



October 3, 2019

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-19-0038

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

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 subcommittee is putting forth a proposal for NOP to issue “Instruction to Certifiers” to encourage their certified organic producers to obtain information from their seed or planting stock suppliers about any GE contamination found in the seed/planting stock they are purchasing. The proposal addresses all seed or planting stock that has a GE equivalent in the marketplace. There is no specific requirement, other than for certifiers to instruct their clients about the option to request GE contamination test results from their seed and planting stock providers.

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.

The Organic Trade Association continues to support the goal of planting clean seed. We acknowledge that GMO contamination prevention practices must be in place throughout the organic supply chain, and that placing a control point at the beginning of the process will help set the stage for successful GMO avoidance. We have long supported the use of testing as an important tool to determine compliance with a ***process-based standard***, and we have strongly advocated for setting limits for controlling GMO contamination in feed, crops, food and fiber. We believe that planting clean seed is one of the fundamental practices that encourages prevention of GMO contamination throughout the supply chain.

In summary:

1. The Organic Trade Association generally supports the intent behind the subcommittee’s proposal. The following sections of the proposal, however, are problematic and in need of revision or further clarification:

- The proposal in 1A encourages producers to contact their suppliers “**to obtain GE contamination test results.**” In order to encourage a more realistic outcome consistent with what we believe seed suppliers will be willing to provide, we suggest the sentence be revised to read: “...**to obtain information regarding the levels of GE contamination.**”
 - We are unclear if the instruction applies to both organic *and* non-organic seed / planting stock. It is important to note that positive GE contamination data for organic seed obtained by the certifier could trigger an investigation on the seed itself (see NOP Policy Memo 11-13). GE contamination data for non-organic seed, however, would not trigger an investigation for the seed itself. This could potentially impose undue burden on organic seed growers and suppliers. Furthermore, in addition to the organic production requirements for organic seed, there is also an already an established process for certifiers to follow when GE contamination is discovered in an organic crop.
2. The Organic Trade Association supports NOSB’s continued request for a NOP funded task force to systematically collect data on GE contamination to better inform the extent of the problem and to help inform an appropriate solution.
 3. The Organic Trade Association recommends that NOSB focus on a recommendation to NOP requesting guidance on GMO testing for certifying agencies and industry.

We offer the following more detailed comments:

The Organic Trade Association has submitted extensive comments on this topic since 2012. 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 the feasibility of a fair and effective 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. The proposal for the fall 2019 meeting presents a significant departure from the original discussion in 2013 (to develop a seed purity standard), but it continues to reflect the overriding goal of keeping GE contamination out of organic food, feed and fiber.

The Organic Trade Association emphasizes that all reputable organic seed companies are testing, and that organic seed growers and suppliers are already making great strides to be transparent about detectable levels of GE traits, and taking measures to protect the genetic integrity of their seed through contamination prevention measures. The major seed suppliers understand the importance of adventitious presence to their customers, and already take a lot of steps to prevent the contamination from occurring. As such, we support a recommendation that encourages and supports this continued practice. We do not support a proposal that would discourage this practice or create an undue or unfair burden on organic seed growers and suppliers. In fact, we are most supportive of a proposal that encourages organic certification and use of organic seed and discourages use of non-organic seed when organic seed is available. We also place strong emphasis on the support of a process-based standard and robust implementation of GE contamination prevention measures vs. handing down penalty to organic seed producers for inadvertent

GE contamination.

To help meet our goals, strengthen the proposal and support future work in this area, we respectfully ask NOSB to consider the following suggestions:

The proposal is in need of minor revisions and/or clarification

1. The proposal in 1A encourages producers to contact their suppliers to obtain GE contamination test results. From our understanding based on the results of Organic Seed Alliance survey and in consultation with our member organic seed suppliers, the reference to “test results” sets up an unrealistic expectation of what seed suppliers would be willing to share.

We recommend that the language in the proposal be revised to say “can contact their suppliers.....to obtain information *regarding the levels of GE contamination* that may be present.” If requested, we do not believe seed suppliers will be willing to provide actual test results. However, we do believe they will be willing to share information on contamination levels.

