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OREGONIANS FOR FOOD & SHELTER

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A non-profit coalition to promote the efficient production of quality food and fiber while protecting human health, personal property and the environment, through the integrated, responsible use of pest management products, soil nutrients and biotechnology.

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HB 2739—Relating to patent holder liability for genetically engineered organisms.

16 March 2015

Testimony to the House Judiciary Committee

Honorable Committee Members:

Oregonians for Food & Shelter (OFS) is a grassroots coalition of farmers, foresters, and other technology users focused on natural resource issues involving pesticides, fertilizer, and biotechnology. We are writing you today in opposition to House Bill 2739 which would hold seed patent holders of genetically engineered (GE) crops financially responsible if a GE plant is found where it wasn't intentionally planted.

OFS supports all types of agriculture including conventional, organic and GE. We continue to support programs that promote coexistence between the different types of agriculture, and different types of crops. Unfortunately, HB 2469 would pit different types of agriculture against each other, simply based on the technique of breeding used to develop the seed they use. This promotes exclusion not coexistence and we will not support regulation that divides our agricultural communities.

USDA Approval Confirms No Unique Risk from GE Crops

GE plants are evaluated by the Animal and Plant Health Inspection Service (APHIS), which is part of the United States Department of Agriculture (USDA), to determine if they are a risk to other crops as a plant pest. All commercialized GE crops have undergone this review and have been determined to be no more of a risk than their non-GE counterparts.

GE crops pose no unique risk to neighboring crops than their non-GE counterparts. For example, the adventitious presence of GE material does not affect USDA Organic status. So, as long as an organic grower takes the proper precautions as required under the USDA rules, they are at no risk of losing certification. In fact, not a single farmer has ever lost their USDA Organic certification due to the adventitious presence of GE material (see attached).

Misplaced Liability

If there are “damages” to an agricultural crop, that grower can currently sue the person who caused the damage to be compensated for their loss. That holds the person responsible for the damage accountable. HB 2964 turns that system entirely on its head, as it would now assign liability for damages in cases involving GE crops to the seed patent holder. That’s akin to holding Chevrolet liable for damages if somebody drove their pickup into the side of a building. Seed patent holders have no control over what the end user does with a product. With liability for “treble damages” and no control over the growing methods used by farmers, many seed companies could stop selling certain varieties in our state, limiting choices for Oregon growers.

Stifling Innovation

Seed breeding programs at Oregon State University (OSU) rely on access to patented traits to improve current varieties. If patent holders face potential liability for their traits in Oregon, it will be increasingly difficult for our seed researchers to gain access to these important crop improvements.

The broad definition of “genetically engineered” in the bill could capture a wider variety of seeds than intended. Plant breeding is extremely complex, and with new techniques being used all the time, there is the serious potential for other types of breeding to be captured. The precedent of new liability for seed patent holders is also concerning for all types of seed breeders. OSU holds seed patents, as do many individual farmers. Facing potential new liability will create a huge disincentive for them to research and develop new varieties.

Coexistence is Possible

Because of Oregon’s wonderful agricultural diversity—both in crops and growing methods—coexistence is key. Oregon farmers have worked with their neighbors for over 100 years managing coexistence conflicts. This bill flies in the face of that work by picking “winners” and “losers.”

Please oppose HB 2739.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott J. Dahlman', with a long horizontal flourish extending to the right.

Scott J. Dahlman
Policy Director



Policy Memorandum

To: Stakeholders and interested parties

From: Miles McEvoy, Deputy Administrator

Subject: Genetically modified organisms

Date: Original Issue Date – April 15, 2011

The National Organic Program (NOP) has recently received questions concerning the use of genetically modified organisms (GMOs) under the U.S. National Organic Standards. This policy memorandum addresses frequently asked questions concerning GMOs and reiterates the statements made in a 2004 letter from USDA Undersecretary Bill Hawks to the National Association of State Departments of Agriculture.

Compliance with the organic standards entails that operations have verifiable practices in place to avoid contact with GMOs. Since organic certification is process-based, presence of dateable GMO residues alone does not necessarily constitute a violation of the regulation. The NOP relies on organic certifiers and producers to determine preventative practices that most effectively avoid contact with GMOs on an organic operation.

The use of GMOs is prohibited in organic production and handling. The NOP regulations prohibit the use of GMOs as “excluded methods” under 7 CFR § 205.105, “Allowed and prohibited substances, methods, and ingredients in organic production and handling.” Excluded methods are defined as:

A variety of methods to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture. (7 CFR § 205.2-Terms defined)

This policy memo reiterates that the use of GMOs is prohibited under the NOP regulations and answers questions that have been raised concerning GMOs and organic production and handling.



Issue: If a producer adheres to all aspects of the NOP regulations, including never utilizing genetically modified seeds, but a certifying agent tests and detects the presence of genetically modified material in the crop, is that crop's status determined to be no longer certified organic?

