

Formal Recommendation
From: National Organic Standards Board (NOSB)
To: the National Organic Program (NOP)

Date: October 25, 2019

Subject: Genetic Integrity Transparency of Seed Grown on Organic Land - Instructions to
Certifiers

NOSB Chair: Harriet Behar

The NOSB hereby recommends to the NOP the following:

Rulemaking Action:

Guidance Statement: x

Other:

Statement of the Recommendation:

The NOSB recommends the NOP publish an instruction to certifiers that guides them to inform their farmers that information on possible genetic contamination of seeds with GE equivalents could be obtained from their seed suppliers. While farmers will not lose organic certification if GE contamination is found, farmers need to know what percentage of GE contamination might be present in the seed they plant on organic land. Many farmers sign contracts or sell into markets that require the organic crops they deliver to their buyers have less than a specific threshold of contamination. Since the crop would never have less than the contamination percentage that the seed might have, it is important that organic farmers have this information before planting.

Rationale Supporting Recommendation (including consistency with OFPA and Organic Regulations):

This recommendation is an instruction to certifiers, to inform farmers that there is information in the seed marketplace on GE contamination. Most seed companies who sell seed that have a GE equivalent, do extensive testing and are willing to share the test results for specific seed varieties, with their potential customers. Many organic farmers are unaware of this testing, and that they can request this important information from the seed companies. Certifiers can inform their clients in many ways, putting a sentence in the OSP reminding farmers they can reach out to their seed suppliers to obtain GE contamination, put articles in their newsletters and provide information at workshops or other gatherings.

Farmers can then plant seed varieties that meet their specific needs and ultimate market requirements. This information will hopefully lessen the significant losses that farmers have experienced when their crops are rejected by the buyer for a higher than required presence of

GE contamination. Knowing the percentage (if any) of GE contamination before planting the seed is the first step of many that organic farmers take, when meeting market requirements based upon levels of GE contamination. This recommendation promotes transparency in the marketplace, detailing if there is any, and at what percentage of GE seed contamination there may be, before farmers plant these seeds on organic land.

NOSB Vote:

Motion to accept the “Genetic Integrity Transparency of Seed Grown on Organic Land Instructions to Certifiers” Proposal

Motion by: Harriet Behar

Seconded by: Dave Mortensen

Yes: 13 No: 0 Abstain: 0 Absent: 1 Recuse: 0

Outcome: Motion Passed

**National Organic Standards Board
Materials Subcommittee Proposal
Genetic Integrity Transparency of Seed Grown on Organic Land - Instructions to Certifiers
August 13, 2019**

I INTRODUCTION

The USDA National Organic Program (NOP) regulations do not allow the use of materials developed using “excluded methods” in certified organic production. The USDA defines “excluded methods” as , “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...” (7 CFR 205.2). These organisms include, but are not limited to, seed, bacteria, insects, animals and vaccines. According to the most [recent National Agricultural Statistics Survey](#) (NASS), at least 94% of soybeans, 92% of corn, 94% of cotton, 75% of Hawaiian papaya, 98% of sugar beets, and 90% of canola are genetically engineered. This proposal will address seed planted on organic land that may have a Genetically Engineered (GE) equivalent.

II BACKGROUND

The National Organic Standards Board (NOSB), in separate recommendations in [2016](#), [2017](#), [2018](#), and [2019](#), defined terms used when describing gene altering technologies and the subset of those methods deemed to be excluded methods. This list is continually under review, with new methods being added periodically. The list of those excluded methods are as follows:

- Sequence-specific nucleases (SSNs)
- Meganucleases Zinc finger nuclease (ZFN)
- Mutagenesis via Oligonucleotides
- CRISPR-Cas system (Clustered regularly interspaced short palindromic repeats) and associated protein genes
- TALENs (Transcription activator-like effector nucleases)
- Oligonucleotide directed mutagenesis (ODM) Rapid Trait Development System
- RNA-dependent DNA methylation (RdDM)
- Silencing via RNAi pathway RNAi pesticides
- Reverse breeding
- Genome elimination
- FasTrack
- Fast flowering
- Creating new DNA sequences
- Synthetic chromosomes
- Engineered biological functions and systems
- Somatic nuclear transfer
- Plastid transformation
- Cisgenesis
- Intragenesis
- Agro-infiltration
- Transposons-Developed via use of in vitro nucleic acid techniques

