National Grain and Feed Association
NEWSLETTER

Volume 66, No. 6 | March 21, 2014 ngfa.org/newsletter | ngfa@ngfa.org | 202.289.0873

Inside This Issue

Syngenta, Gavilon Provide Letter to NGFA, NAEGA Members on 2014 Launch of Duracade™ Biotech Corn

By Randy Gordon, President

Syngenta North America Inc. and Gavilon Grain LLC on March 11 submitted a joint letter to the NGFA and North American Export Grain Association (NAEGA) in reaction to a series of 13 questions posed by NGFA and NAEGA before a March 4 meeting with top officials from the two companies concerning the commercial launch of Syngenta's Agrisure Duracade™ biotech-enhanced corn in the United States in 2014.

In the letter, Syngenta again estimated that between 250,000 to 300,000 acres of Duracade could be planted in what it has termed a "launch zone" that encompasses all or portions of 19 states in the eastern and western corn belt. The launch zone boundaries represent either state lines or highways. However, the response letter raises questions about how rigid those boundaries will be, stating that Syngenta is "**encouraging** licensees, resellers and farmers to sell and plant Agrisure Duracade only in this region, so that they can have the confidence there is an available market that will accept their Agrisure Duracade corn." [Emphasis added.]

The Syngenta-Gavilon joint letter to NGFA and NAEGA members also clearly places the legal responsibility on producers and grain handlers for stewarding Duracade™ to domestic users and export markets that have approved import of the trait for food, feed and further processing. Specifically, the letter states: "…[T]he grower remains responsible for planting, harvesting and stewardship of seed and grain, just as members of the grain handling industry purchasing grain and reselling it remain solely liable for any risks or liabilities arising from their commercial activity."

Under Syngenta Seeds Inc.'s stewardship agreement with growers, to which the

Arbitration Decisions

The decisions published this week are:

- 2452 - (Appeal and Original Decision) - *FRM Farms v. The Andersons, Inc.*
- 2580 - (Appeal and Original Decision) - *Dodge City Cooperative d/b/a Pride Ag Resources v. Bee Agriculture Co., WB Johnston Grain Co. and Archer Daniels Midland Co.*
- 2606 - *Atteburry Grain v. Superior Grain Company*

All NGFA Arbitration decisions and defaults are at ngfa.org/decisions.

company provided access to NGFA and NAEGA after initially indicating it would not do so, producers are required to agree to the following "responsibilities" as a condition for obtaining a limited license to purchase and plant Agrisure Duracade™, as well as other Syngenta seed products:

- Channel grain produced from seed products (whether corn or soybeans) to appropriate markets as necessary to prevent movement to markets where the grain has not yet received regulatory approval for import.
- Use seed products solely for planting a single commercial corn or soybean crop.
- Not supply, transfer, license or sublicense any seed products to any other person or entity for planting or any other purpose.
- Not use or allow others to use seed products, grain produced from seed products, the limited technologies or any plant material containing the licensed technologies for crop breeding research…generation of registration data or seed production (unless the grower has entered into a valid, written agreement with Syngenta or a licensed seed company expressly authorizing one or more of these actions or for the limited purpose of conducting field evaluation research trials solely as set forth on "Plot Seed" and/or "Sample Seed" bags of seed products provided to the grower by Syntenta.
- Abide by the terms of the (Syngenta) Stewardship Guide.

Syngenta's stewardship agreement with growers also contains the following relevant general provisions:

- The grower consents to understanding that grain harvested from corn hybrids containing Agrisure and other Syngenta corn and soybean varieties (e.g., technologies and DAS technologies, or soybean varieties containing the Genuity RR2Y technology or LibertyLink technology) may not be fully approved for all grain export markets. (Syngenta's grower agreement says producers can obtain current export market approvals on its Agrisure website.)
- The grower consents to provide Syngenta, its representatives and the representatives of any owner of its seed patents with access to the grower's land where the licensed technologies have been planted in prior years or where such traits currently are being grown, as well as the refuge area, to examine the land, the grower's crop, obtain and test samples; review U.S. Department of Agriculture Farm Service Agency crop-reporting information; and obtain copies of invoices of grower seed and chemical transactions from the grower's seed and/or chemical dealer.
- The grower agrees that Syngenta and any owners of the patents for its seed traits are entitled to recover any costs or expenses, including reasonable attorney fees, incurred with enforcing their rights under the stewardship agreement.

