



October 11, 2017

Ms. Michelle Arsenault  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Avenue, SW  
Room 2642-So., Ag Stop 0268  
Washington, DC 20250-0268

**Docket:** AMS-NOP-17-0024

**RE: Crops Subcommittee – Strengthening and Clarify the Requirements for Use of Organic Seed (Proposal)**

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the Crops Subcommittee's Proposal on Strengthening the Organic Seed Guidance (NOP 5029).

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

### **Summary of OTA's Position**

OTA commends the work of the Subcommittee on releasing an extensive proposal intended to strengthen the organic regulations on organic seed usage and to further address the use of seeds and crops at risk from GMO contamination. While we support the majority of the proposal and recognize that it addresses most of the suggestions that OTA raised in our fall 2016 comments, we believe that a few substantive changes are critical as it relates to guidance. As a result, the proposal related to guidance **should not be passed** at this meeting. We would like to see the sections on guidance brought back to the Subcommittee for further work, and a revised version released for comment prior to the spring 2018 NOSB meeting.

In summary, OTA strongly supports the proposal to amend the organic regulations at § 205.204 as written. As a stand-alone motion, we would support passing the regulatory proposal at this meeting.

Although we support the majority of the proposed changes to NOP's Organic Seed, Annual Seedlings and Planting Stock Guidance (NOP 5029), we urge the Subcommittee to address the following sections and accept our requested revisions:

- **5029-4 (Policy):** The underlined italicized text proposed in 5029-4 should be removed.

*Producers must prevent and avoid contamination from excluded methods in seed of at-risk-crops (corn, soybeans, canola, alfalfa, beets, chard, cotton, rice and summer squash).*

We agree that NOP 5029 should be amended to reiterate the already existing prohibition on excluded methods just as the Subcommittee proposed in section 4.1.2(c). Any further language or guidance on protecting or preventing seed from contact with GMOs should simply reference NOSB's recommendation on "Prevention Strategy Guidance for Excluded Methods," NOP's existing guidance on Commingling and Contamination Prevention (NOP 5025) and NOP's Policy on Genetically Modified Organisms (PM 11-13). Trying to include only parts of other guidance may create confusion. We believe the best approach is for the related guidance to be referenced and reviewed in its entirety.

- **4.1.2(c) (Sourcing of Seeds):** The proposed sentence in section 4.1.2(c) should be revised to read:

*Track changes: §4.1.2(c) On-farm variety trials of organic seed may be used by producers to evaluate and document equivalency and quality of varieties that are available as organic seed. ~~Trials are encouraged and records should be kept of results to show inspectors, but they are not mandatory.~~*

*Cleaned version: §4.1.2(c) On-farm variety trials of organic seed may be used by producers to evaluate and document equivalency and quality of varieties that are available as organic seed.*

It is not necessary *in guidance* to state that *encouraged* trials are not mandatory. Adding "but they are not mandatory" in effect discourages a practice that the guidance is encouraging. We suggest striking the last sentence and adjusting the first to simply state that, "On-farm variety trials of organic seed may be used by producers to evaluate and document equivalency and quality of varieties that are available as organic seed." This suggests the option but does not mandate the practice.

- **4.1.3 (Sourcing of Seeds):** The proposed addition to this section should be removed:

*Contamination from GMO consideration: non-organic seed can be used if organic seed cannot be sourced because of GMO contamination.*

The use of excluded methods (GMOs) is prohibited in organic production, and handling and organic agricultural products should have minimal if any GMO contamination. A proposal that formally recognizes contaminated organic seed as an acceptable reason to use non-organic seed contradicts basic production principles, disincentives the requirement to produce and use organic (non-GMO) seed, and it does not acknowledge certifying agents roles in determining whether GMO contaminated seed is non-compliant or a result of unavoidable contact. Furthermore, without the establishment of a seed purity standard, it makes an already challenging compliance determination even harder. We do not believe this proposed language is needed nor helpful.

