



# NGFA

# Newsletter<sup>®</sup>

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## USDA to Rescind 'Deadline' for Beneficial Interest on 'Open Storage' Grain

The NGFA has learned that the U.S. Department of Agriculture's Farm Service Agency (FSA) is scheduled as early as July 7 to announce that it is rescinding a provision of its final regulations on marketing assistance loan collateral that stipulated that producers lose "beneficial interest" on the 16<sup>th</sup> day after such commodities are placed in "open storage" at commercial warehouses.

Under final regulations published in the June 6 *Federal Register*, USDA stipulated that producers have 15 days after delivery of commodities into open storage to determine whether to transfer ownership in marketing assistance loan collateral to the warehouse or to store the commodities. "Open storage" also is referred to as "open unsettled position" and other terms in the grain warehouse industry.

During its June 13-14 meeting in Washington, the NGFA's Country Elevator cited problems caused by the arbitrary "deadline" on open storage in a session with agency officials, and encouraged FSA to reconsider. In a subsequent June 23 letter to FSA, NGFA Country Elevator Committee Chairman Eric Wilkey requested that the agency amend its final regulations to delete the 15-day time limit on beneficial interest with respect to open-storage grain. "It is the NGFA's view that the warehouse operator should have the flexibility to decide the duration of open storage to offer to producers," Wilkey wrote. "Further, the producer should retain decision-making authority on when to market or store the commodity within the boundaries of the

warehouse's open-storage policy."

It now is the NGFA's understanding that FSA first will issue a loan program notice to its state and county offices rescinding the open-storage "deadline" provision. The notice reportedly will state that for produces depositing grain in open storage at federally licensed warehouses, the producer must retain the ability – but is not required – to obtain negotiable warehouse receipts or other acceptable forms of evidence of ownership in the commodity, pursuant to the beneficial interest requirement that the producer retain title and control of the commodity. At state-licensed warehouses, FSA county offices will be instructed to contact the respective State Department of Agriculture to determine state law requirements applicable to open storage.

FSA also is developing an amendment to its final regulations rescinding the open storage deadline. The NGFA understands that the amendment to the final regulations also will correct and clarify another problem in the beneficial interest final regulations that implied that producers retain title and control of commodities even after they are applied in fulfillment of deferred-price or price-later contracts. USDA officials told the NGFA that the amendments to the final regulations currently are being drafted, and will be published in the *Federal Register* once the normal clearance process is completed. See the June 22 edition of the *NGFA Newsletter* for additional background on these issues.

## Revisions to U.S. BSE-Prevention Feed Regulations Delayed

The NGFA has learned that the Food and Drug Administration (FDA) likely will not issue final regulations amending its BSE-prevention feed regulations before the end of the year.

The delay has been caused by a reassessment of its economic impact analysis concerning the quantity of cattle material that potentially could be generated under the agency's proposal to ban brain and spinal cord from cattle 30 months or older from all animal feed, as well as banning all non-ambulatory (downer) and dead cattle from all animal feed unless brain and spinal cord are removed.

When issuing its proposed rule in October 2005, FDA projected that approximately 64.3 million pounds of cattle material on an annual basis no longer would be able to be used

in animal feed. It estimated the cost impact at between \$14 million and \$24 million, annualized over 10 years. Now, the NGFA has learned that FDA believes the economic impact may "substantially higher." FDA said it reached the conclusion after reviewing comments submitted in response to the proposed rule and said today it nearly has completed a revised economic impact assessment.

FDA's Center for Veterinary Medicine currently is considering various options for amending the proposed rule to further reduce the economic impact while still having a substantive impact on further reducing the already low risk of BSE in the U.S. cattle herd. In its proposed rule, FDA said the best available scientific evidence indicated its proposed actions would remove 90 percent of any remaining potential BSE infectivity from the feed chain.



## USDA Proposes to Eliminate CCC Warehouse Storage Agreements

Commercial grain, rice and peanut warehouse operators who are federally or state licensed no longer would be required to enter into warehouse storage agreements with the U.S. Department of Agriculture's Commodity Credit Corporation (CCC) under a proposal published by USDA in the July 3 *Federal Register*.

In essence, the proposal would eliminate the requirement for federal or state-licensed warehouses to enter into a Uniform Grain and Rice Storage Agreement (UGRSA) contract, as well as the Peanut Storage Agreement. USDA noted in its proposal that the advent of the marketing assistance loan program – with its alternative marketing loan repayment rates, loan deficiency payments and commodity certificates – has reduced dramatically the quantity of loan collateral forfeited into CCC's ownership. That, in turn, has reduced CCC's risk exposure and the need for the UGRSA, USDA contended.

Under its proposal, USDA said it "may" continue to utilize storage agreements for: 1) warehouses involved in long-term storage of CCC-owned commodities, such as commodities stored under the Bill Emerson Humanitarian Trust; and 2) warehouses that are not federally licensed that operate in states without licensing programs (such as California) before they are allowed to store CCC loan collateral. There currently are approximately 6,100 grain and rice warehouse facilities that have UGRSA contracts with CCC, with a combined storage capacity of 7.8 billion bushels.

USDA's proposal conceivably would end separate and duplicative examinations conducted by federal and state

examiners of state-licensed warehouses that also have storage agreement contracts with CCC. It also would end the annual process of renewing the UGRSA contract with CCC, and conceivably eliminate the ability of USDA to impose agroterrorism facility-security related requirements through the UGRSA contract (although it still could do so through the federal warehouse license or purchase contracts with warehouses that are vendors to CCC).

