



NGFA Newsletter

Volume 51, Number 16, August 12, 1999

Senate Emergency Farm Aid Includes Increase in Payment Limit

...Next Step is Conference Committee with House in September...

The Senate on Aug. 4 approved its version of the fiscal 2000 agricultural appropriations bill (S. 1233) after incorporating \$7.6 billion in emergency farm assistance, including an NGFA-supported increase in the payment limit for marketing loan gains and loan deficiency payments (LDPs).

The next step will be a joint Senate-House conference committee to resolve differences between the respective chambers' bills. No emergency assistance was included in the House version (H.R. 1906) of the fiscal 2000 agriculture appropriations bill, which was passed on June 8. Congress, which began its August recess on Aug. 5, is scheduled to reconvene on Sept. 8.

The Senate-passed appropriations bill includes the following emergency aid:

◆ \$5.54 billion in market loss payments for 1999 crops (effectively doubling producer AMTA payments for this year).

- ◆ \$475 million in direct payments to soybean and "minor" oilseed producers for 1999 crops.
- ◆ \$650 million in additional crop insurance premium subsidies for the 2000 crop year.
- ◆ \$322 million in payments to livestock and dairy producers, to be administered by the secretary of agriculture.
- ◆ \$134 million for specialty crops, \$50 million of which is for fruits and vegetables.
- ◆ an increase in the payment limit for marketing loan gains and LDPs to \$150,000 for the 1999-crop year, up from the current \$75,000-per-person per-year limit.

According to the Senate Agriculture Committee, the 1996 farm law – exclusive of the \$7.6 billion in emergency aid – already would provide \$16.6 billion in federal

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Iowa Federal Judge Vacates NGFA Arbitration Decision; NGFA Seeks to Intervene and Appeal

The NGFA on Aug. 12 filed motions to intervene and immediately appeal a decision issued by an Iowa federal judge, who on Aug. 2 issued a decision vacating a NGFA arbitration award.

The extraordinary action was taken by the NGFA in response to a decision issued by Judge Mark W. Bennett of the U.S. District Court for the Northern District of Iowa (Central Division) in a case involving Cargill Inc. (a NGFA-member company) and Mark Hoffman (a nonmember producer). Cargill previously had been awarded a judgment by a three-person NGFA arbitration committee [NGFA Arbitration Case Number 1787], and had sought an order from the Iowa federal court confirming the NGFA arbitration award. Hoffman had asked the court to vacate the NGFA arbitration award.

The arbitration case, which included a two-day oral hearing, involved claims by Cargill against Hoffman on 10 corn contracts. Hoffman contended that Cargill breached the contracts by, among other things, not providing accurate destination weights.

The NGFA arbitrators rejected Hoffman's claims and awarded Cargill a net judgment of \$408,262.50, plus interest,

against Hoffman. Subsequently, the federal district court held its own hearing on Cargill's motion to confirm the judgment and heard testimony from several witnesses who had not been called by Hoffman's counsel during the NGFA arbitration oral hearing. The NGFA filed a "friend-of-the-court" brief with the federal district court after learning of the hearing conducted by the court.

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**It's been hot this week!
(The NGFA's web site that is.)
Check it out!**



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

Enter the User Name: ngfa

Enter the Password: soybean



The Courts and Arbitration

As noted on page 1 of this week's *NGFA Newsletter*, an Iowa Federal District Court on Aug. 2, refused to enforce an arbitration award issued by a NGFA arbitration committee. The federal judge, while finding no legal basis under the Federal Arbitration Act for rejecting the decision (in fact the judge affirmed that the NGFA process met the guidelines of this law which governs U.S. arbitration processes), still refused enforcement on the grounds that he judged the process to be "fundamentally unfair."

Having served as National Secretary from 1984-86, during which I administered the NGFA's Arbitration System – and having observed the system in operation for almost 20 years – this judge's descriptive words of NGFA's system are a bit much for me to swallow.

