**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

**21ST CENTURY AGRICULTURE (AC21)**

***Tools and Standards to Verify Eligibility and Losses Working Group Conference call—***

***February 7, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members David Johnson, Mary-Howell Martens, Greg Jaffe, Keith Kisling, Rachel Lattimore, and Karil Kochenderfer. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation. One AC21 member who was not a member of the working group, Angela Olsen, also listened in on the conversation. The goals of the call were to: review outcomes from last conference call; discuss tools that could be implemented to verify that damage occurred and to ascertain the extent of losses; discuss potential limitations in scope of loss coverage; discuss whether there are existing programs in USDA that might help to develop such standards or to monitor or assess losses; and identify a rapporteur for next AC21 plenary meeting

The call started with WG members agreeing that the meeting summary from the previous WG meeting accurately reflected their discussions. The WG moved on to discuss tools that could be implemented to verify that damage occurred and to ascertain the extent of losses. One WG member suggested that it might simply be determined by using the difference between the price at the elevator where the shipment was rejected and the price at the elevator where it was subsequently accepted. This idea was amended to include additional transportation costs in the calculations. There was discussion about appropriateness of the initial set price, which may be locally set, set by a Board of Trade, or based on distance from a particular port. Some may be futures contracts, others may be set based on the price when the contract was due. One WG member, without wanting to assume dishonesty on any of the contracting parties, cautioned that prices must not be set so high in a contract that they would provide a disincentive to actually deliver the identity-preserved product (if compensation would cover the loss). Another WG member who buys and sells products from other farmers and is concerned about GE presence, noted that GE status is not the top-level concern she has in contracting grain purchases. Moisture content and vomitoxin presence, which can affect, respectively, whether a crop may decay or whether mammalian toxins may be present, as well as cleanliness, have greater impact day-to-day. Her view is aided by the fact that she knows all her suppliers, with whom she works directly, and has contracts with them that require that the growers meet organic certification requirements. GE testing is not something she does routinely with her growers unless there is a problem or there is a new grower she is working with.

Another WG member noted that for some crops, such as conventional forage hay, price is set regionally rather than nationally, and vary also by bale size. USDA market news services posts weekly regional prices on hay, including organic hay. So there may be options for determining what an appropriate price would be in those rare instances where a price was not predetermined in a contract. He also noted that there have been ongoing discussions to establish standard prices for organic grain on the Chicago Board of Trade, but those discussions have not yet been resolved. Most WG members thought that prices would be specified in contracts, however, and the prices specified could be used in loss calculations. There was still some concern, though, that a mechanism might need to be set up to verify “reasonableness” of the contract pricing terms so as to discourage gaming the system. But presuming “reasonable” prices set in both contracts, calculations could be made based on the price differential and transportation costs.

Another WG member noted that the seed market was somewhat different. Supply and demand for seed is typically well balanced in any given year. If a seed shipment was rejected by a GE-sensitive market, it might take time—even years—to develop a new market for the seed (which might be limited based on, for example, the particular growing zone for which the seed was adapted and variety restrictions as well). There could be costs including inventory costs, market development costs, and interest. The interest costs would arise on farm operating loans which would normally have been paid off when the seed was sold. There was some question raised about whether there should be limitations raised as to which costs could be covered under a compensation mechanism, if one is established: this is an unresolved policy question. Several WG members felt, though, that for seed if any of these other costs were to be covered, there would need to be documentation provided of unsuccessful attempts to sell the seed while it was being stored.

In terms of potential limitations in the scope of loss coverage, WG members felt that other regular costs of doing business should be excluded, as well as any costs addressed under any other type of insurance. In order to decide on whether a contract were reasonable, some WG members suggested that “best practice contracts” might need to be established, indicating, for example that contracts would need to be in writing, with a price certain, etc.

Deciding at what level of unintended GE presence a contract would be compensable was also recognized to be a complex question. The EU labeling standard of 0.9% GE was noted, but one WG member remarked that many people would argue as to whether or not that was a reasonable standard. WG members also thought that it would not be unreasonable to set a maximum payout level for any individual claim. Another member noted that contracts, especially for organic crops, may be based not on bushels delivered but on acres (knowing what historical yields are like). Another WG member noted that in other instances, farmers may be charged for the bushels they are not able to deliver. One WG member offered the summation that a contract would need to be examined as a whole, not only at the maximum level of unintended GE allowed, but also at general parameters to make sue that the contract does not provide implicit disincentives to meet its terms. Members felt that others with broader contract expertise would be needed to address parameters of “reasonableness of contracts.” However, there was sentiment that a rough idea about reasonableness could be gotten from examining Board of Trade prices and USDA posted prices, and using (in the case of organic products) organic production standards to see whether appropriate production standards were met. WG members also felt that, having been rejected because of unintended GE presence, a farmer should not be able to then use the crop on-farm and claim a loss. Rather, documentation of a sale at a reduced price should be required. In terms of rejected seed, members recognized that there might need to be a time limit on the amount of time a seed could be held (both because the seed may have a finite viability and because compensation should not be extended indefinitely). Time limits might vary from crop to crop and from commodity to seed. Reasonable efforts would need to be taken to find alternative markets. The system would need to discourage seed producers from holding onto seed longer than would be necessary to unload it, e.g., rejecting a “second market” for the seed if waiting for a “third market” at higher price would enable recouping all the differential storage costs from USDA.

In terms of relevant USDA programs for the tools and standards under discussion, it was noted that the Economic Research Service and the Agricultural Marketing Service have price information, the Animal and Plant Health Inspection Service does GE regulatory approvals, and the Agricultural Research Service has scientific expertise on testing, which could help on quantifying the amount of unintended GE presence and identifying the source of the GE genetic material for an individual incident. A question was raised as to the relevance of the identity of the GE genetic material under a potential compensation mechanism, and Dr. Schechtman cautioned that assignment of fault and recourse to the courts was, in part, what Secretary Vilsack was trying to avoid through a compensation mechanism. The question arose as to whether general farm liability insurance would address these concerns. However, another WG member stressed that farmers don’t want to sue each other and would prefer to have more emphasis on containment rather than address any problems after the fact. One other WG member cautioned on imposing standards on farmers not part of any legal claim. Another member noted that agricultural mediation groups form and work together relatively well. It was also noted that in the case of alfalfa, people are coming together to solve production problems: there are now two GE-sensitive opportunity zones for alfalfa production, one in the Northwest and one in Wyoming.

WG members agreed that the rapporteur for WG 3 the next AC21 plenary session would be David Johnson.