

Perennial Ryegrass Price Negotiations  
Supervised by the Oregon Department of Agriculture Pursuant to HB 3811  
September 12, 2001

The Perennial Ryegrass Bargaining Association (PRBA) and a number of grass seed dealers contacted the department with the intent of discussing price issues relative to the 2002 crop. In an effort to adhere to components of the Bargaining Plan, the parties desired to meet prior to September 15, 2001. Arrangements were made by the department to supervise discussions between the PRBA and a group of seed dealers on September 12, 2001.

The department convened a meeting with representatives of the PRBA and seed dealers (comprising the Bargaining Council) at the department headquarters, 635 Capitol Street NE, Salem, Oregon on September 12, 2001 at 8:00am.

Brent Searle, Special Assistant to the Director, represented the Director in supervising the price discussions.

Present:

Representing PRBA: Don Fisher, Jim Carnes, Ron DeConinck, Dave Vanasche, Wendell Manning, Dave Malpass.

Representing seed dealers: Mike Baker (Pennington Seed), Steve Tubbs (TMI), Brad Dozler (Cebeco International Seeds), Rich Underwood (Simplot/Jacklin Seeds), Jon Odenthal (Lesco), Roeland Kapsenberg (Barenbrug USA), Dick Olson (Pro Seeds Marketing), Bill Dunn (Seed Research of Oregon).

ODA opened the meeting, stating that the process was being convened under the auspices and supervision of the Oregon Department of Agriculture in accordance with the authority provided under House Bill 3811. ODA read a statement from testimony provided by the Department of Justice, referencing Supreme Court views on state action immunity, as follows:

“For States which do choose to displace the free market with regulation, our [meaning the Court’s] insistence on real compliance with both parts of the ... test will serve to make it clear that the State is responsible for the price-fixing it has sanctioned and undertaken to control... If, as the FTC examines the role and authority of the state in these matters, it concludes that the state has a minimal level of involvement or authority to the point where the state is merely deferring to private price fixing arrangements, then the agency will seriously

consider rejecting the defense and taking enforcement action against the persons who are engaging in the unlawful conduct.”

As it is the intent of the department to ensure that this process meets the criteria set by state and federal law and court guidance, the department wants to ensure that the parties clearly understand that the ability to discuss price requires the department to 1) actively supervise the process, and 2) ultimately set the price, taking fully into account the recommended/negotiated price (if reached) by the Bargaining Council. It is the intent of ODA to ensure that parties are provided anti-trust immunity during discussions under department supervision.

Because the Oregon Seed Trade Association (OSTA) recently voted to abstain from officially participating in the price bargaining process under the jurisdiction of the department, the seed dealers present, representing more than 50% of the contracted acreage, were representing their own companies and “the industry” generally, but not officially on behalf of the OSTA. All dealers meet the definition of “dealer” as contained in ORS 646.515, pursuant to HB 3811.

The PRBA read and submitted into the discussion record the following statement:

Representatives of the PRBA are attending the bargaining session prior to September 15, 2001, in accordance with legislation (HB 3811, 2001), and in compliance with the PRBA Bargaining Plan, which was developed in recent settlement of litigation between PRBA and two seed dealers.

That Bargaining Plan was reviewed and approved by the Board of the Oregon Seed Trade Association. The PRBA was notified on September 10, 2001 that the Oregon Seed Trade Association, on the basis of the results of a vote by its members, will not participate in the Bargaining Council’s negotiation for the 2002 crop year.

Under the legislation, the Oregon Department of Agriculture is directing the bargaining between the PRBA and dealer representatives, who represent those companies producing and marketing the majority of the production of TournamenT®Quality turf-type perennial ryegrass seed produced by members of the PRBA; and the Department of Agriculture is directing the negotiating parties to use criteria which the department has drawn from the Bargaining Plan.

In regard to the issue of cost of production as a component of the price discussions and referenced in the Bargaining Plan, the PRBA provided a proposal that would create a formal relationship with an independent accounting firm to compile and summarize cost of production data. The process would initially begin with data submitted by PRBA Board Members, including costs for establishment and three subsequent production

years. PRBA would then work to expand the submission of data from grower members, segmented by regional locations.

Dealers asked whether a certain percentage of growers needed to submit data in order for the results to be valid. PRBA responded that a certain amount of cost data already exists with Chemeketa and Lane County Community College Farm Business Management Programs, and that the PRBA efforts will augment this data. As more grower information becomes available, it will add to the overall significance of the data. PRBA stressed the importance of making progress on the issue.

It was noted that equipment depreciation was not accounted for in the PRBA cost accounting survey and there was general agreement that this needed to be included.

General discussion ensued about the importance of understanding costs of production, both at the individual grower level to help in making production decisions, as well as the industry level, to remain competitive.

PRBA noted that production costs are only a snap-shot in time -- changes in world events can quickly lead to movement in oil prices that impact fuel and fertilizer costs.

The Council generally acknowledged that cost of production is only one factor in the ongoing discussions about pricing and issues related to pricing. It is an important component of the discussions, but not the only criteria for pricing. Dealers agreed that the concept proposed by PRBA meets the intent and concepts contained in the Bargaining Plan.

Dealers acknowledged that inventory information is also essential to price discussions and agreed to submit information to the same accounting firm for summary reporting.