Syngenta has noted previously that two versions of the Agrisure Duracade trait are being made available for sale and planting in the United States in 2014. Agrisure Duracade 5222 E-Z Refuge® contains Duracade, Viptera, Agrisure® 3000GT and Herculex®, while Agrisure Duracade 5122 E-Z Refuge® contains each of the aforementioned traits except Viptera®.

The Syngenta-Gavilon joint letter to NGFA and NAEGA members stated that the Agrisure Duracade trait as of March 11 had been approved for cultivation in the United States and Canada, and had received import approvals from Japan, South Korea, Mexico, Taiwan, Australia and New Zealand. The letter stated that Syngenta has submitted and still is working to obtain import approvals for Agrisure Duracade in China, all 28 states of the European Union, and a "number of other markets, such as: Colombia, The Philippines, Russia, Kazakhstan, Belarus, Indonesia, Thailand, Singapore and Switzerland."

The Syngenta-Gavilon joint letter to NGFA and NAEGA members also contained the following information:

- **Additional 'Recommendations' to Growers:** The joint Syngenta-Gavilon letter to NGFA and NAEGA members also reiterated that producers are being provided with additional "recommendations" in addition to the aforementioned requirements contained in the Syngenta stewardship agreement. As previously reported in the March 7 ***NGFA Newsletter***, those "recommendations" include the following:

    - **Planting Recommendations:** Syngenta advises producers to select fields for planting that are surrounded by the producer's own corn field or planted next to a non-corn field. Syngenta also said it will make signs available to producers planting Agrisure Duracade corn to post in their fields if they wish to do so, advising that the trait has been planted. In planting Duracade, Syngenta "recommends" producers use block configurations, plant border rows (with a buffer of 12 rows of non-Duracade corn), clean the planter, properly dispose of unused seed and return unopened seed units to the seed provider.
    - **Harvest Recommendations:** Syngenta's harvest "recommendations" to producers include the following: 1) Harvest corn containing Duracade separately; 2) flush the combine; 3) deliver all corn containing Duracade, plus corn harvested to flush the combine, to a previously arranged delivery point; 4) store grain containing Duracade in a separate bin (if stored on-farm); and 5) clean the bin floor (preferably by broom, not a sweep auger).

- **Testing:** Syngenta said it will make test tests available before grain from its new technologies enter supply channels, "consistent with

Upcoming Events

March 26 Regional Safety Seminar With North Dakota Grain Dealers Association, Minnesota Grain and Feed Association, and South Dakota Grain and Feed Association
Fargo, N.D.

March 30-April 1, 2014
NGFA Annual Convention
Westin Hilton Head Resort,
Hilton Head, S.C.

For a full listing of events, go to ngfa.org/events

previous practice." But the grain purchaser will be required to pay for the test kits. The test for eCry3.1Ab protein found in Agrisure Duracade corn currently is available from Envirologix, the letter said. Further, it said that "depending upon demand, we anticipate it will be available through other sources, as well." The letter said three test kit options currently are available from Envirologix: 1) QuickStix Kit for eCry3.1Ab in Corn Bulk Grain; 2) QuickStix Kits for eCry3 in Corn Leaf and Seed; and 3) Qualiplate Kit for eCry3.1Ab. Syngenta said the accuracy of QuickStix kits is 1 percent (detecting one kernel in 100), while the accuracy of the Qualiplate kit is 0.25 percent (detecting one kernel in 400).

NGFA Advocates Improvements to Reduce Regulatory Burden of Expanded Veterinary Feed Directive Process

By Dave Fairfield, Vice President of Feed Services

NGFA is urging the Food and Drug Administration (FDA) to proceed with improvements to its so-called veterinary feed directive (VFD) procedures that apply to certain animal drugs used in feed.

FDA has announced plans to significantly expand the use of its VFD process to provide for additional veterinary oversight of certain antimicrobial drugs used in feed for food-producing animals that it believes are important in treating human illness. These regulatory changes will include transitioning the availability of such drugs from an over-the-counter (OTC) status to VFD status. It is anticipated that this transition will occur by the end of 2016.

The NGFA's statement commends FDA for incorporating many of the organization's previous recommendations to streamline and make more efficient the agency's current VFD process. NGFA's statement said its recommendations "would make substantial and meaningful improvements to the VFD process if retained in final regulations."

In its statement, the NGFA also commends the agency for its approach to crafting and soliciting additional public comment before "proceeding to proposed regulations, given the significance of the regulatory issues involved." NGFA also notes that it is important that the "transition by FDA of existing animal drugs to VFD status should be science-based, and limited solely to those antimicrobial drugs that truly have significant importance to human medicine. Limiting the potential number of VFD drugs would lessen the regulatory burden on all parties."

