



# NGFA Newsletter

Volume 51, Number 8, April 21, 1999

## NGFA Provides Information on Status of EU Approval of GMO Corn

In response to a request from corn-based organizations and seed companies, the NGFA on April 2 notified member companies about the varieties of genetically modified corn approved and released for planting in the United States that have not received import clearance yet from the European Union.

The request to the NGFA was made in a March 26 letter jointly signed by the Corn Refiners Association Inc., the National Corn Growers Association (an NGFA associate member), the North American Millers' Association, the U.S. Grains Council and three seed companies that manufacture or sell transgenically modified corn – Monsanto, Pioneer Hi-Bred International and AgrEvo USA Co.

### Seed Company Responds to NGFA Questions on GMOs – See Page 8

In their letter to the NGFA, the corn-based groups said the review process for approving genetically modified products outside the United States “has proven to be lengthy and unpredictable....The situation has been most acute in the European Union, where applications for import approval for some products submitted in 1996 are still under consideration.”

## Potential Changes to LDPs to be Submitted to Glickman

The NGFA learned today that two decision memorandums containing potential options for changing the U.S. Department of Agriculture's procedures for determining loan deficiency payments (LDPs) and county loan rates are scheduled to be submitted to Secretary of Agriculture Dan Glickman sometime during the week of April 26.

USDA officials said they are hopeful that final decisions will be made by week's end. USDA's goal has been to announce any changes in its LDP procedures by May 1, prior to the start of wheat harvest in southern states, so that they could apply to all 1999 harvested crops.

Meanwhile, a congressional subcommittee has scheduled a May 6 hearing on USDA's implementation of the LDP program. The hearing is to be conducted by the House Agriculture Committee's Subcommittee on General Farm Commodities, Resource Conservation and Credit, chaired by Rep. Bill Barrett, R-Neb. The NGFA has accepted an

The groups continued: “Because of this tension, we have supported the efforts of seed companies to work with their customers to develop plans to market corn that has not received European Union import approval in the domestic feed market. Each of the companies marketing these products has developed information programs to inform producers that they should market harvested grain from these varieties for domestic feed use only. These programs recognize that informed producers are in the best position to channel these grain varieties into acceptable domestic uses. In addition to information being provided producers through companies, farmers will need the assistance of commercial grain merchants to carry out an effective channeling program...[W]e would request that you (NGFA) provide farmers with any assistance you can offer in securing domestic feed markets for grain from the following seven specific corn varieties. Such markets may include other farmers with on-farm feeding operations, feed compounders who serve the domestic market or processors who serve only the domestic market...”

The letter from the corn-related groups cited the following GMO corn varieties that are available for planting in the United States that have not obtained

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invitation to testify on its recommendations to USDA on ways to improve the LDP program. [See *NGFA Newsletter*, Feb. 25, 1999.]

**LDP Options:** It is the NGFA's understanding that the decision memorandum on LDP policy, as cleared by the office of Undersecretary of Agriculture Gus Schumacher, contains several possible options, including:

- ▶ establishment of a **national LDP rate** for grains and oilseeds similar to the approach currently used for rice and cotton. As noted in previous editions of the *NGFA Newsletter*, this concept would involve USDA determining a national LDP rate that would be subtracted from the applicable county loan rate (after adjustments for premiums and discounts applicable to the individual producer's loan) to arrive at the producer's LDP rate for each commodity.

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# NGFA to Urge Repeal of Harbor Maintenance Tax

In a letter to be sent next week to members of two key congressional committees, the NGFA will urge passage of legislation to repeal the Harbor Maintenance Tax and fund dredging and other navigation maintenance activities from the general treasury.

Reps. Jim Oberstar, D-Minn., and Robert Borski, D-Pa., have introduced legislation (H.R. 1260) that would repeal the harbor maintenance tax, a portion of which the U.S. Supreme Court last year declared to be unconstitutional. The bill also would mandate that all federal dredging and harbor maintenance activities be funded from general tax revenues. The latter provision would prevent the implementation of a harbor services user fee that the Clinton administration has drafted as a replacement to the harbor maintenance tax.

The legislation has been referred to the House Committee on Transportation and Infrastructure and the House Committee on Ways and Means, both of which have jurisdiction over the HMT. In an effort to increase support for the bill and expedite its consideration, the NGFA will send the following letter to members of these committees. **NGFA members can help by similarly contacting their congressmen and urging support of the bill.**

“Dear Representative \_\_\_\_\_:

“On behalf of the more than 1,200 corporate and individual members of the National Grain and Feed Association, I urge you to co-sponsor H.R. 1260, the Support for Harbor Investment Program Act (SHIP Act), introduced by Congressmen Robert Borski and Jim Oberstar. The SHIP Act would repeal the Harbor Maintenance Tax (HMT) and authorize general revenues to pay for the federal share of operating and maintaining the nation’s ports and waterways.

“Currently, the HMT pays for the cost of maintaining the nation’s federal navigation channels. The future of the HMT is in doubt, however, since the export portion of the tax was found to be unconstitutional and the remainder is being challenged before the World Trade Organization. In its search for a replacement funding mechanism, the administration is expected to propose a harbor services user fee, which would be levied against shipping companies that call on U.S. ports.