PRBA distributed a 2002 Crop Year Minimum Price proposal, including \$0.41 for certified and \$0.40 per pound for uncertified Tournament® Quality seed meeting the specifications of definition of that seed. The proposal established a price through July 1, 2002. The price would not apply to existing fixed price contracts.

The proposal also contained a provision for addressing the situation where a grower and dealer were unable to reach agreement on contract issues related to production, harvesting, conditioning, testing, storage or delivery. The process involved referring the case to the Bargaining Council, then to the department's mediation program, and finally to an arbitrator in accordance with the rules of the American Arbitration Association.

ODA clarified that in relation to price, an arbitrator nor any other party than the Director, can establish the price or adjust the price. The other issues may be resolved as agreed by the parties.

A dealer asked about the obligation of dealers to abide by a price established through the price negotiations and set by the Director. Another dealer expressed concern that price is being used as the sole mechanism for market stability and other issues were equally as important.

ODA commented that the intent of the legislation is to provide a forum for dealers to meet with growers and openly discuss prices; the parties are afforded immunity from state and federal anti-trust action and the ability to provide input and discussion about establishing a price for Tournament®Quality seed. The overall goal of the process is industry stability and a way for producers and dealers to have substantive discussions about prices. ODA further noted that the legislation that provides this process did not address the issue of enforcement of prices, only setting the price. PRBA noted that enforcement of contracts comes through its membership not signing contracts less than the set price. It would be up to PRBA to address price violations involving its membership.

One dealer noted that the price set through this process, although not directly applicable to open priced contracts, does have an impact on them by establishing a “fair market price.”

Another dealer noted his objection to being bound by a price set through this process.

Further discussion ensued about whether to have a single price for the entire 2002 crop year or to allow the price to float in July. Some parties felt the open price contracts encourage overproduction.

A PRBA Board Member suggested that the Bargaining Council needs to decide on whether the Bargaining Plan reached in the court settlement is driving the pricing discussion or if that agreement is superseded by HB 3811. A dealer involved in the court settlement continues to refer to that document as the framework for the discussions.

ODA commented that neither the department nor the other parties at these discussions were party to the court settlement. Indeed, the Director takes his authority solely and direction from the state law, not the court settlement. Should the Bargaining Council decide to utilize portions of the Bargaining Plan contained in the court settlement as guidance for the price discussions, that is up to the Bargaining Council.

Dealers addressed the issue of inventory relative to the aftermath of the ABT bankruptcy. One dealer felt that “90% of the surplus from ABT had cleared the pipeline...”

Concern was expressed about dealers who don't have the necessary capital to operate, consequently not paying growers on time, creating risky situations with inventory, underpricing, etc. Some dealers suggested raising the requirements to obtain a seed dealers license. Bonding, indemnity and other programs were briefly discussed and noted as issues of importance for continuing discussions in another setting. One dealer suggested that responsible dealers might consider "shaming" their poor performing colleagues into stopping inappropriate practices.

General discussion ensued about acreage -- is it getting into balance? PRBA provided information about acreage and noted that in previous price negotiations the parties felt that 150,000 acres is about the balancing point for the industry at the present. PRBA distributed information from OSU Extension Service that indicates 2001 (projected) acreage is approximately 163,700, down from 181,890 acres in 2000.

The parties acknowledged that last year's price had brought acreage out of production and that it is headed in the right direction.

A dealer raised the question of appealing the price set by the Director. ODA clarified that the proposed rule which will be adopted by the department will use language very similar to that in the Bargaining Plan, providing that the Bargaining Council or its entities, under unusual market circumstances, may petition the director for reconsideration of the price. It was further noted that the Administrative Procedures Act applies, meaning that any affected party of the price "order" may appeal within 60 days of the order. However, for the process to be meaningful, the bargaining entities (PRBA and dealers) need to encourage their members to refrain from appealing the price unless absolutely warranted by market conditions and endorsed by their membership -- otherwise the price becomes meaningless as any number of appeals could be submitted. Ultimately, it is up to the Director to accept an appeal; his determination is final. If the appealing party decides to further pursue the appeal, it would go before an administrative judge.

The Council discussed the importance of having a price established prior to the fall planting time so growers could plan their budget with lenders, and to send a message to discourage additional acreage being established. PRBA felt this was an important signal; dealers agreed, but some felt a need to wait until December or January to set the price.

PRBA proposed to extend the \$0.41/lb. certified and \$0.40/lb. uncertified price for one-third of 2002 production.

Dealers responded with a proposal for coverage of 50% of production. PRBA countered with coverage of 40% of production, but on further deliberation, consented to the dealers 50% proposal.

The Bargaining Council voted on and unanimously approved the proposal from the dealers that the price for the 2002 crop year Tournament®Quality perennial ryegrass would be recommended to the Director at \$0.41/lb. for certified seed and \$0.40 for uncertified seed on 50% of the contracted production.

The Bargaining Council also voted on some agenda items for the next meeting of the Council, to be held no later than March 1, 2002. These included:

- non-contracted seed pricing issues
- price cap issues
- pricing related to cost of production based on variety and yield
- reporting of inventory and acreage data from dealers
- reporting of cost of production by PRBA

ODA noted that the proposed (negotiated) price would be forwarded to the Director for his review by September 17, 2001. A decision on the price would shortly follow.

The meeting was adjourned at 11:55am.