But while the proposed rule is silent on the matter, such a change could result in potentially significant licensing fee increases for federally licensed warehouses, since CCC currently pays approximately 50 percent of the cost of federal grain warehouse examinations to reflect the protection provided to CCC's interests. Further, the elimination of storage contracts would remove what amounts to a "minimum standard" (including financial requirements, such as net worth) that all state-licensed warehouses currently are required to meet before being designated as "USDA-approved" warehouses. By contrast, the financial and other requirements that apply to federal- and some state-licensed warehouses exceed the UGRSA requirements. In addition, USDA's proposal, as written, provides flexibility as to whether CCC will require non-licensed warehouse entities to enter into storage agreements before being eligible to store CCC loan collateral.

A 30-day comment period is being provided, with comments due by Aug. 2. The NGFA's Country Elevator Committee will take the lead in developing the NGFA's statement to USDA.

## USDA Authorizes Emergency Storage for 2006 Wheat, Feed Grains

The U.S. Department of Agriculture (USDA) on July 3 published a notice in the *Federal Register* authorizing the use of emergency storage (outside ground piles) for 2006-crop marketing assistance loan collateral of corn, wheat and other feed grains. The notice took effect immediately.

USDA's notice requires warehouses seeking to utilize emergency storage for loan collateral to have a Uniform Grain and Rice Storage Agreement (UGRSA) contract with USDA's Commodity Credit Corporation (CCC). Federally licensed warehouses are required to comply with the same requirements that existed for 2005 crops, with one important exception: Namely, the deadline for relocating emergency-stored grain will be delayed from the previous Jan. 31 to March 31 (2007). However, while not mentioned in the notice, USDA officials told the NGFA's Country Elevator Committee during its meeting on June 13 in Washington that there will be **no extensions** granted from the March 31 deadline. As was the case in 2005 and previous crop years, federally licensed grain warehouses also will be required to: 1) submit a written request in advance to the Licensing Authority Division

at USDA's Kansas City Commodity Office (KCCO), as well as receive preapproval before utilizing such space for loan collateral; 2) meet the security, net worth, bonding and insurance requirements that apply to conventional storage space; 3) provide written justification of the need for emergency storage; and 4) maintain a separate daily position record (DPR) on all grain stored in emergency space. Warehouse operators continue to be liable for quality and quantity for emergency-stored grain.

Non-federally licensed warehouses will be required to meet whatever requirements are applicable to emergency storage under state law and regulations (including the date the state licensing authority establishes for relocating emergency grain to conventional space). Some states do not authorize emergency storage under any conditions.

USDA officials told the NGFA that they are developing another *Federal Register* notice to address contemporary (temporary) storage (e.g., storage with a solid floor, rigid sidewalls and a cover). USDA officials have given no time frame yet for issuance of that notice.



## USDA Amends Warehouse Standards for Approval

The U.S. Department of Agriculture on June 22 issued a long-delayed final rule amending its standards governing warehouses approved to store commodities for its Commodity Credit Corporation (CCC).

The final regulations in effect dodged the most substantive part of the agency's proposed rule issued on Nov. 20, 2003 – whether to continue to allow warehouse operators to submit financial statement compilation reports prepared by a commission or management firm. USDA had proposed that such financial statements be disallowed, and that warehouse operators be required to submit an audit or review level financial statement approved by an independent certified public accountant (CPA) or independent public accountant. USDA noted that it received 11 comments in response to the proposal, seven of which were supportive. Four of the seven supportive comments were filed by grain warehouse operators and the NGFA; the NGFA also encouraged USDA to provide a phase-in period to provide time for warehouse operators currently using commission houses or management firms to transition to a CPA or independent public accountant. The other three supportive comments were submitted by cotton associations and a commission firm. However, the proposal was opposed by another commission firm and three warehouse operators, which argued that commission firms were qualified to conduct such financial statements and could do so in a more cost-effective manner.

As a result, USDA in effect “punted” on the issue and amended the regulations to instead give it the authority to revise and customize each of the specific storage agreements applicable to grain, cotton and other commodities to address the financial statement and other issues. However, given USDA's proposal to eliminate storage agreements [see *first article on page 2*], it appears that such a decision could “default” to whatever standards are required for federally licensed warehouses and warehouses operating under state law.

Other aspects of the final rule also were put in doubt by USDA's proposal to eliminate storage agreement contracts. Those include revisions to USDA's warehouse standards for approval that would have empowered the department to utilize storage agreements for the specific commodities to: 1) establish net worth requirements; 2) a requirement to have adequate firefighting equipment available; 3) requirements governing temporary storage conditions; and 4) other substantive requirements. USDA rejected recommendations that it provide at least 120-day advance notice of changes to provisions of CCC storage agreements, but said it would issue a **Federal Register** notice alerting the industry when a “major rewrite of a CCC storage agreement is planned.” For members receiving the *NGFA Newsletter* electronically, USDA's final regulation on the warehouse standards for approval are available by [clicking here](#).

## Knight Named USDA Undersecretary for Marketing, Regulatory Programs

President Bush on June 30 nominated **Bruce I. Knight** to become undersecretary of agriculture for marketing and regulatory programs at the U.S. Department of Agriculture (USDA). If confirmed to this position by the Senate, Knight would oversee the operations of two key agencies important to NGFA members – USDA's Grain Inspection, Packers and Stockyards Administration (including the Federal Grain Inspection Service), and the Animal and Plant Health Inspection Service (APHIS). He also would oversee USDA's Agricultural Marketing Service and its Transportation and Marketing Programs Division.

Knight has served since May 2002 as chief of USDA's Natural Resources Conservation Service, which is in the natural resources and environment section of USDA. The agency provides technical and financial assistance to private landowners on voluntary programs to enhance soil and water conservation, as well as other natural resource protection projects. In his current capacity, Knight serves as the agency's chief executive officer and has been involved in implementing the conservation provisions of the 2002 farm law, including the Conservation Security Program, the Grasslands Reserve Program, and a significant expansion of the Environ-

mental Quality Incentives Program (EQIP), as well as various conservation and natural resource research projects.

