



# NGFA Newsletter®

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## Clinton Signs Massive Spending Bill

### ...\$5.9 Billion in 'Emergency Spending' Allocated for Agricultural Producers

President Clinton on Oct. 21 signed into law a massive \$520 billion spending bill (H.R. 4328) for fiscal 1999 – representing nearly one-third of the entire federal budget – that includes \$5.9 billion in “emergency spending” for agricultural producers.

The measure was approved earlier in the day by the Senate by a 65-29 vote. Among those voting against the measure were Senate Agriculture Committee Chairman Richard Lugar, R-Ind., and Sens. Charles Grassley, R-Iowa, Phil Gramm, R-Texas, Chuck Hagel, R-Neb., and Daniel Patrick Moynihan, D-N.Y. The bill had passed the House on Oct. 20 by a 333-95 vote, with 170 Democrats joining 162 Republicans and one Independent in support, and 64 Republicans and 31 Democrats opposed.

Importantly, the final bill does **not** remove the cap on marketing loan rates, contrary to the wishes of some Plains State Senate Democrats. Nor does it provide for extensions in the loan period.

The following provisions are included in the \$5.9 billion of agricultural “emergency spending” (which is exempt from congressionally imposed budget caps):

- ▶ **\$3.1 billion** in one-time “agricultural market transition act” (AMTA) payments – the direct market transition payments made under the 1996 farm law. This is approximately **\$1.5 billion more** than was provided in the congressionally passed appropriations bill vetoed previously by Clinton. Of this amount, \$200 million is earmarked for dairy price support programs. The remainder will translate into an additional payment amounting to 52 percent of the original payment for 1998 made to each producer.
- ▶ **\$2.4 billion** in disaster assistance, broken down as follows:
  - **\$1.5 billion** in payments for 1998 crop losses, – equal to the amount contained in the vetoed measure, but **\$1 billion more** than the original proposal introduced by Sens. Thomas A. Daschle, D-S.D., and Byron Dorgan, D-N.D.
  - **\$875 million** for multi-year crop losses – about **\$200 million more** than provided in the vetoed bill.

- **\$200 million** for emergency livestock feed assistance for producers sustaining a shortfall in feed supplies because of drought or other weather-related disasters – **\$25 million more** than the amount in the previously vetoed bill. USDA will have the authority to determine eligibility for feed assistance funds.

- ▶ **\$3 million** in dairy indemnification payments to offset “market losses.”

**Tax Provisions:** The bill also contains about \$1 billion in tax benefits for producers, including:

- ▶ **permanent income averaging** (valued at \$45 million over five years), which previously had been scheduled to expire at the end of the year 2000. This provision gives producers the option to average farm income over a three-year period when calculating tax payments.
- ▶ **a net operating loss carryback provision** (valued at \$81 million over five years) that allows producers who sustain operating losses attributable to farming operations to be carried back five years, rather than the current two years, regardless of whether the loss occurred in a presidentially declared disaster area. Current law generally defines net operating losses to be the amount by which the business deductions of a taxpayer exceeds the taxpayer’s gross income.

(Continued page page 3)



## 3 Easy Steps for Using NGFA's Web Site:

1. **Access the Web Site by Typing the NGFA's Web Site Address:** <http://www.ngfa.org>
2. **Enter the User Name:** ngfa
3. **Enter the Password:** soybean

[Note: Password changed to “soybean” on **Oct. 1**]

[Note: Type all letters in lower case. Any problems or ideas? Call us at (202) 289-0873.]



## Lugar Outlines Concerns with Market Regulation

In an Oct. 15 speech before the Chicago-Kent Derivatives and Commodities Law Institute attended by the NGFA, Senate Agriculture Committee Chairman Richard G. Lugar, R-Ind., announced that he would conduct post-election hearings to review derivative activity of hedge funds and related topics, perhaps as early as December.

