



October 4, 2018

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-18-0029

RE: Crops Subcommittee – Strengthening the Organic Seed Guidance (Proposal)

Dear Ms. Arsenault:

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

Seed is the fundamental starting point for transforming agriculture through nutritious ecologically grown food, feed and fiber, especially when coupled with the principles behind organic production of building healthy soils, using non-toxic inputs, and stewarding natural resources and the environment. As the foundation for organic farming systems, seed deserves continuous attention, from protecting its genetic resources, to preventing contamination, to building a strong organic seed sector that can supply the needs of a diverse and resilient agriculture.

OTA is committed to the development of the organic seed and planting stock industry, and we agree that NOP regulations need to be amended to require demonstrable improvement over time. We also agree that 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. Increasing support for organic seed lines through a stronger seed requirement is not only fundamental to improving organic farm systems, it is essential to further reducing unintended GMO presence and limiting the extent to which seeds outside of NOP purview are used and for ensuring the consistent application and enforcement of organic seed requirements.

Summary of OTA's Position

OTA continues to strongly support an amendment to the organic regulations at § 205.204 to require improvement in sourcing and usage of organic seed (continuous improvement) and we support the adjusted language included in the fall 2018 proposal. As a stand-alone motion, we urge NOSB to **pass this section of the proposal** at this meeting.

The proposal to **revise NOP guidance is close** but needs additional work. OTA thanks the Crops Subcommittee for considering most of the public comments received prior to the fall 2017 meeting and for making many changes accordingly. Although we support most of the proposal, there are a few new additions and an omission we are concerned about. We continue to urge NOSB to clearly state in guidance that conventional untreated seed must be produced without the use of excluded methods. At the same time, we also urge NOSB to leave seed purity considerations out of this document. It muddies the water, introduces a separate proposal that is complex and under construction and may slow up--if not hold back--this proposal from making it through the rulemaking process. We recommend articulating that non-organic seed must not be genetically modified, and referencing the required contamination prevention measures in the organic regulations and associated NOP guidance. This would be a significant improvement to existing seed/planting stock guidance and it will avoid introducing concepts that stakeholders are still working through.

At-a-glance

OTA **disagrees** with the omission of the following language (in bold italics) from the proposal:

- § 4.1.2 Certified operations may use non-organic seed and planting stock only if equivalent organically produced varieties of organic seeds and planting stock are not commercially available, ***and the conventional replacement variety can be documented as being produced without the use of excluded methods¹***.

Although we are in complete support of all efforts to prevent GMO contamination and maintain genetic integrity of seed, we have concerns about including the following sections as stand-alone statements, out of context from their associated guidance:

- § 4.1.2 When there is a risk of excluded-method contamination in seed production, the certified operation may ask the seed supplier for a non-GMO level of purity assurance, and communicate this information to their organic certification agency.
- § 4.1.3 d. Contamination from GMO Consideration: non-organic seed can be used if there is no organic seed available of equivalent variety with the desired level of purity from GMO contamination.

¹ Excluded Methods (genetic engineering), as defined in 7 CFR 205.2 of USDA's organic regulations

We do not agree with the inclusion of the new language to the fall 2018 proposal:

- § 4.1.2(c) Horticultural crops, which may have specific flavor profiles, size, color or other characteristics, can also be shown to not have an equivalent organic variety through descriptions provided in seed/planting stock catalogs or websites.

Finally, as communicated in our fall 2017 comments, we continue to emphasize that 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, AND it must include the dates of organic seed sourcing:

- Minimum of five sources should be contacted;
- 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 source searching 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).

We offer the following more detailed comments:

The intent of the allowance in 7 CFR § 205.204(a) to use non-organic untreated 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. Although tremendous strides have been made in the past decade to increase the availability of organic seed and planting stock, improvements in the private and public sector are both needed. The private sector is continuing to work to increase both the production and use of organic seed to meet the diverse and regional demands of organic production, 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. Unfortunately, however, in part due to a poor regulatory framework, the existing USDA-NOP 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. Commercial availability is applied inconsistently, and the level at which certifiers monitor and enforce the use of organic seeds and planting stock varies significantly. This greatly hinders efforts.

To help remedy the situation and match the efforts made by industry, it is time that NOP's regulations are amended, and guidance on sourcing organic seed and planting stock is updated. Below we have included a chart with the language proposed in the fall 2017 recommendation and the language included in the revised proposal for this fall 2018 meeting. Following each section are our comments.