Knight is an experienced agricultural and natural resource policy official, having worked previously on both Capitol Hill and for various farm organizations. He served on the staff of then-Senate Majority Leader Bob Dole, R-Kan.,



where he focused on the development of the conservation section of the 1996 farm law. He also was a legislative assistant to then-Rep. Fred Grandy, R-Iowa, and then-Sen. James Abdnor, R-S.D. Knight also served seven years as vice president for public policy for the National Corn Growers Association and worked for the National Association of Wheat Growers. A Gann Valley, S.D., native, he owns a diversified grain and cattle operation and attended South Dakota State University.



# Newsletter

by Todd Kemp  
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## Risk Management Committee Examining Basis/Convergence Concerns

### ...Importance of Communicating Basis Risk Stressed...

Following expressions of concern from several members and a request from the NGFA's Country Elevator Committee, NGFA's Risk Management Committee conducted a 90-minute conference call on June 28 to begin discussing performance of the soft-wheat contract.

While no formal recommendations resulted from the conference call, the committee will continue discussions in greater detail at its next meeting, tentatively scheduled for late August in Chicago.

The concerns have emerged because of the extremely weak SRW basis relative to high wheat futures prices. Some have suggested that such a dislocation may mean cash and futures are not converging, which could lead to a loss of hedging effectiveness and a decrease in confidence in the SRW contract. Potential contributors to historically weak basis levels include transportation costs; a change in vomitoxin specifications in the SRW contract; softness in export business; and the recent influx of fund investment capital into futures.

There was agreement that non-traditional swings in basis could present marketing challenges to producers and could result in displeasure with the performance of certain forward

contracts. This, in turn, could lead to political efforts to "fix" the problem. The committee also agreed on the importance of continuing need to communicate with the NGFA membership about the importance of including language in producer contracts about basis risk.

Most committee members believed that the current market imbalance between cash and futures for SRW should correct over time, and that care should be taken when recommending changes in contracts and futures delivery specs. However, the committee agreed that additional discussion about an adjustment in storage rates was merited, and that an increase might help narrow basis and improve convergence. That topic will be on the agenda for the committee's August meeting, along with discussion of other concepts such as utilizing shipping certificates for wheat; and potential revisions to the delivery system to include more domestic delivery points in response to market changes (fund investment, ethanol growth, etc.).

Input to the Risk Management Committee as it prepares to discuss these matters is welcomed from all NGFA members. Comments may be directed to NGFA Director of Marketing/Treasurer Todd Kemp at the NGFA at 202-289-0873, or by email to [tkemp@ngfa.org](mailto:tkemp@ngfa.org).



# Rails, Rivers and Roads

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## STB Requests Plans from Rail Carriers for Meeting 'Fall Peak' Season

For the third consecutive year, the federal Surface Transportation Board (STB) has written to the chief executive officers of each of the seven largest U.S. rail carriers asking that they provide information on their plans for meeting the expected increased demand for rail service during the "fall peak" shipping season.

In a June 28 letter, STB Chairman W. Douglas Buttrey asked each of the carriers for information by July 17 on: 1) steps being taken to ascertain demand for, and to prepare for, the fall peak-season service; 2) performance goals for the remainder of 2006; 3) plans for achieving those performance goals; and 4) plans for communicating performance goals and plans with shippers and other rail customers.

the railroads to meet demands for rail service," Buttrey wrote. "At least four major factors have converged to cause this heightened focus: the healthy domestic economy; growth in import/export traffic; the agriculture sector's forecast of record harvests; and the fact that rail infrastructure has begun to show capacity constraints.

"Consequently, I believe it is essential that the (STB) continue its close monitoring of the railroads' service plans," he continued. "This will contribute to the (STB's) confidence level that appropriate planning is being done to ensure that spikes in rail traffic demand that are expected for the remainder of the year can be handled as efficiently as possible. As in past years, this will also provide an important tool for rail customers to keep them better informed and enable them to plan efficiently for the needs of their rail-served businesses."

"There is heightened focus this year on the ability of





## AAR Schedules Meeting in September on Rail Industry Outlook

The Association of American Railroads (AAR) has scheduled a "Railroad Customer Forum" for Sept. 13 in St. Louis, Mo., to discuss the current state of the rail industry and outlook.

In a letter to NGFA President Kendell W. Keith, AAR President Edward R. Hamberger invited NGFA members utilizing rail to attend. The AAR said senior officers from each Class I rail carrier will provide information on their respective railroad. The meeting also will be attended by federal Surface

Transportation Board (STB) Chairman W. Douglas Buttrey, who will deliver luncheon remarks. The meeting is to be keynoted by AAR Board Chairman Charles "Wick" Moorman, president and chief executive officer of the Norfolk Southern Corp.

The meeting is scheduled for 9 a.m. to 5 p.m. at the Renaissance St. Louis Airport Hotel at 9801 Natural Bridge Road. NGFA members wishing to attend should register through the AAR's website at [www.aar.org](http://www.aar.org). Link to the 2006 customer forum banner to register and for more information.

## NGFA to Testify at STB Hearing on 'Paper Barriers' to Rail Access

The NGFA on July 27 is scheduled to testify at a federal Surface Transportation Board (STB) hearing on so-called "paper barriers" to rail competitive access.

As reported in the June 22 *NGFA Newsletter*, the hearing is being conducted in response to a renewed petition [*STB Ex Parte No. 575*] filed by The Western Coal Traffic League (WCTL). In its petition, the WCTL asked the agency to adopt rules limiting the extent to which agreements for the sale or lease of railroad lines – by larger railroads to existing or newly

created short lines carriers – may contain "paper barriers." Those "paper barriers" restrict the incentives or ability of a purchaser or tenant to interchange traffic with connecting railroads that could compete with the seller or landlord railroad.

