



NGFA Newsletter

Volume 51, Number 19, September 23, 1999

Senate Ag Committee Sets Hearings on Biotech-Enhanced Grains

...NGFA Accepts Invitation to Testify...

The Senate Agriculture Committee has scheduled two days of hearings for Oct. 6-7 on agricultural biotechnology issues.

The hearing on Oct. 6 is scheduled to be devoted to a discussion on the scientific issues surrounding agricultural biotechnology – such as the insertion of various traits (DNA and proteins) of different commodities into a host commodity to improve its disease or insect-resistance, yields and end-use properties – with testimony provided by experts from academia and the scientific community.

The Oct. 7 hearing is scheduled to be devoted to an examination of the U.S. regulatory framework for approving the commercial release of biotechnology-enhanced seed for planting, with testimony expected from the Environmental Protection Agency, the U.S. Department of Agriculture and the Food and Drug Administration. The second day of hearings also will feature testimony from seed and technol-

ogy providers, producer groups, grain handlers, processors and food and consumer product manufacturers.

The NGFA has accepted an invitation from Senate Agriculture Committee Chairman Richard G. Lugar, R-Ind., to testify at the Oct. 7 hearing. The NGFA's testimony is scheduled to be presented by **Robert C. Smigelski**, Agriculture Group operations manager for the Grain Division of The Andersons, Maumee, Ohio. Smigelski is a member of the NGFA's Board of Directors and is chairman of the NGFA's Grain Grades and Weights Committee, one of four NGFA committees that has discussed and formulated recommendations since June concerning issues surrounding biotechnology-enhanced grain and grain products. The other committees that have been involved are: Country Elevator Committee, Feed Industry Committee and Food and Feed Safety Committee.

(Continued on page 5)

EPA May Significantly Alter Phosphine Fumigation Restrictions

...Final Rules Expected by End of 1999...

The NGFA has learned that the Environmental Protection Agency may be on the verge of dramatically scaling back its proposed restrictions on the use of phosphine fumigation at grain-handling facilities.

At a meeting on Sept. 22 with representatives of the manufacturers (registrants) of aluminum and magnesium phosphide, the NGFA was told by the registrants that it appears EPA now is willing to endorse safety measures similar to those contained in current labeling for these chemicals, with only minor changes. Importantly, the NGFA was told that, after reviewing the NGFA's recently released economic analysis showing the potential economic impact of EPA's proposed "risk-mitigation measures" would range from \$341 million to \$1.135 billion, the agency decided that its proposed 500-foot ban and 750-foot notification proposals were seriously flawed and infeasible. In their place, the registrants reported, EPA plans to require that facilities develop a "fumigation management plan" prior to fumigating with aluminum and magnesium phosphide. It was reported that the plan would include site characteriza-

tion, monitoring and some form of notification of employees and local emergency responders.

Next Steps: The registrants told the NGFA that they plan to develop and submit draft label language to EPA by the end of October for discussion. The NGFA

(Continued on page 12)

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



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

Enter the User Name: ngfa

Enter the Password: soybean



Bratten Recipient of Chairman's Award



John L. Bratten (left), chair of the NGFA's Rail Shipper/Receiver Committee, receives the **Chairman's Award** for "extraordinary leadership and outstanding service" to the NGFA and the industry. Bratten was honored by NGFA Chairman Michael Donnelly, president of R.F. Cunningham & Co., Inc., Smithtown, N.Y., during the Sept. 12-13 meeting of the NGFA's Board of Directors. Bratten, who is vice president, transportation, for the Central Soya Co. Inc., Fort Wayne, Ind., has been instrumental in working with the nation's rail carriers to forge the historic agreement – and its subsequent expansion – to utilize NGFA arbitration and mediation to resolve certain types of rail disputes. Bratten also has ably represented the NGFA's interest on rail matters before Congress and the Surface Transportation Board.

NGFA Chairman Donnelly Announces New Committee Chairpersons

NGFA Chairman Mike Donnelly this week announced changes in two NGFA committee chairperson positions.

Tom Coyle, a vice president with Nidera Corp., Stamford, Conn., will serve as chair of the Risk Management Committee, which addresses issues related to futures and cash markets and risk-management matters. For the past two years, Coyle has served as co-chair of the committee with **Diana Klemme**, vice president of Grain Service Corp., Atlanta, Ga., who will continue to serve on the committee. "During the past two years, Tom has contributed substantial energies to NGFA programs and demonstrated his ability to lead the NGFA in this area," said Donnelly, president of R.F. Cunningham & Co., Inc., Smithtown, N.Y. "The industry and members of the NGFA owe a debt of gratitude to Diana Klemme. The time and effort she poured into her work during her eight-year service as committee chair is exemplary. The NGFA accomplished much during her tenure as chair."

In addition, Donnelly announced that **Gary Martin**, who has served as chair of the NGFA's International Trade/Agricultural Policy Committee for the past year, has resigned his position as director of marketing with Farmland Industries, Kansas City, Mo. Donnelly announced that **Duane "Butch" Fischer**, current chair of NGFA's Executive Committee, has agreed to also serve as chairman of the International Trade and Agricultural Policy Committee for the remainder of Donnelly's term. "As our industry faces new policy and political challenges related to abundant grain supplies and relatively weak demand, Butch Fischer will be an outstanding spokesperson for pro-competitive and pro-growth policies," Donnelly said. "The tenets of the 'Freedom to Farm' legislation may be challenged in the next year, and it's important to have experienced leadership. I am grateful to Butch for his willingness to take on this new assignment."

Foundation Receives Gifts in Memory of Madison Clement

The Sept. 9 edition of the *NGFA Newsletter* featured a remembrance of NGFA Past President Madison Clement, who died on Sept. 9. Clement was president of what was then called the Grain Dealers National Association from 1957-60, the only industry president to serve a three-year term.

