



FDA Set to Announce Advance Notice of Proposed Rulemaking on BSE-Prevention Feed Rule

The Food and Drug Administration on July 9 after markets close is scheduled to announce jointly with the U.S. Department of Agriculture that it will initiate what is known as an “advance notice of proposed rulemaking” to solicit public comment on potential changes to its feed regulations designed to prevent the establishment or spread of bovine spongiform encephalopathy (BSE) in the United States.

Importantly, the advance notice of proposed rulemaking provides an additional opportunity for public comment than would have been provided had FDA issued a proposed rule. **The bottom line is that no immediate changes will be made to FDA’s current BSE-prevention feed rule**, which took effect in 1997 and bans the feeding of certain mammalian protein to cattle and other ruminants. The NGFA was notified of the agency’s pending action by top FDA officials earlier this week.

The process to be announced by FDA has the advantage of providing more time for USDA to gather data through its expanded BSE surveillance and testing program that is intended to provide a one-year snapshot on whether and to what extent BSE exists in the U.S. cattle herd. But Canadian Agriculture Minister Bob Speller told the Canadian press this week that Canada intends to announce its BSE feed rule changes simultaneously with FDA’s announcement. And the Canadian actions are expected to include a ban on all so-called “specified risk materials” in all animal feed.

What FDA is Expected to Announce on the Feed Rule:

With respect to its BSE-prevention feed rule, the advance notice of proposed rulemaking is expected to request public comment on a **diverse series of potential policy options**

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Federal Budget Exposure Being Evaluated of Potential Changes to Federal Grain Warehouse Program

The five organizations, including the NGFA, that have been participating in a joint Grain Warehouse Working Group to develop a draft framework containing potential changes to the federal grain warehouse program have requested that the potential federal budget exposure of the plan be evaluated by the Congressional Budget Office (CBO).

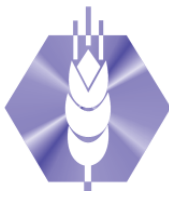
The issue is important, since congressional committees are under budget guidance not to adopt legislation that would result in additional federal expenditures, unless commensurate budget savings also are identified. The draft plan currently being considered by the Grain Warehouse Working Group envisions using the U.S. Department of Agriculture’s Commodity Credit Corporation as a vehicle for providing short-term borrowing authority to finance coverage for stored grain and producer grain-payable obligations in the event of insolvencies that may occur while an “Escrow/Trust Fund” consisting of industry assessments is being capitalized, as well as to cover catastrophic losses that exceed the ability of federal grain warehouses to repay under an eventually agreed-upon assessment formula.

The Grain Warehouse Working Group has developed a draft framework containing a package of proposals to amend

the U.S. Warehouse Act and U.S. Department of Agriculture regulations. Among the major proposals is to clarify that the U.S. Warehouse Act vests in USDA the sole responsibility and liability for regulating and conducting examinations at federally licensed grain warehouses for storage **and** producer grain-payable obligations. The draft framework also would enhance depositor and producer grain-payable protection by adding base levels of financial protection at the following levels: 1) 100 percent for stored grain obligations; 2) 100 percent for producer cash grain payables for which payment is due within 30 days of delivery (basically, the time it takes for checks to clear); and 3) 50 percent for cash and credit-sale producer grain payables for which payment is due 31 to 365 days after delivery.

Still under review within the Grain Warehouse Working Group is the type of federal grain warehouse license that would be recommended. There is a consensus that federally licensed grain warehouses would need to obtain a combined federal license that covers **both** storage and producer grain payable obligations. Yet to be determined is whether companies would be able to make licensing decisions on a **facility-by-facility basis**, or would need to decide whether

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NGFA, GEAPS Table Talks on Joint Annual Conference, Trade Show

The NGFA and the Grain Elevator and Processing Society (GEAPS) on July 12 are scheduled to issue the following joint statement announcing that we are tabling discussions concerning a merger of the NGFA Country Elevator/Feed Industry Council and Trade Show with the GEAPS Exchange and Trade Show.

