Public Forum
To review the biotechnology product regulatory approval process
Committee on Agriculture
U.S. House of Representatives
January 20, 2011

Statement of Charles Conner
President and Chief Executive Officer
National Council of Farmer Cooperatives

Chairman Lucas, Mr. Peterson and members of the Committee, thank you for holding today's forum on the biotechnology product regulatory approval process. I am Chuck Conner, President and Chief Executive Officer of the National Council of Farmer Cooperatives (NCFC). NCFC represents the nearly 3,000 farmer-owned cooperatives across the country whose members include a majority of our nation's more than 2 million farmers. These farmer cooperatives allow individual farmers the ability to own and lead organizations that are essential for the vitality of the agriculture sector and rural communities.

I applaud the Committee for holding this forum in recognition of the need to gain insight, provide transparency and highlight the concerns of America's farmers. This is timely given the U.S. Department of Agriculture's pending decision on herbicide-tolerant alfalfa and the long-reaching effects of that decision. These are the very reasons so many grower groups and related organizations urged the Committee to host this session. Additionally, NCFC is a member of a broad coalition of agriculture and related industry groups on biotechnology—that group will submit additional comments for the record.

My comments today will focus on three issues:

- First, the USDA regulatory process for agricultural biotechnology approvals to date;
- Second, the regulatory status of Round up Ready alfalfa and "co-existence" issues; and
- Third, litigation and court cases over biotechnology product approvals.

American agriculture has long been at the forefront of meeting the world's ever expanding needs for food, feed and fiber. The availability of corn, cotton, soybeans, sugar beets, canola, alfalfa, and other crops enhanced through biotechnology will continue to assist the U.S. farmer in providing for the world's growing population.

In addition, crops enhanced by biotechnology currently on the market bring value to agriculture, consumers and the environment. For example, some of these plants have been

engineered to allow the application of herbicides such as glyphosate over the top of crops growing in the field, reducing tillage and runoff. Others have been protected against harmful insect pests and diseases, thereby reducing the need for chemical spraying.

The development and adoption of these products, and the promise of new products, makes possible the continued availability of safe food, feed and fiber products to consumers in the U.S. and worldwide. With 23 crops in the regulatory pipeline, and more on the way, it's clear that USDA's pending decision on herbicide-tolerant alfalfa will have a far-reaching impact.

The acceptance of biotech crops would not have been possible without the existence of a risk-based regulatory process based on sound scientific principles. That process has been in place since the adoption of the Coordinated Framework for Regulation of Biotechnology by the United States was announced in 1986. Every biotechnology crop on the market today has successfully completed review under the Framework and has been found to be safe. We support the integrity of the U.S. regulatory requirements for biotechnology-derived crops.

Under the authority of the Plant Protection Act implementing regulations, USDA's Animal and Plant Health Inspection Service (APHIS) is the agency that reviews all biotechnology crops before they can be field tested or commercialized. APHIS has overseen tens of thousands of field tests that have made it possible for over 70 biotechnology crops to reach the market through its deregulation process. In making deregulation decisions under the Plant Protection Act, APHIS has consistently relied upon its independent evaluation of the potential for new products that could pose a plant pest risk. Under its authority it considers factors that are relevant to a plant pest risk determination. Though the National Environmental Policy Act (NEPA) must be addressed in making a deregulation decision, it is important to remember that NEPA is a procedural statute. NEPA directs APHIS to assess potential environmental impacts of its actions, but that is where NEPA's jurisdiction ends. NEPA does not give USDA any authority beyond the Plant Protection Act and APHIS's implementing regulations.

In 2005, APHIS prepared an environmental assessment for glyphosate-tolerant alfalfa and made a deregulation decision. The crop was on the market and successfully grown by U.S. farmers for two years before a NEPA law suit reversed APHIS' decision. In an order issued by the United States District Court for the Northern District of California in San Francisco in 2007, APHIS was required to prepare a full environmental impact statement (EIS) because the court found that APHIS failed to follow the proper procedures in meeting its NEPA obligations. There was no finding of any deficiency under the Plant Protection Act or of any risk to health or safety.

