



NGFA Newsletter

Volume 51, Number 20, October 7, 1999

U.S. Regulatory Agencies Attest to Safety of Biotech Foods

...NGFA Provides Perspectives of Grain, Feed and Processing Industry at Senate Hearing...

The three U.S. government agencies responsible for regulatory oversight of agricultural biotechnology today told the Senate Agriculture Committee that the regulatory review process currently in place is sound and ensures that food and feed products resulting from agricultural biotechnology are safe.

Dr. James H. Maryanski, biotechnology coordinator for the Food and Drug Administration's Center for Food Safety and Applied Nutrition, said the agency in 1992 developed a science-based regulatory policy statement that ensures that commodities produced from agricultural biotechnology meet the same safety standards as traditional foods. FDA's policy statement focuses on the traits and characteristics of the foods, and applies to all new varieties of food crops. He also noted that FDA in 1998 issued guidance on the use of antibiotic-resistant marker genes in bioengineered plants intended for food use.

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NGFA Grain Grades and Weights Committee Chairman Robert C. Smigelski is shown after presenting the association's recommendations on biotechnology-enhanced grains and oilseeds at a hearing conducted today by the Senate Agriculture Committee. Smigelski, who also is a member of the NGFA's Board of Directors, is Agriculture Group operations manager for The Andersons, Maumee, Ohio. The NGFA and the Corn Refiners Association were invited to present the perspectives of the grain, feed and processing industry on biotechnology issues at the packed Senate hearing. See enclosed Committee Action for a report on the NGFA's recommendations.

Watch NGFA Web Site for Updates!!!

No Decision Imminent on Loan Program Lock-In Repayment Rate Change

U.S. Department of Agriculture officials said today that no decision has been made – nor is one imminent — on whether to change the marketing assistance loan repayment rate lock-in procedure.

USDA officials said they still are exploring a number of potential options for changing the loan repayment rate lock-in procedure. During an hour-plus meeting on Sept. 30 attended by the NGFA, other commodity organizations and producer groups, USDA discussed a plethora of potential options for changing the loan repayment rate lock-in procedure. No consensus emerged on which, if any, approach was preferable.

Among the potential options discussed were to:

- ▶ allow producers to lock-in the loan repayment rate on all or a portion of the loan quantity for either farm- or warehouse-stored loans, but require the producer to make repayment at that locked-in rate during a specific time (30, 60, 90 and 180 days were among the loan-repayment periods floated by USDA and some commod-

ity organizations). In effect, for producers who select a lock-in rate, this would amount to a recourse loan on the quantity for which the lock-in rate applies, since the producer would have to repay the loan and would not have the option of forfeiture.

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The NGFA's web site --
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Access the Web Site
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Web Site Address:
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NGFA's Biotechnology Recommendations

"No longer can food companies assume that all consumers have the same attitude toward ingredients, nutritional value and other qualities of products. No longer can farmers plant seed and safely assume the harvested product will be accepted universally by all buyers...Farmers (should) seek advice from their customers – those firms to which they intend to market their crops."

This statement was included in the NGFA's testimony today to the Senate Agriculture Committee, and demonstrates how much biotechnology developments in corn and soybeans already have reshaped the marketplace.

The foundation for the NGFA's testimony was a set of recommendations released this week concerning management of biotechnology issues. Following a far-ranging discussion by four committees – Country Elevator, Feed Industry, Food and Feed Safety, and Grain Grades and Weights – and by the NGFA Board of Directors, there is consensus that biotechnology is a "mega" issue, and must be proactively addressed by your NGFA. These recommendations are available for review at NGFA's web site, www.ngfa.org, and will continue to be reviewed for relevance and currency as new biotechnology-related issues surface.

The NGFA's recommendations are based upon two premises: 1) government regulatory acceptance of biotechnology-enhanced products should be strictly science-based; and 2) the U.S. food system is customer-driven. Last year, government regulatory acceptance seemed to be the greatest challenge to biotech, particularly delays by the European Union in its approvals of newer corn varieties. But in today's market, consumer acceptance looms as the biggest unknown. Some customers are stating preferences for non-biotechnology enhanced products, and paying for that preference.

Regardless of what factors shape consumers' preferences, as a customer-driven industry, we are challenged to respond. If we don't have a system that can reliably and consistently deliver products the consumer wants, there are two potential losses: biotechnology may lose favor or U.S. agriculture might lose part of its customer base. Our industry is trying to segregate to meet this new preference. But as stated in the NGFA's testimony, "(the grain industry) does not have (all) the tools to get this job done."

