INSIDE

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IN FUTURE ISSUES

Eighth Circuit reverses tax court on self-employment tax on rental income

In *McNamara v. Commissioner*, 87 AFTR2d 2001-306 (8th Cir. 2000) the Eighth Circuit Court of Appeals reversed and remanded the tax court opinions in *McNamara v. Commissioner*, TC Memo 1999-333, *Hennen v. Commissioner*, TC Memo 1999-306, and *Bot v. Commissioner*, TC Memo 1999-256. The Eighth Circuit did not agree with the taxpayers' argument that self-employment tax is imposed only on rental payments derived from sharecropping or share farming and therefore not on the cash rent paid in these cases. The court also held that the Tax Court did not err in finding that the employment contracts required the respective landowners to materially participate in the farming activities.

The Eighth Circuit was persuaded by the taxpayers' argument that the lessor-lessee relationship should stand on its own apart from the employer-employee relationship. Contrary to the IRS argument and the Tax Court holdings, the Eighth Circuit is not willing to look at all of the agreements between the lessor and the lessee to find the "arrangement" calling for material participation. It is willing to look at agreements other than the lease only if there is a nexus between the lease and the other agreement. Indicium of a nexus, according to the Eighth Circuit, is rental payments in excess of the fair rent for the farmland. If the rent is a fair rental rate, the lease is an independent transaction and not part of the employment agreement that requires the lessor's material participation.

Since there was no evidence presented regarding the fair rent of the farmland, the cases were remanded to give the IRS a chance to show that the rent was in excess of a fair rental rate.

The Eighth Circuit opinion restores the principle that an owner of agricultural land does not have to report rent as self-employment income if the rental arrangement does not require the landowner to materially participate in the farming operation. However the IRS could appeal the Eighth Circuit opinion. Furthermore, the Eighth Circuit opinion is not binding for taxpayers who are outside the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota) so the IRS can cite the Tax Court opinions to support its position that such rent is subject to self-employment tax for those taxpayers.

—Philip E. Harris, Department of Agricultural and Applied Economics, University of Wisconsin-Madison

The EPA's proposed regulations for animal feeding operations

The Environmental Protection Agency is advancing new regulations to address water pollution from concentrated animal feeding operations (CAFOs), and invites public comments on these regulations before May 2, 2001. (*See* 17 *Agricultural Law Update* 1, September 2000). If these projected changes are adopted, we could double or triple the number of animal feeding operations (AFOs) subject to point-source pollution regulations. The EPA estimates the earliest the proposed regulations can be implemented is January 2003. Moreover, rules reclassifying AFOs based on threshold numbers of animals would not take effect until January 2006.

These proposed regulations are the culmination of efforts previously set forth by the EPA and USDA including "Compliance Assurance Implementation Plan for Concentrated Animal Feeding Operations," "Unified National Strategy for Animal Feeding Operations" (*see* 16 *Agricultural Law Update* 1, April 1999), and "Draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations, Final Internal Draft." (*See* 16 *Agricultural Law Update* 1, August 1999). The expansive nature of the contemplated regulations will involve major new costs for animal producers and related industrial firms. The EPA calculated that the

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proposed regulations may cost $831-935 million annually and may reduce aggregate national economic output by nearly $2 billion per year.

Proposed rules classifying CAFOs

The major thrust of the proposed regulations is to classify more AFOs as CAFOs. This is proposed through several provisions. Because of expected controversy with a proposal to compel more AFOs to obtain permits, the EPA detailed two suggested structures. The first is a two-tier structure consisting of operations having a threshold of 500 animal units as well as operations designated on a case-by-case basis. It is calculated that 25,540 operations would be considered CAFOs under this two-tier structure.

The proposed second alternative structure retains the three-tier structure of the existing regulations. The EPA estimates that more than 39,000 operations would be affected by this proposed structure, with 12,660 operations needing permits because of their size of more than 1,000 animal units. Operations with 300-1,000 animal units would have to apply for a National Pollutant Discharge Elimination System (NPDES) permit or certify to the permit authority that they are not a CAFO based on existing practices. Operations with less than 300 animal units could be designated CAFOs on a case-by-case basis.

