



NGFA

Newsletter[®]

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USDA Schedules Additional Farm Bill Forums in Five States

...Johanns Expresses Surprise at Producer Criticism of CRP...

The U.S. Department of Agriculture announced Aug. 3 that it is scheduling five more farm bill forums during the week of Aug. 11-18.

The forums are scheduled for **Aug. 11** in conjunction with the Iowa State Fair in Des Moines (11:30 a.m.-2:30 p.m.); **Aug. 12** at the Fresno County Fairgrounds in Fresno, Calif. (1-4 p.m.); **Aug. 16** at Penn State University's Ag Progress Days event in University Park, Pa. (9 a.m.-noon); **Aug. 17** in Jackson Hole, Wyo. (4-7 p.m.); and **Aug. 18** in Indianapolis, Ind. (4-8 p.m.). Secretary of Agriculture Mike Johanns is scheduled to attend the first three sessions, while Undersecretary of Agriculture for Natural Resources and Environment Mark E. Rey and Deputy

Secretary of Agriculture Charles F. Conner, respectively, will moderate the Wyoming and Indiana forums.

CRP Concerns Voiced at North Dakota Forum: Meanwhile, Secretary Johanns expressed a sense of surprise to reporters at the farm bill forum conducted on July 26 in Minot, N.D., regarding the negative comments registered by producers about the impact of the Conservation Reserve Program (CRP) on entry-level and tenant farmers, as well as rural communities. "There was some pretty strong criticism of the CRP," Johanns told KRVN Radio following the event. "Those programs are usually very popular with producers and environmental groups. There was some concern expressed here."

(Continued on page 8)

Agroterrorism Initiative Launched by Federal Agencies

...Concerns Over Approach Voiced by NGFA, Other Groups...

Four federal agencies on July 26 announced a major collaborative effort to work with states and private companies in a "voluntary" effort to assess potential vulnerabilities and to devise risk-mitigation strategies for a wide range of agricultural and food-production, manufacturing and export facilities.

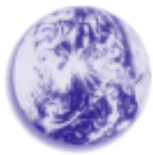
But a wide range of industry organizations – including the NGFA – voiced major concerns over the approach planned by the federal agencies, as well as concerns over whether the information collected would remain confidential and exempt from Freedom of Information Act disclosure under federal and state laws. **Because of these concerns, articulated elsewhere in this article, NGFA member companies are encouraged to contact Randy Gordon at rgordon@ngfa.org or at 202-289-0873 to discuss the program before volunteering to participate.**

The Federal Initiative: Dubbed the "Strategic Partnership Program Agroterrorism (SPPA) Initiative," the plan is the product of an interagency task force comprised of the U.S. Department of Agriculture (USDA), Food and Drug Administration (FDA), Department of Homeland Security (DHS) and the FBI that has been meeting since June. The concept, which was

unveiled at a meeting of the Food and Agriculture Sector Security Coordinating Council attended by the NGFA, would involve a series of **up to 50 site visits over the next two years**. The site visits would be conducted by teams comprised of representatives of each of the four federal agencies, plus state and private industry experts. The site-visit teams would be responsible for: 1) identifying potential vulnerabilities to agroterrorism; 2) developing potential risk-mitigation strategies; 3) identifying warning signs and indicators at each site that might signify planning for a terrorist attack; and 4) developing generic post-visit reports that would be shared with similar facilities as a way to further enhance the security of what the plan terms "the farm-to-table continuum." The results of the site visits also would be used to identify and validate investments in security-related research and development related to the food and agriculture sector, DHS officials said.

Importantly, DHS said the locations for the site visits would be selected from private-sector "volunteers." Among the types of facilities identified by DHS, USDA, FDA and the FBI as potential sites for such visits are grain elevators and storage facilities; grain export facilities; rice mills; feed mills; high fructose corn syrup plants; and livestock, dairy and poultry

(Continued on page 9)



Mexico to Begin 'Pilot Program' for Biotech Labeling of U.S. Corn

The NGFA and North American Export Grain Association (NAEGA) have been informed that the Mexican government starting on Sept. 1 plans to begin what is being termed a "pilot program" to require U.S. grain exporters to designate on invoices that corn shipments "may contain" living modified organisms (i.e., biotechnology-enhanced events) if such may be the case.

It is expected that the Mexican government's pilot program will precipitate requests from Mexican importers of U.S. corn to include such biotech labeling on invoices accompanying shipments. The NGFA and NAEGA were apprised by APPAMEX – the organization representing Mexican importers of U.S. grains and oilseeds – that agreement in principle on the pilot program had been reached recently by the Mexican government and Mexican grain-importing industry. APPAMEX said the pilot program will depend upon voluntary participation of all involved industry members, particularly U.S. corn exporters and Mexican corn importers.