The NGFA received valuable input throughout these deliberations with GEAPS from our Board of Directors, Executive Committee, Country Elevator Committee and three principal feed-related committees, as well as from State and Regional Grain and Feed Associations affiliated with the NGFA. The NGFA also surveyed attendees who regularly attend the Country Elevator and Feed Industry

Council conferences, and those survey results also provided valuable feedback.

From the NGFA's standpoint, we believe the outcome expressed in the following joint statement reflects the input and advice received about the strong desire to preserve the dynamic and well-attended Country Elevator/Feed Industry Council conference and trade show. As also expressed in the statement, our strong and expanding strategic alliance with GEAPS is working extremely well, and we will continue to explore additional opportunities to cooperatively work together to serve the industry's needs.

– **Kendell W. Keith**, NGFA President

NGFA/GEAPS Joint Statement

The National Grain and Feed Association (NGFA) and the Grain Elevator and Processing Society (GEAPS) announced today (July 12) that they have made a joint decision to table discussions concerning a merger of their major annual conferences and trade shows.

Following several months of discussions about combining the annual GEAPS Exchange and the NGFA's annual Country Elevator/Feed Industry Council conference and show, leadership of the two organizations agreed to suspend further consideration at the present time because of challenges involving scheduling of a combined event.

Differing busy seasons for personnel attending the two events played a large role in the joint decision. While a number of positive outcomes that could emerge from a combined event were identified, both the NGFA and GEAPS determined that it was in their organizations' best interests to maintain traditional scheduling to best serve the needs of their members. The NGFA conference and trade show is conducted in early December, and the GEAPS Exchange in late February or early March.

The decision will not affect other collaborative ventures between the NGFA and GEAPS, including the joint annual Operations, Management and Technology seminars. The first seminar of the newly expanded series is set for July 27-28 in Kansas City.

"We're going to continue to work closely together on several fronts," said GEAPS Executive Vice President David Krejci. "That fact has not changed, because it makes sense for members of both groups." "We are

confident that new initiatives will emerge from our long-established collaborative relationship, including the prospect of renewing consideration of a joint conference and trade show sometime in the future."

"While the discussions ultimately did not result in the outcome of a joint conference and trade show that both groups originally intended, the discussions involving industry and staff leadership of both organizations were extremely useful in identifying other interest areas where joint collaborative efforts may be possible that will benefit the industry," said NGFA President Kendell W. Keith. "The NGFA and GEAPS have a lot of common members that want to see the organizations do as much as we can cooperatively under the expanded strategic alliance that already exists. We're committed to making that happen."

As part of that strategic alliance, the NGFA and GEAPS maintain two joint technical committees to address important industry issues and member interests: a Grain Grades and Weights Committee; and a Safety, Health and Environmental Quality Committee. The NGFA and GEAPS also have jointly produced training materials, as well as conducted seminars on a number of critical grain industry operations matters. The seminar this month will focus on evolving and emerging facility security, safety, health and environmental compliance issues.

The organizations also will continue joint production of multi-media publications and other educational resource materials for the grain handling, feed manufacturing and processing industries.



Australian and Moroccan Free Trade Agreements Advance

House and Senate Republican leaders this week expressed confidence that both the U.S.-Australia and U.S.-Morocco free trade agreements will be approved by each chamber before Congress begins its long summer recess on July 23.

Legislative language implementing the U.S.-Australia free trade agreement has been introduced and was approved by the House Ways and Means Committee on July 8. A vote on the House floor could occur as early as the week of July 12. Meanwhile, in the Senate, the Finance Committee is scheduled to consider the legislation on July 14 followed by debate and a vote on the Senate floor soon thereafter. House Ways and Means Committee Chairman Bill Thomas, R-Calif., and Senate Finance Committee Chairman Charles Grassley, R-Iowa, also have said they expect the U.S.-Morocco accord will be considered this month. Both trade agreements are being considered under the law granting the president trade promotion authority (so-called "fast-track"), which requires Congress to approve or reject the accord, without amendment.