Recognized for his loyal and selfless dedication to the industry and to the association, Madison's passing has not gone unmarked. Several industry leaders, in making contributions to the National Grain and Feed Foundation in his memory, have shared their sentiments with the NGFA's staff:

"...our industry has lost a great friend."

"Serving with Madison on the Executive Committee was a real honor and privilege."

"His laid-back patience and commitment have been a comfort and cherished example."

In recognition of Clement's leadership and dedication to the NGFA and the industry, it has been suggested that others may wish to consider memorials to the Foundation in his memory. The Foundation is a 501(c)(3) charitable entity that supports research and education of general benefit to the industry, consistent with the spirit of Madison's participation throughout the years. Gifts may be sent to the "National Grain and Feed Foundation," 1201 New York Avenue, NW, Suite 830, Washington, D.C. 20005. Please designate gifts as "Madison Clement Memorial."



Dairy Impasse Delays Completion of Ag Spending Bill

As the *NGFA Newsletter* went to press, an impasse over the future of federal dairy policy had delayed completion by a joint House-Senate conference committee of the agricultural appropriations bill for fiscal year 2000, which begins Oct. 1.

The conferees began meeting Sept. 22 and are attempting to resolve differences between each chamber's version of the spending bill. The \$70 billion Senate-passed appropriations measure (S. 1233) includes about \$7.65 billion in emergency farm spending. Meanwhile, the \$60.7 billion House bill (H.R. 1906), passed in June, does not contain any emergency farm relief.

The conferees appear to be adhering closely to the Senate version in crafting the emergency farm spending provisions of the appropriations bill, which now is expected to total nearly \$8 billion. Under that approach, the bulk of the emergency payments would be made through the mechanism of the direct agricultural marketing transition (AMTA) payments mandated in the 1996 farm law.

The Senate version of the appropriations bill would allocate emergency spending amounting to:

- ◆ \$5.54 billion to double the fixed AMTA payments to producers for 1999.
- ◆ \$475 million in direct payments to soybean and other oilseed producers for the 1999 crop year.
- ◆ \$400 million in additional crop insurance premium subsidies for the 2000 crop year.
- ◆ \$325 million in payments to livestock and dairy producers.
- ◆ \$134 million for specialty crops.
- ◆ an increase in the producer payment limit for marketing loan gains and loan deficiency payments from \$75,000 to \$150,000 for the 1999 crop year.

Democrats Propose Alternative Mechanism for Emergency Cash Payments: But many Democrats advocated an increase in the emergency spending to \$10 billion, and expressed a preference for funneling the cash payments through the LDP program rather than AMTA because of their belief that the latter mechanism is not targeted to the "neediest" producers. Many Democrats who favor this approach have indicated support for a plan proposed by Rep. Charles Stenholm, D-Texas, the top-ranking Democrat on the House Agriculture Committee.

Under Stenholm's proposal (H.R. 2792), USDA would make "supplemental income payments" to producers during crop years in which the national gross revenue of the crop was less than 95 percent of the five-

NGFA Testifies at 21st Century Ag Commission Hearing



NGFA Risk Management Committee Chair Tom Coyle (left) is shown after presenting the NGFA's farm policy statement to the 21st Century Production Agriculture Commission at its Sept. 21 "listening session" in Chicago. Shown with Coyle is Commission Chairman Dr. Barry Flinchbaugh, Kansas State University, Manhattan, Kan. Coyle is vice president, Nidera, Stamford, Conn. [See enclosed Committee Action for a report on the NGFA's statement.]

year average of that crop's national gross revenue. USDA would determine the national average gross revenue by multiplying the national average price (which would be the higher of the season-average price or the loan rate) by the national average production. The amount received by the producer would be figured by multiplying:

- ◆ the amount per acre by which the national gross revenue for that crop year was less than 95 percent of the five-year average national gross revenue; by
- ◆ the total number of acres harvested by that producer.

Republican leaders indicated that the emergency funding likely will not exceed \$8 billion, which would include approximately \$600 million for flood and drought relief. They further indicate that the majority of the funds would be routed through the AMTA mechanism. Previously, on Sept. 21, House Agriculture Committee Chairman Larry Combest, R-Texas, said he anticipated Congress may consider yet another emergency spending bill for agriculture later this year that focuses on weather-related disasters.

Cuba Omitted from Sanctions Reform: The conferees also reportedly have acceded to the wishes of House Republican leaders and deleted Cuba from the countries that would be exempt from food and medicine sanctions, until it becomes a democracy.

(Continued on page 4)

ON CAPITOL HILL (CONT'D)

("Dairy Impasse" continued from page 3)

The Senate bill had included a provision authored by Sen. John Ashcroft, R-Mo., which would prohibit agricultural products from being included in unilateral economic sanctions without congressional approval. However, House Republican leaders strenuously objected to the fact that the language of the provision would have allowed the sale of food and medicinal products to Cuba.

Administration Position: At the 11th hour, the Clinton administration submitted its recommendations to the appropriations conferees.

In a Sept. 15 letter, White House Office of Management and Budget Director Jacob J. Lew said the administration "generally agrees with the total additional funding level provided in the Senate bill." But the administration "strongly disagrees" with providing the assistance through increased AMTA payments. Instead, it supported a counter-cyclical payment approach targeted at "small farmers" along the lines proposed by Rep. Stenholm.