One NGFA recommendation is the "development of new testing technology that will quickly, accurately and affordably differentiate biotechnology products from conventional ones." The NGFA further states that the initiative to develop such tests must come from the biotechnology companies, because "these companies are in control of seed development and thus control the DNA and resulting protein expressions of such DNA." NGFA members

certainly have a strong belief in the competitive marketplace being able to respond to greater diversity, "but only if it has the tools (and information) to sort and segregate grains on the basis of factors reflecting economic value."

The NGFA's recommendations for government's role in addressing biotechnology issues include continued oversight and scientific objectivity from regulatory bodies, including EPA, USDA and FDA. We ask those agencies to be prepared to defend the science-based U.S. regulatory-approval process against unsubstantiated claims. The U.S. government should work through international organizations to preserve open trade for safe products. The NGFA's recommendations suggest that the Federal Grain Inspection Service establish a process for validating the accuracy of commercial tests for biotechnology-enhanced products. The NGFA's recommendations also oppose government-mandated labeling or tolerances for bulk agricultural products, reasoning that such considerations should be left to commercial contracts between buyer and seller.

The promise that biotechnology can deliver future products that could cure vitamin deficiencies for millions of people in developing countries and produce fruit containing edible vaccines suggest how far this technology could go in reshaping the future world in positive ways. But getting to that point may be bumpy. And it could reshape the way the bulk commodity marketing industry conducts business.

The NGFA's recommendations are intended to assist the marketplace in being responsive to new challenges and make the changes and accompanying new risks more manageable for members.

NGFA Calendar

- Oct. 20:** **Vitamin Litigation Informational Meeting**, Holiday Inn KCI Airport, Kansas City, Mo.
- Nov. 3:** **Marketing Committee**, GATX Headquarters, Chicago, IL
- Dec. 4:** **Leadership Conference**, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 4:** **Feed Industry Committee**, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5:** **Country Elevator Committee**, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5-6:** **Feed Industry Council**, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5-6:** **NGFA Trade Show**, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 6-7:** **Country Elevator Council Meeting**, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 7-8:** **NGFA Trade Rules Committee**, Regal Riverfront Hotel, St. Louis, Mo.
- March 29-31, 2000:** **NGFA's 104th Annual Convention**, Hotel Del Coronado, San Diego, Calif.



House Passes Ag Appropriations Bill; Senate Action Delayed

The House on Oct. 1, following a contentious debate, approved the final version of the fiscal year 2000 agriculture appropriations bill by a 240-175 vote.

But action in the Senate has been delayed by a filibuster threatened by Sens. Rick Santorum, R-Pa., and Bob Torricelli, D-N.J., who objected to the bill because they think it does not contain sufficient relief funds for Northeastern drought and flood-stricken areas. In addition, Sen. Patrick Leahy, D-Vt., is demanding that the final bill include a Northeastern-favored provision that would prevent the U.S. Department of Agriculture from changing the current price structure for dairy.

In public comments, Sen. Torricelli indicated that his group may or may not have the necessary votes to sustain the filibuster. Under Senate rules, a filibuster is ended if 60 or more senators vote to limit debate and proceed to a final vote.

Since fiscal 2000 began at midnight on Oct. 1, U.S. Department of Agriculture programs have been financed through a stopgap measure known as a continuing resolution, which allows the agency to function at fiscal 1999 levels until the fiscal 2000 bill is enacted into law.

Final Bill: The bill (H.R. 1906) provides \$69 billion in funding for USDA operations. It also includes a total of

\$8.7 billion in emergency aid consisting of:

- ◆ \$5.5 billion in increased direct marketing transition (so-called "AMTA") payments to producers;
- ◆ \$1.2 billion in production loss payments to compensate for adverse weather;
- ◆ \$475 million to soybean and oilseed producers;
- ◆ \$134 million to specialty crop producers;
- ◆ \$328 million to tobacco growers;
- ◆ \$200 million to livestock producers;
- ◆ \$125 million to dairy farmers;
- ◆ \$650 million for crop insurance premium reductions;
- ◆ A doubling of the payment limit for loan deficiency program (LDP) and marketing loan gains to \$150,000 for the 1999 crop year; and
- ◆ Mandatory livestock price reporting.