**NOTE: The language we have included under the column for “Fall 2018 proposal” is taken from the “Crops Subcommittee Proposal” starting on page 196 of the proposal. The language in the proposal is not always consistent with the language suggested in the discussion portion of the document.*

NOP regulation

Fall 2017 proposal	Fall 2018 proposal
<p>205.204(a)(1) – ADD: (i) Improvement in sourcing and use of organic seed must be demonstrated every year until full compliance with (a) is achieved.</p>	<p>205.204(a)(1) – ADD: (i) Improvement in searching, sourcing and use of organic seed/planting stock must be demonstrated every year with the goal of achieving full compliance in the use of only organic seed/planting stock</p>

OTA Comments: 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, 16 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.

A change to the regulation is a top priority because it 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 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 (searching, sourcing and use) over the years. If a particular variety or type of seed is not available in organic form, an organic operator would not be penalized.

OTA urges NOSB to make a motion and vote to pass the proposed regulatory change separate from the proposal on guidance. We believe the intent of “continuous improvement in use of organic seed” will be adequately expressed to NOP for the purpose of rulemaking, and it is no longer productive to wordsmith the exact proposed language that may appear in the regulation.

NOP Guidance 5029

Fall 2017 proposal	Fall 2018 proposal
<p>5029 – 4. Policy: Producers must prevent and avoid contamination from excluded methods in seed of at-risk crops</p>	<p>REMOVED</p>

(corn, soybeans, canola, alfalfa, beets, chard, cotton, rice, and summer squash).

OTA Comments: Consistent with our fall 2017 comments, we agree with the removal of this recommendation.

NOP Guidance 5029

Fall 2017 proposal	Fall 2018 proposal
<p>§ 4.1.2 Certified operations may use non-organic seed and planting stock only if equivalent organically produced varieties of organic seeds and planting stock are not commercially available, and the conventional replacement variety can be documented as being produced without the use of excluded methods².</p>	<p>§ 4.1.2 Certified operations may use non-organic seed and planting stock only if equivalent organically produced varieties of organic seeds and planting stock are not commercially available. When there is a risk of excluded-method contamination in seed production, the certified operation may ask the seed supplier for a non-GMO level of purity assurance, and communicate this information to their organic certification agency.</p>

OTA Comments: We disagree with the removal of the language from the fall 2017 proposal. OTA requested this change in our comments on NOP’s draft guidance in 2011 and in all of our comments to NOSB on this proposal. NOP 5029 should be amended to reiterate the already existing prohibition on excluded methods because the regulations do not explicitly state that non-organic seed must be non-GMO. Although certification agencies may be clear on this point (and that is good), industry and consumers are not, and it is very helpful to have a formal NOP document to point to. We frequently receive questions and hear from operators pointing to the lack of any specific GE reference to seed in the regulations as well as in the guidance. OTA explicitly requested this language be included because of the lack of clarity we continue to see in organic trade and media channels.

We also do not agree with the replacement language included in the fall 2018 proposal. As we have previously stated, 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 under construction may create confusion and hold up rulemaking. We also believe it is premature to make any reference to seed purity in this proposal. From a strategic standpoint, it may hinder the

² As defined in 7 CFR 205.2 of USDA’s organic regulations - *Excluded methods*. A variety of methods used 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.

passage of a proposal intended to help increase the usage of organic seed. We are in strong support of all efforts to address the challenges related to GMO seed contamination and genetic seed integrity, but we think it is wise to separate out the topics according to feasibility and push through the low hanging fruit rather than trying to incorporate and solve everything in one document.

NOP Guidance 5029

<p>§ 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. Trials are encouraged and records of results should be kept to show inspectors, but the trials are not mandatory.</p>	<p>§ 4.1.2(c) On-farm variety trials of organic seed/planting stock may be used by producers to evaluate and document organic variety/cultivar equivalency to the non-organic item in use. Horticultural crops, which may have specific flavor profiles, size, color or other characteristics, can also be shown to not have an equivalent organic variety through descriptions provided in seed/planting stock catalogs or websites.</p>
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OTA Comments: We agree with the removal of this sentence: “Trials are encouraged and records of results should be kept to show inspectors, but the trials are not mandatory.” Adding “but they are not mandatory” in effect discourages a practice (increased organic seed usage) that guidance should be encouraging. At the same time, we are uncertain why the new sentence regarding horticultural crops appeared in this proposal. OTA encourages its removal or at very least a revision. The ultimate flaw with the guidance is that it does not account for various grower types (small, medium, large and crop type) and how they acquire seed. Large-scale growers typically do not consult seed catalogs for the characteristics described, especially flavor profiles. In the case of horticultural crops, they have a multitude of sales representatives from seed breeder and distributor companies who service them by putting in trials, taking contracts (either by reserving seed and/or doing contract productions for them), and delivering the seed of the varieties selected from their on-farm trials to them in a timely manner. The data included in seed catalogs will likely not be appropriate because it is generic information that is typically not reflective of subjective traits like ‘flavor.’ Accordingly, it may not be relevant to the exact bioregion, market and slot in which the grower sourcing seed is growing.

