



NGFA Newsletter

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Season's Greetings

Deadline for Signing Rail Arbitration Agreement Extended to Dec. 31

The deadline for existing NGFA-member companies to sign the historic agreement with rail carriers to utilize binding NGFA arbitration to resolve specific types of rail disputes has been extended to **Dec. 31**.

The extension was granted by the NGFA's newly established Rail Arbitration Rules Committee at a meeting conducted Dec. 7 in conjunction with the association's Country Elevator Council meeting in Fort Worth, Texas. The committee's action means that NGFA member companies that sign the agreement between Nov. 1 (the previous deadline) and Dec. 31 will be accorded rail arbitration rights and obligations for disputes that occur on or after Jan. 1.

Thus far, 394 NGFA Active and Associate/Trading-member rail user companies – which operate thousands of facilities and represent the vast majority of NGFA member companies that ship or receive grain, feed, feed ingredients or grain products by rail – have signed the agreement. So have 15 rail carriers, including all nine

Class I carriers operating in North America. The agreement, which covers disputes involving a wide range of grains, oilseeds, feed and feed ingredients, and other grain products, took effect for rail transportation disputes arising on or after Oct. 1, 1998, and will continue in force until Oct. 1, 2000.

The deadline for signing the agreement was extended to accommodate several existing NGFA member companies that submitted their signed agreements after the Nov. 1 deadline. The agreement, approved earlier this fall by the NGFA's Board of Directors and the Association of American Railroads, also provides for confidential, non-binding mediation of certain rate-related rail disputes.

“Given the significance of this agreement, we wanted to accommodate the late filings submitted by some NGFA member companies, as well as to provide one last opportunity for existing NGFA member rail users to sign

(Continued on page 2)

Polish Grain and Feed Chamber Applies for NGFA Membership

The Polish Grain and Feed Chamber, a self-governing membership organization representing the Polish grain, feed and processing industries, has become the first association outside North America to apply to become an Affiliated Association member of the NGFA. The Polish association has 114 members comprising grain handling, feed manufacturing, flour milling and grain processing companies throughout the country. Consistent with the requirement for all new members, the Polish group's application will be submitted to the NGFA's Board of Directors for consideration.

The NGFA was instrumental in the creation of the Polish organization through its participation in the ACDI/VOCA Grain Storage and Marketing Project headed by Joe Allen, formerly of Consolidated Grain and Barge Co., which was funded by the U.S. Department of Agriculture and the U.S. Agency for International Development. The NGFA worked with the Polish industries to develop the chamber's charter, bylaws, organizational structure, arbitration system and member services.



Shown during the most recent of two NGFA missions to Poland, which occurred Thanksgiving week, are (from left) Randall C. Gordon, NGFA vice president for communications and government relations; Polish Grain and Feed Chamber President Bogdan Judzinski, director of the Grain and Feed Division for Rolimpex, Warsaw, Poland; and Jerzy Wojciechowski, secretary general of the Polish Grain and Feed Chamber.



("Rail Arbitration Agreement" continued from page 1)

the agreement if they wish to do so now that the harvest rush is over," said Stevan B. Bobb, vice president, agricultural commodities for the Burlington Northern Santa Fe Railway Co., Fort Worth, Texas, who chairs the NGFA Rail Arbitration Rules Committee.

As of press time, 32 NGFA-member companies had taken advantage of the extension offer thus far. Companies that become new members of the NGFA have 60 days to decide whether to sign the rail arbitration agreement.

Rail Arbitration Forms Faxed to Eligible Member Firms:

The NGFA on Dec. 14 faxed rail arbitration forms to eligible Active and Associate/Trading member companies that have not signed the rail arbitration agreement yet but which are eligible to do so. Importantly, if your company did not receive a form and would like one, please call Jackie Congress at the NGFA at (202) 289-0873. The form, as well as complete information on the rail arbitration agreement, also is available under the "Member's Only" section of the NGFA's web site at <http://www.ngfa.org>. To access the "Member's Only" section, type *ngfa* as the "user" name and *soybean* as the "password."

