



NGFA Newsletter

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USDA Spells Out Plans for Implementing 'Emergency' Ag Spending

[Editor's Note: This article updates and provides additional information on the story filed on the NGFA's web site on Oct. 27.]

At an Oct. 27 briefing attended by the NGFA, the U.S. Department of Agriculture spelled out its current plans for dispensing the approximately \$8.7 billion in emergency farm spending earmarked as part of the fiscal year 2000 agricultural appropriations law.

President Clinton signed the legislation into law on Oct. 22. Previously, the Senate had passed the combined appropriations and emergency-spending bill on Oct. 13 by a 74-26 vote and the House had done so on Oct. 1 by a 240-175 vote. The bill earmarks \$69 billion for USDA operations in fiscal year 2000, as well as funding for the Food and Drug Administration.

USDA said the law will bring total direct assistance to farmers to \$22.5 billion in 1999, the highest in history, topping the previous record of \$16.7 billion in 1987.

(Continued on page 5)

Focus on Inland Waterways Transportation

Two NGFA members are shown while participating in the U.S. Army Corps of Engineers' Inland Waterways Users Board's Nov. 3 meeting in Washington. Pictured are (from left) NGFA Waterborne Commerce Committee Chairman J. Stephen Lucas, vice president, export operations, Louis Dreyfus Corp., Wilton, Conn.; and Waterborne Commerce Committee member James W. Keistler, merchandising manager, Twomey Co., Smithshire, Ill. Keistler serves on the users



Photo by: Alison Bawek

board and is also chairman of the NGFA's Trade Rules Committee. During the meeting, the users board reviewed the status of construction projects on the inland waterways system and approved its report to Congress. On the same day, Lucas also testified at a congressional hearing on behalf of the NGFA, urging that construction and renovation projects on the Upper Mississippi and Illinois River Systems be expedited by fully using the Inland Waterways Trust Fund. Lucas' testimony is summarized in the enclosed edition of Committee Action.

USDA to Resurrect Farm Storage Subsidy Program

[Editor's Note: This article updates and provides additional information on the story filed on the NGFA's web site on Oct. 25.]

The NGFA has learned that Secretary of Agriculture Dan Glickman has signed a decision memorandum that will reinstitute the on-farm storage facility loan program that was discontinued in 1982.

The administration officially approved the decision as part of an interagency review that occurred in August and September, White House officials told the NGFA.

USDA officials told the NGFA that they plan to implement the program after issuing either a proposed rule or interim final rule later this year. Under both scenarios, an opportunity for public comment (likely 60 or 90 days) would be provided. But issuing an interim final rule would allow the loan program to take effect immediately.

USDA officials told the NGFA that in any event, it likely will be spring before specific procedures are implemented and USDA's Farm Service Agency county offices are able

to begin receiving applications from producers for the storage subsidy program.

Under the program, USDA will provide subsidies – either through direct low-interest loans or through loan guarantees (the exact mechanism has not been decided yet) – to producers who wish to construct new on-farm

(Continued on page 12)

The NGFA's web site --
Check it out!



**Access the Web Site
by Typing the NGFA's
Web Site Address:**
<http://www.ngfa.org>

Enter the User Name: ngfa

Enter the Password: soybean



Working Together During Eastern Rail Service Problems

It is evident in both the volume and tenor of telephone calls being received at the NGFA's office: The continuing rail service problems being encountered on the Norfolk Southern and CSXT railroads have spread – and are disrupting relationships between shippers and receivers, as well.

During these tough times, the industry will do better if everyone works together.

The NGFA continues to stay on top of the deteriorating eastern rail situation. The reality is that the service problems may well continue for some time, notwithstanding the carriers' efforts to improve their performance. And, undoubtedly, some disputes will turn into claims between grain-trading partners that also may include claims against railroads.

Meanwhile, what can be done? Some guidelines that already exist include:

◆ **NGFA® Code of Ethics:** NGFA members pledge, as a condition of membership, to abide by the principles embodied in this document. Among other things, the Code of Ethics states: "...[E]ach member shall exert every reasonable effort...to engage in sales and purchasing methods, promotional practices and other transactions, giving consideration to the best interests of the agricultural industry, as well as the public." Another provision provides that members shall "maintain and promote the highest ethical and honest procedures in the transaction of business by members of this Association." Think about whether you are applying these principles the next time you encounter a problem with your contractual counterparty or the serving rail carrier. Think about what will maintain amicable long-term business relations.

◆ **NGFA® Grain Trade Rule 9:** Review the Grain Trade Rules before you enter into transactions. This particular rule provides some definitions and terms to address difficult situations. But in some instances, they apply only if you refer to those terms in your contracts. Are you addressing these issues?

◆ **NGFA Grain Trade Rule 10:** Are you complying with this rule when encountering rail-related contract performance problems? Note that this rule imposes obligations on both parties. A primary duty is to communicate in an effort to mitigate the damages when shipment or delivery will not be completed within the agreed-upon time period. Are you doing everything you can to minimize the harm when it becomes clear that rail cars will not arrive when expected?

◆ **Resolving Problems:** While the NGFA has a highly respected and effective Arbitration System for resolving claims between trading partners (including rail user/railroad disputes), the best practice still is to work toward avoiding disputes and to first try to resolve them privately when they do occur. Are you going the extra mile to make that happens? If private resolution doesn't work, NGFA arbitration does serve a useful purpose to members.

