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October 4, 2018

Ms. Michelle Arsenault, Special Assistant
National Organic Standard Board
USDA–AMS–NOP 1400 Independence Ave. SW.,
Room 2648-So., Mail Stop 0268
Washington, DC 20250–0268

Re: Docket Number: AMS-NOP-18-0029
Crops Subcommittee Proposal on Strengthening the Organic Seed Guidance

Dear Ms. Arsenault:

Thank you for the opportunity to provide comments to the National Organic Standards Board (NOSB) Crops Subcommittee (CS) on the Strengthening the Organic Seed Guidance Proposal. The Accredited Certifiers Association (ACA) is a nonprofit educational organization, and our membership includes 54 USDA Accredited Certification Agents and over 90% of US based certifiers accredited by the USDA.

We appreciate the time the CS has put into this topic. Because we agree it is an important conversation, the ACA formed a working group in 2018 to answer many of the same questions the proposal seeks to address. Many of our proposal responses are taken from a draft Best Practices document that the working group has been working on. We also requested feedback from our general membership.

Below we offer comments on each section of the proposal:

Regarding Proposal 1.

To amend the National Organic Regulations §205.204 Organic seed and planting stock practice standard as follows:

(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;

(i) Improvement in searching, sourcing, and use of organic seed/planting stock must be demonstrated every year with the goal of achieving full compliance in the use of only organic seed/planting stock.

The ACA agrees with the general principle of continuous improvement in searching, sourcing, and use of organic seed. However, continuous improvement should be evaluated in terms of longer-term patterns, as opposed to strict year-to-year comparisons. This will ensure that growers are not punished because of one-time failure that is beyond their control (for example, a long-time supplier of organic seed going business or having trouble sourcing a seed in a particular year).

We appreciate the CACS's clear intention to develop language that is "sufficiently open ended to allow for farmers to use nonorganic seeds as long as they demonstrate their organic seed search is valid and improving." However, the language of the current recommendation requires improvements in searching, sourcing, *and* use. *And*, not *or*. A strict reading suggests that improvements in all three areas must happen every year.

Based on these two observations, we recommend the following language instead:

(i) Continuous improvement in use of organic seed must be demonstrated over time with the goal of using only organic seed and planting stock. When non-organic seed is used, growers must demonstrate that their organic search is valid and improving.

Regarding Proposal 2a.

We support the CACS's withdrawal of the previous recommendation regarding NOP 5029 - 4 Policy. The previous recommendation stated, "**Producers must prevent and avoid contamination from excluded methods in seed of at-risk crops...**" We agree with the commenters who said producers shouldn't be responsible for the genetic contamination of seed that they purchase as certified organic and affirm that ACAs already require documentation that non-organic seeds are non-GMO.

Regarding Proposal 2b.

The recommendation for language added to NOP 5029 - 4.1.2 reads: "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. **When there is a risk of excluded method contamination in seed production, the certified operation may ask the seed supplier for a non-GMO level of purity assurance, and communicate this information to their organic certification agency.**"

Members of the ACA working group on this topic arrived at varying interpretations of this language. Some think it means that certified operations may ask the seed supplier of *organic* seed for a non-GMO level of purity assurance, but some think it refers to suppliers of non-organic seeds. We would like to see this language removed.

Regarding Proposal 2c.

On the subject of variety trialing, we support the current recommendation for inclusion in NOP 5029 - 4.1.2(c) and 4.1.2(d):

§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.

§4.1.2(d) Documentation of these trials must be available at the annual inspection. This documentation should include which seed characteristics are desired, and be based upon the varietal benefits of the current nonorganic seed/planting stock in use. The varietal characteristics discovered during the on-farm trial, of both the nonorganic seed/planting stock and the organic seed/planting stock trialed, can be tracked in a simple table or spreadsheet detailing the specific characteristics sought, and whether or not the various varieties grown contained those characteristics.

In general, we support this idea. However, there was some confusion related to the sentence that reads: "Horticultural crops, which may have specific flavor profiles, size, color, or other characteristics, can also be shown to not have an equivalent variety through descriptions provided in seed/planting stock catalogs or websites." Does this mean that trials could be used to show that crops did not actually yield the effects described in the catalogs? That concept would be sensible but the language is not entirely clear.

Regarding Proposal 2d.