NGFA Transportation Counsel Andrew P. Goldstein of the Washington-based law firm of McCarthy, Sweeney and Harkaway, P.C., will testify at the STB hearing on the Association's behalf.

## Senator Introduces Rail Antitrust Bill

Sen. Herbert Kohl, D-Wis., on June 29 introduced legislation (S. 3612) that would repeal the antitrust exemptions applying to the nation's rail carriers.

Kohl said current antitrust exemptions for railroads are contrary to sound competition policy. "By clearing out this thicket of outmoded antitrust exemptions, railroads will be subject to the same laws as the rest of the economy," Kohl said in introducing the bill. "All those who rely on railroads to ship their products – whether it is an electric utility for its coal, a farmer to ship his grain, or a factory to acquire its raw materials or ship out its finished product – deserve the full application of the antitrust laws to end the anti-competitive abuses all too prevalent in this industry today."

The bill would repeal the exemptions found in current federal antitrust and transportation laws to: 1) permit the U.S. Justice Department and the Federal Trade Commission (FTC) to review rail mergers, and allow legal action to block "anti-competitive" railroad mergers; 2) eliminate the antitrust exemptions for mergers, acquisitions, collective ratemaking and coordination among railroads; 3) allow state attorneys general and other private parties to sue for treble damages for violations by railroads of the antitrust

laws; 4) allow state attorneys general and private parties to sue for court orders to halt anti-competitive conduct; and 5) expand the jurisdiction of the FTC to enable it to enforce antitrust law in the rail industry.

Kohl serves as the ranking Democrat on the Senate Judiciary Committee's Antitrust, Competition Policy and Consumer Rights Subcommittee. The subcommittee is chaired by Sen. Mike DeWine, R-Ohio. No hearings or action has been scheduled yet on the bill.



### Calendar

**Aug. 1-2, 2006:** NGFA/GEAPS Safety, Health and Environmental Seminar  
St. Louis Airport Marriott, St. Louis, Mo.

**Aug. 4, 2006:** NGFA Feed Legislative and Regulatory Affairs Committee  
Sheraton Oklahoma City Hotel, Oklahoma City, Okla.

**Sept. 10-11, 2006:** NGFA Board of Directors Meeting  
Inn and Spa at Loretto, Santa Fe, N.M.

**Dec 3-5, 2006:** NGFA Country Elevator / Feed Industry  
Conference & Trade Show  
Hyatt Regency Crown Center, Kansas City, Mo.





## Canada Confirms Sixth Case of BSE

The Canadian Food Inspection Agency (CFIA) on July 4 confirmed the country's latest case of bovine spongiform encephalopathy (BSE). CFIA said the animal was a mature cross-bred beef cow in Manitoba that was "at least" 15 years old, adding that it likely contracted the brain-wasting disease well before the 1997 implementation of Canada's BSE-prevention feed regulations. CFIA said no part of the animal's carcass entered the food or feed system.

CFIA officials said they have launched a full investigation, in accordance with World Animal Health Organization (OIE) standards, and are attempting to locate the animal's birth farm. They said the cow was purchased by the owner as part of an assembled group of cattle in 1992. Given the animal's age,

CFIA noted that investigative efforts may be constrained because there may be few surviving animals in the original herd, as well as birth cohorts of the infected cow. CFIA did say that a calf born to the affected animal in 2004 is being traced.

The BSE-positive analysis was made by Canada's National Centre for Foreign Animal Disease in Winnipeg, where samples had been sent for confirmatory testing. The latest BSE case brings Canada's total to six. But that does not include the Canadian-born cow diagnosed with BSE in Washington state in 2003 that became the first U.S. case of BSE. It also is the first BSE case detected in Manitoba Province.

## Canada Revises BSE-Prevention Feed Regulations

Final regulations announced by Canada on June 26 amending its BSE-prevention feed regulations contain a little-reported option that allows the Canadian Food Inspection Agency (CFIA) to consider "alternative approaches" that can be scientifically shown to be effective in removing more than 99 percent of potential BSE infectivity.

CFIA said its intent in doing so was to allow for "scientific innovation and to provide flexibility for industry, while maintaining a high level of animal health protection."

The "default mechanism" in Canada's revised BSE-prevention feed regulations for achieving the "more-than-99-percent goal" is a ban on all so-called specified risk materials from all animal feed (including pet food) that is identical to the ban currently in effect on SRM removal from human food in Canada and the United States. That definition of SRMs encompasses the skull, brain, trigeminal ganglia (nerves attached to the brain), eyes, tonsils, spinal cord and dorsal root ganglia (nerves attached to the spinal cord) of all cattle 30 months or older, as well as the distal ileum (a portion of the small intestine) from cattle of all ages. But the CFIA said it will consider alternative approaches, provided they are buttressed with supporting scientific data, which can be shown to achieve the same level of protection as a "full" SRM ban.

Canada's final regulations also ban the use of SRMs in fertilizer, out of concern that grazing cattle could consume small quantities of SRMs. Fertilizers and/or supplements containing ruminant protein other than SRMs will be required to be labeled with the Canadian version of the BSE caution statement advising that the product is not to be spread on land grazed by ruminants.

Importantly, Canada's final regulations continue to exempt from the ban protein products derived from swine, poultry, equine and fish, as well as milk, blood and gelatin

products derived from any species. In addition, non-protein animal products, such as rendered animal fats (including beef tallow, lard and poultry fat), also still can be fed to ruminants. The purity tolerance level for tallow in the Canadian regulations is identical to that proposed by FDA and recognized by the World Animal Health Organization – 0.15 percent insoluble impurities.