The Mexican pilot program is viewed as a positive development in that it is intended to implement the provisions of a trilateral arrangement involving the United States, Mexico and Canada designed to comply with the so-called "Biosafety Protocol." The Biosafety Protocol is an international environmental treaty signed in January 2000 by 135 countries – including Mexico but not the United States or Canada. The accord is designed to protect against potential adverse effects of biotech-enhanced commodities on the environment and biological diversity of plant species. The treaty uses the term "living modified organisms" (LMOs) to describe novel combinations of viable genetic material obtained through the use of modern biotechnology.

Negotiations still are underway among signatory countries on how to implement the Biosafety Protocol's requirement that shipments of LMO-enhanced commodities be labeled. But the trilateral arrangement entered into by the United States, Mexico and Canada allows such labeling to use the phrase "may contain LMOs," rather than more onerous labeling that would require specific biotech-enhanced events to be identified. The trilateral arrangement's approach is consistent with the recommendations of the International Grain Trade Coalition, a consortium of 20 major grain associations (including NAEGA and the NGFA) whose members comprise more than 2,600 companies in more than 80 countries.

Under the terms of the trilateral arrangement, exporters of corn to Mexico (under MX tariff section 10059003) will be required under the pilot program to:

- ▶ Use the commercial invoice as the shipping document to convey the LMO labeling information required under the Biosafety Protocol. But there is no requirement to provide the specific identification of individual biotech events that are or may potentially be present in the shipment.
- ▶ The commercial invoice provided by the exporter will be required to contain the following statement: *"Cartagena Biosafety Protocol Provision: This shipment may contain living modified organisms intended for direct use as food or feed, or for further processing, that are not intended for intentional introduction into the environment."*
- ▶ The last exporter prior to – and first importer after – the cross-border movement are to be specified on the invoice and are to be the "contact points" from which further information on the shipment may be obtained.
- ▶ Shipments are **exempt** from the LMO labeling requirement on invoices if it: 1) is from an exporting country that does not have any living modified organisms of that species in commerce; or 2) involves a U.S. exporter and Mexican importer that have contracted for delivery of a "non-LMO shipment," in which case the shipment is required to achieve a minimum of 95 percent non-LMO content, and provided that such a definition does not conflict with the regulations of the importing country. The "adventitious presence" (unintentional low-level) of LMOs in a non-LMO shipment is not considered to be a trigger for requiring the "may contain LMO" labeling language on shipment invoices.
- ▶ The Mexican importer/end-user is to create a quarterly "disappearance report" for the imported corn, including its final destination or use, namely as food, feed or for further processing.



Calendar

- Sept. 9, 2005:** NGFA Executive Committee and Foundation Trustees
Coeur d'Alene, Idaho
- Sept. 9-10, 2005:** NGFA Board of Directors
Coeur d'Alene, Idaho
- Dec 4-6, 2005:** NGFA Country Elevator / Feed Industry Council
Conference & Trade Show
Hyatt Union Station, St. Louis, Mo.
- March 5-7, 2006:** NGFA's 110th Annual Convention
Charleston, S.C.



Congress Completes Trade, Energy, Highway Bills before Summer Break

In a flurry of activity in the weeks leading up to its five-week summer recess, Congress completed action on long-pending legislation, including the energy and highway bills and the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR).

But for the grain export industry, one of the most significant developments was the House Agriculture Committee's passage of NGFA-supported legislation (H.R. 3421) that would authorize the use of independent, third-party entities to perform official grain inspection and weighing services at U.S. export elevators. On July 29, Senate Agriculture Committee Chairman Saxby Chambliss, R-Ga., and Sen. Pat Roberts, R-Kan., introduced an identical measure in the Senate that is scheduled to be considered in September.

Still awaiting Congress when it returns after Labor Day are nine appropriations measures to fund the operations of most federal agencies for fiscal 2006, which begins Oct. 1. Meanwhile, much of the focus of the Senate in September will be on the nomination of Appellate Court Judge John G. Roberts to serve on the U.S. Supreme Court. Issues Congress must undertake upon their return important to the grain, feed and processing industry include completion of the U.S. Grain Standards Act reauthorization before several of its provisions expire on Sept. 30. Also expiring on that date are provisions included in the Commodity Futures Trade Commission reauthorization. The Senate Agriculture Committee has laid down a legislative marker (S. 1566), but negotiations continue on the final legislative language among stakeholders. The agriculture committees also must agree on a budget reconciliation package by Sept. 16 that reduces agricultural program spending by \$3 billion over the next five years.

Here's a rundown on significant legislative action that occurred prior to the congressional recess:

▶ **House Ag Committee Approves Bill Authorizing Use of Independent Third Parties to Provide Official Inspection, Weighing at U.S. Grain Export Facilities:** The House Agriculture Committee on July 27 approved by a voice vote legislation (H.R. 3421) that would amend the U.S. Grain Standards Act to authorize the U.S. Department of Agriculture (USDA) to delegate to independent, third-party agencies the responsibility at export facilities for performing the hands-on inspection and weighing of grain, under 100 percent USDA supervision. The legislation also would reauthorize for five years – through Sept. 30, 2010 – the official grain inspection and weighing system and related programs administered by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA). Also reauthorized for five years would be the Grain Inspection Advisory Committee, which provides input to the secretary of agriculture concerning the official grain inspection and

weighing system.