“The NGFA is opposed to this proposal for several reasons. First, the administration (as disclosed in its FY2000 budget) is expected to call for nearly \$1 billion in user fees, more than twice what is needed for maintenance and dredging. This would effectively end the government’s responsibility for maintaining and improving federal channels that the government was solely responsible for until 1986. In addition, increased fees at U.S. ports would add significant costs to U.S. products – including grain exports – effectively pricing our goods out of many foreign markets. Finally, by making U.S. ports more expensive for shipping companies, the fee will shift cargo traffic to non-U.S. facilities, resulting in a decline in U.S. jobs.

“The SHIP Act will restore the federal obligation to adequately fund dredging and other activities vital to our ports and channels, will be in compliance with our trade commitments and will preserve the competitiveness of U.S. exports. The NGFA vigorously opposes the administration’s harbor services user fee and strongly urges you to co-sponsor the SHIP Act.

“Thank you for your time and consideration of this matter.”

Sincerely,

Kendell Keith  
President

## NGFA to Testify at Upcoming Congressional Hearings

Your NGFA is scheduled to testify at two important upcoming congressional hearings:

- ▶ **May 5:** Senate Agriculture Committee hearing on changes needed to encourage participation in the Commodity Futures Trading Commission’s agricultural trade options program.
- ▶ **May 6:** House Agriculture Committee’s Subcommittee on General Farm Commodities, Resource Conser-

vation and Credit hearing on USDA’s implementation of the loan deficiency payment program for 1999.

In addition, the NGFA will submit a statement on the Environmental Protection Agency’s proposed restrictions on the use of phosphide-based fumigants to the Senate Appropriations Committee’s Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies. This panel has jurisdiction over EPA’s funding.



(“LDP” continued from page 1)

One method believed to be under consideration for determining the national LDP rate is to base it on the average posted county prices (PCP) for the top eight or so producing states for each commodity. Another potential option is to use an olympic average of terminal market prices.

- ▶ retaining the current terminal market/PCP/differential-based approach, perhaps with some adjustments to more accurately reflect local cash prices.

Importantly, one potential policy change advocated by the NGFA and strongly considered by USDA – basing the LDP rate on the county where the grain is produced rather than where delivered – reportedly has been dropped because of a legal interpretation that the 1996 farm law requires that LDPs be considered as part of the loan program, not as a “deficiency payment” as existed under the previous farm law. Since the loan rate applicable to commodities is the county **where stored** (be it on the farm or at a commercial warehouse with a Uniform Grain and Rice Storage Agreement contract), USDA attorneys ruled that they could not preclude producers from obtaining the LDP rate in the county where the commodity is delivered.

**County Loan Rates:** The second decision memorandum addresses county loan rates and contains several potential options, including: 1) retaining 1998-crop county loan rates unchanged; 2) allowing unrestricted adjustments in county loan rates based upon updated production data and the most recent 24 months of PCP data; 3) allowing unrestricted adjustments in county loan rates and establishing wheat loan rates by class; 4) allowing county loan rates to be adjusted +/- 5 percent; or 5) allowing county loan rates to be adjusted, but stipulate that no loan rate could decline to less than 95 percent of 1998-crop levels.

Adjustments are being considered because current county loan rates for grains and oilseeds are based upon 1995-crop cash market prices, which even at that time were considered to be in need of significant revision. Ostensibly, USDA’s county loan rates are supposed to be set by using the average of the most recent 12-month period of cash market prices under the loan rate formula specified in the 1996 farm law. USDA officials believe that many of the disparities in LDP payment rates between counties and states could be corrected by allowing county loan rates to be adjusted and by establishing class-based county wheat loan rates.

**Other Changes Being Finalized:** USDA’s Farm Service Agency also is awaiting final approval of several administrative changes to the operation of the LDP program for 1999, the NGFA has learned. Believed to be among those changes is a streamlined LDP payment process that will allow producers to self-certify their LDP quantities, instead

of requiring that they submit settlement sheets or load summaries to the FSA county office. Under this arrangement, the FSA county office would spot-check producer certifications. Another change expected to be approved involves the issuance of a single LDP form – a modified version of the CCC-666 LDP that also would incorporate some of the field-direct features of the former CCC-777 form.

## USDA Announces National Average Loan Rates for 1999 Crops

The U.S. Department of Agriculture on March 18 announced that national average marketing assistance loan rates for 1999 crops will be set at their maximum allowable levels. The announced loan rates were:

- **Wheat:** \$2.58 per bushel.
- **Corn:** \$1.89 per bushel.
- **Soybeans:** \$5.26 per bushel.
- **Sorghum:** \$1.74 per bushel.
- **Barley:** \$1.59 per bushel.
- **Oats:** \$1.13 per bushel.
- **Minor Oilseeds:** \$9.30 per hundredweight.

USDA noted that it had the authority to reduce wheat and corn loan rates by 5 percent, based upon current stocks-to-use ratios. But it declined to do so “because lower marketing assistance loan rates would weaken the safety net for producers of wheat and feed grains during a critical period of financial need,” USDA said.

## Grau Named New USDA Deputy Undersecretary

Secretary of Agriculture Dan Glickman has named **Thomas L. Grau** as deputy undersecretary of agriculture for farm and foreign agricultural service.