Lugar, whose committee is charged with specific oversight responsibility of the Commodity Futures Trading Commission, also reaffirmed his intent to "hold extensive authorization hearings" beginning next year in an effort to resolve fundamental questions surrounding the Commodity Exchange Act. "Although the CFTC's current authorization runs through (the year) 2000, our committee's schedule has been pushed forward in light of the concept release (on over-the-counter derivatives issued recently by the CFTC) and the magnitude of the job before us," Lugar said. He said that various firms, exchanges, public interest groups, scholars and "elder statesmen" of the industry would be invited to testify.

In explaining the need for close examination, Lugar stated, "At the heart of this entire debate lies the question, 'Is a swap a future?'...In this comment letter (concerning a rulemaking), the CFTC stated publicly that 'many swaps constitute futures and options,' something the agency had never before asserted so definitively....(Such statements) have brought legal uncertainty to the market. In particular, it (has brought) considerable legal uncertainty to the equity swaps market, which the CFTC has no authority to exempt."

Lugar said the over-the-counter derivatives industry faces "two major risks if the CFTC finds that swaps are futures and decides to regulate in this area: 1) regulatory risk; and 2) legal risk. If the CFTC can find a peg to claim jurisdiction over this market, the swaps industry faces the potential of burdensome regulation. Additional regulation might cause this extremely cost-sensitive market to move offshore where it can conduct its business more efficiently. The greater exposure cited by these firms is legal risk. Legal risk is the potential that a court will find the underlying contract illegal and unenforceable...If courts perceive rightly or wrongly that the CFTC believes that swaps are futures, many of these contracts could unravel and become unenforceable."

The Senate Agriculture Committee chairman also reiterated his past support of the CFTC, saying that "over the years, I have been a cheerleader of sorts for the CFTC

and have defended the agency from its detractors....I agree with the commission that this market deserves examination. However, Congress is the appropriate body to debate the matter....Congress – and only Congress – can get beyond the legalistic question of whether swaps are futures and simply decide what it thinks about swaps and whether additional regulation seems appropriate."

Lugar closed by pledging to "present extensive, probing, basic questions regarding public policy on futures, swaps and other derivatives – my own so-called 'concept release'....I face all of these events, not with a feeling of pessimism or cynicism, but armed with a good sense of humor and optimism. That is sometimes difficult but not impossible....We have to strive to bring confidence, leadership and certainty to our markets, and I will personally work with the public and private sectors to help regain our risk-taking zeal without sacrificing the public interest."

## NGFA Calendar

- Oct. 28:** Strategic Issues Committee, Skybird Meeting Center, O'Hare Airport, Chicago, Ill.
- Nov. 5:** Grain Grades and Weights Committee, NGFA Library/Conference Room, Washington, D.C.
- Nov. 12:** Research Committee, NGFA Library/Conference Room, Washington, D.C.
- Nov. 18:** International Trade/Agricultural Policy Committee, NGFA Library/Conference Room, Washington, D.C.
- Dec. 5:** Feed Industry Committee, Worthington Hotel, Fort Worth, Texas
- Dec. 6:** Leadership Conference for State/Regional Associations, Worthington Hotel, Fort Worth, Texas
- Dec. 6:** Country Elevator Committee, Worthington Hotel, Fort Worth, Texas
- Dec. 6:** Feed Industry Council Seminar, Worthington Hotel, Fort Worth, Texas
- Dec. 6-7:** NGFA Trade Show, Worthington Hotel, Fort Worth, Texas
- Dec. 7-8:** Country Elevator Council Meeting, Worthington Hotel, Fort Worth, Texas
- March 21-23, 1999:** NGFA's 103rd Annual Convention, Sheraton Palace Hotel, San Francisco, Calif.



*("Spending Bill" continued from page 1)*

▶ **health insurance deductions for producers and self-employed individuals** (valued at \$880 million over five years). The percentage of health insurance costs that are tax deductible will gradually increase to 100 percent by the year 2003, instead of 2007 as under previous law. For self-employed individuals, the deduction of health insurance costs will be 75 percent starting in the year 2002 and 100 percent in 2003. Previous law allowed the self-employed to deduct 60 percent in 2002, 80 percent in 2003-05, 90 percent in 2006 and 100 percent in 2007.

▶ **favorable tax treatment for any producer opting to take all or a portion of his/ her market transition (AMTA) payments early.**

The bill also extends for six months – through March 31, 1999 – Chapter 12 of the bankruptcy code, which covers bankruptcy for farmers.