The NGFA and North American Export Grain Association (NAEGA) issued a joint statement commending the leadership of House Agriculture Committee Chairman Bob Goodlatte, R-Va., and ranking member Rep. Collin Peterson, D-Minn. – as well as Reps. Jim Moran, R-Kan., and Bob Etheridge, D-N.C., the chairman and ranking member, respectively, of the committee's Subcommittee on General Farm Commodities and Risk Management – for securing bipartisan support for the bill. The NGFA and NAEGA said the bill was "absolutely essential" if a government-based official grain inspection and weighing system is to be "cost-competitive and remain viable for bulk U.S. grain and oilseed exports in the future." The NGFA and NAEGA have estimated that once fully implemented, the change would result in an immediate 23 percent savings in official inspection costs, amounting to \$6.1 million per year. But because those savings would be compounded over time compared to the approximately 7 percent annual inspection fee increase occurring now under GIPSA, the savings would grow to around \$17.5 million after a decade – a cumulative savings of approximately \$112 million over the 10-year period, the NGFA and NAEGA estimated. GIPSA currently is responsible for performing official grain inspection and weighing at all but a handful of export ports, where state agencies are authorized to perform such service. [See the accompanying edition of *Issues and Actions* for a full report on the NGFA-NAEGA statement.]

Joining the NGFA and NAEGA in supporting the legislative change were six major national farm and commodity organizations – the American Farm Bureau Federation, American Soybean Association, National Association of Wheat Growers, National Corn Growers Association, National Grain Sorghum Producers and U.S. Wheat Associates – as well as the American Association of Grain Inspection and Weighing Agencies, which represents most of the state and private inspection agencies that currently perform official inspections for GIPSA in the domestic market.

Meanwhile, Senate Agriculture Committee Chairman Saxby Chambliss, R-Ga., and fellow committee member Sen. Pat Roberts, R-Kan., on July 29 introduced a companion bill (S. 1582) in the Senate. "This is an historic time (for) the grain standards... a time in which industry and commodity groups have joined together to improve the competitiveness of U.S. agriculture products worldwide," Chambliss said in introducing the measure. "Congress has a unique opportunity to provide this authority to USDA, and I have included the industry's proposal in this legislation." Chambliss noted that the Federal Grain Inspection Service program's staffing situation – 75 percent of GIPSA's



On Capitol Hill

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official grain inspectors will be eligible for retirement by 2009 – should “ease” the transition in providing official inspection and weighing services at export terminals. “The ability of the United States to increase long-term competitiveness, coupled with a system that can maintain its strong reputation worldwide, certainly holds great potential for success,” Chambliss said.

◆ **CAFTA-DR Trade Agreement Clears Final Hurdle with Two-Vote Margin in House:** The CAFTA-DR trade accord cleared its final hurdle just after midnight on July 28, when the House approved implementing legislation (H.R. 3045) by a two-vote margin – 217-215. The vote occurred after the House Republican leadership kept the normal 15-minute voting period open for an hour, then gavelled the vote shut after the necessary margin of victory was secured. In the end, Republicans voted 202-27 in support of the accord, with two members not voting. Democrats voted against the bill by a 187-15 margin, while the lone Independent member of the House also voted no. **Thanks to NGFA members who responded to our request to contact their congressmen in support of the bill!** Wondering how your member of Congress voted? Members receiving the *NGFA Newsletter* electronically can find out by clicking here.

Although the Senate previously had passed the CAFTA-DR bill at the end of June by a 54-45 margin, it was required to vote again since the House must initiate action on trade accords. When it did, the bill actually picked up two more “yes” votes in the Senate – from Sens. Joe Lieberman, D-Conn., who did not vote in June; and Arlen Specter, R-Pa., who switched his vote. So, the “official” Senate vote was 56-44.

The CAFTA-DR trade accord, which the United States signed in August 2004, will encompass the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic. Under the agreement, more than half of U.S. agricultural products will become eligible for duty-free treatment immediately upon implementation, with most remaining duties on U.S. products phased out over 15 years. Currently, those countries apply average tariffs on U.S. agricultural commodities ranging from 35 to 60 percent, the NGFA and NAEGA noted, and there is no assurance those countries won’t increase these existing tariffs to substantially higher levels authorized by the WTO. Meanwhile, 99 percent of food and agricultural products exported to the United States from CAFTA-DR countries currently receive duty-free treatment.