As such, Grau serves as the top deputy to Undersecretary of Agriculture Gus Schumacher, who oversees the operation of USDA’s Farm Service Agency, Risk Management Agency and Foreign Agricultural Service. Prior to joining USDA, Grau spent nearly six years as Iowa state FSA executive director where he was responsible for administering federal farm programs in the state, including price support, farm loans, production adjustment, conservation and compliance. Previously, he was chairman of the Iowa Corn Promotion Board and the U.S. National Corn Development Foundation. He also participated in U.S. agricultural trade missions to Japan, China, Taiwan and South Korea. A native of Iowa, he received undergraduate degrees in public service/administration and animal science from Iowa State University, as well as a law degree from Drake University.

### USDA Provides Clarification of Policy Prohibiting Substitution

The U.S. Department of Agriculture has provided the NGFA with an additional clarification of its long-standing policy (effective since March 5, 1990) that prohibits producers from “substituting” commodities as collateral for marketing assistance loans. This clarification may be helpful to warehouse operators who anticipate storage congestion at harvest.

In a loan program notice (Notice LP-1658) issued on July 27, 1998, USDA’s Farm Service Agency said that grain that is physically moved to another commercial warehouse location indicated on the warehouse receipt from a warehouse location where the grain initially was delivered (for instance, to accommodate increased production in the local area) still is considered to be eligible for a loan or loan deficiency payment (LDP), and is **not** considered to have been “substituted.” Specifically, the notice states that “[w]hen grain is **physically moved** to

the warehouse location indicated on the warehouse receipt from where the grain was initially delivered, the grain is eligible for a CCC loan or LDP. A **paper transaction** for moving warehouse obligation from one warehouse to another warehouse is **not** a movement of grain and **is** substitution.” [Emphasis added.]

In the clarification provided orally to the NGFA, FSA officials said that the following scenario **would** be considered to be substitution and the grain would **not be eligible** for a loan or LDP: A producer is asked to deliver grain at harvest directly to a terminal, but the warehouse receipt for the producer is issued by the country elevator for an equivalent quantity and quality of company-owned or non-obligated stocks (e.g., the producer delivers to terminal X but the warehouse receipt is issued by country elevator Y). In this case, the warehouse receipt would need to be issued by the terminal to avoid violating the substitution policy.

### USDA Inspector General Cites Abuses in Crop Insurance Program

The U.S. Department of Agriculture’s inspector general has cited what he termed numerous abuses in the federal crop insurance program and suggested that policymakers consider using the government – rather than reinsurers – as the preferred delivery mechanism.

The Senate Agriculture Committee today conducted a hearing on the inspector general’s findings, contained in a wide-ranging 38-page report. USDA Inspector General Roger C. Viadero wrote “...[R]einsured companies do not have an adequate incentive to manage the crop insurance program in an actuarially sound manner.” He recommended that USDA’s Risk Management Agency redesign its standard reinsurance agreement to assign greater risk to the reinsured companies or, alternatively, return the crop insurance program to a government-administered delivery system, particularly for the Catastrophic Risk Protection (CAT) program.

The inspector general said more federal funds are being paid to reinsured companies than are being used to help producers recover from insurable losses. “For example the Catastrophic Risk Protection (CAT) program has resulted in about \$2 in administrative payments to reinsured companies for every \$1 paid to insured producers in the form of insurance indemnities.” From 1995-98, he continued, producers received \$5.4 billion in indemnity payments. But because only \$3.4 billion were covered by producers’ premiums, the government paid the remaining \$2 billion. Over the same period, the inspector general said, the government paid reinsured companies \$2.8 billion for delivering the program, \$800 million more than it paid in producer’s subsidies and \$400 million more than they received in the previous 14 years combined.

**Findings:** The inspector general cited the following types of “abuses” by reinsured firms that he asserted could be

eliminated by greater risk-sharing by the companies:

- ◆ Conflicts of interest, in which sales agents, loss adjusters and others are financially involved with producers to whom they sold policies or for whom they verified claims.
- ◆ Pressure on loss adjusters to “rubberstamp” policyholders’ loss claims.
- ◆ A lack of objectivity in reinsurers’ quality-control reviews, which he termed “superficial” and lacking in independent verification. “...[I]n numerous audits, indemnities were found to have been improper and/or incorrect,” the inspector general wrote. “However, the reinsured companies’ Q/C (quality-control) reviews found no problems.”

The inspector general also recommended changes by USDA’s Risk Management Agency to better research and develop crop insurance policies before implementing them, noting the error made this year for durum wheat policy that may artificially encourage excess production. He also recommended that the Risk Management Agency:

- ◆ avoid policies that encourage producers to abuse the program. One example cited was the agency’s “optional unit production policy” that allows producers to subdivide their acreage into smaller units and later declare a disaster on some of the units even though overall production was normal.
- ◆ provide better guidance and instructions to reinsured companies, particularly in servicing limited-resource producers. The inspector general noted that reinsurer companies have a strong financial incentive to direct their crop insurance promotion efforts to larger premium, larger producer clients, since their administrative fees are based on a percentage of the premiums.