**Other Agricultural-Related Provisions:** The bill also:

▶ **allocates \$1.1 billion for the P.L. 480 program** for fiscal 1999, \$6 million less than in fiscal 1998 but \$90 million more than requested by the administration. The funds are to be allocated as follows: 1) \$220 million for Title I credit sales; 2) \$837 million for Title II commodity donations; and 3) \$25 million for Title III commodity grants.

▶ **earmarks \$75 million for the administration's food safety initiative.** These funds are being allocated to USDA and the Food and Drug Administration to enhance surveillance, research and education on food-borne illnesses and antimicrobial resistance alleged to result from the feeding of subtherapeutic levels of antibiotics to food-producing animals.

▶ **directs \$64 million for USDA's Risk Management Agency,** which manages the federal crop insurance program.

▶ **authorizes \$842 million for agricultural research and extension,** \$17 million more than in fiscal 1998 and \$29 million more than requested by the administration.

▶ **allocates \$641 million for USDA's Natural Resource Conservation Service,** \$101 million less than requested by the administration. This section of the bill caps enrollment of land in the Wetlands Reserve Program at 120,000 acres in fiscal 1999, 44,000 acres less than proposed by the administration. It also limits the amount of funding available for the Environmental Quality Incentives Program at \$174 million, down from the administration's request for \$300 million.

▶ **delays the phase out of methyl bromide for three years,** until 2005. An international environmental agreement known as the Montreal Protocol directed

industrialized nations to phase out methyl bromide (a suspected ozone-depleting substance) by 2005, but the U.S. Environmental Protection Agency had expedited the phaseout to occur in 2001.

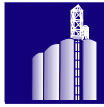
▶ **institutes two, 12-month pilot programs for livestock price reporting** – a provision that was included in the original Senate agricultural appropriations bill, but which was stricken from the measure ultimately vetoed by President Clinton. One of the pilot programs requires persons or companies that buy, sell or market a significant share of domestic or imported fed cattle and fresh muscle cuts to report price information. No prices are to be reported publicly until after the secretary of agriculture reports to Congress on the results, which is required within six months of the conclusion of the pilot program. The second pilot program requires the secretary of agriculture to establish a streamlined electronic system for issuing meat product export certificates, with summary data to be disseminated within two weeks after the export certificates are issued.

▶ **prohibits the Commodity Futures Trading Commission from regulating over-the-counter derivatives for six months.** The moratorium is designed to provide time for the administration, Congress and the financial industry to determine whether to reform the regulatory structure for swaps and other over-the-counter trading. *[See related article on page 2.]*

**Other Provisions of the Budget Law:** The massive budget law also contains the following provisions of interest to the grain, feed and processing industry:

▶ \$18 billion to replenish the International Monetary Fund. As a precondition to receiving the money, the law requires that the secretary of the treasury and the chairman of the Board of Governors of the Federal Reserve certify that the IMF is undertaking a series of reforms, including: 1) increasing interest rates on IMF borrowing for most types of loans; 2) accelerating repayment of IMF loans; 3) an agreement by borrowing countries to comply with international trade agreements and practices; 4) refraining from giving preferential treatment to domestic creditors in borrowing countries when settling bankruptcies; 5) prohibiting loans at preferential government rates to domestic businesses in recipient countries; and 6) publishing summaries of IMF board meetings within three months after such meetings occur.

▶ \$13.4 million to fund the operations of the Surface Transportation Board, which has regulatory oversight of freight rail transportation. This represents a 3.3 percent reduction from the \$13.9 million allocated in fiscal 1998. *[See related article on page 6.]*



## Glickman Vows to Make Aggressive Use of CRP

### ...USDA Pledges Not to Ease Enrollment Criteria for 18th Signup...

At a press availability on Oct. 13, Secretary of Agriculture Dan Glickman pledged to make aggressive use of the Conservation Reserve Program, implying that the U.S. Department of Agriculture may accept sufficient offers during the 18<sup>th</sup> signup to nearly fill the CRP to its authorized cap of 36.4 million acres. The next signup is scheduled to occur Oct. 26 through Dec. 11, with USDA scheduled to announce the results by March 1999.