My main message to you, our members, is to affirm what you already know. The NGFA Arbitration System is administered and operates with absolute integrity. I can't imagine a system any more "fundamentally fair." There are redundant safeguards built into the system to ensure that arbitrators are not prejudiced or have conflicts of interest. Further, we ask the ultimate of the volunteer arbitrator – to put his/her reputation on the line by signing the decision and making the decision public. If you've served as an arbitrator, you know what that means. You think long and hard about every aspect of the decision, because it will be reviewed by literally thousands of people in the industry for its rationale, logic and fairness.

In short, the NGFA Arbitration System, and the decisions of its arbitrators, are judged anew with every published case and decision. If there ever were a problem of fairness, it would become apparent quickly. Professor Lisa Bernstein of the University of Chicago Law School has studied private arbitration systems throughout the world and states, "NGFA's system is one of the best commercial systems in existence...precisely because it has so many procedural safeguards for fairness that include making public both the decisions and the rationale."

In my 20 years with the NGFA, I do not remember a court ever refusing to affirm an NGFA arbitration award. As noted in the *Newsletter* article, there will be an appeal of this case. Given the seeming weak legal grounds underpinning this decision, there seems to be a high probability that the decision will be overturned. But there are no guarantees. If it happened once, the unthinkable could happen again. Rest assured that the NGFA will use its resources to defend the legal status of its Arbitration System.

In general, the U.S. legal system works well. But clearly there are some exceptions. When I look at this particular judge's decision, why do my thoughts turn to wondering how many other cases are judged by judicial fiat

versus the facts? The court's logic and decision in this case certainly does reaffirm one of the primary benefits of arbitration – resolving commercial disputes, to every extent possible, without resorting to the court system.

In Memoriam

The NGFA was saddened to learn of the death on July 21 of **Paul C. Hughes**, president of Farmers Soybean Corp., Blytheville, Ark.

Hughes was a dedicated, long-time member of the NGFA, who served with distinction on the Grain Grades and Weights Committee, the Barge Users Committee and as a past member of the NGFA's Board of Directors. He was co-founder and first president of the Midsouth Grain Association from 1954-56, and subsequently served as its executive secretary from 1956-93. He also was a member of the Federal Grain Inspection Service's advisory committee.

The Hughes family has requested that memorials be sent to the Paul C. Hughes Scholarship Fund at the Mississippi County Community College, P.O. Box 1109, Blytheville, Ark. The NGFA extends its sympathy to the Hughes family.

Personal

Long-time NGFA member **Joe Allen** has returned to the United States from his four-year assignment in Poland, where he was senior project adviser for a grain storage and marketing project funded by the U.S. Agency for International Development and the U.S. Department of Agriculture.

The project led to the development and introduction of the first system of warehouse receipts in Eastern Europe, and to the founding of the Polish Grain and Feed Chamber, which is an affiliated association member of the NGFA. Allen also has worked in Russia, Hungary and Brazil.

Allen has joined the staff of Advance Trading Inc., Bloomington, Ill., where he will serve as director of business development. Allen has more than 26 years of agricultural experience, having previously served as a vice president at Consolidated Grain and Barge Co., St. Louis, Mo. He is a past member of the NGFA's former Terminal Elevator and Marketing Committee, which subsequently was reorganized with the former Transportation Committee to form the Rail Shipper/Receiver Committee.



("Emergency Aid" continued from page 1)

payments to farmers, representing 38 percent of the total 1999 projected net farm income of \$43.8 billion. The additional farm spending approved by the Senate would increase projected net farm income to more than \$50 billion – of which about 47 percent would be from federal government payments. The \$7.6 billion package represents half of the estimated federal government surplus, the Senate Agriculture Committee said.

The Senate emergency farm aid provisions, approved by an 89-8 vote, were offered by Sen. Thad Cochran, R-Miss., after the Senate rejected a \$10.79 billion aid package offered by Sen. Tom Harkin, D-Iowa. The Democrats' plan, among other things, would have

provided \$200 million for an "emergency short-term land diversion program," \$100 million for extending the current nine-month loan, and \$30 million for an "emergency conservation program."

