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Ms. Michelle Arsenault, Advisory Committee Specialist
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave., SW.,
Room 2642-S., Mail Stop 0268
Washington, DC 20250-0268

Submitted via www.regulations.gov

RE: Document #AMS-NOP-18-0029.

NOSB Materials Subcommittee Proposal on Genetic Integrity Transparency of Seed Grown on Organic Land

Dear NOSB Members:

Thank you for the opportunity to provide comments on Genetic Integrity Transparency of Seed Grown on Organic Land.

MOSA certifies approximately 2125 organic operations throughout the United States. The majority of the farms we certify are located in the Upper Midwest, where the vast majority of conventional agricultural crops are genetically modified. Many organic operators that we certify grow crops with high risk for GMO contamination. These include over 1400 organic corn growers, nearly 500 organic soybean producers, at least 1400 alfalfa growers, and many others that grow beets, chard, summer squash, or canola. In our certification work we review many GMO contamination prevention plans, and we've investigated a number of GMO contamination cases.

In 2016, we commented about urgency and frustration around this issue. *"We've reviewed thousands of seemingly reasonable contamination prevention plans. However, the plans sometimes prove to be ineffective; we continue to come across test results showing GMO contamination of organic seed sources and harvested crops, sometimes at alarming levels. Appropriately responding to such test results is extremely challenging from a regulatory standpoint. This is frustrating as we strive to promote that organic means non-GMO, and more. The GMO incursion situation is getting more urgent."* We're thankful to see continued progress on the troubling issue of GMO incursion into organic systems, and our regulatory approach.

In summary, we support the general direction of the proposal. It presents some sound concepts. However, we suggest that this proposal be pulled back for further refinement and clarity. We have some concerns around sensibly sharing burdens within the organic community, practicality

of enforcement, and test results leading to unfair impacts on geographic regions where contamination is harder to avoid. We also think the discussion and/or background sections of the proposal should emphatically reiterate the need for USDA support in order for coexistence to be successful, and just.

Many times since 2012, MOSA has commented on the subject of maintaining genetic integrity, and related fairness concerns, as NOSB has sought feedback on a number of documents, including: Research Priorities Framework, GMOs and Seed Purity, Prevention Strategy Guidance for Excluded Methods, Strengthening the Organic Seed Guidance, NOSB Materials/GMO Subcommittee Report to the USDA Secretary on Progress to Prevent GMO Incursion into Organic, Protecting the Genetic Integrity of Seed Grown on Organic Land, and now, Genetic Integrity Transparency of Seed Grown on Organic Land. Aside from comments to the NOSB, in 2014 we also offered comments to the USDA regarding the AC21 Report on Enhancing Coexistence.

In our many comments, we have continuously stressed a need for USDA leadership and shared responsibility to protect organic systems from unfair incursion. A while back, we wrote, in part, *“Strengthened seed guidance will help our enforcement of requirements and will aid continuous improvement in organic seed supply and organic seed usage... However, we also continue to question the overall efficacy of certifier enforcement of seed purity expectations, relative to the larger picture of increasing GMO incursion challenges... It is very clear that the public expects organic to be GMO-free, and, while the organic community continues productive work to guard against GMO incursion, USDA leadership is critical for ensuring that the responsibility for preventing GMO contamination is shared. Without meaningful shared responsibility, coexistence cannot work, and the organic label is harmed...”*

“Until the organic seed industry can produce truly non-gmo seed for at-risk crops, it will be nearly impossible for the organic farmer to produce truly non-gmo crops. We need to get our organic seed house in order with regard to GMO contamination, to maintain confidence in organic seed. However, that seems to unfairly burden organic operators. This gets at the moral question of who should be responsible for controlling GMO incursion into organic... We won’t get to the real desired end of meeting consumers’ organic purity expectations unless we have more support and leadership from the USDA, and not just from the NOP. We can continue to fight this good fight, but it can’t just be our organic community that is making the effort. Otherwise, coexistence is a fantasy. Especially right here in your (midwestern) breadbasket.”

The background section in this proposal generally provides a clear, thorough summary of the current situation and regulatory challenges. It also explains why transparency of GE contamination levels has become a necessity. Transparency is an organic tenet, and so that is our right path. But, organic should not have to contend with genetic incursion. The proposal would benefit from being more outspoken about fairness and responsibility. It does a good job of setting a forward course for dealing with genetic incursion, but that path also seems to indicate some acquiescence, some acceptance that GMOs are here to stay, and puts us in a defensive position. We’d like to see a little more “call to arms.”

We appreciate how the proposal's discussion section gives good perspective on some economic impacts of failed coexistence - the significant financial losses from organic crops being rejected due to GE contamination (for crops where we already need to increase domestic production). This is a problem that United States agriculture has created for itself, through such prevalence of GMO crop production. It sounds like we could learn some things from Europe, where, as noted in the introduction section, less than 1% of crops are genetically modified.

Our following comments address the Proposal part of the document (section VI):

In general, while the 17 points seem fairly comprehensive and set a good course, they need some further consideration, and as a whole, they are hard to follow. We appreciate the transparency and data collection aspects. But, the proposal could be made more clear if the concepts were organized differently. One idea is to organize them by the requirements and responsibilities required of each person/entity, even if some of those expectations might be duplicative. Persons/entities would include: certifier, laboratory, inspectors, NOP, organic seed supplier, nonorganic seed supplier, grower of at-risk crops, and maybe others.

More specific comments on the points in the proposal, by number, are below.