The NGFA and North American Export Grain Association (NAEGA) were among numerous agricultural organizations that issued statements commending the House for its passage of the measure. “The CAFTA-DR accord

deserved strong support based strictly on its merits,” said NGFA President Kendell Keith and NAEGA President Gary Martin. “But much more than CAFTA-DR was on the line. This vote was essential in signaling to the rest of the world that the United States still believes in the goal of liberalizing world agricultural trade under the World Trade Organization’s Doha Development Round, and is a trading partner that is to be negotiated with seriously.”

◆ **Highway Bill Approved; Onerous Mandatory Truck Diesel Fuel Surcharge Stricken:** Both the House and Senate on July 29 gave final passage to the massive highway reauthorization bill (H.R. 3). The House approved the bill by a 412-8 vote, while the Senate approved it by a 91-4 margin. Under the final version negotiated by a joint House-Senate conference committee, the bill would allot about \$286.5 billion through fiscal year 2009 for highway construction, public transportation and safety programs.

Of importance to the grain, feed and processing industry, the bill includes NGFA-supported provisions that clarify the agricultural exemption from the U.S. Department of Transportation’s onerous hours-of-service truck driving rules, and clarifies the exemption definition to include feed deliveries. Specifically, the agricultural exemption now is defined to encompass “any agricultural commodity, non-processed food, feed, fiber or livestock.” The hours-of-service agricultural exemption applies to planting and harvest periods, as determined by each state, and is valid within a 100 air-mile radius from the source of the commodities or distribution point of the farm and feed supplies within each state. The agricultural exemption was spearheaded by Sen. Conrad Burns, R-Mont., and Rep. Jerry Moran, R-Kan. In addition, the NGFA was successful in working with the American Trucking Associations to strip from the final version of the bill a House-passed provision that would have required truckers to impose fuel surcharges on shippers anytime diesel prices exceeded a benchmark price of \$1.10 per gallon by more than a nickel.

Rail Provisions: The highway bill also includes provisions that streamline the Federal Railroad Administration’s **railroad rehabilitation and improvement financing loan program**, and increases funding for loans for railroad infrastructure improvements. The provisions are designed to address what widely is considered to be a lengthy and cumbersome process that has inhibited participation in the program thus far. The measure would seek to alleviate these barriers by rescinding current U.S. Department of Transportation (DOT) regulatory requirements that include excessive collateralization before an application is approved, as well as a requirement that a private lender first reject the financing of a project before an application would be eligible for filing. Funding for the program is





increased from the previous \$3.5 billion level to \$35 billion. In addition, enhancement of service and increased capacity in the national transportation system were added as priorities for DOT to evaluate when approving loan applications. DOT would be required to give priority to projects that are intended to alleviate capacity problems that hamper service to shippers. The conference report accompanying the bill notes that the program “should be used to help improve service and capacity in the national rail system wherever feasible.”

The conference report also creates a new program to fund the **relocation** of rail lines and other projects that help alleviate congestion, noise and other impacts from railroads on communities. Under the provision, \$350 million is available for fiscal years 2006-09, with individual grants not to exceed \$20 million. Members receiving the *NGFA Newsletter* electronically may access the 22-page section of the highway bill that contains rail provisions by clicking here.

► **Energy Bill Approved:** The House (by a 275-156 vote on July 28) and the Senate (by a 74-26 vote on July 29) approved the new energy bill (H.R. 6) that mandates that refineries utilize 7.5 billion gallons of ethanol and other renewable fuels in their gasoline formulas by 2012. The 1,724-page bill requires the following levels of renewable fuel production from calendar year 2006-12: 4 billion gallons in 2006; 4.7 billion gallons in 2007; 5.4 billion gallons in 2008; 6.1 billion gallons in 2009; 6.8 billion gallons in 2010; 7.4 billion gallons in 2011; and 7.5 billion gallons in 2012. The final version of the bill provides for an energy-trading mechanism under which refiners in areas with little ethanol demand could buy credits from refineries where ethanol is widely used, such as the Midwest. In addition, the trading mechanism contains a provision that provides an incentive

for ethanol production from waste materials through a trading credit that is 2.5 times the value of a credit for the same quantity of ethanol produced from corn.

The energy bill also includes about \$14.55 billion in various tax breaks and incentives over 10 years – about \$9 billion of which would be earmarked for traditional oil, gas, coal and electrical forms of energy. About \$5 billion would be dedicated to promoting renewable sources of energy, as well as conservation. Those incentives include \$3.1 billion to encourage production of electricity with renewable energy; \$1.3 billion to encourage energy efficiency and conservation; and \$1.2 billion to encourage purchases of hybrid and energy-efficient vehicles and fuels. The tax incentives in the bill exceed the \$6.7 billion requested by the Bush administration. The bill also extends daylight savings time by a month – advancing it three weeks earlier in the spring and extending it one week later in the fall.