Under the U.S.-Australia agreement, Australia is to remove its 5 percent tariff on 99 percent of U.S. manufactured goods immediately. In addition, all U.S. agricultural exports to Australia (totaling approximately \$400 million in 2003) are to receive duty-free access. Further, the United States and Australia agreed to develop mechanisms for resolving sanitary and phytosanitary barriers that have disrupted two-way trade in pork, corn and other agricultural products. These mechanisms include establishment of a standing technical working group comprised of representatives from USDA's Animal and Plant Health Inspection Service (APHIS) and their Australian counterparts in an agency known as Biosecurity Australia.

The U.S.-Australia accord does include some exclusions and

restrictions that limit the growth in Australia's duty-free exports of beef and dairy products to the United States and freeze Australia's quota for sugar exports to the United States at levels negotiated under the Uruguay Round of the General Agreement on Tariffs and Trade. With these exceptions, the measure has drawn fairly wide congressional support and is expected to pass the House and Senate with ease – although the Senate likely will use most of its 20 hours of debate before a final vote. In response to U.S. concerns over the operation of the Australian Wheat Board, Australia agreed to work with the United States during the current Doha Round of World Trade Organization (WTO) negotiations "to develop export competition disciplines that eliminate restrictions on the right of entities to export."

Under the U.S.-Morocco agreement, U.S. agriculture would be extended preferential market access on all products under various negotiated schedules. The agreement establishes preferential tariff-rate quotas for high- and standard-quality beef, whole birds, leg quarters, durum wheat, non-durum wheat, almonds and apples. In addition, the agreement contains a provision that will give U.S. exporters of products, including corn and corn products, wheat, soybeans and soybean products, beef and poultry any market access improvements Morocco extends to other trading partners. Many agricultural in-quota tariffs, some as high as 275 percent, would be reduced upon implementation of the agreement and reduced to zero in five to 10 years.

In addition to market-access improvements, the U.S. and Morocco agreed to work in the WTO to eliminate restrictions on the right to export and special financing granted directly or indirectly to exporting state trading enterprises. They also agreed to ensure greater transparency in the activities of export state trading enterprises.

Upper Mississippi-Illinois River Lock Renovation Bill Introduced in House

Legislation that would authorize the first stage of the U.S. Army Corps of Engineers's plan to renovate and extend the locks on the Upper Mississippi River and Illinois Waterway was introduced in the House today (July 8) by Rep. Kenny Hulshof, R-Mo.

Hulshof in his capacity as chairman of the House Mississippi River Caucus, also conducted a hearing today on the Corps' inland waterways renovation plan. The House bill is identical to one introduced in June in the Senate by Sen. Christopher (Kit) Bond, R-Mo. Both measures would authorize spending for construction of new 1,200-foot locks at Locks 20-25 on the Upper Mississippi River, and at LaGrange and Peoria on the Illinois River. In addition, they would authorize funds for mitigation efforts associated with the new construction. The bill also would authorize the financing of mooring facilities at Locks 12, 14, 18, 20, 22, 24 and LaGrange;

switchboats at Locks 20-25 for five years during project operations; and funds to conduct development and testing of an appointment-scheduling system on the inland waterways. These tax funds would be matched by an equal amount from the Inland Waterways Trust Fund that consists of barge fuel taxes paid by barge users.

The NGFA and other organizations long have been pressing for authorization by Congress for this much-needed inland waterways renovation projects. The House bill was introduced because that chamber's version of the water resources development bill, passed last year, did not contain authorization for the project since the Corps had not finalized its proposed plan. The Senate version of the water resources development bill currently being considered does include language authorizing the project; Hulshof's bill would signal the House's support for doing likewise.