In December 2010, USDA announced the completion of the court-ordered EIS. In subsequent meetings, the Secretary has indicated he will make a final regulatory decision by late January 2011. In preparing the EIS, USDA chose to include the option, referred to as "Alternative 3," of deregulating glyphosate-tolerant alfalfa with unprecedented regulatory conditions in an attempt to address concerns between growers planting glyphosate-tolerant alfalfa and those planting conventional and organic alfalfa. USDA designated this as one of its "preferred options." The conditions include isolation distances of up to five miles and other geographic

restrictions that would not allow farmers to plant glyphosate-tolerant alfalfa on an estimated 20 percent of alfalfa acres (50 percent of the alfalfa acreage in the western states); limitations on harvest periods and equipment usage; seed bag labeling; seed coloration; and the listing of seed production field locations on a national data base.

The EIS for glyphosate-tolerant alfalfa states USDA's conclusion that it does not pose a plant pest risk. Having made that determination, USDA should immediately deregulated glyphosate-tolerant alfalfa without additional regulatory conditions. Combined with broader policy statements in the EIS, the imposition of conditions on a crop that poses no plant pest risk sets a dangerous precedent for the continued safe development, availability and marketability of new biotechnology products. Broad policy changes related to how USDA makes regulatory decisions on new biotechnology crops should not be made in the context of an environmental review for a specific crop. Attempting to mediate disputes between interest groups in the context of a specific regulatory decision for a product such as glyphosate-tolerant alfalfa would set a precedent that is in direct conflict with the long-standing adherence to science-based regulation of biotechnology crops in the U.S. as well as this Administration's commitment to upholding the public's trust in the integrity of the scientific process.

Now that an EIS has been prepared and APHIS has found, for the second time, that there is no plant pest risk, we fully support alfalfa growers having access to glyphosate-tolerant alfalfa for planting this spring. The best way to ensure production of this valuable crop is for USDA to grant full deregulation without further delay. We urge the Secretary to fully deregulate glyphosate-tolerant alfalfa, and hope that the U.S. government will vigorously defend that action in any court challenge. The alfalfa industry, with its partners, has demonstrated it has stewardship measures in place that meet all requirements of the re-deregulation that does not require additional regulatory oversight.

We appreciate Secretary Vilsack's commitment to address some of the roadblocks that have been placed in the path of valuable new biotechnology crops including herbicide-tolerant alfalfa and sugar beets by NEPA litigation. Where we respectfully disagree with the Secretary is on his approach to removing these roadblocks.

One of the terms we've heard most over the last several months is "coexistence." The ability of growers to choose what they want to plant cannot be achieved through the process laid out in the alfalfa deregulation decision if the Department adopts Alternative 3. The ability of multiple production systems to exist side-by-side is based on market needs, communication, and workable solutions developed by industry and growers. Growers have always worked closely with the seed industry and state seed certifying agencies to meet their respective stewardship obligations through contractual agreements and other mechanisms.

Characterizations of disputes between farmers with different cropping systems may have been overstated in the last several months. Farmers, processors and markets have been and are managing potential conflicts with best practices and private contractual agreements. Where the terms of private contracts call for the exclusion of safe, deregulated biotechnology crops,

those contracts should not be the basis for the imposition of regulatory conditions on the production of those biotechnology crops. Coexistence of all crops is a marketing issue, not a safety issue.