The final hurdle facing the bill – how to resolve the impasse over the House-passed bill’s provision granting a product liability waiver for manufacturers of methyl butyl ether (MTBE) – was overcome when the conferees agreed to a proposal by House Energy and Commerce Committee Chairman Rep. Joe Barton, R-Texas, that would give parties involved in such lawsuits the option to have the cases heard in federal instead of state courts. The provision would apply to MTBE lawsuits filed on or after the date the energy bill is signed into law. The compromise came after Barton failed in attempts to link the MTBE product-liability protection to the creation of an \$11.4 billion fund to clean up alleged groundwater contamination attributed to MTBE.

Members receiving the *NGFA Newsletter* electronically may access a congressionally prepared summary of the energy bill by clicking here; the tax provisions of the energy bill are available by clicking here.

Senate Ag Subcommittee Conducts Hearing on CRP

The Senate Agriculture Committee’s Subcommittee on Forestry, Conservation and Rural Revitalization conducted a wide-ranging hearing on July 27 focusing on the U.S. Department of Agriculture’s plans for handling the more than 22 million acres enrolled in the Conservation Reserve Program (CRP) that are set to expire in 2007-08.

Subcommittee Chairman Mike Crapo, R-Idaho, while stating his support for the CRP, stressed the need to carefully consider its impacts on production agriculture and rural communities. He also stressed the need to enroll only the most environmentally sensitive acres to ensure tax funds are invested efficiently. Meanwhile, Sen. Ken Salazar, D-Colo., raised concerns over the impact the CRP has had on rural communities in eastern Colorado, “where the population continues to decline” and some counties find themselves “near extinction.” He alluded to

several calls he had received from mayors and citizens complaining of “abuses” in the implementation of the CRP, and said the program had been used by some absentee landowners “as a gravy train to fund their high-flying lives in New Orleans and Las Vegas.”

Meanwhile, Farm Service Agency Administrator James Little refused to tip USDA’s hand, saying that it expects to announce policies and procedures governing CRP reenrollments and extensions later this year. “Several options are on the table,” Little said, noting that the department is examining whether to use its current environmental benefits criteria to determine which CRP contracts are considered for renewal. He said the agency is considering whether to “pull back” from the 25 percent-per-county limit on CRP enrollment to allow more acres to be enrolled in





the Conservation Reserve Enhancement Program (CREP) or future general signups. Nationwide, he said, 670,000 acres are enrolled in CREP, including about 90,000 wetland and buffer acres. Little also said the agency is working with USDA's Natural Resources Conservation Service to update CRP rental rate criteria to be more in line with cash land rental values.

In his testimony, NGFA President Kendell Keith focused on seven major points: 1) the CRP-legislated cap of 39.2 million acres is not a mandate, but a maximum limit; 2) automatic long-term extensions of expiring CRP contracts without subjecting them to critical evaluation would waste taxpayer funds and achieve less-than-optimal environmental benefits; 3) long-term commitments to keep non-environmentally sensitive land out of active crop production and grazing hampers economic growth, particularly for the livestock and poultry sector; 4) CRP enrollment, currently focused in western states, has contributed to a long-term decline in U.S. wheat acreage, leading to disinvestments in marketing and transportation services that have made the region even less profitable for grain production; 5) an excessive focus has been placed on wildlife and game bird production in the CRP, to the detriment of enrolling acres that would protect water quality;

6) USDA's policy decisions on whether to reenroll expiring acres in the CRP should not tie Congress' hands to reshape the CRP within the context of overall conservation programs as part of the 2007 farm bill; and 7) USDA's administration of the 25 percent-per-county CRP enrollment cap needs to be reevaluated since it has been exceeded in many counties. [See the accompanying edition of *Issues and Actions* for a report on the NGFA's testimony.]

Also testifying was the National Association of Wheat Growers (NAWG), whose president, Sherman Reese, urged that USDA not automatically reenroll expiring CRP acres, but rather evaluate them through a competitive-bidding process. NAWG supported short-term CRP contract extensions of one to five years, with the most environmentally sensitive acres getting the longest extensions. Other witnesses included representatives of Ducks Unlimited (which testified on behalf of a wide range of game bird groups), the National Association of Conservation Districts and the Georgia Department of Natural Resources. Members receiving the *NGFA Newsletter* electronically may access the testimony of each of the witnesses from the Senate Agriculture Committee's website by clicking here.

NGFA Welcomes Kansas Grain and Feed Association Delegation



Members of the Kansas Grain and Feed Association's Tomorrow's Agribusiness Leaders class of 2005 are shown following their meeting with NGFA staff in the NGFA's conference room on July 18. During its visit, the Kansas delegation was active in lobbying members of the state's congressional delegation to support several NGFA legislative priorities – including reform of the Conservation Reserve Program and amendments to the U.S. Grain Standards Act to authorize the use of independent third-party entities to perform official grain inspection at export facilities. The NGFA thanked the KGFA membership and staff for their outstanding support, and emphasized the importance of cooperative grassroots lobbying efforts like those undertaken by KGFA in achieving important legislative goals for the industry.