Canada's new BSE-prevention regulations are scheduled to take effect on July 12, 2007 – a one-year phase-in – to provide affected entities with time to make adjustments to infrastructure and operating practices. An additional six months – until Jan. 30, 2008 – is being provided to provincial (non-federal) slaughtering plants to comply with two sections of CFIA's final regulations that require the staining and packaging in dedicated containers of SRMs removed at slaughter, as well as a regulation that requires the staining of entire carcasses of dead or condemned cattle at slaughter. These facilities, though, will be required to remove SRMs effective July 12. Under Canada's regulations, provincially licensed plants only are authorized to sell product within the province. The regulations are scheduled to be officially published in the Canada Gazette (its version of the *Federal Register*) on July 12.

There were these other BSE-related developments:

► **Japanese Auditors Inspecting Meat Packing Plants, Feed Mills as Part of Continuing Process to Resume U.S. Beef Exports:** Teams of Japanese "auditors" in late June initiated their inspections of U.S. meat processing plants as part of the continuing effort to reopen U.S. beef exports to that country. The Japanese audit teams plan to be in the United States for nearly a month – until July 21 – and their visits will include stops at commercial feed mills in Nebraska and Idaho. The NGFA is helping facilitate the feed mill visits in

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response to a request from the Food and Drug Administration. Under an ambiguous agreement announced June 20, Japan and the United States outlined additional steps that included a provision concerning the visit by the teams of Japanese auditors to verify whether U.S. meat processing plants had sufficient procedures in place to prevent a recurrence of the veal shipment that contained fragments of banned bone material and offal that led Japan to reimpose its ban on U.S. beef imports. It remains unclear how long it would take Japan to actually resume imports after the audit process is complete.

► **Canada Further Eases Restrictions on U.S. Cattle Imports:** The Canadian Food Inspection Agency (CFIA) on June 29 revised its regulations to permit additional imports of U.S. live cattle, including breeding cattle, as well as certain commercially prepared pet food. Specifically, CFIA said that all classes of U.S. cattle, bison and water buffalo, including breeding animals, born on or after Jan. 1, 1999 now are eligible for import under prescribed certification requirements. Previously, Canada had prohibited imports of U.S. breeding cattle, and had limited imports to feeder and slaughter cattle 30 months of age or younger. In addition, U.S. sheep and goats less than 12 months of age now can be exported to Canada. So can commercially prepared pet food that contains bovine ingredients [except those derived from bovine specified risk material (SRM)], so long as the bovine ingredients do not originate from Argentina, Australia, Brazil, Canada, Chile, New Zealand or Uruguay. U.S. beef liver and hides and skins (except from hides and skins from the head of an animal) also are eligible for export to Canada.

CFIA said it would continue to prohibit imports of bovine SRMs, as well as meat from animals processed at slaughter plants using stunning practices. "Canada's import controls continue to provide the highest levels of public and animal health protection," said Agriculture and Agri-Food Minister Chuck Strahl. "At the same time, Canada's new government is moving closer to reintegrating the North American cattle market, in accordance with international standards."

► **China's Partial Lifting of Ban on U.S. Beef Engenders Lukewarm Reaction:** The People's Republic of China on June 30 announced a limited market opening to allow imports of U.S. boneless beef from cattle less than 30 months of age. Secretary of Agriculture Mike Johanns responded by issuing a statement saying the United States was "disappointed" with China's announcement, calling on it to open its market to all U.S. beef products in accordance with standards established by the World Animal Health Organization (OIE).

► **Canada Completes Investigation into Latest BSE Case:** The Canadian Food Inspection Agency (CFIA) has issued the final report of its investigation into the approximately six-year-old Holstein cow in British Columbia that was confirmed positive for bovine spongiform encephalopathy (BSE) on April 16. The report notes that investigators could not precisely determine how feed consumed by the cow may have become contaminated with the BSE agent. But it said that while the primary supplier of feed to the farm where the infected cow was a dedicated facility that did not handle prohibited mammalian protein, it did share an ingredient receiving system and bulk feed delivery trucks with another facility that did utilize prohibited material. "Under these circumstances, cross-contamination of feeds manufactured by the primary supplier could have occurred as a result of either the shared ingredient receiving system or during the delivery of bulk feed," the report said.

The CFIA report also faulted the facility that handled prohibited mammalian material for not including flushing clean-out procedures in its written procedures, even though CFIA said interviews with the facility's staff indicated that such flushing procedures were utilized. "In the absence of written records of procedures used to prevent cross-contamination, and lack of documentation to demonstrate these procedures were followed, it is not possible to verify actual production practices in place or to assess occurrence of possible failures," the report said. [Click here](#) to access a copy of the CFIA report.

## Codex Delays Action on Reestablishing Animal Feed Task Force

In a significant development, the Codex Alimentarius Commission (Codex) this week decided to postpone a decision until at least 2008 on whether to reestablish a task force on animal feed.

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 other agricultural products.

A Codex *Ad Hoc* Intergovernmental Task Force on Animal Feeding in 2004 finalized the first international code of practice

on animal feed, which subsequently was adopted by Codex that summer. The NGFA served as an adviser to the official U.S. government delegation involved in those task force negotiations, which lasted six years. The code of practice that emerged from that effort contains prudent and practical quality-assurance principles to be observed by both commercial feed and ingredient manufacturers, as well as on-farm feeders, to protect the safety of foods from food-producing animals.