Glickman also said that the Clinton administration, as part of its fiscal 2000 budget proposal to be submitted to Congress in January, may recommend that the size of the CRP be expanded beyond the current 36.4-million-acre cap.

At a subsequent briefing the same day attended by the NGFA, top U.S. Department of Agriculture officials pledged not to ease the environmental benefits index or other criteria used to evaluate CRP bids in an effort to maximize enrollment. Parks Shackelford, associate administrator for programs at the Farm Service Agency, said USDA "absolutely will not use the CRP as a supply management tool." Instead, he said, USDA projects that more qualifying acres may be offered for enrollment in the CRP because of the downturn in cash grain prices.

Approximately 30.9 million acres were enrolled in the CRP as of Oct. 1, about 5.5 million acres less than the 36.4-million-acre cap authorized under current law. In addition, slightly more than 3.5 million acres subject to CRP contracts are scheduled to expire on Sept. 30, 1999. Contracts awarded in response to signup 18 will take effect on Oct. 1, 1999.

**EBI Changes for the 18<sup>th</sup> Signup:** In a fact sheet released this month, USDA states that the EBI criteria used for signup 18 will be "very similar" to the criteria used for the 16<sup>th</sup> signup last year. Two changes have been made: 1) Contract size has been eliminated as a subfactor in the wildlife component; and 2) points have been added for wildlife food plots and wetland restoration. In addition, USDA said, in certain states, water quality designations have been modified and a few additional conservation priority areas may have been approved.

**USDA to Issue \$1.3 Billion in CRP Payments:** In a related development, USDA announced Oct. 13 that it will make more than \$1.3 billion in CRP rental payments available "as soon as possible." [See accompanying table.]

USDA officials also told the NGFA that for acres enrolled in the 18<sup>th</sup> signup, they are considering accelerating CRP rental payments so that they are available either on the effective date of the CRP contract or in the middle of the contract year, rather than at the end of the first contract year (as currently is the case). Otherwise, rental payments for CRP contracts that take effect on Oct. 1, 1999 would not be available until Oct. 1, 2000, USDA said.

### CRP Rental Payments (As of September 1998)

Rounded to the nearest 1,000 acres.  
A zero value means no acres, or less than 500 acres.

State	Number of Farms	Acres Enrolled September 1998		Rental Payments October 1998	
		(1,000)	(%)	(1,000)	(%)
Alabama	6,731	439	1.4	18.5	1.3
Alaska	37	26	0.1	0.9	0.1
Arizona	1	0	0.0	0.0	0.0
Arkansas	2,043	190	0.6	8.3	0.6
California	308	138	0.4	4.5	0.3
Colorado	4,684	1,814	5.9	58.2	4.2
Connecticut	12	0	0.0	0.0	0.0
Delaware	83	3	0.0	0.1	0.0
Florida	1,713	101	0.3	3.9	0.3
Georgia	7,006	365	1.2	15.0	1.1
Idaho	2,599	761	2.5	31.0	2.2
Illinois	20,746	780	2.5	61.4	4.4
Indiana	9,986	367	1.2	26.9	1.9
Iowa	27,435	1,571	5.1	134.8	9.8
Kansas	22,143	2,668	8.6	113.8	8.2
Kentucky	4,913	267	0.9	16.5	1.2
Louisiana	1,451	164	0.5	6.5	0.5
Maine	515	25	0.1	1.3	0.1
Maryland	833	27	0.1	1.8	0.1
Massachusetts	10	0	0.0	0.0	0.0
Michigan	6,777	304	1.0	16.7	1.2
Minnesota	17,747	1,142	3.7	55.1	4.0
Mississippi	10,339	795	2.6	31.8	2.3
Missouri	16,183	1,411	4.6	89.8	6.5
Montana	5,874	2,839	9.2	97.8	7.1
Nebraska	10,059	1,080	3.5	56.6	4.1
Nevada	7	2	0.0	0.0	0.0
New Hampshire	9	0	0.0	0.0	0.0
New Jersey	59	3	0.0	0.1	0.0
New Mexico	1,591	564	1.8	18.3	1.3
New York	1,253	58	0.2	2.3	0.2
N. Carolina	3,933	113	0.4	4.3	0.3
N. Dakota	15,147	3,336	10.8	117.3	8.5
Ohio	8,319	348	1.1	25.1	1.8
Oklahoma	6,082	990	3.2	34.3	2.5
Oregon	1,137	382	1.2	17.0	1.2
Pennsylvania	1,906	88	0.3	4.3	0.3
Rhode Island	0	0	0.0	0.2	0.0
S. Carolina	4,493	220	0.7	7.8	0.6
S. Dakota	9,699	1,747	5.6	71.9	5.2
Tennessee	5,734	279	0.9	14.0	1.0
Texas	15,721	3,631	11.7	125.7	9.1
Utah	593	185	0.6	5.6	0.4
Vermont	14	0	0.0	0.0	0.0
Virginia	1,952	59	0.2	2.7	0.2
Washington	2,711	815	2.6	31.7	2.3
West Virginia	35	1	0.0	0.0	0.0
Wisconsin	16,995	620	2.0	39.1	2.8
Wyoming	603	251	0.8	7.5	0.5
<b>U.S. Totals</b>	<b>278,233</b>	<b>30,968</b>	<b>100</b>	<b>1,380</b>	<b>100</b>

