



National Grain and Feed Association

NEWSLETTER

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NGFA, NAEGA Issue Joint Statement Urging Syngenta to Suspend Commercialization of Agrisure Viptera and Duracade Biotech Corn

By Randy Gordon, President

The NGFA and North American Export Grain Association on Jan. 23 issued a joint statement urging Syngenta to immediately halt the commercialization in the United States of its Agrisure Viptera® and Duracade® biotech-enhanced corn traits, which have not been approved yet by China.

The joint statement was issued in response to rejections of U.S. corn and distillers dried grains with solubles (DDGs) by Chinese authorities because of the presence of Syngenta's Agrisure Viptera® corn, as well as Syngenta's recent commercialization this year of Duracade®.

The joint statement, printed in its entirety below, may be useful to NGFA-member companies in communicating with farmer-customers and other commercial parties. Of course, each member company needs to determine for itself whether and how best to address limitations, if any, it may have on accepting delivery of commodities containing biotech-enhanced traits that do not have certain export market approvals or functionally different output traits.

[A copy of the joint statement](#) on NGFA and NAEGA letterhead is available to be used as a handout or for distribution.

In addition, the NGFA is making available options for sample grain contract clause language based upon provisions developed by NGFA several years ago to assist grain purchasers who wish to address issues that may arise from time-to-time concerning the introduction and commercialization of new biotech-enhanced traits. One or more of the [sample contract clause options](#) are available online and may be relevant and applicable. The sample boilerplate biotech contract language options, which are presented in no particular order or preference, should be read and considered carefully before being used.

Importantly, as with all contractual matters, it is recommended strongly that companies consult with competent legal counsel before making changes to legal documents, such as grain contracts.

The full text of the NGFA-NAEGA joint statement follows:

“On Jan. 22, 2014, the National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) sent a letter to Syngenta asking the company to immediately halt commercialization in the United States of its Agrisure Viptera® corn and Agrisure Duracade® corn until such time as China and certain other U.S. export markets have granted required regulatory approvals/authorizations.

“The NGFA and NAEGA both strongly support agricultural biotechnology and other scientific and technological innovations that contribute to production efficiency and availability of a safe, abundant and high-quality food and feed supply for U.S. and world consumers.

“However, NAEGA and NGFA are gravely concerned about the serious economic harm to exporters, grain handlers and, ultimately, agricultural producers – as well as the United States’ reputation to meet its customers’ needs – that has resulted from Syngenta’s current approach to stewardship of Viptera. Further, the same concerns now transcend to Syngenta’s intended product launch plans for Duracade, which risk repeating and extending the damage. Immediate action is required by Syngenta to halt such damage.

“There are numerous negative consequences incurred when the Chinese and other U.S. export markets are put at risk through commercialization of biotechnology-enhanced seeds before approvals for import into foreign markets are obtained. Such consequences may include reducing the value and demand for the U.S. farmers’ products, preventing foreign consumer access to much-needed supplies, shutting off or increasing the cost of U.S. producers’ access to some export markets for their crops, exposing exporting companies to financial losses because of cargo rejections and contract cancellations, and ultimately diminishing the United States’ reputation as a reliable, often-preferred supplier of grains, oilseeds and grain products in world markets. Commercialization prior to foreign regulatory approvals also has a negative impact on the overall U.S. corn and other grain value chains, and reduces significantly U.S. agriculture’s contribution to global food security and economic growth.

“Within the U.S. grain and oilseed handling and marketing system, each purchaser or handler makes its own determination as to whether to accept various commodity crops – including those produced from biotechnology-enhanced seeds. Such a decision likely is driven by customer preferences, infrastructure and operational limitations, regulatory regimes and contractual commitments, as well as meeting regulatory requirements in the respective markets they serve. Given the nature of the U.S. grain marketing system, these

business decisions extend to the first point of sale or transfer from the producer.

“As a matter of policy, NGFA and NAEGA have communicated consistently, clearly and in good faith with biotechnology providers and seed companies about the importance of biotechnology providers actually obtaining regulatory approvals/authorizations for import in foreign markets before such traits are commercialized in the United States. Individual grain handler, processor, service provider and exporter member companies of our Associations represent further system-wide support and advocacy for this policy.