- **4.2.1(b)(1)(i) Record Keeping for Organic Producers:**
  - The Subcommittee is proposing to retain the existing guidance stating that, "three or more seed or planting stock sources must be contacted." The Subcommittee is instead recommending that FIVE sources **MUST** be contacted for **seed of at-risk-crops**. Consistent with comments that were submitted by numerous organic stakeholders, including OTA, to NOP on its draft guidance in 2012 and to NOSB on its fall 2016

discussion document, OTA strongly urges NOSB to pass a proposal specifying a **minimum** of five sources for ALL seed **along with the criteria** we have provided in the body of our comments below. OTA believes guidance stipulating an **exact number** of sources that should be contacted is less important than describing the criteria or conditions that should help determine the number as it relates to the potential number of suppliers offering the desired organic equivalent variety.

- OTA acknowledges the Subcommittee’s reasoning for not including a proposal for guidance specific to an Organic Systems Plan (OSP) **goal** for increasing organic seed usage. However, given the proposal to amend the organic regulations to **require** producers to demonstrate **improvement** in sourcing and use of organic seed and planting stock each year until full compliance is achieved, it now seems appropriate to draft supporting guidance that would address the documentation organic producers are maintaining to communicate their transition to organic varieties and annual increase by percentage used or acreage planted.

➤ **4.4.4 Role of Certifying Agents**

- The proposal to add language to section 4.4.4 on page 113/137 of the NOSB packet is not consistent with the proposed change in the summary section on page 117/137. The phrase “and using commercially available” was omitted from the summary. We request that proposal on page 117 be revised so that it is consistent with the language on page 113:

*4.4.4 Certifying agents should review an operation’s progress in obtaining organic seeds, planting stock and transplants by comparing current source information to previous years*

- a. If sufficient progress is not demonstrated, a certifying agent may ask for a corrective action plan and require additional seed sources be researched, encourage variety trials, or require additional steps to procure organic seed.*
- b. Non-compliances should be issued for repeated lack of progress in sourcing **and using commercially available** organic seed over time.*

**We offer the following more detailed comments:**

OTA agrees that the NOP regulations need to be amended to require demonstrable improvement over time, and NOP’s existing Organic Seed, Annual Seedlings and Planting Stock Guidance (NOP 5029) needs to be revised to support this rule change and reflect the current state of the organic seed industry.

Tremendous strides have been made in the past decade to increase the availability of organic seed and planting stock, yet much greater improvement is needed. According to a 2016 Organic Seed Alliance survey that included responses from certified organic farmers in 47 states, only 27% reported that they used 100% organic seed. This demonstrates a minor improvement compared to 2009 data, where 20% of farmers were using 100% organic seed. Specific to field crops (including corn and soy), field crop growers, on average, planted 78% of their acreage to organic seed compared to 72% in 2009. More encouraging is that 56% reported using 100% organic seed for field crop acreage compared to 47% in 2009. Most respondents had less than 80 acres in field crops, whereas 13% of respondents had more than 480 (Hubbard, K. and J. Zystro. 2016. *State of Organic, 2016*, Organic Seed Alliance).

We understand the complexity of organic seed issues, and we recognize that the organic seed sector has not yet caught up to fully meet the diverse and regional demands of organic production. Still, in part due

to a poor regulatory framework, the existing seed guidance as written does not reflect the progress that has been made in the organic seed sector since the regulations and the 2005 and 2008 NOSB recommendations were written. Since then, the number of companies supplying organic seed has grown tenfold, and more educational resources and tools exist to support the sourcing and planting of organic seed. For these reasons, it is time that NOP's regulations are amended, and guidance on sourcing organic seed and planting stock is updated.

**Crops at risk from GMO contamination might need to be acknowledged, emphasized and have additional requirements for sourcing seeds.**

In response to many years of discussion on ways to ensure seed purity for at-risk crops, the Handling Subcommittee is exploring possible places in NOP 5029 where seed purity from excluded methods could be included.