("GMO Corn" continued from page 1)

import clearance yet from the EU:

- ◆ Roundup-Ready Corn™: Monsanto event GA21.
- ◆ BT Xtra™ – DeKalb event DBT 418.
- ◆ DeKalb GR™: DeKalb event DLL 25.
- ◆ DeKalb RoundupReady + Bty: Stacked variety of Monsanto 810 and GA21.
- ◆ Pioneer YieldGard + LibertyLink: Stacked variety of Monsanto 810 and AgrEvo T25.
- ◆ LibertyLink™ T14: AgrEvo event T-14. [Note: The vast majority of "LibertyLink" corn is derived from AgrEvo event T-25 that has received full EU clearance. If in doubt, please be sure to clarify from which LibertyLink event the grain is derived.]
- ◆ Starlink™: AgrEvo event CBH351.

The corn-related groups wrote: "Growers producing these varieties will have signed a grower agreement containing specific guidance on marketing of harvested

grain. "It is important to note that all other varieties of transgenic corn have received EU approval and are not subject to any marketing restrictions. These include any corn varieties incorporating traits solely from Novartis/Mycogen event Bt176, Novartis event Bt11, AgrEvo event T25 and Monsanto event 810."

**NGFA's Role:** Importantly, the NGFA's role has been to convey accurate information to member companies concerning the technological and regulatory-approval process for genetically modified grains. It is hoped that this information then can be used by member companies to make their own decisions on the purchase, sale and handling of such commodities.

**Whom to Call:** Companies manufacturing and selling transgenic corn have provided the following contacts within their firms to respond to questions:

- ◆ **Monsanto/DeKalb:** 1-800-Roundup (1-800-768-6387) (toll-free).
- ◆ **Pioneer Hi-Bred International:** 1-515-334-6897.
- ◆ **AgrEvo USA Co.:** Eric Hilbrands at 1-877-STARLINK (1-877-782-7546) (toll-free).



## GIPSA Proposes to Regulate Scales Used to Weigh Feed for Growers

The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration has proposed to amend its existing regulations under the Packers and Stockyards Act to include requirements for weighing feed provided by integrators and others under a "livestock or poultry growing arrangement" in which the weight of the feed is a factor in determining the payment to the grower.

GIPSA noted that its current regulations "do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers." Its proposed rule would apply to stockyard owners, market agencies, dealers, packers or live poultry dealers where the weight of the feed is a factor in determining payment or settlement to a livestock or poultry grower.

Specifically, the rule would require that such entities issue duplicate scale tickets that show: 1) the name of the agency performing the weighing service or the name and location of the firm supplying the feed; 2) the name and address of the livestock or poultry grower; 3) the name or initials of the person who weighed the feed (or the signature of the weigher if required by state law); 4) the location of the scale; 5) the gross weight, tare weight and net weight of each lot of feed assigned to an individual grower (if applicable); 6) the date and time the gross weight and tare

weight (if applicable) are determined; 7) the identification of each lot of feed assigned to an individual grower by vehicle or trailer compartment number and seal numbers(if applicable); 8) whether the driver was on or off the truck at the time of weighing; and 9) the license number or other identification numbers of the truck and trailer, if weighed together, or trailer if only the trailer is weighed.

The proposed rule also would require that the scales be: 1) equipped with a printer; 2) installed, maintained and operated to meet the applicable requirements contained in the National Institute of Standards and Technology's *Handbook 44*; and 3) tested at least twice annually (approximately every six months) by a "competent person," with the test results filed with the regional Packers and Stockyards Office. It also would require that such firms employ "qualified persons" to operate the scales.

**Submitting Comments:** The proposal, published in the April 2 *Federal Register*, is being reviewed by the NGFA's Feed Industry Committee and Grain Grades and Weights Committee. Comments are due by **June 1**, and should be submitted to: Deputy Administrator; GIPSA/USDA; Packers and Stockyards Programs; Stop 3641; 1400 Independence Ave., S.W., Washington, D.C., 20250-3641. Comments also may be faxed to (202) 205-3941, or e-mailed to PSP.GIPSA@usda.gov.



## Status of EU Approval of GMO Corn Varieties

The National Corn Growers Association has developed the following two tables to depict the status *as of April 20* of the EU's approval process for various GMO corn varieties:

Event	Registrant	Trade Name	Property	Status
Event 176	<u>Novartis</u>	NaturGard™ KnockOut™	Insect Resistance	EU Approved 12/96
Bt11	<u>Novartis</u>	YieldGard™	Insect Resistance	EU Approved 12/96
MON810	<u>Monsanto</u>	YieldGard™	Insect Resistance	EU Approved 6/98
T25	<u>AgrEvo</u>	LibertyLink™	Glufosinate Tolerance	EU Approved 8/98
MON GA21	<u>Monsanto</u>	Roundup Ready Corn™	Glyphosate Tolerance	Currently under UK review
T14*	<u>AgrEvo</u>	Liberty Link T14™	Glufosinate Tolerance	90/220 application withdrawn, currently under Novel Label Feed Safety review
MON 810 + T25	<u>Pioneer</u>	Yieldgard™ LibertyLink™	Stacked - Insect Resistance and Glufosinate Tolerance	Netherlands approval pending in 1999
DLL 25	<u>DeKalb</u>	DeKalb GR™	Glufosinate Tolerance	To EU from France early 1999
DBT 418	<u>DeKalb</u>	Bt Xtra™	Insect Resistance	To EU Commission 6/98
MON 810 + MON GA21	<u>Monsanto</u>	Yieldgard/Roundup Ready Corn™	Stacked - Insect Resistance and Glyphosate Tolerance	Not Pending
CBH 351	<u>AgrEvo</u>	Starlink™	Insect Resistance	Import clearance filed by the rapporteur country (Netherlands) in early 1999; Novel Food submission being prepared for spring 1999.