A separate provision of the suggested regulations would expand the AFOs classified as CAFOs to include poultry operations with dry manure handling systems, swine nurseries, dairy heifer operations, veal production facilities, and turkey operations.

The EPA proposal also seeks to require some processors and integrators to secure NPDES permits under federal co-permitting provisions. The proposed regulation would allow the EPA to regulate nonfarming entities that exercise "substantial operational control" over a CAFO through co-permitting requirements.

Other changes

Besides changing which operations are CAFOs, the proposed regulations offer several other changes that would markedly affect the oversight of AFOs. The EPA is seeking authority to designate AFOs as CAFOs despite the existence of an approved state program. This would allow the EPA to address instances of significant discharges from AFOs that are not addressed by state regulators.

Suggested provisions would clarify the definition of an AFO and define CAFOs to include both the production area and the land area where animal waste is applied. Some off-site recipients of manure would be regulated under the proposed structure. The controversial 25-year, 24-hour storm event permit exclusion would be eliminated.

Despite employing the term "animal unit" to delineate its proposed structures, the EPA wants to eliminate the term in favor of given numbers of animal types for meeting threshold numbers. It is proposed to remove the mixed animal calculation so that an AFO would only be a CAFO if it met the threshold number of animals for one animal type.

The proposed regulation would differentiate Comprehensive Nutrient Management Plans (CNMPs) from the nutrient plans required of CAFO operators. Under the regulatory proposal, CAFO operators would be required to have a Permit Nutrient Plan incorporating an allowable manure application rate for land applications of manure and wastewater. A Permit Nutrient Plan would be narrower in scope than a CNMP, as it would exclude the identification of conservation practices and management activities needed for erosion control and water management. This new term would differentiate voluntary efforts from mandatory efforts: Permit Nutrient Plans would be mandatory while USDA CNMPs would be voluntary. Moreover, the regulation would incorporate certification requirements for the specialists who oversee Permit Nutrient Plans.

Another major change involves expanding current requirements relying on "best available technology economically achievable" to requirements based on "best practicable control technology limitations currently available." For all CAFOs in the beef, dairy, swine, veal, chicken, and turkey subcategories, best practicable control technology limitations currently available would apply. This would involve a zero discharge of process wastewater from the production area except for a 10-year, 24-hour storm event and a prohibition of the application of animal waste within 100 feet of surface tile drain inlets, sinkholes, and agricultural drainage wells. An alternative option would impose a management practice requiring the adoption of phosphorus-based manure application rates.

Concern is expressed for CAFOs that go out of business. Under the contemplated regulations, a CAFO would need to remain permitted until all wastes at the facility no longer have the potential to reach waterbodies.

The EPA also wants to regulate AFOs with discharges even though they are not CAFOs. Any AFO that discharges through a discrete conveyance that would qualify as a point source would be subject to the NPDES regulatory program according to the suggested regulations.

Concluding comments

The EPA's proposed regulations reflect a public desire to improve water quality. The regulations will supplement the countless state regulations that have been adopted governing animal operations over the past few years. Given the projected costs and the fact that we do not know how effective many of the recently enacted state regulations will be, it may be too early to gauge the need for some of these additional federal regulations.

—Terence J. Centner, Professor, The University of Georgia, Athens, GA

[1] Environmental Protection Agency, "National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, Proposed rule," 66 Fed. Reg. 29960-3145 (January 12, 2001).

[2] 60 Fed. Reg. 3071-3072.

[3] Environmental Protection Agency, "Compliance Assurance Implementation Plan for Concentrated animal Feeding Operations," March 1998.

[4] U.S. Dep't. Agriculture and Environmental Protection Agency, "Unified National Strategy for Animal Feeding

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The Producer Protection Act – will it protect producers?