"The freedom to farm bill is failing," the administration wrote. In the letter, the administration also urged Congress to:

- ▶ expand the Conservation Reserve Program to 40 million acres, up from the 36.4-million-acre-ceiling currently mandated by law.
- ▶ restore funding for loans to finance construction of on-farm storage facilities.
- ▶ provide additional funding for the Environmental Quality Incentives Program.
- ▶ fully fund the Wetlands Reserve Program, and increase the cap to permit enrollment of up to 250,000 acres per year.
- ▶ provide additional funding for technical assistance to implement conservation programs.
- ▶ support the administration's bio-energy agenda and provide additional financing "to support expanded opportunities for family farmers in the production of ethanol fuels."
- ▶ allocate an unspecified amount of funds for "livestock, because of continuing low prices."

In addition, the administration urged Congress to enact other legislation that would: 1) permit extension of marketing assistance loans beyond their current nine-month maturity, 2) "strengthen the farm safety net," including crop insurance reform; and 3) permit the allocation of unused Export Enhancement Program funds to other agricultural trade purposes.



Hill Highlights

There were these other developments on Capitol Hill:

House Ag Committee Plans Farm Policy Hearings:

House Agriculture Committee Chairman Larry Combest, R-Texas, has announced his intention to convene a series of hearings soon after Congress convenes in January 2000 to "evaluate various issues related to current and future American farm policy.

"The volatility of markets and the unpredictable nature of weather presents us with constant challenges in writing good agricultural policy," Combest said in a Sept. 16 announcement. "We simply don't need to wait for years between each farm bill to discuss these issues and we don't intend to. Instead, we need to stay on top of them constantly so we are ready to act when necessary. The past two years of crisis drives that point home."

Combest said the "comprehensive" hearings will include "all those involved in agricultural policy, including farmers, ranchers, agribusiness and government officials," and will include discussion of "farm programs, domestic and foreign markets, and the effects of government regulation."

Meanwhile, Senate Minority Leader Thomas A. Daschle, D-S.D., has urged Senate Agriculture Committee Chairman Richard G. Lugar, R-Ind., to conduct similar hearings in the Senate.

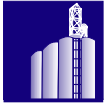
Sens. Roberts and Kerrey Reintroduce Crop Insurance Bill: Sens. Pat Roberts, R-Kan., and Bob Kerrey, D-Neb., recently re-introduced their crop insurance reform bill in an attempt to find a compromise vehicle that can garner sufficient support in the Senate to pass.

The new bill (S. 1580) encompasses most of the earlier legislation, while adding several provisions to encourage broad use of risk-management tools by producers. Under the new bill, insurance premium subsidies would be inverted to the following scale:

Coverage	Subsidy	Coverage	Subsidy
50/100	= 55%	65/100	= 50%
55/100	= 45%	70/100	= 50%
60/100	= 45%	75/100	= 55%

In addition, the bill would provide incentives for the use of alternative risk-management tools, such as futures and options, cash-forward contracts, agricultural trade options, risk-management education programs, or reductions in the producer's debt load. Under the bill, if a producer were to utilize at least two of the aforementioned tools, USDA's Federal Crop Insurance Corp. would pay an additional 5 percent of the premium cost for a crop insurance policy.

At this point, it still is not certain if the Senate will pass a crop insurance reform vehicle before its scheduled Oct. 29 adjournment. The House soon is expected to consider the crop insurance bill (H.R. 2559) introduced by House Agriculture Committee Chairman Larry Combest, R-Texas.



("Biotech" continued from page 1)

NGFA Board of Directors Discusses Agricultural Biotechnology Issues: At its meeting on Sept. 12-13, the NGFA's Board of Directors discussed recommendations that could be made to technology providers/seed companies, government and others concerning market issues related to agricultural biotechnology. The draft recommendations address market information needs and an appropriate role for government to play in advocating the implementation of a science-based approach for agricultural biotechnology issues in international trade. The draft recommendations currently are being reviewed by the NGFA Board of Directors, and are scheduled to be released to the membership, other agricultural and food industry sectors, government and the public once they are approved.

NGFA Joins Alliance for Better Foods Coalition: In a related matter, the NGFA has joined a broad-based agricultural and food industry coalition – known as the Alliance for Better Foods – that will serve as a mechanism for conveying accurate and timely communications and information to policymakers and the public on agricultural biotechnology issues. The Grocery Manufacturers Association (GMA) is spearheading the effort. In addition to GMA and the NGFA, other organizations that are members include: American Bakers Association, American Farm Bureau Federation, American Peanut Council, American Seed Trade Association, Chocolate Manufacturers Association, Corn Refiners Association, National Confectioners Association, Food Distributors International, Food Marketing Institute, Institute of Shortening and Edible Oils, National Chicken Council, National Cotton Council, National Food Processors Association, National Soft Drink Association, Pet Food Institute, Snack Food Association, Sugar Association Inc., U.S. Council for International Business and USA Rice Federation.

The NGFA also is serving at the invitation of GMA as a member of GMA's Biotechnology Coordination Group, a small group of agribusiness and food industry representatives who meet once or twice a month to discuss developments involving agricultural biotechnology and their impacts on policy and public affairs.

Other Agricultural Biotechnology Developments: In other biotechnology-related developments, the NGFA has learned that:

▶ **Monsanto Urges Growers of Non-Biotech Seed to Secure Contracts if They Expect Premiums:** Monsanto Co. on Sept. 21 issued a press release "reminding growers to consider the economics

involved in producing and marketing both non-biotech and biotech crops." The release stated that "only a very few purchasers have been willing to pay a premium for non-biotech corn and soybeans," and quoted Carl Casale, director of Monsanto's North American agricultural business, as encouraging growers who are considering switching to non-biotech seeds "to secure an upfront agreement or contract if they expect to receive a premium following the 2000 harvest."