\* Registration application for T14 under EU regulation 90/220 has been withdrawn. Application for feed safety approval (Netherlands) is under review.

## Individual Seed Company Hybrid Numbers Not Approved by EU

Following is a list of individual company corn hybrid numbers not approved by the European Union as of April 20. While comprehensive in nature, the list is not complete and will be continually updated as numbers are received from the individual companies and/or EU approval status changes.

Pioneer Hi-Bred International, Inc.	DeKalb Genetics (Cont'd)	Garst	Cargill Hybrid Seeds	Agrigold Seed	Beck's Hybrids	Great Lakes
33Y11	607RR	8756RR	5021Bt/LL	6413 RR	5229RR	4701RR
38B22	626RR	8557RR	7821Bt/LL	6443 RR	5409RR	5701RR
34T14	658RR	8349RR	<b>Pfister Hybrids</b>	6483 RR	5727RR	5901RR/Bt
<b>DeKalb Genetics</b>	560GR	8896BLT		XA 2814 RR	5229RR/Bt	<b>Genex/Croplan Genetics</b>
	566GR	8773BLT	XA 4840 RR	<b>Wyffels Hybrids</b>	562Bt/LL	
	574GR	8692BLT	XA 6819 RR		592Bt/LL	
	626GR	8600BLT	XA 5844 BTRR		692Bt/LL	<b>Trisler</b> T-5272RR
	687GR	8585GLS/BLT	6605 LL	D5862Bt/LL	<b>Growmark (FS)</b> 6860RR 6760RR	
	493RR	8539BLT	<b>Asgrow Seed Co.</b>	W1927 W7284		<b>Growmark (FS)</b> 6860RR 6760RR
	512RR	8481BLT				
	520RR	8366Bt/LL				
	545RR	8692LL				
	566RR	8539LL				
574RR	618BtX	RX738RR	RX740RR	RX770RR	RX770RR/YG	
580RR	561SR	8481LL				
589RR						

[Source: National Corn Growers Association. Reprinted by permission.]



## **Pioneer Hi-Bred Responds to NGFA Questions on GMOs**

In response to phone calls received from many of its members, the NGFA on April 19 submitted the following questions to representatives of Monsanto, Pioneer Hi-Bred International and AgrEvo USA Co. As of press time, the NGFA had received responses from Pioneer Hi-Bred International. If and when received, the responses from Monsanto and AgrEvo USA will be posted on the NGFA's web site and printed in the May 6 edition of the *NGFA Newsletter*.

**Q 1. NGFA:** What information programs has your company implemented to advise producers concerning the marketing of GMO corn varieties not approved for import by the European Union? In what forms and through what mechanisms is this information being conveyed by your company to your producer-customers?

**A Pioneer Hi-Bred International:** Of the 200 corn hybrids sold by Pioneer in North America, only three are not yet approved for export to the European Union. Pioneer advises its customers purchasing these three relevant products that approval for export to the EU may not be received before harvest. As a result, we advise the producer to be prepared to feed the grain on-farm or sell it into domestic and non-restricted export markets only. This is also stated in our advertising, catalogue, memo book and other such informational items. We have worked very closely with our customers to ensure the EU regulatory system does not prevent them from enjoying the advantages provided by these products.

**Q 2. NGFA:** Please provide the common brand names which EU-unapproved corn varieties are being marketed?

**A Pioneer Hi-Bred International:** The three corn hybrids not yet approved for export to the EU are 38B22, 34T14 and 33Y11. They are being sold in relatively small volumes to meet specific needs in specific farming operations. These three hybrids contain both the YieldGard (MON810 Bt) and LibertyLink (T25) genes in combination. Both the YieldGard and LibertyLink genes are approved separately for export to the EU, but a new approval is needed when they are used in combination. Thus, all Pioneer hybrids containing only the YieldGuard gene, or only the Liberty Link gene, are approved for export. This is the vast majority of our GMO hybrids. It's only the approval of the genes when used in combination, commonly known as a "stack" product, that is pending in the EU.

**Q 3. NGFA:** What kind of agreement does your company have with farmer-customers of your GMO corn varieties concerning marketing? What do these contractual requirements stipulate? How are these agreements being implemented? What specific actions and activities is your company taking to address the potential need to keep such GMO corn varieties in domestic-use channels?

**A Pioneer Hi-Bred International:** Pioneer uses a Technology Use Agreement that must be read and signed by any grower who purchases one of the three hybrids not yet approved for export to the EU. The agreement, similar to the other informational materials, calls attention to the fact that regulatory approval for the product is pending in the EU. It notes that the grower must be prepared to keep the harvested grain out of European grain export channels by feeding it on-farm or using it in domestic feed markets only.

