



April 4, 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-18-0071

RE: Materials Subcommittee Discussion Document – 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 Discussion Document on Genetic Integrity Transparency of Seed Grown on Organic Land. The subcommittee is asking several questions to help inform a future proposal that will include gathering of information for a database, providing farmers with transparency on the seed purity of corn they may plant 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.

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, but that having control at the beginning of the process sets a critical 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 a fundamental practice that encourages prevention of GMO contamination throughout the supply chain.

In summary

- The Organic Trade Association did not have enough time to adequately survey members and collect feedback on the questions being asked. We have drafted comments that best reflect the current thinking of our membership, but additional time is needed. The short comment period continues to be a disservice to the entire NOSB process and the organic sector. We urge NOSB and members of the organic community to unite and voice this concern to USDA.
- The current discussion document is confusing, and the end-goal (proposal) is not clear. The current approach is running a parallel track of trying to understand the problem while at the same time prescribing the solution. Posting seed purity information in a public database that is

uncoupled from a seed purity standard could hurt the organic sector rather than help it. The Organic Trade Association recommends a much more measured approach that will allow NOSB to evaluate testing data, evaluate the problem, and then decide what kind of testing and reporting protocols are needed, if any. We continue to recommend that data collection be administered and carried out by USDA or a similar entity through a task force effort.

- The use of genetic engineering in organic production and handling is prohibited under the USDA organic regulations. Contact between organic products and prohibited substances is also prohibited and certified operations must have approved contamination prevention measures in described in the Organic System Plan. 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 contact with GMOs. The Organic Trade Association encourages NOSB to 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, but after reading this spring 2019 Discussion Document, we have concerns about the direction we are heading, and the unintended consequences this current approach may have.

There is a notable divergence in the current proposal from the original intent of the GMO Ad hoc Sub-Committee that formed in 2012. The Sub-Committee was exploring means of strengthening seed purity as one step to avoid the potential of contamination of crops with GMOs. Seed was identified as perhaps the most impactful and efficient point in the supply chain at which contamination could be limited and controlled. The focus, when this conversation started, was to recommend a standard for the genetic content of seed used in organic production. Without repeating the entire history that has occurred over the past six years, we can say that we have moved from collecting statistically significant and meaningful data to inform the feasibility of an effective and fair seed purity standard to the gathering of information for a public database, for the intended purpose of providing organic farmers with transparency on the seed purity of corn they may plant on organic land. The intended proposal will not include tolerance levels that could prohibit the planting of seed that exceeds any specific tolerance.

The Organic Trade Association's primary concerns and comments are as follows:

Limited comment time: The proposals were again released to the public a week and a half late, resulting in a 22-day comment period (16 business days). The shortened comment period continues to be a real disservice to NOSB members and the time and resources that go into the NOSB proposals and the public comment process. It is also a disservice to the entire NOSB process and the organic sector. As a member-based organization, our comments and positions are shaped through our task forces and extensive outreach to our members. 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, such as this one, we argue that the comment process needs to be *at least* 60 days. Unfortunately, for this meeting, the 22-day time allotment is extremely unreasonable and does not pay respect to NOSB or the process. Organic stakeholders are becoming increasingly disgruntled by the process, and action needs to be taken. The Organic Trade Association 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.

The proposal is confusing: The Organic Trade Association is unclear at this point whether the fall proposal will be for a regulatory change or instruction or both. We are also unclear about who will be required to do the testing, who will be collecting the data, and ultimately, what will happen with the data. Given the lack of clarity and the short comment period, if the subcommittee decides to move forward, we request that a proposal be released for DISCUSSION prior to the fall 2019 meeting (or preferably sooner). We are still in the process of collecting feedback from members on the subcommittee's questions due to the short comment period, and we still do not have a clear picture of the proposal that is being shaped. We understand that the current proposal is aimed at collecting GE contamination data on corn seed for the sake of transparency rather than to inform the feasibility of seed purity standard. We believe more information needs to be gathered to determine if this approach is in fact the best solution to meet the end goal of clean seed and GMO contamination prevention.

Meaningful data collection to inform a solution is needed: The Organic Trade Association has consistently emphasized that any data collection effort that will yield statistically significant and meaningful results needs 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 in corn seed 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 should happen outside of the certification and compliance system. Throughout the public comment process, stakeholders have conveyed the need to first identify the problem before moving to the solution. However, this proposal is aimed at data collection and transparency, which in effect will turn the problem over to the private sector (and the public at large) to figure out the solution. The Organic Trade Association recommends a much more measured approach that will allow NOSB to evaluate testing data, evaluate the problem, and **then** decide what kind of testing and reporting protocols are needed, if any. The current approach is running a parallel track of trying to understand the problem while at the same time prescribing the solution.

The Organic Trade Association emphasizes that all reputable seed companies are testing, and that 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 organic sector continues to shoulder the burden of GMO contamination prevention, both in terms of action and cost. The Organic Trade Association continues to request that any proposal NOSB passes on the topic of seed purity must ensure the following guiding principles are met:

- Incentivize the development and use of organic seed
- Be established per crop (corn, soy, alfalfa, cotton, etc.)
- Be based on data conducted through feasibility studies for this intended purpose
- Establish levels, if any, of unavoidable presence of GMOs per crop

- Apply to adventitious or unavoidable presence only. The intentional use or presence of GMOs will continue to be strictly prohibited with a zero-tolerance level.
- Be acceptable to consumers, seed growers and users of organic and non-organic seed.
- Avoid inadvertent and negative impact on organic farmers and organic seed growers and genetic diversity of organic seed.

The approach of the proposal could lead to less available corn seed varieties.

The demand for tested product is growing, and the marketplace will continue to respond to demand. In the long run, it may be that required transparency will spark innovation and will increase organic seed breadth and depth. The concern is a proposal that gets out ahead of where the market can realistically move in the short term, and the long-term harm that might occur as a result. Members have expressed concern that at least in the short term, the proposal may result in fewer seed varieties that will be available to organic farmers. Choices may be limited because there is a large economic risk in producing organic seed corn. Seed companies growing organic hybrid seed corn will choose to limit this risk by only producing hybrids with a high probability of achieving a low level of GMO. Many of the inbreds used to grow organic seed corn test positive for GMO at a low level. The acceptable threshold for inbred seed will necessarily go down if transparency is required in hybrid seed. This tighter threshold will limit the number of hybrids the seed industry can produce. In addition, seed companies growing conventional untreated seed corn for organic farmers have the luxury of “cherry-picking” lots. In other words, they can produce a large quantity of a given hybrid that is sold as treated and untreated, and then choose the lots (or seed sizes) that have low levels of GMO to sell to organic farmers. This gives them an unfair advantage over organic seed corn producers.

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. The major immediate impact to organic seed companies would be the forced tightening of inbred seed standards, which would in turn reduce the number of organic hybrids available to organic farmers.

The proposal does not provide certifying agents or industry with 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 does include procedures and criteria specific to GE testing. An update to NOP’s existing residue testing guidance and inclusion of guidance on GE testing should 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 would also be very helpful. Certifiers are now 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.

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 be 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 effort of 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.

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 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,

A handwritten signature in black ink, which appears to read "Gwendolyn V. Wyard".

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

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association