The legislation was opposed by many House members because of the way the emergency funding is distributed (through AMTA), the way the Republican leadership handled the negotiations and because two key policy provisions -- sanctions reform and dairy -- were excluded from the final measure.

Senate Committee Approves Morgan's Nomination to STB

The Senate Commerce, Science and Transportation Committee on Sept. 30 announced it had approved the nomination of Linda Morgan to another term (ending on Dec. 31, 2003) on the Surface Transportation Board.

That clears the way for her nomination to proceed to the Senate floor, although it is not certain yet when – or whether – the nomination will be considered. There have been unconfirmed reports that rail labor interests, which have opposed the STB's treatment of rail labor agreements when considering rail merger applications, may try to have a senator place a "hold" on the nomination. That would have the effect of stalling floor action on the nomination unless and until the senator removes the "hold."

Morgan's current term expired on Dec. 31, 1998, but she can continue to serve without Senate confirmation until Dec. 31, 1999. At that time, she would be required to leave office unless confirmed by the Senate, which currently is scheduled to adjourn for the year on Oct. 29.

Bill Would Remove Rail Antitrust Immunity; Change Merger Rules

The expressed antitrust immunity now enjoyed by the nation's railroads, as well as other rules governing rail mergers, would be changed under legislation introduced recently by Sen. Michael Crapo, R-Idaho.

The bill (S. 1590) also would prohibit the Surface Transportation Board from interfering with rail labor agreements when railroads merge. It also would remove the STB's express statutory authority [49 U.S.C. Section 11321] to set aside shipper contracts as part of a merger. The STB exercised that authority in the recent acquisition of Conrail by the Norfolk Southern and CSXT Railroads.

The bill, which is cosponsored by Sens. Max Cleland, D-Ga., and Tim Johnson, D-S.D., has been referred for consideration to the Senate Commerce, Science, and Transportation Committee. STB Chairman Linda Morgan, in response to a question raised in late September during her confirmation hearing before the committee, indicated general support for the legislation.

House Passes Crop Insurance Reform Bill

On Sept. 29, the House unanimously passed a comprehensive crop insurance reform bill (H.R. 2559) authored by Agriculture Committee Chairman Larry Combest, R-Texas.

The centerpiece of the Combest legislation would provide for increased government subsidies for producer premiums on federal crop insurance. The subsidies for the various levels of insurance would be as follows:

Coverage	Subsidy	Coverage	Subsidy
• 50/100	= 67%	• 70/100	= 59%
• 55/100	= 64%	• 75/100	= 54%
• 60/100	= 64%	• 80/100	= 40.6%
• 65/100	= 59%	• 85/100	= 30.6%

In addition, the Combest bill would allow producers to adjust their agricultural production history loss adjustment by excluding any year when their recorded or appraised yield declined to less than 60 percent of the applicable transitional yield. In addition, the bill would create a pilot program for livestock revenue insurance that would expand to a total value of \$55 million by 2004.

Senate to Conduct Oct. 14 Hearing: Meanwhile, the Senate Agriculture Committee has scheduled an Oct. 14 hearing to debate its two competing versions of crop insurance reform bills. On Sept. 13, Sens. Roberts and Kerrey reintroduced their reform bill (S. 1580), including some elements of Senate Agriculture Committee Chairman Richard Lugar's risk management plan. Lugar, R-Ind., on Sept. 29, introduced his own legislation (S. 1666).

The new Roberts-Kerrey bill is similar to the Combest legislation in that it would increase premium subsidies to encourage greater producer participation. The new language adds incentives for producers to use alternative risk-management tools, such as exchange-traded futures or options, in addition to crop insurance.

This latter concept forms the centerpiece of the Lugar proposal (S. 1666). Rather than focus on insurance, Lugar's bill would provide an increased AMTA payment for producers for each of the years between 2000 and 2002. The amount of the bonus would be based upon a percentage of the producer's current AMTA payment. To receive the additional funds, producers would have to utilize at least two of the following risk-management practices: 1) Purchase crop insurance that is at least equal to catastrophic coverage; 2) Enter into at least one exchange-traded future or option for the principal commodity produced on the property; 3) Cover at least 20 percent of the value of the principal commodity with a cash forward or other marketing contract; 4) Attend a risk-management class; 5) Purchase an agricultural trade option for at least 10 percent of the value of the principal commodity; 6) Deposit at least 25 percent of the payment into a tax-deductible account; 7) Reduce debt; or 8) Diversify production. Producers not receiving AMTA payments would qualify for a 35 percent discount on federal crop insurance premiums. In addition, pilot programs for livestock coverage would be created and 85/100 insurance broadened to areas where feasible.



