

AMERICAN SEED TRADE ASSOCIATION, INC.



February 14, 2008

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RE: Vermont Seed Standard Regulations – Vermont Proposed Rule: 08P001

The American Seed Trade Association (“ASTA”) is pleased to comment on Vermont’s proposed amendments to its seed law regulations. We have been impressed with the transparency and willingness of the Vermont Agency of Agriculture to consider all perspectives throughout the process. This type of cooperation will definitely benefit the citizens of Vermont and improve relationships for all conducting commerce within the state. The acceptance of our previous technical suggestions during the development of the proposed rule is appreciated as well. We look forward to future opportunities for interaction and assistance.

Founded in 1883, ASTA is one of the oldest trade organizations in the United States. Its membership consists of about 850 companies involved in seed production and distribution, plant breeding and related industries. ASTA’s membership is comprised primarily of U.S. companies, although it does have members from 15 other countries. ASTA advocates science and policy issues of importance to the seed industry. Its mission is to enhance the development of free movement of seed worldwide. ASTA is a diverse organization. It represents all types of seed companies and technologies – seed from alfalfa to zucchini, technologies from organic to biotechnology and companies from “mom and pop” to multinationals. Among others, it has a standing committee on organic seed and a standing committee on biotechnology. ASTA has members in 47 states. It works on behalf of all of its members at the state, national and international levels. In other words, ASTA represents every company that would be affected by the proposed legislation, and works in cooperation with the rest of agribusiness and consumers as well, whom the proposed legislation would also affect.

Through the use of modern scientific practices and research, seeds that have been enhanced with biotechnology traits have been and are continuing to be adopted rapidly across the United States and around the world. In the U.S., the vast majority of soybeans, cotton, and corn acres are planted with seeds improved with modern biotechnology. Globally, in the past decade alone, over 1 billion acres of crops improved through modern biotechnology have been harvested. Today, over 10.3 million farmers in 22 countries grow these crops, and the adoption of these crops has resulted in economic, environmental and human health benefits.

As a result of further study, we feel that as currently drafted, the proposed amendments could effectively require seed companies to label their seed with information that is false and misleading, violating a variety of other laws and regulations. In particular, there is a significant discrepancy between the labeling requirements in the Proposed Amendments and existing requirements in the Vermont Seed Law, Vermont Annotated Statutes, Title 6, Chapter 35, §§ 611-649 (“Vermont Seed Law”), as well as the Federal Seed Act, 7 U.S.C. 1551-1611. Further, ASTA believes that the State of Vermont would benefit by revisiting the Vermont Seed Law itself to align the statutory definition of “genetically engineered” seed with emerging national and international norms. ASTA believes that such a result was not intended, but without changes to align these proposed regulations with Vermont’s own statutes and federal law, trade could be disrupted and seed companies could be placed in the untenable position of trying to comply with conflicting requirements.

Within the Vermont Seed law, we believe the current definition of “genetic engineering” differs significantly from both national and international regulatory provisions in defining “genetically engineered seed” by reference to “excluded methods” under the National Organic Program of the United States Department of Agriculture (“USDA”).¹ The statutory definition asserts that seed production techniques “used to modify genetically organisms **or influence their growth and development by means that are not possible under natural conditions or processes**” produce, by definition, “genetically engineered seed,” that is subject to the Vermont Seed Law’s “genetically engineered” labeling requirements. This definition is so broad that, arguably, the use of pesticides or other chemical treatments on seed is not among acceptable “natural conditions or processes,” yet these are common seed production techniques that influence the growth and development of plants. While these treatments would not cause seed to be considered “genetically engineered seed” by any other regulatory body in the world, they would, under current Vermont law, make the seed “genetically engineered,” and thus subject to the State’s labeling requirements. Even chemical seed treatments regulated under FIFRA and other state laws seemingly would fall under this extremely broad statutory definition and would be required to be labeled as “genetically engineered.”

Again, ASTA does not believe that the State of Vermont intended that all treated or processed seed should be labeled as “genetically engineered.” To address this potential for confusion, the current regulatory process offers the State the opportunity to clarify the specific technology it intends to reach through its labeling regulations. ASTA would be happy to work with the State of Vermont to craft a regulatory definition that would more closely align with federal and international standards.

Additionally, ASTA is concerned that the proposed label language exceeds the scope of the Vermont Seed Law’s labeling mandate. As discussed more fully below, the proposed labeling language does not further the intent of the statute, and may be misleading to the consumer.

The Proposed Amendments to the Vermont Seed Regulations further exacerbate the definitional problems of the Vermont Seed Law by requiring new specific terms in labeling that could result in false characterizations of seed and cause violations of both Vermont law and federal law. The Vermont Seed Law requires seed meeting the statutory definition of “genetically engineered seed” to be labeled to specify

“the identity and relevant traits or characteristics of such seed, plus any requirements for their safe handling, storage, transport, and use, the contact point for further information and, as appropriate, the name and address of the manufacturer, distributor, or supplier of such seed.”
Vermont Seed Law, § 644(a)(4).

As such, this statutory language merely requires labeling specifying the trait and characteristic, if any, actually present in the seed, and does not require any specific language in the label. Under this statutory provision, the seed company is at least allowed, despite the evidently irregular definitions in the Vermont Seed Law, to truthfully state and describe the identity and relevant trait or characteristic of such seed.