By Michael Boehlje, Lee Schrader, Chris Hurt, Ken Foster, and James Pritchett

Iowa Attorney General Tom Miller and 16 state Attorneys General have proposed new laws to protect contract growers and producers. By contract growers, we refer to the growing number of farmers and ranches who produce livestock or grain on a contract with large contractor companies or other farmers. Former Indiana Attorney General Karen Freeman-Wilson was one of the cosponsors of the model Producer Protection Act. Senator Thomas Harkin of Iowa has proposed similar legislation in the U.S. Senate.

Miller and the Farm Division of his office led the multi-state project drafting the model legislation, is to be introduced in individual state legislatures. Several of the measures are based on laws that recently were adopted in Iowa – banning confidentiality clauses in contracts, for example, and giving farmers a first-priority lien for payments in case a contractor company goes out of business.

In a joint statement accompanying the model Producer Protection Act, Miller and the 16 state Attorneys General said the legislation would "help preserve competition in agriculture for the benefit of farmers and consumers."

The Attorneys General cited their concern about "the rapid trend toward consolidation in agriculture" and about the fact that fewer firms control the production, processing, preparation, and retailing of agricultural commodities and food. The rapid rise of production contracts and marketing contracts is a trend that has dramatically increased vertical coordination in U.S. agriculture. This change is most noticeable in the pork and poultry industries.

Attorney General Miller said: "In production contracting, we worry about the great disparity in bargaining power and marketing information between the contractor companies and individual producers. Large companies often offer contracts to producers on a take-it-or-leave-it basis. Risks to producers are buried in pages of legalese, and producers easily can be stuck with unfair contract terms. On top of that, they may be barred from disclosing any of the terms to others."

The Attorneys General said contracting often results in unfair shifting of economic risk to farmers and ranchers, especially those who are required to make large capital investments in buildings and equipment.

The model state legislation Producer Protection Act contains at least five key provisions. It:

1. requires contracts to be in plain language and contain disclosure of material risks;
2. provides contract producers with a three-day cancellation period to review production contracts and allow them to discuss contracts with advisors;
3. provides producers with a first-priority lien for payments due under a contract in case the contractor company should go out of business;
4. protects producers from having contracts terminated capriciously or as a form of retribution if farmers already have made a sizeable capital investment required by the contracts; and
5. prohibits tournament contracts whereby grower compensation is determined in part by performance compared to other growers.

Some important questions

The dialogue concerning the advantages and disadvantages of contract production and the proposed Producer Protection Act raises a number of questions that merit discussion and investigation. The article identifies some of the important issues raised by this proposed legislation in the spirit of furthering that dialogue. We are not here criticizing or supporting this proposed legislation; rather, our goal is to further the discussion and debate on this important public policy issue.

General issues

A key general issue that must be considered in assessing this or similar legislation is the intended impact, and whether there may be unintended consequences. It would appear that the intended impact of the Producer Protection Act is to reduce the potential for exploitation of producers by processors and packers in contractual arrangements, and to foster continuation of a relatively independent (although aligned through contracts and other arms-length business arrangements) agricultural sector. A key concern is whether the rules imposed by the Producer Protection Act may be sufficiently restrictive with respect to contracting and similar arrangements that the unintended consequence and end result would not be to maintain a relatively independent agricultural structure, but instead to encourage vertical integration through ownership of production facilities by processors and packers. For example, in the early 1990s the state of Missouri enacted tough anti-corporate farming legislation. In a few short years afterward, the independent pork industry declined significantly and was ultimately replaced by the vertically integrated Premium Standard Farms Company and other contract production systems.

A second general issue that must be considered in any legislation concerning the provisions surrounding contracting is that it is virtually impossible to write a long-term contract that will meet all contingencies. Because of this, contracts must be flexible and based on trust. In fact, the major goals of public policy in the area of contracting should probably be:

1. to facilitate informed decision making by both parties to a contract, and
2. to encourage an environment of trust and confidence in contracting arrangements.

These goals are likely to be more achievable than a goal of specifying the full set of conditions and contingencies that must be included and considered in the specification of a complete contract. In essence, determining a set of rules that the public will enforce for the specification of a complete contract is almost surely doomed to failure.

