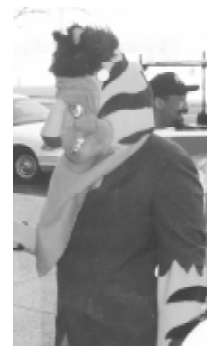




NGFA Newsletter

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President Kendell W. Keith (right) presents the NGFA's statement at FDA's public meeting on biotechnology on Nov. 30 in Washington. Also pictured is Joseph Levitt (far left), director of FDA's Center for Food Safety and Applied Nutrition. The NGFA was invited by FDA to be part of a select panel discussing the public information and labeling issues surrounding biotech commodities. The NGFA also presented a brief statement at FDA's Nov. 18 meeting in Chicago.

A small group of about 10 anti-biotech protestors gathered, some in Monarch butterfly costumes, outside the FDA public meeting in Washington. The environmental advocacy group Greenpeace now is targeting Kellogg's for its use of biotechnology-enhanced corn in one of its signature cereal products, and has introduced a new character, which it dubs "FrankenTony."

FDA Meetings Focus on Labeling, Preapproval of Biotech Commodities

Two major issues – the scientific soundness of the process it uses for approving the use of biotechnology-enhanced commodities and whether to create a system for labeling products that contain biotechnology-enhanced ingredients – have taken center stage in the two public meetings conducted thus far by the Food and Drug Administration on its future regulatory framework for foods and feed produced from biotechnology.

The NGFA has participated in and submitted oral and written statements [see pages 4-5] at both FDA meetings – on Nov. 18 in Chicago and on Nov. 30 in Washington as part of

an invited panel. A third FDA public meeting is scheduled for Dec. 13 in Oakland.

FDA said it will wait until the meetings have concluded, and public comment received by mid January, before considering any changes to its existing procedures that govern the approval and labeling of products containing biotechnology-enhanced ingredients. But based upon the public comments by both advocates and opponents of biotech thus far, it would appear that the agency will be under pressure to

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USDA Proposes Subsidies for Grain Cleaners at Wheat Export Facilities

The U.S. Department of Agriculture has issued a notice requesting public comments on whether its Commodity Credit Corporation should "finance, in some manner, the installation or upgrading of grain-cleaning systems at (U.S.) wheat export elevators.

In the Nov. 29 *Federal Register* notice, USDA Foreign Agricultural Service Administrator Tim Galvin wrote that the "goal of this initiative, if undertaken, would be to improve the quality and competitiveness of U.S. wheat exports by insuring that foreign buyers may readily purchase U.S. wheat with dockage specifications substantially lower than currently available from export elevators."

USDA, which has been advocating the installation of taxpayer-funded grain-cleaning equipment at U.S. Gulf export elevators off-and-on since last year, said its proposal was justified by reports from wheat producers about on-going complaints from foreign buyers about the cleanliness of U.S. wheat "especially in comparison to foreign competitors." USDA's notice said that the average dockage levels in Canadian and Australian wheat is about 0.2 percent, while average dockage for U.S. wheat exports in 1998 averaged from 0.5 to 0.7 percent. USDA's notice also said that buyers in Latin

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CFTC Issues Final Rules on Agricultural Trade Options

The Commodity Futures Trading Commission on Nov. 29 issued its final regulations governing agricultural trade options transactions.

The rules are expected to be published in the *Federal Register* shortly, and take effect 60 days thereafter – likely in early February. The complete text of the CFTC’s regulations will be available on its web site [www.cftc.gov] following their publication in the *Federal Register*.

The final rule contains only minor changes from revisions proposed by the agency on Aug. 25, which were reported in the *NGFA Newsletter* editions of Aug. 26 and Sept. 9 (accessible on the NGFA’s web site at www.ngfa.org). The CFTC published an interim final rule lifting the ban on agricultural trade options in April 1998, and announced a two-year pilot project. No companies have signed up yet to become agricultural trade option merchants.

The CFTC’s final rules:

- ▶ continue to require registration by all agricultural trade option merchants, although in many respects these registration requirements are less extensive than the original interim final rules issued in 1998;
- ▶ allow commercial businesses buying/selling commodities, input suppliers or banks to become agricultural trade option merchants;
- ▶ permit cash settlement or offset of agricultural trade options, eliminating the requirement that such options be settled through delivery;
- ▶ require customer funds to be maintained in segregated accounts until exercised or expired;
- ▶ require only a single “summary disclosure statement” in agricultural trade option contracts, the full text of which is contained in the proposed rule;
- ▶ require that customers may choose to seek dispute resolution through the CFTC reparations process. The CFTC’s rules state that this right cannot be waived by contracting parties;
- ▶ require extensive record-keeping and reporting by agricultural trade option merchants to both the National Futures Association (NFA) and the CFTC (although these requirements are somewhat less than the original rules published in 1998); and
- ▶ provide full exemption from regulations only if both the buyer and seller of the agricultural trade option have a minimum net worth of \$10 million each.

CFTC Fails to Address Several NGFA Comments:

In its comments to the CFTC in response to its August proposed rule, the NGFA objected to the agency using the NFA to register agricultural trade option merchants, and asked for clarification on whether the NFA’s regulatory authorities would be limited. In response, the CFTC’s preamble to the final rule states that NFA’s role will be strictly limited, and “NFA does not become a self-regulatory authority for (agricultural trade option merchants) simply by administratively processing registration applications on the CFTC’s behalf.”

The NGFA also raised concerns with the registration requirements limiting the ability of private contracting parties to reach pre-dispute agreement on forums for resolving disputes, which is allowed under standard commercial contracts. The CFTC made no changes in the final rule to address this concern, which raises potential litigation risks for those offering agricultural trade option contracts.