The release stated that "[r]ecent announcements by processors asking growers to segregate their non-biotech corn and soybeans indicate that this specialty niche market for non-biotech products will be quickly filled." It quoted Casale as saying: "Niche markets for specialized products have existed for a long time. By all indications we've seen, the downstream market for non-biotech products is very small. There could be similar opportunities for a limited number of growers to earn a premium in the future for non-biotech crops, just as there is for any specialty crop that requires extra handling.... Obviously, that premium should be great enough to cover the additional input and labor costs involved in growing a non-biotech crop, as well as the costs involved in preserving the identity of the specialty crop after harvest."

▶ **GIPSA Offers to Provide 'Letterhead Statement' that U.S. Wheat, Barley Not Biotech:** The U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration announced today that effective immediately, it would offer to issue a letterhead statement upon request attesting that U.S. wheat and barley are not biotechnology-enhanced. GIPSA said it was taking the action in response to "requests from importers for a letterhead statement indicating that no transgenic wheat (or barley) varieties are currently available in U.S. commerce...." GIPSA said, upon request, it could issue the following statement on its letterhead: "**There are no transgenic (wheat or barley) varieties for sale or in commercial production in the United States at this time.**"

▶ **FDA Reviewing Biotech-Approval Procedures:** the U.S. Food and Drug Administration is reviewing its procedures for approving the safety of food products derived from agricultural biotechnology. The agency currently reviews safety data provided by technology providers/seed companies, and has classified such products under its long-standing "generally recognized as safe" (GRAS) category for foods and feeds, determining that they are "substantially equivalent" to conventionally produced agricultural commodities. However, Commissioner Jane E. Henney reportedly is exploring a more formal review process.

(Continued on page 6)

("Biotech" continued from page 5)

- ▶ **Greenpeace to Launch Anti-Biotech Campaign in Canada:** The environmental/consumer advocacy group Greenpeace has targeted Canada to launch its anti-agricultural biotechnology campaign in North America. The Greenpeace effort is scheduled to begin this fall, and will involve picketing at supermarkets and food retailers. Greenpeace reportedly has allocated \$9 million to \$25 million for the Canadian campaign.
- ▶ **Canadian Government to Work Toward Voluntary Labeling of Foods Containing Biotech Products:** The Canadian government has announced it will support voluntary labeling of food containing commodities produced from agricultural biotechnology. The Canadian Council of Grocery Distributors states that it hopes to work with the Canadian General Standards Board to develop standardized guidelines for labeling such foods sometime next year.
- ▶ **U.N. Group Forms Task Force on Biotech:** A United Nations group known as the Codex Alimentarius Commission has established an ad hoc intergovernmental task force on foods derived from biotechnology "to develop standards, guidelines or recommendations...for foods derived from biotechnology or traits introduced into foods by biotechnology...."

The task force was created during Codex's 23rd biennial meeting on June 28-July 3 in Rome, Italy. Established in 1962 under the auspices of the U.N., Codex is the principal international organization for establishing health and safety-related standards to facilitate fair international trade in food and agricultural products. It adopts food standards, codes of practice and other guidelines, and promotes the adoption by member governments. Its importance has increased under the Uruguay Round of the General Agreement on Tariffs and Trade as the principal mechanism for establishing scientific-based consensus standards in an effort to reduce the practice of some countries to erect non-tariff trade barriers under the guise of protecting public health.

The United States successfully argued for incorporating into the task force's objectives a recognition that such "standards, guidelines or recommendations" for biotech foods should be established "...on the basis of scientific evidence, risk analysis and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices." [Emphasis added.]

The underscored phrases in the preceding paragraph – known as the "four principles of science" – were established when Codex was founded in 1962. But the European Union served notice that it wanted the biotechnology task force to consider a broad array of

issues, including economics and ethical considerations of foods produced from genetically enhanced commodities. The United States – successfully, for now – argued that such considerations were inconsistent with a science-based approach, and are more properly the purview of the governments of individual countries and their political systems. However, it is expected that this issue will reemerge when the task force at its first meeting discusses its scope of work.

The biotechnology task force was directed to complete its work in four years, under the following timetable: 1) submit a preliminary report to Codex in 2001; 2) submit a mid-term report to the Codex Executive Committee in 2002; and 3) submit a final report in 2003. All countries that are members of Codex will be allowed to appoint a delegate and alternate to the task force. The Food and Drug Administration is serving as the lead U.S. government agency to select the U.S. government delegates, and will be obtaining advice in this regard from the Secretary of Agriculture's Biotechnology Advisory Committee (which has not been appointed yet). Significantly, Japan was appointed as the host country, and will sponsor the first meeting on March 14, 2000 in Tokyo.

- ▶ **Labeling of Foods Derived from Biotechnology:** Separately, the Codex Committee on Food Labeling – which has discussed labeling foods produced or derived from genetically enhanced commodities for several meetings without reaching consensus – has established a working group consisting of 23 countries and 14 observer nations to meet in May 2000 in Ottawa, Canada. An initial draft of a labeling document is to be prepared by seven-member "Drafting Committee" consisting of the United States, Canada, Australia, Japan, Brazil and the European Union (the EU will get two seats). The drafting committee is scheduled to meet sometime this October.

The U.S. delegation said it preferred to keep this issue within the labeling committee rather than assign it to the new biotechnology task force. In the past, the U.S. position has been to oppose mandatory labeling, but to support the development of guidelines for voluntary labeling of food products containing biotechnology-enhanced products.

- ▶ **Dutch Agribusiness Group Urges USDA Support for Segregation of Biotech/Non-Biotech Crops:** The Royal Dutch Grain and Feed Trade Association has encouraged the U.S. Department of Agriculture to support segregation of biotechnology-enhanced grains and oilseeds. The head of the organization said he believes the additional costs associated with segregation would foster acceptance of biotechnology-enhanced commodities.