Currently in the U.S., testing is not required to verify if seeds planted on organically certified farms were

produced using an excluded method. Organic farmers plant both organic and non-organic seed (when the organic seed is not commercially available in the form, variety, or quantity required). Some, but not all, certification agencies perform genetically engineered (GE) testing on a farmer client's harvested crop. Proposed here is an additional step; certifiers should recommend that their farmers request information on any GE testing performed on seed they may purchase.

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.

In a previous discussion document the Material's Subcommittee discussed a proposed requirement that all field corn seed planted on organic land be accompanied by a statement detailing any presence of GE within specific percentages, such as .1%, .9% etc. levels. While many farmers, consumers, advocates, and certifiers liked the transparency this would have provided, there was significant concern from all groups, especially seed breeders, that there could be unintended negative consequences from this requirement. These potential negative consequences included added cost of disseminating this information, loss of germplasm and seed varieties to organic producers if there is significant presence of GE in the seed, loss of genetic diversity available to organic farmers, and more. This proposal recommends the NOP provide an instruction to certifiers informing producers they can request the results of any testing for presence of genetic engineering in the seeds they purchase.

In the development of this proposal, NOSB members and the public, specifically the Organic Seed Alliance, reached out to numerous suppliers of field corn seed that typically serve the organic market. This includes both organic and nonorganic seed growers. The vast majority of seed suppliers reported that they already test their field corn seed for detectable levels of genetic engineering, and, when asked, are willing to provide this testing information to those who buy their seed.. Most farmers are not aware that this testing is being done, and consequently, most do not currently request this information.

If farmers don't know what they are starting with, it puts them in a compromised position when they sell their crop; after all, they are committed to producing GE-free grains, fruits, and vegetables. On the other hand, the organic marketplace, or the "back end" of the food system, has developed a fairly robust testing protocol for organic foods intended for human consumption as well as livestock feeds. Various tolerance levels of genetic contamination must be met in order to sell into specific markets. Knowing the purity of the seed farmers plant on the "front end" is critically important for several reasons. The level of contamination at the beginning of the season will not decline and can only worsen by cross-pollination and post-harvest seed handling. To meet organic market demand and to provide farmers with what they need to make informed decisions when choosing seeds, transparency of GE contamination levels and the knowledge of the adventitious presence of genetic engineering in their seed has become a necessity.

The NOSB put forth discussion documents and proposals addressing the issue of clarity around genetic purity of the seed supply in 2013, 2014, 2015, 2016, 2017, and 2018. The strong response from the public in the form of many comments clearly demonstrates the importance of this issue for organic farmers,

processors, and consumers.

III RELEVANT AREAS OF THE STATUTE, RULE and RELATED DOCUMENTS

Detection and Testing Requirements: Under the NOP residue testing requirements, products from certified organic operations may require testing when there is reason to believe that certified products have come into contact with prohibited substances or have been produced using excluded methods. This requirement is specified in Subpart G (Administrative) of the regulations:

§205.670 Inspection and testing of agricultural product to be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”

(b) The Administrator, applicable State organic program's governing State official, or the certifying agent may require pre-harvest or post-harvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the applicable State organic program's governing State official or the certifying agent at the official's or certifying agent's own expense.

NOP Policy: The NOP issued a Policy Memo on April 15, 2011 (Policy Memo 11-13) on genetically engineered organisms. The memo clearly states that the use of genetically engineered organisms is prohibited and goes on to address questions that have been raised concerning the use of these organisms and how to minimize their presence in organic production and handling. The memo emphasizes that organic certification is a process-based standard, explaining the presence of detectable GMO residue alone does not necessarily constitute a violation of the regulation.

