

March 4, 2014

By Electronic Submission  
Regulatory Analysis and Development  
APHIS  
4700 River Road, Unit 118  
Riverside, MD 20737-1238

Re: Comment to Docket No: APHIS-2013-0047 on  
Enhancing Agricultural Coexistence

The Center for Science in the Public Interest (CSPI)<sup>1</sup> hereby submits the following comments to the United States Department of Agriculture (USDA) regarding actions that it can take to enhance coexistence between farmers growing crops using different agricultural systems. Farmers in the United States grow traditionally produced, organic, identity preserved, and genetically engineered (GE) crops and CSPI believes that USDA has a role to play ensuring that farmers minimize any unintended impact their cultivation practices may have on their neighbors' farms.

Approximately one year ago, CSPI sent a letter to Secretary Vilsack setting forth three concrete actions that USDA immediately could implement to support coexistence between farmers throughout the United States. Those actions do not require new legislation nor additional funding from Congress and would fall within President Obama's recent statement in his 2014 State of the Union Address to carry out significant new policy actions through executive actions. Therefore, CSPI attaches that letter to this comment and requests that USDA immediately implement those three actions to foster coexistence between farmers throughout the country.

In addition, USDA should finalize the portion of its proposed rules for 7 C.F.R. Part 340 (73 FR 60008, Oct. 9, 2008) that incorporated the Plant Protection Act's "noxious weed" authority into the regulatory system for GE organisms and then use that authority to manage and address coexistence issues. In the Plant Protection Act, the term "noxious weed" means

any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock,

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<sup>1</sup> CSPI is a nonprofit education and advocacy organization that focuses on improving the safety and nutritional quality of our food supply. CSPI seeks to promote health through educating the public about nutrition; it represents citizens' interests before legislative, regulatory, and judicial bodies; and it works to ensure advances in science are used for the public good. CSPI is supported by the 900,000 member-subscribers to its Nutrition Action Healthletter and by foundation grants. CSPI receives no funding from industry or the federal government.

poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

Including that definition in the 7 CFR Part 340 regulations and requiring any GE organisms that may exhibit “noxious weed” characteristics to be regulated will establish science-based oversight of GE organisms and ensure that APHIS is safeguarding environmental and agricultural interests. It will require APHIS to evaluate the potential “noxious weed” impacts of a GE crop on other crops and “other interests of agriculture,” which could include an analysis of issues surrounding coexistence (such as economic impacts from the unintended presences of GE material). With such an analysis and the Secretary’s mandate from Congress in the Plant Protection Act and other statutes to promote and protect US agriculture, there should be sufficient legal authority for USDA to identify concrete steps fostering coexistence for each GE organism when evaluated under the 7 CFR Part 340 regulatory process.

If USDA would like more information about any of the issues raised in this letter, I would be happy to provide it.

Sincerely,



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March 20, 2013

The Honorable Thomas Vilsack  
Secretary of Agriculture  
United States Department of Agriculture  
Jamie L. Whitten Building, Room 200-A  
1400 Independence Ave., S.W.  
Washington, DC 20250

Re: Request that USDA Implement Policies that Make Coexistence a  
Priority of the Seed Industry and Farmers

Dear Secretary Vilsack,

Numerous times in the past several years, the United States Department of Agriculture (USDA) has stated as an important priority the need to address any coexistence issues caused by the interaction of different agricultural production systems. The Center for Science in the Public Interest (CSPI)<sup>1</sup> supports that priority and many of the actions USDA has taken so far to foster coexistence, including the reactivation of the Advisory Committee on Biotechnology and 21<sup>st</sup> Century Agriculture (AC21) in 2011.

As a member of the AC21, I supported the committee's consensus report and the recommendations it proposed to foster coexistence between conventional, organic, identity-preserved, and genetically engineered (GE) crops. It was refreshing to read USDA's announcement last month setting forth the first phase of activities it will undertake in response to that report. Conducting research in the many areas identified, reaching out to stakeholders to learn about the challenges faced by farmers and the seed industry, and investigating crop insurance as a potential compensation mechanism are all necessary actions in order to establish long-term coexistence policies that further all forms of U.S. agriculture.