◆ **The Future:** The NGFA Trade Rules Committee is engaged in a major rewrite/reorganization of the NGFA Grain Trade Rules. Are there changes that you think need to be made in the rules, especially in light of changes in rail transportation? If so, let us know. The committee will meet on Dec. 7 and 8 in St. Louis, Mo., immediately following the Feed Industry Council/Country Elevator Council meeting. Send your suggestions to David C. Barrett at the NGFA by mail or e-mail at: d Barrett@ngfa.org.

NGFA Transportation Counsel to Review Legal/ Arbitration Matters Related to Rail Problems at Country Elevator Council Meeting

In a late addition to the Country Elevator Council program, an experienced rail transportation attorney – **Andrew P. Goldstein** – will discuss possible remedies to various types of rail problems and situations encountered in 1999. Among other things, Goldstein, who serves as the NGFA's transportation counsel, will examine potential remedies before the courts, the Surface Transportation Board and under NGFA rail arbitration. **Companies that believe they may have possible claims will not want to miss this session!**



Senate May Consider Crop Insurance Reform Bill Soon

The NGFA has learned that an attempt may be made soon to force the Senate to act on a crop insurance reform bill (S. 1580) introduced by Sens. Pat Roberts, R-Kan., and J. Robert Kerrey, D-Neb., before its scheduled adjournment on Nov. 10. And it may occur without the support of the Senate Agriculture Committee Chairman Richard Lugar, R-Ind.

Earlier this year, Congress set aside \$6 billion in additional funding for crop insurance for the next five years. But to gain access to those funds, the House and Senate Agriculture Committees are required to reach consensus on a crop insurance reform package and submit it to Congress for approval. The House passed its version (H.R. 2559) on Sept. 29.

But the Senate Agriculture Committee has been unable to reach a similar agreement. Debate has focused on two bills, one introduced by Sens. Roberts and Kerrey and an alternative approach (S. 1666) introduced by Lugar. The Roberts-Kerrey proposal would encourage producers to increase their use of crop insurance by raising subsidies for the higher levels of coverage. But the Lugar proposal, rather than focus solely on crop insurance, would provide an increased direct fixed payment (AMTA) 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 eight alternative risk management practices.

An analysis of the two bills conducted by the Food and Agricultural Policy Research Institute (FAPRI) projects that the Lugar legislation would increase farm income by about \$4.7 billion over five years, while the Roberts-Kerrey bill would cause a \$3.7 billion increase over the same period.

Although the Senate Agriculture Committee has conducted several hearings on crop insurance, most recently on Oct. 14, Lugar has not scheduled a business meeting to formally consider the bills. At the Oct. 14 hearing, Lugar refused to set a date for such a meeting, despite being repeatedly pressed by both Sens. Roberts and Kerrey. Instead, Lugar stated that he wanted legislation that provided the most choice for producers, and that the crop insurance program, while part of a broader risk-management package, was an inefficient way of supplementing producer security.

On Nov. 3, the NGFA learned Roberts and Kerrey may attempt to bypass the Senate Agriculture Committee and ask that their bill be considered as an amendment to an unrelated bankruptcy reform bill awaiting Senate

consideration. If approved, the Roberts-Kerrey bill would form the Senate position on crop insurance reform during a conference committee meeting with the House to arrive at a final version.

But there is a catch. Under this scenario, the two senators would have to muster 60 votes on the floor to bypass Senate Agriculture Committee consideration. As the *NGFA Newsletter* went to press, it is unknown if Sens. Roberts and Kerrey had the necessary support. If not, the amendment might not be offered at all.

But the pressure is escalating. Today, a group of House Agriculture Committee members, led by Rep. Earl Pomeroy, D-N.D., and Saxby Chambliss, R-Ga., called a press conference to urge Senate action on crop insurance. The press conference also was attended by House committee members Reps. David Minge, D-Minn., Jack Kingston, R-Ga., Charles W. Stenholm, D-Texas, and Leonard Boswell, D-Iowa.

Meanwhile, the American Association of Crop Insurers spearheaded a Nov. 4 letter submitted to Senate leaders urging action on the Roberts-Kerrey bill. "This legislation has bipartisan support and is endorsed by **every leading agricultural organization** (emphasis added)," the letter said. "The necessity for the Senate to act could not be more urgent. America's farmers and ranchers desperately need an improved risk-management program." The letter was co-signed by the American Bankers Association, the American Farm Bureau Federation, the Independent Community Bankers of America, the National Association of Wheat Growers, the National Barley Growers Association, the National Corn Growers Association, the National Sunflower Association, Rural Community Insurance Services, and the U.S. Canola Association.

NGFA Meets with New CFTC Chairman Rainer

In an Oct. 29 meeting with NGFA President Kendell W. Keith, the new chairman of the Commodity Futures Trading Commission indicated his intent to reduce the regulatory burden imposed by the agency on the futures market.

During the meeting, CFTC Chairman William J. Rainer said he anticipated that the agency would issue its final rule on agricultural trade options in the near future, and would wait to see how the market reacts. Keith also discussed with Rainer working together to develop language to clarify the legal distinction between regulated futures contracts and cash-forward contracts, the latter of which is exempt from CFTC regulation, when Congress considers legislation to reauthorize the Commodity Exchange Act next year.

(Continued on page 9)

Congress Races to Complete Fiscal Year 2000 Appropriations Bills

The pace of work on Capitol Hill reached a fever-pitch this week as Congress focused its attention on reaching a final deal with the White House on government spending for the new fiscal year that began Oct. 1. Congress hopes to complete the unfinished spending bills and adjourn for the year on Nov. 10.

The Republican strategy has been to avoid two possible outcomes – a shutdown of the government, or a last-minute, omnibus bill negotiated under the pressure of an impending shutdown. These scenarios have both occurred in recent years, and both times Republicans were portrayed in a largely negative light.