Reply: Organic certification is process based. That is, certifying agents attest to the ability of organic operations to follow a set of production standards and practices which meet the requirements of the Organic Foods Production Act of 1990 and the NOP regulations. The NOP regulations prohibit the use of excluded methods (i.e., "GMOs") in organic operations. If all aspects of the organic production or handling process were followed correctly, then the presence of a detectable residue from a genetically modified organism alone does not constitute a violation of this regulation. This policy was established at the promulgation of the NOP Regulation in the Preamble to the Final Rule (FR Vol. 65, No. 246, p. 80556), December 21, 2000. The Preamble stated that:

As long as an organic operation has not used excluded methods and takes reasonable steps to avoid contact with the products of excluded methods as detailed in their approved organic system plan, the unintentional presence of the products of excluded methods should not affect the status of the organic operation or its organic products.

Issue: Is the inadvertent presence of GMOs in organic seeds a violation of the NOP regulations? Can organic producers use seeds that contain the inadvertent presence of GMOs?

Reply: 7 CFR § 205.105 of the NOP regulations prohibits the use of GMOs as excluded methods in organic production and handling. The use of excluded methods, such as planting genetically modified seeds, would require a specific intent, and would render any product ineligible for organic certification. However, the inadvertent presence of GMOs in organic seeds does not constitute a use because there was no intent on the part of the certified operation to use excluded methods. The presence of detectable GMO residues alone in an organic seed does not constitute a violation of the NOP regulations.

Issue: How do organic producers avoid contact with GMOs?

Reply: Organic producers utilize a variety of methods to avoid contact or the unintentional presence of GMOs including testing seed sources for GMO presence, delayed or early planting to get different flowering times for organic and GMO crops, cooperative agreements with neighbors to avoid planting GMO crops adjacent to organic crops, cutting or mowing alfalfa prior to flowering, posting signs to notify neighboring farmers of the location of organic fields, and thorough cleaning of farm equipment that has been used in non-organic crop production.

Issue: What are organic producers required to do in order to avoid the presence of GMOs in their products?



Reply: In order to become a certified organic operation, a producer must submit an organic system plan to a NOP accredited certifying agent for approval. The producer's organic system plan must include a description of management practices and physical barriers established to prevent contact of organic crops with prohibited substances. Certifying agents evaluate the preventative practices and buffer zones to determine if they are adequate to avoid contact with GMOs.

Issue: Could a farm's organic certification status be threatened if sufficient buffers and barriers are not established and inadvertent contact with GMO material occurs?

Reply: Organic producers that implement preventive measures to avoid contact with GMOs will not have their certification threatened from the inadvertent presence of the products of excluded methods (GMOs). Crops grown on certified organic operation may be sold, labeled and represented as organic, even with the inadvertent presence of GMOs, provided that all organic requirements under 7 CFR Part 205 have been followed.

Issue: Is there a working definition of the word "contamination" within the NOP?

Reply: There is no definition in the NOP regulations for the word "contamination," even though it is mentioned frequently in the standards. The use of excluded methods in organic production is prohibited, as cited in 7 CFR § 205.105.

Issue: What actions are authorized or required when organic crops or products are found to contain unintended or inadvertent genetically modified substances?

Reply: The inadvertent presence of genetically modified material does not affect the status of the certified operation and does not result in loss of organic status for the organic product, provided it was produced in accordance with all of the organic requirements under 7 CFR Part 205. Certifying agents are responsible for working with organic producers to identify the source of the inadvertent GMOs and to implement improvements to avoid contact with GMOs in the future.

Issue: Are organic products tested for genetically modified substances?

Reply: Under 7 CFR § 205.670(b) certifying agents may test organic products when there is reason to believe that excluded methods were used in the production or handling of an organic agricultural product. Certifying agents may also collect and test organic products from organic handlers to ensure that practices are in place to prevent commingling or contamination during handling and processing.

Issue: Are organic products free of GMO contaminants?

Reply: Organic standards are process based. The NOP regulations prohibit the use of genetically modified organisms, prohibit commingling or contamination during processing and



handling, and require preventative practices to avoid contact with GMOs. Organic agricultural products should have minimal if any GMO contaminants; however, organic food products do not have a zero tolerance for the presence of GMO material.

Issue: Has a tolerance level (e.g. 5%) been established for the presence of GMOs in organic agricultural products?

Reply: The NOP regulations do not establish GMO tolerance levels. The NOP regulations establish a tolerance for the presence of pesticides registered by the U.S. Environmental Protection Agency (EPA) that is set at 5% of the EPA tolerance level for the specific residue detected. No federal agency, including EPA or USDA has established tolerance levels for the inadvertent presence of the products of excluded methods (GMOs).

Issue: Processed foods sold as “organic” must contain at least 95% organic ingredients. Are GMOs allowed in the remaining 5% of ingredients? Likewise, processed foods sold as “made with organic (specified ingredients or food group(s))” must contain at least 70% organic ingredients. Are GMOs allowed in the remaining 30% of ingredients for these products?

Reply: The use of GMOs is prohibited in all ingredients in “organic” and “made with organic (specified ingredients or food groups(s)).” There is no provision within the NOP regulations that allows the use of excluded methods (GMOs) in ingredients or processing aids under the “organic” or “made with organic (specified ingredients or food group(s))” label categories.