



BEYOND PESTICIDES

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April 10, 2016

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

Re. MS: Excluded Methods Terminology Proposal and Discussion Document; Seed Purity

These comments to the National Organic Standards Board (NOSB) on its Spring 2016 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

Excluded Methods Terminology Proposal and Discussion Document

We thank the Materials Subcommittee for its long work on this project. We will rely on others to check the scientific details and comment here mostly on the proposed principles and process.

We support the approach of separating out technologies, terms, and issues on which the subcommittee does not yet agree, while moving ahead with those where there is consensus. As the subcommittee notes, this is a rapidly changing field. Therefore, any guidance document must be a work in progress. This also highlights the importance of keeping in place regulations that have broad support, but are relatively simple, while addressing complications and new technologies in guidance. We request that NOP post proposed guidance for public comment.

Excluded Methods Terminology Proposal

It is important to establish a process-based definitional framework for “excluded methods” because these methods are changing and increasing at such a rapid pace. We believe that the approach taken in this proposal is sound and consistent with organic production practices.

- It defines basic terms to “be adopted by the NOSB as being Excluded Methods.” However, we must point out that “non-GMO” does not belong in a list of excluded methods.

- It gives a firm foundation by beginning with principles that define what organic production is –using the NOSB Principles of Organic Production and Handling and IFOAM Principles of Organic Agriculture to support criteria for reviewing biotechnology processes.
- It bases its criteria on process, rather than product. A strict process-based approach needs to be clearly stated, and used in all regulatory schemes, not just organic. The fact that new processes that “are very clearly genetic engineering techniques are not regulated by the current government structure because they do not involve DNA from a ‘pest’ under the USDA APHIS regulatory structure” has created problems for organic producers and others. The reliance on a product-based regulatory scheme, particularly one based on a definition of “pest,” has shown itself to be unworkable.

Subject to (hopefully minor) technical corrections that might be provided by others, such as the Center for Food Safety, we support this proposal and urge its rapid adoption.

[Excluded Methods Terminology Discussion Document](#)

As we stated above, we support the approach of moving ahead where the subcommittee is in agreement and seeking more information and input on technologies, terms, and issues where there is not yet consensus. Our comments will address general principles and processes, and we will leave comments on scientific details to others.

- We support the additional criteria from FiBL that are listed in the discussion document.
- The related issues of detection and enforcement are difficult to address solely within organic rules. There is a similar problem with pesticides –some cause damage at levels too low to be detected. As with pesticides, we suggest that the response must be taken by those who allow the products of such technologies to be used –for example, by USDA in deregulating genetically engineered organisms. GE crops should not be allowed to be used without a practical detection method.
- The NOSB must call upon the Secretary of Agriculture to reverse his policy of allowing more and more genetically engineered crops and to support legislation that places liability for damages on the patent holder.

[Seed Purity Discussion Document](#)

[Reasons for Requiring a Seed Purity Declaration for Non-Organic Seeds](#)

We agree with the Materials Subcommittee (MS) that there are a number of good reasons to require a seed purity declaration for non-organic seed, including:

- It provides an incentive for growers to use organic seed.
- It shifts the burden of routine GMO testing from organic seed producers to suppliers of non-organic seed.
- It reduces the inadvertent introduction of GMOs into organic crops through seed.
- It fits in with the organic regulations to prohibit excluded methods by providing ACAs with a tangible method of verification.

Comments on Some Themes from Public Comment

We need more data.

We always need more data. However, as the MS says, “It all starts with seeds.” Although more data would be helpful, we know enough to be sure that seeds are a significant part of the problem. Seeds that carry genetically engineered (GE) traits contaminate the crop. More data will give us better quantification of the problem, but are not necessary to establish that there is a problem that needs to be addressed.

The responsibility for genetic contamination should lie with the polluters.