The NGFA objected to the CFTC’s proposed recordkeeping requirement that agricultural trade option merchants keep “full, complete and systematic books and records together with all pertinent data on (agricultural trade option) transactions,” including solicitations and covering transactions, and make books available to the CFTC and the Department of Justice – calling such requirements too extensive and all encompassing. As an alternative, the NGFA suggested that the CFTC consider narrowing the scope of its rules to make them less threatening and more manageable. But the CFTC’s final rules generally were unresponsive to NGFA’s concerns on this matter, except that the agency clarified that records on solicitations were only required if the solicitations were made in writing or electronically. Thus, it appears there will be less regulation of verbal solicitations for agricultural trade options than written or electronic transmissions under the CFTC’s final rule.

Registration: Persons interested in registering as agricultural trade option merchants may contact the NFA at (312) 781-1410. The CFTC final rule states that questions on the rule may be directed to Paul Architzel at the CFTC at (202) 418-5260. The CFTC said that the registration process can begin prior to the effective date of the final rule. However, at press time, the NGFA did not have an estimated time when registration materials would be available for distribution to prospective agricultural trade option merchants.



Farm Bill Review, Crop Insurance Reform Likely Priorities when Congress Reconvenes in 2000

A review of the 1996 farm law and crop insurance reform likely will be high priorities on the agricultural agenda when Congress reconvenes on Jan. 24.

House Agriculture Committee Chairman Rep. Larry Combest, R-Texas, already has announced a series of farm bill hearings, with an eye on providing greater income protection for producers during periods of low prices.

Here are a few of the specific topics that will receive attention:

▶ **Counter-Cyclical Assistance:** The ranking Democrat on the House Agriculture Committee, Rep. Charles W. Stenholm of Texas, has introduced a bill (H.R. 2792) that would provide income support to producers whenever the current year's national gross revenue for a commodity fall below a certain percentage of an average national gross revenue of the previous five years for that commodity. House Agriculture Committee consideration of this or other counter-cyclical proposals is possible.

▶ **Crop Insurance:** Earlier this year, Congress set aside \$6 billion over the next five fiscal years in additional funding for crop insurance as a means of improving the safety net for producers. But to access that money, the two agriculture committees need to agree on a crop insurance reform bill and send it to their respective chambers for consideration. The House passed its bill (H.R. 2559) on Sept. 29.

But the Senate Agriculture Committee has not been able to reach agreement on a crop insurance reform proposal. Debate has focused on two bills: S. 1580, introduced by Sens. Pat Roberts, R-Kan., and J. Robert Kerrey, D-Neb., and S. 1666, introduced by Chairman Richard G. Lugar, R-Ind. The Roberts/Kerrey plan would encourage producers to increase their use of crop insurance by increasing subsidies for the higher levels of coverage. The Lugar plan, rather than focus on insurance, would provide a direct payment to producers for use toward at least two of eight alternative risk-management practices. Lugar has promised committee action on crop insurance by March.

▶ **Agriculture Concentration:** On Nov. 17, during debate over a bankruptcy reform bill, the Senate considered an amendment by Sen. Paul Wellstone, D-Minn., to place an 18-month moratorium on "large" agribusiness mergers. While the amendment was soundly defeated, the issue is sure to be revisited by some members of Congress, who have expressed concern about agribusiness consolidation. The House

Judiciary Committee conducted a hearing on the subject on Oct. 20, and more hearings by other committees are possible.

The language of the Wellstone amendment was identical to that of a bill he introduced earlier in the year (S. 1739). Rep. Earl Pomeroy, D-N.D., has introduced a similar measure in the House (H.R. 3159).

▶ **Agency Reauthorizations:** Three agencies whose operations affect the grain, feed and processing industry are scheduled to be reauthorized by Congress next year: The Surface Transportation Board, which oversees the railroad industry; the Commodity Futures Trading Commission, which regulates the nation's commodity futures exchanges; and the Federal Grain Inspection Service program, which provides official grain inspection and weighing services.

Several bills have been introduced to reauthorize the STB, ranging from a simple extension of the agency to more extensive proposals to revise the Staggers Rail Act. Legislation to renew the CFTC currently is being drafted by staff of the House and Senate Agriculture Committees, and may address the topic of agricultural trade options. The House and Senate Agriculture Committees have not announced hearings yet on the reauthorization of FGIS, although USDA is seeking a 10-year reauthorization with minimal changes in the underlying U.S. Grain Standards Act.

New CRP Expansion Bill Introduced in Senate:

Meanwhile, Sen. Tim Johnson, D-S.D., has introduced a bill (S. 1961) that would increase the ceiling on the size of the Conservation Reserve Program to 45 million acres, up from the current 36.4-million-acre ceiling.

The bill, cosponsored by Sens. J. Robert Kerrey, D-Neb., and Paul Wellstone, D-Minn., has been referred to the Senate Agriculture Committee. Rep. Collin Peterson, D-Minn., introduced similar legislation (H.R. 408) in the House in January. That House bill currently has 64 co-sponsors.

NGFA Calendar

Jan. 12-13: Feed Quality Assurance Workshop, New World Inn, Columbus, Neb.

Jan. 13: Food and Feed Safety Committee, NGFA's Conference Room, Washington, D.C.

March 29-31, 2000: NGFA's 104th Annual Convention, Hotel Del Coronado, San Diego, Calif.