## Mexico Issues Final Phytosanitary Rules for Grain Imports

Mexico has finalized rules on phytosanitary requirements that will apply to imports of grains and seeds (not for planting), effective **Oct. 27**.

The new rules (known as NOM-FITO-1995) were issued Oct. 12 by Mexico's Secretaria de Agricultura, Ganaderia y Desarrollo Rural (SAGAR). According to a report prepared by the U.S. embassy in Mexico City, the rules prescribe fumigation methods for imported grains and seeds; impose additional requirements for information to be provided on international phytosanitary certificates for wheat (to address Karnal bunt) and sorghum (to address ergot); and require the cleaning and fumigation of surface transport vehicles if Mexican border officials determine they are contaminated with vegetation or soil. The new phytosanitary measures also limit points of entry for selected commodities and impose different requirements for selected commodities transhipped through the United States.

**Fumigation Requirements:** The final rules mandate different fumigation treatment methods, depending upon where it occurs.

- ▶ For shipments originating in the United States, Mexico will accept fumigation at point of origin using phosphine gas.
- ▶ For shipments originating in the United States but not fumigated at the point of origin, Mexico specifies treatment with methyl bromide at either atmospheric pressure or 600mm of vacuum, or treatment with phosphine gas at the point of entry into Mexico.
- ▶ For direct surface imports from the United States, the dosage and exposure times are required to be specified on the fumigation certificate issued by the Federal Grain Inspection Service or a USDA-authorized company. For direct ocean shipments originating from the United States or Canada, the rules require that the dosage and exposure time be specified on the phytosanitary certificate.

**Sorghum and Wheat Shipments:** Mexico's rules impose the following additional requirements on imports of sorghum and wheat:

- ▶ For **sorghum** shipments, the phytosanitary certificate "should" indicate that the shipment contains less than 0.05 percent of ergot (sclerotia of *Claviceps sorghi* and/or *Claviceps africana*), which Mexico specifies as 90 sclerotia per kilogram of sorghum.
- ▶ For **wheat** shipments, the phytosanitary certificate "should" indicate that it is free from *Tilletia controversa* (TCK smut). For *Tilletia indica* (Karnal bunt), the phytosanitary certificate should indicate that the shipment did not originate from Arizona, California, New Mexico or Southwestern Texas (i.e., El Paso, Hudpeth, Culberson, Jeff Davis and Presidio, Texas).

**Rail Cars and Trucks:** The Mexican rules require that railcars, trucks and containers be free from vegetation and soil. When Mexican border inspectors detect vegetation and/or soil and require cleaning, the rules specify the types of fumigants to be used and direct that the cleaning be done outside of Mexico. The rules state that when vegetation is detected on railcars or trucks, such vehicles will be prohibited from entering Mexico and the Mexican government will notify other entry points of the vehicle identification number.

