

PROVISIONAL FINAL

Bylaws and Operating Procedures for the USDA Advisory Committee on Biotechnology and 21st Century Agriculture

Section I: Purpose

The purpose of the U.S. Department of Agriculture (USDA) Advisory Committee on Biotechnology and 21st Century Agriculture (AC21) is two-fold: to examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture.

Section II: Authority

The Secretary of Agriculture has determined that the establishment of the AC21 is in the public interest. The AC21 is subject to the FACA, as outlined in its Charter, filed with the Library of Congress.

Section III: Decision Making

- a. Consensus. The AC21 will seek to operate via consensus in recommendations made to the Secretary of Agriculture within the constraints of fixed time periods allotted for work on designated issues. On occasion, the Chairperson may request a motion for a vote. Any member, including the Chairperson, may make a motion for a vote.

Recommendations or other documents can be considered to have achieved consensus if there is no dissent by any member of the AC21. Furthermore, the USDA believes there is value in the Committee articulating the range of disparate views of its members even if consensus is not reached. Therefore, if consensus on specific substantive proposals is not possible, the AC21 will make every effort in any recommendations or findings provided to the Secretary to articulate both the areas of agreement and disagreement, and the reasons why differences continue to exist. In striving to achieve consensus, AC21 members should consider all relevant public and private sector perspectives and the interests and concerns of all AC21 members. If it is required that the AC21 report to the Secretary by a fixed date recommendations or findings on which it has not been possible to achieve full consensus, a report shall consist of those elements upon which there has been consensus agreement plus an accurate description of non-consensus

recommendations and the points of disagreement within those recommendations, developed jointly by the AC21 Chairman or Chairwoman and the Executive Secretary. Committee members will be given the opportunity to confirm and/or improve the accuracy of the draft report. AC21 members shall be afforded the opportunity to provide to the Secretary, in parallel and in a timely manner, any comments on the accuracy of such a report.

The AC21 will also strive to achieve consensus on significant procedural issues, such as whether to establish work groups. However, if the AC21 is unable to achieve consensus on significant procedural matters or on whether a particular procedural matter is significant, the Designated Federal Official (DFO) will make final decisions on how to proceed. For routine procedural matters, such as setting the date of meetings, the DFO will make every effort to find a solution that best meets the needs of AC21 members and USDA staff.

- b. Agreement and Product(s). Agreement of the AC21 on any written document or other product(s) of the AC21 intended for delivery to the Secretary will include appropriately authorized signatures from AC21 Members. Pre-consensus draft materials should not be considered nor characterized as products of the AC21.

Section IV: Meeting Procedures

The full AC21 will meet up to four times per year. These meetings will take place in the Washington, DC area. However, AC21 meetings may take place outside the DC area if the DFO, Chair, and members agree there are compelling reasons to do so. Meetings will be open to the public except when a determination is made in writing by the Secretary of Agriculture or his designee that any or all portions of a meeting should be closed in accordance with 5 U.S.C. 552b (c).

- a. FACA. The AC21 will be conducted under the Federal Advisory Committee Act (FACA).
- b. Open Meetings: Unless otherwise determined in advance, all meetings of the AC21 will be open to the public. Once an open meeting has begun, it will not be closed for any reason. All materials brought before, or presented to, the AC21 during the conduct of an open meeting, including the minutes of the proceedings of an open meeting, will be available to the public for review or copying at the time of the scheduled meeting. Members of the public may attend any open meeting or portion of an open meeting and may, at the determination of the Chairman or Chairwoman, offer oral comment at such meeting. The Chairman or Chairwoman may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded and will invite

written comment as an alternative. Members of the public may submit written statements to the AC21 at any time.

- c. Closed Meetings: Meetings of the AC21 will be closed only in limited circumstances and in accordance with applicable law. In addition, requests for closed meetings must be approved by USDA's Office of General Counsel (OGC). Whenever a meeting is to be closed, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), 5 U.S.C. 552b, will be published in the Federal Register. The notice may announce the closing of all or just part of a meeting. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chairman will order such discussion to cease and will schedule it for closed session if it is determined that such a session is warranted.
- d. Agendas. Meeting agendas will be drafted by the DFO in consultation with the AC21 Chairperson. In developing approaches to address items on the agenda, the DFO will also solicit thoughts from the AC21 members. Items for the agenda may be provided by the Secretary of Agriculture, or by recommendation of USDA's Biotechnology Coordinating Committee. The DFO will approve the agenda for all meetings. A draft agenda will be distributed at least two weeks in advance of each meeting for review by AC21 members. USDA will endeavor to distribute all documents to be considered at an AC21 meeting to AC21 members at least two weeks in advance of that meeting, recognizing that some time-sensitive documents may need updating at the time of the meeting. USDA will publish an outline of the agenda with the notice of the meeting in the Federal Register. It will be reviewed at the beginning of each meeting and refined, if necessary, and approved by consensus. However, AC21 may not substantively change the agenda without approval of the DFO.
- e. Minutes and Records. The DFO will prepare minutes (i.e., a meeting summary) of each meeting and distribute copies to AC21 members for approval review approximately one month after the meeting. Committee members present at the meeting being summarized will have two weeks to review the summary and make suggested changes. The DFO and AC21 Chair will attempt to address any comments received and will subsequently develop a final summary for public distribution. Minutes of closed meetings will also be available to the public upon request, subject to the withholding of matters that are exempt from disclosure under the Freedom of Information Act (FOIA). The minutes will include a record of the persons present (including the names of AC21 members, names of staff, and the names of members of the public from whom written or oral presentations were made) and a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued or approved by the AC21.