We agree that NOP 5029 should be amended to reiterate the already existing prohibition on excluded methods as the Subcommittee proposed in section 4.1.2(c). OTA requested this change in our comments on NOP's draft guidance in 2011 and in our comments to NOSB last fall. However, any further language or guidance on protecting or preventing seed from contact with GMOs should simply reference NOSB's recommendation on "Prevention Strategy Guidance for Excluded Methods," NOP's existing guidance on Commingling and Contamination Prevention (NOP 5025), and/or NOP's Policy on Genetically Modified Organisms (PM 11-13). Accordingly, we request that the following underlined italicized text proposed in **5029-4 (Policy)** be removed:

*Producers must prevent and avoid contamination from excluded methods in seed of at-risk-crops (corn, soybeans, canola, alfalfa, beets, chard, cotton, rice and summer squash)*

The inclusion of an isolated phrase such as "producers must prevent contamination of excluded methods in seed" is potentially problematic and confusing without the greater context and explanation that is offered in the policy on genetically modified organisms and NOP's guidance specific to practices to avoid contact with GMOs. Until a seed purity standard is developed, we strongly urge NOSB to simply clarify that non-organic seed must be commercially unavailable in organic form and produced without the use of excluded methods. Where appropriate, we support including reference to existing guidance on prevention measures to avoid contamination for seed of at-risk-crops. An example of where this could be done is with the proposed language in section 4.4.5 which OTA supports:

*4.4.5 Certifying agents should review the prevention measures taken to avoid contamination for seed of at-risk crops.*

**4.1.3 (Sourcing of Seeds):** OTA agrees that GMO contamination in seed could be a valid reason to not use organic seed; the commercial availability clause in the organic standards accommodates this unfortunate situation. However, we do not believe including the proposed language as a recognized option in formal guidance is helpful. Therefore, we are requesting that the following proposed language be removed:

*Contamination from GMO consideration: non-organic seed can be used if organic seed cannot be sourced because of GMO contamination.*

The use of excluded methods (GMOs) is prohibited in organic production and handling, and organic agricultural products should have minimal if any GMO contamination. We also know that 1) the presence of detectable GMO residue alone in an organic seed does not necessarily constitute a violation of the NOP regulations; 2) the non-compliance status of GMO contaminated seed must be determined by a certifying agent: **and** 3) NOP regulations do not establish GMO tolerance levels. A proposal that formally recognizes contaminated organic seed as an acceptable reason to use non-organic seed not only disincentives the requirement to produce and use organic (non-GMO) seed, it flies in the face of organic production principles. It also does not acknowledge certifying agents' roles in determining whether GMO contaminated seed is non-compliant. Without the establishment of a seed purity standard, it makes an already challenging compliance determination even harder. We do not believe this proposed language is needed nor helpful.

### **Continuous improvement**

OTA has consistently supported the need to stress the goal of continuous improvement in guidance to improve ongoing efforts to use organic seed and planting stock. We acknowledge, however, that the organic regulations do not explicitly require "improvement." This is problematic because the intent of the allowance in 7 CFR § 205.204(a) to use non-organic seed under certain conditions was to provide a transition time for the industry while the production of organic seed and planting stock caught up to its demand. However, 15 years later, the increased use of organic seed and planting stock has been less than robust. Commercial availability has been applied inconsistently since the implementation of the rule, and the level at which certifiers monitor and enforce the use of organic seeds and planting stock varies significantly.

Given the situation, we agree that a regulatory change is needed. OTA strongly supports the proposal to amend the organic regulations at § 205.204 as follows (new language in underlined italics):

#### **§ 205.204 Seeds and planting stock practice standard.**

(a) The producer must use organically grown seeds, annual seedlings, and planting stock: *Except, That,*

(1) Non-organically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available: *Except, That,* organically produced seed must be used for the production of edible sprouts;

*(i) Improvement in sourcing and use of organic seed and planting stock must be demonstrated every year until full compliance with (a) is achieved.*

OTA believes this is a practical proposal that signals to the broader organic sector that organic seed is important to organic integrity, and that further investments in organic seed will have a positive ripple effect that leads to more high-quality seed options that are well-suited to organic systems. It's important to note that the revised language will not force farmers to use organic seed that isn't a good fit for their production system and markets. The recommendation simply requires organic operations to take extra measures to demonstrate improvement over the years. If a particular variety or type of seed is simply not available in organic form, an organic operator would not be penalized.

