



March 4, 2014

Docket No. APHIS–2013–0047
Regulatory Analysis and Development PPD, APHIS,
Station 3A–03.8
4700 River Road, Unit 118
Riverdale, MD 20737–1238

RE: Enhancing Agricultural Coexistence: Request for Public Input

Dear Ms. Klingel:

Thank you very much for this opportunity to provide comment.

OTA is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing organic businesses across 49 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect the growth of organic trade to benefit the environment, farmers, the public and the economy.

OTA agrees with the U.S. Department of Agriculture's (USDA's) statement that, "As the complexity and diversity of U.S agriculture increase, so does the importance of managing issues that affect agricultural coexistence, such as seed purity, gene flow, post-harvest mixing, identity testing, and market requirements."

The AC21 Committee, after much exchange and debate, submitted a report to the Secretary on coexistence, and made recommendations in five major areas regarding agricultural coexistence: (1) potential compensation mechanisms, (2) stewardship, (3) education and outreach, (4) research, and (5) seed quality. The release of this *Federal Register* notice on communications and outreach puts what should be the final piece of a comprehensive plan in front of critical substantive areas that require both public input and USDA action.

USDA's stated goal in seeking comment is to determine how we can best foster communication and collaboration among those involved in diverse agricultural systems on the topic of coexistence. As recent market disruptions from a failure to contain gene flow of traits with asynchronous global approvals demonstrated, a concrete science-based set of policy initiatives to substantively address these questions benefits all of agriculture and SHOULD take place prior to the focus on an outreach strategy. It does not further USDA's stated goal to detail the parameters of communications tools and vehicles without first grappling with WHAT is to be communicated and HOW policy reform can ensure coexistence by protecting seed purity, and eliminating market disruption due to gene flow and post-harvest mixing.

At the heart of AC21 discussions was the debate regarding whether voluntary or mandatory stewardship practices will solve the problem. It is our firm belief that mandatory measures are required. Research and

seed quality precede the determination of best stewardship practices. Making those practices mandatory ensures they are followed. Education and outreach should be about these defined stewardship practices. The single-most important step USDA can take to foster coexistence, as defined by USDA, is to immediately implement the provisions of The Plant Protection Act of 2000 that broaden and make clear USDA's jurisdiction to regulate crops produced through biotechnology. Regulations to implement this authority are the avenue to demonstrate a commitment to all forms of agriculture.

Setting the basis for regulating biotech crops, the Plant Protection Act (PPA) gives the Secretary of Agriculture authority to adopt regulations preventing the introduction and dissemination of plant pests [7 U.S.C § 7711(a)]. Consistent with that authority, APHIS regulates the introduction of organisms and products altered or produced through genetically engineering that are plant pests or believed to be plant pests, or regulated articles. The regulations covering GE crops are contained in 7 C.F.R. § 340. USDA, however, relies on an antiquated biotechnology crop regulatory system based on the Federal Plant Pest Act (FPPA) and other quarantine authorities that were repealed as part of the enactment of PPA in defining plant pests. Although a comprehensive overhaul of the biotech regulatory process was initiated through a Programmatic EIS (rulemaking) process in 2004 leading to the publication of Proposed Rules (APHIS-2008-0023), final regulations have not been implemented.

Although OTA believes USDA has broader authority currently available that remains unexercised, it strongly urges USDA to take action on these reforms that have languished since 2000. The limitations of the "plant-pest" paradigm will never prevent gene flow or secure diverse opportunity for U.S. crop production at home and abroad. Unless this problem is solved, the high-value opportunities for organic and identity-preserved production will continue to migrate overseas where the pressures of gene flow, post-harvest mixing and the resulting market loss are kept in check. Relegating this opportunity overseas, without the ability of U.S. producers to participate, will weaken U.S. agriculture as a whole. These trends underscore the failure of the status quo—voluntary schemes—to prove adequate now and for the future.

USDA continues to use these authorities as the basis for its existing comprehensive regulatory system for biotech crops, despite their failure to address the broader environmental and economic impacts of GE crops. Under the existing regulatory framework, USDA limits its inquiry to whether the inserted genetic material poses a plant pest risk, defined as *—any living stage of any of the following that can directly or indirectly injure, cause damage to ...any plant of plant product*" [7 U.S.C. § 7702(14)]. APHIS regulations similarly define plant pests as *"any living state of ... bacteria ... or any organisms similar to allied with the foregoing ... which can directly or indirectly injure, cause disease or damage in or to any plants or plant parts thereof, or any processed, manufactured or other product of plants"*[7 C.F.R. § 340.1]. Those same regulations reference plant pest analysis as including *"indirect plant pest effects on other agriculture products"* [7 C.F.R. § 340.6(c)(4)].

The noxious weed authority in PPA was designed to address the full range of adverse agricultural, public health and environmental impacts associated with GE crops (7 U.S.C. § 7702 (10) in order to fulfill PPA's purpose to protect agriculture, the environment and economy of the United States [7 U.S.C. § 7701(1)]. This provides clear authority for USDA to consider the economic impacts to farmers in the deregulation decision-making process. Thus, USDA has legitimate statutory authority to protect U.S. farmers and agricultural economies, but has yet to exercise it.

Recent USDA determinations have concluded that since no plant pest risk was involved, it was powerless to:

- Impose isolation distances,
- Require regulatory restrictions,
- Establish/mandate management practices,
- Establish geographic restrictions, or
- Impose conditions to reduce impact to organic farmers.

These are exactly the types of stewardship parameters that must be codified on a crop-by-crop basis in order to deliver on USDA's stated goals for coexistence.

Again, on behalf of our members across the supply chain and the country, OTA appreciates the opportunity to comment.

Respectfully submitted,



Laura Batcha
CEO / Executive Director
Organic Trade Association (OTA)