



# ORGANIC FARMERS ASSOCIATION

June 15, 2022

Jaina Nian  
Agricultural Marketing Service  
USDA, Room 2055-S, STOP 0201  
1400 Independence Avenue SW  
Washington, DC 20250-0201

Re: "Competition and the Intellectual Property System: Seeds and Other Agricultural Inputs,"  
Docket No. AMS-AMS-22-0025

To Whom It May Concern:

The Organic Farmers Association (OFA) is a membership organization that represents U.S. certified organic farmers. Our organization was founded by and is controlled by certified organic farmers, and only domestic certified organic farmers vote on OFA's policies and leadership. We appreciate the opportunity to comment on "Competition and the Intellectual Property System: Seeds and Other Agricultural Inputs." (Docket No. AMS-AMS-22-0025).

Organic is a growing sector of the U.S. agriculture system, with tremendous potential to address climate change, help family farms flourish, revive rural communities and protect public health. The potential for economic viability for smaller farms has been a major strength of organic. But the dramatic growth of the overall organic sector and the comparative success of organic farms relative to their conventional peers does not mean that there are no risks that could undermine the continued success of the organic sector. One area of risk for organic agriculture is the struggle to access inputs and seeds that are best suited to organic production.

*(1) Please describe challenges, concerns, and any other views (including relating to any benefits) with market concentration and market power in the agricultural input industries, including, as applicable, effects on farmers, competitors and related markets; pricing; availability; transportation and delivery; quality; research and innovation; economic growth, labor markets, and inequality issues; supply chain resiliency; and any other factors.*

In addition to organic farmers' challenges in sourcing organic seed and varieties that are suited to their unique needs, which are discussed in response to later questions, this year organic farmers have reported new difficulties in securing the natural fertilizers they rely on for their crops, including chicken litter and other manures. This is because dramatic price hikes in

synthetic fertilizer markets have sent conventional farmers in search of manure and other natural nitrogen sources.<sup>1</sup> In this instance, consolidation and fragile global supply chains for products that certified organic farmers are not allowed to use, such as synthetic fertilizers, is still causing disruption for organic farms.

*(2) Please share your views on access, availability, pricing, quality, and related matters relating to seeds. In particular, are seed companies offering an adequate variety of types of seeds and traits that meet your needs as a grower? Are seed companies regularly providing new and improved varieties for growers? Have gains in yield or net returns resulting from use of new varieties been adequate to compensate farmers for the cost of seeds? Are regional needs, tribal and underserved communities, climate concerns, and product-specific needs, such as organic seeds, being appropriately served by the seed marketplace?*

Organic farmers need access to seeds and animal breeds adapted to their unique farming systems, soils and climates, including seeds developed to flourish without synthetic inputs. The Organic Seed Alliance tracks the state of the organic seed industry and has found that there are obstacles to increasing the prevalence of organic seed use, many of which relate to consolidation in the seed industry. Their surveys reveal that obstacles to organic farms using organic seed include specific varieties being unavailable in an organic form, insufficient quantities of organic seed, and a lack of desirable traits.

OSA's most recent findings show an increase in organic producers identifying contracts as a barrier to sourcing organic seed (i.e., a buyer contract dictates a specific variety be grown, but it isn't available as organic seed.) OSA's surveys also found that larger scale vegetable producers cited lack of seed treatments, buyer requirements, and insufficient quantities of seed in organic form as obstacles, while the lack of specific traits in organic varieties was a key problem for larger vegetable, field crop, and forage crop producers.<sup>2</sup>

*(12) Is there evidence of contracting or sales practices locking a farmer into a mode of production and inhibiting them from entering other farm enterprises? To what extent do requirements or inducements to buy a main product ( e.g., seed) with a second product ( e.g., pest management chemical), bundle, stacked trait, or service impact the farmer or other agricultural input competitors? For instance, does such a practice lock a farmer into or out of certain product choices? Please offer specific recommendations for reforms.*

This is another trend in conventional agriculture markets that has an impact on organic farmers. The growing use of drift-prone herbicides such as dicamba in conjunction with genetically-

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<sup>1</sup> Leah Douglas. "No poop for you: Manure supplies run short as fertilizer prices soar." *Reuters*. April 6, 2022. <https://www.reuters.com/world/us/us-manure-is-hot-commodity-amid-commercial-fertilizer-shortage-2022-04-06/>