For any federal coexistence policies to be successful, however, USDA must convince the different actors outside of Washington, DC, who actually implement coexistence measures -- the seed companies, the agricultural extension establishment, farmers, and grain handlers -- that coexistence is a top priority that needs to be incorporated into their daily actions. However, the activities announced last month by

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USDA – such as conducting coexistence research and collecting case studies – are not likely to change the day-to-day practices of farmers and others who influence whether different farm production methods coexist.

To convince farmers (both GE and non-GE), the seed industry, and other stakeholders that coexistence is a federal priority that must be implemented throughout the agricultural production system, USDA should establish some policies that will immediately elevate this issue's importance on the farm and throughout the grain handling system. Three such policy changes are set forth below. If implemented by USDA, they would send a message to the agricultural community that all actors in the production process share responsibility for carrying out coexistence measures.

1. USDA should propose actions to foster coexistence when it grants a GE crop non-regulated status. In the United States, almost all GE crops are not permitted to be grown commercially until USDA determines that those crops need not be regulated because they are not “plant pests.” Simultaneously with the public release of its “non-regulated status” determination, USDA should provide to the GE crop developer, farmers of the crop (both the GE and non-GE varieties), and members of the food chain, recommended actions that would foster coexistence when that GE crop begins commercial production.<sup>2</sup>

USDA should identify coexistence measures, such as best management practices for farmers of both the GE and non-GE varieties of the crop, testing protocols to identify unintended presence, actions to ensure seed purity for public and private seed varieties, and segregation tools for food chain actors. If USDA provided this information when it released each regulatory decision, it would be making available examples of actions that everyone could take to foster coexistence.<sup>3</sup>

2. USDA should require seed companies to include coexistence measures as a mandatory requirement in their seed contracts with GE farmers. Seed companies place numerous requirements on farmers who purchase their seeds, including restrictions that protect intellectual property, limitations on the use of the seeds for research, and insect-resistance management practices for varieties that produce biological pesticides. USDA should require that seed companies also mandate that farmers purchasing GE seeds carry out appropriate coexistence measures that would limit their crops' unintended impact on neighboring farms. For the vast majority of farmers who already work with

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<sup>2</sup> USDA identified some coexistence measures when it completed its decision process to grant non-regulated status to GE alfalfa so this proposed policy is something that USDA has already done before. USDA stressed the importance of coexistence measures in its letter to the developer of GE Kentucky blue grass, but did not identify any specific actions.

<sup>3</sup> In addition to proposing actions to foster coexistence for each new GE crop variety that is granted non-regulated status, USDA should provide similar recommendations for GE crop varieties that already have non-regulated status.

their neighbors to prevent unintended consequences, such a requirement might not impose any new obligations. However, it would make such practices mandatory and elevate them as a critical farm management priority.

In addition, USDA should require GE-seed developers to identify farm management practices for GE farmers that would foster coexistence (such as staggered planting times, planting refuge plots adjacent to neighboring farms, etc...) and educate their customers (i.e., seed companies and farmers) on those practices.

3. USDA should provide incentives for farmers to carry out measures supporting coexistence on their farms. If coexistence is a priority for USDA, then USDA needs to create incentive programs to make it attractive for farmers to implement coexistence compliance measures. For example, USDA could reduce crop insurance premiums or provide other financial incentives for farmers who set aside buffer land between GE and non-GE crops. Similarly, USDA could modify its conservation programs to encourage farmers to use those lands to improve coexistence (getting two benefits for the price of one). Economic incentives that foster coexistence certainly would encourage farmers to conduct risk mitigation activities. Future AC21 discussions should further explore this area and provide the Secretary with additional creative ways to foster on-farm coexistence.

In conclusion, USDA has a mandate to promote all forms of U.S. agriculture. With the many different agricultural production methods that now exist, USDA needs to send a clear message across the country that coexistence is critically important. Coexistence actions involving GE crops should start when USDA grants non-regulated status to a GE crop variety and continue throughout the food production system. Everyone needs to be involved in minimizing the impact of one production method on another, including the GE seed developer, seed companies, grain handlers, and both GE and non-GE farmers.

I would welcome the opportunity to meet with you and your staff to discuss the issues addressed in this letter. In the interim, if you or your staff have any questions about the content of this letter, please let me know and I would be happy to answer them.

Sincerely,



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