washington; **Thomas Carper**, Delaware; **Dianne Feinstein**, California; **Blanche Lincoln**, Arkansas; **Patty Murray**, Washington; **Ben Nelson**, Nebraska; **Bill Nelson**, Florida; **Mark Pryor**, Arkansas; and **Ron Wyden**, Oregon. All other Democrats voted against the accord, with the exception of **Sen. Joe Lieberman**, D-Conn., who did not vote. The Senate's lone Independent, **Sen. James Jeffords** of Vermont, voted in favor.

The NGFA encourages members to contact their senators to express appreciation or voice concern over their votes on CAFTA-DR and contact their representatives in favor of the agreement.



Calendar

July 14, 2005: Joint NGFA Food Safety Committee and NAEGA Biothechnology Committee
NGFA Conference Room, Washington, D.C.

July 19, 2005: Rail Shipper/Receiver Committee
Washington Plaza Hotel, 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)

Aug, 4, 2005: NGFA/GEAPS Joint Safety, Health and Environmental Quality Committee
Renaissance, St. Louis Airport Hotel, St. Louis, Mo.



Hill Highlights

There were these other developments on Capitol Hill that are relevant to the grain, feed and processing industry:

► **Congress Approves Eighth Extension of Highway Bill as Conference Committee Negotiations Continue:**

Congress on June 30 approved the eighth stopgap extension to continue funding of federal highway projects as House and Senate conferees continued to haggle over the specifics of a new federal highway reauthorization bill. The newly enacted extension expires July 19. Rep. Don Young, R-Alaska, who chairs the House Transportation and Infrastructure Committee and is chairing the 93-member joint conference committee, initially set June 30 as the deadline for reaching final agreement on a new bill. House and Senate negotiators are working on a proposal whose funding level – a reported \$286.5 billion for highway, transit and road-safety projects through fiscal year 2009 – hews more closely to the House-passed bill's \$284 billion authorization than the Senate's \$295 billion level. The Bush administration has said it would consider vetoing a highway bill that authorizes spending more than \$284 billion over the four-year period. House and Senate conferees reportedly are near to reaching agreement on the maximum rate of return each state would receive on the highway tax dollars contributed to the Highway Trust Fund, as well as the portion of highway funds that would be included in calculating that maximum rate of return.

The NGFA's efforts on the highway bill are focused at maintaining language in both bills that would codify the agricultural exemption from the U.S. Department of Transportation's hours-of-service truck driving rules, and expand the definition of agricultural commodities to include feed, livestock, poultry and milk – a provision authored and championed by the NGFA. The NGFA also is urging the conferees to delete a provision contained in the House-passed bill that would require truckers to impose a diesel fuel surcharge on shippers anytime diesel prices exceeded a benchmark price of \$1.10 per gallon by more than a nickel.

► **House Vote Delayed on Bill Authorizing Lock-and-Dam Improvements:**

The House delayed a final vote originally scheduled for June 29 on legislation (H.R. 2864) that would authorize funding for constructing new locks on the Upper Mississippi River and Illinois Waterways, a key industry priority. The measure now is expected to be considered on the House floor shortly after the House returns on July 11. The authorization, which is included in the water resources development bill, had been approved by the House Transportation and Infrastructure Committee on June 22.

Under the bill, the U.S. Army Corps of Engineers would be authorized to spend more than \$3 billion on the navigation project and the accompanying ecosystem restoration

associated with the authorized lock-and-dam construction projects. The House bill also would authorize \$10 billion in waterway improvement projects, nearly identical to the version passed by the House during the previous Congress. Supporters of the measure, including the NGFA, today urged congressmen to vote against amendments that may be offered during House floor debate that would impose onerous procedural requirements on the U.S. Army Corps of Engineers that would result in extensive and time-consuming delays on the start-up of navigation projects.

In the Senate, the Environment and Public Works Committee on April 13 completed work on its version (S. 728) of the water resources development bill, which also includes authorization for the Upper Mississippi River and Illinois Waterway navigation project – at a level of \$2.475 billion. But Senate floor consideration of the bill has been delayed by action on the energy and highway bills.

Here is a breakdown of the specific funding levels specified in both the House and Senate bills: \$1.795 billion in authorizations for the construction of new 1,200-foot locks at Locks 20, 21, 22, 24, 25, LaGrange and Peoria; \$235 million for moorings at Locks, 12, 14, 18, 20, 22, 24 and LaGrange; switchboats at Locks 20 through 25; and the development and testing of an appointment-scheduling system. The appropriated federal funds would be matched by contributions from the Inland Waterways Trust Fund. Importantly, the bills do **not** impose a fiscal year expiration on the funding authorization, meaning that funds not expended during one fiscal year could be carried over into a future year.