This year the Republican strategy has been to send each of the 13 annual appropriations bills to the president one at a time, while not using any of the surplus from Social Security to fund unrelated government programs.

On paper, the plan seems to be working. As of today, eight of the 13 bills have been signed into law, while the remainder – including funds for foreign aid programs, the District of Columbia, the federal courts, the national parks and other government-managed lands and resources, and federal education and health programs – have not yet been enacted and have generated objections from President Clinton. Negotiations are continuing, and a final deal is reportedly near. The agriculture spending bill, which contained \$8.7 billion in emergency farm relief, was passed by Congress on Oct. 13 and was signed into law on Oct. 22. [See *NGFA Newsletter*, Oct. 21, 1999.] To prevent a shutdown of those agencies whose spending bills have not been enacted, Congress has passed, and the president has signed, several resolutions enabling those agencies to continue to operate at current spending levels for short periods of time.

U.S. Prepares For WTO Negotiations

The Clinton administration has outlined its goals for agricultural trade during the initial round of World Trade Organization negotiations scheduled to start Nov. 30 in Seattle, Wash.

At an Oct. 20 hearing conducted by the House Agriculture Committee, U.S. Trade Representative Charlene Barchefsky and Secretary of Agriculture Dan Glickman stated that reforming agricultural trade will be one of the major goals of U.S. negotiators.

Barchefsky remarked that “an open, fair trading system for agriculture is among the world’s strongest defenses against hunger,” and “we must have the ability to export to the 96 percent of humanity that lives beyond our borders if (U.S.) farm families are to prosper.”

Barchefsky and Glickman laid out the following objectives that the U.S. will pursue: 1) Elimination of agriculture export subsidies; 2) reduction of trade-distorting domestic supports; 3) reduced tariff rates; 4) more discipline for state-trading enterprises; and 5) “ensure trade in agricultural biotechnology products.”

Barchefsky also said that the United States would seek to avoid reopening previous trade agreements and negotiating on sectors where it believes the chances for final agreement are remote. In addition, Barchefsky testified that the United States and other nations were

reaching a consensus that negotiations conclude by 2003, and that negotiations follow a detailed timetable.

The NGFA, along with other agriculture-based organizations and firms, is a member of the Seattle Round Agricultural Committee (SRAC). This group published a set of agricultural trade goals that it would like to see the U.S. delegation pursue. In addition, the NGFA published a list of its top priorities for the negotiations. See the enclosed edition of *Committee Action* for details.

**Nov. 11 Deadline
Fast Approaching!**



Nov. 11 is the drop-dead date for trapping the special-low early bird registration rate for the NGFA's Country Elevator/Feed Industry Council meetings. It's also the deadline for reserving your campsite at the Regal Riverfront Hotel in St. Louis. Don't end up in the wilderness -- ACT NOW!!!



("Ag Spending" continued from page 1)

Earlier in the day, at a press conference, Secretary of Agriculture Dan Glickman said he and President Clinton still believe the law "falls short" because the income loss assistance is "inadequately targeted and will be unfairly distributed." Glickman also faulted the legislation for being "not nearly adequate" to compensate for weather-related disasters. "We need more disaster assistance, and we will fight for more funds that will provide it," he said.

Glickman also renewed his call on Congress "early next year" to amend the 1996 farm law, saying it "cut a hole in the safety net...and left us with a shell of a farm policy, forcing ad-hoc payments which are increasing rather than decreasing government support."

Gus Schumacher, undersecretary of agriculture for farm and foreign agricultural services, said USDA's Farm Service Agency began making the approximately \$5.544 billion in "supplemental" market-loss-assistance payments on Oct. 25, and should complete them by early November. These payments are in addition to the approximately \$5.1 billion in direct marketing transition (so-called "AMTA") payments to be provided to those who signed production flexibility contracts under the 1996 farm law.

Payment Limit: Importantly, USDA officials said that the "supplemental" market-loss-assistance payments are **not** subject to the \$40,000-per-person payment limit that applies to AMTA payments. Thus, because the "supplemental" payments are being made using the AMTA mechanism and because the amount of "supplemental" payments authorized by Congress approximates the amount of AMTA payments due, **the practical effect will be to double the AMTA payments for eligible producers for the 1999 crop year.** For example, if an eligible producer is due \$38,000 in AMTA payments for the 1999 crop year, he or she will receive \$76,000 after adding the "supplemental" market-loss-assistance payments.

For the regular AMTA payments for the 1999 crop year only, producers also have the option – because of a change made in the agricultural appropriations law – to receive their payments in one lump sum or in two equal payments at any time during the fiscal year. The fiscal year began Oct. 1 and ends Sept. 30. Those who do not choose a payment option will receive their full payment near the end of the fiscal year. Information on selecting a payment option is available at the Farm Service Agency office at local USDA service centers.

Implementing Other Provisions: USDA officials also provided these additional details on the implementation of the agricultural spending law:

► **Soybeans and Oilseeds:** USDA officials said the \$475

million in additional assistance for 1999-crop soybeans and oilseeds will be the most difficult provision to implement because of the convoluted language contained in the law. USDA officials told the NGFA that the supplemental oilseed payments, which are expected to amount to about 15 cents per bushel, likely will not be made until early next year. The reason: the new law requires the use of a complex formula. The payment will be made to those who produced oilseeds in 1999. But the benefits will be based upon their production in 1997 or 1998 (or 1999 for new producers). Further, USDA said the law requires oilseed producers to enroll at the FSA office to receive the benefits. USDA officials said because of this complexity, oilseed producers probably will be the last to receive the additional financial assistance.