It has been suggested that extraordinary regulatory action is needed to address the burdens that have been imposed by recent NEPA lawsuits challenging APHIS's decisions. Those who are opposed to biotechnology have sought relief in the federal courts under NEPA for nearly 30 years and more recently have challenged regulatory actions taken by APHIS. In those few cases where their suits have been successful, it has always been based on the court finding a procedural violation – no court has ever held that a biotechnology crop presents a risk to health, safety or the environment, nor has any court ever directed APHIS to regulate coexistence. The answer is to take whatever steps are needed to adequately address APHIS's procedural responsibilities under NEPA so that, when and if a decision is challenged, it can be successfully defended with little or no adverse impact on agricultural production or innovation. We look forward to discussing these issues with the Secretary and the Administration further.

APHIS has already implemented a number of key reforms to address the court's concerns with its NEPA compliance. This ability to learn, evolve and improve is one of the great strengths of the U.S. regulatory process for biotechnology. The best insurance for mitigating the adverse effects of the current round of NEPA court cases will be the continued preparation of enhanced environmental assessments for biotechnology crops and, where circumstances warrant, an environmental impact statement. We continue to support efforts to secure adequate resources for the continued enhancement of APHIS's regulatory program and the defense of its decisions.

The U.S. government has consistently supported and defended science-based regulatory regimes. In many international forums, U.S. policy is the standard for science- and risk-based regulation. The U.S. successfully argued against the European Union in a World Trade Organization dispute over the approval of biotechnology products. The interests of growers, businesses and consumers depend on trade agreements with countries that import commodities and products that we produce. The injection of non-science-based criteria into our government's regulatory process will only serve to undermine those international efforts.

As former Acting Secretary and Deputy Secretary at USDA, I am very familiar with the biotechnology product regulatory approval process. We were threatened by lawsuits when I was at USDA—in fact, the alfalfa case was filed while I was Deputy Secretary. I believed then and I believe now in science-based risk assessments for the regulation of all crops.

In closing, we urge the Administration and this Committee to maintain the integrity of the regulatory process for the benefit of U.S. growers and our consumers. We must remember that we all are working toward the use of biotechnology in a manner that promotes continued opportunities for all farmers and consumers around the world. We look forward to working with the Secretary on this issue.

Thank you again for convening this forum and for your continued interest in this matter.

Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2008.

Name: **Charles F. Conner**

Address: **50 F Street, NW – Suite 900, Washington, DC 20001**

Telephone: **202-626-8700**

Organization you represent (if any): National Council of Farmer Cooperatives (NCFC)

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1. **Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2008, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:**

Source: NONE **Amount:**

Source: NONE **Amount:**

2. **If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2008, as well as the source and the amount of each grant or contract:**

Source: NONE **Amount:**

Source: NONE **Amount:**

Please check here if this form is NOT applicable to you: ✓

Signature:

* Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: *Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.*

PLEASE ATTACH DISCLOSURE FORM TO EACH COPY OF TESTIMONY.

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Information Required From Nongovernmental Witnesses

House rules require nongovernmental witnesses to provide their resume or biographical sketch prior to testifying. If you do not have a resume or biographical sketch available, please complete this form.

1. Name: **Charles F. Conner**

2. Business Address: **50 F Street, N.W.**
   Suite 900
   Washington, DC 20001

3. Business Phone Number: **202-626-8700**

4. Organization you represent: **National Council of Farmer Cooperatives (NCFC)**

5. Please list any occupational, employment, or work-related experience you have which add to your qualification to provide testimony before the Committee: **I represent farmer-owned cooperatives who produce and sell Biotech seed. I also served as the Acting Secretary and Deputy Secretary at USDA during a period when many Biotech seed varieties were deregulated.**

6. Please list any special training, education, or professional experience you have which add to your qualifications to provide testimony before the Committee: **While serving at USDA I was directly responsible for overseeing the regulatory framework agreement as it relates to Biotech seed.**

7. If you are appearing on behalf of an organization, please list the capacity in which you are representing that organization, including any offices or elected positions you hold: **President & CEO of the National Council of Farmer Cooperatives**

PLEASE ATTACH THIS FORM OR YOUR BIOGRAPHY TO EACH COPY OF TESTIMONY.