Among other things, the NGFA's statement recommends that FDA:

- Require veterinarians to take and pass a training program – preferably available electronically – before being authorized to issue a lawful VFD. NGFA says it believes this will eliminate confusion and errors that have occurred within the existing VFD process.
- Create a list of VFD-trained veterinarians to be made available on a publicly accessible website hosted by a professional society or by FDA itself.
- Improve the information collected on the VFD form itself to be more appropriate and relevant to the manufacturing of medicated feed, including by eliminating the requirement that the VFD form contain a specific quantity of feed to be manufactured per order, which can vary based upon weather and other factors that affect feed consumption by animals. NGFA previously had noted that other information already required on the VFD form, such as the duration of treatment, level of animal drug allowed in the feed, feeding directions and expiration date, already provided sufficient information so that the appropriate quantity of feed is manufactured, distributed and fed to the target animals.
- Further clarify that VFD orders under the agency's proposed amendments may be transmitted and stored with electronic systems that need not be compliant with the agency's costly and onerous electronic records/electronic signatures requirements.

"The NGFA for several years has advocated improvements to the VFD process – even though it currently is applied to a limited number of animal drugs products used in food-producing animals," the statement says. "Importantly in this regard, medicated feed manufacturers who use existing VFD animal drugs already bear the primary regulatory burden associated with administering these drugs. This regulatory burden is substantial, both in terms of time and cost, with feed mills being the focal point for inspection when regulatory officials seek to determine compliance with the VFD regulations."

The letter continues, "given FDA's decision to expand the use of the VFD process to encompass many currently approved animal drugs, feed manufacturers will experience a significant increase in paperwork burdens and regulatory compliance costs if long-overdue improvements are not made."

As such, according to its letter, "the NGFA believes it is essential to modify the VFD process to make it as efficient and cost-effective as possible, while retaining prudent regulatory control to foster animal and human health."

NGFA's letter also outlines several additional improvements to VFD forms to help alleviate confusion and burden, and provides comments on issues such as required VFD information, recordkeeping, veterinarian oversight and VFD drug classifications.

For specific details on NGFA's recommendations, see the full letter.

NGFA Voices Concerns Over OSHA Proposed Rule to Track Workplace Injuries, Illnesses

By Jess McCluer, Director of Safety and Regulatory Affairs

NGFA is concerned that an Occupational Safety and Health Administration (OSHA) notice of proposed rulemaking "does little to achieve its stated goal of reducing injuries, illnesses and fatalities."

In a recently submitted statement, the NGFA asks OSHA to withdraw its proposed rule to track workplace injuries and illnesses. According to the letter, "the current injury-and-illness reporting requirements have worked well and proven themselves as balanced and useful in protecting lives and reducing injury levels."

The proposed rule would require employers to electronically submit to OSHA injury-and-illness information currently contained in forms 300A, 300 and 301. Under the OSHA proposal, each establishment with 250 or more employees would be required to report on a quarterly basis, and establishments with 20 or more employees in certain designated industries would be required to report annually. The agency also would have discretion under the proposal to require any employer to submit more detailed information about specific injuries and illnesses.

In its statement, NGFA outlines the following concerns:

- **Reliability:** As currently proposed, the rule would allow OSHA to obtain and release to the public detailed information regarding specific workplace injuries and illnesses, including the company, location and incident-specific data. OSHA states that the change would give employees, potential employees, consumers, labor organizations and businesses, and other members of the public important information about companies' workplace safety records. However, NGFA states, "OSHA under its proposal would provide such data without any meaningful context. As a result, the data and information made public may well not be a reliable measure of an employer's safety record or its efforts to promote a safe work environment."

- **Privacy:** The proposed rule would require employers to submit confidential details about the company and information about its employees, which many consider proprietary business information.

In issuing its proposal, according to NGFA's letter, "OSHA ignores several court rulings that have found employers have a privacy interest in maintaining the confidentiality of such data and business information, and fails to consider the implications of publishing it." For example, OSHA states it intends to publish the addresses of certain businesses that produce, store or maintain highly sensitive, hazardous or valuable products or commodities. Depending upon the nature of the business, publicizing locations and number of employees could leave a business vulnerable to threats to security.

- **No-Fault:** The proposed rule abandons OSHA's "no-fault" approach to recordkeeping without justification or analysis.

