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National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave., SW.,
Room 2642-S., Mail Stop 0268
Washington, DC 20250-0268

Submitted via www.regulations.gov

RE: Docket: [AMS-NOP-16-0100](#) NOP-16-11

NOSB Crops Subcommittee Proposal on Strengthening the Organic Seed Guidance (NOP 5029), February 15, 2017

Dear NOSB members:

Thank you for the opportunity to provide comments on the Proposal on Strengthening the Organic Seed Guidance (NOP 5029). MOSA certifies approximately 2000 organic operations throughout the United States. The Proposal identifies several seed crops that are at high risk of GMO contamination. Based on our best available data, the following number of MOSA producers grow these crops:

- corn - 1400 (includes popcorn, sweet corn, blue corn and field corn)
- soybeans - 480
- canola - 3
- alfalfa - at least 1400 (as some certificate listings of hay likely include alfalfa)
- beets - 300
- chard - 260
- summer squash - 200

MOSA and MOSA-certified clients clearly have a vested interest in protecting the organic integrity of crops at risk of GMO contamination. We recognize the foundational importance of organic seed for organic farming systems and appreciate the work of the NOSB Crops Subcommittee to clarify and strengthen the Organic Seed Guidance and to provide compliance tools for certifiers to better enforce the seed practice standard. MOSA strongly supports improved guidance on organic seed use. Our comments on the specific proposal are guided by the following principles:

- MOSA supports guidance that helps to foster and enforce organic integrity and to cultivate consumer trust in the organic label.

- MOSA endorses the guiding principle of “sound but sensible,” striving to not overburden organic operations or certifiers with onerous recordkeeping requirements, especially for those operations for which compliance is not in question. We support guidance that allows us to impose additional requirements in cases where compliance is potentially in question.
- MOSA would like to consider any seed guidance in the context of the larger picture of increasing awareness of GMO contamination of non-GMO crops and express concern that the current responsibility for preventing GMO contamination unfairly burdens organic and non-GMO producers.

MOSA’s Response to the Discussion:

Thank you for noting the NOSB’s plan to develop a future discussion document, planned for fall 2017, to address seed purity from excluded methods. As MOSA has previously commented, unfortunately, in the current Midwestern agricultural paradigm, GMO material, like pollen, is practically everywhere. It is not clear that existing standards speak to the incidental contamination of organic products by modified genetic material. We have a number of concerns about this issue, including the practicality and effectiveness of the suggested prevention strategies, uncertainty as to future expectations for enforcement, the practicality of enforcement, and the impact of the prevalence of GMO technologies on “Organic is non-GMO” messaging. We are concerned that pursuing additional testing for GMOs without establishing acceptable levels of contamination may lead to increased disruption in the industry and devaluing of the USDA Organic Seal. Additionally, we are concerned that the burden of contamination would be unjustly borne by organic operators. We look forward to further discussion around this important issue.

Thank you for also raising questions about the Organic Seed Finder resource, managed by the Association of Official Seed Certifying Agencies (AOSCA). You put forward various alternative options that may be more complete. One proposed option is having certifiers provide data regarding certified clients that have organic seed available. MOSA already reports this information to some degree. We include certified products in our report to the NOP, though we do not always list variety and do not report quantities available. We’re unsure of the value submitting additional data would bring, since this only represents an annual snapshot of the seeds certified by each certified seed supplier, and this system would only work if all certifiers supplied the necessary information. Furthermore, this would not include data on the specific characteristics of each seed variety, information needed to assess commercial availability based on lack of equivalent variety, form, quality or quantity considerations. While we support a more robust resource for evaluating organic seed availability, we do not see this option as providing that resource.

MOSA’s Response to the Proposed Changes to NOS 205.204: For the purposes of this document, MOSA is adopting the style of the proposal, to note *all NOSB proposed text in underlined italics.*

Amendment to NOS 205.204(a) The Producer must use organically grown seed, annual seedlings, and planting stock with the addition of *(a)(1)(i) Improvement in sourcing and use of*

organic seed and planting stock must be demonstrated every year until full compliance with (a) is achieved.

While we appreciate the intent of this proposed addition to mandate continuous improvement and to bolster certifier enforcement of organic seed usage, we caution that this requirement may disable organic farmers who need specially adapted seeds. We want organic farmers to be able to source seeds that fit their systems. Enforcing continuous improvement with an end goal of no non-organic, non-GMO seed usage may hamstring the organic farmer from being able to flexibly adapt to changing markets or environmental conditions. For example, a dairy farmer may have a very low field site and require an alfalfa variety with a high crown so it can persist. Or, a produce grower may need to trial several varieties of a certain crop (not all commercially available as organic) to find the variety best adapted to his growing location and practices, or to meet an emerging market demand. The market size for these specialized seed varieties may not sufficiently incentivize making organic seed available for these uses, or organic availability may lag behind demand. Additionally, external forces, such as climate change, may change which seed varieties work the best. Also, as farm site conditions change, the seeds that work best may also change. We support strengthening the need for continuous improvement within the Organic Seed Guidance (NOP 5029), and specifying the enforcement tools available to certifiers, such as requiring additional steps for sourcing organic seeds (like additional recordkeeping requirements, or trialing of alternative varieties available as organic to verify that there is no commercially available organic alternative).

MOSA's Response to the Proposed Changes to the Organic Seed Guidance (NOP 5029): Again please note, for the purposes of this document, MOSA is adopting the style of the proposal to note all NOSB proposed text in underlined italics.