### **Organic seed usage as an Organic System Plan "goal"**

OTA acknowledges the Subcommittee's reasoning for not including a proposal for guidance specific to an Organic Systems Plan (OSP) **goal** for increasing organic seed usage. However, given the proposal to

amend the organic regulations to **require** producers to demonstrate **improvement** in sourcing and use of organic seed and planting stock each year until full compliance is achieved, it now seems appropriate to draft supporting guidance that would address the documentation organic producers are maintaining to communicate their transition to organic varieties and annual increase by percentage used or acreage planted. OTA suggests the following language or similar could be added under **section 4.2.1(b) of NOP 5029**:

Records showing whether, from year to year, the operation has, through continuous improvement, increased the overall use of organic seed and planting stock. For example:

- For row crops/field crops and specialty crops grown on substantial amounts of acres, the percentage of total crop acreage planted with organic seed and/or planting stock year after year would be an appropriate measure of improvement.
- For specialty crops grown in diverse varieties on smaller acreages, an appropriate measure of improvement would be no less than 5% increase.

### **Documentation of quality, quantity and equivalent variety**

OTA agrees with the Subcommittee that it is reasonable for ACAs to ask for improvement in compliance with the organic seed and planting stock requirements to use organic seed over time and to impose increased efforts to achieve compliance if progress is too slow. We support the suggested changes made to 4.2.1(a) and the addition of 4.1.2(c) with the exception of the last part of the sentence.

**4.1.2(c) (Sourcing of Seeds):** We suggest section 4.1.2(c) be revised to read:

*Track changes: §4.1.2(c) On-farm variety trials of organic seed may be used by producers to evaluate and document equivalency and quality of varieties that are available as organic seed. ~~Trials are encouraged and records should be kept of results to show inspectors, but they are not mandatory.~~*

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It is not necessary *in guidance* to state that *encouraged* trials are not mandatory. Adding “but they are not mandatory” in effect discourages a practice that the guidance is encouraging. We suggest striking the last sentence and adjusting the first to simply state that, “On-farm variety trials of organic seed may be used by producers to evaluate and document equivalency and quality of varieties that are available as organic seed.” This suggests the option but does not mandate the practice.

**4.2.1(b)(1)(i) Record Keeping for Organic Producers:** The Subcommittee is proposing to retain the existing guidance stating *three or more* seed or planting stock sources must be contacted. The Subcommittee is instead recommending that FIVE sources **MUST** be contacted for **seed of at-risk-crops**. OTA does not believe this is consistent with the comments received on this topic to date.

Ultimately, OTA believes guidance stipulating an **exact number** of sources that should be contacted is less important than describing the criteria or conditions that should help determine the number as it relates to the potential number of suppliers offering the desired organic equivalent variety. Consistent with comments that were submitted by numerous organic stakeholders, including OTA, to NOP on its draft

guidance in 2012 and to NOSB on its fall 2016 discussion document, OTA strongly urges NOSB to pass a proposal specifying a **minimum** of five sources for **ALL seed** and include the following supporting criteria:

Certified operations should contact seed or planting stock sources to ascertain the availability of organic seed or planting stock for all crops grown.

- These sources must be companies that offer organic seed and planting stock.
- The number of seed or planting stock sources contacted should be relative to the number of companies potentially supplying the organic equivalent variety being procured and to the quantity (commercial vs. backyard) of seed needed.
- Documentation regarding this search should be maintained as part of record keeping, and should include the dates of organic seed sourcing attempts. Sourcing dates should be verified to confirm the grower attempted sourcing efforts in sufficient time to actually be possible (e.g. 3-6 months for off-the shelf quantities and 12-18 months for large quantities of high-density crops such as baby leaf lettuce, spinach, arugula, kale).

