



# BEYOND PESTICIDES

701 E Street, SE ■ Washington DC 20003  
202-543-5450 phone ■ 202-543-4791 fax  
info@beyondpesticides.org ■ www.beyondpesticides.org

September 17, 2018

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 and Clarifying the Requirements for the Use of Organic Seed**

### **MS: Protecting the Genetic Integrity of Seed Grown on Organic Land, Excluded Methods Terminology**

These comments to the National Organic Standards Board (NOSB) on its Fall 2018 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.

The issue of **protecting the genetic integrity of seed grown on organic land** is related to two others that are being addressed by the Materials Subcommittee –excluded methods terminology and strengthening and clarifying the requirements for the use of organic seed. **Excluded methods terminology** should be maintained on the NOSB agenda to keep up with a fast-moving biotechnology industry. **Strengthening and clarifying the requirements for the use of organic seed** is important to eliminate inconsistencies in the enforcement of NOP’s broad exemption that allows the use of conventionally produced seed in certified organic production.

Addressing these two other issues adequately will help to ensure that the presence of plants grown from genetically engineered (GE) seeds is greatly reduced on organic farms. The issue of protecting the genetic integrity of seed grown on organic land is concerned with those instances when organic producers plant nonorganic seed, so any efforts to strengthen the requirements for organic seed would tend to eliminate the problem.

## **Protecting the genetic integrity of seed grown on organic land**

We agree with the Materials Subcommittee (MS) that it is important to protect the genetic integrity of organic crops. In this context, it is important to have a protocol for those cases in which organic seed is not available. Much of the MS proposal makes sense. We agree that it makes sense to view any system adopted now as a starting point, to be improved as we learn more. We agree that it makes sense to start with corn, which is the most at-risk crop, and to extend the process to other at-risk crops. However, we believe that, rather than allowing the organic grower to choose a degree of purity –up to “over 5%” –it would make sense to create a minimum standard of purity and then ratchet down the amount of genetic contamination.

## Excluded methods terminology

We support the continued inclusion of excluded methods terminology on the NOSB work agenda. Genetic technologies develop quickly, and the NOSB must continuously monitor them on behalf of the organic community. We agree that technologies used to manipulate the genetic code in a manner that is outside traditional plant and animal breeding should remain prohibited in organic production.

We support the proposal to list transposons as an excluded methods. Transposons are mobile genetic elements that have been used to genetically engineer plants and animals. They are “discrete pieces of DNA with the ability to change their positions within the genome *via* a 'cut and paste' mechanism called transposition,”<sup>1</sup> and thus clearly meet criteria 1 and 3 for excluded methods, as established in the Fall 2016 recommendation.<sup>2</sup> Transposons can also be used to create animal vaccines. Genetically engineered vaccines are not currently prohibited in the organic program.

## Strengthening and clarifying the requirements for the use of organic seed

We support the proposed changes to the regulations and guidance in NOP 5029. We also support efforts to quantify the extent of GE contamination and provide transparency in GE content of non-organic seeds that do not further burden organic growers. Because of inconsistencies in the enforcement of NOP's broad exemption that allows the use of conventionally produced seed in certified organic production, the integrity of the organic label is jeopardized. Enforcement must be the first step to strengthen the organic seed requirement –certifiers must enforce consistent and uniform adherence to the present organic seed requirements. Therefore, we support the proposals made by the Crops Subcommittee. In particular, we support seeking a rule change to the seed practice standard §205.204, which will require a demonstrable improvement over time until 100% organic seed use is achieved, **and** strengthening the guidance NOP 5029 in ways that are consistent with the existing rule.

## There are 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;

---

1 Ivics, Z. and Izsvák, Z., 2010. The expanding universe of transposon technologies for gene and cell engineering. Mobile DNA, 1(1), p.25.

<sup>2</sup> Excluded Methods Terminology Recommendation, November 18, 2016.

<https://www.ams.usda.gov/sites/default/files/media/MSExcludedMethods.pdf>.

- (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 plausible justification 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. As a result, Section 4.1.2 of the guidance should state, “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 Methods and prohibited materials.*” (Underlined language added to CS proposed language.)

Thank you for your consideration of these comments.

Sincerely,



Terry Shistar, Ph.D.  
Board of Directors