



BEYOND PESTICIDES

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August 12, 2011

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1400 Independence Ave., SW.
Room 2646 So., Ag Stop 0268
Washington, DC 20250-0268

Re: AMS-NOP-11-0002; NOP-11-02

Dear Ms. Strother:

Thank you for this opportunity to comment on the *Draft Guidance on Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production*. On behalf of Beyond Pesticides, we urge you to take steps to close the loopholes for seeds, seedlings and planting stock and ensure the integrity of organic production, from seed to plant.

Beyond Pesticides, founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and groups around the world.

Guidance on the use of organic seeds and planting stock is overdue. Some organic growers have been using seeds and starts grown with prohibited materials (those not on the National List), which is illegal discourages the growth of the organic seed and planting stock sectors. In addition, the failure to enforce requirements to use organic planting stock has had a negative impact on the development of alternatives to methyl bromide, chloropicrin, and methyl iodide fumigants for strawberries, among others, which would be promoted if a vigorous demand existed.

The need for guidance is pressing and real. The negative health and environmental impacts of the existing loophole in the current use of nonorganic seeds and planting stock are evident in rural communities throughout the country. In one rural community outside Red Bluff, California, residents and farm workers face repeated and ongoing exposure to methyl bromide and chloropicrin pesticide drift as a result of strawberry start production. With appropriate support, this region could support vibrant organic strawberry start production. In

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addition, our pollinators are threatened by the ever-increasing use of seed treatments containing neonicotinoid pesticides that poison the pollen and nectar of the plants grown from such seeds. Organic growers and pollinators would greatly benefit from having ready availability to organic seeds.

I. The guidance document must give positive guidance towards helping growers and certifiers to locate organically grown seeds and planting stock. The NOP, certifiers, growers, and handlers should all adopt a goal of 100% organic seeds and planting stock.

To this end, we support comments of the Organic Seed Alliance. In particular,

- The NOP must support the development of a national seed and planting stock database, as recommended by the NOSB in the 2005 recommendation on commercial availability of seeds and planting stock. The absence of a comprehensive mechanism for sharing information about seed availability and seed needs is the largest obstacle to meeting the goal of 100% organic seeds and planting stock.
- The requirement to contact three sources is inadequate. Although neither we nor the OSA want to require the use of seeds from a national database when they would be inappropriate, the database would, in many cases, make it unnecessary to contact a number of individual sources. Even without the use of a database, there are sources OMRI (Organic Materials Review Institute) and ATTRA (Appropriate Technology Transfer for Rural Areas), which have shortcomings compared to the proposed national database, but can provide information about a number of different companies. Growers should also consult their certifiers.
- The use of 100% organic seed and planting stock should be a goal built into every grower's Organic System Plan. Movement towards that goal should be seen as part of the "continual improvement" principle built into organic standards.
- The guidance needs to provide greater clarity on the consequences of noncompliance.
- Certified handlers who contract with growers must be required to support the organic seed requirement so that growers who pursue the goal of 100% organic seeds are not penalized.
- We support a task force on organic seeds and planting stock that would look at impediments to use of organic seeds and planting stock as well as threats to organic seed integrity, such as unwanted genetically engineered material and the concentrated ownership of plant genetic resources.

The 2005 NOSB recommendation on commercial availability of seeds and planting stock also proposed a condition for equivalence of varieties: ***"An organic variety is considered to be equivalent to a specific non-organic variety if it meets the operation's required site-specific agronomic and marketing characteristics."*** This should be used to guide growers and handlers in developing contracts. The national database should include information on equivalent varieties.

II. Commercial availability requirements must be enforced.

The NOP should provide clear guidance that requires organic growers to seek organic seed and plant stock, and certifiers to proactively insist upon organic material when possible. We are concerned about a lack of enforcement, which leads to a lack of availability of seeds and planting stock.

A recent example of this lack of enforcement is provided by the efforts of Prather Ranch to sell organic strawberry plants.¹ Prather Ranch sold organic strawberry plants grown in a ten-year rotation, which helps prevent the diseases for which conventional growers use fumigants like methyl bromide or methyl iodide. In spite of an impressive growth in the production of organic strawberries, Prather Ranch was unable to sell many of their plants. Lacking clarity, certifiers were not requiring large strawberry growers to use organically grown plants. This is doubly unfortunate because the conventional plants are grown in soil in which the highly toxic fumigants, including methyl bromide, chloropicrin, and methyl iodide are used.