The Proposed Regulations, however, appear to exceed the labeling authority set forth in the statute, however. Beyond simply identifying relevant traits and characteristics of the plant, the proposed regulations would impose a labeling requirement simply from the fact that the seed has been genetically engineered as defined by the statute and within the Proposed Regulations. Specifically, the Proposed

Amendments would require a seed company to label seed that meets the definition of “genetically engineered seed” with certain specified language or equivalent terms:

*“the identity and relevant traits or characteristics of such seed **which shall include thereon the words “biotechnology traits” “biotechnology seed traits” “biotech seed” “transgenic material” “genetic material” “contain genes” or equally similar words that indicate to the purchaser that the seeds have been genetically engineered to convey or contain in-plant tolerance to herbicides or insecticidal proteins.** (2) any requirements for the safe handling, storage, transport, and use of the genetically engineered seeds including any insect resistance management or refuge management requirements; (3) the contact point for further information; and, (4) the name and address of the manufacturer, distributor, or supplier of the genetically engineered seed. B. The requirements of these rules for the labeling of genetically engineered seeds that have a pesticide genetically engineered into them to convey insect resistance shall not apply to the labeling of plant-incorporated protectants otherwise regulated under the Federal Insecticide, Fungicide and Rodenticide and act (FIFRA) to the extent that these rules are in conflict with that Act.”*

This language would require the labeling of seed meeting Vermont’s exceptionally broad definition of “genetically engineered” seed with a label that declares with one or more of the indicated terms that seed is “genetically engineered.” However, as indicated above, the applicable definition of “genetically engineered” sweeps in techniques and treatments that are simply not the product of “genetic engineering” under any other known regulatory standard. The statute’s labeling requirements can be truthfully implemented despite the current broad definition of “genetic engineering.” However, the Proposed Regulations could easily be read to require the labeling of seed with a false statement or description of seeds, in violation of federal law.²

The fact that this problematic language could require false labeling has significant legal implications. First, under a different section of Proposed Regulations, a seed company is prohibited from providing “false or misleading labeling or advertisement.” See Proposed Regulations, Section IV Prohibitions. Also, such false labeling could violate other provisions of Vermont law, such as the State Consumer Fraud Act, and would be against the public policy of the State of Vermont. Thus, if the Proposed Regulations are not amended, they could result in conflicting obligations for seed companies under Vermont law. Further, the Federal Seed Act also prohibits the interstate shipment of seed “having a false labeling, or pertaining to which there has been a false advertisement, or to sell or offer for sale such seed for interstate shipment.” 7 U.S.C. 1571(d). Thus, federal seed labeling law would prohibit the labeling of the seed in the manner that the Proposed Regulations appear to require.

Furthermore, even under an appropriately narrow definition of the term, “genetic engineering,” the proposed regulation’s labeling examples include statements that provide no helpful information to the purchaser. Certainly, the term “contains genes” could apply to any seed or plant. As the Vermont Seed Law only provides authority for labeling of particular seed characteristics or traits developed through genetic engineering, the purpose of such statements is unclear.

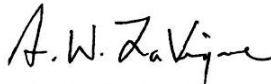
The specific labeling requirements set forth in the statute have been sufficient to meet the needs of consumers as to the identity of the type of seed they have been purchasing since the Vermont Seed Laws “genetic engineering” provisions were passed. Furthermore, we have not been made aware of any confusion in the marketplace that would require labeling beyond that currently required by statute. ASTA would support the adoption of regulations simply incorporating the statutory requirements as written. The statute is unclear whether any further broader labeling of the type proposed would be authorized under the law. Such a regulation would allow seed companies to continue to label seed truthfully.

As discussed above, the regulatory definition of “genetic engineering” should also be amended to more accurately address the types of seed development Vermont seeks to reach through its “genetic engineering” labeling requirements, without requiring “genetic engineering” labeling of more conventionally treated seed.

Going forward, the State of Vermont may also wish to consider a statutory amendment of the Vermont Seed Law’s definition of “genetic engineering” that closely approximates broadly accepted national and international definitions. The international standards cited previously were achieved through broad-based scientific inquiry and negotiations with governments, numerous non-governmental entities and industry. Further, as indicated previously, the USDA is currently working on new Part 340 regulations likely to be released for public review and comment in 2009, and it is possible that changes to the federal regulatory definition of “genetic engineering” will result. This federal regulatory process might also result in a definition that would be appropriate for the State of Vermont to adopt.

ASTA would be pleased to work with the State of Vermont to offer further language assistance on the relevant sections of the Proposed Regulations, or on the Vermont Seed Law, so as to allow seed companies of all types the continued freedom to operate in Vermont.

Sincerely,



Andrew W. LaVigne
President & CEO

cc: Roger Albee
Tim Schmalz

¹ The USDA defines “genetic engineering” narrowly to be “the genetic modification of organisms by recombinant DNA techniques.” 7 C.F.R. § 340.1. Recently, however, the USDA has indicated its intent to revise its Part 340 regulations, and it is possible that this definition could be expanded. The Cartagena Protocol on Biosafety provides a broader definition of “living modified organisms” but much more limited than Vermont’s definition. In summary, the relevant definitions are:

1. “living modified organism” as “any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology.”
2. “living organism” is defined as “any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids.”
3. “modern biotechnology” is defined as “the application of:
 - a. in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or
 - b. fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding or selection.”

The Codex Alimentarius Commission defines “modern biotechnology” in a manner very similar to the definitions in the Cartagena Protocol on Biosafety. In both, “modern biotechnology” is either in reference to rDNA techniques, or the “fusion of cells beyond the taxonomic family.” None of the known international or national standards define “genetic engineering” by reference to organic standards.

² In fact, it appears this labeling requirement is not only applicable to seed companies, but more would more broadly apply to the “manufacturer, distributor, or supplier” of the “genetically engineered” seed. Thus, it is evidently the case that dealers of seed and those who merely transport seed could be subject to a regulatory mandate where compliance is not possible.