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Room 2648-S, Mail Stop 0268
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RE: Crops Subcommittee Proposal: Strengthening the Organic Seed Guidance April 2019

Organic Seed Alliance (OSA) appreciates the opportunity to provide comments on an improved version of the Crops Subcommittee’s Proposal: Strengthening the Organic Seed Guidance (February 19, 2019). OSA is a mission-driven organization that works nationally to advance ethical seed solutions to meet food and farming needs in a changing world. Our research, education, and advocacy programs foster seed systems that are responsive to the needs of organic agriculture, resulting in more organic seed and more skilled organic seed producers.

We support the subcommittee’s revised recommendations for strengthening the seed and planting stock guidance document and encourage the NOSB to pass it.

We are pleased to see a stronger proposal for strengthening the organic seed guidance following the passage of a regulatory update to the organic seed requirement last fall. What follows are additional comments and suggested edits for the subcommittee to consider.

4.1 Sourcing of Seeds

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.**

- **OSA’s comments:** We agree that this documentation is needed for at-risk crops (crops that have a genetically engineered event in the marketplace that buyers are testing for). The subcommittee clarifies this more narrow interpretation of this guidance language in the “Public Comment and Subcommittee Response” text that follows in the proposal, stating: “This statement provides clear guidance to all NOP certifiers, both foreign and domestic, that providing this proof is needed when nonorganic seed is planted of a type that has a GMO equivalent.” We believe the statement could more clearly state that this documentation relates to at-risk crops only. Otherwise, out of context from the subcommittee’s comments, it’s unclear if this documentation is required for all conventional varieties, only at-risk crops (where companies are testing for GMO events), or non-traceable methods. Clarity on what kind of documentation, from whom, and for which types of crops would strengthen this guidance.

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 nonorganic 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.~~ If trials are not performed, the producer can use catalog or website seed descriptions, to document there are no organic seeds that have equivalent characteristics to the nonorganic seed in use.

- **OSA's comments:** We support the recommendation at 4.1.2(c) clarifying the role that variety trials can play in identifying equivalent organic varieties or in determining a lack of equivalent options. We also support the new recommendation to strike the language regarding horticultural crops. As written, this sentence is confusing, appears out of context, and seemingly weakens the recommendation to conduct variety trials. We still believe that referencing catalog and website descriptions is unnecessary and seemingly undermines the recommendation to conduct trials. It should also be noted that beyond conducting on-farm trials, there are other ways to access variety trial data, including regional university trials or those conducted by seed companies. The guidance should acknowledge other routes to accessing variety performance data.

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.~~

- **OSA's comments:** We very much support striking the language above in 4.1.3. We appreciate this change and agree with the subcommittee's decision to address the presence of GMOs in seed separately from this proposal. We believe this proposal should remain focused on fostering more consistent enforcement of the organic seed requirement.

4.1.6 Use of non-organic planting stock to produce organic crops is subject to commercial availability as per §205.204(a)(1). If planting stock is from a non-organic source and is used to produce perennial crops, then that planting stock may be sold, labeled or represented as organic planting stock **or an organic vegetative crop only** after 12 months of organic management §205.204 (a)(4).

- **OSA's comments:** This addition provides more confusion than clarity. Defining “vegetative crop” would help. Alternatively, the following edit recommended by CCOF provides more clarity:
 - 4.1.6 Use of non-organic planting stock to produce organic crops is subject to commercial availability as per §205.204(a)(1). If planting stock is from a non-organic source and is used to produce perennial crops, then the vegetative harvest from that planting stock may be sold, labeled or represented as organic ~~planting stock or an organic vegetative crop~~ **only** after 12 months of organic management §205.204 (a)(4).

4.2 Recordkeeping for Organic Producers

4.2.1 The following records should be maintained by organic producers:

4.2.1 (a) A list of all seed and planting stock, indicating any non-organic seeds or stock used, and the justification for their use including lack of equivalent variety, form, quality or quantity considerations. ~~Justification for use of varieties needs to be specific to each variety on the list and which issue (form, quality, quantity, or equivalence) is the reason.~~ Records describing on-farm

trials, **or other descriptions illustrating seed characteristics**, can be used to demonstrate lack of equivalent seed or planting stock varieties/cultivars for site- specific conditions.

- **OSA's comments:** Regarding the stricken language above, we understand that such reporting could prove tedious for highly diversified operations. We support removing this level of specification for certifiers since the NOSB has formally recommended that the NOP update the seed regulation at §205.204 to require demonstrated improvement each year. This regulatory improvement underscores the importance of tracking, monitoring, and enforcing the seed and planting stock requirement in a reasonable and measurable way.

4.2.1 (b)

b. The search and procurement methods used to source organic seed and planting stock varieties, including:

1. Evidence of efforts made to source organic seed and planting stock varieties should include but is not limited to:

(i) **Documentation of contact with at least three or more seed or planting stock sources to ascertain the availability of equivalent organic seed or planting stock, including date, variety requested, quantity of seed, as well as if the seed is available organically, or was out-of-stock.**

(ii) **Improved timeliness of seed/planting stock ordering by documenting the date(s) of orders. Earlier ordering can result in a greater chance of organic seed/planting stock availability. For larger orders, suppliers need to be given sufficient lead time to provide the quality, quantity and variety/cultivar within the timeframe needed by the organic producer.**

(iii) **Work with seed/planting stock suppliers that provide a quick response of organic availability, to enable the producer to request seed, in a timely manner, of other suppliers if organic seed was not available from the first supplier.**