Monsanto Replies to NGFA Request to Communicate with Growers of EU-Unapproved Corn

Monsanto Co. has become the fourth seed company to respond to the NGFA's request to reestablish communications and work with growers of varieties of biotechnology-enhanced corn not approved for import by the European Union.

The NGFA on Aug. 6 had transmitted a letter to the major U.S. seed companies urging that they take the following three immediate actions:

1. Contact their dealerships and seed sales force that sold EU-unapproved genetically enhanced corn events, and direct that they re-contact the producers who purchased and planted such corn to reiterate the producer's responsibility to deliver such corn for approved uses;
2. Strongly encourage the grower to contact his or her potential buyer to establish affirmatively that the buyer is willing and able to accept delivery of such corn. Further, strongly suggest that the seed sales person offer to accompany the grower to the buyer's location to facilitate the exchange of this vitally important information; and
3. Establish a means of written verification to ensure that the seed company's sales force has performed the two aforementioned actions and to follow up in instances where such actions have not been taken.

The NGFA's letter was sent to the following seed companies: Monsanto Co., Pioneer Hi-Bred International, AgrEvo USA Co., Dow AgroScience, Novartis Seeds Inc. and Optimum Quality Grains L.L.C.

Dow AgroScience has informed the NGFA orally that it does not have any EU-unapproved corn events, and will be responding in writing. The NGFA also has been contacted by Optimum Quality Grains L.L.C., noting that it does not sell seed directly, and indicating that it will respond shortly. The responses of three other seed companies – AgrEvo USA Co., Novartis and Pioneer Hi-Bred International – were summarized in the Sept. 9 edition of the NGFA Newsletter.

Monsanto's Response: In Monsanto's letter, Director of Public Affairs Randy P. Krotz said the company had taken several actions to help growers "channel" this year's harvest of Roundup Ready corn, Roundup Ready+YieldGard corn, DEKALB BT-Xtra corn and DEKALB GR corn:

- ▶ **Grower-signed technology agreements:** Monsanto said a "harvest advisory" was printed in the technology agreement and seed tags for these corn varieties. It said "multiple written communications" were sent to corn growers and prospects before planting, and that all of its promotional materials and radio advertisements included the harvest advisory.
- ▶ **Personal conversations with each grower:** The company said its internal sales force, seed dealers and agricul-

tural retailers had been through "rigorous training" on the restrictions, and that its seed sales force had called on growers throughout the summer. "We also recently completed a market assistance project with growers, who selected these technologies, to confirm their channeling intentions and to identify customers who needed help finding a domestic use outlet."

- ▶ **Follow-up on grower requests for marketing assistance:** Monsanto said it had recently initiated a "call-back" process to growers who asked for help in finding a domestic-use outlet.

The company also noted -- as have other seed firms -- that it had been a co-sponsor of the American Seed Trade Association's web site listing facilities willing to accept delivery of EU-unapproved corn. It also noted it had met with numerous industry stakeholders, including the NGFA. "Monsanto recognizes the importance of growers communicating with grain delivery points regarding their harvest and delivery of grains which await approval in the European Union," wrote Krotz. "I hope these steps demonstrate our responsible stewardship of new technologies that are fully approved in the United States but still awaiting import approval in some world areas."

Copies Available on NGFA Web Site: The complete text of each of the seed company letters is available on the NGFA's web site for members only at: <http://www.ngfa.org>. Click on the "biotechnology updates" heading on the left-hand column of the NGFA's home page. To access the documents, type the "user name," which is: ngfa. The "password" is: soybean. Type all letters in lower case.

NGFA Calendar

- Nov. 3:** Marketing Committee, GATX Headquarters, Chicago, IL
- Dec. 4:** Leadership Conference, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 4:** Feed Industry Committee, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5:** Country Elevator Committee, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5-6:** Feed Industry Council, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 5-6:** NGFA Trade Show, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 6-7:** Country Elevator Council Meeting, Regal Riverfront Hotel, St. Louis, Mo.
- Dec. 7-8:** NGFA Trade Rules Committee, Regal Riverfront Hotel, St. Louis, Mo.
- March 29-31, 2000:** NGFA's 104th Annual Convention, Hotel Del Coronado, San Diego, Calif.



CFTC Judge Rules Nebraska Grain Elevator Operated 'Bucket Shop'

A Commodity Futures Trading Commission administrative law judge has issued an opinion finding that the now-defunct Great Plains Co-op and its manager operated an unlawful "bucket shop" involving off-exchange futures trading. The cooperative formerly operated grain elevators in Benedict and Stromsburg, Neb.

In the opinion [CFTC Docket No. 98-4] issued on Sept. 17, CFTC Administrative Law Judge George H. Painter found that Great Plains entered into illegal off-exchange futures contracts on behalf of customers acquired through CSA Investor Services, Inc. Judge Painter specifically found that "not one bushel of grain was ever delivered to Great Plains pursuant to the terms of the contract." Likewise, Judge Painter found that [n]either the CSA introduced customers nor Great Plains intended to make or take delivery of grain on the Cross Country HTA (hedge-to-arrive) contracts."

Other defendants [Competitive Strategies for Agriculture, Ltd.; CSA Investor Services, Inc.; and Lee D. Amundson] named in the original CFTC enforcement complaint involving Great Plains' "Cross Country Hedge-to-Arrive Contracts" reached a settlement with the CFTC in August 1998.

In addition to examining how Great Plains actually dealt with the contracts, Judge Painter wrote that a promotional

brochure issued by the company and used to solicit customers was important in reaching his decision. The brochure stated that: "*'Offsetting the contract is less costly in the event the producer can't or would rather not make delivery of the grain.'* This message is clear: customers who enter into Cross Country Hedge-to-Arrive contracts can decide that they would rather not make delivery and simply cash liquidate their contracts." [Emphasis contained in Judge Painter's decision.]