The package also includes an amendment offered by Sens. John Ashcroft, R-Mo., and Chuck Hagel, R-Neb., that prohibits the president from imposing unilateral economic sanctions on food and medicine exports without congressional approval.

Complete coverage of the debate and passage of S. 1233 is available on the "Breaking News and Info" section on the home page of the NGFA's web site at <http://www.ngfa.org>. The NGFA's statement to the Senate, issued on Aug. 2, is reported in the enclosed edition of *Committee Action*.

Crop Insurance Reform on Agenda when Congress Reconvenes

Crop insurance reform will be on the agenda when Congress returns from its August recess on Sept. 8.

Here's where things currently stand:

► **House:** The House Agriculture Committee on Aug. 3 approved and sent to the floor the crop insurance reform bill (H.R. 2559) introduced by Chairman Larry Combest, R-Texas. Among other things, the bill would: 1) increase government premium subsidies at all levels of crop insurance coverage to encourage more producer participation; 2) provide enhanced coverage for multi-year disasters; and 3) develop a pilot program for livestock price insurance. A summary of the bill was reported in the July 2 edition of the *NGFA Newsletter*.

► **Senate:** The outcome – as yet unclear – of the Senate's debate on crop insurance reform will be critical to the eventual outcome. Currently, there are three major bills that have been introduced or have been unveiled in draft form:

- **S. 529:** Authored by Sens. Pat Roberts, R-Kan., and Robert Kerrey, D-Neb., this bill would invert the current subsidy structure to encourage more producer participation at the higher coverage levels. It also would provide for livestock price insurance.
- **S. 1108:** Introduced by Sen. Thad Cochran, R-Miss., this bill would increase crop insurance premium subsidies; grant additional premium discounts to producers who use sound management techniques; and increase catastrophic (CAT) insurance coverage.
- **Lugar Bill:** While not yet introduced, Senate Agriculture Committee Chairman Richard Lugar, R-Ind., has unveiled the principles of his crop insurance bill that features additional direct agricultural marketing transition (AMTA) payments to producers if they utilize at least two of eight specific risk

management practices. The bill also would provide an insurance premium discount for producers not enrolled in the farm program, and examines the possibility of covering livestock through whole farm insurance.

Hill Preview – What's Ahead this Fall:

The twin issues of emergency farm relief and crop insurance reform will be at the forefront of congressional action on agriculture this Fall.

While there are several viewpoints on these topics, dependent upon the political party and chamber involved, here's how things may play out:

► **Senate:** Senate Agriculture Committee Chairman Richard Lugar, R-Ind., and other Republican senators have agreed that some emergency farm spending this year will be necessary, but believe extensive hearings need to be conducted by the Agriculture Committee prior to any changes being made to the 1996 farm law. The committee conducted a series of hearings on the subject during the first week of August, but Lugar believes more hearings will be needed.

Senate Democrats have a different view, asserting that the amount of emergency spending agreed to in the recently passed Senate appropriations bill for fiscal 2000 is inadequate. They will advocate additional funding when a joint House-Senate conference committee meets to resolve differences in the two chambers' bills. In addition, they question the need for more hearings and want instead to make substantive changes to the 1996 farm law now, either through the appropriations bill or separate legislation.

► **House:** The consensus appears to be that House Agriculture Committee Chairman Larry Combest's crop insurance reform bill (H.R. 2559) will be the linchpin of that chamber's actions to address the farm "safety net" issue this year. But Combest has expressed a

("Hill Preview" continued from page 3)

willingness to conduct hearings into long-term farm policy once the Congress returns in September. As for the emergency farm assistance package, it is very possible that the Senate's relief package will be agreed to by the House, with some as-yet-unspecified changes.