- **Disincentives:** Under existing rules, OSHA encourages employers to record all possible qualifying incidents, and provides that if an incident is later found to be outside the reporting requirements, it can be stricken. This protection may well have resulted in employers erring on the side of "over-reporting" of injury and illness incidents with the assurance that they could be corrected later, NGFA says. However, the proposed rule potentially would give employers an incentive not to record those incidents, and "paradoxically, the outcome would be less – not more – information on workplace injuries."

- **Access:** Under the proposed rule, OSHA would require all records be submitted electronically. However, OSHA has not tested or verified its assumption that only a small portion of businesses do not have immediate access to computers or the internet. This verification is required under the Small Business Regulatory Enforcement Fairness Act of 1996.

- **Time and cost:** NGFA says OSHA has grossly underestimated the costs of compliance, estimating it to be only $183 per year for establishments with 250 or more employees, and only $9 per year for establishments with 20 or more employees in specified industries. However, NGFA says, the agency fails to account for numerous costs associated with the proposed rule, including, but not limited to:

    - Possible cost of adopting a new system to accommodate OSHA's filing system; and
    - Training for a new system and implementation of electronic systems for businesses only using paper format, which is representative of most grain, feed and processing businesses.

Further, according to NGFA's statement, "OSHA provides no data, surveys or objective support for its assertions of the benefits that allegedly will flow from the

proposed regulation. The agency's claims are mere speculation and conjecture that these benefits will emerge. Simultaneously, the agency ignores entirely the various negative consequences that are sure to occur.

"For all these reasons, the NGFA believes OSHA's proposed rule will fail to enhance workplace safety and instead will have the effect of driving up costs for grain, feed and processing businesses, and pose a risk to increasing unemployment," the statement concludes.

For additional information, see NGFA's statement.

Coalition for Safe and Affordable Food Continues Push for Federal Biotech Labeling Solution

By Jared Hill, Director of Legislative Affairs

The push for a federal solution to the debate over biotech-enhanced ingredients in labeling human and animal food products is gathering steam. The Coalition for Safe and Affordable Food (CFSAF) continues to grow – it now has more than 30 groups, comprised of farmer, processor, and food and beverage associations. The NGFA is a founding member of the coalition.

The coalition's expressed purpose is to provide policymakers, media, consumers and all stakeholders with the facts about food ingredients grown through genetically modified technology. One of the main goals of the coalition is to obtain a federal solution to the issue of biotech labeling. As the biotech-labeling issue comes up before more and more state legislatures and appears on state ballot initiatives, the need for a federal standard on how such labeling is handled has become apparent. Recently, coalition members have been increasing their efforts to inform federal policymakers that a state-by-state patchwork of labeling laws is detrimental to consumers, farmers, food manufacturers and the economy.

It appears all the talk with policy makers may turn into action in the coming weeks. There is a growing expectation among coalition members that federal legislation could be introduced before the Easter recess. Whenever legislation is introduced it will certainly ramp up the GMO labeling debate.

The fact is the United States has the safest, highest quality, most abundant food supply in the world. Genetically modified technology has played a major role in U.S. agriculture and the food industry providing the high quality food supply to the nation and world. NGFA continues to partner with other

coalition members to help educate members of Congress, media, and consumers about the benefits and safety of genetically modified technology.

If you would also like to support NGFA's efforts to obtain a federal solution to biotech-labeling on food and feed products, visit the CFSAF website and follow the directions on contacting your members of Congress.

FDA Announces New Safety Reporting Tool for Livestock Animal Feed

By Dave Fairfield, Vice President of Feed Services

The U.S. Food and Drug Administration (FDA) on March 20 announced the availability of a new web-based portal for the public to report issues related to livestock animal feed.

The Livestock Food Reporting portal is designed to accept reports about animal feed made for species considered to be livestock, including but not limited to, horses, cattle, swine, poultry and fish. The portal specifically is to be used by veterinarians and livestock producers when reporting safety issues related to such products.

The reporting mechanism is FDA's latest addition to the Safety Reporting Portal, an online system designed to streamline the process of reporting product-safety issues to FDA and the National Institutes of Health. The Safety Reporting Portal was launched in 2010 to provide a means to report various food and animal feed incidents, including submission of:

1) reportable food reports that are required under the FDA Amendments Act of 2007;
2) safety events associated with pet foods and pet treats;
3) adverse drug events associated with animal drugs; and
4) adverse events pertaining to human gene transfer clinic trials.

FDA's announcement also clarified that manufacturers, distributors, retailers and public health officials at the federal, state and local level should continue to use the Reportable Food section of the Safety Reporting Portal when reporting safety issues pertaining to livestock animal feed. In addition, FDA stated that its district offices will continue to accept product-safety reports via phone.