Finally, Judge Painter said that:

"The probative evidence of record proves beyond peradventure that the Great Plains-CSA enterprise was a bucket shop operation masquerading as a 'cash forward hedge-to-arrive' business. Great Plains took not one bushel from a CSA customer. The Great Plains-CSA operation could have been housed in the backroom of a tavern or pawn shop. There was certainly no need for a grain elevator."

Judge Painter ordered that the now-defunct Great Plains Co-op cease and desist from violating Section 4(a) of the Commodity Exchange Act. Likewise, the co-op's manager was prohibited from trading on or subject to the rules of any contract market for 10 years from the date the decision becomes final. The decision is subject to appeal to the full CFTC.

Another Federal Appeals Court Rejects Challenge to HTA Contracts

A three-judge panel of the U.S. Court of Appeals for the Seventh Circuit on Sept. 13 unanimously rejected a challenge to the legality of hedge-to-arrive (HTA) contracts.

In addition to affirming that the HTA contracts were lawful forward contracts under the self-executing forward-contract exception contained in the federal Commodity Exchange Act, the appellate court affirmed a decision by an Indiana federal district court to dismiss other state and federal claims brought by a producer against ADM Investor Services Inc., Chicago, Ill., A/C Trading 2000, Fowler, Ind., and Demeter Inc., Fowler, Ind.

The case involved an allegation by a producer – Tom Lachmund – that ADM Investor Services (a futures commission merchant), A/C Trading 2000 (an introducing broker) and Demeter (a grain elevator operator) had engaged in a conspiracy of fraudulent misrepresentation with respect to HTA contracts entered into between Lachmund and Demeter. Likewise, Lachmund alleged that the HTA contracts were illegal off-exchange

futures contracts "because the grain purportedly sold by the contracts did not have to be delivered within the crop year." The Indiana federal district court dismissed all of the federal claims asserted by Lachmund, as well as a state law fraud claim asserted against ADM Investor Services. The district court expressly found that the HTA contracts were cash-forward contracts that are exempt from regulation under the Commodity Exchange Act.

The decision by the U.S. Court of Appeals for the Seventh Circuit, which covers Wisconsin, Illinois and Indiana, is the second federal appellate court to expressly find that HTA contracts are lawful forward contracts exempted from regulation under the Commodity Exchange Act. The U.S. Court of Appeals for the Sixth Circuit, which covers Michigan, Ohio, Kentucky and Tennessee, rendered a similar decision in December 1998 [see *The Andersons, Inc. v. Horton Farms, Inc.*, 166 F.3d 308 (6th Cir. 1998)]. A copy of the latest decision in *Lachmund v. ADM Investor Services, Inc.* is available via the Internet at: <http://www.ca7.uscourts.gov/scripts/foxweb.exe/ca7Op2?yr=98&num=3467&Submit1=Request+Opinion>.

USDA Orders Review of Seed Contracts for Beneficial Interest

The U.S. Department of Agriculture's Farm Service Agency has directed that its state and county offices review seed contracts for 1999 to determine if producers have retained so-called "beneficial interest" (i.e., title) in the commodities when seeking to obtain a loan deficiency payment.

In a notice (Notice LP-1698) issued on Aug. 31, FSA directed that county offices:

- ▶ require that producers provide a copy of their seed contracts when filing a Form CCC-709 application for an LDP.
- ▶ review the seed contract to ensure that title, risk of loss and control of the commodity remains with the producer

"until the grain is marketed" (i.e., until an LDP is requested).

- ▶ send the contracts to the FSA state office for review if a determination cannot be made at the county office concerning whether the producer has retained beneficial interest in the commodity prior to requesting an LDP.

The FSA notice stated that "both parties to a contract may amend the contract by mutual consent to ensure that the producer maintains beneficial interest" until such time as the producer applies for an LDP. "FSA can accept these amendments as long as they are effective before the crop is harvested," the notice said.

USDA Rescinds Authority to Extend Delivery Period on CCC-681-1s

Effective Aug. 30, the U.S. Department of Agriculture's Farm Service Agency rescinded the authority previously granted to FSA state executive directors to extend the delivery period for grain covered by marketing authorization forms (CCC-681-1s).

FSA on July 28 had issued a notice (Notice LP-1692) granting such authority to extend the CCC-681-1 delivery period to accommodate situations in which elevators were

"unable or unwilling" to accept deliveries of maturing loan collateral. But in a notice (Notice LP-1699) issued on Aug. 31, FSA said it was revoking "effective immediately" the authority to extend "for any circumstance" the delivery period beyond the authorization period stated in the CCC-681-1. For matured loans with undelivered quantities and for those quantities that are repaid after the maturity date, the repayment rate must be at principal, plus applicable interest, FSA headquarters advised.

Important Reminder

FSA Accepting LDP Requests from Producers Nearing Payment Limit

The NGFA received calls from several members this week concerning producers seeking loan deficiency program (LDP) payments who have reached the current \$75,000 payment limit for marketing loan gains and LDPs for 1999 crops.

As reported in the Sept. 9 *NGFA Newsletter*, USDA's Farm Service Agency has instructed its county offices to accept applications – but withhold action on – LDP requests from producers who have reached the \$75,000 payment limit. FSA took the action because of pending action on legislation included in the Senate version of the fiscal year 2000 agricultural appropriations bill that would double the payment limit to \$150,000 for 1999 crops. [See related article on page 3.]

In its notice, FSA directed that its county offices accept the LDP application (CCC-666-LDP) from producers who have reached the current \$75,000 payment limit, and inform them that no action will be taken on the request until the county office receives further instructions. During this interim period, the county office will neither approve nor disapprove the LDP request from such producers.