The guidance should follow the 2005 NOSB recommendation on commercial availability of seed and plants, which offered the following suggestions relating to the enforcement of the organic seed and planting stock provisions:

- “An organic variety is considered to be equivalent to a specific non-organic variety if it meets the operation’s required site-specific agronomic and marketing characteristics.”
- “For an organic producer to receive an allowance to use non-organic seed or planting stock to produce a crop that can be sold or labeled ‘organic,’ the producer must provide records to the certifying agent as a part of the organic system plan demonstrating lack of ‘commercial availability.’ These records will provide:
 - “Justification for use of non-organic seed or planting stock, based on the attributes of appropriate form, quality, and quantity of the seed or planting stock;
 - “A description of the site-specific agronomic or marketing characteristics required by the operation;
 - “Written evidence of efforts to locate and source organic seed by contacting at least three suppliers of organic seed – written evidence may include letters, faxes, e-mail correspondence, and phone logs; or
 - “Written description of trials comparing organic and non-organic seeds or planting stock. If the producer makes a claim that the varieties of organic seed are not equivalent to non-organic seed that the producer prefers to use, supporting documentation must be provided to the certifying agent. (Certifiers may grant an allowance from the organic seed requirement if an applicant or operator conducts ‘on farm’ trials comparing organic and non-organic seed

¹ Source for this story is the Valley Flora blog <http://www.valleyflorafarm.com/content/week-4-june-28>

varieties. If so, documentation of ‘on farm’ trials should be recorded in the operation’s organic system plan.)”

We support the NOSB recommendation rather than the proposed guidance, which says, “The following considerations could be acceptable justifications for sourcing nonorganic seeds and planting stock.” It then details form, quality, and quantity considerations. There is a significant difference between the NOSB approach and that of the proposed guidance. The NOSB recommendation would *require* justification based on these attributes, offering a definition of equivalence as a basis of the justification, while the proposed guidance makes these attributes *permissible* reasons for using non-organic sources. As we stated above, the establishment of a national database would simplify the search. Even without the use of a database, sources like OMRI, ATTRA, and the certification agency should also be consulted.

The 2005 recommendation continues:

- “Buyers of organic agricultural products who contractually require organic growers to grow selected varieties should require or provide organic seed or planting stock. When a producer is contractually obligated by a buyer of organic agricultural products to use a variety or varieties that are not currently available as organically grown seed or planting stock, the producer must receive written documentation from the buyer describing:
 - (a) the unique characteristics sought by the buyer; and
 - (b) the non-availability or non-equivalency of organic varieties.”

It is important that buyers become part of the process as the NOSB recommends so that they do not inadvertently promote the purchase of non-organically produced seeds and planting stock. This is particularly important when the buyer is a certified handler.

The NOSB recommendation also says:

- “In granting an allowance that organically produced seed or planting stock is not commercially available, the accredited certifying agent shall:
 - “Evaluate the applicant’s claim that no organic seed or planting stock was commercially available in the equivalent variety, form, quality, or quantity needed;
 - “Validate that the applicant has properly and completely documented that the organic seed or planting stock was not commercially available. This includes validation of the documentation producers receive from buyers who require the use of non-organic varieties.
 - “Require certified operators to update commercial availability information in each organic system plan update; and
 - “Maintain and annually submit to the National Organic Program an up-to-date list of specific non-organic crop varieties permitted by each agency.”

The proposed guidance falls short of providing necessary direction to certifiers. We support this NOSB recommendation because it would require certifiers to act proactively to insist upon organically sourced material whenever possible.

The NOP needs to provide guidance to Accredited Certifying Agents (ACAs) concerning when the failure to source organic seeds or planting stock becomes a major noncompliance, and what evidence is needed to pursue suspension or revocation, based on use of non-organic seeds/plants. Inconsistency in this matter can result in a lack of fairness to growers, especially if buyers shop around for those who will use non-organic seeds and plants.

III. Even when seeds and plants are not commercially available, organic growers must not use seeds and plants grown with prohibited substances.

The regulations state (emphasis added):

§ 205.204 Seeds and planting stock practice standard.

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

That,

(1) Nonorganically 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;

(2) Nonorganically produced seeds and planting stock ***that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production*** may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;

(3) Nonorganically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with §205.290(a)(2);

(4) Nonorganically produced planting stock to be used to produce a perennial crop may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management for a period of no less than 1 year; and

(5) Seeds, annual seedlings, and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phytosanitary regulations.

There is, therefore, no excuse for using plants that have been treated with prohibited substances. This includes, for example, plants grown in fumigated soil or from seeds treated with neonicotinoid pesticides.

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Perennials grown as annuals should be treated as perennials in the first year of growth. The proposed guidance states:

“Certain perennial crops, such as strawberries or raspberries, may be grown by certified operations as annuals rather than perennials. On these operations, new planting stock is used each year to produce one harvest season of an organic crop. In such cases, the planting stock should be considered annual planting stock, and may be sourced per the requirements at § 205.204(a)(1-2).”

This guidance would permit growers to repeatedly plant non-organic plants and sell the produce as organic.

Instead, perennials grown as annuals should be treated as perennials in the first year of growth, which would prohibit growers from selling the products of non-organically produced plants as organic and would promote the use of organically grown plants. **Regardless of whether perennials grown as annuals are treated as annual planting stock as proposed or as perennial stock as we would prefer, they must be held subject to commercial availability standards, and produced without prohibited substances.** Therefore, for example, organic strawberry growers should never be allowed to sell as organic strawberries grown in soil fumigated with prohibited substances.

We are pleased to see this draft guidance and hope that the final guidance document will support stronger enforcement of the organic seeds and planting stock requirements, leading to a more vibrant organic seed and planting stock sector and hence more sustainability in organic agriculture.

Sincerely,



Terry Shistar, Ph.D.
Board of Directors