(“BSE” continued from page 1)

gleaned from both the actions the agency announced on Jan. 26 that it intended to implement as an interim final rule – but never did – plus the recommendations submitted by an international review team that investigated the single cases of BSE that have been diagnosed thus far in both the United States and Canada.

Thus, the rulemaking notice is expected to include a request for comments on the international panel’s recommendation to ban SRMs from all animal feed. The international panel classified as SRMs the brain, spinal cord, skull and vertebral column from all cattle 30 months or older, as well as the entire intestine (large and small) of all cattle regardless of age. The international panel also said it believed that BSE was “indigenous” in North America, and therefore warranted stronger preventive measures. However, the international panel also recommended a “phased approach” to SRM removal, starting with the removal of brain and spinal cord of cattle 30 months or older, until the level of BSE infectivity could be determined. Scientists believe the brain and spinal cord of cattle 30 months or older carry up to 90 to 95 percent of the potential infectivity if BSE exists in an animal. The NGFA has been told by FDA officials that the advance notice of proposed rulemaking will include “strong language” on SRM removal as being a preferred strategy for reducing the risk of cross-contamination throughout the feed chain.

The FDA proposal also may request comments on other feed-related recommendations of the international panel, including its recommendation to ban in ruminant feed all mammalian material (including pork and equine), as well as all poultry protein, as an additional layer of protection against potential cross-contamination.

However, the FDA advance notice of proposed rulemaking also is expected to request comments on other potential policy options, including those FDA announced on Jan. 26 but never implemented. Those included: 1) requiring dedicated equip-

ment, facilities or production lines by facilities and transporters that handle mammalian material prohibited from being fed to ruminants and also manufacture ruminant feed; and 2) banning the feeding poultry litter, plate waste and ruminant-derived blood products to ruminants. In essence, these are the same actions on which FDA requested comment in a **Nov. 6, 2002** advance notice of proposed rulemaking.

FDA officials told the NGFA today that while a public announcement still is scheduled for July 9 after markets close, the actual text of the advance notice of proposed rulemaking may not be released until early next week.

FDA to Announce Interim Final Rule on FDA-Regulated Human Products: FDA and USDA also are scheduled to announce jointly on July 9 an interim final rule banning the use of certain products in FDA-regulated human food (including dietary supplements, soups and pizza toppings), drugs and cosmetics. The FDA restrictions will mirror SRM restrictions implemented in January by USDA’s Food Safety and Inspection Service (FSIS) for USDA-regulated meat and meat products. FSIS’s definition of SRMs encompasses the skull, brain, trigeminal ganglia, eyes, vertebral column, spinal cord and dorsal root ganglia of cattle 30 months of age or older, as well as the small intestine of all cattle. Tonsils from all cattle previously had been considered inedible as human food. For cosmetics, FDA is expected to establish a maximum impurity level for tallow (maximum 0.15 percent impurities) because of concern that the BSE prion agent tends to concentrate in protein fractions of tallow.

More Information Coming from NGFA: The NGFA will issue a special edition of its electronic *NGFA E-Alert* publication providing complete details of the FDA announcement once it occurs.

GAO Auditors Accompanying FDA on BSE Feed Rule Inspections

Food and Drug Administration officials have told the NGFA that auditors from the General Accounting Office (GAO) – the investigatory arm of Congress – have begun accompanying FDA inspectors on inspections of feed mills and other regulated sectors to determine compliance with FDA’s BSE-prevention feed rule.