Railroad Signatories: Class I railroads signing the agreement are: **Burlington Northern Santa Fe Railway,**

Fort Worth, Texas; **Canadian National,** Winnipeg, Manitoba, Canada; **Canadian Pacific Railway,** Minneapolis, Minn.; **Consolidated Rail Corp. (Conrail),** Philadelphia, Pa.; **CSX Transportation Co.,** Jacksonville, Fla.; **Illinois Central Railroad,** Chicago, Ill.; **Kansas City Southern Railway,** Kansas City, Mo.; **Norfolk Southern Railway Co.,** Norfolk, Va.; and the **Union Pacific Railroad Co.,** Omaha, Neb.

In addition, the following shortline railroads have signed: the **Dakota, Minnesota & Eastern Railroad,** Brookings, S.D.; **I&M Rail Link, LLC,** Chanhasen, Minn.; **Iowa Interstate Railroad,** Iowa City, Iowa; **Kyle Railroad,** Scottsdale, Ariz.; **Ohio Central Railroad System,** Coshocton, Ohio; and the **Red River Valley and Western Railroad Co.,** Wahpeton, N.D. There is no deadline for rail carriers to sign the agreement, and additional shortline carriers are expected to do so.

Early Out Provision: The agreement contains a provision that permits a rail carrier or a rail user to withdraw from the agreement prior to Oct. 1, 2000 after giving 90 days' written notice. Importantly, however, any party exercising its right to withdraw from the agreement still would be obligated to use arbitration/mediation to resolve covered disputes that arose prior to the effective date of its withdrawal.

Disputes Subject to Binding Arbitration

Rail users and rail carriers signing the agreement commit to submitting the following types of disputes to the NGFA for binding arbitration:

- ▶ Disputes involving the application of a railroad's general car distribution rules that govern so-called "regular tariff" service.
- ▶ Disputes involving the application of a railroad's special car or equipment program rules [such as the Burlington Northern Santa Fe Railway's certificate of transportation (COT) program or the Union Pacific Railroad's voucher and pool programs].
- ▶ Disputes involving the rental rates and liability terms of railroad-owned land that is leased to an agricultural facility.
- ▶ Disputes involving the application of a railroad's

demurrage rule(s) or term(s).

- ▶ Disputes involving the misrouting of loaded rail cars or locomotives.
- ▶ Disputes arising under receipts and bills of lading (such as loss-and-damage claims).
- ▶ Disputes arising from transportation contracts between one or more rail users and one or more rail carriers (unless excluded by mutual agreement).
- ▶ Disputes involving mishandling of private cars or locomotives.

Parties are not obligated to arbitrate claims seeking more than \$200,000 per occurrence, unless they voluntarily decide to do so. Nor are parties obligated to arbitrate specific personal injury claims.

Disputes Subject to Voluntary Mediation

The agreement also commits signatory railroads, upon request, to enter into confidential, non-binding mediation for the following types of rate-related issues:

- ▶ disputes involving an allegation of unreasonable rate

discrimination.

- ▶ disputes involving an allegation that switching rates, rules or practices of carriers unreasonably bar access of a rail shipper or receiver to markets.



Senate Agriculture Committee Reviews Market Regulation

Congress should delay legislative action on whether or how to regulate over-the-counter derivatives until the President's Working Group on Financial Markets completes its study, which is scheduled to be issued in early 1999 and is expected to include regulatory alternatives.

That was the recommendation of most witnesses testifying at a Dec. 16 hearing conducted by the Senate Agriculture Committee.

But all five former chairmen of the Commodity Futures Trading Commission who testified at the hearing went a step further, suggesting that the agency probably should have little, if any, role in regulating OTC derivative markets. One of the former chairmen, Susan Phillips, recommended that the CFTC should simply maintain the current regulatory exemption for over-the-counter derivatives, rather than Congress legislating rules that prevent the agency from exercising its broad regulatory authority.

The hearing was conducted in the wake of the near-collapse of the Long-Term Capital Management (LTCM) hedge fund. Testifying were all five current CFTC commissioners and representatives of the three other agencies involved in the President's Working Group on Financial Markets: the Department of the Treasury, the Securities and Exchange Commission and the Federal Reserve Board. In addition to Phillips, testimony was presented by former CFTC Chairmen Wendy Lee Gramm, and William Albrecht.