But Schumacher noted that once made, soybean producers, in particular, will receive "handsome" payments as a result of the spending package. USDA officials subsequently told the NGFA that their current projections are that soybean producers likely will receive about \$7.85 per bushel for 1999 crops, \$2.85 per bushel of which will be in government payments.

► **Payment Limits for Marketing Loan Gains, LDPs:**

USDA said it has notified FSA offices to double the payment limit for marketing loan gains and loan deficiency payments (LDPs) to \$150,000 (up from the previous \$75,000 limit) for the 1999 crop year only.

► **Commodity Certificates:** While required for Step II cotton payments, USDA said it has not decided yet whether to make "in-kind" payments in the form of "negotiable commodity marketing certificates" to producers of other commodities. USDA Deputy Administrator for Farm Programs Larry Mitchell said the law is structured in a way that gives USDA the authority to issue commodity certificates, but does not require the department to do so (except for Step II cotton). Mitchell also said that USDA has made a legal determination that the **issuance** of commodity certificates **will count against the producer's \$150,000-per-person payment limit** for marketing loan gains and LDPs.

► **Crop Insurance Subsidies:** The law allocates approximately \$400 million for a one-year buy-up incentive for federal crop insurance premiums. USDA Deputy Administrator for Risk Management Kenneth Ackerman said that USDA projects that this level of funding will be enough to finance a 25 percent reduction in crop insurance premiums, which will take effect immediately. USDA administratively provided a 30 percent subsidy for crop insurance for 1999 crops. USDA also announced that since the sales date for winter wheat had

(Continued on page 6)

COUNTRY/TERMINAL CORNER (CONT'D)

("Ag Spending" continued from page 5)

expired, it is reopening the sales of crop insurance for that commodity through Dec. 1.

► **Crop-Loss Assistance:** The approximately \$1.2 billion earmarked for crop-loss disaster assistance likely will not be made until early 2000 because of the need to conduct a sign-up period and determine eligibility, USDA officials said. Sign up is expected to begin by the end of 1999, USDA said. However, USDA officials said they are working to provide a 35 percent advance payment at sign-up for verified losses. The program will be administered similar to the 1998 program, and USDA said the computer software for computing the assistance is ready.

► **No Funds Available for Livestock Reporting:** Even though the law mandates price reporting for livestock markets, USDA officials said no funds were earmarked

for the estimated \$4.7 million cost of this program and that there is no authority to transfer funds from another account (including the CCC revolving fund). USDA estimates it will cost \$4.7 million. USDA officials said Secretary of Agriculture Dan Glickman was discussing the situation with Congress, and hoped to identify potential funding – perhaps through an additional appropriation – shortly.

► **Livestock Aid:** USDA officials said they would implement a Livestock Assistance Program to award the \$200 million made available for grazing-loss assistance. It is expected that the majority of these funds will be allocated to cattle producers through direct payments based upon supplemental feed needs. A livestock indemnity program also will be implemented to provide assistance to producers whose livestock perished because of natural disasters.

USDA Announces AMTA Payment Rates

The U.S. Department of Agriculture on Oct. 25 announced the fiscal year 2000 rates for the approximately \$5.1 billion in direct marketing transition (so-called "AMTA") payments provided to those who signed production flexibility contracts under the 1996 farm law.

Importantly, producers will be eligible for an additional \$5.544 billion in "market-loss assistance" payments, which also will be made through the AMTA mechanism, because of the emergency farm spending provisions approved as part of the agricultural appropriations bill passed by Congress earlier this month and signed into law by President Clinton on Oct. 22. This will have the effect of doubling the AMTA payments above and beyond the figures shown in the accompanying tables.

In addition, because of a change made in the agricultural appropriations law that applies to the current fiscal year only, producers can choose to receive their AMTA payments in one lump sum or in two equal payments at any time during the fiscal year. The fiscal year began Oct. 1 and ends Sept. 30. Those who do not choose a payment option will receive their full payment near the end of the fiscal year. Information on selecting a payment option is available at the Farm Service Agency office at local USDA service centers.

The following tables show the payment rates and estimated AMTA payments by state:

Commodity	Payment Rate
Wheat	58.8 cents/bu
Corn	33.4 cents/bu
Grain Sorghum	40.0 cents/bu
Barley	25.1 cents/bu
Oats	2.8 cents/bu
Upland Cotton	7.33 cents/lb
Rice	2.60 \$/cwt

Production Flexibility Contract Payments by State¹ (Fiscal Year 2000; Million of Dollars)

Alabama	\$36	Nebraska	\$362
Alaska	\$0	Nevada	\$1
Arizona	\$42	New Hampshire	\$0
Arkansas	\$247	New Jersey	\$2
California	\$217	New Mexico	\$18
Colorado	\$89	New York	\$28
Connecticut	\$1	North Carolina	\$59
Delaware	\$4	North Dakota	\$225
Florida	\$9	Ohio	\$142
Georgia	\$72	Oklahoma	\$137
Idaho	\$66	Oregon	\$35
Illinois	\$423	Pennsylvania	\$22
Indiana	\$209	Rhode Island	\$0
Iowa	\$481	South Carolina	\$27
Kansas	\$364	South Dakota	\$147
Kentucky	\$52	Tennessee	\$51
Louisiana	\$131	Texas	\$454
Maine	\$1	Utah	\$7
Maryland	\$15	Vermont	\$1
Massachusetts	\$1	Virginia	\$20
Michigan	\$89	Washington	\$87
Minnesota	\$292	West Virginia	\$2
Mississippi	\$124	Wisconsin	\$114
Missouri	\$161	Wyoming	\$8
Montana	\$118		
		U.S. Total	\$5,193

1/ The total exceeds \$5.13 billion because it does not include savings due to application of payment limit decisions.