GAO is in the midst of conducting a follow-up investigation at the request of Sens. Richard Durbin, D-Ill., Tom Harkin, D-Iowa, and Thad Cochran, R-Miss., to check on compliance with and enforcement of FDA’s BSE-prevention feed rule, as well as to determine the extent to which the agency has implemented suggestions made by GAO in a previous 2002 report. FDA officials told the NGFA that GAO auditors thus far have accompanied FDA inspectors from its Atlanta and San Francisco District Offices on BSE-prevention feed rule inspections. FDA officials said they believe GAO auditors

also already may have accompanied FDA inspectors stationed at its Kansas City and Dallas District Offices on BSE-prevention feed rule inspections. GAO also has requested that FDA allow GAO auditors to accompany FDA inspectors on at least one inspection from each of the agency’s 25 district offices. GAO is seeking to accompany FDA inspectors on inspections involving multi-specie feed manufacturers, renderers and on-farm mixer-feeders that use mammalian protein prohibited from being fed to ruminants and that also manufacture ruminant feed.

FDA officials told the NGFA that during inspections in which CBO auditors have accompanied FDA inspectors thus far, several notable violations of the FDA BSE-prevention feed rule have been detected. The violations involve a failure to label with the BSE caution statement (“Do Not Feed to Cattle or Other Ruminants”) feed that contains or may contain





prohibited mammalian protein and instances in which firms either did not have written procedures for preventing cross-contamination or actual cases of cross-contamination were detected when handling feed containing both prohibited and non-prohibited mammalian material. FDA said the CBO-monitored inspections already have resulted in several product recalls and the issuance of at least one warning letter from the agency.

Second "Inconclusive" BSE Test Result Confirmed Negative; Focus Shifted to Wisdom of USDA Reporting Preliminary Results

The U.S. Department of Agriculture's July 2 announcement that the second of two cattle was **negative** for bovine spongiform encephalopathy (BSE), after initially being diagnosed as "inconclusive" based upon a USDA-approved rapid-screening test, has brought into question the wisdom of USDA publicly reporting preliminary test results.

USDA's Animal and Plant Health Inspection Service (APHIS) also is being questioned about the accuracy and reliability of the rapid-screening test that is being used, and whether adequate quality controls are in place at the USDA-approved laboratories performing them.

USDA Chief Veterinary Officer Dr. John Clifford announced June 30 that the first animal that yielded an "inconclusive" test result using the ELISA-based rapid-screening test developed by Bio-Rad Laboratories, Hercules, Calif., also had tested negative for BSE using the so-called "gold-standard" immunohistochemistry (IHC) test performed at the National Veterinary Services Laboratories. At the current rate of "inconclusives" and based upon the number of cattle to be tested by USDA during the next 11-17 months, estimates are that the United States would far exceed the rate of false positives experienced in other countries that have used similar rapid-screening tests.

During a June 30 press briefing, Clifford said that five rapid-screening tests have been licensed by USDA, but only the Bio-Rad test has completed field testing. Field trials on the four other rapid-screening tests currently are underway, he said. It is the NGFA's understanding that the Bio-Rad test was the preferred choice of USDA-approved laboratories currently in operation since many previously had used it as a screening test for chronic wasting disease.

Under the rapid-screening procedures being used by USDA, if the first test yields an "inconclusive" (suspect-positive) result for BSE, two more rapid-screening tests are done at the same laboratory. Each rapid-screening test takes about four hours to run. Concurrently, the laboratory ships brain tissue samples to the National Veterinary Services Laboratories in Ames, Iowa, where the confirmatory IHC test is performed. The Ames laboratory also runs another rapid-screening test on the sample as a good laboratory quality-control check on the original

The NGFA continues to strongly urge 100 percent compliance with the BSE-prevention feed rule, and advises member companies to reexamine their procedures to ensure that they are in compliance. The NGFA in 1997 published a BSE-prevention feed rule compliance guide for commercial feed manufacturers that is available at no charge on the association's web site at www.ngfa.org.

laboratory. However, USDA announces the "inconclusive" test result based upon the outcome of the first rapid-screening test, then waits the four to seven days it takes to obtain the confirmatory test result before announcing definitively whether the suspect animal does, or does not, have BSE.

