**ADVISORY COMMITTEE ON BIOTECHNOLOGY AND**

**21ST CENTURY AGRICULTURE (AC21)**

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

***April 23, 2012***

*Conference Call Summary*

A two-hour conference call was held, with Working Group (WG) members Mary-Howell Martens, Charles Benbrook, Greg Jaffe, Keith Kisling, Rachel Lattimore, Brad Shurdut, and Karil Kochenderfer. Michael Schechtman, Executive Secretary, AC21, facilitated the conversation and the AC21 Chair, Russell Redding, also participated. Two AC21 members who are not members of the working group, Angela Olsen and Leon Corzine, also listened in on the conversation. The goals of the call were to: consider a readout by the AC21 Chair from the briefing with the USDA Secretary and Deputy Secretary by him and Dr. Schechtman on the last AC21 plenary session; finish remaining elements identified in the WG 3 Plan of Work; and consider government vs. private sector roles for each of the potential tools and standards identified.

The Chair thanked WG members for their continued participation and proceeded to provide a summary of the briefing he and Dr. Schechtman had given USDA Secretary Tom Vilsack and Deputy Secretary Kathleen Merrigan on the last AC21 plenary session, on March 5-6, 2012. He noted that the briefing was intended both as a progress report and as a request for additional guidance from them. He noted that the plenary session was organized to provide AC21 members with updates on the progress of the four WGs, consider panel presentations on how the commercial sector manages unintended GE presence, and explore areas of agreement among members. He noted that the committee was evenly divided between those favoring the establishment of a compensation mechanism and those opposed. He indicated that he and Dr. Schechtman had provided an honest assessment of the state of the AC21’s deliberations, noting the themes of support for prevention, containment, education, and stewardship. The Secretary was not surprised at the current state of discussions, thought that those items would all be part of a reasoned overall response, but reiterated his expectation that the committee would be able to provide him its best thinking on compensation mechanisms. His expressed his continued support for the AC21’s work and his continued high expectations that the group would be able to respond to the three-point charge that it was given, and thereby further public dialogue on coexistence. He noted that not reaching agreement on compensation mechanisms to support coexistence would be a statement by the committee, but it would be the wrong statement. He felt that the committee needs to pick a preferred compensation mechanism, with whatever caveats are needed alongside, and acknowledging all the relevant sensitivities of members. He expressed the view that it may not be necessary to establish specific triggers to define a compensation mechanism: parameters may be needed at some point, but working to define them may not be best use of the AC21’s time. The committee might use hypothetical examples to work around impediments. In expressing continued support for the AC21’s work, he acknowledged the group’s sincere efforts and recognized that the points of concern that have arisen were not unexpected. He reiterated his expectation that the committee would come back to USDA with its best thinking on mechanisms. Dr. Schechtman added that the Secretary had emphasized that if there is no resolution of this issue through the committee process, it would likely end up in the courts, which might not be the best venue for making agricultural policy.

One participant inquired whether, given that the Secretary wants the AC21’s analysis of the pluses and minuses of the three different compensation mechanisms, whether he also requested an analysis of the pluses and minuses of having no compensation mechanism. The Chair noted that that issue had been discussed in the context of the “if any” clause in the first element of the charge. It could be encompassed in the overall framing of the response, i.e., if there is to be a compensation mechanism, it would be framed in such-and-such a context and here are some considerations. A WG member indicated that he had seen a message that suggested that there was a desire to broaden the scope of the AC21’s deliberations beyond compensation for unintended GE presence and bolstering coexistence, and inquired whether that was the case. Dr. Schechtman responded by reiterating the scope for the committee’s initial discussions, which specifically are limited to addressing the economic implications of the unintended movement of GE material. He noted, however, that would also include movement of GE material onto other GE crops, which could have implications in some circumstances, e.g., if the moved material had specific functional traits that affected the quality of the neighbor’s crops. One WG member agreed, noting the need to think progressively about the need to address channeling for new products that may raise quality concerns for other producers and for downstream users. The Chair added that this issue had been among the topics discussed with senior officials in the briefing, and the Secretary thought that the overall issue of unintended GE presence was of concern to all producers.

Dr. Schechtman then turned the discussion to the first of the three remaining un-discussed issues in the WG’s Plan of Work, namely item 5: Are there other marketplace tools (e.g., standardized testing mechanisms) that might be put in place that might facilitate the operation of a compensation mechanism? One WG member offered his view that there are many changes happening in the marketplace now, but there is a role for USDA in standardizing methodologies, certifying the accuracy of testing methods and ensuring that labs are carrying out tests in a reliable way. He suggested that more progress along these lines will need to be made, especially as GE crops increasingly carry multiple engineered traits. Another WG member added that the government had opportunities to provide additional guidance quality management systems and on establishing process verification systems. Dr. Schechtman noted that USDA does some of these things already and wondered what was being suggested in terms of doing things differently. One WG member offered her view that a big issue meriting more government guidance is that of sampling for GE testing. She described sampling as a “weak spot” if talking about compensation. Dr. Schechtman noted that USDA’s Grain Inspection Packers and Stockyards Administration (GIPSA) has issued guidance on proper sampling methodology. Further discussion on the guidelines suggested that they might be adequate, but farmers might not necessarily know about them and about the importance of following them. There was also a view expressed that they might need to be some “teeth” associated with them. Another member added that guidance on testing and analysis could also be strengthened.