“U.S. farmers, as well as the commercial grain handling and export industry, depend heavily upon the exercise of due corporate responsibility by biotechnology providers with respect to the timing of product launch and commercialization. We therefore seek assurances from Syngenta that it will follow suit by publicly announcing that it will suspend immediately its commercialization of Viptera and Duracade products in the United States until such time as China and other U.S. export markets have granted required regulatory approvals and authorizations.

“Given these on-going concerns, NGFA and NAEGA urge U.S. farmers to evaluate these issues as they prepare for the 2014 planting season. Farmers should check with their local grain elevators and merchants to determine whether the grain buyer or handler has any limitations on accepting biotechnology traits that do not have certain export market approvals.”

Evaluation of USDA Grain Reports

By Max Fisher, Director of Economics and Government Affairs

A new [research report](#), funded by the Office of the Chief Economist of the U.S. Department of Agriculture (USDA), examined the accuracy of quarterly estimates of corn inventories. It was conducted by University of Illinois at Urbana-Champaign Professors Scott Irwin and Darrel Good, and Southern Illinois University-Carbondale Professor Dwight Sanders.

They found that – in spite of on-going efforts to maintain the quality of information provided and the transparency of the methodology used – misunderstandings, concerns, or complaints about corn and soy reports still exist.

For additional information, see the [full research report](#), or see a summary below.

Findings

The researchers' primary finding was that quarterly corn stocks have gotten

much harder to predict since 2006. They examined numerous reasons for this, such as:

- biased survey respondents;
- mixing of old and new crop stocks;
- changing geography of corn production;
- changing number and size of on-farm grain facilities;
- changing make-up of the survey sample during the marketing year;
- reduced survey response rates,
- more ethanol plants;
- more corn in transit; and
- inaccurate estimates of corn used for ethanol.

However, they believe the explanation with the most merit is that unresolved errors in production estimates for corn led to the large surprises.

To most market analysts, the January corn production estimate generally is viewed as the final production estimate. But USDA's National Agricultural Statistics Service (NASS) always is careful to include a detailed discussion of potential sampling errors, and those errors amount to hundreds of millions of bushels of over/under-accounted corn. The production estimate errors are believed to have been amplified in recent years by unusual growing season weather conditions.

Researchers also found that there is a general tendency for NASS from August through November to underestimate the final soybean yield forecast. While the underestimate is not significant, it does impact estimates and thus reports.

Recommendations

To improve the accuracy of USDA yield forecasts and estimates, the researchers made several recommendations:

- 1) USDA's World Agricultural Outlook Board (WAOB) should outline the exact process used to determine corn and soybean yield forecasts.
- 2) NASS should review its soybean yield forecasting procedures for sources of bias.
- 3) NASS should provide its yield forecasts derived from both the agricultural yield survey and the object yield survey.

For corn and soybean stock estimates, the researchers recommend that NASS improve the accuracy of on-farm stock estimates by telling farmers to estimate stocks using 56 pound bushels for corn and 60 pound bushels for soybeans. Also, the researchers recommend NASS conduct an internal review of corn stock estimation procedures, and that NASS add grain stocks questions to the Agricultural Census.

Upcoming Events

- Feb. 5-6** Feed Legislative and Regulatory Affairs Committee and Feed Manufacturing and Technology Committee Meetings
Omaha, Neb.
- Feb. 11-12** SHEQ Committee Meeting
Kansas City, Mo.
- Feb. 19** Regional Safety Seminar
With the Oklahoma and Texas Grain and Feed Associations
Oklahoma City
- 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 improving domestic usage forecasts and estimates, the researchers recommend NASS add surveys of corn for feed use and corn for ethanol use. Lastly, the researchers recommend that USDA create a replacement report for the discontinued (in July 2011) Census Bureau oilseed crushings report, which was used to gauge the rate of consumption of soybeans and soybean products during the marketing year and to judge the strength of demand for those commodities.

Can the Farm Bill Cross the Finish Line?

By Jared Hill, Director of Legislative Affairs

The House and Senate farm bill conference committees continue to push toward the finish line. At this point, most of the conferees are not being included in discussions on the remaining items to resolve. The leaders of the conference committee, Sen. Debbie Stabenow, D-Mich., Sen. Thad Cochran, R-Miss., Rep. Frank Lucas, R-Okla., and Rep. Collin Peterson, D-Minn., are still trying to sort out issues on dairy, commodity program payment limitations and country-of-origin labeling.