2. We support the call for an NOP Program Manual Instruction regarding the elements of the proposal. However, such instruction should not be limited just to certifiers. With the various requirements and responsibilities listed within the 17 points in the proposal, instruction should be directed at the organic industry as a whole. We'd stress that the instruction must be practical and that it aids enforcement of various persons' responsibilities. Further, in order to enable more public comment, "guidance" may be a better route than instruction.

3. This OSP tracking, and verifying its accuracy, will change the face of our work. Although unfortunately necessary for addressing GMO incursion concerns, it creates more burden, in requirements and in finances, for certifiers and organic farmers. The testing required to gather the information for the level of purity for *all* corn seed being planted on any organic acres, *including both organic and nonorganic seed*, would clearly increase costs for farmers. Recordkeeping requirements will increase, again, and farmers using nonorganic seeds would have additional expenses and effort.

Additionally, requiring information from nonorganic seed suppliers is a regulatory challenge; we don't have any regulatory authority over nonorganic entities. (We've expressed similar concerns in our comments on the Crops Subcommittee Proposal on Strengthening the Organic Seed Guidance.) Many nonorganic seed suppliers would have no incentive to supply purity information to organic growers. Certifiers would have no basis on which to require that the information be collected from uncertified persons, nor, after collection, any basis on which to act upon the information.

4. We understand why these levels of purity are chosen (they're common thresholds used in the organic marketplace), and that transparency is needed so informed choices can be made when choosing seed. However, we have some concerns over how this kind of disclosure of contamination levels, for organic seed, may be perceived as contrary to "organic is non-GMO" messaging. The organic community should consider how to address consumers' and critics

questions as to why organic products may have some GE contamination. And, the reasons for disclosing purity - transparency enabling informed choice - must be made clear to organic stakeholders. These could be misinterpreted as being some sort of regulatory requirement for purity, but organic products do not have mandated purity levels. Further, it also is not clear in the proposal whether these levels would also apply to nonorganic seed.

5. It is not clear who is responsible for providing sampling, testing, and documentation.

6. We have some concerns that requiring level of purity declarations on seed tags may conflict with other regulatory authorities' requirements for seed labeling. This also relates to our concerns regarding ability to obtain information from uncertified persons. Research is needed to determine how this proposal may affect laws regarding seed labeling, protection of confidential business information, and more. We wonder if this is an area where the USDA could step in and assist with ensuring that the burdens of coexistence are fairly shared.

7. Testing of "all known GE traits available" may be at odds with testing capabilities, and practicality. Testing may not be available for some available GE traits, or testing for uncommon traits may be very expensive. We need more informed, sound and sensible guidance. Perhaps we should start with a list of the traits for which testing is desired.

3., 10. through 13., and 16. These points imply some requirements for Organic System Plans. It also would be helpful if the proposal outlined Organic System Plan questions for growers and seed suppliers. Again, this may be more easily accomplished and clearly presented if the proposal were organized by responsible persons/entities.

14. Each grower or seed supplier may have differing ways of defining a "lot." It may be helpful to have some more clarity regarding what constitutes a lot. This also has huge financial implications. Requiring testing of each lot could result in hundreds of tests required before planting but after purchase. Some reorganization of the proposal may bring more clarity on who bears responsibility for testing and when the testing must be done.

15. We recognize the importance of consistent sampling, testing and documentation to assess the current level of purity. We'll need some clarity regarding where such data is housed, and who's responsible for data maintenance, and we desire such data uploading to be user-friendly. It's worth considering how this data collection may also be coordinated with a comprehensive Organic Seed/Planting Stock Database, as discussed in our comments on Strengthening the Organic Seed Guidance.

We also have a concern over fairness. It makes sense for the data to include geographic locations. However, as we look forward and envision use of this data, it raises some concerns from our seat here in the midwest, a GMO hot zone. We support trying source seed with as little contamination as possible (ultimately zero), but, we wonder if transparency of test results will create a geographic disadvantage for growers and seed suppliers in regions, like the midwestern grain belt, that have more contamination from ubiquitous presence of GMO production (90%-plus GMO production in all directions, including "up"). Growers in more contaminated regions may have fewer options for choosing pure, locally adapted seed, and their products may be at a competitive disadvantage with similar products from less-contaminated regions. This

would not just be a competitive disadvantage, it also would illustrate a failure of coexistence, and fairness.

17. Is the “should” intentional, deliberately toned down from a “must?” It’s practical when written as a “should.” We wonder whether organic farmers are adequately equipped to be able to retain samples under proper storage conditions.

Last, we note a slight need for more clarity in the proposal’s section II, Background. The “Genetically Modified Organism” definition references the “IFOAM Position cited above.” That parenthetical statement needs further context within this new proposal.

We have a final general concern regarding the very limited comment period for this meeting. There were only 16 business days to read and analyze all documents and to write our feedback. This shortchanges our best collaborative thinking. It’s a disservice to all organic stakeholders, including the NOSB, and is disrespectful of this public, democratic process. We hope that USDA will hear this ongoing concern, and will get meeting materials published for comment earlier. We’d note that the NOSB Policy Manual sets pre-meeting timeframes for posting, and requires at least 30 days for public comment. For best engagement and useful input, a reasonable comment period is closer to 60 days. Thank you for addressing this concern.

We hope that these comments are helpful as you work toward a sound and practical proposal for Genetic Integrity Transparency. Thanks for your work.

Respectfully submitted,

The MOSA Certification Team