WTO Negotiations Begin Despite Protests in Seattle

Trade ministers from around the world began meeting in Seattle this week to establish the framework for the next round of free trade negotiations, despite large and sometimes violent protests by those opposed to the World Trade Organization.

The goal of the Seattle conference is for the 134 member nations of the WTO, the body that oversees and enforces international trade agreements, to agree on a framework for a new round of negotiations. Some of the details that must be finalized are a timeframe for completion of the talks, and precisely which sectors of world trade will be included in the negotiations.

Agriculture is one sector that is high on the U.S. agenda. In a speech at the Port of Seattle on Dec. 1, President Clinton called upon the European Union to stop subsidizing its agricultural exports so heavily, and to halt the labeling of U.S. foods as potentially unsafe when there is no scientific evidence to back such a claim. In response to Clinton's remarks, EU Agriculture Commissioner Franz Fischler stated that: "We [the EU nations] are prepared to negotiate significant reductions [in subsidies], but we are not prepared to accept total elimination."

The EU has defended its subsidies of European farmers as a means of helping to preserve the environment, enhance food safety, and protect the rural way of life, a

concept known in trade circles as "multi-functionality." In general, the United States is opposed to the WTO's possible acceptance of multi-functionality because it could result in continued excess government subsidization.

The Clinton administration has laid out the following specific objectives that the United States will pursue in Seattle: 1) Elimination of agricultural export subsidies; 2) Reduction of trade-distorting domestic supports; 3) Reduced tariff rates; 4) More discipline for state-trading enterprises; and 5) Ensuring "trade in agricultural biotechnology products."

The administration also said it will strive to avoid re-opening previous trade agreements, or negotiating on sectors that it believes are not ready for final action.

The NGFA, along with other agriculture organizations and firms, is a member of the Seattle Round Agricultural Committee (SRAC). This group published a set of goals that it would like to see the United States pursue. In addition, the NGFA published a list of its top priorities for the negotiations, including an end to export subsidies and non-tariff barriers to trade; better enforcement of dispute-panel decisions; reinforced sanitary and phytosanitary procedures; and sound science as the basis for determining the safety of foods produced through biotechnology. The document containing the NGFA's goals is accessible on Association's web site at: www.ngfa.org.



NEWSLETTER (CONT'D)

by **randall c. gordon**
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implement a more formal review process – perhaps mandatory (instead of the current voluntary) consultation by biotech companies – before granting such products GRAS (generally recognized as safe) status. Further, FDA is being pressured to either require mandatory labeling of products containing biotechnology-enhanced ingredients, or to create a framework under which companies wishing to promote their products as being substantially free of biotech ingredients can do so without violating the Federal Food, Drug and Cosmetic Act's provisions that require labels to be accurate, informative and not misleading.

FDA's Process for Approving Biotechnology-Enhanced Products: Organizations representing the food industry, biotechnology companies and agribusiness – as well as most scientists – generally supported FDA's 1992 policy statement, which evaluates all methods of breeding, including recombinant DNA, and compares the resulting product to its traditional counterpart to determine if it is "substantially equivalent."

FDA said it requires formal premarket clearance of a biotechnology-enhanced product if there is scientific

uncertainty as to whether the product is substantially different from its traditional counterpart in either its composition, allergenicity, digestibility, nutritional content or dietary exposure. If manufacturers of biotech commodities are uncertain, FDA says it currently "strongly encourages" them to enter into voluntary consultations with the agency to discuss appropriate safety tests that should be conducted before the product is released commercially. FDA said this voluntary consultation process typically has taken one to two years.

An organization representing biotech and seed companies said that, as a matter of practice, such companies have routinely entered into such consultations with FDA. And they – and several farm and agribusiness organizations (including the NGFA) – said they would support making such consultations mandatory.

But more extreme environmental and consumer advocacy groups, such as Greenpeace, the Environmental Defense Fund, the Natural Law Party and the U.S. Public Interest Research Group, called on FDA to require rigid, independent food and environmental safety testing of biotechnology-enhanced commodities before they are

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approved for use. Greepeace, at the Chicago event, urged FDA to recall all foods containing biotechnology-enhanced ingredients until pre-market testing and labeling are in place.

Labeling: Organizations representing the food industry, biotech companies and agribusiness supported FDA’s current science-based policy that does not require labeling of products containing biotechnology-enhanced ingredients unless they contain an allergen or are not substantially equivalent to their conventional counterpart.

The NGFA has learned that two major organizations representing the food industry – the Grocery Manufacturers Association and the National Food Processors Association – have privately approached FDA asking that the agency consider providing a framework for voluntary labeling. GMA, which represents the manufacturers of branded food products, said it “supports the right of manufacturers to make claims for their products, including claims about products made without the use of modern biotechnology.” GMA recommended that FDA “develop criteria for claim accuracy and substantiation in relation to voluntary labeling of ‘non-biotech’ foods or food ingredients.” By contrast, NFPA, which represents food processors, said it favors creating a voluntary labeling framework for both foods that are “bioengineered and those that are not.” In determining whether a voluntary label is truthful and not misleading, NFPA advised FDA to consider: “1) a detection or threshold limit; 2) substantiation, including identity preservation (traceback: all the way back); and 3) disclosures/accompanying statements.”

But Consumers Union, the organization that publishes the magazine *Consumer Reports*, urged FDA to require labeling of all products containing biotechnology-enhanced ingredients. Its representative was booed by some self-proclaimed consumer advocates at the Chicago meeting when he suggested that FDA use a tolerance of 0.5 (one-half) percent of biotechnology-enhanced ingredients when determining if a product is to be labeled.