► **Senate Approves Energy Bill:** The Senate on June 28, by an 85-10 vote, approved its version of a massive energy bill (S. 10) that includes a mandate that oil refiners blend at least 8 billion gallons of ethanol, biodiesel and other renewable fuels annually by 2012. The Senate's renewable fuels provision would mandate the following production levels: 4 billion gallons annually by 2006; 4.7 billion gallons by 2007; 5.4 billion gallons by 2008; 6.1 billion gallons by 2009; 6.8 billion gallons by 2010; 7.4 billion gallons by 2011; and 8 billion gallons by 2012.

The Senate energy bill also includes \$10.9 billion in tax incentives over five years – and \$16.1 billion over 10 years for renewable fuels, energy development and fuel-conservation measures. Those incentives include an extension of the biodiesel tax credit through 2010, an update of the small ethanol producer program, and establishment of a tax credit to partially compensate for the cost of installing clean-fuel refueling equipment, such as an E85 fuel pump. About half of the incentives would be targeted to modernizing the electrical power grid.



Next step for the energy legislation is a joint House-Senate conference committee that likely will convene starting in mid-July to attempt to resolve differences between the Senate- and House-passed measures. The most contentious difference is expected to be the one that doomed the energy bill last year – the House bill’s liability waiver for manufacturers of methyl tertiary butyl ether (MTBE), a fuel additive designed to reduce emissions that has been implicated in groundwater contamination. The House bill also contains a 5-billion, rather than 8-billion gallon annual renewable fuels mandate by 2012. But in a show of support for the higher Senate renewable fuels mandate, legislation (H.R. 3081) was introduced on June 28 by Reps. Gil Gutknecht, R-Minn., and Stephanie Herseth, D-S.D., that would increase the mandate to 8 billion gallons by 2012. Cosponsors of the bill include House Agriculture Committee Chairman Bob Goodlatte, R-Va., ranking member Rep. Collin Peterson, D-Minn., and Reps. Tom Osborne, R-Neb., and Jerry Moran, R-Kan. Goodlatte, in his remarks at a press conference to unveil the bill, did note his commitment to “work hard to ensure that we continue to have an affordable and ample supply of feed for our livestock producers.” The House version of the energy bill (H.R. 6) calls for \$8.1 billion in energy tax breaks over five years, most of it aimed at encouraging new domestic energy production.

▶ **Senate Approves Appropriations Bill Adding Funding for Waterway Projects:** The Senate on July 1 approved by a 92-3 vote its version of a \$31.5 billion fiscal 2006 energy and water development bill that would increase funding for the U.S. Army Corps of Engineers to nearly \$5.3 billion, including a significant increase for waterway operations and maintenance. That represents a 23 percent increase (\$966 million) over President Bush’s budget request for the U.S. Army Corps of Engineers, and is about \$550 million more than the \$4.746 billion allocated in the House version of the bill. Senators voting **against** the bill were: Sens. Tom Coburn, R-Okla., John McCain, R-Ariz., and John Sununu, R-N.H. **Not voting** were Sens. Evan Bayh, D-Ind., Jim Bunning, R-Ky., Joe Lieberman, D-Conn., Barbara Mikulski, D-Md., and Arlen Specter, R-Pa. The increase is a positive outcome for the NGFA, which supported the efforts of the National Waterways Alliance to increase Corps funding for the next fiscal year, which begins Oct. 1.

The Senate bill designates \$2.1 billion for port and waterway operations and maintenance, compared with \$2 billion in the House version and \$1.8 proposed by the Bush administration. The bill also significantly increases the waterway general construction budget – to \$2.087 billion versus \$1.763 in the House version and the \$1.636 billion proposed by the administration. The energy and water development appropriations bill was approved by the House on May 24. The next step will be a joint House-Senate conference committee later this month to resolve differences between the two measures

▶ **CFTC at Full Strength:** The Senate confirmed **Ruben Jeffrey III** and **Walt Lukken** to serve on the Commodity Futures Trading Commission (CFTC) after both sailed through a joint confirmation hearing on June 9 by the Senate Agriculture Committee. Jeffrey, nominated for a term through April 13, 2007, previously served as the special assistant to the president and senior director of international economic affairs at the White House National Security Council. Jeffrey was confirmed as chairman of the CFTC. Lukken has served as a CFTC commissioner since August 2002 and was nominated to serve a second term through April 15, 2010.