Current CFTC Chairman Brooksley Born testified that the market shocks of the LTCM demonstrated "unseen" risks to the world economy, and said the only regulatory authority now exercised by the CFTC over such hedge funds is when they are licensed as a commodity pool operator and are required to disclose financial information and daily trading activity through large-trader reports.

Born cited the following regulatory issues related to LTCM: 1) lack of transparency; 2) lack of internal controls; and 3) excessive leverage. She stated that LTCM had an asset-to-capital ratio of approximately 25 to 1 in March 1998 when filing its annual report. By August-September 1998, its position had deteriorated to the point that its asset-to-capital ratio had climbed to 125 to 1. Born stated that while this was high, it was "far from the highest" reported financial leverage for such funds. She concluded by recommending that Congress delay action until the President's Working Group issues its report.

Most other current CFTC commissioners agreed Congress should not take legislative action prior to the report of the President's Working Group. But commissioner Barbara Holum added that she believed Congress needed to review "on-exchange" regulations concur-

rently. Commissioner David Spears also said the agency was seriously considering how to make the agricultural trade options pilot program more "user friendly."

Lugar Poses Questions Important to Ag Markets:

While most of the emphasis at the hearing was on financial markets, Senate Agriculture Committee Chairman Richard G. Lugar, R-Ind., raised the following questions important to agricultural markets:

- ▶ Should the agricultural sector be treated differently than other participants in the futures market?
- ▶ Is the agricultural sector more reliant than other industries on the price-discovery and risk-management functions provided by the futures markets? If so, should public policy call for futures markets to be regulated more or would less regulation be desirable to encourage innovation in these markets?
- ▶ How much self-regulation by exchanges would occur without government oversight?
- ▶ Has the CFTC's pilot program on agricultural trade options met its objectives? If improvements are necessary, how can the program be amended to provide farmers with a useful risk-management tool?
- ▶ Should Congress attempt to define more clearly the term "cash forward contract?" (*This question refers to the statutory exclusion of cash contracts from the regulatory purview of the CFTC.*)

Next Hearings Planned for March: The Senate Agriculture Committee expects to resume hearings on the CFTC's reauthorization in March. The NGFA expects to actively participate in Senate hearings at that time.



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.]



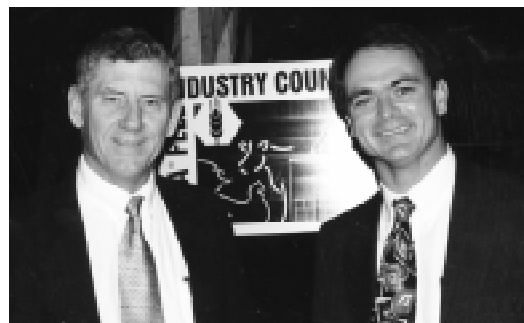
NGFA's Country Elevator Council/Feed Industry Council Highlights

More than 400 industry members gathered in Fort Worth, Texas, on Dec. 6-8 for the second annual Feed Industry Council conference and the 27th annual Country Elevator Council meeting. See the enclosed yellow flyer for information on how to obtain audio tapes from both of these outstanding, informative conferences.

Feed Industry Council Conference



A panel discussed the use of specialty grains in feed rations and the nutritional attributes of the next generation of genetically engineered commodities that will have value for feed mills. Pictured are (from left) Bill Wyffels, president, Wyffels Hybrids Inc., Atkinson, Ill.; Feed Industry Committee Chair Don Gringer, president of Gringer Feed and Grain Inc., Iowa City, Iowa; and Steve Rosenbloom, U.S. marketing manager for Roundup Ready™ Soybeans, Monsanto Co., St. Louis, Mo.



Innovations in feed mill technology was the subject addressed by one of the nation's premier authorities, Dr. Keith C. Behnke (left), professor of feed technology science at Kansas State University, Manhattan. Also pictured is Brad Gottula, quality assurance/regulatory manager for Land O'Lakes Feed, Fort Dodge, Iowa, a member of the NGFA's Feed Industry Committee, who moderated the session.



Dr. Stephen Sundlof, director of the Food and Drug Administration's Center for Veterinary Medicine, Rockville, Md., discusses a wide range of topics – from BSE inspections to voluntary self-inspections for feed mills – during his keynote luncheon address.