This is a basic premise of all environmental regulation. Organic seed producers are already motivated to produce seeds without GE contamination, and are already burdened with practical obstacles to delivering the product that they want to produce and organic growers want to use.

The Discussion Document says,

The NOSB is limited in scope to what can be achieved through the organic regulations. Making polluters accept responsibility is outside of that scope. Only by being proactive in keeping these issues in the public eye and communicating them to the Secretary, can the NOSB make a difference.

A recommendation with this statement in it will not be able to be published by the NOP. In order to keep this message in circulation, the concept needs to be expressed as part of other more achievable language.

If it is true that a recommendation with the above statement will not be published by NOP, then either NOP should not be within USDA or the OFPA requirement for a staff director responsible to the NOSB must be implemented. The NOSB cannot do its job if it cannot give honest recommendations and advice to the Secretary as required by OFPA. 7 U.S.C. 6518 [National Organic Standards Board] of OFPA states that the purpose of the board is “to assist in the development of standards for substances to be used in organic production **and to advise the Secretary on any other aspects of the implementation of this title.**” [emphasis added] In carrying out this responsibility under OFPA, the NOSB, as a stakeholder group, must bring issues forward to the Secretary that it believes are important to carrying out all aspects of the law, from the allowed materials to acceptable practices, from excluded methods to contamination by those methods, all with the goal to ensure the integrity of organic and the value of the organic label.

In addition, the Federal Advisory Committee Act (FACA), which governs NOSB activities, requires that “the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment.”¹

¹ FACA Section 5(b)(3) and FACA regulations § 102-3.105(g).

One suggestion floated several times has been to exempt breeding lines grown in organic systems from the treated seed prohibition in the rule.

Treated seeds have no place in any part of the organic system. The justification offered for this suggestion is:

Many of the breeding lines are only available with seed treatments. Since these lines are not used to produce a crop, but only to produce the seed that then needs to be increased for sale, there might be a variance for the seed treatments that would give breeders access to a much larger assortment of germplasm.

Seeds treated with insecticides are a major contributor to pollinator decline.² For organic production to contribute to this decline through allowing the use of treated seed is incompatible with organic practices and contrary to OFPA.

Let the marketplace guide the way.

The MS says, “The best way to gain more credibility in the USDA and conventional agricultural industry is to gain enough market share that they have to pay attention.” Organic production’s growing share of the market does not necessarily mean that the purveyors of GE crops and their associated poisons will relinquish their control over a regulatory system that protects and promotes their interests. The marketplace has shown that consumers want organic food, but the marketplace cannot protect organic integrity, so the organic community –acting through the NOSB– must demand that USDA’s regulatory authorities be used to protect organic seed.

Comments on Suggestions

A. Enabling Data Collection

Although this suggestion refers to collecting data, it is actually much more. It is a trial of a process that could be used to prevent the use of GMO seeds in organic production. We like the idea of not waiting for the government to act –especially since it is so reluctant to act in this area—and “recommending through guidance (but not an absolute requirement subject to violations and penalties) for ACAs to collect a seed purity declaration from non-organic seed of high risk crops being planted on organic farms (preferably on the seed tag of each bag of seed with a lot number).” We support the idea of finding an independent home for the data that is collected. This suggestion appears to be a good starting place.

B. USDA Task Force

We are skeptical that any task force established by USDA could or would take any action that would be supportive of seed purity. NOSB calls for help do occasionally evoke positive responses from outside organizations. We suggest that just as with the home for data collected according to suggestion A, an independent organization could conduct the feasibility study on testing and thresholds.

C. Strengthening the Organic Seed Requirement

We support strengthening the organic seed requirement. We support the NOSB drafting improved guidance for the NOP to adopt. In particular, we support making handlers and

² <http://www.beyondpesticides.org/assets/media/documents/SystemicsCited.pdf>.

processors accountable when they require specific varieties that may not be available as organic seed.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Terry Shistar, Ph.D.
Board of Directors