Pioneer customers who purchased one of the three hybrids have received a personalized reminder letter about the situation. The letter also included a listing provided by AgrEvo of local feed outlets as possible markets for the grain.

Pioneer has worked closely with its customers who purchased the three stacked products. The products were made available because they met a special need in a given farming operation. Given that two-thirds or more of the corn crop never enters export channels, there is no reason for a grower to lose the advantages offered by these hybrids.

**Q 4. NGFA:** The NGFA has received several questions from members about scientific tests that may be available to determine whether a particular GMO corn is an EU-approved or EU-unapproved variety. Please provide any information you have on: 1) the availability of tests and the varieties of your company's GMO commodities to which such tests apply; 2) how long it takes to conduct such tests; 3) the cost (per-test) of such tests; 4) the accuracy, precision of and detection level for these tests, as well as the repeatability of their results; and 5) Any other information related to the commercial availability, applicability and practicality of such tests.

**A Pioneer Hi-Bred International:** There are tests available commercially, but they vary significantly in time, cost and margin of error. Since Pioneer is not in the business of testing, someone providing that service would better answer your questions. Once such firm is Strategic Diagnostics Inc. of Newark, Del. SDI's vice president of sales and marketing is Kelly J. Cullum, who can be reached at (302) 456-6789.



# Clinton Administration Blocks Funding for Shortline, Regional RRs

The Clinton administration is blocking funding for rail loan programs passed by Congress in 1998 that could benefit grain rail users, especially those located on shortline and regional railroads.

The so-called Transportation Equity Act for the 21<sup>st</sup> Century (P.L. 105-178), signed into law on June 9, included authorization for up to \$3.5 billion in loans for a broad range of rail infrastructure projects. At least \$1 billion of that amount was to be earmarked for the primary benefit of smaller shortline and regional carriers, many of which serve agricultural rail users.

Projects eligible for loan assistance under Section 7203 of the law would include acquisition, improvement or rehabilitation of intermodal or rail equipment and facilities; refinancing of debt incurred for the aforementioned purposes; and development or establishment of new intermodal or railroad facilities. Operating expenses would not be eligible for loan assistance.

But the Clinton administration has failed to issue any proposed regulations to implement the new loan assistance program. Further, the administration's proposed budget for fiscal year 2000 (which begins Oct. 1) contains restrictions that, if implemented, would impede substantially the effectiveness of the loan-assistance program.

The House Transportation and Infrastructure Committee recently challenged the administration to implement the rail loan-assistance program. Specifically, the committee voted unanimously on March 2 to include in its report on the administration's budget proposals the following conclusions: "The (fiscal) 2000 president's budget also proposes to engraft upon the Rail Infrastructure Loan Program...two new burdensome requirements for guaranteed or direct loans made under the program. These requirements are not consistent with either the language or intent of the statute....The president's budget proposes to prohibit any direct or guaranteed loans unless the applicant demonstrates that the government is the lender of last resort. **This is inconsistent with the fundamental purpose of the program – to help modernize and rehabilitate rail infrastructure that, while creating many public benefits, may not be able to attract adequate private capital resources.** The second budget proposal is to require that all loans made under the program carry a market rate of interest. This is flatly contradicted by the statute, which requires the secretary of transportation to set a "reasonable" rate of interest, taking into account prevailing market rates. The committee therefore urges that neither of the proposed requirements be assumed." [Emphasis added.]

House Transportation and Infrastructure Committee

Chairman Bud Shuster, R-Pa., and Reps. James L. Oberstar, D-Minn., Nick J. Rahall, Jr., D-W.Va., and Thomas E. Petri, R-Wis., subsequently sent an April 15 letter to Transportation Secretary Rodney Slater and White House Office of Management and Budget Acting Director Jacob J. Lew calling for issuance of regulations implementing the loan-assistance program "as soon as possible" and withdrawal of the new requirements contained in the administration's budget proposal. Among other things, they wrote, "[e]ach month that passes without having the ground rules for the loan program in place is another lost opportunity to make timely improvements to our transportation system."

## Canadian Pacific Railway Clarifies Phosphine Policy

The Canadian Pacific Railway (CPR) has informed the NGFA that its January 1999 policy banning the use of Phostoxin (a particular brand of phosphine) for fumigating rail cars does **not** apply to grain originating in the United States that has been fumigated with a phosphine product in accordance with U.S. Environmental Protection Agency requirements and label directions, including the placarding of railcars.

CPR's policy stated that Phostoxin "cannot, for safety reasons, be used or in any way introduced into railway cars that will be handled on CPR track. Other substances may be permissible; but, before introducing any pesticide or toxin into any CPR railway car, written permission must be first obtained from CPR." The CPR's policy raised concern among U.S. firms shipping grain and grain products from U.S. origins to Canadian buyers. Since current U.S. procedures provide for the safe use and handling of phosphine fumigants, the NGFA urged the CPR to permit U.S. origins to continue using phosphine on shipments from the United States to Canada. The CPR agreed that this would be permissible.

