



BEYOND PESTICIDES

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October 11, 2016

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave., SW
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Re. CS: Strengthening Organic Seed Guidance Discussion Document

These comments to the National Organic Standards Board (NOSB) on its Fall 2016 agenda are submitted on behalf of 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, Beyond Pesticides 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 the world.

NOP's broad exemption allowing the use of conventionally produced seed maintains inconsistency in the enforcement of organic standards. Enforcement must be a first step to strengthening the organic seed requirement –certifiers must enforce consistent and uniform adherence to the present organic seed requirements.

NOP auditors must provide training and better monitor how certifiers oversee seed exemptions. Blanket exemptions, after three cited seed sources fail to turn up organic seed, are not acceptable. Complete seed lists of requests for exempted varieties and documented efforts to source and trial organic seed must be included in the farmer's Organic System Plan (OSP).

The goal should be a requirement for virtually 100% organic seed use on organic farms. However, we understand that exceptions will on occasion arise to allow for seed that is not available as organic, and we advocate for necessary allowances to ensure organic farmers have full access to diverse seed genetics.

Compliance with the organic seed requirement and increased usage of organic seed by organic farmers will not only help mitigate GE contamination, but will also benefit the overall economic success of farmers, and the ecological well-being and resilience of organic farms.

The Crops Subcommittee asks three questions.

1. Please provide input on the key points above.

We support all of the key points outlined in the discussion document.

2. Are there additional areas of the Seed Guidance in NOP 5029 that could be strengthened?

The absolute prohibition on non-organic seeds that applies to sprouts should also apply to other crops not grown in soil.

Like sprouting, the production of microgreens is essentially a way of processing seeds.

Microgreens are produced quickly, and one cannot expect that systemic chemicals in the seeds will disappear in the process.

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.

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.

The guidance should follow the 2005 NOSB recommendation on commercial availability of seed and plants.

The NOSB 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 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 current 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. 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 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 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,

- 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 we do not 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.

3. Are there ways to encourage increased organic seed use among larger producers?

Enforcement must target the largest producers –over 160 acres– who, according to the *State of Organic Seeds* and the discussion document, are using relatively little organic seed. Targeting the largest growers has impacts beyond increasing the acreage of crops produced with organic seed. More importantly, it has a positive impact on the organic seed industry. Instead of giving those producers a free ride, allowing them to use nonorganic seed when their favored variety is not available, those growers must be required to work with seed growers and buyers to produce appropriate varieties. They should not be able to exempt themselves "when an equivalent organically produced variety is not commercially available" more than two years –or three for biennial crops.

Thank you for your consideration of these comments.

Sincerely,



Terry Shistar, Ph.D.
Board of Directors