A third general issue in the discussion of the Producer Protection Act or similar legislation is what provisions or protections are already available in current law, and what new provisions are needed that are not part of current law. This issue is particularly important as one considers whether producers entering contracts need unique protections compared to other parties entering a contract, or whether they need to be better informed about the protections already provided by current contract law.

A fourth general issue relates to the long-term location of the world's livestock industries. Greater regulation on a state (or even multi-state) level is likely to shift production away from that state (or states) in the longer run. Binding regulation at the federal level could result in a movement of an industry to Canada, Latin America, Asia, and Australia. Are the benefits of contract regulation worth the risk of losing the economic and employment benefits of these industries?

Specific issues

Specific issues that must be considered relate to the key provisions of the Producer Protection Act noted earlier. They include the following:

1. What are the benefits of the provisions requiring plain language and a description of risk? What are the costs that this will impose? Will there be a standardization of terms in all contracts? Will disclosure include layman discussion of compensation technique and

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By Michael Boehlje, Professor; Lee Schrader, Professor Emeritus; Chris Hurt, Professor; Ken Foster, Professor; and James Pritchett, Assistant Professor, Agricultural Economics Department, Purdue University.

method? If the best advice is to have a contract reviewed by an attorney, or accountant, should there be a requirement or certification that has occurred as part of the contract or should all production contracts be vetted by a state Attorney General's staff? What are the benefits compared to the costs of full disclosure?

2. Does the three-day right to review provision provide significant benefits? What are the disadvantages or costs of providing this three-day right to review? If better informed decision-making is desirable, it appears reasonable that a producer should have the opportunity to discuss contracting provisions with advisors. Thus, provisions prohibiting confidentiality seem desirable. However, what does this disclosure requirement mean to the processor/packer in terms of revealing strategically important information relative to their competition? What does it do to the creativity and innovation in incentives for compensating suppliers for various attributes if a packer cannot obtain any competitive advantage from this innovation?

Furthermore, contractors invest significant legal expense in the development of contracts and contract language. Making contracts open to public scrutiny allows others to "free ride" on the investment by simply copying contracts and making minor alternations. Is there any way that information with respect to the contract might be shared with advisors, but a prohibition be imposed in terms of sharing this information with competitors? If contract information is shared with those who will help the producer make a more informed decision, then steps must be taken to prevent seepage of contracts into the public domain. This could take the form of a non-disclosure statement to be signed by all advisors and appended to the contract.

3. With regard to the producer being provided with a first-priority lien, production contract liens will likely *not* be acceptable to lenders as they consider the financial risk of providing capital to processors and packers. If the real issue is concern about the financial losses of a producer who does not get paid for his services under a contract production arrangement because of financial problems of the packer or processor, an alternative might be for the packer to post a bond. Alternatively, a state or federally sponsored insurance fund to indemnify producers (much like those currently used in the grain industry to protect producers from elevator bankruptcies) might be considered. In essence, alternatives to a lien that might be as effective in protecting producers from packer or processor financial failure should be considered. Also to be considered is that most production contracts eliminate price risk for the grower in exchange for the risk of contractor bankruptcy and increased access to investment capital. This shift from short-term price risk to long-run risk of contract termination has drawn significant investment into livestock industries, and therefore, must be preferred by a significant group of producers.

4. Provisions concerning production contracts that involve investment requirements need serious consideration before adoption. If the fundamental issue is that producers are making long-term investments based on a short-term contract, an alternative is to make sure that producers are fully informed as to the risk they are taking in such a contract. Or it might be required that under contracting arrangements where the producer makes a long-term financial commitment to fulfill the contract, the processor or packer is required to also make a long-term contract commitment that more closely matches the maturity of the investment. More creative ways for solving this classic hold-up problem should be considered. If this provision were to make it necessary for the processor to take all of the financial risk of the producer's investment, a natural response would be for the processor to make that investment and have complete control. In this situation, the end result may be vertical integration, the exact opposite of the proposed legislation's intent.