But even as the code was being adopted, the Euro-  
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pean Union and several other countries urged Codex to reestablish the task force to conduct additional work – most of which had been debated and rejected during the task force deliberations. Those efforts continued at the Codex meeting conducted this week in Geneva, Switzerland, where the EU and its allies sought reestablishment of the animal feed task force to develop: 1) a feed-specific hazard analysis and critical control point (HACCP) program; 2) a rapid-alert system for feed hazards; 3) maximum residue limits for potential “undesirable substances” that would be prohibited in animal feed and feed ingredients; and 4) a “negative list” of feed “hazards” and contaminants. The NGFA worked intensely with U.S. government officials to develop a strategy to oppose reestablishing the task force to conduct such work at this time.

The result of those efforts bore fruit when Codex decided to postpone action until at least 2008. Instead, in 2007 Codex member countries will be polled to identify issues that potentially should be considered by a new task force. Countries also will be asked by Codex to report on their progress in implementing the code of practice approved in 2004. In addition, a U.N. Food and Agriculture Organization consultation/workshop is to be scheduled in the United States in 2007 to evaluate any real “gaps” that may exist in the existing animal feed safety code.

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.

## USDA Issues Interim Report on Avian Influenza Efforts

The U.S. Department of Agriculture on June 29 issued an interim report on its avian influenza efforts and its use of \$91 million appropriated by Congress six months ago to address pandemic flu.

The 180-day report details USDA’s efforts both internationally and domestically to combat highly pathogenic H5N1 avian flu. Some highlights include:

- ▶ USDA said it is working closely with international organizations to assist HPAI H5N1-affected regions with disease prevention, management and eradication activities.
- ▶ USDA continues to strengthen safeguards already in place to protect against the introduction of HPAI H5N1 into the United States. USDA cited trade restrictions implemented on the importation of poultry and poultry products from regions currently affected by H5N1 HPAI in commercial or traditionally raised flocks.
- ▶ USDA said it and state animal health officials are working cooperatively with the poultry industry to conduct surveillance of breeding flocks, slaughter plants, live-bird markets, livestock auctions and poultry dealers.

▶ USDA said it has implemented a reporting system to answer calls and inquiries from the public regarding dead or sick wild birds. The toll-free number, 866-4 USDAWS, has been published on the [USDA Web site](#) to support public inquiries and help expedite calls.

▶ USDA is conducting avian influenza surveillance in wild migratory birds in Alaska and 10 other states. Initial screening tests are performed by one of more than 45 USDA-approved laboratories in the National Animal Health Laboratory Network (NAHLN). In the case of wild bird samples, the U.S. Department of the Interior’s National Wildlife Health Center also performs initial screening tests.

▶ USDA has finalized a National Avian Influenza Response Plan to guide efforts if and when any surveillance system detects any serious poultry disease. In May, USDA’s draft summary of the National Avian Influenza Response Plan was posted on the Animal and Plant Health Inspection Service Web site for review and comment by federal, state and industry leaders.

Members receiving the *NGFA Newsletter* electronically may access a full copy of the report by [clicking here](#).

## Audit Faults USDA for Avian Influenza Preparedness

The U.S. Department of Agriculture’s Office of Inspector General (OIG) has released the results of its audit concerning the adequacy of USDA’s preparations for detecting and responding to avian influenza in the United States.

The OIG report’s main criticism of USDA’s Animal and Plant Health Inspection Service (APHIS) was its alleged shortcomings in developing a “comprehensive approach” for surveillance and monitoring of AI in domestic poultry, although it did praise the agency for making “commend-

able” progress in developing plans and establishing networks among states and industry to prepare and respond to an AI outbreak. But OIG said APHIS, in particular, was overly reliant on a system of voluntary state and commercial industry programs to monitor and test for the presence of avian influenza. OIG faulted APHIS for not yet conducting a risk assessment to identify the volume and distribution of U.S. poultry not subject to surveillance, as well as the subtypes of AI or rate of prevalence that may exist.

*(Continued on page 9)*





# Feed Facts

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But in response, APHIS noted that the OIG audit began before the agency received additional funding from Congress as part of an emergency supplemental spending request to enhance detection and prevention efforts, and that considerable progress had been made. Specifically, APHIS said it was in the process of developing a comprehensive AI surveillance plan within the National Surveillance Unit of its Veterinary Services Division that will include federal, state and industry components, with a draft due to have been completed by June 30. The agency also said it is scheduled to publish an interim final regulation by Sept. 1 that incorporates existing state and industry AI testing programs into APHIS' National Poultry Improvement Plan.

In response to another OIG surveillance criticism, APHIS said it had undertaken efforts to expand its surveillance of live bird markets and backyard flocks; plans to survey upland game and waterfowl birds raised for release for hunting purposes; and will enhance existing surveillance of live bird auction

markets, flea markets, sales, swap meets and public exhibitions. APHIS said it anticipated entering into cooperative surveillance agreements to address these areas by Sept. 30.

In response to other concerns raised by OIG, APHIS said: 1) its draft standards, due to have been completed by June 30, would identify gaps in sampling surveillance; 2) it has formed a Live Bird Market Working Group comprised of federal, state and industry groups to develop response plans by Dec. 31 for that sector, including proper euthanasia, quarantine and movement controls; 3) it will work with USDA's Farm Service Agency to obtain updated contract information of producers to enhance rapid communication in the event of an AI outbreak; and 4) it has amended its High Pathogen Avian Influenza Response Plan to detail how the agency will communicate with states, industry and media in the event of a high-path AI outbreak. Access the OIG's 38-page report (which includes APHIS' response) by [clicking here](#).

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# Biotechnology

## FDA Issues Early Food Safety Assessment Guidance for Biotech Crops

The Food and Drug Administration (FDA) on June 21 issued its long-awaited guidance advising developers to solicit early food safety assessments from the agency prior to conducting field trials that could result in cross-pollination or commingling of biotechnology-enhanced commodities that have not yet been authorized for use in food or feed.