(iv) **Demonstrate an increase in the percentage of organic seed/planting stock used over time by the operation.**

(v) **Search suppliers that ~~are known to~~ carry organic varieties or cultivars of the type they seek.**

(vi) **Discuss and document their desire to purchase equivalent organic varieties or cultivars with their current nonorganic suppliers.**

(vii) **Failure to demonstrate improvement in sourcing organic seed/planting stock over time may result in additional seed/planting stock sources being required or additional steps taken to procure organic seed/planting stock, by the organic certifier.**

~~Five sources must be contacted for seed of crops at risk for excluded method contamination.~~

- **OSA's comments:** While we would have liked to see a minimum of five sources from the previous proposal remain, we support emphasizing the quality of seed and planting stock searches over the quantity contacted, and thank the subcommittee for these improvements. It is helpful to see examples of search activities described here in order to provide certifiers more options for judging if seed searches are adequate or should be improved. We also appreciate the additional points added to this proposal in the way of encouraging timeliness of seed/planting stock ordering and demonstrating a measurable increase in organic seed/planting stock used over time. We suggest strengthening some of this language per the highlighted text above.

4.2.1 b. 3.

If seed/planting stock is sourced or mandated by the buyer of a contracted organic 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 could include:

(a) The handler's organic search documents there are no organic equivalents in quality, quantity or function, to the nonorganic seed/planting stock they require.

(b) The handler has discussed the development of an equivalent organic seed/planting stock source with their nonorganic seed supplier, as well as with organic seed breeders.

(c) The handler seeks out organic growers, either those that are contracted to grow organic crops from that nonorganic seed/planting stock source, or known organic growers who are experienced in seed/planting stock production, to trial production of an organic equivalent variety/cultivar.

(d) The handler clearly documents that mandating use of nonorganic seed/planting stock is not solely based upon the possibly higher monetary cost of an organic equivalent variety.

(e) The handler can be required to illustrate they have performed the items required of producers in 4.2.1 (b), where the certifier feels this is appropriate, in order to achieve the goal of full compliance in the use of only organic seed/planting stock.

- **OSA's comments:** We view this new language as an improvement. It's important to note, however, that organic farmers are still being held responsible for the practices of others. To make more progress in increased sourcing of organic seed, the role of buyers directly involved in seed decisions will need to support organic producers in meeting the seed requirement. The measures above are a place to start. One additional challenge is that not all buyers are certified organic handlers and therefore can't be held accountable through the review and inspection process.

4.4 Role of Certifying Agents

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

(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.

(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 noncompliance can include, but is not limited to:

(i) The certifier's communication detailing commercially availability organic seed/planting stock and continued non-use by the farmer

(ii) Organic seed searches that do not include suppliers who carry organic seed/planting stock of that specific crop.

(iii) The producer's lack of on-farm seed trials, or reference to descriptions, for judging equivalency between nonorganic seed and organic seed.

(iv) Return to nonorganic seed/planting stock use for a crop, if the organic equivalent seed/planting stock was not documented as having a significant yield, market or other loss.

- **OSA's comments:** We are supportive of this language and appreciate the additional language that clarifies what constitutes a noncompliance.

4.4.5 Certifying agents should review the prevention measures taken to avoid contamination for seed of crops grown by the organic operator, at-risk of GMO contamination.

- **OSA's comments:** We are supportive of this language given the important role that on-farm seed saving and growing plays in operators' ability to have the organic seed they need.

Organic Seed/Planting Stock Database

OSA agrees that a central clearinghouse of organic seed availability information is essential to more consistency in locating organic seed and verifying compliance with the regulation. We support exploring ways that the NOP can facilitate the collection of organic seed data. Missing from the discussion in this proposal is that the Organic Seed Finder website, managed by the Association of Official Seed Certifying Agents (AOSCA), is a platform that already exists. Our *State of Organic Seed* (2016) findings show that 95% of organic certifiers already point their clients to this website as a resource for finding organic seed. We would like the crops subcommittee to explore ways that certifiers and/or the NOP can work with AOSCA to broaden the list of variety offering on this site.

Accredited Organic Certifier and Organic Inspector Training

We believe that regular trainings related to the commercial availability clause will greatly benefit certifiers and inspectors, and build off an improved NOP guidance document. Our ideas for organic seed trainings include providing:

- Clarity on the rule and guidance on measuring progress annually in the context of continuous improvement.
- Data that help certifiers understand ongoing needs and improvements in organic seed availability, including resources that help growers source organic seed and conduct trials.
- Instruction on how to discuss and evaluate on-farm variety trials with operations to help identify equivalent varieties in the marketplace, and sourcing variety trial data outside of on-farm trials (e.g., accessible university and company trial data in a grower's region).
- Examples of non-compliances that builds off the recommendations in this proposal.
- Instruction on what documentation regarding excluded methods per 4.1.2 above is required, what it looks like, and who provides it.

We are collaborating on organic seed resources for certifiers in partnership with the Accredited Certifiers Association, and will have a new publication completed on this topic soon.

Summary

We are pleased to see past public comments incorporated into this most recent proposal, and hope the NOSB will support its passage. Improving the sourcing of organic seed will have far-reaching impacts beyond helping organic operators meet a regulatory requirement. More consistent enforcement, and more sourcing of organic seed, will lead to more investments in organic plant breeding and seed production, and ultimately more optimal varieties for organic farmers. The integrity of the organic label begins with this critical first link in the organic production chain.

Sincerely,



Kiki Hubbard
Director of Advocacy & Communications