**Copy Available:** The document is available on the NGFA's web site at <http://www.ngfa.org>, or by fax by calling Jackie Congress at (202) 289-5388.

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## Shackelford, Galvin Promoted to New USDA Posts

The U.S. Department of Agriculture has announced the promotion of two officials – **Parks Shackelford** and **Timothy J. Galvin** – to new high-level posts.

Shackelford was appointed to the influential position of associate administrator for programs at the Farm Service Agency, where he will be responsible for supervising, administering and implementing the farm programs, farm loan programs and commodity operations of the agency. These responsibilities include implementation of the 1996 farm law and its provisions for loan deficiency payments, marketing assistance loans and market transition payments, as well as Commodity Credit Corporation and U.S. Warehouse Act issues. ***Shackelford is one of the featured speakers at the NGFA's 27<sup>th</sup> annual Country Elevator Council meeting to be conducted Dec. 7-8 in Fort Worth, Texas.***

Since November 1997, Shackelford has served as the Farm Service Agency's assistant deputy administrator for farm programs, after having served four years as deputy administrator for state and county operations at the former Agricultural Stabilization and Conservation Service. Prior to that, the Louisiana native served from 1987-92 as a top staff member of the House Agriculture Committee.

**Galvin** was appointed by Secretary of Agriculture Glickman to the position of special assistant for international affairs. He succeeds Paul Drazek, who left USDA to join the Washington office of an Atlanta-based law firm. Galvin most recently served as associate administrator of USDA's Foreign Agricultural Service. An Iowa native, he previously worked as agricultural and trade legislative assistant for Sen. J. Robert Kerrey, D-Neb., and as a staff member for the House Agriculture Committee.



## Surface Transportation Board Faces Uncertain Future

The Surface Transportation Board, the federal agency charged with administering federal regulation of railroads, faces an uncertain future after Congress failed to formally reauthorize the agency or confirm new board members.

The ICC Termination Act of 1995 authorized appropriations for the STB through fiscal 1998, which ended Sept. 30. While Congress included \$13.4 million in appropriations to fund the STB's operations for fiscal 1999, the failure to reauthorize the agency means that legislative battles over both the substantive law and the agency's future will begin anew when the new Congress convenes early in 1999.

In addition, it is likely that the STB will have only one member – STB Chair Linda Morgan – at the start of 1999. President Clinton on Oct. 5 formally withdrew the nomination of Vice Chairman Gus A. Owen for a second term. Since Owen's current term expired on Dec. 31, 1997, the ICC Termination Act of 1995 requires that he leave office by Dec. 31, 1998.

While Senate staff confirms that Senate Majority Leader Trent Lott, R-Miss., late in the session officially recommended **Wayne Burkes** (a Mississippi highway commissioner) as his choice to replace Owen in the Republican spot on the STB, he has not been nominated formally yet by Clinton. In the absence of a Republican nominee, the Senate also refused to confirm previously nominated **William Clyburn** of South Carolina to fill the Democratic vacancy at the agency. Clyburn's future prospects most likely hinge on whether his sponsor, Sen. Ernest Hollings, D-S.C., wins reelection in November.

Consequently, it is almost certain that Morgan will be the lone STB member as of Jan. 1. Her term actually expires on Dec. 31, 1998, but she can remain in office until as late as Dec. 31, 1999, unless a successor is nominated and confirmed sooner. While the president has the power under the U.S. Constitution to make temporary "recess" appointments to fill vacancies at federal agencies while the Congress is not in session, Clinton has rarely done so.

**Rail Law Changed by Inaction:** Ironically, the failure of Congress to pass substantive rail legislation this year resulted in the expiration of the so-called "40 percent rule" on agricultural transportation contracts, effective Sept. 30. The NGFA had supported deletion of the 40 percent rule because: 1) it was deemed unenforceable as written; and 2) other changes to the common carrier portions of the law [49 U.S.C. § 11101(a)] made by the ICC Termination Act of 1995 may provide more protection for rail users than the 40 percent rule. The failure of Congress to renew the provision means that the 40 percent rule ceased to apply to agricultural rail shipments on Oct. 1. Thus, the law now applicable to agricultural rail users provides that **any** contractual "[c]ommitments which deprive a carrier of its ability to

respond to reasonable requests for common carrier service are not reasonable."