2. In the proposal, the Subcommittee explains:

“To meet the current certification standard, farmers are required to provide documentation that the seed they plant was not produced using excluded methods. This standard is met in one of two ways. 1) Certified organic seed breeding companies must verify excluded methods were not used in the production of certified organic seed. 2) For non-organic seed, a non-GE affidavit is required if the crop has a genetically engineered equivalent in the marketplace. Affidavits typically state “to the best of the seed supplier’s knowledge, the seed was not produced using excluded methods”; however, the affidavit does not address the issue of possible contamination of the seed lot with seed produced using excluded methods. The *intentional* use of seed produced by an excluded method is prohibited. Non-GE affidavits have been accepted as proof by organic certifiers that the seed is acceptable in organic systems.

It is unclear if the proposed instruction to collect GE contamination is intended to apply to both organic and non-organic seed / planting stock. It is important to note that positive GE contamination data obtained by the certifier could trigger an investigation and require GE prevention improvements on the organic seed (see NOP Policy Memo 11-13). However, it would not trigger an investigation of non-organic seed, if the investigation is for the seed/planting stock itself vs. a “finished organic crop” as is suggested in the proposal. This could potentially impose undue burden on organic seed growers and suppliers.

The Organic Trade Association recommends that the instruction to collect GE contamination information be directed at the purchase and use of **non-organic seed**. The organic certificate should provide adequate compliance documentation to producers for the purchase of organic seed. Furthermore, the regulations and associated NOP policy already require certifiers to investigate unintended GE contamination in organic crops and product. Certifying agents are already responsible for working with organic producers to identify the source of the inadvertent GMOs

and to implement improvements to avoid contact with GMOs in the future. Therefore, we recommend that the instruction be directed at the collection of GE contamination data for non-organic seed that is used when organic seed is not available.

Meaningful data collection is needed to inform an appropriate solution

The proposal on the table for this meeting would bring about instruction from NOP to certifiers to be proactive in encouraging their farmers who grow organic crops to obtain information from their seed or planting stock suppliers about any GE contamination found in the seed. The intent of the proposal is not to set any specific seed purity requirement but rather facilitate a conversation between certifiers and their certified farmer clients that would aid producers in collection of testing data to help inform choice and ultimately support a goal of low-to-no detection of GE contamination of their organic crops. The proposal is not recommending that the testing data be used to inform a seed purity standard.

The Organic Trade Association has consistently emphasized that any seed data collection efforts to inform the feasibility of a seed purity standard need to be designed systematically according to established sampling protocols and testing specifications. If the goal is to collect information to understand the extent of GE contamination used by organic growers, then the collection of data should be done via a well-designed research product conducted by USDA or a similar third-party entity. In other words, the data collection for the sake of informing a seed purity standard should happen outside of the certification and compliance system. Therefore, we support NOSB's continued efforts towards a NOP funded task force:

“The NOSB continues to request that the NOP fund a task force that would collect information on the genetic integrity of seed planted on organic land so the organic community - from farmers to consumers - would have statistical information detailing GE contamination issues. This task force would be empowered to collect data for multiple years, since growing conditions and crop production issues change from year to year, and in order to collect useful information, numerous years and regions must be tracked. We know there are issues with some crops in some regions, but there has not been a comprehensive review of data to provide a clear picture of the problems. Without this information, the organic community cannot develop solutions.”

The Organic Trade Association envisions that the primary function of a seed task force would be to design a feasibility study based on testing (data collection) that would be administered and carried out by USDA. A data collection effort that yields statistically significant and meaningful results needs to be designed systematically according to established sampling protocols and testing specifications. This panel of experts would not only design the framework for the data collection the organic community continues to call for, but it would also act as an expert panel to interpret the data being collected. This, in turn, would help shape a NOSB recommendation to NOP on appropriate crop-specific testing thresholds for seed if that is a direction we want to continue to pursue. We can expect that any established threshold is going to need to be acceptable to consumers and realistic for seed growers. It would also need to be established on a crop-by-crop basis.

OTA continues to request a proposal for formal NOP guidance on GE testing

Testing is a critical tool that certifiers use to determine compliance with a process-based standard. Certifiers use testing to determine if organic operations have adequate contamination prevention measures in place, and this of course includes GMO contamination prevention measures. Certifiers are currently

testing for GMO contamination under the requirements of § 205.670 (Inspection and testing of agricultural products to be sold as “organic”), and industry is voluntarily testing as well.

