**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

 **21ST CENTURY AGRICULTURE**

***Potential Compensation Mechanisms Working Group Conference call—April 9, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Douglas Goehring, Barry Bushue, Laura Batcha, Jerry Slocum, and Jessica Adelman participating. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation, and the AC21 Chair, Russell Redding, also participated. Two AC21 members who were not members of the working group, Gregory Jaffe and David Johnson, also listened in on the conversation. The goals of call were to: consider a readout by the AC21 Chair from the briefing with the Secretary and Deputy Secretary on the outcome of the last AC21 plenary session; complete work examining each of the three potential compensation mechanisms according to the criteria outlined in the plan of work (i.e., complete the filling in of “the matrix”); and consider operational features of each potential mechanism (e.g., ease of payment, clarity, etc.).

After Dr. Schechtman called the meeting to order, the AC21 Chair briefly summarized the outcomes at the March 5-6, 2012 AC21 plenary session, noting the reports of the working groups, the divisions among committee members regarding the appropriateness of developing a compensation mechanism for economic losses from the unintended presence of GE materials, and the desire among a number of committee members to discuss management measures to address unintended gene flow. He then described the briefing that he and Dr. Schechtman had provided to USDA Secretary Tom Vilsack and Deputy Secretary Kathleen Merrigan. He indicated that the Secretary was not surprised by the current state of the committee’s deliberations, expressed his thanks for the committee’s continuing efforts, and indicated that his expectations remain high. The Secretary also noted that there was still a need to send a message on compensation mechanisms, and that inability to reach an agreement on the subject is itself a statement on coexistence, but the wrong one. He supported the idea advanced in the AC21’s deliberations that should a compensation mechanism be decided upon, whatever mechanism that is should not be one that further divides agriculture. He also expressed the view that it may not be necessary for the AC21 to establish thresholds or triggers in order to recommend compensation mechanisms—such tools could be developed by the marketplace.

The Chair then noted that the work of this WG (“WG 2”) is to finish filling in “the matrix”, to consider operational pros and cons for each potential mechanism, and to think more broadly about how to structure a compensation mechanism that doesn’t divide agricultural producers, which might entail broadening eligibility to a wider number of producers. Dr. Schechtman added that the Secretary had reiterated an earlier remark that if there was no agreement on compensation mechanisms, then the issue would likely wind up in the courts, which would not be a positive outcome.

One WG member who had not attended the recent plenary session requested a brief summary of the reports from the other three WGs at the plenary, and Dr. Schechtman provided a brief summary of their reports. Another WG member thanked the Chair and Dr. Schechtman for the summaries and for refocusing the WG’s discussions, and noted her view that it is clear that there is data supporting the existence of economic losses associated with unintended GE presence but that the data is not robust enough for everyone to interpret it same way. She supported the concept atht whatever mechanism for compensation might be recommended, it should not further divide agricultural producers. As a way to achieve this end, she raised the concept of a pilot fund to try out compensation, as had been proposed at the last plenary session by another AC21 member.

Dr. Schechtman noted that in order to complete the WG’s examination of the three potential compensation mechanisms according to the WG’s plan of work, three topics remained to be discussed: costs/benefits to consumers; type and scale of risk each mechanism is most appropriate to address; and whether there is existing authority to establish such a mechanism.

Regarding costs and benefits to consumers of the three potential compensation mechanisms, members felt that costs to consumers would be dependent on who pays. A compensation fund might have the least cost to consumers, with crop insurance having the next least impacts, and risk-retention groups potentially having the most impact. Regarding benefits, one member argued that amount of benefit would depend on how much the particular mechanism drives changes in farmer practice. Another member suggested that one benefit to consumers from any of the mechanism would be enhanced reliability of the supply of products meeting consumer expectations. He further argued that if a pilot program were established, consumers would see very little cost, and see no direct benefits.

Regarding the type and scale of risk issues most appropriate to address for each potential compensation mechanism, one WG member noted the difficulties organic agriculture has had in working with crop insurance mechanisms, and argued that under a compensation fund might be easier to review claims on their merits instead of seeking to forecast every possible scenario beforehand. Another WG member disagreed, arguing that under any mechanism actuarial work would need to be done beforehand. The first member added that it might be easier in this instance just to start anew. Another member concurred, suggesting that using a compensation fund approach, less actuarial work might be needed initially, but that it would even out eventually. With a pilot program, this might be even more true. If a pilot program were established, USDA could see how growers responded to it, and could begin to gather data on how a larger mechanism might perform. The Chair noted that existing forms of crop insurance have been relatively successful in accommodating regional and crop-specific differences and pricing differences and could in his view offer more latitude in addressing risk issues. When asked for further explanation, he cited the overall level of farmer trust in crop insurance and experience in its ability to deliver benefits.

