

## **Myths and Facts about Section 735, the Farmer Assurance Provision**

On March 27, the President signed into law a bill funding the federal government for the remainder of the fiscal year (H.R. 933, P.L. 113-6). Inclusion of Section 735 in the appropriations bill has been a priority of supporters of agriculture to mitigate the effects of repeated and future nuisance litigation from anti-biotechnology activists aimed at driving the technology out of the marketplace. Known as the Farmer Assurance Provision (FAP), Section 735 has since been mischaracterized by the very groups driving the lawsuits. Below is a primer on addressing five of the most common myths of the provision:

### **MYTH: Section 735 gives biotech companies “immunity” from litigation at the expense of farmers**

**FACT:** Section 735 does not protect USDA or any biotech company from litigation or any court action related to the review of USDA’s approval of a biotech trait. Section 735 explicitly, and only temporarily, protects farmers who plant biotech traits in reliance on USDA review and approval. The provision gives farmers the assurance that once they have planted an approved product, their ability to continue to grow and harvest their crop will not be unnecessarily jeopardized if a judicial ruling threatens the crop they have already invested in. That’s why this language is publicly supported by the American Soybean Association, American Farm Bureau Federation, National Corn Growers Association, National Cotton Council, National Association of Wheat Growers, Agricultural Retailers Association, National Council of Farmer Cooperatives, Biotechnology Industry Organization, American Seed Trade Association, American Sugarbeet Growers Association, former Secretaries of Agriculture John Block and Mike Espy, and several state secretaries and commissioners of agriculture.

### **MYTH: Section 735 prevents USDA from stopping the sale or cultivation of “unsafe” seeds even if they prove dangerous to consumers**

**FACT:** The Secretary of Agriculture has emergency authority under Section 414 of the Plant Protection Act to remove an approved biotech trait from the market at any time if a risk to human or plant health is discovered. This authority is unaffected by the Farmer Assurance Provision; indeed, preservation of the Secretary’s authority in this regard is explicitly stated. The provision does not make any changes to USDA’s regulatory review or oversight of biotech traits as has been claimed. Furthermore, the roles of the Environmental Protection Agency (EPA) and Food and Drug Administration (FDA) in reviewing the health and safety of food and feed from biotech crops are similarly unaffected by this language. As with USDA, the ability for EPA or FDA to remove or recall products from the market if they are found by those agencies to be unsafe is not impacted. It is worth noting that no court of law has ever found biotech traits unsafe to consumers or the environment. As Greg Conko of the Competitive Enterprise Institute put it, “[i]n the five lawsuits against biotech crop approvals filed so far, not a single harm to consumers or the environment were even alleged, let alone proved.”<sup>1</sup>

### **MYTH: Section 735 is unconstitutional because it pre-empts judicial review**

**FACT:** The provision does not restrict the right to challenge USDA’s determination that a product does not present a plant pest risk, nor does it prevent judicial review of that question or procedural matters related to an agency’s determination. Rather, it is a straightforward codification of authority the Secretary of Agriculture has always had and has previously exercised in the event of a judicial order questioning USDA’s determination. The constitutionality of Section 735 is firmly supported by a long line of Supreme Court decisions that give authority and discretion to regulatory agencies to implement so-called remedies in complying with judicial orders. The authority for USDA to issue permits or a partial deregulation was affirmed by the Supreme Court in 2010.

### **MYTH: Section 735 was inserted into the funding bill with no debate or advance notice**

**FACT:** The language contained in Section 735 was drafted over nine months ago and was included for consideration in the underlying House agricultural spending bill for FY13 (as Section 733) which was openly debated and passed by both the House agricultural appropriations subcommittee as well as the full committee

in June, 2012. No Member of the committee offered an amendment to strike or revise the language nor did any Member criticize its inclusion during committee debate. Not surprisingly, the same groups touting the supposed secrecy of Sec. 735 in the appropriations bill were publicly opposed to the same language last June.<sup>ii</sup>

**MYTH: Section 735 is unnecessary because no farmer has ever had to plow up a crop due to a judicial ruling**

**FACT:** Ironically, groups making this claim are the very ones that have put farmers at risk by advocating for the destruction of approved crops, and have come very close to being successful. In 2010, anti-biotech groups and other plaintiffs challenged USDA's issuance of permits to authorize plantings of herbicide tolerant sugarbeet seedlings. The U.S. District Court hearing the case granted an injunction that ordered the destruction of the seedlings. On appeal, the ruling was overturned and the permits allowing the continued cultivation of the seedlings were upheld.

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<sup>i</sup> *Ag Professional*, "There is no Monsanto Protection Act," by Rich Keller, April 1, 2013

<sup>ii</sup> Murphy, Dave, "Stop the Monsanto Protection Act," *Food Democracy Now! Blog*, June 27, 2012. Web. Retrieved from [http://www.fooddemocracynow.org/blog/2012/jun/27/stop\\_the\\_monsanto\\_protection\\_act/](http://www.fooddemocracynow.org/blog/2012/jun/27/stop_the_monsanto_protection_act/)