COUNTRY/TERMINAL CORNER

by randall c. gordon
v.p., communications/gov't relations

("Loan Program" continued from page 1)

Under this option, the producer could deliver the grain at any time once the loan repayment occurs.

- ▶ fine tune the current system by allowing producers to continue to lock-in a loan repayment rate for 15 or 30 days, but allow only one lock-in rate for the selected loan quantity during that time period. Producers – as they can with the current CCC-681-1 – would be permitted to let the lock-in rate expire at the end of the 15- or 30-day period, and lock in a new loan repayment rate. This proposal also would expand the lock-in rate privilege to warehouse-stored loans.
- ▶ not divorce the CCC-681-1 from the loan-repayment rate, but allow a producer to have only one outstanding CCC-681-1 (and hence only one lock-in rate) at a time. Producers still would have the option of allowing the CCC-681-1 to expire, and obtain a new marketing authorization form (and lock-in rate).

- ▶ allow producers to lock-in the loan repayment rate at any time during the nine-month loan, but base the loan repayment rate as the rate in effect on the date of delivery.
- ▶ allow producers to determine the loan-repayment rate at any time during the life of the loan, and retain the option of forfeiting the commodity to the Commodity Credit Corporation at loan maturity.
- ▶ issue a proposed rule on one or more options and seek public comment.
- ▶ retain the status quo.

Most of the aforementioned options discussed during the meeting (except retaining the status quo) would divorce the loan repayment lock-in rate from the marketing authorization form (CCC-681-1) – a step that the White House Office of Management and Budget has approved. But there was considerable discussion as to the advisability of implementing a change at this stage in the marketing year.

(Continued on page 5)

(“Loan Program” continued from page 4)

Importantly, it does appear extremely unlikely that USDA’s initial proposal will be implemented without significant change. That proposal would have given producers the option to lock-in a loan-repayment rate on all – or a portion of the loan quantity – at the posted county price (PCP) for farm- or warehouse-stored grain at any time during the life of the nine-month loan. Under USDA’s initial proposal, producers would not have been required to repay the loan until loan maturity, and still would have had the option to forfeit the loan collateral at loan maturity.

Under the current program, producers who have pledged grain as collateral for a **farm-stored** marketing assistance loan have the right anytime during the nine-month life of the loan to request a CCC-681-1 to deliver the loan collateral and repay the loan. Under the CCC-681-1, they also have the option to “lock-in” the loan repayment rate at the posted county price (PCP) for a 15- or 30-day period. Producers ostensibly then are required to deliver the loan collateral during the delivery period specified on the CCC-681-1; however, the existing program allows producers to let the CCC-681-1 expire without delivering the loan collateral, and take out a new CCC-681-1 – and lock-in a new repayment rate – at a later time. One problem with the existing program has been that it has encouraged producers to obtain multiple CCC-681-1s with different potential buyers solely to obtain a new “lock-in” rate. Current rules prohibit producers from changing the lock-in rate during the 15- or 30-day period unless he/she obtains a new CCC-681-1 by designating a different buyer as the delivery location.

NGFA Voices Industry Concerns over USDA’s Initial Proposal. The NGFA shared with USDA the following concerns raised by members in response to USDA’s initial proposal:

- ▶ It would create a strong bias in the farm program toward the loan program – and encourage producers to enroll grain under loan – versus the loan deficiency payment (LDP) program because it would provide free interest on the nine-month loan and a free “put” opportunity because the producer would have the right at loan maturity to forfeit the commodity to CCC.
- ▶ It likely would encourage speculation by producers. By providing farmers with a free “put” and a guaranteed minimum price via the loan rate, it would encourage farmers to speculate on price for nine months in hopes that prices would increase to levels that exceed the loan repayment rate that had been “locked-in” previously by the producer.
- ▶ It would exacerbate logistical problems that have been encountered in mid-to-late-summer in the last two years.
- ▶ It could create an even-more-bearish market toward the end of the crop year (both futures and basis) than has existed in the last two years because of maturing loan

collateral coming onto the market through deliveries or loan forfeitures (which CCC currently is authorized to sell immediately). Such bear markets tend to carry over into the new crop year, as new and old crop look for a purchaser or “home” at the same time.