▶ **Senators Call for RMA Director’s Resignation:** For USDA Risk Management Agency Administrator Ross Davidson, the fireworks began early when, during a Senate Agriculture Committee hearing on federal crop insurance on June 28, several senators expressed a lack of confidence and called for his resignation. Sens. Pat Roberts, R-Kan., Charles Grassley, R-Iowa, and Kent Conrad, D-N.D., all called on Davidson to resign, with Grassley accusing him of causing irreparable harm to the agency during his tenure. Roberts expressed concerns registered by constituents and indicated he would ask Secretary of Agriculture Mike Johanns to find an immediate replacement. Senators sighted Davidson’s alleged ineffectiveness and the continued hostile relationship he has with many insurers, including their agents and customers, as the major reasons he should resign.

▶ **Raymond Confirmed as USDA Food Safety Chief:** **Dr. Richard Raymond**, a Nebraska physician and former chief medical officer for the Nebraska Health and Human Services System under then Gov. Mike Johanns, has been confirmed by the Senate as the U.S. Department of Agriculture’s new under secretary for food safety. Prior to that, Dr. Raymond operated a family medical practice in rural Nebraska and directed the Family Practice Residency Program in Omaha that is designed to encourage young physicians to start medical practices in rural areas. He replaces Dr. Elsa A. Murano, who resigned in December to take a multi-faceted post as vice chancellor of agriculture for the Texas A&M University System, dean of Texas A & M’s College of Agriculture and director of the Texas Agricultural Experiment Station.

▶ **House Completes Action on Fiscal 2006 Spending Bills:** The House completed action on all of its fiscal 2006 appropriations bills, marking the first time since 1988 that the chamber has completed what ostensibly is required under the 1974 Budget Act. But Senate action is lagging, with seven of the 12 spending bills being approved by the Appropriations Committee and three passing the full Senate. Senate Appropriations Committee Chairman Thad Cochran, R-Miss., has said he wants to complete action on as many of the remaining bills as possible before the August congressional recess. Congressional Republican leaders this year want to avoid another end-of-session omnibus spending package.





NGFA Reviews Rail Service, Fuel Surcharges at National Grain Car Council Meeting

The NGFA provided an assessment of rail service performance and voiced concerns over the practices of some rail carriers in assessing diesel fuel surcharges at the June 23 meeting of the Surface Transportation Board's National Grain Car Council in Chicago, Ill.

As the lone national trade association representing rail shippers and receivers to participate in the meeting, the NGFA's presentation captured the attention of all three members of the federal Surface Transportation Board, as well as carrier and shipper representatives.

The NGFA's presentation, which was based upon responses to an informal survey of several key NGFA committees, raised concerns about the performance of the Eastern Class I carriers – the Norfolk Southern and CSX. However, the NGFA noted that the service problems documented by survey respondents tended to conflict with information that had been reported in a published survey the previous week, which found that CSX and NS service performance overall was fairly good. NS and CSX representatives at the meeting did note that their systems had some problem areas that needed to be addressed, which they said were those likely being conveyed by shippers responding

to the NGFA survey. Western shippers generally praised the performance of the BNSF Railway. While expressing concern about the Union Pacific Railway, respondents generally noted that UP service was improving and more predictable than six months ago.

Some other concerns expressed by respondents to the NGFA survey included: 1) carriers seemingly less customer focused and less willing to resolve problems; 2) new and expanding accessorial charges; 3) whether tariff increases caused by tight capacity were being fairly distributed among different types of rail service; and 4) high fuel surcharges that have increased volatility across months, making it very difficult to price grain and products efficiently in forward contracts.

Because of the oft-stated concerns about fuel surcharges, the NGFA conducted an analysis of first quarter 2005 fuel surcharges and made a comparison with actual fuel costs reported by each carrier for the same period. Those results are presented in the table below. A comparison of the first two rows of the table suggests some rail shippers paying the published surcharges were likely paying surcharges in excess of the total fuel costs incurred by the carriers.