One WG member suggested that more research was also needed to correlate recommendations for GE management practices around buffer rows with GE testing outcomes. Another member added that additional reliable methodologies are needed to strengthen confidence in the market, and that both the public and private sectors need to work and cooperate on them to create higher level of confidence. He added that as more and more GE varieties with multiple GE traits enter the marketplace, there will be more and more instances where it the identity of individual traits will matter, but that the marketplace does not currently support trait-specific testing and trait specific testing methodologies need to be improved. Another participant, citing his experience, noted that many standards already exist in the marketplace, often set by State Departments of agriculture, and that in corn there are already many products with multiple stacked GE traits. His view was that in corn there is unlikely to be more additional complexity. Another WG member expressed the view that specific tools and testing methods already exist. What is most complicated, in his view, is not the detection of GE events, but rather the analysis of data obtained and how associated uncertainties are taken into account. Also, in his view, more government involvement or guidance on process verification systems for specific production methologies is also needed, and such systems would play an important role in decisions about compensability of damage claims. Another WG member supported this suggestion.

One WG suggested that the government might have a role in creating mechanisms to neighboring farmers make decisions on how to split up the planting of any needed buffer crops and address planting and harvest dates etc., based on the idea of shared responsibilities. With some guidance, adjoining land owners could work out those details amongst themselves but would be able to work out any compensation they might need to provide each other on occasion. Dr. Schechtman inquired whether the member was asking that USDA provide guidance on how to have such neighbor-to-neighbor conversations. The member replied that, in anticipation of the existence of some mechanism for compensation which would require the use of best management practices, the government should create a mechanism to make it to the farmers’ best interests to talk to their neighbors. One WG member questioned whether those incentives weren’t already built into market premiums. Another WG member thought that they were insufficient, noting that neighbor’s practices could have effects on a farmer’s crops. Another WG member noted that while many farmers work well along their fence lines, there are a few farmers that don’t care, and that consequently there is a need for a new incentive to get reluctant land owners to have conversations with their neighbors.

One WG member suggested that not only was more information needed to help farmers more effectively address gene flow, but that new genetic tools should also be developed by companies to help in this regard. Dr. Schechtman noted that several avenue of research are ongoing in this regard, but that commercial products have not yet been developed. The member replied that such efforts should become higher priorities.

Dr. Schechtman asked why there was particular worry about individual GE traits in this context if most of the market concern related to the presence of acceptable levels of GE material in general. The WG member who had raised the concern about detection of specific GE events raised the example of the need to detect minute levels of GE amylase corn. Dr. Schechtman suggested that such products might be special cases that would be dealt with in different ways, and the member added that it was hard to predict what the future would bring in terms of new products.

The WG then turned to the next item in its Plan of Work, namely, “For each type of potential tool identified, what would be the impacts in the marketplace of introducing such a tool, for: GE crop producers; identity-preserved non-GE producers; non-GE commodity crop producers; and organic producers; and how would such tools affect export of US products?”

With respect to one of the tools/standards identified by the WG, namely demonstration of prior intent to produce particular IP product, one member noted that such demonstration would require more documentation from some farmers, but that most would already have such documentation. With respect to another, providing evidence that best management practices were employed in producing their crop, Dr. Schechtman inquired as to whether there is adequate information on, and documentation of, best management practices. One WG member expressed the view that the fact that one in ten shipments of organic corn is rejected for unacceptable levels of GE presence provides an indication that current best management practices are not adequate. Another WG member, while agreeing with the previous member, noted that figuring out the details of such recommended practices would be beyond the scope of the AC21. Some such materials may exist, some may be internal operating procedures for particular organizations, etc.

Dr. Schechtman observed that WG members seemed to be saying that the practices need to be collected and/or written down. A WG member stressed that the recommended practices needed to maintain some flexibility as well. Another participant offered his experience that contracts for specialty crops generally specify particular required practices such as use of buffer strips, cleaning of storage facilities, planting time, weeding, drying, etc. He expressed concern that codifying such required practices could induce foreign buyers of U.S. agricultural commodities to believe that a problem exists where there isn’t one. Upon a request for further clarification, the member added that de facto tolerances and thresholds already exist in the marketplace but that new measures could be misinterpreted or misused, and if the U.S. is seen as questioning itself it could have negative impact. Other WG members disagreed, noting that problems do exist, and these are being evidenced by the fact that the marketplace is requiring testing, and that requiring documentation of the use of best management practices would strengthen confidence in the rigor of our production procedures.