NOP Guidance 5029

<p>Not included, new language was added as “an improvement.”</p>	<p>§ 4.1.2(d) Documentation of these trials must be available at the annual inspection. This documentation should include which seed characteristics are desired, and be based upon the varietal benefits of the current non-organic seed/planting stock in use. The varietal characteristics discovered during the on-farm trail, of both the non-organic seed/planting stock and the organic seed/planting stock trialed, can be tracked in a simple table or spreadsheet detailing the specific characteristics sought, and whether or not the various varieties grown contained those characteristics.</p>
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OTA Comments: OTA supports the intent behind this new language. Reporting trial performance, when performed, should be feasible considering of all the trialing that is occurring on professional farms/greenhouses. For example, in the Salinas Valley area, there are over 35 companies putting in over 100 trials per large-scale grower. These trial results are detailed, and can be readily transferred to an inspector during the certification process.

NOP Guidance 5029

<p>4.1.3 The following considerations could be acceptable to justify use of non-organic seeds..... d. Contamination from GMO consideration: non-organic seed can be used if organic seed cannot be sourced because of GMO contamination.</p>	<p>§4.1.3 d. Contamination from GMO Consideration: non-organic seed can be used if there is no organic seed available of equivalent variety with the desired level of purity from GMO contamination.</p>
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OTA Comments: We continue to be concerned about formalizing such justification in NOP Guidance. The comments OTA submitted in fall 2017 represented many stakeholders including organic seed producers, certifiers and organic seed advocacy organizations. As we stated in those comments, 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 for guidance that formally recognizes contaminated organic seed (at some level above desired purity) 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. **The revised language only makes it more problematic because of the reference to “desired level of purity.”** This will be very hard for producers and handlers to understand and verify. 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 in this guidance, and we strongly urge the subcommittee to remove it.

NOP Guidance 5029

<p>§ 4.2.1 b 1. Evidence of efforts made to source organic seed, including</p> <ul style="list-style-type: none"> <i>i.</i> Documentation of contact with three or more seed or planting stock sources to ascertain the availability of equivalent organic seed or planting stock. Five sources must be contacted for seed of at-risk crops. <i>ii.</i> Sources should include companies that offer organic seeds and planting stock. Such sources should provide evidence of their organic certification (if relevant), 	<p>§ 4.2.1 b 1. Evidence of efforts made to source organic seed/planting stock, including</p> <ul style="list-style-type: none"> <i>i.</i> At least five documented sources must be contacted for seed/planting stock of all crops when this number of sources is available for an equivalent variety or cultivar. <i>ii.</i> Sources must include companies that offer organic seeds and planting stock. <i>iii.</i> Failure to demonstrate improvement in sourcing organic
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<p>ability to source organic seed, and specific varieties sourced every year.</p> <p>iii. Failure to demonstrate improvement in sourcing organic seed over time may result in additional seed sources being required or additional steps taken to procure organic seed.</p> <p>3. If seed sourcing is carried out or mandated by the buyer of a contracted crop, the producer must keep records of the buyer's documentation on attempting to source organic seed as part of the producer's own Organic System Plan. Such documentation must be comparable to that required of a producer who sources their own seed.</p>	<p>seed/planting stock over time may result in additional seed sources being required or additional steps taken to procure organic seed/planting stock, by the organic certifier.</p> <p>3. If seed/planting stock is sourced or mandated by the buyer of a contracted crop, the producer must obtain sourcing information and documentation from the contracted buyer. The buyer's attempts to source organic seed/planting stock then becomes part of the producer's Organic System Plan. Such documentation must be comparable to that required of the producer who sources their own seed/planting stock.</p>
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OTA Comments: OTA supports the change specifying a *minimum* of five sources should be contacted. However, we continue to stress that 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. For this reason, we support the criteria added to this proposal with the understanding that a **minimum of five sources must be contacted AND they must be companies that offer organic seed. Additionally, if only three companies with organic seed or planting stock exist, a certified operator should not be penalized for not contacting FIVE.**

In our fall 2017 we suggested the following language:

- Minimum of five sources
- 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.