Importantly, this action by FSA:

- ▶ allows producers who have reached the \$75,000 payment limit to **establish the LDP payment rate**. Under a policy change that took effect for 1999 crops, the LDP payment rate for producers using the CCC-666-LDP form is based on the rate in effect on the date the producer submits the LDP request, not the date on which the application is approved by FSA. This change was conveyed by FSA to its state and county offices in FSA Notice LP-1689.
- ▶ allows producers, once submitting their LDP application, to **market the crop** without losing "beneficial interest" (e.g., title, control or risk of loss in the commodity).

Obtaining a Copy of the FSA Notice: Some NGFA members said their FSA county offices were unaware of FSA headquarters' action on this matter. Refer your county office to Notice LP-1695, which was issued on Aug. 26, a copy of which is available on the NGFA's web site at: <http://www.ngfa.org>. The "user name" is: ngfa. The "password" is: soybean. Type all letters in lower case. To access the FSA notice, click on the "Reference Desk" heading on the NGFA's home page. Then click on the "Warehousing" subject icon. Members without Internet access can obtain a copy of the notice by contacting Jackie Congress at the NGFA at (202) 289-0873.



Norfolk Southern, CSX Update Plans for Mitigating Service Problems

The Norfolk Southern Corp. and CSX Transportation Co. today provided updates on their efforts to mitigate service problems that have occurred following their acquisition of Conrail.

At a meeting of the Conrail Transaction Council, which was attended by NGFA Chairman Michael Donnelly and NGFA Counsel for Public Affairs David C. Barrett Jr. Norfolk Southern said it currently was operating 91 unit grain trains (33 moving loaded; 28 moving empty; 15 loading; and 15 unloading). The carrier said it anticipates adding 20 trains during the harvest peak, and said it had sufficient locomotive power in place to do so.

Norfolk Southern said that train delays related to lack of locomotive power increased in August and early September. Reasons given included: 1) imbalances in the operating plan; 2) seasonal surges in business; and 3) incomplete information in their locomotive management systems. As one of the causes, it cited confusion between Conrail numbering systems and new numbering for locomotives on Norfolk Southern, which made it difficult to determine what, and how many, locomotives were in service.

Norfolk Southern also said it was investing additional funds to clear several system choke points, including: \$17 million to increase the Buffalo, N.Y., yard's capacity; \$4 million to remedy problems at Toledo/Bellevue, Ohio; \$13 million to accelerate computer systems improvement; and \$9 million for additional route integration. These sums were in addition to the carrier's \$1.07 billion capital budget for 1999.

CSXT expressed concerns over the high percentage (about one-third) of waybills still done manually.

NGFA Provides Members' Views: The NGFA provided the Conrail Transaction Council with a summary of views registered by its members, which included the following:

- ◆ There likely will be greater-than-normal demand for grain movements to the Northeast and Mid-Atlantic regions because of the 1999 drought, which will put additional pressure on both carriers. Buying local truck



NGFA Chairman Michael Donnelly (center), president of R.F. Cunningham & Co., Inc., Smithtown, N.Y., is shown visiting with representatives of the Norfolk Southern and CSX Transportation Co. during the Conrail Transaction Council meeting. Also pictured (from left) are Thomas J. Schoenleben, assistant vice president, marketing and strategy support, CSXT, Jacksonville, Fla., and Walter B. Trollinger, assistant vice president, markets management, Norfolk Southern Corp., Norfolk, Va. Donnelly urged the carriers to develop a "game plan" that addresses the service needs of large and small shippers, focuses on the immediate need to move grain from the Midwest to domestic users, and helps mitigate the unavailability of local truck grain in the Northeast because of the drought. He also urged the carriers to improve their customer service centers to provide more timely and accurate replies to service-related questions from shippers and receivers.

grain simply will not be a viable option if rail grain shipments don't arrive when expected.

- ◆ **CSXT:** Those telephoning CSXT customer service representatives are experiencing long wait times. There also were concerns about potential problems with car congestion on the CSXT system.
- ◆ **NS:** Several shippers cited "noticeable deterioration" in Norfolk Southern service during the past month; it was reported that even unit trains are sitting for more than one week (both at origins and in-transit). Receivers reported they were having to book additional trains to ensure arrival of adequate supplies. Poor and inaccurate information on train arrival times also was reported. There also were reports that repairs for bad-order cars were slowing dramatically (e.g., now 10 to 14 days on rip track versus three to five days prior to June 1). Disruptions involving billing instructions on loaded and empty cars also were reported.

Senate Confirmation Hearing Scheduled for STB Chairman Morgan

The NGFA has learned that the Senate Commerce, Science and Transportation Committee has scheduled a confirmation hearing on Sept. 28 for Surface Transportation Board Chairman Linda Morgan. If confirmed, her term would expire on Dec. 31, 2003.

While it is expected that Morgan will receive a favorable vote from the Senate Commerce Committee, there are unconfirmed reports that rail labor interests have received the assurance of a

Senate Democrat to place a "hold" on the nomination once it reaches the Senate floor for consideration. Such action would stall floor action on the nomination unless – and until – the senator removes the "hold." Rail labor has opposed the STB's treatment of rail labor agreements when considering rail merger applications. Morgan's current term expired on Dec. 31, 1998. But she can continue to serve without Senate confirmation until Dec. 31, at which time she must leave office unless confirmed by the Senate.



NGFA Conducts 11th Feed Quality Assurance Workshop

The NGFA on Sept. 14-15 conducted the 11th in an ongoing series of Feed Quality Assurance Workshops. The most recent workshop, conducted in Mankato, Minn., attracted 57 participants and marked the unveiling of the new, third edition of the model NGFA Feed Quality Assurance Program notebook.