Comparing Fuel Costs and Surcharges (First Quarter 2005)

	BNSF	CN	CSX	NS	UP	CP
Fuel Surcharges	8.2%	12%	9.5%	9.5%	8.2%	7.5,4.7,11.5%*
Fuel Cost as % of Revenue	13.1%	9.7%	8.5%	6.3%	15.8%	13.3%
Average Price Per Gallon Fuel (includes hedging gains/losses)	\$1.13	\$1.53	\$1.14	\$1.12	\$1.45	\$1.36
Average U.S. wholesale diesel	\$1.49	\$1.49	\$1.49	\$1.49	\$1.49	\$1.49
Announced Surcharges						
June 2005	10.5%	9.9%	12.4%	12.4%	10.5%	14.0%
July 2005	9.5%	8.7%	10.8%	10.8%	9.5%	12.8%
August 2005	–	–	13.2%	12.8%	–	–

* The CP has three different surcharges; the two lower surcharges apply to grain movements.

STB Requests Fall Peak Service Plans from Rail Carriers

As it did a year ago, the federal Surface Transportation Board (STB) has asked the seven largest North American rail carriers and the American Short Line and Regional Railroad Association to submit their operating plans for handling the peak fall shipping season.

In a June 16 letter to the carriers, STB Chairman Roger Nober asked the carriers to respond within 30 days and said the plans would be made public on the agency's website. Nober's letter also asked the carriers to provide their capital expenditure plans for 'relieving





Rails, Rivers and Roads

by Charlie Delacruz
Counsel for Public Affairs
E-Mail: cdelacruz@ngfa.org

bottlenecks.” The STB chairman referenced a Congressional Budget Office report that “praised our efforts in monitoring the fall peak last year and said it ‘may have prompted the railroads to enhance their efforts to meet demand.’ I believe it did just that, which is a good reason to seek these plans again.”

The STB asked that each carrier provide information on: 1) steps being taken to ascertain demand, and to prepare, for the fall peak shipping season; 2) performance goals for “at least the next 120 days, with a view toward meeting the service demands for the fall peak”; and 3) plans for achieving the

stated performance goals. In addition, “recognizing that many of the service issues experienced by railroads and their customers are related to insufficient rail capacity,” the letter sought information from carriers on: 1) capital expenditure plans for increasing freight-hauling capacity in 2005; and 2) critical capacity-related infrastructure needs and plans for addressing them. The letter also asked carriers to provide information on how they plan to keep shipper/receiver customers informed on service- and capital-related developments.

AAR to Conduct Rail Customer Forum on Sept. 21 in St. Louis

The Association of American Railroads (AAR) has scheduled another “railroad customer forum” for Sept. 21 in St. Louis, Mo. The session is scheduled for 1 to 5 p.m. at the Renaissance St. Louis Airport Hotel.

Modeled after a similar session conducted last September in Kansas City, AAR said senior marketing and/or operations officers from each of the North American Class I railroads will make presentations, as will American Short Line and Regional Railroad Association President Richard Timmons. AAR President Edward Hamberger told the NGFA that individual

Class I carriers are inviting their customers to the forum, and will “present the current state of the rail industry and outlook.” Following the rail carrier presentations, Surface Transportation Board Chairman Roger Nober is scheduled to address the forum, after which Hamberger will moderate a question-and-answer session. Members receiving the *NGFA Newsletter* electronically may register, access an agenda and obtain more information by [clicking here](#), or by visiting AAR’s website at www.aar.org.

NGFA and NAEGA Join in Efforts to Address Rail Shipment Delays at U.S.-Mexico Border

In an effort to address delays and congestion for inbound rail shipments of grain at the U.S.-Mexico border, a delegation from the NGFA and North American Export Grain Association (NAEGA) on June 28 met in Mexico City with industry representatives and officials of the Mexican government.

The meetings were hosted by APPAMEX, the trade association serving the grain industry in Mexico. In addition to NAEGA President Gary Martin and NGFA Counsel for Public Affairs Charles Delacruz, representatives from a range of U.S. and Mexican rail carriers and grain companies participated, including ADM; Bartlett; DeBruce Grain; Louis Dreyfus Corp.; Ferrocarril Mexicano; Union Pacific Railroad (UP); BNSF Railway; and Transportacion Ferroviaria Mexicana. Representatives of the U.S. Grains Council also participated at the invitation of the NGFA and NAEGA.