On dairy, reports indicate a compromise is close at hand, and it likely will not include the supply management provision Rep. Peterson had been advocating for the last two years. It has been well documented that House Speaker John Boehner, R-Ohio, is adamantly opposed to the supply management measure, and threatened not to bring the farm bill to the floor for final approval if it included supply management. From reports coming out of the halls of Congress, it appears the speaker will get his wish.

On the heels of what appears to be a possible solution to the dairy debate, commodity program payment limits have now taken a front seat in the negotiations. The payment limits language is reportedly one of the last major hang-ups with getting the bill completed. Sen. Chuck Grassley, R-Iowa, and Rep. Jeff Fortenberry, R-Neb., each were successful in getting an overall cap on farm program payments set at \$250,000 in the Senate and House versions of the farm bill.

In addition, both bills included language closing loopholes that non-farmers have used to obtain farm program payments. The Government Accountability Office (GAO) recently conducted an examination of how the U.S. Department of Agriculture (USDA) administers the "actively engaged" requirements, where individuals have to meet certain requirements to be considered "actively engaged" in farming thereby allowing those individuals to receive farm payments. The GAO report found instances where non-

farmers were using loopholes in the law to qualify as “actively engaged,” and receiving commodity program payments.

Despite the payment caps and language closing loopholes being included in both Senate and House versions of the farm bill, Cochran and Lucas oppose the provisions, while Stabenow has dug in to keep the provisions in the final bill. If reports are accurate, a deal is in the works to resolve the payment limits issues, although it remains to be seen just how different the final language will be from what is in the bills passed by each chamber.

According to congressional sources, the conference committee expects the remaining issues to be wrapped up by next week when Congress is back in session. This would clear the way for the House and Senate to vote on approval of the conference report sometime in early February, *if* everything goes smoothly; judging by how this farm bill process has been dragging on over the last three years, that remains a big “if.”



Early Agenda Unveiled for 118th NGFA Annual Convention

With temperatures hovering in single digits in many parts of the country, make plans to get away to the beach of sunny South Carolina to join NGFA and industry colleagues for NGFA's 118th annual convention. This year, the convention will be held March 30 to April 1 at the [Westin Hilton Head Resort](#) on Hilton Head Island, S.C., where we will celebrate a tradition of community and a future of growth.

[Registration is open](#) and early bird rates are available until March 7. In addition, be sure to [reserve a hotel room](#) early – the reduced room rate also expires March 7 – rooms are anticipated to go early.

During the convention, attendees will be treated to:

- A Transportation Open Forum featuring John Hellmann, president and chief executive officer of Genesee & Wyoming Inc, and Mike Toohey, president of Waterways Council Inc. A speaker from the trucking industry also will address the Forum.
- A congressional speaker.
- A major address from a food-industry leader.
- Marc Freedman, director of labor law policy from the U.S. Chamber of Commerce, who will address “Regulatory Overkill.”
- A panel on “Sustainability and Consumer Preferences” featuring a major retailer; Steve Peterson, director of sourcing sustainability, General Mills;

and Randy Spronk, president, National Pork Producers Council.

- Sessions on “Futures Markets – Change and Innovation” and “Progress Toward Free Trade.”
- The always entertaining membership awards.
- Receptions and networking events.

In addition, numerous committees will meet and there are opportunities for outside tours:

- A May River Boat Cruise and Bluffton Oyster Experience,
- The Parris Island Marine Recruit Depot, and
- A Daufuskie Island History and Artisan Tour.

However, if golf is preferred, put a group together for the Foundation Golf Tournament held this year at the [Oyster Reef Golf Club](#). Play a round and help support the National Grain and Feed Foundation.

For additional information, [download the program](#) or go to ngfa.org/annualconvention.

Finally, don't leave early. Be sure to stay for the Tuesday night beach banquet, where the palm trees will sway in time to the laid-back rhythm of Hilton Head Island - enjoy a change of attitude with a change of latitude.

If you have any questions, please contact [Rebecca Grubbs](#), director of meetings and event marketing, at (202) 289-0873.

NGFA Task Force to Make Recommendations on Position Limits

By Todd Kemp, Vice President of Marketing and Treasurer

A 10-person task force drawn from three NGFA committees – Risk Management, Country Elevator, and Finance and Administration – has been analyzing a [proposed rule](#) from the Commodity Futures Trading Commission (CFTC) that would redefine the parameters of a *bona fide* hedge and implement new methodologies for establishing federal speculative position limits as contained in the Dodd-Frank law. The task force's findings and recommendations will be forwarded to the Risk Management Committee, which has the lead role in formulating NGFA comments to the CFTC, and to the other two committees.