Confirmatory Tests Negative for BSE in Latest U.S. Suspect Case

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) announced Aug. 3 that confirmatory tests did **not** detect bovine spongiform encephalopathy (BSE) in a U.S. cow that previously had yielded "non-definitive" test results for the brain-wasting disease.

The results of the confirmatory tests using immunohistochemistry (IHC) were conducted by both USDA's National Veterinary Services Laboratory in Ames, Iowa, and the International BSE Reference Laboratory in Weybridge, England. During a July 27 press conference monitored by the NGFA, USDA Chief Veterinarian Dr. John Clifford had said that the suspect animal was an "at-least" 12-year-old cow, and that "all indications" were that it was of U.S. origin. The animal involved had experienced complications during calving and its brain stem was sampled by an accredited private veterinarian in April on the farm of origin. Clifford said the private veterinarian treated the brain stem samples with a preservative known as formalin, a formaldehyde-and-water solution that prepares the sample for testing using IHC, but precludes it from being tested with either the BioRad rapid ELISA screening test or the

Western blot confirmatory test. The use of the preservative was part of USDA's protocols until June, when it changed its procedures so as to permit the use of both the Western blot and IHC methods for BSE confirmatory testing. The private veterinarian also set aside and "forgot" until last week to send the brain tissue samples to USDA's laboratory in Ames, Clifford said. The USDA lab received the samples on July 19.

Clifford said that USDA headquarters was notified late on July 26 by the Ames lab that a preliminary IHC test used to detect the presence of abnormal prions associated with BSE had yielded a "non-definitive" result. In essence, the preliminary IHC test resulted in an atypical staining distribution pattern on the brain tissue, although the tissue showed some weak staining that could indicate the presence of BSE. Additional slices of the suspect cow's brain stem subsequently were examined by both the Ames and Weybridge labs. Dr. Clifford also emphasized that the cow posed no danger to human or animal health since it was incinerated, and stressed the BSE-prevention firewalls in place in both the United States and Canada.

R-CALF Still Weighing Legal Options after Stinging Rebuke in Canada Beef Border Case

As the *NGFA Newsletter* went to press, the Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) still was evaluating its legal options after sustaining a stinging rebuke from the U.S. Court of Appeals for the Ninth Circuit that reversed the decision of a Montana federal district court judge and reopened the border to imports of Canadian live cattle and beef.

In a written opinion issued on July 25, the appellate court summarily rejected each of the nine reasons that Montana Federal District Court Judge Richard Cebull used to justify the imposition of a preliminary injunction on March 2 that barred the U.S. Department of Agriculture from implementing its final regulations that classified Canada as a "minimal-risk" for bovine spongiform encephalopathy (BSE). The litigation was initiated by R-CALF, which challenged USDA's so-called "minimal-risk" rule that established criteria under which countries or regions in which BSE had been discovered would be allowed to export products to the United States, and designated Canada as such a country. In its unanimous decision, the appellate court ruled that Judge Cebull's decision was "fundamentally flawed" and said the judge "committed legal error by failing to respect (USDA's) judgment and expertise" – the type of deference that government agencies have been granted under case law to make policy decisions based upon the administrative record of regulatory proceedings. "Rather than evaluating the final rule to determine if USDA had a basis for its conclusions, the district court repeatedly substituted its judgment for the agency's, disagree-

ing with USDA's determinations even though (USDA) had a sound basis in the administrative record..." the appellate court wrote.

"Our own review of the final rule leads us to conclude that (USDA) had a firm basis for determining that the resumption of ruminant imports from Canada would not significantly increase the risk of BSE for the American population," the appellate court wrote, referencing such measures as the 1997 BSE-prevention feed regulations, the requirement that specified risk materials be removed from ruminant products intended for human consumption, and safeguards contained in USDA's minimal-risk rule that allow only imports of Canadian cattle younger than 30 months for feeding or immediate slaughter. "Instead of evaluating the BSE safeguards as part of a larger system, the district court parsed the regulations and faulted USDA for any risk that a given step failed to remove....In conducting this review, we believe it is appropriate to view the BSE-prevention measures currently in place as part of a comprehensive system. Thus, rather than follow the 'divide and conquer' strategy of analyzing each protective component of the regulatory system in isolation, we evaluate the cumulative effects of multiple, interlocking safeguards...In sum, USDA decided to reopen the border to Canadian ruminants after making a reasoned determination that the importation of a small number of BSE-infected cattle into this country would not pose a serious risk to humans or livestock," the appellate court concluded. To access the appellate court's 54-page decision, [click here](#).



"CRP" continued from page 1

One of the most articulate of those expressions came from the third public speaker – a 19-year-old sophomore at North Dakota State University majoring in agriculture systems management, and a Future Farmers of America state officer: “...I would love to have an opportunity to farm. But I also have been running the numbers....And sometimes they don’t come out in the black....We need to make new opportunities (available) for young farmers so they decide to give farming a chance. A major challenge in my area is finding land that is available for production because a large percentage of the land has been converted to CRP or wildlife areas. CRP may be a great program in the eyes of many, but there are some negatives....First, CRP has taken thousands of acres of good-quality farmland out of the market for young farmers. CRP provides nesting areas for waterfowl and our rising deer population; however, it does not provide a food supply or shelter in winter storms. Young farmers not only have to compete against big farmers, but also CRP for land rent. Finally, land taken out of production has hurt local farm businesses, grain elevators and especially local schools. We need (USDA) to expand markets of agricultural products, foreign grain trade and especially the beef exports (which) are critical for young producers.”