The congestion and delay at the U.S.-Mexico border gateways is attributable in part to requirements under Mexican law that documentation on rail car shipments must be completed prior to the car entering Mexico, as well as the availability of Mexican government inspection and customs services on weekends and holidays. The BNSF and UP recently implemented major changes to their *Despacho Previo* rules that, among other things, significantly reduced the time periods allowed to complete the documentation for shipments into Mexico. The new rules, which became

effective June 1, also provide for heavy penalties for trains that exceed the specified time periods. For shipments that meet the new time periods, incentive payments are available until June 2006 under the BNSF’s new rules, and until June 2007 under the UP’s rules. [See *NGFA Newsletter*, May 26, 2005.]

The NGFA/NAEGA group met with several high-ranking officials of SAGARPA (the Mexican Agriculture Ministry), including Dr. Jorge Leyva Vazquez, director general; Francisco Sandoval Montesinos, underdirector of border points; and Antonio Hernandez Ovando, chief of border points supervision. An important premise of these discussions is that improving efficiencies in the Mexico-U.S. grain trade is for the long-term benefit of both countries, including end-users and consumers in Mexico. The discussions included administrative and logistical limitations faced by SAGARPA, as well as possible solutions, including the development of processes that would result in the acceptance of facsimile or electronic transmission of the necessary documentation, and coverage for exigent circumstances, such as shipments arriving on weekends or holidays. The NGFA, NAEGA and the other industry representatives remain committed to working with the Mexican government on these efforts in coming months.

For more information, contact NGFA Counsel for Public Affairs Charles Delacruz at (202) 289-0873 or by e-mail at cdelacruz@ngfa.org.





USDA Sets Procedures, Schedule for Emerson Trust Wheat Sales

The U.S. Department of Agriculture on June 28 announced the procedures it intends to use to make **all** 1.415 million metric tons of Commodity Credit Corporation-owned wheat grading U.S. No. 2 or better available from the Bill Emerson Humanitarian Trust to acquire up to 270,000 metric tons of hard red winter wheat and 230,000 metric tons of soft white wheat requested by the U.S. Agency for International Development (USAID) to meet emergency food aid needs for Africa.

The release of up to 500,000 metric tons (approximately 18.37 bushels) of CCC-owned wheat from the Emerson Trust was formally authorized on June 22 by Secretary of Agriculture Mike Johanns. Based upon the anticipated shipping schedule supplied by USAID, USDA's notice **tentatively** projected that it would issue its first invitation on or about July 11 for approximately 50,000 metric tons (approximately 1.837 million bushels) each of hard white and soft white wheat, followed by additional purchase invitations in quantities ranging from 50,000 to 100,000 metric tons for each class of wheat during each of the weeks of Aug. 8, Sept. 5 and Oct. 3.

However, USDA officials told the NGFA today (July 7) that they still had not received formal notice from USAID to initiate the sales, which means the tentative schedule may lag. In the previous releases of CCC-owned wheat from the Emerson Trust, there was significant slippage in USDA's purchase schedule based upon changes in the shipping schedule provided by USAID.

Emerson Trust Sales Procedures: USDA's notice to the trade (BCD-104) said it had not decided yet whether the wheat will be obtained using buy-sell or swap transactions, although

it has utilized buy-sell arrangements in each of its previous releases of Emerson Trust stocks. But the procedures outlined by USDA closely resemble those used previously, with two important differences: 1) CCC will permit **40 percent** – rather than the previously used 35 percent – of CCC-owned wheat stored as of June 28 at single warehouse code to be obtained through sales or swaps; and 2) CCC-owned wheat totaling less than **30,000 bushels** at a single warehouse code location will be available to third parties with no quantity limitations. As with the previous releases, storing warehouse operators again will have exclusive rights to enter into negotiated sales with CCC to purchase **any or all** CCC-owned wheat stored in their locations for three business days after the date an official notice to the trade is issued announcing the opportunity to purchase. USDA again will allow storing warehouse operators to purchase a quantity in excess of the 40 percent maximum level, provided the bid does not result in CCC exceeding the 500,000-metric-ton maximum release authorized from the Emerson Trust. After three business days, purchase rights will be opened to all interested bidders, including third parties, without prior notification to the storing warehouse operator. Third-party buyers will be permitted to purchase up to 15,000 metric tons (approximately 551,150 bushels) during a single transaction. As previously, the new 40 percent limit will include any quantity purchased by the storing warehouse operator prior to the opening of bids to third parties.

In its notice, USDA provided a table of warehouse code locations where CCC-owned wheat eligible for purchase is stored. Members receiving the *NGFA Newsletter* electronically may access the USDA notice to the trade by [clicking here](#).

