



October 4, 2018

Ms. Michelle Arsenault  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Avenue, SW  
Room 2642-So., Ag Stop 0268  
Washington, DC 20250-0268

**Docket:** AMS-NOP-18-0029

**RE: Materials Subcommittee – Genetic Integrity Transparency of Seed Grown on Organic Land (Proposal)**

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the Materials Subcommittee's Proposal on Genetic Integrity Transparency of Seed Grown on Organic Land.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

OTA agrees with many in the organic sector that seed is the most impactful and appropriate point in the value chain to set limits for controlling GMO contamination in feed, crops, and food. Planting clean seed is a fundamental practice that encourages prevention of GMO contamination. We acknowledge that GMO contamination prevention practices must be in place throughout the supply chain, but we recognize that having control at the beginning of the process sets the stage for successful GMO avoidance. Once the integrity of seed has been compromised, the integrity of the entire organic system will follow.

OTA has submitted extensive comments on this topic since 2013. Despite great efforts to develop a seed purity standard, the organic sector has struggled to agree on a proposal because of the various obstacles identified through the public comment process, one of which is the need to collect more data to shape an effective and fair seed purity standard. NOSB's efforts to keep this important topic alive at the NOSB level and its perseverance to shape a workable solution are commendable, and we continue to offer our support.

### **Summary**

This proposal reflects good progress and is a solid starting point, to learn how to best provide information to producers so they may choose levels of seed purity they are comfortable with (transparency), and to collect data & track contamination risks to inform a future seed purity standard. In summary:

- The proposal contains concrete ideas for collecting data, reporting purity levels for certifier visibility and critical information on sampling and testing protocols.
- The organization and clarity of the information need significant improvement. It would be helpful to separate the requirements into categorical sections: A) sampling and testing protocols; B) organic farmer using organic seed; C) organic farmer using non-organic seed; D) organic seed supplier; E) organic seed buyer (if not the farmer); and F) the certifier.
- Integrating separate recommendations on excluded methods terminology and including technologies for which testing is not possible into a proposal that mandates testing are problematic. We recommend removing the list of excluded methods that NOSB is continually working on but retaining the regulatory definition of “excluded methods<sup>1</sup>.”
- Research into patents and legal protections on proprietary seed is needed to better understand how it may limit or prohibit testing
- Including data on seed tags may violate seed labeling laws.

**We offer the following more detailed comments:**

OTA thanks the Materials Subcommittee for taking the time and initiative to put concrete ideas and working solutions on the table. This is a huge step forward. We are especially appreciative of the sampling and testing protocol information included in the proposal, which is of course the key element for collecting good data. Although we believe the proposal needs additional work and should not be passed at this meeting, we are encouraged by the progress. We think many of the needed elements are present but better organization of the information is needed to clearly convey accurate intent to NOP. We are also discouraged by the limited time to comment and offer well-researched and vetted suggestions on some of the more complex aspects of the proposal.

Limited comment period

The proposals were released to the public on Wednesday, September 12 resulting in a 22-day comment period (16 business days). The shortened comment period is a real disservice to NOSB members and the time and resources that go into the NOSB proposals and the public comment process. OTA now represents more than 9,500 businesses through direct membership and formal agreements with farmer-governed organizations that make up OTA’s Farmers Advisory Council. As a member-based organization, our comments and positions are shaped through our task forces and extensive outreach to our members. Prior to submission of final comments, draft comments are distributed to membership at least a week in advance of the comment deadline. The entire process takes a significant amount of time, especially when we are dealing with 21 topics, over 40 Sunset materials and a 206-page packet.

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<sup>1</sup> *Excluded methods.* A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

To carry out a meaningful comment process under OTA’s governance structure, a comment period needs to be *at least* 30 days. Given the number and complexity of topics that are typically on any NOSB meeting agenda, we argue that the comment process needs to be *at least* 45-60 days. Unfortunately, for this meeting, the 22-day time allotment is extremely unreasonable and does not pay respect to NOSB or the process. OTA understands this is not the fault of NOSB members, and we offer our support in all ways possible. We urge NOSB and members of the organic community to unite and voice this concern to USDA.

As it applies to this topic and a proposal for significant instruction to certifiers and industry on testing for GE contamination, we need to acknowledge the limitation it places on everyone’s ability to provide thorough and constructive comments. With that said, we offer a few suggestions based on the member outreach we were able to conduct in the limited time provided that should help guide the subcommittee to a revised proposal that can be passed to NOP.

#### Purpose, Organization of the Proposed System, Roles and Responsibilities

In general, the proposal is very hard to follow. Better organization will be extremely helpful.

- *Purpose and Goal:* It would be helpful if the proposal could start with a purpose and follow with goals/objectives.
- *Organization:* The information contained in the proposal could be neatly organized into the following categories outlining the requirements for each:
  - Sampling and testing protocols (this information is clear and straight forward but it could all be consolidated into one topic area)
  - Role and responsibility of the organic farmer
    - If using organic vs. conventional untreated seed
  - Role and responsibility of the organic seed grower and/or supplier
  - Role and responsibility of the organic seed buyer (if not the farmer)
  - Role and responsibility of the certifier
- *Organic seed vs. conventional untreated seed:* It is not clear if the proposal applies equally to organic and non-organic seed:
  - **In #1**, the proposal states that sampling, testing and transparency of findings apply to all field corn seed planted on organic land. In #3, the proposal states “all field corn...both organic and non-organic seed...shall be tracked in the farm Organic System Plan with information detailing the state/province and country of origin of the seed, **as well as the level of purity from GE contamination**. Certified organic field corn seed suppliers must track these items as well.” The proposal then goes on to state that, “**if non-organic field corn seed is planted, the organic farmer is mandated to obtain the level of purity information, determined through approved protocols, and document this in their OSP. The organic farmer would need to have this test performed before planting each lot of non-organic seed they purchase.**”

**In #16**, the proposal states that, “GE purity testing and information transparency are **required** of all organic field corn seed suppliers and must be documented in the annual organic seed

handler OSP. The organic field corn farmer would document the information from their organic field corn seed supplier in their OSP as well.