Another producer, a former president of the Landowners Association of North Dakota, took a different tact: “The wildlife that come from the CRP have forced me to change my cropping rotations,” he said. “North Dakota State University has done a study that CRP has reduced the economic activity in the counties they studied by an average of \$16 million a year, and if you multiply that by the number of years the CRP has been (in existence) times the multiplier effect, it’s easy to say \$1 billion of economic activity has been taken from the counties that were studied.” The same producer also said adjacent CRP land riddled with Canadian thistle had caused his combine to “burn up” in 1999 “because of the fuzz that was blowing off that thistle.”

Still another producer from Powers Lake, N.D., said: “...[I]n order to keep those younger generations involved in agriculture, it has to be profitable. With that in mind, there needs to be greater emphasis on working lands conservation programs like the Conservation Security Program rather than on (land)-retirement programs like CRP. Retired land cannot be utilized by young and beginning farmers and ranchers....In these times of budget constraints, working lands conservation programs are suffering....The Conservation Security Program needs to be the flagship of conservation programs.”

The CRP also generated critical remarks from the vice president of the North Dakota Farmers Union, who said it had “met with mixed results”

and added that the Conservation Security Program “*may be the way to go. It’s done on working lands and it’s an excellent program.*” Said still another producer: “...[I]f the CRP is such a good deal, spread it all over the United States. Don’t concentrate it here in North Dakota....[W]e can’t afford that.”

The lone advocate of the CRP at the North Dakota forum was a representative of Ducks Unlimited, who said he was “anxious to see USDA act on President Bush’s pledge to offer automatic reenrollments in CRP” and added that “we see the same trends in declining rural economy (in Canada) where there’s no set-aside program like CRP.” A Starkweather, N.D., farmer, to audience applause, responded by inviting Secretary Johanns to “come up to my farm and go duck hunting, and help me shoot some of these ducks that I’ve been feeding for Ducks Unlimited on my barley acres that are currently under water.”

In a **Federal Register** notice issued June 17, USDA identified the competitiveness of U.S. agriculture in global and domestic markets as a key issue on which it would welcome input during the forums. A second issue raised by USDA concerned how to design farm policy in ways that avoid “unintended consequences...(that) discourage new farmers and the next generation of farmers from entering production agriculture.” In this regard, USDA stated that “some observers” believe farm program benefits have been capitalized into ever-escalating land values that create a barrier to entry of new and young farmers, while also reducing profits for existing producers and weakening U.S. agriculture’s competitive position.

The other four major issues raised by USDA on which it seeks public comment concern how to: 1) “effectively and fairly” distribute farm program and other assistance to producers; 2) achieve conservation and environmental goals; 3) enhance rural economic growth by investing in infrastructure and new technologies; and 4) address agricultural product development, marketing and research-related issues. Concerning this latter topic, USDA cited suggestions that U.S. farm policy be more “flexible” in enabling greater support for a broader range of activities helpful to expanding markets, including product quality and new attributes, organic and specialty crops; value-added products, including renewable energy and bioproducts and other new uses for agricultural products; expanded basic and applied research; domestic and foreign market development; and similar activities.

Additional locations for USDA farm bill forums are scheduled to be announced soon. The NGFA, through its International Trade/Agricultural Policy Committee, will be testifying at several of the forums. In addition to the North Dakota event, farm bill forums already have been conducted in Tennessee, Minnesota and Wisconsin.





"Agroterrorism" continued from page 1

operations. DHS said the goal is to begin the site visits in September, with two such visits to be conducted monthly for two years. DHS officials also said that over the next year, teams of federal and state officials will travel to all 50 states to meet with "all sectors of the food chain" to discuss security-related issues "from farm to table to better protect our food supply." The initiative is being financed through the FBI's budget.

Industry Concerns: One of the major concerns voiced by the NGFA and a wide range of other industry organizations involves the "open invitation" that the federal government is using to select specific facility sites to visit to conduct vulnerability assessments and develop risk-mitigation strategies, and the degree to which that information may be extrapolated inappropriately to apply to an entire industry sector. As an alternative, industry organizations are proposing that the federal and state agencies sit down in a conference-room setting with representatives of a cross-section of firms to do a more "generic" assessment of the processes and operations common to that particular industry sector, as well as to point out the differences that

may exist, **before any site visits are conducted.** If any site visits are conducted under the initiative, the industry thoughts have been that the visits should be more educational in nature and not formal vulnerability assessments of a particular site.