FDA Sets Public Meetings on Biotech-Enhanced Foods

The Food and Drug Administration has announced it will conduct three public meetings to discuss its current policy for ensuring the safety of foods containing biotechnology-enhanced ingredients, and to obtain suggestions on “appropriate” means of providing information to the public about such products in the food supply.

FDA has invited the NGFA to present its views on biotechnology-enhanced grains and feed at one of the public meetings.

FDA noted that under its current policy, technology providers of biotechnology-enhanced commodities “are expected to consult with the agency before marketing such foods to ensure that all safety and regulatory questions have been fully addressed.” The agency also said its policy requires special labeling for a biotechnology-enhanced food if its composition is significantly different from its conventionally grown counterpart, or if its nutritive value has been altered significantly. Special labeling also would be required if a product contains an allergen that would not normally be found in the conventionally grown product.

“FDA’s food regulatory system relies on the best science available to protect the public,” said FDA Commissioner Dr. Jane E. Henney in announcing the public meetings. “Our scientists are not aware of any reason to question the safety of currently marketed foods produced through bioengineering. Nevertheless, as a science-based agency, FDA will consider any valid scientific information that suggests the agency should reevaluate its process for overseeing the safety of these foods.”

The dates, locations and persons with whom to register if you want to attend the public meetings are as follows:

Nov. 18, Chicago:

The Plaza Club, 130 East Randolph St. (9 a.m.-6 p.m.)
Contact: Darlene Bailey, FDA Chicago District Office
Phone: (312) 353-7126, Fax: (312) 886-3280
E-mail: dbailey@ora.fda.gov

Nov. 30, Washington, D.C.:

Grand Hyatt Hotel, 1000 H St., N.W. (10 a.m.- 7 p.m.)
Contact: Patricia Alexander, FDA Office of Consumer Affairs
Phone: (301) 827-5006, Fax: (301) 827-3052
E-mail: palexand@oc.fda.gov

Dec. 13, Oakland, Calif.:

Elihu Harris State Office Bldg., 1515 Clay St. (9a.m.-6 p.m.)
Contact: Janet McDonald, FDA San Francisco District Office
Phone: (510) 337-6845, Fax: (510) 337-6708
E-mail: jmcdonal@ora.fda.gov

The deadline for registering is 15 days prior to the date of each meeting. Those wishing to make public statements

also are requested to inform the FDA contact person when registering, and to submit: 1) a brief written statement of the general nature of views that the person wishes to present; 2) the names and addresses of those wishing to make the presentation; and 3) the amount of time requested.

FDA said the scope of the discussions will be limited to three core scientific/safety issues and an equal number of public information issues. “These meetings will afford consumers, industry and academia an opportunity to provide focused comment on these issues in a manner that will assist FDA in evaluating and refining its existing policies and procedures,” the agency said in an Oct. 25 *Federal Register* announcement. The questions posed by the agency are as follows:

Scientific/Safety Issues:

- ▶ Has FDA’s consultation process achieved its intended purpose? Based on experience to date, should this regulatory approach be allowed to expire, continue in its current state, be mandatory, or be otherwise revised?
- ▶ What newly emerging scientific information, if any, exists concerning the safety of foods derived from biotechnology-enhanced plants? Are there specific tests that, if conducted on such foods, would provide increased assurance of safety for man or animals?
- ▶ What types of food products derived from biotechnology-enhanced plants are planned for the future? Will these foods raise food safety issues that would require different approaches to safety testing and agency oversight? If so, what are those approaches?

Public Information Issues:

- ▶ Should FDA’s policy requiring labeling for significant changes, including changes in nutrients or the introduction of allergens, be maintained or modified? Should FDA maintain or revise its policy, which requires that the name of the new food be changed when the common or usual name for the traditional counterpart no longer applies? Have FDA’s labeling policies on biotechnology-enhanced foods served the public?
- ▶ Should additional information be made available to the public about foods derived from biotechnology-enhanced plants? If so, what information? Who should be responsible for communicating such information?
- ▶ How should additional information be made available to the public (e.g., on the Internet, through food information phone lines, on food labels or by other means)?

Further information about the public meetings is available by contacting the author at the NGFA at (202) 289-0873 or by e-mail at rgordon@ngfa.org.



Class Action Settlement of Vitamin Price-Fixing Case Filed with Court

...NGFA Feed Industry Council Meeting to Address Legal Options for Direct, Indirect Purchasers...

Plaintiff's attorneys representing direct purchasers of bulk vitamins have filed with a federal district court judge in Washington a proposed \$1.05 billion class-action settlement against seven vitamin manufacturers for overcharges resulting from antitrust violations that occurred between 1990-99.

U.S. district court judge Thomas F. Hogan likely will schedule an oral hearing on the proposed settlement, and provide an opportunity for affected parties to file objections. The judge has the right to reject the proposed settlement if he determines it to be unfair to the class members. Judge Hogan's orders regarding the vitamin litigation can be found on the Internet at: <http://www.dcd.uscourts.gov/99ms197.html>

There are reports that several direct purchasers of vitamins that have been part of the class action are considering dropping out of the settlement to pursue separate litigation against the vitamin manufacturers because they consider the award to be too small. The proposed settlement equates to about 20 cents on the dollar for vitamin purchases made by the parties during the affected period, according to the class-action lawyers. But the U.S. Justice Department, which earlier imposed fines as part of a settlement of criminal charges against the vitamin manufacturers, estimates that the value of the overcharges amounted to 25 to 45 percent. The level of charges allegedly was greater on bulk vitamins used for animal feed than for those used by humans.

