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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 2649—Relating to Genetically Engineered Goods

16 March 2015

Testimony to the House Committee on Agriculture

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 2469 which would undermine the state seed preemption law by exempting local regulations on genetically engineered (GE) crops.

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.

### Creating a Potential Patchwork of County and City Seed Regulations

As drafted, HB 2469 will result in a patchwork of 36 different county regulations and over 400 city regulations on agricultural crops if they are genetically engineered (GE). Currently, Oregon law ensures that all growers in Oregon operate on a level playing field, regardless of what county they live in. It is very common for farmers and foresters to have land in multiple counties, and often times a single field can straddle county boundaries.

### Removing Farmer's Flexibility to Shift Crops to Market

Currently, farmers and foresters decide what type of crop to plant in any given year based on a wide variety of considerations. Markets, soil types, crop rotations, expected weather—all of these affect planting decisions. For dairy and livestock producers, their decision making hinges upon their need to feed their herd a balanced diet containing crops grown on or near their farms. Whether their county or city has banned certain types of seed should not be something farmers and foresters need to consider.

**Restricting Crops with Farmer and Consumer Benefits**

GE crops allow farmers to produce better yields while consuming less water, soil, and pesticides. In 2010, the reduction in carbon dioxide from the atmosphere from the use of GE crops and related practices, was more than 21 million tons-- equivalent to 8.6 million cars off the road for one year. Recently approved GE crops, such as the "Innate" potato and "Arctic" apple offer health benefits to consumers by removing carcinogens and reducing bruising. Even more exciting are crops that are being developed now that will be drought resistant.

**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 of the 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).

**County and City Regulations Could Force Farmers to Tear out Crops**

Currently proposed county ordinances would force farmers to tear out crops and lose a year or more of investment with no reimbursement. Additionally, there are pending proposals that will expose farmers to costly third party lawsuits over the crops they choose to grow.

**Please protect farmers across Oregon by opposing HB 2469.**

Sincerely,



Scott J. Dahlman  
Policy Director



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## 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.



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**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?



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**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



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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.