Second, there is major concern that information gathered by federal and state agencies might be disclosed to inappropriate parties – either by design under the Freedom Information Act's requirements or inadvertently. For this reason, the industry groups have suggested that any **generic** vulnerability assessments or risk-mitigation studies developed in collaboration with federal and/or state agencies should be held privately by the pertinent industry sector under attorney-client privilege to prevent inappropriate disclosure.

The industry's concerns were voiced to representatives of all four federal agencies, as well as state government officials, during an Aug. 2 conference call in which the NGFA participated. Subsequent discussions are planned during the week of Aug. 8. **Again, members are encouraged to contact the NGFA if they are approached by any federal agency and asked to participate in the Strategic Partnership Program Agroterrorism (SPPA) Initiative.**

Suspect Spores Detected in Illinois

The U.S. Department of Agriculture on Aug. 3 reported that "rust-like" spores had been detected on July 29 in Champaign County, Illinois.

USDA hastened to add that it was undetermined whether the spores were the Asian variety of soybean rust. "These are spores that look similar to many kinds of rusts from various hosts," said the notice on USDA's soybean rust website. "However, spores in traps cannot be positively identified with visual, molecular or culturing techniques. Therefore, it is not possible to confirm whether these spores are actually soybean rust spores, but scouting in Champaign County has increased."

Earlier, Georgia researchers evaluating a fungicidal trial plot at the Coastal Plain Experiment Station in Tift County, Georgia, detected a meter-diameter-sized area of rust-defoliated soybeans. "Recent weather patterns appear to have favored the spread of soybean rust," the notice said. "Soybean growers on the Coastal Plain should be willing to spray fungicide as crop reaches productive development." Thus far, soybean rust has been detected in six Georgia counties – Brooks, Colquitt, Decatur, Effingham, Seminole and Tift. On Aug. 1, soybean rust spores also were detected in a second Alabama county – a sentinel plot on Auburn University's campus in Lee County.

USDA Announces 2005 Conservation Security Program Contracts

The U.S. Department of Agriculture (USDA) announced July 25 that it has approved 12,700 applications toward more than \$1 billion to be expended over the next 10 years for watershed projects under the Conservation Security Program.

The Conservation Security Program is a voluntary initiative included in the 2002 farm law that provides financial and technical support for producers to implement conservation practices on working farmlands. The program is available annually on a rotational basis in as many watersheds as funding allows. The contracts offered by USDA encompass about 9 million acres of private land in 220 watersheds nationwide. USDA said it expects to invest

all of the \$202 million provided by Congress for the program for fiscal year 2005. Environmental enhancements covered under the approved contracts include improving soil quality, water quality, wildlife habitat management, nutrient and pest management, air quality and on-farm energy management.

The top five states in terms of monetary awards for Conservation Security Program projects for fiscal 2005 are: 1) Oregon, with 719 applications totaling \$15 million; 2) Iowa, with 1,973 applications totaling \$13.7 million; 3) Missouri, with 1,133 applications totaling \$12.4 million; 4) Arkansas, with 594 applications totaling \$11.6 million; and 5) Kansas, with 691 applications totaling \$8.7 million. [Click here for a rundown on project funding by state.](#)





Membership Matters

by Todd Kemp
Director of Marketing

August is *Membership Month!*

...Special Grand Prize: Washington Weekend!...

The NGFA's annual *Membership Month* has begun!

Through the month of August, all NGFA members are asked to make membership recruiting a priority. Call a customer, a supplier, a competitor, a colleague – and invite them to join the NGFA! Materials explaining the benefits of membership, and talking points you can use, are available from the NGFA's staff.

Here's an incentive to hit the recruiting trail: Each successful recruiter during August is entered in a drawing for our *Washington Weekend* grand prize! At close of business on Aug. 31, a random drawing will be held for:

- Airfare for two to Washington, D.C., sponsored by **BASF Plant Science**, Research Triangle Park, N.C.
- Two nights of luxury accommodations in our nation's capital.

- Dinner at a fine Washington dining establishment, sponsored by **GATX Rail**, Chicago, Ill.
- Tickets to a Washington Nationals baseball game at historic RFK Stadium – the hottest ticket in town! – provided courtesy of **Arent Fox PLLC**, Washington, D.C., the NGFA's outside legal counsel.

Many thanks to our generous sponsors for making the Washington Weekend prize possible!

Add to our prize package the allure of our nation's capital – monuments, museums, history, culture and all the rest – and this prize has something for everyone.

Need some ideas about who to recruit? Or how to go about it? Contact Todd Kemp at tkemp@ngfa.org or (202) 289-0873. Help us make August a *Membership Month* to remember!

ALERT!!!

Registration now is open for the NGFA's popular and business-focused **Country Elevator/Feed Industry Council Conference**. See the insert accompanying this edition of the *NGFA Newsletter* for more details. Save \$50 per person by registering on or before Nov. 4!



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