While only direct purchasers have claims under federal antitrust law, state antitrust law affords **indirect** purchasers a similar right of recovery for overcharges against the conspiring vitamin manufacturers. Several states have enacted statutory provisions that provide rights to indirect purchasers and courts have afforded such rights to indirect purchasers in other states through case law. These states include: Alabama, Arizona, California, Florida, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, New Mexico, New York, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, West Virginia and Wisconsin.

States not listed in the preceding paragraph have not expressly addressed the issue. But indirect purchasers located in such states (e.g., Indiana, Iowa, Missouri, Nebraska, Ohio and Texas) still may have the right to recover damages if state law is interpreted to give them such rights. There is a significant likelihood that

indirect purchasers ultimately will recover on claims in at least some of the aforementioned states.

Companies, Products Involved in Conspiracy: The companies that the U.S. Justice Department has identified thus far as having been involved in the conspiracy are: Hoffman-La Roche Ltd., BASF Aktiengesellschaft, Rhone-Poulenc S.A., Lonza AG, Eisai Co., Ltd., Daiichi Pharmaceutical Co. Ltd., Takeda Chemical Industries Ltd. and Chinook Group Ltd. Products that have been identified as being subject to the conspiracy include: vitamins A, B₂, B₃, B₄, B₅, C, E, beta-carotene and vitamin premixes.

Update on Vitamin Litigation at Feed Industry Council Meeting: The legal options and strategies that **direct and indirect** purchasers of vitamins for animal feed have to collect overcharges will be the lead topic at the NGFA's Feed Industry Council meeting to be conducted on Dec. 5-6 in St. Louis. ***The potential recovery is equal to three times the amount of the overcharge, plus attorneys' fees and reasonable expenses.*** This session will update the information conveyed at a meeting conducted by the NGFA on Oct. 20 in Kansas City, Mo. ***If your company is in the feed business and purchased vitamins and sorbates during the period 1990-99, you owe it to yourself to attend!***

NGFA Calendar

- Nov. 17:** Strategic Issues Committee, Skybird Meeting Center, Chicago O'Hare Airport
- Nov. 18:** International Trade/Agricultural Policy Committee, NGFA's Conference Room, Washington, D.C.
- 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.

Model National Medicated Feed Program Presented to FDA

...Includes Voluntary Self-Inspection; FDA Pledges Action...

The Food and Drug Administration will work to implement a pilot program next year to test the concept of voluntary self inspections for medicated feed establishments.

FDA officials made the pledge during an Oct. 29 meeting with a delegation from the Association of American Feed Control Officials (AAFCO), the professional organization of state and federal feed regulatory officials. The voluntary self-inspection program is part of a comprehensive Model National Medicated Feed Program developed by AAFCO during the past three years that was officially presented to FDA at the meeting. The NGFA, which was part of the official AAFCO delegation at the meeting with FDA, strongly advocated and spearheaded the development of the self-inspection program through its participation in AAFCO.

Under the voluntary self-inspection pilot program, participating medicated feed establishments that have implemented quality-assurance programs (such as the one developed by the NGFA) that meet FDA's current good manufacturing practices (CGMPs) would conduct an annual self-inspection and submit a summary report to FDA and the appropriate state feed control agency. In return, FDA would use its discretionary authority to generally exempt licensed medicated feed establishments from routine biennial CGMP inspections. It is expected that some states also will consider using similar regulatory discretion. FDA said it plans to conduct random spot-check audits of a certain percentage (perhaps 10 percent) of pilot program participants to verify compliance with the CGMPs.

The AAFCO model program recommends that the self-inspection pilot program be conducted for two years and be open to any medicated feed manufacturing establishment – be it a commercial feed mill, integrator operation or on-farm/mixer-feeder. The AAFCO document also suggests that a minimum of 125 medicated feed establishments be enrolled, disbursed across all geographic regions, to ensure the pilot project has an adequate number of participating establishments to measure its success.

FDA officials said they still are evaluating whether to implement the pilot project through a compliance policy guide or another form of guidance document. Because the pilot project envisions collecting information from participating establishments – namely the annual self-inspection summary report – FDA believes the program also will require the concurrence of the White House Office of Management and Budget. FDA also is considering requesting dedicated funds in the president's fiscal year 2001 budget to finance the pilot program.

NGFA to Keep Members Informed: The voluntary self-inspection pilot program is expected to generate keen interest from the feed manufacturing industry. The NGFA already has developed a database of member companies that have indicated a potential interest in participating in the pilot project, and will keep those members informed of the program details as they develop. **If your company has an interest, please contact Randy Gordon at the NGFA at (202) 289-0873 or by e-mail at rgordon@ngfa.org.**

("Rainer" continued from page 3)

Keith and the new CFTC chairman also discussed federal crop insurance and the NGFA's concern that such tools not "crowd out" other risk-management tools offered by the regulated exchanges and the private sector. Rainer also asked about the NGFA's views on biotechnology-enhanced grains.

Rainer's comments to the NGFA about his regulatory philosophy mirrored remarks he made in a significant speech on Oct. 28 before the Chicago-Kent College of Law Derivatives and Commodities Law Institute. In the speech, he said he intended to transform the agency into an "oversight regulator" instead of a "frontline regulator."

While the speech focused on financial futures – which he said are "most in need of regulatory reform" – Rainer said "all of our contract markets would benefit from a lighter regulatory hand."