- ▶ It probably would increase prices nearby. But long-term, because grain is being stored that could be sold, the United States would have difficulty remaining competitive in the middle of the crop year – which would be bearish for U.S. markets. It is important that U.S. markets clear burdensome stocks to the extent possible to provide an opportunity for improved prices to producers, rather than overhanging the market and depressing prices for a longer period.
- ▶ If prices become bearish toward the loan maturity dates, forfeitures to CCC could increase dramatically. Under USDA’s original proposal, USDA would lose its current ability to adjust the PCPs to less than market prices to encourage loan redemption, rather than forfeiture, because the loan-repayment rate already would have been “locked in” previously by the producer.
- ▶ It would represent a significant mid-year policy change that would discriminate against producers who already had sold, obtained an LDP or redeemed the loan on their harvested commodities. It also arguably would disadvantage the best marketers – those who have a marketing plan, planned early, forward contracted, etc.

Watch NGFA Web Site for Updates!

The NGFA will be providing updated information on this issue through its web site at: <http://www.ngfa.org>. The information will be posted on the “Breaking News and Info” section on the NGFA’s home page, and will be available for members only. To access the information, enter the “user name”: ngfa. The “password” is: soybean. Type all letters in lower case.

USDA to Issue CRP Payments

The U.S. Department of Agriculture announced Oct. 3 that it will make more than \$1.3 billion in Conservation Reserve Program payments “as soon as possible.” USDA said the payments will average \$5,000 per farm and \$45.15 per acre on more than 400,000 contracts and 270,000 farms.

“The CRP is tremendously beneficial for producers and the general public,” said Secretary of Agriculture Dan Glickman in announcing the payments. “It has reduced soil erosion and expanded wildlife habitat while improving air and water quality, restoring wetlands and encouraging tree planting. And at the same time, it has strengthened farm income.”

(“Biotechnology” continued from page 1)

“In conducting its safety evaluations of genetically engineered foods, FDA considers not only the final product but also the techniques used to create it,” he said. “The substances intentionally added to food via biotechnology to date have been well-characterized proteins, fats and carbohydrates, and are functionally very similar to other proteins, fats and carbohydrates commonly and safely consumed in the diet and so will be presumptively generally recognized as safe (GRAS).”

He noted that the Federal Food, Drug and Cosmetic Act authorizes FDA to require premarket review of any substances intentionally added via biotechnology that are not GRAS. “FDA’s authority under current law – both pre- and post-market provisions – is sufficient to ensure the safety in the marketplace of foods derived from new plant varieties,” Maryanski said.

EPA: Meanwhile, Dr. Janet L. Andersen, director of the Biopesticides and Pollution Prevention Division at the Environmental Protection Agency, said her agency’s regulatory system “is based on the most rigorous scientific information available, is credible, defensible and will serve to protect the environment and public health as we address the challenges associated with biotechnology.” She said biotechnology has “great potential to reduce our reliance on some older, more risky chemical pesticides and lower worker and ecological risk.”

She revealed that in 1995, before the first *Bt* plant-pesticide was registered, EPA evaluated studies of its potential effects on a wide variety of organisms and found that these species – including butterflies – would not be exposed to the *Bt* toxin. In the aftermath of the Cornell University laboratory study on the Monarch butterfly, she said, EPA has worked with researchers at Cornell and Iowa State University and expects to conclude its scientific review of their studies shortly.

Anderson also noted that EPA has implemented resistance-management data and monitoring requirements on the *Bt* plant pesticides, and continues to evaluate the size of refuge areas that should be required as buffers around *Bt*-planted crops.

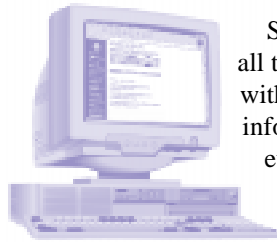
USDA: Dr. Sally L. McCammon, science advisor on biotechnology issues for USDA’s Animal and Plant Health Inspection Service, said her agency had processed more than 5,000 permits and notifications for field release of biotechnology-modified organisms at 22,000 sites – most for testing herbicide tolerances and pest-and disease-resistance. “[A]dvances in biotechnology have increased the ability of regulators to scrutinize product safety and the effect of product modification upon safety,” she said. “Biotechnology has the potential to create more and better sources of food, to reduce pesticide use, increase yields, and improve nutrition and quality of life.”