In addition, the NGFA, in an April 16 letter to CPR, stated:

"The NGFA appreciates the clarification of CP's policy and the recognition that current U.S. procedures provide for safe use and handling of phosphine fumigants. As you know, a significant volume of grain also moves from Canadian origins to or through the United States. Many of the Canadian firms shipping such grain are NGFA Associate/Trading members doing business with our members here in the United States. We urge CP to grant permission to use phosphine at Canadian origins where label directions and protocols similar to those in the United States are in place and being followed."



# OSHA Proposes to Require Employers to Pay for Workplace Protective Equipment

The Occupational Safety and Health Administration (OSHA) is proposing that employers be required to pay for protective equipment, including personal protective equipment, required to be worn by employees at the workplace.

In a March 31 *Federal Register* notice, the agency said the change is needed to clarify that when employers are required to provide protective equipment, they must do so at no cost to the employee.

**Exceptions:** OSHA proposed to exempt employers from the payment requirement for safety-toe footwear and prescription safety eyewear if the following conditions are met:

- ▶ the employer permits the footwear or eyewear to be worn off-site;
- ▶ the footwear or eyewear is used on the job in a manner that does not make it unsafe for off-site use; and
- ▶ the footwear or eyewear is not designed for special use on the job.

OSHA said the proposed exceptions do **not** apply to metatarsal protection or special cut-resistant footwear because “these kinds of footwear are not generally used off the worksite, and employers often reissue metatarsal guards and cut-resistant footwear to subsequent employ-

ees.” The proposed exception also would not apply to any safety-toe footwear that cannot be worn safely off the worksite.

The agency noted that employers would be required to provide employees with protective goggles and any prescription eyewear that is mounted inside the full facepiece of a respirator because “such eyewear would fall under the “special use” conditions of the proposed rule.”

**Submitting Comments:** The NGFA’s Safety, Health and Environmental Quality Committee is analyzing the potential impact of OSHA’s proposal. Members wishing to submit their own comments may do so by sending an original and three copies to: OSHA Docket Office; Docket S-042; Room N-2625; U.S. Department of Labor; 200 Constitution Ave, N.W., Washington, D.C., 20210. OSHA said comments also may be faxed to (202) 693-1648 if followed by hard copy postmarked within two days. Comments may also be submitted electronically through OSHA’s internet site, <http://www.osha-slc.gov/e-comments/e-comments-ppe.html>. The deadline for submitting comments is **June 14**.

**Informal Hearing:** OSHA said it plans to conduct public hearings on the proposal in Washington on June 22. These hearings will extend through July 2 depending on the number of persons intending to participate, the agency said.

# GIPSA to Update HRW, HRS Wheat Calibrations on May 1

The U.S. Department of Agriculture’s Grain Inspection, Packers and Stockyards Administration (GIPSA) plans to update its official hard red winter (HRW) and hard red spring (HRS) wheat protein calibrations for official near-infrared transmittance (NIRT) instruments beginning May 1.

Simultaneously, the agency said it will adjust its hard white (HDWH), soft red winter (SRW) and soft white (SWH) wheat protein calibrations by issuing new standard slopes to make protein predictions more closely align with the Combustion Nitrogen Analyzer (CNA), which is GIPSA’s standard reference method.

GIPSA said that the calibration changes will more closely align the official NIRT protein measurements with the CNA reference method based upon system-wide averages. The agency also noted that individual samples of HRW and HRS wheat may predict protein differently from previous calibrations, and some individual samples at the upper and lower protein ranges may show a greater change in protein content from previous slope setting of HDWH, SRW and SWH wheat.

## GIPSA Offers Official Testing for Corn Oil, Corn Protein and Corn Starch:

In a related development, GIPSA announced it will begin offering official testing of corn for oil, protein and starch beginning May 19. The cost for the service will be \$1.50 per test when performed at the applicant’s facility; \$8.10 per test when performed elsewhere; and \$15.85 per test for an appeal.

## EPA Stakeholder Meetings on Phosphine Delayed

The Environmental Protection Agency has notified the NGFA that its three planned “stakeholder” meetings – in Atlanta Ga., Kansas City, Mo., and Sacramento, Calif. – on the agency’s proposed restrictions on the use of aluminum and magnesium phosphide have been delayed until late August or early September. EPA’s proposed rule would have the effect of precluding the use of phosphine gas as a grain fumigant at most facilities. [See *NGFA Newsletter*, March 25, 1999.]

## EPA Requires Additional Data in Risk Management Programs

Those companies affected by the Environmental Protection Agency's Risk Management Program will be required to provide additional information to the agency starting on **June 23**.

Facilities are required to develop and submit a risk management program if they manufacture, store, distribute, handle or use more than a threshold quantity of a regulated toxic chemical, flammable gas or volatile liquids. The threshold quantities for toxic substances range from 500 to 20,000 pounds. For covered flammable and volatile materials, the threshold is 10,000 pounds at any one time. The regulated substances and related threshold quantities most likely affecting grain, feed and farm supply facilities are:

- ◆ Propane: 10,000 pounds.
- ◆ Ammonia (*anhydrous*): 10,000 pounds.
- ◆ Ammonia (*concentration of 20 percent or more*): 20,000 pounds.

The threshold level is the amount present at the site at any one time. For instance, a facility with a propane tank with a 10,000-pound capacity is **not** required to have a risk management program if the tank is only filled to 8,000 pounds, even if it is refilled to that 8,000 pound level several times a year.