The agency intends to "withdraw from approving contract designations and will soon issue proposed regulations to permit exchanges to adopt new (contract) rules without prior approval," he said. "These are key elements in our overall plan to move from being a frontline to an oversight regulator."

Rainer said he would be guided by what he termed the "three basic purposes" outlined in the Commodity Exchange Act for the regulatory structure currently administered by the CFTC: 1) to protect the price-discovery function; 2) to prevent the manipulation of commodities through corners, squeezes and similar schemes; and 3) to assure an effective vehicle for risk transference. "Implicit throughout is the need to provide suitable customer protection from abusive trade practices and fraud," he said.

At the same conference, CFTC Commissioner James E. Newsome reiterated his view that the agency needs to "appropriately deregulate our domestic exchanges to allow them to compete in today's global financial markets and...provide legal certainty for over-the-counter markets to allow them to thrive." Newsome also said the CFTC should conduct cost/benefit studies before finalizing new regulations. "...I start from the premise that we (should) take regulatory actions...only when the benefits of such actions clearly outweigh the costs."



GIPSA Plans to Establish Lab to Validate Biotech Tests

[Editor's Note: This article updates and provides additional information on the story filed on the NGFA's web site on Nov. 2.]

By next summer, the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration plans to have a "reference laboratory" operational at its Technical Center in Kansas City, Mo., to "evaluate and verify the validity" of tests used to detect and quantify the presence of biotechnology-enhanced traits in grains and oilseeds, the NGFA has learned.

GIPSA said the lab would be financed by some of the \$665,000 in funds appropriated by Congress for fiscal year 2000 to support a variety of activities associated with measuring end-use traits, including biotechnology-based products.

GIPSA said the lab would be used to conduct validation tests on the three types of testing technology currently available commercially: 1) lateral flow strips; 2) enzyme-linked immunosorbent assay (ELISA); and polymerase chain reaction (PCR)-based tests. GIPSA said it also would develop recommended sampling procedures to be used when testing for the presence of biotechnology-enhanced commodities. GIPSA said these tasks were consistent with its mission to facilitate the marketing of grains and oilseeds. The agency said it plans to implement the standardized sampling and testing methods through its inspection program.

"While these technologies show promise, limited technical information or performance verification by an unbiased third party are available," GIPSA wrote in a one-and-a-half-page document presenting the broad concepts for the reference lab. "The reference laboratory will meet the market's need for impartial, professional verification of these technologies. GIPSA has traditionally taken this role in the marketplace."

The NGFA's recommendations concerning biotechnology-enhanced commodities, adopted by its Board of

Directors in October, included a recommendation that GIPSA develop a "process for validating the accuracy and repeatability of testing devices developed by the private sector for detecting biotechnology-enhanced grains and oilseeds." It was one of several recommendations made by the NGFA concerning a "prudent, constructive and appropriate role" that could be served by the U.S. government on biotechnology-enhanced grains and oilseeds.

GIPSA noted that some food manufacturers and retailers had begun contracting for conventional commodities, particularly for corn- and soybean-based products, in response to consumer demand. "This trend has accelerated a need to further segregate the marketing of grains and oilseeds, which has, in turn, created a demand for reliable and accurate analytical techniques to differentiate non-genetic from genetically enhanced grains and oilseeds."

But the agency said the "credibility" of the reference laboratory would depend "largely" on the "willingness of biotechnology firms to cooperate with GIPSA" by providing:

- ▶ Reference materials, such as: 1) supplies of grain with a specified expressed trait to be used in evaluating analytical tests; and 2) sufficient quantities of the protein standards for the development and evaluation of analytical procedures that detect and/or quantify enhancement.
- ▶ Genetic sequence information for the evaluation of DNA-based analytical techniques.
- ▶ Specific information on analytical techniques developed or used by the biotechnology firms.

GIPSA said that because such information is proprietary, it would be entering into confidentiality agreements with seed companies and technology providers to protect the intellectual property rights of all parties.

GIPSA Issues TCK Smut Certification Procedures for Wheat to India

New official procedures for visually inspecting and certifying wheat shipments to India for the presence of TCK smut were issued Oct. 13 by the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA).

India has a maximum tolerance of 0.005 percent for TCK (known as *Tilletia controversia* [Kuhn]) in wheat, which is equivalent to five smut balls per 100,000 kernels of wheat, GIPSA said. The agency noted that India calculates this tolerance on both a count and weight basis.

Under the revised procedures, one smut ball (or portions of smut balls, which equal one smut ball of average size) found in a sample will be considered within tolerance for both count and weight. Under GIPSA's new procedures, if the sample contains the equivalent of 1.5 smut balls, the sample will be approved on a count basis but inspection personnel will be required to then calculate the percent of smut balls by weight to determine if the weight tolerance has been exceeded. Samples exceeding 1.5 smut balls will not meet the count or weight tolerance, according to the new procedures.

OSHA Working to Propose Ergonomics Standard by End of 1999

[Editor's Note: This article updates and provides additional information on the story filed on the NGFA's web site on Nov. 2.]

The NGFA has learned that the Occupational Safety and Health Administration (OSHA) could issue a proposed standard requiring employers to establish workplace ergonomics programs by the end of 1999.

OSHA has been attempting to propose such a standard for several years, but has been thwarted until now by the Republican Congress. However, a recent attempt to further delay publication of the controversial rule until the National Academy of Sciences completes its congressionally mandated study in 2001 on the need for an ergonomics standard faltered in the face of stiff Democratic opposition. While Senate Republicans vowed to find another legislative vehicle to block OSHA from publishing its proposed ergonomics standard, OSHA Administrator Charles Jeffress has stated publicly that he anticipates the proposal to be published in the *Federal Register* by year's end.