NGFA: In its testimony, the NGFA said it strongly supports biotechnology and other scientific innovations that contribute to the availability of an adequate, safe and high-quality food supply. But the NGFA noted that consumer preference requires that the U.S. food system adapt and respond, or risk losing some of its customer base.

Some customers of U.S. grains have stated a preference for conventional varieties of corn and soybeans, noted NGFA Grain Grades and Weights Committee Chairman Robert C. Smigelski. Therefore, he testified, the market needs a single test that is accurate, quick, reliable and cost-effective to differentiate biotechnology-enhanced products from conventional ones to facilitate segregation and quality control to manage marketplace contingencies.

“We have great confidence in the marketplace being able to self-regulate with minimal government intrusion, but only if it has the tools to sort and segregate grains on the basis of factors reflecting economic value, and in today’s market, that includes biotechnology factors,” Smigelski said.

Your Information Source – ngfa.org



So much information these days! And all the hype and clutter that goes along with it. Where do you get the straight information you need in your business every day?

Log onto the NGFA’s web site at www.ngfa.org. A recently developed “Breaking News and Info” page is the first thing you’ll see. Each day, as developments of importance to the industry occur, brief and concise summaries are posted for your use. Many stories are members-only features, so simply enter your user name (“ngfa”) and your password (“soybean”) for access.

In addition to “Breaking News and Info,” a wealth of additional information is available at ngfa.org, including: 1) biotechnology updates; 2) the NGFA’s Trade Rules and Arbitration Rules; 3) the operation of the farm programs, including LDPs; 4) resource materials to help farmers optimize returns; 5) back issues of the *NGFA Newsletter*; and 6) much more!

For news and information affecting the grain, feed and processing industry, there is no better source – for timeliness, accuracy and relevance – than **ngfa.org**. Bookmark it as one of your web site favorites today!

Advertising Available! You now can place your ad on the NGFA web site! Contact Todd Kemp on the NGFA at (202) 289-0873 or by e-mail at tkemp@ngfa.org for details.

Link to the NGFA web site! Any NGFA member can request a complimentary link to the NGFA’s web site. Simply contact Alison Bawek at the NGFA to request your link.



House Urges OSHA to Study Economics of Safety/Health Program Rule

A House subcommittee has included language in an appropriations bill for fiscal year 2000 that would require the Occupational Safety and Health Administration to spend \$2 million on a two-year study of the costs and benefits of implementing the agency's planned safety and health program rule.

In a 1998 draft version of the rule, OSHA proposed that employers be required to establish workplace safety and health programs, which would include workplace safety committees, detection of potential workplace hazards, and other requirements, to ensure compliance with OSHA regulations and the general duty clause.

The action to slow implementation of the OSHA program was taken by the House Appropriations Committee's Subcommittee on Labor, Health and Human Services, which would require the agency to allocate \$2 million from its compliance-assistance budget to pay for the study. As part of the study, OSHA would be required to assess: 1) the costs of developing and implementing

safety and health programs; 2) the projected reduction in injury and illness rates that would result; 3) workers' compensation rates prior to and after implementation; 4) conflicts with the National Labor Relations Act; and 5) other benefits and costs associated with implementing such a program. OSHA would be required to report its initial findings to the House Committee on Education and the Workforce, and the Senate Committee on Health, Education, Labor and Pensions no later than June 1, 2000.

The Appropriations Committee also encouraged the agency to expand efforts "in partnering with employers in establishing voluntary safety and health programs," utilizing such vehicles as state consultation programs and existing safety and health program management guidelines. In addition, the committee directed OSHA to consider whether educating rather than regulating would be the best approach for developing and implementing safety and health programs, and to offer participating businesses "certain incentives, such as relief from random inspections."



NGFA Sets Informational Meeting on Vitamin Litigation for Oct. 20

The NGFA this week confirmed arrangements for an **informational meeting** for members involved in commercial feed or feeding businesses on the potential legal options that **both direct and indirect buyers** of vitamins may have in pursuing monetary damages for overcharges against certain vitamin manufacturers. Also invited to attend are chief executive staff officers of NGFA Affiliated Association members and members of the Pet Food Institute, with which the NGFA has a strategic alliance.

