

March 15, 2013

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

Re: §205.105 Allowed and prohibited substances, methods, and ingredients in organic production and handling.
To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of:
(e) Excluded methods, except for vaccines: Provided, That, the vaccines are approved in accordance with § 205.600(a);

Members of the NOSB,

The NOSB GMO ad hoc Subcommittee is to be congratulated on its encyclopedic discussion of the terminology of “excluded methods.” This discussion and the Vaccine Working Group discussion of physical and chemical genetic modifications together constitute a useful short course to bring the organic community ‘up to speed’ on the subject.

Perhaps more critically, the GMO ad hoc Subcommittee has provided the organic community with a major first step forward in defining clear and consistent criteria for interpreting the language of the regulation at §205.105.

In its discussion document on GMOs and Seed Purity, the GMO ad hoc Subcommittee acknowledges that organic stakeholders are concerned about **“keeping genetically modified organisms out of organic livestock feed, crops, and food.”**

In its discussion document on excluded Methods Terminology, the GMO ad hoc Subcommittee cites the **“introduction of novel proteins into soil and water ecosystems”** as a risk addressed by the process-based guarantee of organic certification.

It is very helpful that you set forth these operational criteria for implementing the phrase “without the use of excluded methods:”

1. Keeping genetically modified organisms out of organic livestock feed, crops, and food; and
2. Preventing the introduction of novel proteins into soil and water ecosystems.

This is the kind of guidance that certifiers, producers, and handlers can execute.

The GMO ad hoc Committee has truly captured the essence of consumer and organic stakeholder concern, which heretofore has been ignored from time to time. For example, consider the following testimony from the October 2012 NOSB meeting [Transcript Page 192 (10/15/2012)]. The most relevant comment is highlighted.

“I am the other half of One Straw Farm so when he wanted to use this biodegradable mulch I was the one in charge of looking up the research. Part of the reason we said it was -- we decided it was okay and was following organic standards was it was certified biodegradable by a third party agency, so it wasn't just the company saying it.

“And the second part of it was it was made from a non -- it was not GMO corn, it was GMO-free corn. **You know, we could get corn stalks from our next door neighbor and put them down as mulch and that would be allowed under organic certification law which we wouldn't do.** This was non-GMO and it was breaking down so we saw no reason that we could not use it.”

This farmer is absolutely right! Using GMO crops as mulch in an organic operation is a clear violation of the regulatory dictum “without the use of excluded methods.” It is inconsistent and illogical that a certifier can allow the use of GMO corn stalks as uncomposted mulch, thus introducing GMOs, transgenically modified DNA, and transgenic proteins into the soil of an organic farm.

Producers and handlers need to know how much further the GMO stigma extends. In the processing realm, GMO corn is the source of most commercial cornstarch. Corn sugar – glucose – is the major feedstock for microbiological fermentations by non-GM organisms. So, what should be the status of the citric acid that is produced from the glucose that is made from the cornstarch that is isolated from GMO corn kernels. Is this citric acid a “product of excluded methods”? Should it be permitted in organic handling?

OMRI, which has faced these issues for decades, shared their experience at the last NOSB meeting [Transcript Page 293 (10/16/2012) Lindsay Fernandez-Salvador]. The OMRI position is not 100% clear and consistent but it has worked for years.

“And according to our current OMRI policy we would not allow biodegradable plastics from that type of genetically modified microbe, the same as we wouldn't allow citric acid derived from genetically modified *Aspergillus*. So I think what has been presented by the subcommittee and what I understand as the changes would then come in concurrence with OMRI's current policy.

“So we would -- we do understand that genetically -- cornstarch from, for example, genetically modified corn would be an allowed feedstock and that would also be in concurrence with our current policy.”

It is a pity that, when it had the opportunity to respond with clear guidance at the October NOSB, the GMO Crops Subcommittee punted. During the discussion of the biodegradable mulch, the NOSB member leading the final discussion of this petitioned material stated the will of the GMO Crops Subcommittee [Transcript Pages 83-4 (10/18/2012)]:

“C), we have decided to be specific about our excluded method language, and we wish to -- I believe we wish to change just slightly, what this says on the screen, but right now it says, "Must be produced without organisms or feedstock derived from excluded methods," and I think we want to at least say and/or, because we don't want either of them. We don't want someone to choose between one or the other, but we definitely intend to keep these out.

“Our feeling is that in the -- let's see, **while we have some concerns about consistency between this and the excluded methods in other soil inputs**, since this will be a brand new category of materials, we wish to shut the door to GMO's at the outset.

“The annotation regarding the feedstock is not to be construed as carrying over to other soil applied materials.”

As a member of the organic community, I must ask the question: “why is this annotation not to carry over to every other soil applied material?” If this annotation is what the regulation requires, it must be uniformly and fairly enforced upon every material of similar character, not just those arbitrarily targeted or intentionally discriminated against by the NOSB. It must be enforced for crop, livestock (other than vaccines, which are exempted in the regulation), and processing materials.

The organic community needs a clear and consistent definition of what specifically is forbidden in organic production and handling. Is it the GMO itself? Is it “novel proteins”? Is it any product of the GMO organism? Is the GMO character of an input obliterated by composting? The definition and its enforcement need to be clear and consistent, and not arbitrary and capricious.

I am not the only one seeking clarification and consistency. NOP would like it as well.

“And in the past the NOP in the questions and answers said that GM crop residue, GM soybean meal as a fertility input was not a use of an excluded method. We don't have those questions and answers up anymore but we're

looking for the board to take a look at this through the GMO Ad Hoc Committee and provide us with a recommendation.

“So a consistent approach to looking at those types of substances and how they're used or not used in organic agriculture is what we would like to see, a consistent approach.”

[Miles McEvoy - Transcript Page 295 (10/16/2012)]

Please address this critical issue.

Sincerely,

Richard C Theuer

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