"As the number and diversity of field tests for bioengineered plants increase..., the likelihood that cross-pollination due to pollen drift from field tests to commercial fields and commingling of seeds produced under field tests with commercial seeds or grain may also increase," the FDA guidance document notes. "This could result in the inadvertent, intermittent, low-level presence in the food supply of proteins that have not been evaluated through FDA's voluntary consultation process for foods derived from new plant varieties. FDA is issuing this guidance document to address this possibility."

Importantly, because of its limited jurisdictional authority, FDA's guidance document is **restricted to non-pesticidal biotech-enhanced crops**, such as commodities with pharmaceutical and industrial properties; the Environmental Protection Agency has authority to regulate biotech-enhanced commodities that contain pesticidal proteins (such as varieties containing *Bt* events).

FDA's guidance recommends that sponsors and developers consult with the agency about their evaluation of the potential toxicity and allergenicity of the novel plant proteins "prior to the stage of development where the new proteins might inadvertently enter the food supply." The early food safety assessment will be limited to evaluating whether a new protein has the potential to cause an allergic reaction to susceptible people if present in food, as well as whether it could be a toxin if consumed as food by people or feed by animals. FDA's guidance also advises that if the developers and sponsors of such biotechnology-enhanced commodities subsequently determine after an early food safety assessment to proceed to commercialization of the product, the agency will expect that they undergo a full-fledged biotechnology consultation with FDA as part of a more comprehensive review of the product.

While not stated in the guidance document, it is widely believed that the agency would exercise enforcement discretion if biotech-enhanced commodities that have undergone early food safety assessments are detected at low levels in the food or feed supply as a result of field trials. Members receiving the *NGFA Newsletter* electronically may [click here](#) to access a copy of FDA's early food safety assessment guidance document.





## GIPSA Proceeding to Implement Independent Third-Party Inspections

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) is proceeding to implement a system of independent, third-party inspections at U.S. grain export ports, under 100 percent GIPSA oversight.

During a June 13-14 meeting of USDA's Grain Inspection Advisory Committee attended by the NGFA, GIPSA officials reported that they have completed the process for implementing independent third-party grain inspection systems at U.S. grain export locations in California and Milwaukee, Wis. Such inspections now are being performed at export grain elevators in those areas. The agency said it plans to implement independent third-party inspection services next at U.S. grain export ports in Toledo, Ohio, and Corpus Christi, Texas, with request for proposals to be issued in July and implementation scheduled to occur by September.

To implement the system, GIPSA utilizes the federal government's contracting process to identify and select qualified independent third-party grain inspection firms that desire to be listed as providers of official grain inspection and weighing services at selected ports. That process includes

posting a statement of work and request for proposal on the federal government's business website ([www.fpo.gov](http://www.fpo.gov)). A GIPSA Technical Evaluation Team then reviews applicants from entities seeking to provide independent third-party inspection services, and evaluates their qualifications based upon predetermined selection criteria. To be eligible for selection, firms are required to adopt GIPSA's quality management principles, agree to employ sufficient personnel to provide official inspection and weighing services in an accurate and timely manner, and must not have any conflicts of interest.

Exporters then select from among the GIPSA-authorized inspection firms, negotiate service fees and enter into contracts with the inspection firm of their choice. All inspections continue to be performed under the supervision of GIPSA personnel, with official grain inspection certificates issued.

The NGFA and the North American Export Grain Association (NAEGA) actively encouraged GIPSA to adopt the independent third-party inspection system for export grain to improve cost-effectiveness and enhance service delivery.

## EPA Proposes Changes to CAFO Regulations

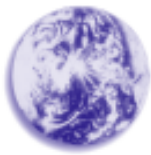
The Environmental Protection Agency (EPA) on June 30 published a proposed rule that would revise its 2003 final regulations governing concentrated animal feeding operations (CAFOs).

The proposed rule was triggered by an appellate court decision that found that under the Clean Water Act, EPA's regulations should apply only to those livestock and poultry operations that actually discharge or propose to discharge regulated pollutants into waterways. The 2003 EPA final regulations included requirements to address the land application of manure from CAFOs, and required all large- and medium-sized CAFOs that discharge manure, litter or process wastewater to U.S. waters to apply for a national pollution discharge elimination system (NPDES) permit. EPA's final rule expanded application of its regulations to an estimated 15,500 operations across the nation. Both environmental and agricultural groups subsequently challenged the 2003 CAFO final rule in court. In February 2005, the Court of Appeals for the Second Circuit struck down parts of EPA's requirements. The agency announced last fall that it would revise the CAFO rules and extended deadlines for operations to meet permit requirements to conform with the court's ruling.

EPA's new proposed rules would revise several aspects of current regulations governing discharges from CAFOs. First, EPA proposes to require only the owners and operators of those CAFOs that discharge or propose to discharge covered pollutants to seek coverage under a NPDES permit.

Second, EPA proposes to require CAFOs seeking coverage under a NPDES permit to submit a facility-specific nutrient management plan (NMP) with their application for an individual permit or notice of intent to be authorized under a general permit. Permitting authorities would be required to review the plan and provide an opportunity for public comment. Permitting authorities also would be required to incorporate terms of the NMP into the permits as enforceable limits. Third, EPA proposes to remove the 100-year, 24-hour storm containment structure standard for new large swine, poultry and veal facilities because of inadequate information on whether this technology works. EPA proposes to replace the standard with a zero-discharge requirement. EPA proposes to authorize permit writers, if requested to do so by a CAFO, to establish best management, zero-discharge effluent limitations when the facility demonstrates it has designed an open-containment system that complies with the agency's no-discharge requirements.