NGFA’s Statement: The NGFA’s statement at both the Chicago and Washington FDA meetings reflected the recommendations established by the Board of Directors in October. Consistent with its Mission Statement, the NGFA said it supports biotechnology and other scientific and technological innovations that contribute to the availability of an adequate, safe and high-quality food supply. But the NGFA said it “also recognizes that some customers may have additional preferences that must be effectively addressed by the grain production/marketing/processing/food industry supply chain to preserve the United States’ ability to maintain access to the broadest possible array of global customers.”

Among other things, the NGFA said it:

- ▶ does not oppose FDA making its consultation process for approving biotechnology-enhanced events mandatory. At the same time, the NGFA said it is not aware of scientific evidence that would warrant FDA changing its science-based 1992 policy statement that provides the regulatory framework for foods produced from biotechnology;
- ▶ supports the public release and dissemination of non-proprietary research on the food and feed safety-related aspects of biotechnology-enhanced grains and oilseeds;
- ▶ opposes government-mandated labeling in both the United States and international markets of bulk agricultural products based upon the presence or absence of biotechnology-derived traits. To require labeling based upon unsubstantiated and unscientific grounds would ultimately undermine public confidence in FDA and the food system, and force additional costs on all consumers, regardless of their desire for such information.
- ▶ does not oppose voluntary labeling of food products, provided it is consistent with U.S. law and international trade agreements. *If* FDA proceeds to develop criteria for voluntary labeling, the NGFA recommended that the agency: 1) do so for products that food companies wish to claim are free or substantially free of biotechnology-enhanced ingredients, not for all foods; and 2) confine its efforts at this time to food products, not animal feed. The NGFA also encouraged FDA to signal its intentions as soon as possible on whether it plans to develop criteria or guidelines for voluntary labeling.

Importantly, the NGFA also said that if FDA develops guidelines or criteria for voluntary labeling, it will be even more important that the grain, feed and processing industry have the testing devices needed to detect the presence of biotechnology-enhanced traits in raw agricultural commodities. The NGFA reiterated its Board-set recommendations that biotechnology companies and seed firms bear the principal responsibility for developing new testing technology – preferably a test capable of detecting the full range of biotech events quickly, accurately and affordably.

Obtaining a Copy: The statements submitted by the NGFA at FDA’s Chicago and Washington biotech meetings are accessible through the NGFA’s web site at: www.ngfa.org. Click on the “News & Info” heading (then the “Testimony or Official Statements” icon) or the “Biotechnology Updates” heading. Members without Internet access may obtain a copy by contacting Jackie Congress at the NGFA at (202) 289-0873.



OSHA Proposes Ergonomics Standard

Virtually all feed mills and processing plants, and slightly less than half of grain elevators, would be required to implement ergonomics programs for certain job tasks under the Occupational Safety and Health Administration's proposal issued on Nov. 22, according to OSHA estimates.

OSHA said its proposed standard would affect 1.9 million employers and 27.3 million employees, at an annual cost to employers of \$4.2 billion.

Who's Affected and What's Required: OSHA said its proposal would, at a minimum, apply to employers whose employees work in manufacturing and/or manual-handling jobs. These employers would be required to implement hazard information and reporting requirements, as well as management leadership and employee-participation programs.

The agency defines manufacturing jobs as physical work activities involved in producing a product where those activities make up a significant amount of the employee's worktime, such as machine operation and machine loading and unloading. OSHA said administrative, clerical, supervisory, technical and maintenance work are not considered manufacturing jobs under the proposed rule.

The agency defines manual-handling jobs as those in which employees perform forceful lifting/lowering, pushing/pulling, or carrying, where forceful manual handling is a core element of an employee's job. Examples cited by OSHA include warehouse manual picking and placing and stock handling and bagging. The agency said manual handling does not include administrative, clerical, technical, sales or marketing work or work that is done only on an infrequent "as-needed" basis or jobs involving minor manual handling incidental to the job (such as carrying a briefcase to a meeting or baggage on work travel).

In addition, the proposed standard would require all employers whose employees experience a covered musculoskeletal disorder to implement the full ergonomics program. The full program would include – in addition to hazard information and reporting requirements, and management leadership and employee participation programs – the following:

- ▶ A hazard analysis of the job.
- ▶ Implementation of engineering, work practice, or administrative controls to eliminate or substantially eliminate the hazards of the job.

- ▶ Training of employees in the job, as well as their supervisors.
- ▶ Implementation of a musculoskeletal disorder management plan that includes appropriate temporary work restrictions and access to a health care or other professionals if a covered injury occurs.
- ▶ Periodic program evaluation.

What is a Covered Musculoskeletal Disorder?:

OSHA defines musculoskeletal disorders as injuries and disorders to the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. Examples include: carpal tunnel syndrome, tendinitis, herniated spinal disc and low back pain.

To trigger the requirements of the standard, the disorder must: 1) meet OSHA's injury and illness reporting requirements; 2) be reported after the effective date of the standard; 3) be reasonably likely to have been caused or been contributed to by the physical work activities and conditions of the job; and 4) result from activities and conditions that are a core element of the job and/or make up a significant amount of the employee's worktime.

Overview of Ergonomic Program Elements:

OSHA's proposed ergonomics standard contains the following major elements:

- ▶ **Management Leadership and Employee Participation:** Affected employers would be required to establish a written ergonomics program with appropriate resources and clear obligations for management and employees to meet the responsibilities established in the plan. Employers would be required to ensure that current policies and practices do not discourage reporting and participation in the program. Employers also would be required to communicate periodically with employees about the program and about their concerns with musculoskeletal disorders. The proposed standard also would require employers to: 1) provide employees with access to the standard; and 2) allow employees to be involved in developing, implementing and evaluating each element of the company's ergonomics program.
- ▶ **Hazard Information and Reporting:** Employers would be required to establish a method for employees to report the signs and symptoms of musculoskeletal

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disorders and promptly respond to such reports. The employer would be required to evaluate employee reports and determine whether a covered disorder has occurred. The OSHA proposal also would require employers to designate a person to receive and respond to employee reports and take any action required under the standard.