Generally, issues surrounding the new definition of bona fide hedging are of paramount concern.

The CFTC's proposed rule would result in some transactions previously considered by both industry and the commission as *bona fide* hedges to be outside the new definition – anticipatory hedging has been identified as an area of particular concern. In addition, the proposed rule would set new spot-month position limits based on a percentage of deliverable supplies of a given commodity, and an all-months-combined limit based on a percentage of open interest.

The [text of the lengthy proposed rule](#) can be accessed online. Deadline for comments to the CFTC is Feb. 10; NGFA members are invited to provide input to Todd Kemp at tkemp@ngfa.org.

Once the NGFA comment letter is submitted to the CFTC, additional details will be reported in the **NGFA Newsletter** in early February.

CME Group Considering Variable Daily Price Limits

By Todd Kemp, Vice President of Marketing and Treasurer

As previously reported in the **NGFA Newsletter**, the CME Group is moving toward proposing variable daily price limits for CBOT grain and oilseed futures contracts. Generally, price limits would be based on a percentage of commodity value during a defined observation period.

Before moving forward, the CME Group has designed a [fact sheet/questionnaire to elicit industry feedback](#).

While the questionnaire mentions a December deadline, the CME Group still is anxious to receive industry input by the end of February. It is looking to finalize the proposal for submission to the Commodity Futures Trading Commission (CFTC) by the end of February, which would trigger a 45-day review period. CME Group's goal is then to implement variable daily price limits by May 1.

Please provide feedback directly to Fred Seamon at the CME Group (fred.seamon@cmegroup.com) per the questionnaire, or to Todd Kemp at tkemp@ngfa.org.

Supreme Court Denies Appeal from Farmers Seeking 'Preemptive' Protection from Future Patent Infringement Claims

By Charlie Delacruz, Vice President and General Counsel

The U.S. Supreme Court on Jan. 13 denied the appeal of a coalition of farmers, seed sellers and advocacy groups, which had filed suit seeking protection from future claims by Monsanto Co. for patent infringement.

The plaintiffs in the lawsuit neither sold nor used transgenic seed that incorporated Monsanto's technologies, such as the widely distributed Roundup Ready® seed varieties. They argued, however, that they could be subject to claims by the company for patent infringement if trace amounts of Monsanto's patented genes were detected in their crops. The plaintiffs in the coalition sought a declaratory judgment of "non-infringement and invalidity" with respect to Monsanto's patents.

The lawsuit was first dismissed by a federal district court in New York. In June 2013, the U.S. Court of Appeals for the Federal Circuit affirmed the district court's ruling. The court of appeals referred in its decision to Monsanto's declared policy:

"It has never been, nor will it be Monsanto policy to exercise its patent rights where trace amounts of our patented seeds or traits are present in farmer's fields as a result of inadvertent means."

Based upon these "binding assurances" that Monsanto will not take legal action against growers whose crops might inadvertently contain trace amounts (less than one percent) of Monsanto biotech genes (because, for example, some transgenic seed or pollen blew onto the grower's land), the court of appeals agreed with the trial court's decision that "these circumstances do not amount to a substantial controversy" and "there has been no injury traceable to defendants."

The effect of the Supreme Court's denial of the petition for writ of certiorari is that the decision of the court of appeals stands as the final ruling on the case.

[Organic Seed Growers and Trade Association, et al. v. Monsanto Co., et al. (Case No. 13-303)].



Profile: Rail Shipper/Receiver Committee

Editors note: NGFA relies heavily on its 18 active committees and councils to address significant issues related to public policy and industry business. As such, NGFA has launched a series of profiles looking at the committees, their priorities and leadership to keep members up-to-date on current issues. A new committee will be featured each month in the "Committee Corner" based on association priorities.

Committee Name: Rail Shipper/Receiver

Committee Chairman: Dan Mack, vice president of transportation and terminal operations at CHS Inc., St. Paul, Minn.