IV RESPONSE TO PUBLIC COMMENT

Public comment from most seed suppliers and producers, did not favor tolerance levels due to concerns that this approach would narrow the availability of needed crop traits and the overall crop choice. Concern was also raised that strict tolerance levels could result in the unintended consequences such as damage to the growth and integrity of organic agriculture, as well as negative impacts to organic growers and seed breeders. This proposal does not set tolerance levels that could prohibit the planting of seed that exceeds any specific tolerance. Instead, this proposal seeks to encourage certifiers and farmers to seek out the currently available information before planting seed that has a GE equivalent on organic land.

There are no current restrictions that would prevent a farmer from taking a sample of hybrid corn seed (a non-GMO variety) or other seeds they purchase and having them tested for the presence of GE. There are agreements that seed breeders might encounter when purchasing the foundation seed for building their own hybrid varieties that could restrict them from testing that seed for the presence of GE. However, this proposal only requires testing of the seed that would be planted by an organic producer who has no legal impediments to this testing. Farmers would not be required to do GE testing of their seed, but if their seed supplier does not provide GE contamination test results for their seed, this option is open to the farmer.

In addition, it is a good practice for farmers to retain seed samples of seed they plant on organic land, and certifiers can suggest this to farmers as another step in finding the source of GE contamination in case their crop is rejected by a buyer at harvest time.

The previous discussion documents on the issue of genetic integrity transparency of seed, focused only on field corn seed. This 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 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.

V Proposal

The NOSB recommends the NOP provide an "Instruction to Certifiers".

The purpose of this instruction is to have certifiers inform their producers that GE contamination of seed or planting stock is being tested regularly by those suppliers who are at risk for GE contamination of their products. Producers are encouraged to discuss GE contamination with suppliers willing to share the results of the GE testing they are currently doing but typically do not disseminate, unless requested by the buyer of the product.

Certifiers should be proactive in encouraging their farmers who grow organic crops according to the USDA organic regulations, and who could be at risk of having crops rejected by their buyers due to presence of GE contamination, to obtain information from their seed or planting stock suppliers about any GE contamination found. Certifiers can request this GE contamination information from their organic producers, and they may choose to maintain that information in the client's organic certification records. Farmers can then make informed decisions about which seed or planting stock to use based upon the requirements of their buyers and their production situations that may or may not result in GE contamination in their fields. Obtaining this GE contamination information before planting can be beneficial in lessening the risk of significant economic losses due to GE contamination when that crop is sold. The discussion between growers and seed suppliers may also demonstrate there is a demand for seed with low GE contamination levels.

1. In order to aid producers in their goal of low-to-no detection of GE contamination of their organic crops (seed and planting stock) that have GE equivalents in the marketplace, certifiers should provide the following information to their organic farmers:
 - A. Producers who are growing crops from seed or planting stock that could be subject to Genetic Engineering contamination of that seed or planting stock, can contact their suppliers to obtain GE contamination test results.
 - B. The vast majority of seed and planting stock suppliers whose crops have GE equivalent varieties that could cause contamination are already doing GE contamination testing and are supplying information, at the request of the buyer of their seed or planting stock, of any GE contamination and the levels present.
 - C. Certifiers may choose to obtain this information at the organic inspection. If presence of GE

contamination is found on the finished crop by the certifier in their testing program or by a buyer of the finished crop, this seed GE contamination information will be useful in determining the cause of the GE contamination.

- D. Certifiers can inform farmers who wish to test seed they grew or test seed or planting stock they purchased, that they are legally allowed to test for GE contamination. A wide variety of laboratories around the U.S. and the world supply this testing service. This information could be provided to the organic certifier as well.

Subcommittee vote:

Motion to accept the “Genetic Integrity Transparency of Seed Grown on Organic Land Instructions to Certifiers” Proposal

Motion by: Harriet Behar

Seconded by: Dave Mortensen

Yes: 5 No: 0 Abstain: 0 Absent: 0 Recuse: 0

Approved by Emily Oakley, Subcommittee Chair to transmit to NOSB, August 13, 2019