5. The prohibition of tournament contracts should also be evaluated carefully. The purpose and function of tournament compensation does not appear to be well understood. Objection to tournament contracts can be summarized as follows:

(1) They place growers in a position of competing rather than cooperating with other growers;

(2) They place growers in the position that if all achieve better performance, none are rewarded for the better performance; and

(3) Performance variation may be due to differences in quality of inputs supplied by the contractor rather than production practices of the grower.

The case for tournament compensation is that it automatically ensures that performance rewards keep up with technological progress, leaves the contractor free to alter input use to adapt to changing prices without penalizing the grower, and automatically reflects the effects on performance of outside factors such as weather.

Tournament-based compensation is widely used by broiler chicken companies. It is a means of varying compensation to reflect performance of the grower. The practice recognizes the difficulty (impossibility) of monitoring or measuring in a meaningful way all aspects of the grower's activity that affect performance. The method bases grower payment per unit (usually pounds reaching the processing plant) on the grower's ranking relative to the average of all growers completing flocks in a specified period of time (usually a week or two) with respect to some index of performance. Factors may be feed conversion, death loss, or a prime cost calculation including chick and feed cost per pound produced (usually calculated using a standard price for feed and chicks).

Based on experience in the broiler industry, there are three significant advantages of this method of compensation, the third is of great significance to the producer.

— Performance rewards keep pace with technology. There is no way for a contractor or grower to safely agree to a long-term contract using fixed performance standards. Regulations, genetics, nutrition, etc. will change over time. Any fixed set of performance standards will be out of date and likely untenable for the company or the grower before the contract term expires. A compensation base tied to average performance of all growers automatically keeps pace with technology.

— Performance standards reflect current best management practice. Changing demand for products or input prices require changes in the size of birds, feed nutrient density, or strain of birds that will maximize contractor profits. Any change in these practices will affect the performance measures used for compensation. If the performance standards are based on current average grower performance, the contractor is not inhibited from using the most efficient production practice. A fixed feed conversion standard would reduce the incentive to use a higher nutrient density feed when prices favor it. The average-based compensation provides greater flexibility for the contractor and, if the same production practices are implemented across all farms in the tournament, then growers are not penalized by changes in the production system.

— The tournament compensation system automatically adjusts for factors affecting all producers. Ambient temperature, humidity, disease conditions, feed quality, chick quality, etc. are factors affecting all producers. Inasmuch as these factors affect all producers in a specific time period in the same way, the use of an average performance base maintains a level playing field for the producer. Of course, farms in a tournament with each other must be within a limited geographic region where weather patterns etc. are similar.

— Contract termination and/or renewal are related to the performance standard's issue. The proposed legislation appears to require renewal of a contract except for breach of contract, a

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Producer protection/C*ont. from p. 5*
rather unusual concept of contract that ignores a specified term as part of a contract. What is breach of contract? This implies some quantitative standard of performance. A standard based on the average performance of the producer group seems much more equitable than any fixed standards set in the past or the qualitative judgement of a producer's compliance with some list of practices which would need to be specified in much detail.

A fnal comment

The Producer Protection Act could have significant implications for the competitiveness of the grain and livestock industries in the state of Indiana. The proposed legislation and details of its intent can be obtained at <<http://www.state.ia.us/government/ag/AGContractingIowarelease.htm>>. Whether or not this specific legislative proposal is debated in the state legislature or in the U.S. Congress, concerns about the impacts of the trend to more contract production and vertical coordination in agriculture will abound in the future. This article is an attempt to add to the discussion of the potential consequences of this and similar legislation to determine its possible impact on producers and the future competitiveness and characteristics of the agricultural industries. It is not meant to reflect on advocacy for, or against, the proposed law.

The Purdue Department of Agricultural Economics continues to develop educational materials and programs aimed at contract growers, potential contract growers, public officials, and other interested parties. EC-675 "Production and Marketing Contracts in the Pork Industry" is available from the Purdue Cooperative Extension Service.

This publication along with other useful information about agricultural contracting is available on the Internet at <<http://www.agecon.Purdue.edu/extensio/contracting/>>.

Drake Journal of Ag Law call for papers

The *Drake Journal of Agricultural Law* Editorial Board invites you to submit articles for consideration for the next edition of the *Drake Journal of Agricultural Law* published by the students of Drake University Law School.