Bruce Ginn, director, sourcing and chief economist for Kraft/Oscar Mayer Foods, Madison, Wis., discusses how the demands of the retail food and supermarket sector will change the livestock industry and the implications those changes have for commercial feed mills.



State feed control issues important to commercial mills are discussed by Roger Hoestenbach, immediate past president of the Association of American Feed Control Officials. Hoestenbach is head of Feed and Fertilizer Control Services at the Office of the Texas State Chemist, College Station, Texas.



Strategic alliances in the feed industry – and factors that feed mill managers should consider when exploring such alliances – is the topic addressed by panelists George Barr (center), director, Regional Feed Business Development, Midwest Feed, Land O'Lakes, St. Paul, Minn.; and Bruce Limpert, director, corporate planning and analysis, Wenger's Feed Mill Inc., Rheems, Pa. (right). The session was moderated by NGFA Feed Industry Committee member Brent Roggie (left), general manager, Lowville Farmers Co-op, Lowville, N.Y.

Country Elevator Council Conference



Rep. Larry Combest, R-Texas, delivers his first address to a national audience since being designated as the new chairman of the House Agriculture Committee.



The future of the U.S. wheat industry is the focus of a panel consisting of (seated, from left): Dr. Rollie Sears, professor of wheat breeding and agronomy, Kansas State University, Manhattan, Kan.; Ron Olson, vice president, grain operations, General Mills Inc., Minneapolis, Minn.; and Bill Flory, a wheat producer from Culdesac, Idaho, current president of the National Association of Wheat Growers. The session was moderated by Jay Sjerven, senior editor, markets, Milling & Baking News, Kansas City, Mo.



Future developments in specialty grains, and steps country elevators should consider to participate in this growing market, is discussed by Dick Reasons, president, Optimum Quality Grains L.L.C., West Des Moines, Iowa.



The 10 most wanted values of a one-minded business are revealed by Stu Penny, president of Gunpai of Austin, Austin, Texas, in a lively, interactive session.



Michael Braude, president of the Kansas City Board of Trade, discusses challenges facing the nation's futures exchanges.



The economic situation in East Asia and the Pacific Rim should begin to turn around next year, with modest economic growth in the year 2000 says Dr. Robert Thompson, strategy and policy specialist for agriculture and rural development at The World Bank, Washington, D.C.



An analysis of the "do's" and "don'ts" in cash grain contracts is presented by Paul Pantano, attorney, McDermott, Will & Emery, Washington, D.C.



Changes to crop insurance and the way farm program benefits are delivered to producers is discussed by Randy Green (left), chief of staff, Senate Agriculture Committee, and Parks Shackelford, associate administrator for programs at the U.S. Department of Agriculture's Farm Service Agency.



Steps being taken by the two major Class 1 carriers in the West to improve service levels for grain shippers and receivers are discussed by Stevan Bobb, vice president, Agricultural Commodities Business Unit, Burlington Northern Santa Fe Railway Co., Fort Worth, Texas; and Diane Knutson, vice president and general manager, Agricultural Products, Marketing and Sales Department, Union Pacific Railroad Co., Omaha, Neb.



Comments Due Dec. 28 on Proposed Changes to CBOT Wheat Futures

...Also Covers Load-Out Requirements for Wheat, Corn, Soybean and Oats Futures...

The Commodity Futures Trading Commission is seeking comments by Dec. 28 on changes proposed by the Chicago Board of Trade to its wheat futures contract.

Among other things, the CBOT has proposed to:

- ◆ modify the locational price differential for delivery of wheat at Toledo to par from the current 2-cent-per-bushel discount currently applicable.
- ◆ change the locational price differential for delivery of wheat at St. Louis to a 10-cent-per-bushel premium from the current 8-cent premium.
- ◆ change the quality price differentials for U.S. No. 1 and U.S. No. 2 northern spring wheat. The quality price differential for U.S. No. 1 northern spring wheat would be changed to a premium of 3 cents per bushel from the current par value. U.S. No. 2 northern spring wheat would be deliverable at par, rather than at a 1-cent-per-bushel discount that currently applies.
- ◆ reduce the speculative position limits for the March and May contract months during the last five trading days to 350 contracts and 220 contracts, respectively, from the existing spot month level of 600 contracts, which currently applies to all contract months.