► **Job Hazard Analysis and Control:** Employers would be required to analyze jobs in which a covered musculoskeletal disorder is reported (called a “problem job”) to identify the “ergonomic risk factors” that result in such hazards. Ergonomic risk factors include such issues as force, repetition, awkward position, vibration and cold temperatures. The standard would require that these risk factors be eliminated, reduced to the extent feasible or materially reduced using the standard’s incremental abatement process. During the analysis, the employer would be required to consult with employees on the aspects of the “problem job” that may be causing the difficulty and actually observe the employees performing the tasks to identify which risk factors are present. In addition, the standard requires employers to seek recommendations from employees on how to eliminate or materially reduce the musculoskeletal disorder hazards.

► **Training:** Employers would be required to train employees about recognizing musculoskeletal disorder hazards in the workplace and the company’s ergonomics program and measures for eliminating or materially reducing such hazards. Such training would be required when the standard takes effect and/or the employee is hired, as well as at least every three years thereafter, at no cost to the employee. The standard requires training of employees in “problem jobs,” their supervisors and those employees responsible for establishing and managing the ergonomics program.

► **Responding to Musculoskeletal Disorder Incidents:** The proposed standard would require employers to respond promptly, at no cost to the employee, when a covered to musculoskeletal disorder incident occurs. When necessary, the standard requires that employees be given access to a health care professional for evaluation, management and follow-up. Employers would be required to provide certain information to the health care professional to assist in the diagnosis and obtain a written response about the employee’s medical condition. The standard also would require that employers provide temporary work restrictions, where necessary, to employees with covered disorders

until such time as: 1) the employee is able to return to the job; 2) the employer implements measures to reduce disorder hazards to the extent they no longer pose a risk to the employee; or 3) six months thereafter. During periods when employees are on temporary work restrictions, employers would be required to maintain the employees earnings and other employment rights and benefits. Maintenance of earnings could range from 90 to 100 percent of after-tax earnings, depending upon whether the employee was reassigned. The proposed standard would allow the employer to reduce employee earnings by the amount of any worker’s compensation payments, payments from insurance programs, or income gained from a job taken with another employer made possible by the work restrictions.

► **Program Evaluation:** The proposed standard would require employers to evaluate their ergonomic program at least every three years to ensure it is in compliance and to correct any deficiencies. Employers with more than 10 employees (including part-time or those provided through personnel services) on any day during the calendar year preceding the effective date of the standard would be required to maintain records of employee reports of musculoskeletal disorders and the employer’s response; job hazard analyses; hazard-control efforts; periodic program evaluations; and musculoskeletal disorder management information. Most records would be required to be retained for three years or until replaced by updated records, whichever comes first.

Submitting Comments: The NGFA’s Safety, Health and Environmental Quality Committee is evaluating the OSHA proposal and will be submitting a response to OSHA on behalf of the NGFA. Written comments must be postmarked by Feb. 1, and should be submitted to: OSHA Docket Office, Docket No. S-777, U.S. Department of Labor, 200 Constitution Ave., N.W., Room N-2625, Washington, D.C., 20210.

Informal Public Hearings: OSHA said it also plans to conduct informal public hearings to allow interested persons the opportunity to provide comments and data on the proposed standard. The first hearing is scheduled for Feb. 22 at the U.S. Department of Labor in Washington. OSHA says this hearing could last up to four weeks. Subsequent hearings are scheduled for March 21-31 in Portland, Ore., and April 11-21 in Chicago. The times and locations of these meetings will be announced later in the *Federal Register*, OSHA said.



Eastern Rail Users Report Continuing Service Disruptions

Rail users reported continuing service disruptions in the East involving the Norfolk Southern and CSX Transportation Co. during the Nov. 23 meeting of the Conrail Transaction Council.

The NGFA told the council meeting that its members continue to voice concern over the impact the service disruptions will have on the projected larger-than-normal grain volume demand in the Northeast and Mid-Atlantic regions resulting from 1999 drought conditions, which created a shortage of local grains accessible by truck. NGFA members reported the Chicago interchange continues to experience major problems on both the Norfolk Southern and CSX – an allegation contested by both Norfolk Southern and CSX representatives, who said congestion and interchange problems in Chicago had been resolved. Railroads operating in Chicago were scheduled to meet on Nov. 30-Dec. 1 to arrive at a consolidated contingency operating plan for addressing service disruptions (e.g., snow, etc.), according to Norfolk Southern and CSX officials.

Some NGFA rail grain users also reported they are avoiding certain origins, such as Sidney, Ohio, because of previous interchange problems.

Concerns Over Norfolk Southern: NGFA members said that grain train speeds on the Norfolk Southern continue to be slow; most recent reports were that train speeds had declined to 13.5 miles per hour, 4.7- miles-per-hour slower than the Norfolk Southern's system train average of 18.2. Concerns were expressed that this could indicate that locomotives and crews were being diverted to traffic other than grain.