The meeting is scheduled for **Wednesday, Oct. 20 in Kansas City at the KCI Airport Holiday Inn**, which is located at 11832 Plaza Circle. The meeting will begin at **10:30 a.m. and end by 3:30 p.m.** to allow most attendees to avoid an overnight stay. **Members who are interested in attending, but who have not yet notified the NGFA, should contact Randy Gordon or David Barrett at (202) 289-0873.**

Agenda: During the meeting, the NGFA's outside legal counsel (Arent Fox Kintner Plotkin and Kahn) will provide information about the litigation involving six vitamin manufacturers for violations of the antitrust laws between 1990 and 1999, and the options available to both direct and indirect purchasers to recover overcharges that amounted to between 25 and 40 percent in vitamins used in animal feed. Counsel will discuss the facts of the case, explain the options that direct and indirect buyers (compa-

nies that bought through resellers) of vitamins may have in pursuing legal recourse if they choose to do so, and examine the pros and cons of various approaches (e.g., class action vs. individual company lawsuits; whether to file in federal or state court, etc.). It will be up to each firm attending to determine the course of action best for its interests.

While generally only direct purchasers have claims under the federal antitrust laws, indirect purchasers may have standing to recover damages under various state laws and judicial interpretations. Recoveries could be significant because of the right to seek treble damages on even state law-based antitrust claims. **Indirect purchasers located or doing business in the following jurisdictions have been identified as having the best chance of recovery:** Alabama, Arizona, California, District of Columbia, Florida, Kansas, Maine, Michigan, Minnesota, Mississippi, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, West Virginia and Wisconsin.

Indirect purchasers in other states may have potential claims depending on how state antitrust or other state laws ultimately are interpreted. In addition, it appears that general case law in other states (such as **Indiana, Iowa, Illinois, Missouri, Nebraska and Ohio**) does **not** preclude the filing of lawsuits from indirect buyers seeking damages. But the outcome of suits in these states would be more uncertain.



NGFA Meetings with Eastern Rail Carriers Set for Oct. 13 and 14



Linda Morgan

Surface Transportation Board Chairman **Linda Morgan**, along with officials from **Norfolk Southern** and **CSXT** railroads, will meet with NGFA representatives on Oct. 13-14 in Washington to discuss continuing rail service problems encountered since the June 1 implementation of the Conrail acquisition.

The meeting with the Norfolk South-ern is scheduled for Oct. 13 from 10 a.m. to noon. The session with the CSXT is scheduled for Oct. 14 from 9:30 to 11:30 a.m.

NGFA representatives attending the meeting will include NGFA Chairman **Michael Donnelly**, president, R.F. Cunningham & Co. Inc., Smithtown, N.Y.; Rail Shipper/Receiver Committee Chair **John L. Bratten**, vice president, transportation, Central Soya Co. Inc., Fort Wayne, Ind.; Rail Shipper/Receiver Committee member **Sharon Mock**, director, traffic, Perdue Farms Inc., Salisbury, Md.; NGFA President **Kendell W. Keith**; and NGFA Counsel for Public Affairs **David C. Barrett Jr.** Other members of the Rail Shipper/Receiver Committee will participate via conference call link-up.

Serious service problems have been reported by a broad spectrum of rail users since the two carriers

implemented their respective acquisitions of Conrail. In addition, NGFA-member rail users have expressed major concerns over the expected near-term demand for larger-than-normal rail grain volumes in the Northeast and Mid-Atlantic regions, where severe drought reduced or eliminated local crops. Buying local truck grain simply will not be a viable option for many eastern receivers if rail grain shipments don't arrive when expected. Contact Barrett at the NGFA at (202) 289-0873 if you have any questions.

It's That Time Again!

Time to imagine yourself on a beautiful, sun dappled beach, far away from the cold, windy March weather, having weathered yet another snowy, frigid winter....Time to fantasize about that perfect golf game....Time to equip yourself with the business information you need to operate profitably in the coming year....Time for..the NGFA's 104th annual convention!

And what a convention we have planned for you at the unique Hotel del Coronado, just outside San Diego, Calif. Mark your calendars now for **March 29 – 31, 2000!** This is one convention you surely won't want to miss! We'll be sending you more about this dream convention as time goes on. But for now, *just imagine....*