NGFA Liaisons:

- Randy Gordon, president
- Jared Hill, director of legislative affairs
- Charlie Delacruz, vice president and general counsel

Committee Members: Below is a list of active committee members as of Jan. 23:

- Shane Berrett, Gavilon LLC, Kansas City, Mo.
- Wyatt Brummer, The Scoular Company, Overland Park, Kan.
- Robert Carlson, Landmark Services Cooperative, Cottage Grove, Wis.
- Jerry Cope, Dakota Mill and Grain Inc., Rapid City, S.D.
- Dan DeRouchey, Berthold Farmers Elevator LLC, Berthold, N.D.
- Roger Fray, West Central Cooperative, Ralston, Iowa
- Scott Fredericksen, Archer Daniels Midland Company, Decatur, Ill.
- Mark Huston, Louis Dreyfus Commodities, Kansas City, Mo.
- Scott Malony, Penny-Newman Grain Co. Inc., Fresno, Calif.
- Jim McKinstry, The Andersons Inc., Maumee, Ohio
- Scot Ortman, Kokomo Grain Co. Inc., Kokomo, Ind.
- Ryan Pellett, J.D. Heiskelle & Co., Elkhorn, Neb.
- William Shortal, Central States Enterprises Inc., Heathrow, Fla.
- Kevin Thompson, Cargill Inc., Minneapolis, Minn.
- Charles Threlkeld, CGB Enterprises Inc., Mandeville, La.
- Greg Twist, Ag Processing Inc., Omaha, Neb.
- Phil Waddell, Foster Commodities, Fresno, Calif.
- Ryan Warner, Bunge North America Inc., St. Louis, Mo.
- Randall Wuttke, Farm City Elevator Inc., Darlen, Wis.
- Kevin E. Zimski, Land O'Lakes Inc., Shoreview, Minn.

Committee Purpose: The NGFA is regarded widely as the lead agribusiness trade association on rail transportation and service issues. The committee is comprised of shippers, receivers, marketers and users of grain and grain products by rail. All types and sizes of companies are represented, including

country and terminal elevator managers, grain processors, feed manufacturers, integrated livestock and poultry feeding operations, grain rail transportation experts, and other senior-level managers. The committee focuses principally on congressional rail legislation, rail rulemakings and proceedings initiated by the federal Surface Transportation Board (STB), and service-related issues confronting the grain, feed, grain processing and export sectors,

Major Current Committee Activities: The committee currently is focusing on the following major issues:

- **BNSF Service-Related Problems:** The committee is interacting with the BNSF Railway to address deteriorating service that has plagued grain shippers and receivers over the last six months or longer, as well as the lack of predictability and transparency on when current service-related disruptions will be resolved. The NGFA will be requesting that the BNSF establish estimated cycle time/velocity-based performance standards that realistically can be expected by grain and grain product shippers and receivers for the remainder of 2014, including at harvest. Service-related issues with other carriers also will be addressed.
- **Competitive Switching:** The NGFA is engaged actively in a current STB proceeding that may result in new proposed rules to enhance competitive switching in terminal areas that lack effective competitive transportation alternatives.
- **Grain Rail Rate Proceeding:** The NGFA will be submitting extensive comments this spring on a new proceeding launched by the STB in response to comments submitted previously by the NGFA concerning the lack of a reasonable method for grain shippers to challenge unreasonable freight rail rates. The STB has indicated it is open to considering an entirely different method for grain shippers to challenge unreasonable freight rates, and the NGFA plans to propose an alternative that is consistent with its overarching philosophy of fostering a competitive transportation environment consistent with free market principles.
- **Addressing Unreasonable Business Practices by Carriers:** The committee is focusing on the increasingly troubling practice of carriers assessing accessorial and other charges, as well as shifting of liability for loss-and-damage claims.
- **FDA Implementation of Safe Food Transportation Provisions of Food Safety Modernization Act:** The committee will be providing input along with other NGFA committees concerning the Food and Drug Administration's proposal, scheduled to be issued in late January, implementing the safe food transportation provisions of the Food Safety Modernization Act (FSMA). The committee's goal will be to ensure sufficient flexibility in FDA's rules to prevent certain classes of rail and

other freight from being ruled “off limits” for use in transporting grain and grain products.

- **Rail Legislation:** The NGFA continues to evaluate opportunities to amend the Staggers Rail Act at some point in the future to require the STB to better balance the need for rail competition and competitive service with its existing statutory requirement to ensure revenue adequacy of rail carriers.