Concerns over CSX: NGFA members reported the following concerns regarding the service provided by the CSX:

- ▶ Increased numbers of cars on line – covered hopper cars for the week ending Nov. 12 were up 18 percent compared to June 1.
- ▶ Congestion problems at Danville, Ill., and Toledo and Wallbridge, Ohio, yards.
- ▶ CSX is moving traffic circuitously from one congested area to another (e.g., cars moved from Columbus yard to Toledo, Ohio, yard just to get them moved).
- ▶ CSX appears to be grappling with locomotive issues caused by track restrictions (e.g., Dana, Ind., is restricted to four-axle power after a train sat for several days). Problem spots need to be identified and rail users notified so plans can be made to avoid or deal with restrictions, NGFA members said.
- ▶ CSX also appears to have crew manpower problems. Trains with locomotives have been delayed for several days waiting for crews.

There also was concern that the CSX does not appear to have sufficient customer-service personnel to address the service decline.

Rail Carrier Reports: Meanwhile, Norfolk Southern and CSX officials said they were making progress in implementing their respective systems over the trackage acquired from Conrail. CSX reported it has completed implementing its systems for all former Conrail portions of the new CSXT system and that technology issues no longer were affecting performance. Norfolk Southern also said more than 75 percent of its system had been converted, with Chicago being switched over on Nov. 23. The yard inventory/car movement systems for Norfolk Southern's Northern Region are scheduled to be completed by Dec. 7, it said. Norfolk Southern also said that its new train information system for that region would be completed by Dec. 21.

Norfolk Southern said that Buffalo, N.Y., and Columbus, Ohio, continued to experience problems. Norfolk Southern also reported that a new haulage agreement with BNSF between St. Louis, Mo., and Memphis, Tenn. – designed to address congestion problems in Decatur, Ill. – was implemented during the week of Nov. 15.

CSX indicated that Nov. 7 was its high point for number of cars on line, but that substantial and steady improvements had been made since that date. Grain and automobiles were identified by CSX officials as movements that continue to be heavy and are expected to remain heavy. Michigan and Indiana were identified as areas with substantial increases in grain loadings since the Nov. 7 report.

CSX identified Michigan as its toughest problem area. Traffic has been diverted from the Toledo, Ohio, yard for classification in other yards to help ease congestion, CSX officials said. But they indicated it would be mid-December before improvements in the Toledo/Wallbridge yards would be noticeable. CSX also said it was using shortlines in Michigan to handle grain trains.

Norfolk Southern officials said a shortage of locomotive power no longer was an issue in causing service delays. They said Norfolk Southern currently is operating 99 unit grain trains (five 100-car trains; four 85-car trains; two 75-car trains; and 88 50-car trains). Cycles improved during October, but remain slower than normal, they said. Norfolk Southern said congestion in its Sandusky (Ohio) District is expected to continue.

Future Meetings: The Conrail Transaction Council's next meeting is scheduled for Jan. 11 in Philadelphia, and will be open to all eastern rail users. Further information on the Conrail Transaction Council meeting is available by contacting David Barrett at the NGFA at (202) 289-0873, or by e-mail at dbarrett@ngfa.org.

CSX Sets Procedure for Handling Freight Claims Arising from Conrail Acquisition

The CSX Transportation Co. has notified the NGFA of the procedures it will use to handle freight claims arising from service disruptions associated with its acquisition of Conrail.

In a letter to NGFA Rail Shipper Receiver Committee Chairman John L. Bratten, CSXT said it has assembled a multi-departmental team to collect and evaluate claims from customers that allegedly are attributable to congestion on its rail network that followed the June 1 operational takeover of the former Conrail territory. "This team operates with the intent to give all claims received a very thorough review and consideration," wrote CSXT Assistant Vice President Thomas C. Owen Jr. "All correspondences take place directly between customers and this group, with no intermediaries that might slow down the process."

Owen said that customers who believe they have suffered damages as a result of congestion on the CSXT system since June 1 should file claims with: Katherine

Wilson, CSXT Freight Damage Prevention and Claims, P.O. Box 44085, Jacksonville, Fla., 32231.

To expedite review of claims, Owen advised that shippers include as much supporting detail and documentation as possible, such as: 1) the CSXT contract, if any; 2) car numbers; and 3) other detail. Owen said that Wilson is available for advance consultation with any customer wanting to ensure that the documentation being prepared is adequate and that the claim at issue is "within the bounds of what CSXT would recognize as a legitimate claim." Wilson's phone number is: (904) 359-1275.

Owen said shippers "may need to adjust logistics planning and inventory management...given the adjusted times of transit" following the acquisition of Conrail. "It is our hope that very few customers will have been so impacted that this course of action is necessary," Owen wrote. "Further, we are making every effort to accelerate the movement of products which the good customers in the agriculture sector have entrusted to us.

STB Withdraws Proposal to Exempt Export Corn, Soybeans

The Surface Transportation Board announced Nov. 24 that it has withdrawn its 1992 proposal [*Ex Parte No. 346 (Sub.-No. 28)*] that would have exempted the rail transportation of export corn and soybeans from rail regulation. The NGFA had strongly opposed the original proposal, which was issued by the former Interstate Commerce Commission as part of a broad deregulatory initiative that also included proposals to deregulate demurrage, bills of lading and empty freight car movements.

The proposal to deregulate the rail transportation of export corn and export soybeans would have: 1) exempted rail contracts and rail rates from regulatory oversight. Rates could have been increased without advance notice; 2) eliminated requirements for equitable car distribution; 3) eliminated the requirement that carriers file tariffs or summaries of transportation contracts on export corn and export soybean shipments; 4) deregulated private car allowances for export corn and soybean movements; and 5) eliminated the right of shippers or receivers to contest any exempt railroad practice, either before the courts or the agency, unless the agency first revoked the exemption.