► **Clinton Administration:** While never drafting a proposal of its own, the White House has urged Congress to pass a short-term multi-billion dollar relief package. Secretary of Agriculture Dan Glickman, while calling for immediate emergency relief, also has advocated a variety of supply control programs, including: 1) expansion of the Conservation Reserve Program beyond the current 36.4-million-acre limit; 2) a three- to five-year version of the 1950s-era soil bank program; and 3) authority for a short-term land-idling program.

In his Aug. 3 testimony to the Senate Agriculture Committee, Glickman also supported: 1) an increase in the payment limit for marketing loan gains and LDPs; 2) authority to extend marketing assistance loans beyond the current nine-month limit; 3) low-interest loans for the construction of on-farm storage; and 4) restoration of the farmer-owned reserve program.

CFTC Reauthorization: Also likely to receive initial consideration this Fall is legislation to reauthorize the Commodity Futures Trading Commission. Staff members of the House and Senate Agriculture Committees currently are working on legislative drafts, and intend to circulate them later this year for discussion and input by members of Congress, the CFTC and other interested parties. Introduction of the bills likely will not occur until Congress returns in January after its holiday recess.



TECH TALK

by **thomas c. o'connor**
director of technical services

Japan to Implement New Labeling Regulations on GMO Products

Japanese government officials have confirmed with the NGFA that Japan intends to impose labeling requirements for certain food products containing genetically enhanced agricultural products destined for direct human consumption.

Japan plans to announce the new labeling regulations by April 2000 and implement the labeling program by April 2001. In so doing, they will be implementing a Japanese government committee's final report, issued on Aug. 10, recommending a labeling plan that calls for **mandatory labeling** of:

- products containing genetically enhanced material that is not equivalent to conventional foods with respect to the constituents' nutritional value or method of use, such as high-oleic soybean oil; and
- products substantially equivalent to conventional foods, but containing DNA or protein from genetically enhanced material that can be detected with testing. Products falling into this category would include tofu, green soybeans, soybean sprouts, stewed soybeans, popcorn, frozen and canned corn, corn starch and soy powder.

Under the proposed program, labeling would apply only to the top three ingredients that make up at least 5 percent of the volume of the product.

No labeling would be required for products substantially equivalent to conventional foods that do **not** contain DNA or protein from genetically enhanced material that can be detected with testing. Products not requiring labeling would include soybean oil, corn oil, canola oil, corn syrup and soy sauce, Japan said.

Importantly, a Japanese official told the NGFA that the proposed labeling plan will **not affect feed grains or bulk commodities not destined for direct human consumption**.

Japan says its labeling program is designed to provide consumers with more information regarding the ingredients in their food, and stressed that all 22 currently approved varieties of genetically enhanced agricultural products have been deemed safe by Japanese regulatory authorities.

Clinton Signs Legislation Exempting Propane from Risk-Management Rule

In a significant development, President Clinton on Aug. 5 signed into law legislation that removes flammable fuels – such as propane – used or held for sale as fuel from the list of substances covered under the Environmental Protection Agency's risk-management program.

The law means that grain, feed and processing facilities that use propane as a fuel – such as for boilers or grain dryers – will be exempt from the requirement to submit a risk-management program to EPA.

Despite removal of flammable fuels from the risk-management program, EPA says that firefighters and other local emergency response agencies should receive information on the potential off-site effects of accidents involving flammable fuels. EPA says it will be working with industry and the National Fire Protection Association to "ensure that local responders receive that information."

Previously, facilities that stored propane exceeding a certain threshold level at any one time were required to submit a risk-management plan. The legislation (S. 880) was introduced and spearheaded by Sen. James M. Inhofe, R-Okla.



USDA Notice on Uniform National LDP Rate Still Under Review

...USDA Agrees to Address Aberrations in Existing PCP-Based System for Fall-Harvested Crops...

The NGFA has learned the U.S. Department of Agriculture has redrafted and begun the clearance process on its planned notice seeking public comment to implement a uniform national loan deficiency payment (LDP) rate.

As of today, the new draft notice was under review by USDA's General Counsel's Office. Prior to publication in the *Federal Register*, the notice also must be approved by the White House Office of Management and Budget.

