



April 14, 2016

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2648-So., Ag Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-15-0085

RE: Materials Subcommittee – Seed Purity, Next Steps (Discussion)

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the Materials Subcommittee's Discussion Document on the next steps for improving seed purity.

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 organic businesses across 50 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's Board of Directors is democratically elected by its members. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The Materials Subcommittee is requesting feedback on the following suggestions that could help move forward the topic of establishing a seed purity standard:

- **A:** Enabling data collection through NOP guidance for ACAs to collect non-GMO seed purity declarations for non-organic seed or conduct testing when seed tags are not available.
- **B:** Establish a USDA-appointed Seed Purity Advisory Task Force that would design a feasibility study and action plan for collecting data to help shape a seed purity threshold and standard.
- **C:** Strengthen the Organic Seed Requirement in the organic regulations through improved NOP guidance.
- **D:** Start with a Soybean Testing Project that would make it easier to adopt a more tailored proposal in the future.

Summary of OTA's Position

OTA thanks the subcommittee for its willingness to listen to stakeholders and for carefully considering the best path forward. We agree with the subcommittee that the ideas presented should **not** be viewed as mutually exclusive. In fact, we think the suggestions can work nicely together, and we should develop a multi-faceted approach that focuses on: a) strengthening the organic seed requirement, and b) developing a testing framework for meaningful data collection. OTA suggests the following:

- **Organic Seed Requirement:** First and foremost, focus on strengthening the organic seed requirement in the organic regulations. OTA believes this is worth a very strong push and we think

it should be taken up by NOSB. We agree that NOP's seed guidance in March 2013 did not go far enough. The guidance needs to be improved and a practical next step would be a recommendation from NOSB to NOP to revise the guidance to reflect the current state of the organic seed industry and to further address the use of "at-risk" non-organic seed. Increasing support for organic seed lines through a stronger seed requirement is essential to further reducing unintended presence and limiting the extent to which seeds outside of NOP purview are used in certified farming systems. It will also have the added benefit of encouraging further breeding investment in biological "blocking" mechanisms to GM pollen influx for "at-risk" organic crops.

- **Seed Purity Advisory Task Force:** Merge and revise suggestions A & B with a focus on establishing a Seed Purity Task Force. There are substantial logistical hurdles and regulatory road blocks to enabling data collection through ACAs. OTA does not agree with this approach. Any data collection effort that yields statistically significant and meaningful results needs to be designed systematically according to established sampling protocols and testing specifications, and it needs to be conducted outside of the organic compliance system. The project also needs to be adequately funded. For this reason, OTA believes that a USDA-appointed Seed Purity Advisory Task Force is needed to systematically design threshold feasibility studies (per crop), identify partners and develop an action plan. This panel of experts would not only design the framework for data collection but it would also act as an expert panel to interpret the data being collected. The study would be administered by USDA. This, in turn, would help shape a NOSB recommendation to NOP on appropriate crop-specific testing thresholds.
- **Soybean Testing:** This suggestion seems feasible. However, we believe our efforts are best spent on strengthening the organic seed requirement and designing threshold feasibility studies. The Seed Purity Advisory Task Force, however, could look at a soybean pilot test as a starting place.

We offer the following more detailed comments:

As discussed over the past several NOSB meetings, many—including OTA—agree that a seed purity standard is an appropriate critical control point to begin to use analytical methods and standards in organic production to limit GMO presence and meet consumer expectations. Many also believe it is not possible to put forward a workable standard at this time because of various obstacles identified through the NOSB public comment process and a shared need to collect more data to shape an effective and fair standard. We believe that the longer we wait to set limits for controlling the unintended or unavoidable presence of GMOs in organic seed, feed, and crops, the further we fall behind market demand and the longer organic farmers are subject to the variability of the private market vs. the requirements of the organic regulations. Time is of the essence, and additional steps must be taken, carefully, to help keep GMOs out of organic agriculture.