In announcing the withdrawal of the proposal, the STB said that the record compiled in the seven-year-old proceeding does not reflect changes that have occurred in U.S.

agriculture. "Withdrawal of the 1992 proposal... would...allow any interested person...to file a petition...to initiate a new proposal supported by a more current presentation of facts and arguments," the STB said.

Other Proposals Withdrawn: The STB on Nov. 24 also announced it was withdrawing two other proposed rulemakings:

- ▶ a 1995 proposal [*Ex Parte No. 282 (Sub.-No. 19)*] that would have implemented new streamlined procedures in rail acquisition, mergers and consolidations that generally would have required the agency to act on an application within 180 days. In withdrawing the proposed rule, the STB said it preferred to continue a case-by-case approach when adopting procedural schedules for reviewing rail acquisitions, mergers and consolidations; and
- ▶ a 1992 proposal [*Ex Parte No. 282 (Sub.-No. 15)*] that would have expanded the class exemption for railroad transactions subject to the agency's consolidation procedures. The STB said its experience has been there is no "pressing necessity" to expand the types of rail transactions exempt from the agency's review.

Leading House Democrat Introduces STB Reform Bill

Another significant bill in the continuing saga over the reauthorization of the Surface Transportation Board was introduced in the waning days of the first session of the 106th Congress by the ranking Democrat on the House Transportation and Infrastructure Committee.

Rep. James L. Oberstar, D-Minn., introduced the bill (H.R. 3446) on Nov. 18, saying it would provide more protection for the rights of workers and consumers. The bill also would authorize appropriations of \$17 million, \$20 million and \$21 million, respectively, to finance the STB's operations from fiscal years 2000 through 2002.

In a Nov. 19 release announcing introduction of the bill, Oberstar said the legislation would:

- ▶ require rail carriers to provide "small captive grain shippers" with capacity to ship 110 percent of the carloads shipped the previous year. If a carrier could not supply such equipment within 45 days of the placement of an order, the bill would require that an alternative carrier be given access to the original carrier's tracks to provide the service. The bill defines "small captive grain shippers as being those that: 1) load no more than 4,000 carloads annually; 2) are served by only one railroad; 3) ship at least 60 percent of their inbound and outbound grain by rail; and 4) pay rates on a majority of shipments that equate to at least 180 percent of the carrier's variable cost.
- ▶ simplify the rate-complaint process for "small captive grain shippers" by capping rates charged to such shippers at 180 percent of a railroad's variable cost and capping the fees the STB can charge for filing rate complaints at \$1,000 (current fees are set at \$5,400);
- ▶ provide for mandatory terminal access and reciprocal switching rights under certain circumstances;
- ▶ codify the STB's December 1998 decision to eliminate product and geographic competition as factors in determining if a rail carrier has market dominance, one of the criteria that is required to be met before a rail rate can be challenged;
- ▶ require carriers to submit to the U.S. Department of Transportation monthly service quality performance reports, including its on-time performance, car availability, average train speed, average terminal dwell time and the number of cars loaded (by commodity group);
- ▶ repeal the exception that currently prohibits the STB to regulate the construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching or side tracks of facilities.

Under current law, rail carriers can construct such facilities and use powers of eminent domain to force the sale of property for the construction of such facilities, without having to satisfy local zoning restrictions or federal environmental requirements, Oberstar's statement said;

- ▶ address the "bottleneck" rate issue by allowing shippers to challenge the reasonableness of the rate charged on particular route segments;
- ▶ require the STB to impose conditions on mergers it approves to mitigate the effects of the transaction on local communities. It also would require the STB to evaluate the safety and environmental effects of a merger and its impact on passenger transportation;
- ▶ "clarify" existing rail transportation policy by stating that its primary objectives are to: "1) ensure effective competition among rail carriers; 2) maintain reasonable rates; 3) maintain consistent, efficient and timely service to shippers; and 4) ensure that smaller shippers are not precluded from accessing rail systems due to volume requirements."
- ▶ grant commuter rail authorities guaranteed access to freight railroads' rights of way;
- ▶ provide the STB with authority to regulate construction and use of rail lines and facilities throughout the country;
- ▶ stipulate that the STB cannot impose or "break, modify, override or abrogate, in whole or in part, any provision in any collective bargaining agreement or implementing agreement" as part of a rail merger.
- ▶ grant railroad employees adversely affected by a merger the right to obtain six full years of labor protection, which was statutorily required prior to passage of the Interstate Commerce Commission Termination Act of 1995; and
- ▶ require water carriers in domestic offshore trade to Alaska, Hawaii, Puerto Rico and Guam to make their tariffs available over the Internet instead of filing paper with the STB.

Oberstar has been a vocal critic of the STB and even wrote to the White House earlier this year opposing the renomination of STB Chairman Linda Morgan.

A section-by-section analysis of the bill is available on the Internet at: http://www.house.gov/transportation_democrats/#HOT_TOPICS



How USDA Computed Estimated Returns for Soybean Producers

A recent *NGFA Newsletter* article [See *NGFA Newsletter*, Nov. 4, page 5] on the U.S. Department of Agriculture's implementation of the emergency ag spending bill approved by Congress reported USDA officials as estimating that their current projections are that soybean producers likely will receive the equivalent of about \$7.85 per bushel for 1999 crops, \$2.85 per bushel of which will be in the form of government payments.