All documents, reports, or other materials prepared by, or for, the AC21 constitute official government records and must be maintained according to USDA policies and

procedures. Under FACA, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the AC21 will be included as official records, subject to FOIA requirements. Comments provided by the public at a meeting of the AC21 or a work group thereof, or submitted to USDA for consideration by the AC21 will be considered part of the official record. Official AC21 documents will be maintained in a designated location by the DFO in accordance with Federal record keeping requirements and will be made available for public viewing by appointment.

- f. Work Groups. As deemed necessary, the Chairman or Chairwoman, in consultation with the DFO, may convene work groups to support the AC21's functions. Work groups will represent a balanced range of viewpoints, and will consist of AC21 members plus other individuals that USDA may deem appropriate for such discussions. Work groups are not authorized to make decisions for the Committee as a whole. Work group meetings may take place via conference call or in person and again, while the default assumption is that these will take place in Washington, DC, other circumstances may dictate that they be held elsewhere in the United States.

All AC21 Members will be notified of subgroup meetings, including date and time of meetings and agenda items to be discussed. Summaries of subgroup meetings also will be provided to AC21 members.

- g. Electronic Communication. Electronic communication mechanisms will be utilized to the greatest extent possible for the sharing of information outside of AC21 meetings, including meeting agendas and summaries. For any AC21 member who is unable to participate in electronic communication, others available means of communication (e.g., fax and mail) will be utilized. All members who have the technical capability to use electronic communication are expected to use it. The purpose of electronic communications is to reduce paperwork, delay and mailing expense.
- h. Caucus. Any subset of AC21 members may confer privately during or after an AC21 meeting as needed.
- i. Attendance at Meetings. All AC21 members must make a good faith effort to attend AC21 meetings. The AC21 Member may be accompanied by such other individuals as the AC21 member believes are appropriate to assist him or her in representing his/her interest. Only AC21 members and USDA designees will be permitted to sit at the speakers' table and speak during the meetings, except during designated public comment periods when members of the public will have an opportunity to comment.

Section V: Role of Board Officials

- a. Chairman or Chairwoman: The Chairman or Chairwoman works with the DFO to

establish priorities, identify issues which must be addressed, and serves as the focal point for the AC21's membership. In addition, the Chairman or Chairwoman is responsible for certifying the accuracy of minutes developed by the DFO to document AC21 meetings.

- b. Designated Federal Official: The DFO serves as the Government's agent for all matters related to the AC21's activities. The DFO must: (1) approve or call the meeting of the AC21; (2) develop and approve agendas; (3) attend all meetings; (4) adjourn the meetings when such adjournment is in the public interest; and (5) chair meetings of the AC21, when so directed by the Secretary of Agriculture, or his designee.

In addition, the DFO is responsible for providing adequate staff support to the AC21, including the performance of the following functions: (1) notifying members of the time and place for each meeting; (2) maintaining records of all meetings, including subgroup or working group activities, as required by Law; (3) maintaining the roll; (4) preparing the minutes of all meetings of the AC21's deliberations, including subgroup and working group activities; (5) attending to official correspondence; (6) maintaining official AC21 records and filing all papers and submissions prepared for or by the AC21, including those items generated by subgroups and working groups; (7) acting as the AC21's agent to collect, validate and pay all vouchers for pre-approved expenditures; and, (8) preparing and handling all reports, including the annual report as required by FACA.

Section VI: Safeguards for Parties

- a. Good Faith. All parties agree to act in good faith in all aspects of the AC21 deliberations. In order to encourage consensus building as well as the free and open exchange of ideas, views and information prior to decision making, members agree not to use specific offers, positions or statements regarding issues under discussion by the AC21 that are made by another member outside the context of a recorded statement at an official session of the AC21 or a working group thereof, for any other purpose not previously agreed to by the members involved. Personal attacks and prejudiced statements will not be tolerated.
- b. Right to Withdraw. Any party may withdraw from the AC21 at any time without prejudice. However, it is requested that the member wishing to withdraw communicate the reasons for withdrawal.
 - 1) Others' Positions. Members agree not to characterize the position of any other party in public statements outside of the AC21 meetings, or in discussions with the media, even if that party withdraws from the AC21. To the extent feasible, members will refer others to approved meeting summaries for information about the AC21's discussions.
- d. Information.

- 1) All parties agree to be open and forthcoming in the sharing of relevant, readily available information to aid in the committee's deliberations. If a party believes it cannot or should not release relevant information important to the committee's deliberations, because of the confidential or proprietary nature of that information, the party will endeavor to provide the substance of the information in some form (such as by aggregating data, by deleting non-relevant confidential information, by providing summaries, or by furnishing it to a neutral consultant to use or abstract) or a general description of the information and the reason for not providing it directly.
- 2) Parties will provide information called for by this paragraph as much in advance of the meeting at which such information is to be used as is reasonably convenient.
- 3) Information and data provided to the AC21 in writing is a matter of a public record and will be maintained according to Department of Agriculture policies and procedures.
- 4) Any information that qualifies as Confidential Business Information under Exemption b(4) of the Freedom of Information Act may not be discussed by the AC21 without prior approval of its owner and may be discussed only in closed session of the Committee. All AC21 members and USDA staff in attendance must agree in writing, prior to its distribution to Committee members, to protect such information.

Section VII: Expenses and Reimbursement.

Expenses related to the operation of the AC21 will be borne by Research, Education, and Economics, USDA. Expenditures of any kind must be approved in advance by the DFO. Federal Government employees serving on the AC21 are not eligible for any form of additional compensation. The Government will pay travel and per diem for those non-government committee members and workgroup members who require assistance in order to attend meetings at a rate equivalent to that allowable for Federal employees.