A. STRENGTHENING THE ORGANIC SEED REQUIREMENT

OTA strongly believes that one of the best areas that NOSB can continue its work is through strengthening the seed provisions in the regulation through the guidance process. We agree that NOP's seed guidance in March 2013 did not go far enough, and an excellent next step would be a recommendation from NOSB to NOP to revise the guidance to further address the current state of the organic seed industry and non-organic seed that is at-risk of GMO contamination (e.g. corn, soybeans, alfalfa)

Tremendous strides have been made in the past decade to increase the availability of organic seed and planting stock, yet a 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 percent reported that they used 100 percent 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)

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, almost 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. Therefore, a regulatory change or improved NOP guidance is crucial to help remedy the situation.

OTA was pleased to see the NOP Final Guidance released on March 4, 2013. However, we were disappointed by its content because it left out critical areas that were suggested and strongly supported through the public comment process on the Draft Guidance. 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, the 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 ten-fold and more educational resources and tools exist to support the sourcing and planting of organic seed.

OTA believes that NOP's guidance (NOP 5029) should be revised to more accurately reflect the current state of the organic seed industry, and it should include additional guidance specific to the use of "at-risk" non-organic seed. We believe the recommended steps below are both appropriate and necessary for supporting organic producers, the organic seed sector, and the broader organic food and fiber industry *and* they support existing NOP regulations. Please note that the recommendations below were formed in collaboration with OTA members and the Organic Seed Alliance.

1. NOP's Seed Guidance does not address the prohibition on excluded methods

The regulations require that non-organic seed is non-GMO. However, NOP's guidance on seed is silent on this requirement. NOP's Guidance should reiterate that certified operators may only use non-GMO non-organic seed or planting stock. While the development of a Seed Purity Standard is the ultimate goal, in the interim we request that NOP reiterate the already existing prohibition on excluded methods, and specifically state in the guidance that organic producers must be able to provide ACAs with documentation demonstrating non-GMO status. Only in the absence of an organic equivalent variety *and* documentation to demonstrate its non-GMO status should producers be able to use non-organic seed.

OTA RECOMMENDATION: NOP’s Seed Guidance should be updated at 4.1 (Sourcing of Seeds, Annual Seedlings, and Planting Stock) to provide organic producers with guidance on the use of non-organic, non-GMO seed:

Add an additional section (4.1.6) to the guidance to specify that the organic regulations allow for the use of non-organic seed only if equivalent organically produced varieties of organic seeds and planting stock are not commercially available and they are produced without the use of excluded methods. Organic producers must provide ACAs with supporting documentation demonstrating that non-organic seed is non-GMO.

2. NOP’s Seed Guidance does not require growers to contact more than three sources

Organic Seed Alliance’s *State of Organic Seed* findings show that when certifiers encourage producers to take additional steps to source organic seed beyond consulting three sources, the result is increased organic seed usage. We would like to see producers be required to consult more than three sources.

Many public comments submitted in response to NOP’s draft guidance pointed to “three” sources as inadequate due to the increased availability of organic seed and planting stock varieties. We agree that no less than three sources should be contacted. However, it would be more helpful to emphasize the appropriate number of sources as they relate to the potential number of suppliers of organic seed.

OTA RECOMMENDATION: In addition to specifying a *minimum* of three sources, we urge NOP to adopt the language provided in OTA’s August 12, 2011, comments on the Draft Guidance:

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

1. These sources must be companies that offer organic seed and planting stock.
2. 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.
3. Documentation regarding this search should be maintained as part of record keeping.

3. NOP’s Seed Guidance does not establish organic seed usage as an Organic System Plan goal

There is no guidance in identifying specific Organic Systems Plan goals for reasonable and measurable increases in organic seed usage, including plans for transitioning to organic varieties and reviewing increases by percentage used or acreage planted. While we’re glad the guidance states (section 4.4) that certifiers should review an operation’s progress in obtaining organic seed by comparing current source information to previous years, the document lacks strong language indicating that this is an important OSP goal that moves us toward continuous improvement.