Convention App

Maximize your time at the show with TripBuilder Event Mobile. Easily view the schedule, exhibitors, speakers, city content, instant alerts and more! You can even create a personalized list to target what you want to see, here and do.

To get the app on your smart phone, snap the QR code below, or, on your smart, go to **tripbuilder.com/ngfa2014**. The link will automatically detect your phone and type and take you to the write place to download the app.

Leading Membership Recruiters in Line to Win Fabulous Prizes at Annual Convention

By Todd Kemp, Vice President of Membership/Treasurer

As the 2013-14 membership year winds down toward convention, NGFA recruiters are avidly vying for major prizes to be awarded at Hilton Head, S.C. During the convention's general session on Monday, March 31, the following prizes will be awarded (need not be present to win):

- **"Palm Tree Paradise"** – Airfare for two and two nights at the Ritz Carlton on Amelia Island, Fla.
- **"California Coast"** – Airfare for two and two nights at the St. Regis Monarch Beach, Dana Point, Calif.
- **"Wine Country Weekend"** – Airfare for two and two nights at the Meritage Resort and Spa, Napa, Calif.

These three fabulous travel prizes will be awarded to the top three individuals in our annual recruiting competition.

Additional awards that will be presented:

- **The Nootbaar Prize** – Random drawing for $1,000 cash! All membership sponsors during the course of the year qualify for the drawing.
- **Ceres, Goddess of the Harvest** – The NGFA-member firm compiling the most total points in our competition will be awarded the solid bronze statue of Ceres for the coming year!

The Membership Leaderboard follows – there is still time to get on the board or move up to qualify for these coveted NGFA awards!

NGFA Membership Leaderboard

(as of March 20)

Mike Wong	Columbia Grain Inc.	29,460.00
Harry Bormann	MaxYield Cooperative	12,325.00
Dave Ragan	Archer Daniels Midland Co.	9,612.50
Dean Reder	Guardian Energy	3,687.50
Joe Christopher	Crossroads Cooperative	3,327.50
Steve Strege	North Dakota Grain and Feed Assn.	3,175.00
David Nutt	J.W. Nutt Co.	2,807.50
Randy Wuttke	Farm City Elevator Inc.	2,592.50
Carl Brown	F.M. Brown & Sons	2,542.50
Scotty McCoy	White Commercial Corp.	2,125.00
James Williams	Deseret Grain	2,075.00

David Kabbes	Bunge North America Inc.	2,075.00
Dean Jipping	Hamilton Farm Bureau	1965.40
Dave Geers	Michigan Ag Commodities	1,900.00
Paul Soukup	Warrior Manufacturing	1,900.00
Tim Schaal	Archer Daniels Midland Co.	1,900.00
Greg Konsor	Gavilon Grain LLC	1,900.00
John Heck	The Scoular Co.	1,900.00
Jarrod Firlotte	Emerson Milling	1,700.00
Jim Montbriand	RPMG Inc.	1,525.00
Jim Traub	Huron Commodities	1,450.00
Edgar Woods	Palmetto Grain Brokerage	1,240.00
Carey Bauer	Rock River Lumber & Grain	1,137.50
Bruce Hartley	Hartley Grain Co.	1,092.50
Ben Kuhns	Tate & Lyle	987.50
Roger Frederick	Brock Manufacturing	950.00
Sean Broderick	CHS	950.00
Jay Ramsey	Archer Daniels Midland Co.	950.00
Bob Cox	Pomeroy Grain Growers	950.00
Mark Avery	Grain Journal	950.00
Dave Hoogmoed	Land O'Lakes/Purina Animal Nutrition	950.00
John Augspurger		950.00
Brad Auger	Gavilon Grain LLC	950.00
David Parker	Nidera US LLC	950.00
John Glynn	CIT Rail	950.00
Tom Pruess	RBH Mill & Elevator Supply	950.00
John Kastelic	Witmer's Feed and Grain	950.00
Tom Tunnell	Kansas Grain and Feed Association	950.00
Mike Smith	The Scoular Co.	950.00
Keith Swigart	Minier Cooperative	950.00
Kevin Miles	Rolfes@Boone	950.00
Paul Hammes	Union Pacific Railroad Co.	950.00
Scott Kleckner	INTL FCStone	950.00
Bart Moseman	Farmers Cooperative Elevator Co.	950.00
Scot Hillman	J.D. Heiskell & Co.	950.00