CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

August 6, 2015

TO: CALIFORNIA ORGANIC PRODUCTS ADVISORY COMMITTEE (COPAC)

A teleconference of the California Organic Products Advisory Committee has been scheduled. Enclosed is the agenda.

Date:	Monday, August 17, 2015 1:00 p.m. – 3:00 p.m.	Location:	2800 Gateway Oaks Drive Sacramento, CA 95833 Room 115 (916) 900-5030

Committee members will use the following information to access the conference call:
Dial-in Number: 888-566-6307
Pass Code: 32945

Members of the public may join the conference call by going to any of the following locations:

Alexandre Farms, 8371 Lower Lake Road, Crescent City
Melody Meyer, 4710 Rodeo Gulch Ln., Soquel
Campbell Soup Supply Co., 2300 River Plaza Dr., Ste. 175, Sacramento
Chino Valley Ranchers, 331 W. Citrus St., Colton
University of California Berkeley, 3 Gianni Hall, Berkeley
Karen Klonsky, 4116 Central Lane, Winters
Conlan Ranches CA, 1375 Prospect Ave., Capitola
Tomas Chapman, 1451 66th Street, Emeryville
Bridgett Montesanti, 245 Hyde Street, San Francisco
Sandra Schmaier, 1160 Burlingame Ave., Burlingame

Notification of committee meetings and their agendas can be found via the Internet at the following website address: http://www.cdfa.ca.gov/is/meetings.html.

Please find the enclosed agenda. If you have any questions regarding this meeting, please contact me at the number listed below.

Sincerely,

Danny Lee
Supervising Special Investigator

Enclosures
cc: Gary Leslie

California Department of Food and Agriculture (CDFA)
California Organic Products Advisory Committee (COPAC) Meeting

Monday, August 17, 2015
1:00 p.m. – 3:00 p.m.

Teleconference

AGENDA

1. Roll Call/Introductions
2. GMO Testing Pilot Project – Attachment A
3. NOP Policy Memo 11-13: Genetically modified organisms – Attachment B
4. New Business
5. Public Comment
6. Next Meeting
7. Adjournment

All meeting facilities are accessible to persons with disabilities. If you need reasonable accommodation as defined by the Americans with Disabilities Act, or if you have questions regarding the public meeting, please contact Susan Shelton at (916) 900-5030. Requests for reasonable accommodation should be made no later than three (3) days before the meeting.

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United States Department of Agriculture
Agricultural Marketing Service
National Organic Program

1400 Independence Avenue SW.
Room 2646-South Building
Washington, DC 20250

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 detectable 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.

GMO Testing Pilot Project

Attachment A
Revised 7/24/15

Description of Tasks

Upon request of the organic community, CDFA is considering a pilot project to expand existing State Organic Program (SOP) pesticide residue testing to include GMO testing of raw agricultural organic products. The collection and testing of raw agricultural organic products, with known risks for genetically modified organisms (GMOs), (also known as genetic engineering (GE)), will be implemented as a one year pilot program; beginning August 2015.

During the pilot program, all samples for GMO testing will only be collected by CDFA staff. If the pilot program is implemented as a permanent program; the collection of GMO samples will then be expanded to county, agricultural staff. The collection of samples for GMO testing shall follow the protocols similar to those currently in place for pesticide residue testing.

CDFA may determine which samples shall be collected; including, but not limited to the type, amount, size, or volume. A duplication of each sample may be taken. Each sample collected shall include an identifying number, the date and time collected, the name of the individual collecting the sample, the address where collected, a detailed description of the product, its location on the premises, and any other identifying information determined to be necessary. Individual samples shall be enclosed in containers appropriate for the type of sample collected, utilizing methods that prevent direct contact with contaminants.

Samples may be collected randomly or as part of an investigation. Sample collections shall be conducted at, but not limited to, production and handler sites; certified farmers' markets; retail locations; and points of entry. During the pilot period; sampling will focus on a limited number of organic commodities in California, and those brought in from out-of-state, that are most likely to contain GMOs such as:

- Alfalfa
- Canola
- Corn
- Soy (Confirm type)
- Zucchini and yellow summer squash
- Cattle feed (blended)
- Seeds and seed crops

Additional organic commodities may be considered for testing during the course of the pilot project and in the future; should testing move beyond the pilot stage.

The CDFA Center for Analytical Chemistry (Chem Lab) doesn't currently have the capability to conduct GMO testing. It would take approximately 12-14 months to establish GMO testing capabilities and another 6-12 months to complete additional GMO testing requirements under the ISO 17025 accreditation. Since the Chem Lab is not established to conduct GMO testing at this time; GMO samples will be submitted to Genetic ID NA, Inc. labs in Iowa for testing.

Genetic ID NA, Inc. is an accredited lab that conducts GMO testing on products with the USDA, Food Safety and Inspection Service (FSIS) Branch's approved, Non-GMO Project Verified label. Genetic ID NA, Inc. also conducts GMO analysis for USDA accredited organic certifiers.

There are other labs that may conduct GMO analysis; however, CDFA is using Genetic ID NA, Inc. in Iowa, as they are the only lab that has officially completed their annual review by the Non-GMO Project. Additional labs may be considered, such as Genista Biosciences in San Jose, if GMO testing continues past the pilot project, and testing is expanded to the counties.

The goal of this pilot program is to collect approximately 60 samples during the one-year testing period. Since qualitative analysis only shows whether GMOs are "Detected" or "Not detected," (down to a limit of 0.01%); all samples will be submitted for DNA, polymerase chain reaction (PCR) quantitative testing. Additionally, due to the limited number of samples being tested during the pilot; PCR testing is the most efficient method of testing, since it shows the actual percentage of GMO in the sample. If qualitative analysis was used and GMOs were detected; additional samples and testing would then still be needed for PCR testing.

The National Organic Program (NOP) has not established threshold limits for GMO testing. The National Organic Program (NOP) proposed rule (2000) excluded the use of biotechnology, genetic engineering or genetically modified organisms (GMOs); in organic production and handling.

The use of genetic engineering, or GMOs, is currently prohibited in organic products; under 7 CFR § 205.105, "Allowed and prohibited substances, methods, and ingredients in organic production and handling." Additionally, NOP Policy Memo 11-13 addresses GMOs in organic production and handing. In addition to reiterating that the use of GMOs is prohibited under the NOP regulations, Policy memo 11-13 also states:

"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 detectable 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."

Since there are currently no established NOP thresholds for GMOs; if the presence of any GMOs are detected, the SOP will follow NOP protocols and initiate an investigation to determine how the presence occurred, and whether the presence of GMOs is intentional or inadvertent. The NOP, certifier (if certified operation), county agricultural commissioner, and operation will be notified if any level of GMOs are detected.

In the absence of NOP thresholds for GMO levels; a possible alternative would be for the SOP to use the European Union's GMO labeling threshold limit of .9%, to determine if enforcement or investigative actions should be taken. Under this option; an investigation would only be required if GMOs were detected at the .9% limit or higher. If below the .9% limit, then no investigative or enforcement actions would be taken.

In either case; the NOP, certifier (if certified operation), county agricultural commissioner, and operation would be notified if any level of GMOs were detected.

A final report on the findings will be issued upon completion of the pilot project.