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24 September 2012

Ms. Michelle Arsenault, Special Assistant  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Ave. SW.,  
Room 2648-So., Mail Stop 0268  
Washington, DC 20250-0268;

Re: Docket AMS-NOP-12-0040; NOP 12 - 12  
NOSB Ad-hoc GMO Subcommittee Discussion Document GMOs and Seed Purity

Dear Ms. Arsenault and National Organic Standards Board:

**Summary:**

- Oregon Tilth Certified Organic – OTCO encourages the NOSB and NOP to develop a GMO Seed Purity policy that is *systems based* in order to evaluate the effectiveness of GMO contamination prevention practices and not one which relies on product verification and which eliminates product from the organic market due to unintended consequences beyond the control of the organic seed producer.
- OTCO recommends that the NOP take a leadership role in establishing broadly applicable USDA regulations that hold the GMO seed industry responsibility for economic damage caused by their products to *any and all* farmers whose economic success depends on seed purity.
- OTCO urges the NOSB and NOP to use the opportunity that this discussion document provides to revise the current definition of Excluded Methods. Recent NOSB discussions regarding nanotechnology, microencapsulation and cell fusion of parent stock illustrate the need to update the definition in recognition of advancing technology.

**General Comments;**

In the National Organic Program regulations, Organic is defined as a system of production. Recently developed procedures related to pesticide residue testing were built as a risk based mechanism to assure that the system is working successfully. We would endorse a GMO seed testing protocol designed to verify that systems designed to protect seed purity are functioning properly.

As with GMO testing of organic crops it is important to differentiate between fraud, inadequate protection or a breach in the OSP, and incidental drift contamination.

The NOP, including the NOSB needs to take a lead role in establishing GMO trespass regulations at the National level not only at the NOP level. Seed purity is fundamental not only to organic but to all identity preserved seed as well as to species purity and genetic diversity.

In the event that an organic farmer can prove the Commercial Unavailability of seed and is granted allowance by a certifier to use non-organic seed, that non-organic seed must also be “true”. Recently there are troubling discussions relating to GMO drift contamination regarding the legalities of “Fence In” versus “Fence Out” which attempt to shift liability from the creator and user of the technology to the farmer or gardener. The NOP needs to take a lead role in establishing the “Fence In” concept which would assign responsibility to GMO users and liability to the patent holders.

We would like to challenge/clarify two of the Background bullet points:

- Producing organic feed, crops, and food ‘free’ of GMOs requires starting with seed that is not produced using GMO Technology. OTCO contends that although Seed Purity is critical, the line between *produced using GMO Technology* and *contaminated by GMO DNA* has served well to require compliance without punishing an organic producer in the absence of malice.
- We suggest that the process for ensuring genetic purity of commercial seeds in organic production must be the same as with conventional crop production. Clean seed must be planted for the farmer to harvest uncontaminated food or feed. Planting and harvesting contaminated seed can increase the likelihood of “creeping contamination” from year to year, since any additional GE drift into a field planted with partially contaminated seed would produce food, crops, or feed with a higher level of contamination than in the original seed. OTCO believes it is impossible and unfair to protect seed purity only in the organic arena.

## Discussion Questions

### **1. Is there a need to establish a seed purity standard or protocol to ensure that planting seed meets the requirements of the NOP rule? Explain your answer.**

Yes. The genetic seed purity standard needs to be established by the USDA and needs to address all seed; Organic, Heritage, Conventional and GMO. Any farmer or gardener purchasing any seed deserves assurance that it is pure.

### **2. What is currently known about the level of GMO contamination of seed used by organic farmers and any associated testing of seed on the farm or in the supply chain? Comments from farmers, seed companies, or buyers describing the following would be relevant:**

No comment

- **the scope of testing (e.g. frequency, methods, costs);**
- **the threshold used for rejection; and**
- **the outcome of seeds that are rejected.**

### **3. What testing methods are appropriate to use in order to determine and label for seed purity and to verify compliance to a seed purity standard?**

As a Certification Body our recommendation is to use a standardized, reliable (minimizing false positives or negatives), affordable method. Doubtless as the technology develops tests will become more accurate, targeted and affordable therefore it is important to set policy now that is flexible enough to allow for developing technology.

### **4. How would an example such as proposed in Discussion point #7 above affect your farm or business?**

If applied uniformly the example proposed in point #7, or a similar proposal, would be welcomed by certifiers since it is easily understood and verified. Presuming proposal #7 puts the verification burden and cost on the seed producer or seller we are concerned that it would pose a significant burden to small producers and heritage seed savers.

**5. Is there a better suggestion for a seed purity standard than that proposed in Discussion point #7 above? Describe.**

While point #7 is clear and uniform it does not properly address the *system* of assuring seed purity since it is product based, applied to all seed. The NOP pesticide residue process is risk, and so system, based. We feel that it is important to use that program as a model for any seed purity program.

**6. What is known about relevant sampling, testing, and detection level protocol necessary to implement such a standard?**

No comment

**7. What training, guidance, or resources do certifiers need to verify compliance for to a seed purity standard?**

Communication and training from the NOP to the Accredited Certifiers has improved dramatically with the implementation of the Handbook and Training Sessions. We are confident that the same system could adequately train certifiers to a seed purity program.

As always, clear uniform guidance for certifiers and producers is critical for uniform application. Sampling technique, specific tests, chain of custody, interpretation of results, noncompliance protocol. Since the NOP is an international standard. GMO regulations and testing resources vary greatly around the world. This will be an important consideration to creating the above criteria.

**8. What approach could an organic seed producers used to safeguard against GMO contamination from an adjacent or neighboring conventional farm? Buffer zones, distance, planting time, pollination factors, and contamination possibilities/solutions could be included in your response.**

GMO contamination from drift must be addressed from not only the "Fence Out" but also the "Fence In" perspective. All of the above practices have merit in preventing genetic drift and none are entirely adequate in all circumstances. As more genetically modified seed products become available across more species this will become even more evident. As mentioned above, many creators of organic seed are not "producers" but homesteaders, market gardeners and seed savers. It is important that corrective actions resulting from positive test results be focused on correcting the system of production before removing the product from market.

Respectfully submitted,



Jim Pierce  
Global Certification Program Manager  
Oregon Tilth Certified Organic OTCO

*Oregon Tilth, Inc. is a non-profit 501(c)(3) organization that supports and promotes biologically sound and socially equitable agriculture. Oregon Tilth offers educational events throughout the state of Oregon, and provides organic certification services to organic growers, processors, and handlers internationally. An NOP accredited certifier since 2002, Oregon Tilth currently certifies over 650 farms and ranches and over 600 handlers in more than 35 states affording us a broad perspective of current practices and challenges faced by organic producers and handlers.*