USDA also is confronting criticism that even though its reporting of "inconclusives" was intended to make the process as transparent as possible, leaks of unauthorized information still are occurring concerning the type and age of suspect carcasses, as well as the location of the laboratories performing the rapid-screening tests.

During the first month of its expanded surveillance (as of June 30), USDA reports testing 10,361 animals – **none of which has been confirmed positive for BSE**. The number of samples being tested weekly is steadily increasing, and should reach a peak during the heavy cattle marketing periods later this fall and winter.

House Hearing Scheduled for July 14 on USDA's Enhanced BSE Surveillance Program: In a related development, the House Agriculture Committee and House Government Reform Committee have scheduled a joint hearing for July 14 focusing on USDA's enhanced surveillance program for detecting BSE. Witnesses scheduled thus far are Secretary of Agriculture Ann M. Veneman and perhaps USDA's inspector general. It is known that the ranking Democrat on the House Government Reform Committee, Rep. Henry Waxman, D-Calif., would like to broaden the list of witnesses and delve into other issues, such as whether the first and only confirmed U.S. case of BSE – involving the Washington state dairy cow diagnosed as BSE-positive on Dec. 23 – was or was not nonambulatory (a "downer") when presented for slaughter. Other issues that could arise are: 1) how certain Canadian beef products subject to USDA import controls were allowed to enter the United States following Canada's May 20, 2003 BSE case; and 2) USDA's handling of the suspect cow in Texas in May, where it is alleged that a USDA/APHIS regional official overruled a local APHIS official at the plant on whether the cow should be tested for BSE. It was not, and was rendered; FDA subsequently intervened to isolate the meat-and-bone meal from the suspect cow to ensure it did not enter the animal feed chain.





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all of their grain facilities would be federally or state licensed on a **state-by-state basis**. If the license determination was made on a state-by-state basis, an exception would need to be granted for companies with grain facilities that are required to be federally licensed by futures exchanges; in these cases, companies likely would be given the option to license all of their remaining non-delivery grain warehouse facilities within a state under either the federal or state system.

The draft framework document was formulated by representatives of the American Farm Bureau Federation, Association of American Warehouse Control Officials, National Association of State Departments of Agriculture, National Farmers Union and the NGFA.

Bonding and Industry Assessments: As part of the draft framework, the "Escrow/Trust Fund" would be established to provide coverage for the additional depositor and the new producer grain-payables protection provided under the plan. The approach now being considered and presented for CBO cost estimates would consist of the following elements:

◆ Retain the current individual storage bond requirement for federally licensed warehouses. The existing maximum storage bonding requirement of \$500,000 per company per state also would be retained.

Implement a licensing-fee assessment that under "normal" conditions would generate a total of \$600,000 annually to cover the historical producer grain-payable losses that have occurred at federally licensed warehouses. The goal would be to structure the trust fund assessments in such a way that no federal warehouse's licensing fee would increase less than 20 percent nor more than 40 percent compared to the licensing fees currently being paid. This level of assessments would exceed by more than \$200,000 per year the expected annual payouts based upon the best available estimates of the loss history of federally licensed grain warehouses over the past 15 years.

In addition, assessments could fluctuate to a level sufficient to generate a total of up to \$1.2 million per year for an unlimited

period if storage or producer grain-payable losses occurred that exceeded the fund's ability to repay.

- ◆ The fund would be capped at \$12 million, with a proviso to recapitalize the fund if it declines to less than \$12 million because of insolvency claims.
- ◆ As noted previously, CCC would serve the role of providing short-term borrowing authority to finance insolvencies that may occur while the fund is being capitalized, as well as to cover catastrophic losses that exceed the ability of federal grain warehouses to repay under the eventually agreed-upon assessment formula. It is this feature of the plan that contains potential federal budget exposure. But it resembles the historical role CCC has performed in the past on storage obligations, in which after grain assets are liquidated and the storage bond is fully utilized, CCC places itself at the last of the line of creditors until producers, banks and other depositors are made whole.