There was further discussion as to the value of guidance on appropriate practices, such as in instances when a farmer might be tempted to harvest an extra buffer row and include it in with the specialty crop harvest. The question was raised as to whether such contingencies weren’t already spelled out in contract language, and the extent to which there is specialty crop production that is not done under contract, or whether there are contingencies that may not be covered by contract language. One WG member noted that for organic production, there is third-party verification of the management practices employed, but the same may not be true for other non-GE production. One participant noted that much of the interest about the quality of the crop resides in the grain handlers, most of whom don’t care about the on-farm practices, just on what the end product is. He questioned whether it was an appropriate role for government to intrude in such a way on a private sale. One member questioned how it could be possible to use best management practices as one trigger for potential compensation without uniform independent verification that such practices were used In response, it was noted that requiring the use of best management practices would be a daunting and expensive task for farmers, that checking farmers’ methods would be problematic, and that including such a requirement would be misinterpreted as having some safety implication.

Dr. Schechtman highlighted the need for the AC21, in providing its report to the Secretary, to do due diligence and set out the potential impacts of putting in place the recommended tools and standards in association with the various potential compensation mechanisms. One participant raised the question of whether putting in place various tools to lessen risks for a specialty grower shouldn’t obviate the need for premiums to be provided for growing the specialty crop. He asked who would be willing to pay such premiums under those circumstances. There was disagreement about whether the existence of the premium was specifically tied to the risks or to costs of production.

With reference to the next eligibility standard discussed, that of demonstrating that the contract for producing the crop was not an unreasonable one, Dr. Schechtman noted that the concern voiced at the last AC21 plenary session seemed to be over possible misuse or misinterpretation of any number used as a standard maximum level of purity set by the government in compensable contracts. One WG member agreed, saying that it was very likely that the number would be used to impugn the safety of, or otherwise misrepresent, GE crops. Dr. Schechtman raised the issue of whether the it could be left to the marketplace, perhaps to insurers if an insurance-type mechanism were adopted, whether production to a particular level of purity was insurable, and if it were, what it would cost to insure production at that purity level. One WG member thought such an approach might not be applicable for all potential funding mechanisms, and that insurable purity levels might be crop-specific. He added that there ought to be some contracts that are not insurable or are deemed “unconscionable,” and that having a compensation mechanism is predicated on having some government oversight. Another WG member expressed alarm at the prospect of having non-farmers administering insurance over farmers, noting that insurance companies are notorious for finding ways not to pay claims. WG members agreed that some standards in this regard, put in place by the government working with whatever entity administers the system, would be beneficial. Dr. Schechtman inquired as to whether having multiple trigger levels, which might be crop specific or differentiated in other ways, might ease concerns about potential misuse or misinterpretation of them. Several members thought that having multiple triggers would not ease concerns and one member added that setting such triggers could also send undesirable messages about U.S. organic products. The principle was acceptable, but the existence of the numbers outside contracts would be problematic. Another member disagreed, saying that it would not be possible to have a compensation mechanism without such triggers. Another WG member noted at least some of the potential compensation mechanisms may involve taxpayer money or government oversight, and it would not be in the public interest to insure every single risk, especially the risk of producing to a 0% GE purity standard. Another member noted that a purity standard currently floating around the organic world is 0% and that, without some intervention, organic farmers will get hurt. She added that should would not want the setting of a trigger number to imply that anything below the number is good and above it is bad, but something is needed to protect farmers. There was discussion of whether the trigger numbers would become de facto thresholds. One WG member noted that both the GE and non-GE communities have something to gain from working out how to deal with this question of practical and reasonable limits, and that members need to challenge themselves to find a way to structure triggers and talk about them that meets both sides’ needs. He noted that some individuals who continue to have safety concerns will inevitably use the number in a safety context, but added his view that if a specific GE-related safety issue were to appear in the future, people in the GE world be use this number to defend GE food. He thought that the existence of the number could dampen the motivation among some groups to raise questions about the safety of GE foods and that there needs to be a means to talk about very low levels of GE. Another WG member disagreed, suggesting that the work would be at an impasse if the number is referenced to any health threshold. Instead, he argued, any trigger would need to be a purely operational number deriving from the performance of best management practices instead. The previous member clarified that he was not advocating a health based standard, but rather the creation of a system that would be defended from all sides and would marginalize extreme voices in the debate.

One WG member offered the view that putting in place all the tools and standards outlined by the WG would have the effect in export markets of increasing confidence in our ability to differentiate GE and non-GE products and would enhance our performance in those markets.

Mr. Redding and Dr. Schechtman thanked participants for helping to frame the pluses and minuses of tools that might be needed to make a compensation mechanism work. He reiterated the additional items that had been identified by participants today under item 5 of the Plan of Work, namely

* Providing additional information about sampling and GE testing and interpretation;
* Developing incentives to help growers be good neighbors;
* Providing information to GE growers on what they can do in management of their own production to help neighbors;
* Promoting the development of new genetic tools for GE growers to help contain gene flow.