Who's Covered? According to a Feb. 25, 1999 draft of the standard, employers with manufacturing operations, manual-handling operations or any job where a work-related musculoskeletal disorder is reported would be required to establish an ergonomics program to control such hazards. The OSHA draft defined a work-related musculoskeletal disorder as one involving the muscles, nerves, tendons, ligaments, joints, cartilage and spinal disks, including carpal tunnel syndrome, muscle strains and low back pain.

What Would Be Required? According to the Feb. 25 draft, employers subject to the proposed standard would be required to establish a workplace ergonomics program to identify and control hazards that "are reasonably likely to be causing or contributing" to the work-related musculoskeletal disorder. The program would include the following elements: 1) management leadership and employee participation; 2) hazard identification and information; 3) job hazard analysis and hazard control; 4) employee training; 5) medical management; and 6) program evaluation. [See *NGFA Newsletter*, April 7, 1999.] One of the more controversial provisions would require employers to provide "prompt and effective" medical management whenever an employee has a work-related musculoskeletal disorder, including retention of the employee's normal earnings, seniority, rights and benefits during the period of limited work activity.

OSHA Makes Some Changes in Draft Standard:

Before forwarding its proposed standard to the White House Office of Management and Budget for review, OSHA Administrator Charles Jeffress said the agency made some modifications to the Feb. 25 draft to accommodate concerns raised by small businesses, including circumstances under which an employer would be required to establish a workplace ergonomics program.

Once published in the *Federal Register*, NGFA's Safety, Health and Environmental Quality Committee will analyze the impact of the proposed standard on NGFA members and provide input to OSHA, as appropriate. OSHA has indicated that it may conduct a series of public meetings on the proposed standard in 2000, and hopes to publish a final standard by 2002.

GIPSA Updates Grain Inspection Guide

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration has issued an updated version of its book, entitled *Inspecting Grain – Practical Procedures for Grain Handlers*. GIPSA says the book provides "step-by-step directions on sampling and inspecting all major (and most minor) grains and oilseeds." The book also provides an overview of mycotoxin, deoxynivalenol (wheat scab) and protein testing, as well as grade charts for all standardized grains and oilseeds.

How to Obtain a Copy: The new book can be downloaded from GIPSA's Internet home page at: <http://www.usda.gov/gipsa/newsinfo/pubs/primer.htm>. It also is available in pdf format. NGFA members without Internet access may order a complimentary copy by calling Jackie Congress at the NGFA at (202) 289-0873, or by faxing a request to (202) 289-5388.

OSHA Proposes Changes to Voluntary Protection Program

The Occupational Safety and Health Administration is seeking input on proposed revisions to its Voluntary Protection Program. The program was established in 1982 to "emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, employee participate, and generally site-specific occupational safety and health programs." Worksites are removed from OSHA's programmed inspection lists as long as they are enrolled in the program.

OSHA proposed to make the Voluntary Protection Program "more challenging and to raise the level of safety and health achievement expected of participants." OSHA said the revised eligibility criteria would allow previously ineligible worksites to apply and would be more easily understood. The agency also said the proposed changes would enable the program's elements to conform with OSHA's 1989 Safety and Health Program Management Guidelines.

Submitting Comments: Comments on the proposed changes to the Voluntary Protection Program are due by Nov. 26 and should be submitted, in duplicate, to: Docket Office, Docket No. C-06, N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C., 20210.



(“USDA” continued from page 1)

storage facilities. Commercial facilities would **not** be eligible for similar subsidies. Funds for the program will be derived from the Commodity Credit Corporation’s revolving fund, White House officials said, rather than through a specific congressional appropriation. USDA will be required to submit its funding request to the White House Office of Management and Budget for approval. OMB officials told the NGFA that once approved, the White House will notify Congress (either as part of the president’s budget proposal to be submitted in January or in a separate correspondence) of the administration’s plans for funding the storage subsidies. But congressional approval will **not** be required.

USDA has not determined how much money it will request to operate the program, nor how long the storage subsidies will be financed. Other details of the program also have not been decided, including the eligibility requirements and the terms and conditions under which loans or loan guarantees would be provided for on-farm storage.

The NGFA was told USDA will cite two major factors in an attempt to justify its decision: 1) the potential desire from producers to build additional storage to segregate biotechnology-enhanced grains from conventional varieties; and 2) anticipated above-normal carryover stocks and relatively tight commercial storage availability.

NGFA Opposes On-Farm Storage Loans. The NGFA has strongly – and repeatedly – urged USDA, the Clinton administration and Congress **not** to allow the department to reinstitute the on-farm storage facility loan program, stating that it:

- ▶ would provide a government-induced incentive to encourage producers to carry larger quantities of stocks on-the-farm than might be justified by market conditions, thereby prolonging depressed grain prices by encouraging increased carryover stocks that the market “knows” continue to exist.
- ▶ could undermine the quality of U.S. grain and oilseed stocks supplied for domestic and export use. Independent studies repeatedly have shown that managing the quality of stored grain is more difficult on the farm than at commercial facilities. Commercial storage has the advantage of guaranteed quality and quantity, as represented by warehouse receipts.
- ▶ could encourage the construction of out-of-position or unjustified farm storage in response to a government-induced economic incentive.
- ▶ is inappropriate for government to provide an economic incentive for producers to build or renovate on-farm storage, and would penalize producers and commercial elevator operators who already have invested in such structures because it made economic sense to do so.