## Rail Rate Case – the Final Word?

A federal appeals court on Oct. 20 issued what may be the final chapter in the infamous "McCarty Farms" rail rate case. And in doing so, the court addressed a jurisdictional issue having much broader impact.

In its decision, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Surface Transportation Board "did nothing that was arbitrary, capricious or contrary to law" in rejecting the class action challenge originally brought in 1980 by a group of Montana rail shippers against wheat and barley rail rates for movements to Pacific Northwest ports charged by what was then the Burlington Northern Railway Co.

But in affirming the STB's rate decision, the court also found that the STB's jurisdiction over transportation by rail carriers is **exclusive over challenges to the reasonableness of rail rates**. Thus, even though a rail user may properly pursue some claims (*e.g.*, loss and damage claims, issues involving alleged breaches of a rail transportation contract, etc.) against a rail carrier in federal district court, **rate claims must be addressed by the STB even if such claims have some relation to other matters before a district court**. The appellate court reached its conclusion despite acknowledging that this result may lead to "some duplication of judicial effort." Consequently, rail users and railroads relying on either the courts or the STB to resolve disputes may face both increased costs and time involved in pursuing claims.

NGFA-member rail users have at least a partial alternative to that scenario by electing prior to Nov. 1 to sign the NGFA rail arbitration agreement on issues outlined in the new NGFA Rail Arbitration Rules.

### Rail Carriers Signing Rail Arbitration Agreement

(As of Oct. 22)

- Burlington Northern Santa Fe Railway Co., Fort Worth, Texas.
- Canadian National Railway, Winnipeg, Manitoba, Canada.
- Canadian Pacific Railway, Minneapolis, Minn.
- Consolidated Rail Corp. (Conrail), Philadelphia, Pa.
- CSX Transportation Co., Jacksonville, Fla.
- Illinois Central Railroad, Chicago, Ill.
- Iowa Interstate Railroad LTD, Iowa City, Iowa.
- Kansas City Southern Railway, Kansas City, Mo.
- Kyle Railroad, Dallas, Texas.
- Norfolk Southern Railway Co., Roanoke, Va.
- Red River Valley & Western Railroad Co., Wahpeton, N.D.
- Union Pacific Railroad Co., Omaha, Neb.



## Japan Considering Labeling of Bio-Engineered Foods

The Japanese Ministry of Agriculture, Forestry and Fisheries is considering implementing rules that would require labeling of foods containing genetically modified (GMO) products.

The plan under consideration would require labeling if foods containing GMO products: 1) are "not equivalent" to conventional products in terms of their constituents, nutrients or methods of use; 2) may affect the health of certain segments of the population because of their greater likelihood of producing allergic reactions or other such properties; or 3) pose ethical problems because of their use of animal genes or other such circumstances.

For foods containing genetically altered material that do not meet these three criteria (i.e., is equivalent, is safe and does not present any health or ethical concerns), the Japanese agency is considering whether to implement one of the following two approaches:

◆ One proposal ("Proposal A") would require mandatory labeling if a product is tested and found to contain GMO material, or in cases where it is believed that GMO material could be present in a shipment. This proposal would exclude foods whose GMO material is removed or decomposed during processing and is judged to no

longer be present in the foodstuff. In this situation, labeling would not be mandatory but could be done voluntarily by the manufacturer. In cases where either foods do not contain GMO material or non-GMO raw materials have been segregated at the production and distribution stages, labeling would not be mandatory. Manufacturers would have the flexibility to voluntarily display a label indicating that the product is GMO free (or similar wording).

◆ The second proposal ("Proposal B") would make labeling voluntary. Under this approach, a product that contains or may contain GMO material could be voluntarily labeled as: 1) "GMO" to indicate that GMO material is the main or sole ingredient; 2) "not segregated for genetic modification" or similar language to indicate non-segregation of GMO from non-GMO material at the production and distribution stages; or 3) "non-GMO" to indicate utilization of non-GMO material at the production and distribution stages.