OTA RECOMMENDATION: To improve ongoing efforts to use organic seed, the guidance should be amended to require certifiers to work with producers on gauging measurable and reasonable annual increases in organic seed usage. Our suggestion is based on the 2008 NOSB recommendation and our comments we submitted to NOP on its draft version. OTA urges NOP to add the following language under section 4.2.1(b) of its final guidance:

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 the number of organic varieties of seed and/or planting stock used year after year, rather than the acreage.

4. NOP's Seed Guidance does not address the requirements of the certified buyer (handler) purchasing seed/planting stock for contractual growing purposes.

In addition to growers, NOP's guidance should also apply to certified operations 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 is responsible for sourcing the seed**, the certified handler should be held responsible for determining if the variety is commercially available as organic. 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 seed/planting stock should be raised during inspections and be addressed in the Organic Systems Plan, since these contracts, not farmers, dictate whether organic or non-organic seed/planting stock is purchased and planted. 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 RECOMMENDATION: The final guidance should be amended to apply to handlers that source seed for contractual growing purposes. A 'handler' is defined in the organic regulations as, "Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products."

5. NOP's Seed Guidance does not reference the Organic Seed Finder

Perhaps the most important tools that can help certified operators and certifying agents in their efforts to source and evaluate the availability of organic seed and planting stock is a national database of available organic varieties. Thankfully, such a database now exists (Organic Seed Finder) but we're concerned that it might not be fully utilized by certifiers and certified operations.

OTA Recommendation: The NOP has endorsed, Organic Seed Finder, as a resource for national organic seed availability data. Accordingly, NOP should proactively work to encourage organic seed companies to participate in Organic Seed Finder and should include in the guidance an explicit reference for certifiers, inspectors, and producers to use this database as a seed-sourcing tool. Referencing this tool would bring it to the attention of certifiers and producers, and encourage its use to spur further engagement and investment. We also recommend the NOSB and NOP work together on a process for reviewing organic seed availability each year to determine if and when there is adequate diversity and volume to require the use of organic seed for particular crop types.

OTA strongly supports the further development of the organic seed and planting stock industry. 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 provide guidelines that will help ensure the consistent application and enforcement of organic seed requirements, which, in turn, will promote the production and use of organic seed.

B. DATA COLLECTION & A USDA-APPOINTED SEED ADVISORY TASK FORCE

OTA supports the idea of a seed purity standard. However, it must be established per crop through a careful and deliberate process based on adequate data. OTA expects a threshold will likely need to be established to have a workable seed purity standard. We can expect that any established threshold is going to need to be acceptable to consumers and realistic for seed growers. It would also need to be established on a crop-by-crop basis.

As explained by the subcommittee and supported by numerous public comments, there is shared need to collect more data to shape an effective and fair seed purity standard. OTA agrees. We also emphasize that any data collection effort that will yield statistically significant and meaningful results needs to be designed systematically according to established sampling protocols and testing specifications. The project also needs to be adequately funded. For this reason, OTA believes that a USDA-appointed Seed Purity Advisory Task Force is the place to start. We **do not** agree that the starting place is guidance for ACAs to conduct testing and gather data.

Enabling data collection through ACAs is problematic

There are substantial logistical hurdles and even regulatory road blocks to enabling data collection through ACAs. ACAs do have a unique position in the organic supply chain in that they have access to records that organic farmers maintain and have the authority to go onto organic farms to observe and sample product. ACAs also have legal authority to collect samples to test for residues (including GMO contamination), which can extend to sampling non-organic seed used on organic farms. However, a number of issues arise when considering using this unique authority and sampling ability for data collection purposes:

- ***Statistical Significance.*** Any move forward on a seed purity standard must be backed up by solid data. This data should reflect the actual presence of GMOs in non-organic seed, so that sound thresholds can be established and enforced. ACAs utilize their residue sampling programs to confirm compliance with the organic regulations, not to collect statistically significant data sets. ACAs often target risky operations (e.g. split operations) or risky elements of operations (e.g. borders adjacent to conventional farmland) to test that contamination and comingling prevention strategies are adequate to ensure integrity of organic products. Simply put, testing is a critical tool that certifiers use to determine compliance. Asking ACAs to collect data for a statistically significant data set would require significant re-training of staff and reorientation of residue sampling programs that ACAs have established.
- ***Regulatory Authority.*** The discussion document indicates that ACAs could share the data found from sampling non-organic seed used on organic operations without pursuing compliance action should a positive result be found. We are concerned about the regulatory and accreditation

implications this may pose for ACAs and the operations that were sampled. The discussion document essentially asks ACAs to ignore organic integrity concerns in the name of data collection. All sample results received by ACAs must be responded to according to NOP guidance, and there is no current legal mechanism in place whereby an ACA can ignore evidence that an operation or its products are not in full compliance with the regulations.

- **Confidentiality.** The discussion document also indicates that samples taken by ACAs for data collection purposes could remain confidential to not tarnish or implicate the operations from which the samples were taken should a positive be found. However, the organic regulations at 7 CFR 205.670(f) require that the results of all samples taken by ACAs be made publically available. It is unclear how ACAs would be able to maintain the confidentiality of these results when they are required to make them public as a part of the residue sampling aspect of organic regulations.
- **Resources.** In addition to the significant concerns mentioned above, the one of cost to the certifier both financially and to their human resources is significant. ACAs are currently required to sample a minimum of 5% of their clients on an annual basis, and many only sample the bare minimum at their own expense. We are concerned that any additional required testing for seed purity data collection purposes would siphon off resources from sampling programs aimed at curtailing other significant compliance concerns including pesticide and antibiotic residues on crops and livestock products.

Enabling data collection through a Seed Advisory Task Force is the place to start

A data collection effort that yields statistically significant and meaningful results needs to be designed systematically according to established sampling protocols and testing specifications. The advisory task force we are recommending would be convened by USDA and would not only design the framework for a feasibility study but would also act as an expert panel to interpret the data being collected. This, in turn, would inform a NOSB recommendation to NOP on appropriate crop-specific testing thresholds.

OTA RECOMMENDATION: Establish a seed purity advisory task force appointed by USDA. The primary function of the seed purity task force will be to design a feasibility study based on testing (data collection) that would be administered and carried out by USDA. The study would evaluate a rigorous yet realistic threshold supporting a seed purity standard for non-organic seed. We recommend the task force design a 3-5 year action plan that includes regular updates to NOSB with a final recommendation.

The timeline could look as follows:

1. Advisory Task Force
 - a. USDA appointed task force convened by January 2017
 - b. Design threshold feasibility studies (per crop), identify partners and establish timeline for completing project (by fall 2017 meeting)
 - i. Report to NOSB at spring 2017 NOSB meeting
 - c. USDA (or identified partner(s)) to conduct feasibility studies and collect data that would evaluate and inform the development of a testing threshold per crop for non-organic seed (completion date established by the task force; no later than December 2019)

- d. Recommendation to NOSB including an implementation timeline (by Spring 2020 meeting)
2. Finally, in support of these efforts, we recommend that NOSB request the following assistance from USDA:
 - a. Financial assistance from USDA for all GMO testing conducted under the National Organic Program.

Conclusion

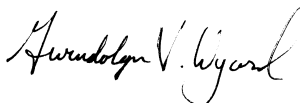
The use of GMOs is prohibited in organic production and handling. OTA continues to be extremely supportive of moving recommendations forward to NOP that will improve the practices used to keep GMOs out of organic seed, feed and crops.

With respect to establishing a seed purity standard, OTA strongly supports NOSB taking a multi-faceted approach in moving this topic forward by developing two separate recommendations to NOP for release prior to the fall 2016 meeting:

- **#1:** Recommendation to NOP on strengthening organic seed sourcing practices through a revision to the NOP's Guidance on Seeds, Annual Seedlings and Planting Stock (NOP 5029)
- **#2:** Recommendation to NOP on convening a Seed Purity Advisory Task Force that would design threshold feasibility studies and act as an expert panel to interpret the data being collected. The task force, in turn, would help shape a NOSB recommendation to NOP on appropriate crop-specific testing thresholds.

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,



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cc: Laura Batcha
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