USDA Amends Export Credit Guarantee Programs

The U.S. Department of Agriculture (USDA) on June 30 amended its export credit guarantee programs to comply with the recent World Trade Organization (WTO) decision that found in favor of Brazil's complaint alleging that various aspects of the U.S. cotton program were trade distorting.

Beginning July 1, USDA's Commodity Credit Corporation began using a risk-based fee structure for its Export Credit Guarantee Program (GSM-102) and Supplier Credit Guarantee Program. Fee rates are to be based on the country risk that CCC is undertaking, as well as the repayment term and repayment frequency (annual or semi-annual) being used under the terms of the guarantee. USDA's action is an attempt to conform with the WTO's finding that export credit guarantee fees should be risk based.

In addition, CCC no longer accepts applications for payment guarantees under its Intermediate Export Credit Guarantee

Program (GSM-103). Any remaining country and regional allocations for GSM-103 coverage under fiscal 2005 program announcements will be reallocated to the existing GSM-102 program for the country or region, USDA said. Questions on the changes to the GSM-103 program are to be directed to the Foreign Agricultural Service's Contract and Registration Branch at 202-720-3224, or by e-mail to AskGSM@fas.usda.gov. For members receiving the *NGFA Newsletter* electronically, details of the changes to the export credit guarantee programs, including the risk categories and new fee schedules, are available by [clicking here](#).

In a related development, Secretary of Agriculture Mike Johanns on July 5 announced that the Bush administration will propose legislative changes to end the so-called "Step 2" cotton payment, which currently compensates cotton exporters and domestic mill users for buying higher-priced U.S. cotton.



Feed Facts

by Randall C. Gordon
V.P., Communications/Gov't Relations
E-Mail: rgordon@ngfa.org

("BSE" continued from page 1)

which closely resemble those found in Great Britain; and 2) pending action by the Canadian Food Inspection Agency, which is considering whether to issue final regulations that would ban all specified risk materials from all animal feed. Further, the fast-food restaurant and other industries that manufacture retail products have renewed their calls on FDA to ban **all** so-called specified risk materials (including intestine and other bovine parts) from all animal feed. And Canadian government officials have let their U.S. government counterparts know they intend to move ahead to issue final regulations that would implement a full SRM removal policy for feed unless FDA issues a less-sweeping proposal (i.e., the brain-and-spinal cord removal policy) soon.

But several other factors – particularly the Senate's continued delay in confirming Dr. Lester Crawford as FDA commissioner – are exerting counter-pressures that could result in continued delay in issuing a proposed rule. A Senate floor vote on the nomination of Crawford – formerly FDA deputy commissioner who has served as FDA acting commissioner since March 25, 2004, and was formally nominated to be commissioner by President Bush on Feb. 14, 2005 – has been slowed by "holds" placed by three senators over unrelated FDA policy issues. But the delay creates an environment of extreme caution within the Bush administration toward issuing any significant rulemaking proposals that might create further controversy that would undermine Crawford's nomination.

Further, it is believed that FDA would prefer to wait to issue a proposed rule until after USDA completes its enhanced surveillance of the U.S. cattle herd to determine the prevalence of BSE in the United States. But it now is clear that USDA's enhanced surveillance will continue until at least November – six months later than originally planned – and may last longer than that depending upon the reaction of U.S. trading partners. Thus far, USDA has tested more than 400,000 cattle for BSE, with only one of those testing positive for the fatal brain-wasting disease.

Feed Traceback Investigation Launched: Meanwhile, FDA and the Office of the Texas State Chemist have launched their traceback investigation attempting to identify the sources of the feed that may have been consumed by the BSE-infected cow.

During an evening press conference on June 29, the U.S. Department of Agriculture (USDA) confirmed that the BSE-infected animal was an approximately 12-year-old Brahman crossbred beef cow that was born, raised and spent its entire life on a single beef operation in Texas. In response, the state of Texas immediately placed a "hold order" on all animals from the herd-of-origin of the BSE-infected cow as USDA continues its epidemiological investigation to identify herdmates born the same year, as well as any offspring born within two years of the infected animal. Thus far, USDA said it had identified two animals from the same beef herd that were related to the BSE-infected animal. USDA declined reporters' requests to

identify the owner or precise location of the beef herd from which the BSE-infected cow originated.