The NGFA and other agricultural groups have sent a letter to the Japanese agency urging that any final regulations *not* require labels if the GMO material is essentially equivalent to non-GMO material, is safe, and does not pose any health or ethical concerns.

## EPA Releases Phosphine Studies

The NGFA has obtained a copy of the cases of alleged aluminum/magnesium phosphide poisonings that the Environmental Protection Agency says it plans to use as justification for a proposal in November to implement stringent new standards on the use of phosphine gas as a fumigant. [See *NGFA Newsletter*, Oct. 8.]

An analysis by the NGFA of the incidents alleged by EPA to involve aluminum/magnesium phosphide poisonings reveals the following patterns:

- ◆ Cited instances of misuse of aluminum/magnesium phosphide that are unrelated to its use as a fumigant at grain handling facilities. For example, the agency cites examples of misuse of the chemical by unauthorized persons fumigating underneath a home or using the chemical to fumigate an apartment.
- ◆ Failure to use proper respiratory protection when entering fumigated areas. For example, EPA cites incidents of persons not wearing appropriate respiratory

protection or not properly aerating the fumigated area prior to entry.

- ◆ Unauthorized entry into a fumigated structure. Among the incidents cited by the agency is entry into fumigated rail cars by unauthorized persons.
- ◆ Anecdotal information with no clear proof that aluminum/magnesium phosphide was present. For example, the agency cites railway workers who claimed they were exposed to phosphine gas while performing welding and cutting on rail cars.

**Next Steps:** The NGFA's Gain Grades and Weights Committee is scheduled to meet with EPA officials on Nov. 5 to discuss the agency's proposed actions on aluminum/magnesium phosphide. The NGFA's Safety, Health and Environmental Quality Committee also is reviewing this matter. The NGFA also is working with State and Regional Grain and Feed Associations, as well as other industry trade associations, to effectively address this matter.



**Nov. 1 Deadline Nears!**

## **NGFA Contacting Eligible Members About Rail Arbitration Agreement**

During the past two weeks, the NGFA has telephoned all Active and Associate/Trading member companies that had not yet indicated whether they wished to sign the rail arbitration agreement to remind them of the **Nov. 1 deadline** for making a decision.

As has been reported in each *NGFA Newsletter* and other communications since the agreement was finalized in August, NGFA members that do **not** sign the agreement by Nov. 1 forego the right to compel arbitration of covered rail disputes for the duration of the two-year agreement, which took effect Oct. 1 and expires on Oct. 1, 2000.

As of Oct. 22, a total of 276 NGFA-member rail-user companies have signed the agreement, as have 12 rail carriers. A current list of NGFA rail users and rail carriers that have signed the agreement is posted on the NGFA's web site at: <http://www.ngfa.org>. [See page 6 for list of railroads that have signed the agreement.]

During its phone conversations with members, one of the most frequently asked questions is: **"What if my shortline railroad has not signed the agreement?"** Members in this situation may wish to consider the following:

▶ The NGFA recently sent the rail arbitration agreement

to approximately 40 shortline railroads. Three have signed, and several more have indicated orally that they intend to sign. Others still are studying the agreement. Since parties to the agreement are required to be NGFA members, one reason for the delay is that several non-member shortlines are seeking authority from management to become NGFA members. There is no deadline for shortlines to sign the agreement.

▶ If NGFA-member rail users believe it would be in their business interest to be bound to arbitrate potential disputes that may arise with their shortline carrier, they may wish to sign the agreement now in the event their shortline ultimately decides to sign. If the shortline does not sign, the NGFA rail user member could choose to utilize the agreement's early out provision, which allows member rail users and carriers to withdraw from the rail arbitration agreement after giving 90 days' written notice. Or the NGFA rail user could simply remain a signatory to the agreement and utilize the system in situations where the carrier voluntarily submits to arbitration.

Please contact the NGFA at (202) 289-0873 if you have any questions about the agreement.



*Mark Your Calendar!*

**NGFA's 103rd Annual Convention**  
**Sheraton Palace Hotel, San Francisco, Calif.**

**March 21-23, 1999**