The draft framework document now being reviewed also would:

- ◆ Increase the minimum net worth for federally licensed grain warehouses from the current \$50,000 to as much as \$200,000 to \$250,000, phased in over a period of several years. The extent to which the net worth requirement is increased will depend somewhat upon the amount of "budget credit" that CBO estimates would result.
- ◆ Change the method used to calculate net worth so that it is based upon both licensed storage capacity and annual producer grain purchased at the first point of sale (to account for grain-payable obligations).
- ◆ Require an annual financial statement that is a review-level or better prepared by a certified public accountant.
- ◆ Expand and codify requirements for financial statement and examination procedures.
- ◆ Enhance federal-state cooperation, including sharing of expertise concerning prudent examination procedures for producer grain-payable obligations.

CFTC Ag Advisory Committee to Meet July 21

The Commodity Futures Trading Commission (CFTC) has set the next meeting of its Agricultural Advisory Committee for **July 21** in Washington.

Among the issues to be discussed are the petitions received from the Chicago Board of Trade, Kansas City Board of Trade and Minneapolis Grain Exchange to modify the rules under which federal speculative position limits are established for certain agricultural commodities. The three major U.S. grain exchanges recently petitioned the CFTC to repeal CFTC regulation 150.2, under which the agency sets federal speculative position limits on regulated agricultural futures and options contracts. Under such action, the exchanges would have

increased authority to determine their own speculative position limits, with some degree of CFTC oversight. If the repeal were granted, it would become the sole responsibility of the exchanges to establish and enforce their own speculative position limits or "position accountability" provisions, subject to CFTC oversight and enforcement. [See *NGFA Newsletter*, June 24, 2004.]

Also on the agenda is a review of trends in the futures industry, and developments regarding various risk-management products for agricultural producers. The NGFA is represented on the CFTC Agricultural Advisory Committee and will be participating in the meeting.





Prodigene Seeking Permit to Field Test Pharma, Industrial Biotech Crops in Texas

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is seeking comments by July 26 on a permit application from ProdiGene Inc., based in College Station, Texas, to conduct two field trials of biotechnology-enhanced corn with pharmaceutical and industrial properties.

Prodigene is seeking permits to conduct field trials on corn genetically engineered to express aprotinin, a protein that has been shown to reduce blood transfusion requirements in pediatric patients and adult patients undergoing cardiac bypass surgery; and trypsin, a protein used in the industrial production of insulin and as an oral medication for treatment of complications resulting from wounds.

In 2002, Prodigene entered into a consent decision and order with USDA involving alleged violations of the Plant Protection Act for failing to adhere to conditions for segregating biotech pharma corn being field tested in Nebraska and western Iowa. While ProdiGene neither admitted nor denied any violations of the law, the company agreed to pay a civil penalty of \$250,000. In addition, the company reimbursed USDA for all costs associated with buying approximately 500,000 bushels of soybeans in storage in Nebraska that were contaminated with ProdiGene pharma corn, and to destroy the beans and clean the facility and all equipment. ProdiGene also agreed to a \$1 million bond and higher compliance standards, including additional approvals before field testing and harvesting genetically modified material. The company was required to develop a written compliance program with USDA to ensure that its employees, agents, cooperators and managers understood, and comply with, the Plant Protection Act, federal regulations and permit conditions.