A major feature of the workshop was a half-day session on compliance with current good manufacturing practices that was led by the feed control staff of the Minnesota Department of Agriculture. The Minnesota Grain and Feed Association and the Northwest Agri-Dealers Association – the NGFA’s two affiliated state/regional associations in Minnesota – joined in hosting and promoting attendance at the workshop.

Shown here is some of the workshop faculty, as well as the chief staff executives of the two NGFA affiliated associations.

Pictured are (from left): Dave Syverson, Rick Manthei and Barb Schroeder, feed specialists in the Agronomy Regulatory Unit of the Minnesota Department of Agriculture; Paul Bachman, supervisor in the Agronomy Regulatory Unit of the Minnesota Department of Agriculture and feed control official for the state; Tom Cashman, executive vice president, Northwest Agri-Dealers Association, Mankato, Minn.; Brad Gottula, quality assurance/regulatory manager for Land O’Lakes Feed, Fort Dodge, Iowa, who was the lead industry faculty member; and Bob Zelenka, executive director, Minnesota Grain and Feed Association, Minneapolis, Minn. Also serving as industry faculty, but not shown, were: Mike Cox, feed manager, Harmony-Preston Agri Services Inc., Harmony, Minn.; and Mike Malecha, manager, byproducts and feed ingredients, Kraft/Oscar Mayer Foods, Madison, Wis.



NGFA Plans to Offer Informational Meeting on Vitamin Litigation

The NGFA plans to offer an informational meeting for its members involved in feed or feeding operations, as well as executives of State/Regional Grain and Feed Associations, concerning the legal options that buyers of vitamins (direct and indirect) may have in pursuing civil litigation against certain vitamin manufacturers for overcharges in the aftermath of the criminal fines imposed in May by the U.S. Justice Department for antitrust violations. [See *NGFA Newsletter*, Sept. 9, 1999.]

It is likely that the informational meeting will be conducted in mid-October at a Midwestern site. NGFA feed members will be notified, and the meeting date and

location will be posted on the NGFA’s web site. At the meeting, outside legal counsel will discuss the facts of the case, as well as options direct and indirect purchasers of vitamins have in pursuing recourse (e.g., *class action, individual suits or no action*), as well as the advantages and disadvantages of each approach. Firms that purchased vitamins directly from the manufacturers may be covered by pending settlements in the class action suits. Such firms may wish to defer a decision on whether to opt out of a class-action settlement until after the NGFA meeting. Once the NGFA conducts such an informational meeting, it will be up to individual companies to decide the course of action that is best for their firms.

U.N. Group Establishes Task Force on Animal Feeding Practices

A United Nations group known as the Codex Alimentarius Commission has established an ad hoc intergovernmental task force “to develop guidelines or standards, as appropriate, on good animal feeding practices...[to ensure] the safety and quality of foods of animal origins.”

The task force was created during Codex’s 23rd biennial meeting on June 28-July 3 in Rome, Italy. Established in 1962 under the auspices of the U.N., Codex is the principal international organization for establishing health and safety-related standards to facilitate fair international trade in food and agricultural products.

This task force is to “complete and extend” the work already done by relevant Codex committees on a Draft Code of Practice for Good Animal Feeding. The task force also has been directed to “address other aspects...such as

problems related to toxic substances, pathogens, microbial resistance, new technologies, storage, control measures, traceability, etc.”

The animal feeding task force was directed to complete its work within four years, under the following timetable: 1) Submit a preliminary report to Codex in 2001; and 2) Submit a final report in 2003. Denmark was selected as the host country, and will sponsor the first meeting of the task force on June 12, 2000 in Copenhagen. FDA’s Center for Veterinary Medicine is serving as the lead U.S. government agency in developing the U.S. position on this matter. It is working with the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service and the Centers for Disease Control to select the U.S. government delegates to this task force. The NGFA has been asked to provide input to the U.S. delegation.



(*"Phosphine" continued from page 1*)

also was told that the agency hopes to issue the "final" label safety measures by late November or early December, which will be subject to a 60- to 90-day public comment period. After the public comment period closes and EPA incorporates any final changes based upon comments received, the registrants will have up to nine months to change the label.

Stakeholder Meetings: The registrants reported that EPA now does not plan to publish a second set of risk-mitigation measures by the end of September, as previously planned. Nor does it plan to conduct stakeholder meetings this fall, questioning their need if the revised label changes agreed to by the agency and registrants are reasonable and cost effective.

EPA's Proposed Exposure Limit: The NGFA also was told that EPA appears ready to increase its proposed 0.03 part per million-exposure limit to 0.1 p.p.m. This action is based in part upon preliminary data submitted to EPA by an outside consulting firm, Sciences International Inc., that demonstrated the agency's more stringent proposed limit was overly protective and confirmation from testing companies that measuring 0.1 p.p.m. is feasible with existing equipment. Another factor that EPA is reported to have considered is that Germany has

adopted a 0.1 p.p.m. standard for phosphine. The NGFA and other industry associations contracted with Sciences International several months ago to conduct an independent scientific analysis of EPA's proposed 0.03-p.p.m. exposure limit. Importantly, Sciences International expects to complete its work and submit its report to EPA by the end of November. It is hoped that the firm's analysis will support raising the final exposure limit to at least the current label exposure limit of 0.3 p.p.m.

OSHA May Not Implement Revised Recordkeeping Rules Until 2001

The Occupational Safety and Health Administration announced Sept. 21 that it hopes to publish revised recordkeeping rules by the end of 1999, but will delay the effective date until January 2001.

The delay was caused by the inability of OSHA to complete its new forms, outreach and compliance assistance materials in time for an earlier implementation date. OSHA proposed significant changes to its current recordkeeping rules (20 CFR 1904) in 1996, including new forms and revised definitions of work-related injuries and illnesses.