The following is a breakdown of how the USDA arrived at the figure:

▶ USDA said it assumes a 100-acre corn farm with a 110-bushel-per-acre yield enrolled in the farm program and therefore eligible for AMTA payments. USDA estimated that this hypothetical farm would currently receive \$33.94 per acre in AMTA payments. If the producer plants soybeans, at an average yield of 40 bushels per acre, and applies the AMTA payments to

the soybean crop, then the producer would be receiving 85 cents per bushel of soybeans.

- ▶ Since the emergency spending bill effectively doubled 1999 AMTA payments, the producer would receive an additional 85 cents per bushel for soybeans, totaling \$1.70.
- ▶ USDA further assumed that a producer would take an LDP on his crop, and uses a \$1-per-bushel average. The resulting total is \$2.70.
- ▶ USDA then added roughly 15 cents per bushel in direct emergency assistance payments. This figure is derived from the \$475 million included in the fiscal year 2000 agriculture appropriations for assistance to oilseed producers who are eligible for marketing loans. This brings the new total to \$2.85 per bushel.
- ▶ Finally, USDA assumed a \$5 per bushel market price for soybeans to arrive at the total \$7.85-per-bushel figure.



MEMBERSHIP MATTERS

by todd kemp
director of marketing

NGFA Membership Program Goes "E-Com"

The NGFA has instituted a new e-mail membership initiative to recruit new members and gather critical information on prospective member companies.

Dubbed "*Prospect-of-the-Day*," the effort involves sending an e-mail each business day to industry volunteers who serve on the NGFA Board of Directors, all committees and the Membership Recruiter Network. A different membership prospect is featured each day, and message recipients are asked to respond with information on business relationships and services that may be particularly relevant to successfully recruiting the prospect to be a new member. The ultimate goal is to reach 104 new members by the 104th NGFA annual convention in San Diego next March.

In addition to providing intelligence on prospective member companies, *Prospect-of-the-Day* will serve as a reminder to leaders within the organization that membership recruiting is a high priority. Each recipient will be encouraged to spend a few minutes daily to review the day's prospect and think about membership recruitment strategies. Anyone not currently receiving *Prospect-of-the-Day* e-mails who would like to participate, please contact Todd Kemp at the NGFA at (202) 289-0873 or tkemp@ngfa.org.

Membership Incentive Prizes Sought: Items currently are being sought from member companies to use as prizes for top membership recruiters at the annual convention, or as incentives during the upcoming Membership Madness II campaign planned for February. Does your company keep

an apartment/suite in a desirable location? Do you have access to high-profile sporting-event tickets? Can you fund travel for prize-winners? Other ideas? Please contact Todd Kemp with your offers!

California Dreamin'

OK! So far it's been a pretty nice fall...no major ice storms toppling trees and power lines in their wake...no three-foot snow storms making the trek to the office an exercise in agility and patience. But it's coming, at least for most of us!

NOW, sit back, close your eyes and imagine: balmy ocean breezes, sunshine, golf, and "Good Vibrations." A chance to kick back and relax after a tough winter season. A chance to find out what's on the industry's horizon as it moves into the new millennium – biotechnology, electronic markets, rail transportation and more! And a chance to take back to the office a recharged, revitalized spirit, not to mention some great new money-making ideas!

WHERE are you going to find all of this? At the NGFA's 104th annual convention in gorgeous, sunny San Diego – at the world-famous Hotel Del Coronado.

SO...mark your calendar for **March 29– 31, 2000**, and look for the program and registration information we'll be mailing you in the next few weeks! And don't forget to imagine....



("Grain Cleaners" continued from page 1)

America and other areas say that they cannot obtain wheat meeting their cleanliness specifications from the United States. USDA's notice also states that wheat exporters have concluded that installing and operating grain-cleaning equipment is not economically justified.

A 1992 study by USDA's Economic Research Service (ERS) found that, while cleanliness can be an important issue in some export markets, other factors, such as price and intrinsic quality factors (e.g., protein), plays an equal and often more important role in the purchasing decisions of foreign buyers. Further, exporters do respond to customer's requirements for cleaner wheat. For example, the USDA noted in its Nov. 29 notice that tighter quality specifications by Japanese buyers have "already brought about the installation of wheat cleaning systems in the U.S. Pacific Northwest."

USDA Seeking Input: USDA said that it has sufficient authority under CCC's Charter Act to provide the needed funds, but was seeking public comment on the following issues before making a final decision:

- ◆ The likely scope and cost of such an initiative. USDA said its preliminary cost estimate is approximately \$5 million per facility.
- ◆ The extent and form of CCC's financial role.

- ◆ How USDA can ensure that those existing elevators, primarily in the Pacific Northwest, that have already undertaken such investments are not competitively disadvantaged.

Previous NGFA Comments: The NGFA has been in the forefront expressing concern and opposition to government funding for cleaners at wheat export facilities since rumors began circulating in 1998 that USDA had formed a task force to study the feasibility of the concept. The NGFA has met with USDA, sent cards and letters, met with congressional staff, and advised Sens. Pat Roberts, R-Kan., and Sam Brownback, R-Kan., about the NGFA's strong opposition to their support for government subsidies for cleaners at wheat export facilities. The NGFA also has met with U.S. Wheat Associates and the National Association of Wheat Growers, two organizations that have expressed support for the concept. The NGFA also has met with a number of state wheat commissions and has had some success in convincing producer leadership that this issue could be economically damaging to producer interests.

Public comments: Comments are due by **Dec. 29**, and should be sent to: Timothy J. Galvin, Administrator, Foreign Agricultural Service, Room 5071 South Bldg., 1400 Independence Ave., S.W., Washington, D.C., 20250. USDA also said it would conduct public meetings on the issue at a time and place yet to be determined.