As reported in the July 29 edition of the *NGFA Newsletter*, it was OMB that raised objections over the narrow scope of the initial draft of USDA's notice. Among six specific objections about the notice, OMB voiced concern over USDA's plan to seek comment only on its plan to establish a national LDP rate; to provide only a 30-day comment period; and to not seek comment on other alternatives to improve the current terminal market/differential/posted county price-based system.

The PCP-based system is used by USDA to determine marketing loan gains and LDPs for producers, and also is used as an unofficial guide by Commodity Credit Corporation merchandisers for determining local cash values when selling loan collateral forfeited into CCC's ownership.

As currently drafted, USDA's notice will present the problems encountered with the current PCP-based approach and will lay out its proposed method for determining a national LDP rate. But through the questions posed, the notice also will enable those submitting comments to suggest alternatives to a national LDP rate approach, USDA officials told the NGFA.

USDA Agrees to Review Local Disparities in PCPs:

Given the likelihood that the current PCP-based system will remain in place for all 1999 crops, USDA officials met with a NGFA Country Elevator Committee task force on Aug. 4 in Kansas City, Mo., to discuss ways to reduce aberrations in PCP values between various states and counties. At the meeting, USDA officials agreed prior to fall harvest to review and adjust, as appropriate, some of the local posted county price (PCP) valuations that may be out of line with neighboring areas in an effort to minimize abnormal grain flows.

USDA officials reiterated with the NGFA today that for the short-term, they will attempt to identify and analyze situations in which aberrations in PCP values appear to exist, and make necessary adjustments. USDA officials said they already were making such adjustments to address PCP anomalies that exist between counties adjacent to the Iowa and Minnesota border. However, USDA noted that, given the short time before fall harvest, it was limited as to how many situations could be reviewed, and if deemed necessary, changed.

As part of a longer term strategy, USDA officials said they intend to obtain more local price data to compare with PCPs, and will examine whether to add additional terminal markets to improve the market-tracking performance of the PCPs. USDA said it will seek the industry's cooperation in obtaining necessary data to achieve this goal, and pledged to work cooperatively with NGFA on an ongoing basis to improve the current PCP-based approach.

CCC Extends Period for Storing Warehouses to Purchase Forfeited Loan Grain: The NGFA has learned that USDA has extended – to 10 business days – the amount of time that Farm Service Agency county offices will retain warehouse receipts for forfeited loan collateral, during which time the storing warehouse may purchase the stocks. Previously, the agency retained the warehouse receipts for five business days. After the 10-day period, the receipts are forwarded to the Kansas City Commodity Office, which records the grain into CCC's inventory – usually within one to two weeks.

CCC currently is selling wheat, feed grains, rice and oilseeds forfeited into its ownership. However, wheat not purchased before the forfeited loan collateral is recorded into CCC's inventory by KCCO is being retained in CCC's ownership for potential use as food assistance.

Correction

The NGFA has learned that it was misinformed concerning the application of the current \$75,000 payment limit for marketing loan gains and loan deficiency payments (LDPs) in an article entitled "USDA, Congress Examining Farm Program Payment Limits," that appeared on page 1 of the July 15, 1999 edition of the *NGFA Newsletter*. The article erroneously indicated that a LDP or marketing loan gain on wheat planted in 1998 and harvested in 1999 would not be counted against the 1999 \$75,000 payment ceiling.

The statutory requirement is that the \$75,000 payment limit for LDPs and marketing loan gains is applied on a crop-year basis. The crop year is determined on the basis of the normal harvest date for the commodity. For example, fall wheat planted in 1998 for harvest in 1999 is considered 1999-crop wheat. Cotton planted in 1999 for harvest in 1999 also is considered 1999-crop cotton, even though harvest may not be completed until 2000. Thus, the \$75,000 payment limitation for LDPs and marketing loan gains applies to the combined total of 1999 crop wheat, corn, soybeans, cotton, and any other eligible crops that would normally be harvested in 1999.