EPA also proposed, as directed by the court, to clarify its regulation of water-quality-based effluent limits and pathogens. Specifically, the agency proposed to clarify that such limits are available in permits with respect to production-area discharges and non-precipitation-related discharges from land application. But the agency said the Clean Water Act prohibits granting such permits to large CAFOs for precipitation-related land application discharges. Details on the proposed rule, including a schedule of five public meetings starting July 24, are posted at EPA's website available by [clicking here](#).



## 'Crisis Situation' Envelops WTO Doha Round

World Trade Organization (WTO) Director-General Pascal Lamy is launching intensified efforts over the next month in an attempt to bridge what Japan's agriculture minister called a "gap as wide as the Grand Canyon" to salvage the Doha Round of multilateral trade negotiations in the aftermath of last weekend's failed mini-ministerial meeting in Geneva.

The end of July is largely viewed as the critical deadline for filling in significant details of an agreement for it to be finalized by the end of the year and passed through Congress before Trade Promotion Authority expires in mid-2007. That authority requires Congress to approve or reject trade agreements, without opportunity for amendment.

The latest round of talks ended after three days – and a day early – on July 1 after it became evident no progress in narrowing differences in the agricultural trade negotiations would be forthcoming. "We have to squarely face the fact that we are now in a crisis situation," Lamy said at a closing press briefing, while adding it was not yet time to "panic." Asked whether he would prepare a draft agreement around a possible consensus, Lamy replied that "there is enough text on the table; what is needed are numbers."

Meanwhile, Secretary of Agriculture Mike Johanns said the Geneva meetings, which involved trade and agriculture ministers from about 60 of the 149 WTO-member countries, was successful in placing the "central question of market access squarely on the table." U.S. Trade Representative Susan Schwab said there are two principal shortcomings in the agricultural trade negotiations, both related to market access: 1) the tariff-cutting formulas currently being offered by other countries "do not deliver the kinds of cuts...required to expand trade flows"; and 2) possible gains in market access from tariff formulas are being

"undermined by loopholes proposed by both developed and developing countries" to protect sensitive products, special products and special safeguards for agriculture. Johanns noted that under proposals by some large blocks of countries, 94 to 98 percent of the access to their markets would be blocked. Even the so-called Group of 20 (G-20) proposal to reduce tariffs by 52 percent, which the European Union said it would be willing to move toward, would result in only a 40 percent reduction after factoring in the additional protections for sensitive products, Johanns said. "I don't know of anybody who could make a case that that turns out to be a fair result when it comes to market access," he said. "That doesn't even meet the lowest expectations of just about anybody...."

Despite calls from most of the other countries and blocs of countries involved in the talks, U.S. negotiators refused to offer further concessions on additional reductions in domestic farm program supports in the absence of flexibility from other countries on agricultural market access. "[T]he United States is not in a position, nor should our trading partners be in a position, to settle for some mediocre version of a trade round that doesn't deliver real market access and new trade flows," said USTR Schwab. "...[U]ntil and unless there is more market access on the table, it's hard to imagine having a further dialogue on domestic support." With the G-20 and the EU coalescing around the 52 percent tariff reduction with significant exemptions for sensitive products, special products and special safeguards, coupled with no further U.S. offer on reducing domestic agricultural supports, the United States finds itself further isolated and tagged with the "roadblock" label. Even rumors of a potential new U.S. offer have met with strong rebuke from producers and Congress, making it difficult to envision how the current impasse can be bridged.

## White House Taps Hunter Moorhead As Top Ag Advisor to the President

President Bush on June 26 named a former congressional staff member as special assistant to the president for agriculture, trade and food assistance.

**Hunter Moorhead** formerly served as a top staff member on the Senate Appropriations Committee's Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies. The

White House position has been vacant since the previous special assistant, Michael Sommers, returned to Capitol Hill to work as policy director for House Majority Leader John Boehner, R-Ohio. Moorhead previously worked as an agriculture legislative assistant for Sen. Thad Cochran, R-Miss., as well as for Rep. Mike Parker, R-Miss. He also served as staff director for the House Agriculture Committee's Risk Management Subcommittee.



## NGFA's "Sizzlin' Summer" of Membership Underway

### ...Major St. Louis Travel Weekend as Grand Prize!...

As announced in the June 22 edition of the *NGFA Newsletter*, a major membership promotion is underway during July and August, culminating in a Grand Prize drawing at close of business on Aug. 31.

During the NGFA *Sizzlin' Summer*, each NGFA recruiter who successfully sponsors a new member will be entered in the Grand Prize drawing for our Gateway Get-Away, consisting of:

- Airfare for two to St. Louis, Mo.
- Two complimentary nights at the Renaissance Grand Hotel
- Tickets to a St. Louis Cardinals' game
- Dinner at St. Louis's hottest new restaurant

Recruiters who sponsor multiple new members receive multiple chances! This will be a great end-of-summer get-away, just in time for the Cardinals to make their annual push for post-season play. And with St. Louis's shopping, fine dining and cultural events, it's a perfect weekend for every NGFA recruiter and his/her guest.

During July and August, NGFA recruiters will receive special updates on hot prospects and recruiting strategies. Watch this space in your *NGFA Newsletter* for updates!

**Year-to-Date Membership Statistics:** The NGFA membership year annually runs from convention-to-convention, so our year will close at the opening session of the NGFA's 111<sup>th</sup> annual convention in San Francisco on March 19, 2007. Typically, new members arrive in a steady flow over the course of the year, with two concentrated periods of recruiting – one over the summer and the second during February and March immediately preceding convention. So, this summer promotion is very important to our 2006-07 campaign's success – we need the help and support of every NGFA member! Here are year-to-date membership statistics since the Charleston, S.C., convention earlier this year:

- New Members: 12
- Non-renewals: 8

Lots of work to do! Get your *Sizzlin' Summer* prospects warmed up now!



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**TIME SENSITIVE**