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National Organic Standards Board
USDA-AMS-NOP
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Submitted via www.regulations.gov

RE: Docket: AMS-NOP-16-0049

NOSB Crops Subcommittee Discussion Document on Strengthening the Organic Seed Guidance, and NOSB Materials/GMO Subcommittee Report to the USDA Secretary on Progress to Prevent GMO Incursion into Organic

Dear NOSB members:

Thank you for the opportunity to again provide comments regarding strengthening requirements for the seed used in organic systems, including preventing GMO incursion into organic systems.

MOSA now certifies nearly 2000 organic operations across the United States. Most MOSA-certified operations are in the upper Midwest, where the vast majority of agricultural crops are genetically modified. We certify many operations with crops that are at high risk for GMO contamination. For example, approximately 1300 MOSA-certified operations grow corn, totalling over 50,000 acres in annual organic corn production. 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.

Strengthened seed guidance will help our enforcement of requirements and will aid continuous improvement in organic seed supply and organic seed usage. We concur with the Crops Subcommittee's identified key points to strengthen the organic seed guidance. 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. We strongly concur with the Materials/GMO Subcommittee Report to Secretary Vilsack. 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.

We offer the following input regarding the identified key points to strengthen the NOP 5029 seed guidance.

We strongly agree that an update to the guidance is needed to address non-GMO expectations. Beyond reiterating that any non-organic seed or planting stock used must be non-GMO, we also need more guidance in how non-GMO status should be verified. What does it mean to be non-GMO? At what point does contamination affect non-GMO status? We aim for continuous improvement, but as regulators, often our most effective tool for encouraging changes is enforcement through issuing noncompliance notices. This tool is not effective or appropriate when sources of contamination are unclear, when our standard does not identify specific contamination thresholds of concern, and when non-GMO verification from suppliers may be inconsistent in its validity.

We understand that the organic standards are process based, and so the presence of detectable GMO residues alone does not necessarily constitute a violation of the regulations. A noncompliance notice must be based in clear standards and supported by facts. When we find positive GMO test results, we investigate causes to the best of our ability. But often, exact causes cannot be determined; the prevention practices appear to be adequate. Our current organic regulations, knowledge base, and NOP 5029 Organic Seed Guidance leave gaps which disable our ability to soundly and sensibly enforce expectations that organic should be GMO-free. We do not have a clear path toward corrective actions.

We cautiously support routine GMO testing as a means of setting clearer expectations, but, first we need better guidance on how to interpret test results. Some operations that we certify are already using testing as a means for making quality control decisions when purchasing organic crop products, sometimes refusing certified organic products with GMO content above a designated percentage. Others are using testing to establish their own baseline expectations, yet continuing to accept products based on their organic certification status, while notifying their suppliers of contamination findings. We appreciate these proactive approaches, but such testing may not follow consistent protocols related to types of tests or sample size. All organic stakeholders urgently need more valid, controlled data before GMO test results can be reliably used as an enforcement tool. In the meantime, now, we feel dissonance when testing shows that an organic product has GMO content, yet we're unable to build a noncompliance case and so we have to allow the product to enter the organic marketplace. Positive test results without context harm confidence for buyer, seller, and regulator. Once we have some reliable baseline data, then we'd cautiously support use of a GMO-percentage threshold beyond which product cannot be represented as organic. This could be similar to the requirements for exclusion of products from organic sale when pesticide residues are beyond 5% of EPA tolerance levels. The inability to represent products as organic could serve marketplace expectations, while being separated from determining the appropriateness of noncompliances and adverse actions which affect certification. Our caution in using some reliance on testing is rooted in concern that the burden

of contamination would be unjustly borne by organic operators, and in recognition that “numbers in the rule” can be somewhat arbitrary, and don’t always draw a sensible line compared to the diversity of organic operations and the particulars of each situation.

In the short term, and in the longer term as testing becomes more useful, we ask that the certification community is engaged in collaboration to help establish expectations for acceptable non-GMO verification. We’d all benefit from consistency in who would be expected to provide non-GMO verification, what type of documentation is acceptable, and who should bear responsibility for testing.

We also think it would be helpful if this section of the 5029 guidance specifically named types of seed which are deemed to be “at-risk.” For example, identify at risk seed as including corn, soybeans, canola, sugar beets, papaya, and so forth.

We agree that the number of seed sources required before nonorganic seed can be allowed can be increased, commensurate with number of known organic suppliers. We also agree that the seed guidance should clarify that the same sourcing requirements must be shown by growers who use seed provided to them by buyers or other partners. In general, we find that instruction and guidance documents in the NOP Program Handbook is very useful in encouraging compliance. While we can point to the applicable regulations, additional clarification or emphasis as found in the Handbook is very helpful in illustrating expectations for organic operators.

*We agree that the seed guidance should include a better framework for what continuous improvement looks like. Such written guidance on ways to measure increases in organic seed usage would assist consistency of enforcement. We would prefer that the suggested measurements, like increases in acreage planted to organic seed, or increasing organic seed percentages, are provided as *examples*, not as prescriptive *mandated* measuring methods. Our Organic System Plan templates could fairly easily be adapted to more specifically ascertain continuous improvement measures, and might include the identified examples, along with another option - “other.” Many sections of our OSP’s include common examples along with an “other” checkbox which asks for explanation, and, which enables the plan to be adapted to operational diversity and innovation.*

We agree with the intent of the suggestion to encourage certifiers to require producers who do not show continuous improvement to do additional research on sources and conduct on-farm organic variety trials, and provide results to certifiers, but, we wonder if this is overly prescriptive. In our regulatory milieu, we have to provide sufficient information to enable organic operators to comply with the standards, but we also have to avoid consulting. So, we have some hesitation to mandate specific actions to improve compliance. We might suggest well-known options that would be compliant, but we leave it to the operator to determine how they will improve. If these proposed research and trials requirements were written into the guidance document, however, that guidance could help elicit the desired action.

We also have strong concerns related to sharing the burden of seed purity. We see a GMO testing threshold as being useful in limiting GMO incursion into organic systems. We agree that such testing is sensible in focusing the GMO control effort on seeds, as the source. But, we have

some concern that requiring organic seed to be below a prescribed, effective GMO contamination level may *decrease* the supply of organic seed. In speaking to several MOSA-certified seed suppliers, we heard that routine tests of at-risk organic seed coming into seed handling facilities shows it all has some level of contamination, from less-than 1%, to far more significant levels. An added GMO testing threshold burden, in a relatively limited organic market, here in the GMO-laden midwestern landscape, could make organic seed suppliers decide to simply drop their organic certification. We recognize that our process-based standards do not lend well to outcome-based market expectations. Putting testing protocols into our current process-based system can bite us, if we don't approach them reasonably.

Unfortunately, currently, it's probably a misconception that planting of organic seed will stop further GMO incursion into organic. While we desire that organic seed reaches the same standard as non-organic seed, we need more guidance on how we get there. We recognize that we have a lot of work to do. 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.

So again, this gets at the moral question of who should be responsible for controlling GMO incursion into organic. We are glad for the discussion and work put into this by the NOSB and other organic stakeholders, but 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 breadbasket.

We appreciate your continued work on this important and challenging issue. Thank you. We are available to answer any questions you may have.

Respectfully submitted,

The MOSA Certification Team