APHIS said Prodigene now is seeking to field-test its pharma and industrial biotech corn in July or August 2004 in an area of Frio County, Texas, southwest of San Antonio. According to APHIS, Frio County is a minor producer of corn, having produced only 0.22 percent of all corn grown in Texas. Uncultivated rangeland is located east, south and north of the field test site, the agency said. Under the proposed permit conditions, both tests would be conducted through use of biological and physical containment measures designed to prevent commingling with non-biotech corn. Such measures would include the requirement that non-biotech corn not be planted within a mile of the test site and that a 50-foot buffer zone be maintained around the site that can be planted only to non-food or non-feed cover crops to

prevent erosion. Field sites would be subject to periodic inspections and security measures to prevent unauthorized access, APHIS said. In addition, APHIS said it would require other safeguards, such as use of dedicated equipment; thorough cleaning of planting and harvesting equipment; strict chain of custody seed and product from origin to destination; use of vehicles equipped with GPS tracking; and similar measures. The site will be monitored for at least one year from harvest for volunteer plants, the agency said. If necessary, ProdiGene would irrigate the sites to promote growth of volunteers, APHIS said.

Submitting Comments: APHIS said it may deny the permit, grant it as proposed, or add additional permit conditions depending upon the comments it receives. The NGFA's Food Safety Committee will be meeting with the head of APHIS' Biotechnology Division on July 14 to discuss the proposed permit conditions, as well as other biotech-related issues being addressed by the agency. Comments may be submitted by regular mail (original and three copies) to: Docket No. 04-041-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, Md., 20737-1238. Or comments may be submitted by e-mail to regulations@aphis.usda.gov; comments are to reference the docket number (Docket No. 04-041-1) and be inserted in the body of the message, not as attached files.

Membership Month Begins!

The 2004 version of NGFA Membership Month began on July 5, and runs through Aug. 13. All NGFA members are asked to make special efforts during Membership Month to bring in a new member or two! All successful recruiters qualify for a drawing at close of business on Aug. 13 for the following Grand Prize:

Colorado Ski Weekend!

- Airfare for two to Denver, Colo.;
- Two complimentary nights at the Adams Mark Hotel in Denver; and
- Two days of lift tickets at nearby Winter Park Resort.

Need to know if a certain company is a member? Need talking points, or materials sent? Contact Todd Kemp at tkemp@ngfa.org or (202) 289-0873.





Rails, Rivers and Roads

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STB Sets July 21 Hearing on Procedures for Small Rail Rate Challenges

The federal Surface Transportation Board (STB) has set a public hearing for **July 21** in Washington to receive testimony on the agency's procedures for handling small rail rate challenges.

In testimony to Congress on March 31, STB Chairman Roger Nober voiced concerns that the agency's current rules are ambiguous over which types of cases qualify for consideration as small rail rate cases, as well as the time and cost of the discovery phase of the process. Nober has suggested a new test to clarify which shippers would qualify automatically as a small rail rate case. He also has recommended assigning an STB administrative law judge to hear and decide small rail rate cases in an effort to reduce costs and ease procedural hurdles for small shippers.

Given their diverse origination points, agricultural shippers and their farmer-customers are among those who conceivably would benefit most by having rational and reasonable small rail rate case procedures. The NGFA is organizing a meeting of agricultural producer and shipper groups to develop a coordinated, joint strategy for the STB hearing.

The small rail rate case proceeding [*STB Ex Parte No. 646*]

has been ongoing since early 2003. In July 2003, 17 shipper organizations – including the NGFA – signed a joint statement that recommended a quantified definition of “small” rail rate cases; suggested a simplified procedure for demonstrating excessive rates; and presented a plan for expediting small rail-rate challenges. The outcome of the proceeding is critical to U.S. agriculture, since the existing STB small rail rate procedures have proved too burdensome and costly. In addition, the only other procedure available for challenging rail rates, requires that shippers demonstrate constrained market-pricing procedures and stand-alone costs, which is extraordinarily complex, time-consuming and costly. In the 24 years since enactment of the Staggers Rail Act of 1980, only two rail rate cases brought before the STB have been non-coal cases. The most infamous agricultural rate case – the McCarty Farms case – took 17 years to litigate and cost the involved shippers \$3.2 million in fees (excluding attorney fees, since the case was taken on a contingency basis). Typical coal rate cases have cost between \$2 million and \$3 million each to pursue.



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TIME SENSITIVE