**Clarification needed:** It appears that every organic farmer, whether they are using organic or non-organic corn seed, must track and maintain GE contamination information in their OSP. The responsibility, however, (including cost) for testing and transparency for *organic* corn seed lies with the organic seed supplier and the information gets passed down to the organic farmer, whereas an organic farmer using *non-organic* seed bears the cost of burden as they are “mandated to obtain the information.” We have heard varying interpretations leading us to believe that clarification is needed.

Additional areas in need of clarification

- #4 – *Detectable levels of purity from GE contamination*
  - The levels presented are for “organic” field corn. Does the subcommittee intend for these levels to also apply to non-organic seed?
  - We’re assuming that at no point is the specific purity percentage required. The idea is for disclosure of a purity level according to the scales presented?
- #5 – *Documentation that the testing and sampling met these requirements must be provided to the buyers of the seed*
  - Again, this is an example of a stand-alone statement where the role of the supplier and buyer is not clear. It will be helpful to spell out who is responsible (including cost) for sampling and testing in all possible relationship scenarios.
- #6 – *The level of purity must be included on the seed tag, or for bulk shipments, on the invoice or other sales document*
  - See our comments below under law and contract issues. This may cause issues with regulations surrounding seed tags and institutional barriers.
  - Again, we are assuming that the level of purity that would be disclosed would not be the actual detection number from the test but a level according to the scale presented:
    - 0.1% or less
    - 0.25% or less
    - 0.9% or less
    - 5% or less
    - Over 5%
- #7 – *Testing must include all known GE traits available in that crop species*
  - This requirement could use refinement. We suggest referencing all GE traits that are applicable vs. available. All KNOWN traits (e.g. traits developed and no longer commercially available such as Starlink) would not be appropriate. Additionally, when ordering PCR testing, one must select the tags to test for which is generally a list of common traits covering 90% of available traits. The last 10% requires a much more specific set of markers . . . gets very expensive very fast.

- **Recommendation:** Testing must include all commercially available GE traits for that species. Test specific guidance will be published by the NOP on an annual basis to conclusively identify required genetic and/or protein based signatures for that year. This publication could simply be a guidance document to certifiers specifying the required traits for ELISA, and PCR based testing.
- #15 – *The Certifier will keep track of this information and send this information to a central database without the farmer or seed supplier information.*
  - What database is being referred to here and who is responsible for maintaining the database?
  - We are assuming that the information would include information detailing the state/province and country of origin of the seed (but not the name or specific address of the farmer or seed supplier)
- #17 - *Organic farmers should retain samples of each lot of seed they planted for at least one year after their crop grown from this seed has been sold.*
  - This is problematic. Proper sample storage is logistically difficult. Organic farmers may need good instructions on how to store samples to prevent damage whether from rodents, environmental differences (temperature, humidity, etc.). Additional guidance on seed sample storage for organic farmers would be extremely helpful if not needed

#### Excluded Methods Terminology

The “Background” in the proposal immediately dives into the Excluded Methods Terminology Recommendations of 2016 and 2017. As a starting place, especially for someone new to the issue, it is a confusing and less than ideal introduction. The more relevant background from an historical and chronological order is found under “Discussion and Public Comment.” That aside, blending this proposal with the Excluded Methods Terminology proposal, and thereby including a list of technologies for which some cannot be tested, complicates the matter and could make acceptance and subsequent rulemaking of this proposal more challenging. OTA agrees with the list of excluded methods as passed to NOP and we strongly support NOSB’s work in this area, but we continue to emphasize a need to maintain the recommendations separately. Therefore, we recommend removing the list of excluded methods that NOSB is continually working on but retaining the regulatory definition of “excluded methods.”

#### Law and contract issues

Research into patents and legal protections on proprietary seed is needed to better understand how it may limit or prohibit testing. In some cases, the ability to purchase and use proprietary seeds that have either patent or other legal protection strictly prohibits the testing required under this proposal. Further, there would be issues around putting such data on a seed tag (**Proposal #6**) as that may violate seed labeling laws. While the testing appears to fall to the grower in the case of non-organic seed, it would require the seed company or the intellectual property holder to provide specific waivers for this testing. This may be problematic because we can expect significant pushback on any public dissemination of the resulting data.

The Organic Trade Association recommends that the subcommittee reach out to a variety of primary seed suppliers (organic and non-organic) and further explore the intersection of seed law, contracts and labeling requirements with the concepts presented in this proposal. For example, in our outreach, we



discovered that while specific seed data on a seed tag is problematic, providing seed testing data that indicates a level (under 0.9%) on a seed specification sheet that accompanies the bag is seed is acceptable.

### **Conclusion**

The use of excluded methods is prohibited in organic production and handling. OTA is committed to actions that keep genetically modified organisms out of organic livestock feed, seed, crops, food and fiber. We continue to be extremely supportive of moving recommendations forward to NOP that will improve the practices to accomplish this goal. In the name of continuous progress, we encourage NOSB to focus on drafting proposals that have the best chance of successfully moving through the regulatory system at this time.

On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

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Organic Trade Association

cc: Laura Batcha  
Executive Director/CEO  
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