The *Drake Journal of Agricultural Law* is dedicated to reviewing legal issues affecting the agricultural world. The *Journal* publishes articles on national and international topics written by judges, attorneys, professors, students, and other legal theorists.

Articles should be submitted electronically in Word for Windows 6.0 or higher. They can be e-mailed to Brandi King, Editor in Chief, at bking_editor@lycos.com, or mailed on diskette to: Brandi King, Editor in Chief, Drake Journal of Agricultural Law, Drake University Law School, 2507 University Avenue, Des Moines, Iowa 50311-4505; (515) 271-4969.

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cation recommendations compiled largely by the Irish government.

The report also acknowledges two important aspects regarding the public disquiet over GM food. First, it points out that the media's "desire for strong, standalone stories is not always easy to reconcile with the incremental, provisional nature of scientific finding." The report also states that "in Britain in particular, there have been no shortages of instances in which newspapers—some of which have a sizable readership [in Ireland]—have misled rather than informed the public about genetic modification. Distorted presentations of the facts, lurid accounts of 'Frankenstein foods', have been commonplace in the treatment of the issue in the mass-circulation newspapers.

The second interesting acknowledgement is that the Irish government has officially underlined the role the organic movement has played in the campaign against GM crops and foods. The report also points out that the organic movement has much to gain in this opposition, which is reflected in the report's comments that "Representatives of the organic farming and food sector have also been prominent in the campaign against GM crops and foods....We appreciate also that the debate about genetic modification has given organic producers an opportunity to draw attention to the merits of their own produce." The Irish government concludes that, even if they accept the concerns of organic farmers regarding possible gene transfer, they "see no reason why [approved GM crops] cannot form part, with organic farming, of a broad mix of crop types and farming practices."

On the basis of this Government report, it seems that Ireland is set to move the debate regarding GM technology to a more mature level at home and abroad.

—Shane Morris, Katija Blaine, and Doug Powell, Dept. of Plant Agriculture, Universitiy of Guelph, reprinted from the December 2000 ISB News Report

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—Drew L. Kershen, Professor of Law, The University of Oklahoma, Norman, OK

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Biotechnology policy in Ireland—an example to Europe?

Recently, a major clarification in modern biotechnology policy took place in Ireland with the publication of a new 235 page Government report. The report is likely to have ripple effects across the European Union in regards to its faith in GM technology. Modern applications of biotechnology have been subject to bipolar influences in Ireland where "Widely different points of view are expressed and challenged daily" on the subject. In the course of this ongoing biopolitical debate, biotechnology itself has been successively defined and redefined, negotiated and renegotiated, as professional and political interests have sought to shape the technology according to differing priorities.

In Ireland, the implementation of experimental field trials of GM crops has been a focus point for all the actors involved in the debate surrounding the application of modern biotechnology—pressure groups, competent authorities, the political establishment, industry, media, academic scientists, etc. In December 1996, the multinational life science/chemical company Monsanto applied to the Environmental Protection Agency (EPA) in Ireland to carry out experimental field trials of the glyphosate tolerant GM sugar beet (*Beta vulgaris*). This application was made in accordance with the EU Directive 92/220, which has been embodied into Irish law within the 1994 GMO Regulations made by the Minister for the Environment pursuant to powers contained in the 1992 Environmental Protection Act. The EPA granted conditional permission to Monsanto to test the GM sugar beet for a period of four years—three for growing purposes and one for subsequent test site monitoring. On September 28, 1997, the first test plot was destroyed by a group called the Gaelic Earth Liberation Front. Clare Watson, a leading member of Genetic Concern, a pressure group set up in April 1997, was granted leave to seek a judicial review of the EPA's procedures in granting the license to Monsanto. This hearing concluded in October 1998 with the High Court ruling against Clare Watson on all the twelve main areas of contention. Since then, the GM sugar beet field trails have continued, and a total of six attacks on the test plots have occurred at several different locations.