On the proposal for new language in NOP 5029 - 4.1.3:

4.1.3 d. Contamination from GMO consideration: non-organic seed can be used if there is no organic seed available of equivalent variety with the desired level of purity from GMO contamination.

We support this concept if revised to ensure that in these cases, the non-organic variety can be shown to have a higher level of purity from contamination compared to the organic variety. Otherwise, there is no guarantee that the actual level of contamination is reduced by the alternate seed use.

Regarding Proposal 3a.

The ACA agrees with the CACS' decision to remove the proposed language in NOP 5029 - 4.2.1, which stated, 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. We agree this would be overly burdensome to diverse growers. While it makes sense to encourage the practice in general, when it comes to growers with a large number of seed varieties, a standard operating procedure that is documented in the OSP and auditable by the inspector or certifier is sufficient.

Regarding Proposal 3b.

We disagree with the recommended language in NOP 5029 - 4.2.1(b). While the ACA's Fall 2017 NOSB comments supported increasing the seed search to five sources for at-risk crops, a working group formed in 2018 agreed it is more important to verify that seed searches are limited to sources that actually supply organic seed. (See below.) Additionally, validation of seed search quality would be greatly enhanced through use of a comprehensive organic seed database funded or established by the NOP.

Regarding Proposal 3c.

The current proposal for language in NOP 5029 - 4.2.1(b)(1) states:

ii. Sources should include companies that offer organic seeds and planting stock.

We would like to see this taken a step further to state: "Sources should *be limited* to companies that offer organic seeds and planting stock."

Regarding Proposal 3d.

We support including the following language in NOP 5029 - 4.2.1(b)(1):

iii. 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.

Regarding Proposal 3e.

While many ACA members feel the onus should really be on the crop buyer in these situations, we recognize that not all buyers are certified organic and therefore cannot be held accountable through the inspection and review process. And so, it essentially falls on the producer to maintain the documentation after holding the buyer accountable in providing it to them. We believe it's important to address this situation, which has been an area of confusion and inconsistency, and so we can support the proposal as written by the Crops Subcommittee:

3. If seed/planting stock is sourced or mandated by the buyer of a contracted 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 must be comparable to that required of the producer who sources their own seed/planting stock.

Regarding Proposal 4a.

The current recommendation for language at 4.4.4(a) reads as follows:

a. If sufficient progress is not demonstrated a certifying agent may ask for a corrective action plan including the following; additional research for seed sources, variety trials, or additional steps to procure organic seed.

We support this concept.

Regarding Proposal 4b.

The current recommendation for language at 4.4.4(b) reads as follows:

b. Non-compliances should be issued for repeated lack of progress in sourcing and using commercially available organic seed/planting stock over time. Judgement of a noncompliance can include, but is not limited to, the certifier's communication detailing commercially availability organic seed/planting stock and continued non-use by the farmer, the producer's lack of on-farm seed trials for judging equivalency between nonorganic seed and organic seed, and organic seed searches that do not include suppliers who carry organic seed.

We support this and encourage wording that describes required improvement "over time," as opposed to "every year" as we have previously stated. We also support certifiers providing growers with information related to options for obtaining organic seed. The ACA Working Group on this topic is drafting a list of organic seed suppliers, which certifiers will be able to use to verify organic seed search activities, and which certifiers could also distribute in PDF form to their growers.

Regarding Proposal 4c.

The current recommendation for language at 4.4.5 reads as follows:

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

This is already standard process for certifiers, so the language seems somewhat unnecessary. Also, the CS discussion of the language makes it clear that the guidance pertains to those producing and distributing seed -- as opposed to those purchasing and planting the seed -- the language of the proposal doesn't really make that distinction clear.

Other Items

The ACA loudly echoes the Crops Subcommittee's support for the development of a comprehensive organic seed database and its encouragement for the NOP to consider how the Organic Integrity Database could include or feed into such a database.

In regard to training on issues related to improved searching and use of organic seed: an ACA working group is currently working on certifier Best Practices. This will be subject to feedback from the entire ACA membership as well as the National Organic Program. It includes a form that can be used to adequately record seed search activities, and a database of organic seed suppliers that can be used by our certifier members. Our intention is to provide training on this topic at the upcoming Annual Certifier Training in Greenville, South Carolina in January of 2019.

Thank you again for your work on this topic and for the opportunity to provide comments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jennifer Cruse".

Jennifer Cruse
ACA Coordinator