**4.4.4 Role of Certifying Agents:** The proposal to add language to section 4.4.4 on page 113/137 of the NOSB packet is not consistent with the proposed change in the summary section on page 117/137. The phrase “and using commercially available” was omitted from the summary. We request that proposal on page 117 be revised so that it is consistent with the language on page 113:

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*a. If sufficient progress is not demonstrated a certifying agent may ask for a corrective action plan and require additional seed sources be researched, encourage variety trials, or require additional steps to procure organic seed.*

*b. Non-compliances should be issued for repeated lack of progress in sourcing **and using commercially available** organic seed over time.*

### **Handlers supplying seed to contract growers**

OTA thanks NOSB for addressing this issue. It is critical that NOP’s guidance address certified operations (i.e. handlers) that contract with growers and mandate specific types of seed or planting stock.

Buyers are often certified handlers who contract with producers to grow certain varieties that are often not available as certified organic. If a certified handler (buyer) mandates a particular variety to be planted **and the buyer/handler is responsible for sourcing the seed**, the certified handler should be held responsible for determining if the variety is commercially available as organic, and this information should be included in the producer’s Organic System Plan. It should also apply to certified seed handling operations such as brokers, and to growers who contract with operations that raise annual seedlings for transplants. Questions about contractual agreements and seed/planting stock should be raised during inspections, and the information must be addressed in the producer’s Organic Systems Plan, since in reality these contracts, not the farmers, dictate whether organic or non-organic seed/planting stock is purchased and planted. As explained in the proposal, this consideration was included in the 2008 NOSB

recommendation but was not included in NOP’s final guidance despite requests made in public comments.

OTA acknowledges that the organic seed use requirements in the regulation specify “producers.” This is exactly why guidance in this area is needed. The reality is that the buyer/handler is responsible for sourcing the seed while it is the producer’s responsibility to demonstrate the sourcing efforts to the certifier. ***Guidance that explicitly references the producer’s responsibility to include sourcing information in the Organic Systems Plan would support growers in their ability to collect this information.***

### **Organic Seed Finder**

OTA thanks the Subcommittee for providing its thoughts and suggestions on this topic. OTA again emphasizes that perhaps the most important tool that can help certified producers, handlers and certifying agents in their efforts to source and evaluate the availability of organic seed and planting stock is a searchable national database of available organic varieties. We are interested in the option of having certifiers provide organic seed availability of their certified clients to the National Organic Program, in such a way as to include this information in a separate field in the National Organic Program Organic Integrity Database. Operators could then search that field for a specific variety of organic seed, and all certified operations who carry that seed would then be found. OTA would like to see NOSB further develop this option and explore its feasibility with NOP.

### **Accredited Organic Certifier and Organic Inspector Training**

As stated in our fall 2016 comments, certifiers have the important job of communicating organic seed requirements to organic producers and handlers, granting approval for the use of non-organic seed due to the commercial unavailability of organic seed, issuing non-compliances when adequate searches are not conducted, and reinforcing the need for continuous improvement as appropriate. This job comes with great challenges given the time, resources and complexity involved in verifying a claim that a particular seed variety is “commercially unavailable.”

Consistent implementation of the organic seed requirements and NOP guidance will significantly be improved through trainings for certifiers and inspectors. OTA’s appreciates NOSB’s willingness to work with ACAs, IOIA and other stakeholders on developing the requirements that should be met as part of a comprehensive training on organic seed use and determination of commercial availability. OTA supports this approach.

### **Conclusion**

OTA is committed to and strongly supports the further development of the organic seed and planting stock industry, and we are committed to finding solutions to meet this goal. The goal of our efforts should be to promote the continued growth and improvement in organic seed and planting stock production, and subsequent usage by organic growers without hurting or putting undue burdens on growers. The intent is not to have non-compliances handed down to farmers trying to comply with the seed and planting stock commercial availability section of the Rule. Instead, the intent is to maintain NOP guidance that will help ensure the consistent application and enforcement of organic seed requirements, which, in turn, will promote the breeding, development and production of a greater diversity of varieties well suited for organic production systems.



On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gwendolyn V. Wyard".

Gwendolyn Wyard  
Vice President, Regulatory and Technical Affairs  
Organic Trade Association

cc: Laura Batcha  
Executive Director/CEO  
Organic Trade Association