Up until last week, the current Irish Government had not officially stated its GM food policy. During the final days of the 1997 election, the ten current Minister of the Environment and the Minister of Agriculture issued a joint statement describing GM food as a 'mass experiment', and vowed to end the experimental trials of GM crops in Ireland (Fianna Fail, Press Release, April 1997). Since gaining office, the new Government has instituted a unique two-stage public consultation process to allow input into the formulation of its policy on 'GMOs and the Environment' under the specific auspices of the Department of Environment and Local Government (DOE). The first stage called for written submissions from interested members of the public. By the submission deadline, September 30, 1998, over 200 people and organizations had made submissions.

The second stage of the consultation process allowed for a two-day debate. A panel of stakeholder representatives participated in the debate sessions, chaired by an independent panel. The stakeholder panels consisted of two representatives from each of three groups: industry; the academic science community; and Non-Government Organizations (NGO)/pressure groups. These representatives were chosen from those who had responded to the advertised Government call for submissions on 'GMOs and the Environment'. The debate process encountered several severe problems, which resulted in a boycott of the final day of a two-day debate by the vast majority of the anti-GM NGO/pressure groups. The panel issued a report of the debate, which was accepted by the Minister. On receipt of the report in October 1999, the Government referred a number of specific issues to the Inter-Departmental Group on Modern Biotechnology, which had been established in March 1999 under political pressure and direct suggestion from the main opposition party, Fine Gael. These issues included the dissemination and coordination of information on genetic engineering, the case for a biotechnology ethics committee, and future policy and administrative coordination genetic engineering.

The Inter-Departmental Group issued a report on Monday, November 20, 2000 in which they made recommendations on the coordinated inter-departmental government positions on a wide range of issues related to the development of modern biotechnology. The Group's main recommendations include the following:

- Ireland should take a positive but precautionary approach to GM issues, at both EU and in international forums, which acknowledges the potential benefits of modern biotechnology while maintaining a fundamental commitment to human safety and environmental sustainability;
- Irish trials of GM crops should continue, subject to compliance with EU legislation and with the conditions laid down by the EPA;
- the Department of Agriculture, Food, and Rural Development should, in consultation with the Environmental Protection Agency, draw up detailed protocols governing the management of GM crops in field trials;
- the Department of Agriculture, Food, and Rural Development should, in cooperation with other bodies, devise a program for the managed development of GM crops that would provide for a phased, monitored progression to full commercial cultivation;
- the Irish State Laboratory should be designated as the national reference laboratory for the detection of GM materials in foods and other products;
- in the interests of transparency and public awareness, regulatory bodies should, as a matter of standard practice, make available the fullest possible information on the applications for release and marketing approvals of GMOs;
- a national biotechnology ethics committee should be established under the auspices of the Royal Irish Academy to consider the ethical issues raised by biotechnology in an informed and dispassionate way;
- independent genetic research should be conducted in Ireland into all aspects of GMOs, giving consideration to distinctive Irish climatic and geological conditions;
- new ways of informing the public about biotechnology, its existing and potential benefits, and the possible risks to health and the environment should be devised and deployed: A central Government Web site should be established that provides a broad range of relevant, up-to-date information in a manner readily accessible to the public;
- new means of promoting public consultation and involvement in debates about biotechnology should be developed and piloted; and
- the Inter-Departmental Group should be permanently supported to ensure that the Government has an integrated view of the full range of relevant issues, and the Group should be expanded to include representatives of the Environmental Protection Agency; the Food Safety Promotion Board; TEAGASC; and the Department of Arts, Heritage, Gaeltacht, and the Islands.

Several noteworthy points can be made regarding this new inter-departmental report. First, the report identifies several factors deemed to have aggravated public disquiet about genetic engineering, and it also comments that the introduction of GM crops and foods was insensitively managed by industry and effectively opposed by environment groups". However, the report fails to mention the lack of political leadership in Ireland on the issue and the current government's own 1997 negative pre-election statement that stimulated public concern. The section outlining the public perceptions toward GM technology in Ireland is dated and omits the 1999 Eurobarometer results. It is also worrisome that the report completely ignores previous public communi-

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