We apologize for any inconvenience this error may have caused.



("NGFA Arbitration" continued from page 1)

While Judge Bennett found that there were no statutory grounds under the Federal Arbitration Act to vacate the arbitration award, he concluded that he could set the decision aside on what he termed "extra-statutory" grounds. In a previous decision in which he had ordered the parties to proceed with arbitration, Judge Bennett had been critical of arbitration generally, as well as the NGFA Arbitration System. Indeed, Judge Bennett said that it was "[w]ith grim reservation, the court concludes that it is unable to decline enforcement of the arbitration agreement at this posture of the proceedings.... However, the court also notes that Hoffman is not without redress if he is unable to receive a fair opportunity to present his claims."

The NGFA on Aug. 11 issued a statement regarding Judge Bennett's decision, which is reproduced in full below:

"The National Grain and Feed Association has operated an arbitration system, which has functioned without parallel for more than 100 years. Other industry associations have used it as a model for their own systems, and no decision rendered in NGFA arbitration has ever been overturned by a court.

"Because of this record, and the ongoing efforts of our Association to assure that the process remains fair, the NGFA is shocked and disappointed that Judge Mark Bennett declared on Aug. 2, 1999 that the process was unfair as it operated in the case under review (Hoffman v. Cargill, Inc., No. C97-3015-MWB, U.S. District Court, Northern District of Iowa, Central Division). While the NGFA is not a party in this case, we are hopeful that the case will be reviewed by the court of appeals, and optimistic that if such a review occurs, Judge Bennett's view of the NGFA arbitration process will be rejected.

"There are several points that bear emphasis in reviewing Judge Bennett's decision:

- " 1. Judge Bennett expressed a view even prior to the arbitration proceeding that alternative dispute resolution (such as arbitration) 'is an increasingly popular mantra,' but that he would not hesitate to overturn an arbitration decision if it did not meet what he believed was a 'minimum level of fairness.' [Hoffman v. Cargill, Inc., 968 F.Supp. 465 (N.D. Iowa 1997).]
- " 2. Following a two-day oral hearing before the NGFA arbitrators and the issuance of their decision, Judge Bennett conducted a hearing in which he permitted witnesses to testify who had not testified during the arbitration proceeding. As a result, he heard evidence that was never presented to the arbitration panel.
- " 3. Despite his overall view of the arbitration process, Judge Bennett conceded that the NGFA process was valid under the standards of the Federal Arbitration Act [9 U.S.C. §9 et seq.] His statutory analysis concluded that: 1) the award was not based on

corruption or fraud; 2) there was no 'evident partiality' or corruption among the arbitrators; 3) the arbitrators were not guilty of misconduct in their scheduling or conduct of the arbitration hearing itself; and 4) the arbitrators did not exceed their authority. Consequently, Judge Bennett did not conclude that there were any statutory violations in either the NGFA arbitration process or the particular arbitration case under review.

- " 4. Judge Bennett concluded that he could review the arbitration decision under what he called 'extra-statutory standards' to determine whether the arbitration process and result were 'irrational,' 'arbitrary' and against public policy, or demonstrated 'fundamental unfairness.' As a general rule, other courts have not permitted judicial review of challenges to arbitration which go beyond the statute, and there has been no decision on the question by the court to which Judge Bennett's decision will be appealed (U.S. Court of Appeals for the Eighth Circuit).
- " 5. Judge Bennett claimed he found the following 'flaws' in this arbitration decision and the NGFA process which formed the basis for his conclusion that he should not enforce the arbitrators' award:
 - a. It was 'irrational' for the arbitrators to conclude that Cargill's scales did not give inaccurate weights. However, the NGFA believes that it is neither the role of the Association, nor a reviewing court, to second-guess the arbitrators' conclusions on issues such as this which are largely factual in nature.
 - b. It was 'fundamentally unfair' because the grain elevator 'imposed' the arbitration provision on the farmer (a so-called 'contract of adhesion') and, in that context, the farmer is not required to show that he was prejudiced by any of the procedures which are deemed to be unfair. The 'unfair' procedures which Judge Bennett alleged existed in this case were that the arbitrators must be NGFA members, that the NGFA rules do not provide that parties may subpoena witnesses or documents, and that the losing party in an arbitration must pay into escrow the amount of the arbitrators' judgment before it may appeal to the Arbitration Appeals Committee. The NGFA believes that each of these requirements is fair and appropriate, and leads to a practical, relatively inexpensive dispute-resolution mechanism. The NGFA also notes that other arbitration systems have similar requirements, and that the posting of a judgment during an appeal is consistent with the appeal rules of most courts throughout the country, including federal courts such as Judge Bennett's. It also is noteworthy that none of these perceived problems was shown to have any impact on this particular case."