In addition, the CBOT proposal would:

- ◆ modify the load-out requirements for wheat, corn, oats and soybean futures contracts. Specifically, the proposal would: 1) delete all existing provisions concerning the "in-loading" of wheat and oats at warehouses regular for delivery; 2) extend to wheat and oats the preferential treatment that receivers of corn and soybeans for futures delivery currently receive when load-out is ordered (over the warehouse or shipping station operator's cash commitments); and 3) set the minimum daily barge loading rate at the highest loading rate applicable for any one commodity if a lineup for loading grain into barges from a regular warehouse/shipping station includes both wheat and corn or soybeans, or both oats and corn or soybeans.
- ◆ change the last trading day for all contract months for the wheat and oats futures contracts to the business day prior to the 15th calendar day of the month; currently, the last trading day is the business day prior to the last seven business days of the month. The proposal also would change the last delivery day for these contracts to the seventh business day following the last trading day; currently, the last delivery day is the last trading day of the month.

The CFTC also is seeking comments on the CBOT's proposed effective date for the contract changes, particularly the timing's effect on the value of existing positions in the affected contracts. The CBOT is proposing that the contract changes for the wheat and oats futures contracts take effect beginning with the March 2000 contract month, except for the proposed amendments to the loading provisions. The loading requirements would apply to all grain loaded out against outstanding warehouse receipts on and after Jan. 1, 2000. The CFTC noted that the proposed amendments to the soybean and corn futures contracts would apply to certain currently listed contract months that expire after Jan. 1, 2000, as well as all outstanding warehouse receipts delivered on prior contract months for corn, soybeans, wheat and oats.

Submitting Comments: Comments on the proposed futures contract changes are to be submitted to: Jean A. Webb, CFTC, Three Lafayette Centre, 1155 21st St., N.W., Washington, D.C., 20581. Comments also may be transmitted by facsimile to: (202) 418-5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the CBOT grain futures contracts' delivery specification proposals.

CBOT Task Force Retains 48% Soymeal Protein Standard

The Chicago Board of Trade's Soymeal Task Force has decided to recommend that the exchange retain its current 48 percent minimum protein standard for soymeal futures contracts.

The task force had considered whether reducing the minimum protein standard to 47.5 percent would "improve the performance of the soymeal futures contract as a hedging and pricing tool." However, based upon input received by the task force before and during a Nov. 17 meeting, it decided not to recommend a change "at this time. As always, the exchange will continue to monitor the performance of the soymeal contract to ensure that (its) specifications provide for servicing the risk-management needs of our customers," wrote Anthony P. Danielak, chairman of the CBOT Soymeal Task Force.

CFTC Issues Final Rule Governing 'No-Action' Regulatory Guidance

The Commodity Futures Trading Commission has issued a final rule on the procedures governing the filing of requests to the agency for so-called "no-action," "interpretive" and "exemptive" letters. The rule takes effect Jan. 11.

In the past, grain companies and others have submitted requests to the agency for issuance of such guidance on proposed cash contracts in an attempt to avoid offering contracts that might violate the Commodity Exchange Act and CFTC regulations. Previously, the CFTC had no formal rules governing the process of filing or issuing such guidance.

The CFTC's final rule, published in the Dec. 10 *Federal Register*, clarifies that two forms of regulatory guidance – "No-Action Letters" and Exemptive Letters" – can be relied upon only by the party requesting it. "Interpretive Letters" are more broadly applicable, and can be relied upon by persons in addition to the party requesting it, the final rule stated.

The final rule defines each type of regulatory guidance as follows:

◆ **No-Action Letter:** "A written statement issued by the staff of a division of the (CFTC) or of the Office of the General Counsel that it will not recommend enforcement action to the (CFTC) for failure to comply with a specific provision of the (Commodity Exchange Act) or (CFTC) rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary." The rule states that a no-action letter repre-

sents the position only of the CFTC division (or the Office of the General Council) that issued it "and not the (CFTC) or other (CFTC) staff."