During the same press conference, FDA Center for Veterinary Medicine (FDA/CVM) Director Dr. Stephen Sundlof said his agency would conduct traceback investigations of the feed or feed ingredients that may have been consumed by the BSE-infected cow and any cohorts identified by USDA's Animal and Plant Health Inspection Service (APHIS). In so doing, Sundlof said FDA/CVM will check the inspection history of these feed establishments concerning their compliance with the agency's 1997 BSE-prevention feed regulations. "[W]e will do our best to trace back the (feed inspection) records as far back as we can possibly go for animals that USDA identifies in its epidemiological study," Sundlof said. USDA Chief Veterinary Officer Dr. John Clifford noted that given the age of the animal and the fact that most cattle appear to contract BSE early in life, it may well be that the contaminated feed was consumed long before FDA's BSE-prevention feed rule took effect – at a time when there were no restrictions on feeding ruminant meat-and-bone meal to ruminants.

Dr. Clifford said the BSE-infected beef cow, which was a downer (nonambulatory), had been delivered to a 3D/4D facility located in Waco, Texas, that processes ingredients for pet food. Subsequently, the company identified itself as Champion Pet Foods, which produces several blends of dog food, primarily for the Greyhound industry. The company reported that the animal had been delivered to its plant on Nov. 15, 2004, and that it was dead upon arrival and as such was tested for BSE and did not enter the food or feed chain. USDA previously had said that the animal was incinerated at a USDA-approved BSE testing laboratory at Texas A&M University.

Secretary of Agriculture Mike Johanns on June 24 had announced that the Veterinary Laboratories Agency in Weybridge, England, had confirmed the BSE-positive case that initially tested "inconclusive" for BSE using a screening test and later was found to be negative for BSE using an immunohistochemistry (IHC) confirmatory test at USDA's National Veterinary Services Laboratory in Ames, Iowa. USDA subsequently said it will continue its enhanced surveillance program for detecting BSE "until further notice" and at least until November – which would be the upper limit of the 12- to 18-month duration originally announced by USDA when the enhanced surveillance began in June 2004. APHIS also immediately suspended its issuance of export certificates for U.S. live cattle, beef and beef products that previously attested that the United States was "provisionally free" of BSE or had never detected an indigenous case of the disease. New language for export certificates is being developed.

Changes in USDA BSE Testing Protocols: During his June 24 press conference, Johanns announced several changes to USDA's BSE-testing protocols and procedures to address several shortcomings in the aftermath of BSE case. Most importantly, he said USDA will work with international experts





to develop a new internationally accepted testing protocol under which any samples yielding an inconclusive test result using the highly sensitive screening test will be subjected to both IHC and the Western blot confirmatory lab tests. If the results from either type of confirmatory test are positive, the animal will be classified as positive for BSE. In addition, Johanns noted that portions of the carcass from the BSE-positive cow were mistakenly stored with four other animals, which led USDA to incinerate the remains of all five carcasses. Johanns also said brain tissue samples from the BSE-positive cow were mistakenly frozen before being tested. While USDA scientists maintain this did not compromise the

test results, it was contrary to established procedure and Johanns said the department is taking corrective action. Finally, Johanns noted that brain tissue from the BSE-positive cow was subjected to an unvalidated, experimental IHC procedure at the Ames laboratory that fixes the brain tissue more rapidly than the traditional, validated IHC procedure. While two tests conducted at the Ames laboratory using the validated IHC method yielded BSE-negative results, this "experimental" procedure yielded a BSE-positive result that was never reported. Johanns said "appropriate protocols relating to additional testing for research will prevent a similar situation in the future."

Court Action Looms on Closure of Canadian Border to Beef Trade

Two separate courts this month will conduct proceedings in response to dueling lawsuits on whether to maintain a current temporary injunction keeping the U.S. border closed to imports of live cattle and certain other processed beef products in response to the diagnosis of four confirmed cases of bovine spongiform encephalopathy involving Canadian-born cattle.

The action will start on July 13, when the U.S. Court of Appeals for the Ninth Circuit will hear oral arguments in the U.S. Justice Department's appeal (on behalf of the U.S. Department of Agriculture) asking the appellate court to overturn the temporary injunction. That injunction was granted in March by a U.S. district court in Montana in

response to the lawsuit filed by the Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) that challenged USDA's final rule that established criteria for determining certain countries or regions represented a "minimal risk" for transmitting BSE and recognizing Canada as the sole country meeting those criteria. The effect of USDA's final rule would have been to reopen the U.S. border to imports of live cattle younger than 30 months.