The changes adopted by EPA add four mandatory and five optional risk management program data elements. The agency also established specific procedures for protecting confidential business information when submitting risk management programs.

**Additional Mandatory Information:** Under the changes adopted by EPA, a facility's risk management program will be required to include: 1) the method for obtaining latitude and longitude of the structure containing the toxic substances, as well as a description of location which that latitude and longitude represent; 2) the Title V permit number; 3) the percent weight of a toxic substance in a liquid mixture; and 4) as part of the facility's five-year accident history report, the NAICS code that most closely corresponds to the process for which a release occurred

**Additional Optional Information:** While not required, facilities also have the option to include the following information in their risk management program: 1) the source or parent company e-mail address; 2) the source web site homepage address; 3) the phone number at the source where public inquiries should be directed; 4) the names of the local emergency planning committee; and 5) OSHA Voluntary Protection Program.

**Confidential Business Information:** EPA added two sections to the risk management program regulations that set forth the procedures to follow when asserting a confidential business information claim, as well as a list of data elements that cannot be claimed as confidential. The agency also requires that sources filing a confidential business information claim provide such information in an EPA-specified format. Sources asserting a confidential business information claim are required to submit their substantiation at the same time they submit their risk management programs.

## 1998 Agricultural Dust Explosion Statistics Published

Kansas State University (KSU) and USDA's Grain Inspection Packers and Stockyards Administration (GIPSA) have reported that 18 dust explosions occurred in the United States in 1998, compared to 16 in 1997 and a 10-year average of 13.5.

The 18 explosions occurring in 1998 resulted in seven deaths and 24 injuries, KSU and GIPSA reported. Eleven of the explosions occurred at grain elevators, while three were at feed mills. The remainder occurred at a wet corn mill, frozen dough factory, sugar plant and aircraft factory, KSU and GIPSA said.

The report found that the most common location for an explosion in the 1998 incidents was the bucket elevator leg. Ignition sources included bearing failure, hot metal, electrical problems, welding, fire and even a truck backfire. For several of the incidents, the cause remained undetermined, the report said.

Data for KSU and GIPSA's annual report are obtained from a variety of news sources and through voluntary cooperation of management at affected facilities. The full report is available under the "What's New" section of the NGFA's web site at <http://www.ngfa.org>.



# U.S., China Sign Bilateral Agricultural Agreement

U.S. and Chinese negotiators on April 10 signed a significant bilateral agricultural trade agreement under which the Chinese, among other things, agreed immediately to allow the import of U.S. wheat and other grains that are at or below a specific tolerance for TCK smut.

The agricultural trade pact, which also covered citrus, meat and poultry products, was the signature achievement of whirlwind negotiations between the Clinton administration and Chinese officials led by Premier Zhu Rongji attempting to reach agreement on conditions for China's entry to the World Trade Organization. Those negotiations are expected to resume later.

Under the agreement, the Chinese will not impose any special requirements on wheat that is at or below the new tolerance level of 30,000 spores per 50 grams. For instance, under the agreement, the Chinese government now will not be allowed to require that an entire shipment be shipped to one mill. It also cannot require that the wheat be processed or require that it be treated or sprayed. Wheat will be certified by USDA before it is exported. Previously,

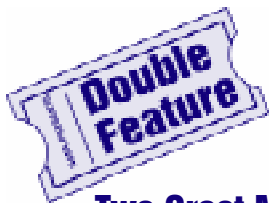
the Chinese government had imposed a zero tolerance level for wheat containing TCK spores, which had the practical effect of banning imports of U.S. wheat and other grains from the Pacific Northwest for more than 26 years for scientifically unjustified reasons.

China also agreed to recognize the U.S. certification system for meat and poultry, which U.S. officials said will allow U.S. products immediate access to all segments of the Chinese market. Previously, U.S. meat and poultry could be imported only by two entities for use in some hotels and restaurants.

**Summary of China's WTO Accession Commitments Available on NGFA Web Site:** A detailed, 17-page summary prepared by the U.S. Trade Representative's Office of the commitments made by China thus far during the WTO negotiations are available under the "Member's Only" and "What's New" sections of the NGFA's web site at <http://www.ngfa.org>. The "user's name" is ngfa. The "password" is soybean. Type all letters in lower case.

## NGFA Calendar

- May 24:** Grain Trade Rules and Barge Trade Rules Subcommittees (Joint Meeting) The Westin Crown Center Hotel, Kansas City, Mo.
- May 24:** Optimal Grain Marketing: Balancing Risks and Revenue Seminar, The Westin Crown Center Hotel, Kansas City, Mo.
- May 25-26:** Trading, Trade Rules and Dispute Resolution Seminar, The Westin Crown Center Hotel, Kansas City, Mo.
- June 15:** NGFA Trade Rules Committee Meeting, Minneapolis Grain Exchange, Minneapolis, Minn.



### Two Great Meetings Back-to-Back in Kansas City

- **Optimal Grain Marketing: Balancing Risks and Revenue Seminar, Monday, May 24**
- **Trading, Trade Rules and Dispute Resolution Seminar, Tuesday/Wednesday, May 25-26**