Ohio Federal District Court Opinion Addresses HTA Issues

A federal court has ruled that certain aspects of hedge-to-arrive contracts offered by a now-defunct agricultural cooperative are unlawful under the Commodity Exchange Act.

The case arose from a lawsuit brought by CoBank, as assignee of the elevator's assets, against the producer-sellers for nonperformance on several HTA contracts. In a decision issued July 27, U.S. District Judge James G. Carr, in Toledo, Ohio, among other things, found that:

- ▶ the original HTA contracts offered by the grain elevator were "valid cash-forward contracts under [the Commodity Exchange Act] because they impose an obligation on the [farmer-sellers] to make physical delivery of corn at some point in the future or to negotiate a 'bookout' to extinguish the obligation to make such delivery;"
- ▶ "option clauses" contained in the original HTA contracts were unlawful options [under 7 U.S.C. § 6c(b)]. The judge's opinion described the options as "a corn call, which, when exercised, resulted in the creation of new HTAs ('resultant HTAs')." The "resultant HTAs" did not contain option clauses. Judge Carr found that the option clauses were exercised by the grain elevator, and that the exercise resulted in the subsequent HTA contracts being litigated. Consequently, he concluded that "it would be against public policy to enforce the resultant HTAs;" and
- ▶ while finding that the "resultant HTAs" were unenforceable, the judge nevertheless concluded that "the original HTAs remain enforceable because the illegal options clauses [contained in those original HTAs] are severable."

A copy of the decision [*CoBank v. Mervin Alexander*] is

available on the NGFA's web site at: <http://www.ngfa.org>. To access the decision, click on the "Reference Desk" heading, then click on the "Legal" section.

Working Drafts of Potential Changes to NGFA Grain Trade Rules Available

The NGFA Trade Rules Committee is in the process of considering several significant changes to the Trade Rules, as well as reorganizing and streamlining the rules.

The potential changes include the incorporation of proposals submitted by a special Country Elevator Committee task force regarding producer trade rule issues. Significant changes to the definitions of "weights" in Grain Trade Rule 4 – including the addition of definitions for Canadian weights – also are being considered.

NGFA Trade Rules Committee Chairman James Keistler has directed that the working drafts of changes to the NGFA Grain Trade Rules be posted on the NGFA's web site for review and comment by members. The working draft may be accessed at: <http://www.ngfa.org>. Click on the "Committee Action" heading on the home page. Then click on the "Trade Rules Committee" icon. The working draft of potential Trade Rules changes is posted under the "Issues" section.

Comments or questions should be directed to David Barrett at the NGFA at (202) 289-0873, or via e-mail to: dbarrett@ngfa.org. The Trade Rules Committee likely will meet again this Fall to discuss the proposals.