In addition to this suggested sourcing criteria, we also emphasize the need for the guidance to address the dates of organic sourcing attempts. It is important that growers report the date of the inquiry they made to a seed supplier by variety/quantity and the response of the company on the data of inquiry. In our fall comments, we requested that the following criteria also be included in the proposal. As it relates to “evidence of efforts made to source organic seed/planting stock,” we urge NOSB to reconsider adding the following language to the proposal:

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

- 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).

With respect to the role of the buyer/handler sourcing seed (§ 4.2.1 (b)(3)), we support the changes made. Buyers are often certified handlers who contract with producers to grow certain varieties 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. Specifically stating that the buyer’s attempt to source organic seed must become part of the Organic Systems Plan is critical, and will support growers in their ability to collect this information. We want to acknowledge that with the proposed revision to the regulation (requiring continuous improvement), the buyer would also need to demonstrate and document (for the organic producer) improvement in searching, sourcing and use of organic seed/planting stock every year with the goal of achieving full compliance in the use of only organic seed/planting stock.

NOP Guidance 5029

<p>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</p> <p>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.</p> <p>b. Non-compliances should be issued for repeated lack of progress in sourcing organic seed over time.</p>	<p>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</p> <p>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.</p> <p>b. Non-compliances should be issued for repeated lack of progress in sourcing and using commercially available organic seed/planting stock over time. Judgment of a non-compliance can include, but is not limited to, the certifier’s communication detailing commercially availability organic seed/planting stock and continued nonuse by the farmer, the producer’s lack of on-farm seed trials for judging equivalency between non-organic seed and organic seed, and organic seed searches that do not include suppliers who carry organic seed.</p>
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OTA Comments: OTA supports the continued inclusion of 4.4.4 (a) and we do not take issue with the new language added in 4.4.4(b).

NOP Guidance 5029

<p>4.4.5 Certifying agents should review the prevention measures taken to avoid contamination for seed of at-risk crops.</p>	<p>4.4.5 Certifying agents should review the prevention measures taken to avoid contamination for seed of crops at-risk of GMO contamination.</p>
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OTA Comments: OTA agrees with continuing to include this recommendation as slightly revised.

OTHER TOPICS

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 continue to support the use the Organic Seed Finder (www.organicseedfinder.org) as a primary resource for national organic seed availability data. As we have expressed in previous comments, it would be extremely helpful if NOP would engage and further serve the organic community by advocating for the participation and use of the Organic Seed Finder through its marketing materials, certifier trainings and communication channels, and by including an explicit reference in the seed guidance for certifiers, inspectors, and producers to use this database as a seed-sourcing tool. To alleviate concerns of promoting one service over another and to further assist searching efforts, NOP could also include reference to other helpful seed resources such as Pick A Carrot (<https://www.pickacarrot.com/>), ATTRA Directory of Organic Seed Suppliers (https://attra.ncat.org/attra-pub/organic_seed/) and SeedWise (<https://www.seedwise.com/>). Referencing these tools in AMS marketing materials, guidance and certifier trainings would increase their visibility to certifiers and producers, and encourage their use to spur further engagement and investment.

In addition to referencing existing search tools, we are very interested in the option of having certifiers provide organic seed availability of their certified clients to NOP, in such a way as to include this information in a separate field in the NOP 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. If this is feasible, we believe NOP should make such reporting a requirement.

Accredited Organic Certifier and Organic Inspector Training

As stated in our fall 2017 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.

Conclusion

OTA strongly supports an amendment to the NOP regulations to require demonstrable improvement over time, and we urge NOSB to pass this part of the proposal at this meeting. We also strongly support the need to revise NOP's Organic Seed, Annual Seedlings and Planting Stock Guidance (NOP 5029) to not only support this rule change but to reflect the current state of the organic seed industry. We recommend additional work on the proposed revisions to guidance.

OTA is committed to and strongly supports the further development of the organic seed and planting stock industry. We also are committed to finding solutions to meet this objective. 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 continuing work in this important area.

Respectfully submitted,



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

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association