◆ **Interpretive Letter:** "Written advice or guidance issued by the staff of the (CFTC) division or the Office of the General Counsel...that binds only the issuing division or the Office of the General Counsel, as applicable, and does not bind the (CFTC) or other (CFTC) staff."

◆ **Exemptive Letter:** "...[A] written grant of relief issued by the staff of a (CFTC) division from the applicability of a specific provision of the (Commodity Exchange) Act or of a rule, regulation or order issued...by the (CFTC). An exemptive letter may only be issued by staff of a division when the (CFTC) itself has exemptive authority and that authority has been delegated by the (CFTC) to the division....An exemptive letter binds the (CFTC) and its staff with respect to the relief provided...."

In a significant change from its original proposal, the CFTC's final rule permits a party who requests a guidance letter to withdraw it at any time. But the final rule requires the party to submit a signed written request for withdrawal that states whether the person on whose behalf the letter was requested plans to proceed with the proposed transaction or activity on which guidance originally was sought.



TECH TALK

by thomas c. o'connor
director of technical services

OSHA Revises Permit-Required Confined Space Entry Rule

Employers will be required to allow employees or their representatives to observe the atmospheric testing of confined spaces prior to and during entry -- instead of just sharing the test results -- under an amendment to the permit-required confined space standard [20 CFR 1910.146] issued recently by the Occupational Safety and Health Administration. The final rule takes effect Feb. 1.

Under OSHA's confined space standard, employers are required to issue a permit and implement specific safety precautions whenever an employee enters a confined space that contains or has the potential to contain a hazardous atmosphere; contains materials that could engulf the employee; has an internal configuration that might cause an entrant to be entrapped or asphyxiated by inwardly converging walls or by a floor that slopes downward and tapers to a smaller cross section; or contains any other recognized safety hazard.

In addition, OSHA's amendments to the standard clarify the employer's responsibility to select a rescue service that is trained, equipped and available to respond to emergencies that occur during confined-space entries. The revised standard emphasizes the employer's "evaluation of potential rescue providers and on the factors that the employer must

consider in determining whether a particular provider is capable of providing effective rescue services for the particular situation that its confined space entrant may face," OSHA said. For example, the standard requires employers to consider a rescuer's ability to respond in a "timely fashion" to the types of emergencies that may arise in the employer's permit-required confined spaces. The amended standard also requires the employer to assess the skill, competence, training and equipment of prospective rescuers, as well as their willingness to become familiar with the particular hazards and circumstances in permit-required confined spaces. To assist employers in evaluating potential rescue services, OSHA added a new non-mandatory appendix that provides suggested criteria for rescue service evaluations.

OSHA also amended the standard to require that lifelines be attached to chest or full-body harnesses in such a way as present "a profile small enough for the successful removal of the entrant." OSHA says wristlets can be used during entry provided the employer can show that a chest or full-body harnesses is unfeasible or creates a greater hazard.



Wenger's Feed Mill Honored for Contribution to BSE Prevention/Food Safety Day

Wenger's Feed Mill Inc., Rheems, Pa., was honored during the NGFA's second annual Feed Industry Council conference for its contribution to the success of the NGFA's BSE Prevention/Food Safety Day. Receiving a framed poster commemorating the event was NGFA Feed Industry Committee Vice Chair Joe Garber (center), nutrition and analytical services coordinator for Wenger's. The poster was presented by NGFA President Kendell Keith (left) and NGFA Chairman Michael Donnelly (right), president of R.F. Cunningham and Co. Inc., Smithtown, N.Y. Wenger's Feed Mill provided video footage in preparation for the featured event of BSE Prevention/Food Safety Day – a live nationwide satellite video-teleconference on June 24 that was co-sponsored by FDA, the Association of American Feed Control Officials, the NGFA and the American Feed Industry Association. The teleconference provided information to



commercial feed mills on how to comply with the Food and Drug Administration's ban on the feeding of certain mammalian proteins to ruminant animals to prevent the establishment or spread through feed of bovine spongiform encephalopathy.

REGISTER NOW FOR NGFA'S SAN FRANCISCO CONVENTION!



Mark Your Calendar!

**NGFA's 103rd Annual Convention
Sheraton Palace Hotel, San Francisco, Calif.
March 20-23, 1999**