RAILS, RIVERS AND ROADS

by david c. barrett jr.
counsel for public affairs

Morgan Renominated to Chair Surface Transportation Board

President Clinton on Aug. 5 officially renominated Surface Transportation Board Chairman Linda Morgan for

Rail User Input Again Sought on Implementation of Conrail Split

The NGFA again is seeking input from member rail users prior to the Aug. 19 meeting of the Conrail Transaction Council. At the meeting, both Norfolk Southern and CSX are to provide progress reports on their efforts to resolve rail service problems that have arisen since the split-up of Conrail on June 1. The NGFA again will have the opportunity to present to the council service-related issues raised by NGFA members. Please provide input on rail service since the split date to David Barrett [e-mail at dbarrett@ngfa.org] **on or before noon on Aug. 18**. The report presented by NGFA at the July 22 meeting of the Conrail Transaction Council is available on the NGFA's website at: www.ngfa.org. Click on the "Reference Desk" icon. Then click on "Transportation" section.

another term, which would expire on Dec. 31, 2003. Likewise, the White House announced that Morgan would continue to be designated as chairman by Clinton.

Morgan's current term expired on Dec. 31, 1998, but she can continue to serve without Senate confirmation until Dec. 31, 1999. If not confirmed by that date, she would be required to leave the STB. The NGFA earlier this year sent letters to both the White House and the Senate in support of the her renomination and redesignation as chairman.

But Morgan does not have unanimous support. Her primary opposition has come from certain rail labor groups that have not supported her renomination because of the STB's treatment of rail labor agreements when considering rail mergers. While only the Senate has a say in her reconfirmation, House Transportation and Infrastructure Committee Ranking Democratic Member James L. Oberstar, D-Minn., sent a scathing three-page letter on July 19, 1999 to Clinton outlining his "serious concerns" over Morgan's renomination.



MEMBERSHIP MATTERS

by todd kemp
director of marketing

Membership Madness Reaches a Thrilling Climax!

As the *NGFA Newsletter* went to press, only two business days remained in the first-ever *Membership Madness* event. So far, 14 new member companies have joined the NGFA during the month-long event, with a goal of reaching 20. The NGFA's recruiters have been madly working on prospects like those listed at the right. New members since the last *NGFA Newsletter* (with sponsors in parentheses) are:

- **KC Supply Co.**, Kansas City, Mo. (Kevin Miles, The Boone Group).
- **Association of Feed Ingredient & Cottonseed Product Dealers**, Little Rock, Ark. (Jack Goldfield, Nathan Segal & Co.).
- **CMC Industrial Equipment**, Burnaby, B.C. (Brian Hyland, James Richardson, International)
- **Northwest Trading (NWT) Inc.**, Vancouver, Wash. (Jim Shanley, J.D. Heiskell & Co.)
- **Central Missouri AGRIService LLC**, Marshall, Mo. (JoAnn Brouillette, Demeter L.P.)

At 5 p.m. on Aug. 16, a random drawing will be held for the *Membership Madness* prize: two free nights at any Marriott property and complimentary airfare. Each successful recruiter since July 15 is eligible for the drawing. Final results of *Membership Madness* and the winner's name will be published in the next edition of the *NGFA Newsletter* and on the "Membership Madness" section of the NGFA's web site at: <http://www.ngfa.org>. Of course, membership recruiting – a year-round effort – won't end



with *Membership Madness*. Members who recruit new member companies still will qualify for awards and prizes to be presented at the NGFA's 104th annual convention in March at the Hotel del Coronado in San Diego, Calif. Need membership materials? Questions about prospects or recruiting strategy. Call Todd Kemp on the NGFA staff at (202) 289-0873, or e-mail your message to tkemp@ngfa.org.

Advertising, Trade Show Opportunities Await!

The NGFA wants to alert member companies to the following opportunities:

- ◆ **NGFA Directory/Yearbook Advertising:** Production of the 1999-2000 edition of the *NGFA Directory/Yearbook* is underway. NGFA's staff is in the final stages of accepting advertising for this much-used publication. If you have not yet placed your ad, contact Todd Kemp or Alison Bawek at the NGFA at (202) 289-0873.
- ◆ **Trade Show:** It's not too early to consider exhibiting at the NGFA's Trade Show in St. Louis on Dec. 5-6. In fact, the show already is halfway sold out. A special emphasis is planned this year on biotechnology developments. For information, contact Todd Kemp or Candace French at (202) 289-0873.