<sup>2</sup> Organic Seed Alliance. "State of Organic Seed." 2022. <https://stateoforganicseed.org/key-findings/>

engineered herbicide-tolerant crops is wreaking havoc on organic and other farmers who suffer the consequences of chemical drift. The failure by federal regulators at both the Environmental Protection Agency and the USDA to take drift seriously has left this problem to state regulators and individual neighbors to sort out. The aggressive promotion of genetically engineered crops and their affiliated herbicides as the only option to deal with the growing problem of herbicide-resistant weeds means that the choices made by conventional row crop producers can have devastating economic impact on their neighbors who have no say in the matter. In fact, the choice by one farm to use dicamba-ready crops on their farm can force their conventional neighbors to defensively plant the same crops, just to avoid the damage caused by herbicide drift. But organic and identity preserved non-GMO crop producers don't have this option, and are left to suffer the consequences of the chemical treadmill that the dominant seed producers continue to run.

The USDA's Animal and Plant Health Inspection Service has failed to protect non-users of genetic engineering from genetic drift from these crops, and the EPA has similarly failed when it comes to chemical drift. The entire approach to the regulation of genetically engineered crops and their affiliated herbicides should be reassessed, with adequate consideration of the impacts on other sectors of agriculture that have been ignored as the dominant agrichemical seed companies have expanded their control of input markets.

*(14) Please comment on implications, negative or positive, of mergers in the seed industry and in industries that sell other agricultural inputs. Have certain mergers changed contracting or sales practices? Have certain mergers allowed the acquisition of rivals or technologies or companies that competitor firms rely on? Have mergers delivered efficiencies? Please offer recommendations for specific actions where appropriate.*

The seed market has been notable for the wave of mergers that have resulted in extreme levels of market share for the dominant companies. This was also notable because of an additional trend, of companies that produce chemical inputs such as herbicides acquiring seed companies, creating a linked platform of inputs through the expansion of herbicide-tolerant genetically engineered seeds. This trend has narrowed crop genetic diversity and locked up the genetics of many crops into patent-protected genetically engineered varieties that certified organic farmers cannot use.

*(24) How could Federal or state antitrust enforcement better address any concerns highlighted?*

An updated approach to antitrust enforcement should begin with an assessment of the impact of previously approved mergers, including the use of anticompetitive practices such as restrictive intellectual property regimes for inputs like seeds, and impacts on resilience of the food system in light of shrinking genetic diversity as a result of seed industry consolidation.

*(25) What other policy changes, tools, investments, or programs could USDA or other agencies deploy to enhance the competitiveness of seeds and other agricultural input markets in relation to any of the concerns highlighted by your responses to the aforementioned questions?*

New Approach to Regulating Genetically Engineered Seeds: As described above, genetic and chemical drift from conventional row crop production is a serious problem for organic farms. The USDA needs to revamp its approach to regulating this technology and properly assess the impacts on non-users before allowing these products to be commercialized. If these products are allowed to remain on the market, the USDA must come up with a way to assign liability for damage caused by genetic or chemical drift to the users and patent holders of the technology; putting the entire burden of trying to prevent contamination on organic and other non-users is unacceptable.

Increased Support for Organic Research: Many of the challenges facing the organic sector can be addressed with increased research. Organic research often investigates practices and challenges that are also relevant to farmers who are not certified organic or who farm conventionally. For example, organic operations cannot deal with an unusual pest pressure situation caused by extreme weather with synthetic pesticides or use synthetic fertilizers to compensate for temperature fluctuations as might be done on conventional operations. The seeds and inputs that work well for organic producers could benefit other non-organic farms who wish to avoid expensive synthetic inputs or need a different approach to production challenges. Organic research funding should prioritize organic plant-breeding projects, with a focus on participatory models that address the needs of underserved communities. We refer you to more detailed recommendations on investing in organic seed research from the Organic Seed Alliance.<sup>3</sup>

Better Implementation of Organic Seed Requirement: We refer you to recommendations from the Organic Seed Alliance on how to improve the National Organic Program's progress in meeting the requirement for organic producers to use organic seed, including the need for the NOP to update its guidance on excluded methods for organic seeds.<sup>4</sup>

We appreciate the opportunity to comment on these critical issues. If you have questions or need more information, please contact our policy director, Patty Lovera, [patty@organicfarmersassociation.org](mailto:patty@organicfarmersassociation.org), (202) 526-2726.

Sincerely,



Kate Mendenhall  
Director

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<sup>3</sup> Organic Seed Alliance. 2022.

<sup>4</sup> Organic Seed Alliance. 2022.