Ironically, after years of discussing genetic integrity and the need to keep GMOs out of the organic supply chain, NOP’s Guidance on Periodic Residue Testing (NOP 2610, 2611 and 2613) is out of date, in general, and is void of procedures and criteria specific to GE testing. We continue to hear that certifiers would be more likely to increase GE testing if there were testing guidelines and protocols to follow. An update to NOP’s existing residue testing guidance and inclusion of guidance on GE testing should therefore be viewed as a top priority. For the sake of consistency and accuracy, a maintained list of tests and testing laboratories along with approved methods of sampling and testing methods would be very helpful whether it is used to support the collection of seed purity data or for general testing of excluded methods under the organic regulations. Guidance on how to respond to positive results will also be very important. Certifiers are able to require increased GE contamination prevention efforts if they have the data to support the action.

The stage for guidance on GMO testing has already been set. On November 9, 2012, NOP published a Final Rule on Periodic Residue Testing. The rule clarifies a provision of the Organic Foods Production Act (OFPA) of 1990 and the regulations issued **require** periodic residue testing of organically produced agricultural products by ACAs. NOP received several comments regarding types of residues that would be considered acceptable targets for testing under the rule. Four commenters, including OTA, requested clarification on testing for GMOs.

NOP responded by saying that it does not intend for the testing conducted under section 205.670 to be limited to pesticides residues. NOP further clarified that under the existing residue testing regulations, certifying agents have the flexibility to test for a range of prohibited materials and excluded methods, including, but not limited to, pesticides, hormones, antibiotics, and GMOs.

As a next agenda item, the Organic Trade Association recommends that NOSB focus on a recommendation to NOP requesting guidance on GMO testing for certifying agencies and industry. **This is a request we continue to repeat in our comments.** Testing is one of the most definite and effective tools the organic sector can use to evaluate whether an organic operation has adequate measures in place to prevent commingling with non-organic GMO crops as well as intentional or unintentional contact with GMOs. With all the time spent on trying to establish seed purity, it is unfortunate that NOP has not issued any instruction or guidance on GMO testing. This is incongruent with NOSB discussions and the fact that testing for GMOs is required under the organic regulations whether it be in response to a contamination event or a complaint (§ 205.670(b)), or whether it is part of a certifying agent’s periodic testing residue plan (§ 205.670(c)).

Providing NOP with a recommendation for further guidance on testing falls directly under the specific responsibilities of NOSB outlined in OFPA starting at section 2119(k):

5. PRODUCT RESIDUE TESTING.—The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

This approach will assist certifiers and industry with a tool that supports a process-based standard, it will increase knowledge about GE contamination, and it will stimulate action and further development of mitigation measures. We are not suggesting this replace the continued effort towards a USDA funded systematic approach for gathering information to better understand the problem of unintended GE presence or the looming topic of setting control limits. We are suggesting a recommendation we feel NOP is best suited to respond to (guidance on GE testing for certifiers and industry) vs. action that is best suited for research conducted by a third party entity outside of the certification system. Furthermore, a list of tests and testing laboratories along with approved methods of sampling and testing methods could in turn be used by the seed task force in the design of a feasibility study on GE contamination.

Conclusion

The use of excluded methods is prohibited in organic production and handling. The Organic Trade Association 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 order to improve the proposal to NOP, we recommend the following:

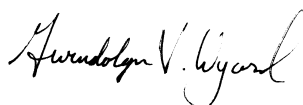
1. Revise 1A to read “Producers who are growing...can contract their suppliers to obtain ~~GE contamination test results~~ information regarding the levels of GE contamination.”
2. Revise the instruction so that the suggested collection of GE contamination information is specific to the purchase and use of non-organic seed. The organic certificate and existing investigative requirements should provide adequate compliance documentation to producers for the purchase of organic seed.

We also request: 1) NOSB continue its efforts towards a NOP funded task force; and 2) NOSB focus next on a recommendation to NOP requesting guidance on GMO testing for certifying agencies and industry.

Finally, although we do not have an exact solution at this time, we feel it is important to note that some of the excluded methods of concern are currently not testable and would not be addressed by this proposal. To this point, we continue to place emphasis on the outcomes of a process-based standard vs. the test results of a product. Testing, in fact, is an important tool to help determine compliance, but it should never become the be-all and end-all.

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,



Gwendolyn Wyard
Vice President, Regulatory and Technical Affairs
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association