Meanwhile, on July 27, the Montana district court judge who imposed the temporary injunction in a scathing opinion is scheduled to hear oral arguments in Billings, Mont., about whether to make the temporary injunction permanent.

Codex Delays Action on Reconstituting Animal Feed Task Force

The Codex Alimentarius Commission during its annual meeting this week in Rome decided to delay until next year a decision on whether to reauthorize and extend the scope of work for its *ad hoc* Intergovernmental Task Force on Animal Feeding.

The task force, during its fifth and final scheduled meeting in May 2004, successfully completed development of the first international science-based code of practice applying to the manufacturing, distribution and use of feed and feed ingredients for food-producing animals. Codex, established in 1963 by the United Nations, develops science-based international food safety standards designed to protect human health, while facilitating trade in food, feed and agricultural products.

The European Union, Japan and several African countries had urged Codex to immediately reconstitute the task force to work on several tasks, including: 1) developing model hazard analysis and critical control point (HACCP) standards as an annex to the feed safety code. During the development of the animal feed code, the U.S. delegation had successfully spearheaded efforts to cite HACCP principles – but not standards – as one of several acceptable approaches to feed safety that also include current good manufacturing practices

(CGMPs); 2) developing a list of feed ingredients that would be prohibited from being used in or for animal feed; 3) developing detailed rules for rapid-alert notification systems for animal feed; and 4) listing of "undesirable substances," such as heavy and toxic metals, mycotoxins, dioxins, pesticides and zoonotic pathogenic agents in feed.

But the Codex Executive Committee recommended that Codex postpone a decision on whether to reconstitute, as well as any decision on what, if any, future scope of work to assign, to the *ad hoc* Intergovernmental Task Force. The Codex Executive Committee's recommendation was supported by the United States, Canada, Australia, New Zealand and several Latin American countries. As a compromise, the full commission decided to suspend the discussions and take up the matter again at its meeting next summer.

Codes of practice adopted by Codex are important because they are recognized under the World Trade Organization as the basis for resolving international trade disputes. Such codes also frequently serve as the basis for formulating domestic standards by individual member countries, particularly those that do not have existing regulatory standards.



O'Connor Leaving NGFA Staff to Fill New USDA Position



NGFA President Kendell Keith announced this week that NGFA Director of Technical Services **Thomas C. O'Connor** will be leaving the association's staff later this month to fill a newly established position at the U.S. Department of Agriculture.

Effective July 25, O'Connor will become national trade director for grain programs at USDA's Animal and Plant Health Inspection Service (APHIS) in Riverdale, Md., just outside Washington. In that capacity, he will assist in planning, coordinating and directing the sanitary- and phytosanitary-related grain programs implemented by APHIS' Plant Protection and Quarantine Division, which are particularly important to maintaining international trade. Among his duties will be to represent the U.S. government in negotiations and site visits with other countries' plant quarantine officials; provide technical direction to APHIS' sanitary and phytosanitary programs; and act as a resource for identifying emerging scientific issues and the application of new technology to managing phytosanitary trade issues.

O'Connor, a 15-year veteran of the NGFA's staff, managed the association's engineering and operations programs for grain

elevators, feed mills and processing plants. In this capacity, he analyzed the impact on grain handling operations of federal regulations, and oversaw activities related to safety and industrial health, grain grades and weights, environmental quality and other issues. He served as principal staff liaison to the NGFA's Grain Grades and Weights Committee; Safety, Health and Environmental Quality Committee; and Food Safety Committee. He recently had been assigned duties related to the Waterborne Commerce Committee.

"Our heartiest congratulations go out to Tom!" said NGFA President Keith. "His successful career with the NGFA was epitomized by his dedication, hard work and service to the industry. I know he's excited about this new and challenging position, and it is fortunate for the industry that it will continue to benefit from his service on behalf of U.S. agriculture in his new role at USDA. We wish Tom and his wife, Cindy, all the very best as they launch this exciting new chapter in their lives."

Prior to joining the NGFA's staff in 1990, O'Connor spent 16 years in the industry working for Central Soya Co., The Andersons and Bunge Corp. He is a graduate of the U.S. Naval Academy, and subsequently received an M.B.A. from Memphis State University and a masters degree in environmental science and engineering from the Virginia Polytechnic Institute and State University (Virginia Tech).



National Grain and Feed Association
1250 Eye St., N.W., Suite 1003
Washington, D.C. 20005-3922

TIME SENSITIVE