Regarding existing authority to set up any of the potential mechanisms, it was noted that USDA’s Risk Management Agency has no authority to set up the kind of crop insurance under discussion by the AC21, nor is there authority in USDA to set up a compensation fund, but no USDA authority would be needed for growers to establish their own risk retention group to insure themselves. One WG member noted that USDA was given authority by Congress to compensate farmers for zoonotic diseases affecting animal health and welfare via a fund. Dr. Schechtman noted that USDA would need to seek authority from Congress for setting up either a pilot program or a full program involving either a compensation fund or a crop insurance option. One WG member requested that Dr. Schechtman consult with USDA’s Office of General Counsel about existing authorities for setting up a pilot program. Another WG member offered the view that crop insurance mechanisms might be set up in different ways.

The Chair noted that the importance of the dialogue the AC21 was having on coexistence could be offered as evidence that USDA needed to undertake additional efforts to strengthen policies on specialty crops, and that USDA needed additional authority to work on additional crops under the crop insurance umbrella. One WG member suggested that the Chair was trying to advance the option of crop insurance at the expense of the other two options on the table, and questioned whether the crop insurance option was compatible with the notion of co-responsibility that goes along with coexistence. Mr. Redding replied that he wasn’t designating one mechanism over the other two. He added that it might also be unnecessary for the AC21 to worry about the whole issue of thresholds, that the marketplace might work that out.

Dr. Schechtman noted the statement made at the last plenary session about the potentially divisive effects of compensation mechanisms that fall entirely on one sector of agriculture or that are perceived to do so and suggested that of the three mechanisms, the one for which burdens might be perceived as most diffuse might be crop insurance. One WG member noted that under a crop insurance mechanism, the Federal government would be subsidizing part of the costs. Another WG member reiterated her concern that USDA and the Chair were attempting to narrow the focus of the WG’s discussions, and suggested that if a crop insurance mechanism was the sole mechanism under discussion, only non-GE producers and organic producers needed to be in discussion with the Department, not the rest of the committee. She questioned why her constituents would support such an option, if they were the only parties that would have to pay for it.

The Chair again replied that it was not his intent to narrow the focus of the discussions and added that he appreciated these questions and wanted to better understand all the sensitivities around these issues. The WG member questioned further whether it was USDA’s intent to bolster coexistence or reduce the burden on litigation. There was some discussion about the limited prospects of eliminating all litigations around the issue of GE crops regardless of the actions taken by USDA.

Another WG member suggested that there was an attempt here to establish fault on the part of GE producers in order to change their behavior, but that what was needed is a non-divisive, no-fault approach. He added that there was a need for all participants to address how they operate in theirr own backyards. The previous WG member responded that she was not seeking to establish fault, but to strengthen responsibility so that it would change behaviors. This is in her view necessary because the status quo isn’t working. In response, the suggestion was made that USDA should put out a press release that would discuss coexistence and recommend steps that can be taken to mitigate risks. Another WG member expressed the view that if encouragement alone would drive adequate containment of GE products, there would be no need for these discussions.

The Chair returned to discussion of a pilot program approach, a “phased approach, which may or may not involve insurance. One WG member supported the idea, noting that a pilot might allow all parties flexibility to learn as the project develops and would allow gathering of data. Another WG member cautioned that even a pilot project would still need to be fleshed out in detail beforehand or both the Office of General Counsel and the Office of the Inspector General would “go thru the roof.” One member wondered whether the AC21 might be more likely to go along with a pilot project than a full-blown mechanism, but another WG member thought that many members might still worry about where the effort would lead and who would eventually pay for it. Another WG member offered his view that to establish a pilot project, the Federal government would need to provide a pool of money, set up some guidelines, then see what happens. The pilot could be localized to a defined place, or could be based on a defined amt of money available, but establishing a pilot would begin to build an actual database.

Dr. Schechtman asked members for their views as to what extent the potential use of a threshold, or a trigger for eligible contracts (which might be reinterpreted by others for purposes for which it was not intended) was responsible for industry concerns about the implementation of a compensation mechanism, and how much eliminating the threshold or trigger entirely would alleviate those concerns. He added that he had thought about this concept in the framework of a crop insurance mechanism, but that there was no need to preclude other mechanisms for funding a compensation mechanism. This question was not directly responded to, but one WG member reiterated that if the final mechanism became the responsibility of just one party, she would not be optimistic about the outcome. Another WG member noted that any compensation mechanism would entail having someone to pay for it. While organic producers may not favor a crop insurance mechanism, other non-GE producers might favor a mechanism under which a portion of their risk might be covered by insurance. In response, one member indicated that she had thought that this dialogue was supposed to be about coexistence, not just risk management for the individual farmer.