- 1) 5029 - 4. Policy. Addition: Producers must prevent and avoid contamination from excluded methods in seed of at-risk crops (corn, soybeans, canola, alfalfa, beets, chard, cotton, rice and summer squash). Certifying agents must assess procedures and documentation of certified production and handling operations as they source seeds, annual seedlings, and planting stock on an annual basis.

We support the prevention of contamination from excluded methods when procuring seed, seedlings and planting stock, but it is not clear how this would be enforced. The proposed wording does not clearly outline the producer's responsibility. Are producers responsible for evaluating GMO contamination in seed they purchase? Are they required to test their seed or require testing from their seed supplier? Who pays for this testing? What is the acceptable limit, if there is one? Are they responsible for preventing all inadvertent GMO contamination during the growing season? Are the best practices for preventing and avoiding contamination clear and sufficient for each at-risk crop? And of course, the big elephant in the room, who is responsible for GMO contamination? Does GMO contamination restrict development of our organic seed industry? For example, how many locations are currently suitable for growing organic seed corn or alfalfa seed without the possibility of GMO drift?

The use of GMOs is a prohibited *method*. Our review of organic operations' management plans ensures that products we certify are not *produced using excluded methods*, and

that reasonable avoidance plans are in place. However, at this point in time, with no additional guidance about the enforcement of GMO contamination in seed crops or a realistic expectation for how *contamination* can be *avoided*, MOSA strongly objects to placing the onus on producers that they “*must prevent and avoid contamination from excluded methods in seed of at-risk crops.*”

Additionally, we would like clarity on the definition of “at-risk crops.” Does the term “at-risk crops” refer only to seed crops that are likely to outcross with commercially available GMO crops (such as chard outcrossing with GMO sugarbeet) where the final organic seed crop is at-risk of GMO contamination? Or are “at-risk crops” all crops that are commercially available as GMO in the United States that need to be verified as non-GMO if non-organic? At MOSA, we have compiled a list of GMO seeds that are reported as commercially available in the US and a list of GMO seeds and planting stock that are in development or available in other countries, by using the [GMO Compass database](#), the [NONGMO Project database](#), and the [ISAAA GM Approval database](#). However, an official up-to-date list of commercially available GMO seeds and planting stock from the NOP would be appreciated.

- 2) 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 with the use of Excluded Methods.*

We do not find this addition necessary as we feel this is already a requirement of the National Organic Standards. On MOSA-certified farms, all non-organic seeds identified as commercially available as GMO are currently verified to be non-GMO. If this addition is adopted in some form, the exact language should be approached cautiously. For example, would hybrid broccoli varieties developed using cell fusion to produce cytoplasmic male sterility in parent lines be considered “produced with Excluded Methods”? The proposed language could be interpreted in different ways.

- 3) *4.1.2(c) On-farm variety trials of organic seed may be used by producers to evaluate equivalency and quality of varieties that are available as organic seed. Trials are encouraged and records should be kept of results to show inspectors, but they are not mandatory.*

MOSA supports the use of on-farm variety trials and has encouraged producers to use this tool through the review process. The language in this particular addition is not very strong, making it challenging to use from an enforcement perspective. Furthermore, it is not clear what is *not* mandatory for the inspectors to verify, the records or the trials. We feel that the more appropriate location for “encouraging” the use of variety trials is in section 4.4.4 (a) Role of Certifying Agents.

- 4) 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.*

MOSA supports this addition. However, we would also like to point out that the non-organic seed source selected in this case must have a lower incidence of GMO contamination.

- 5) 4.2.1 The following records should be maintained by organic producers: 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 include the reason for use (form, quality, quantity, or equivalence). Records describing on-farm trials of organic seed and planting stock can be used to demonstrate lack of equivalent varieties for site specific conditions.

MOSA is not in favor of this addition in this section. Our current Organic Search form requests that clients choose from the following reasons for sourcing non-organic seed or stock after conducting an adequate search of at least three sources that may carry organic seed or stock:

1) *Organic unavailable in the appropriate form, quality, or quantity suitable for your operation.* 2) *Variety preference (specific varietal characteristics).* List:

We would consider this information satisfactory to meet the requirement suggested for addition.

However, we do not require that all producers use this form, particularly if they have many seed varieties (and some vegetable producers may have hundreds). For these operations, we require the inspector to verify the operation's standard procedure for sourcing organic seeds. Most clients use a select number of seed companies to order their seeds and our inspectors verify the organic search most frequently using the seed catalogs. Requiring the additional records proposed of *all* producers is not practical. Recordkeeping is often cited as the main reason for producers who could qualify for organic certification to choose not to certify. This requirement, in general, would place a significant additional recordkeeping burden on vegetable producers. MOSA would like to see this additional recordkeeping requirement noted as a compliance evaluation tool available to certifiers in section 4.4.4 (a) Role of Certifying Agents, which could be required by the certifier when improvement in organic seed sourcing is not being adequately demonstrated.

- 6) 4.2.1 (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, including (i) documentation of contact with three or more sources to ascertain the availability of equivalent organic seed or planting stock. Five sources must be contacted for seed of at-risk crops when this number of sources is available for a specific variety or cultivar.

While MOSA is open to supporting more than three seed sources to be contacted for at-risk crops, it is not clear how it can be efficiently determined what the number of sources available for a specific variety or cultivar might be. If this addition is adopted, we request it be amended to simply state "*Five sources must be contacted for at-risk crops.*" Additionally, the definition of at-risk crops needs to be clearly stated in this section. Any

specific list will need to be updated on a regular basis. Consistency among certifiers will be greatest if this 5029 guidance reliably identifies crops currently at-risk for GMO contamination. We'll also note again that additional clarity is needed regarding the "at-risk crops" list.

- 7) 4.2.1 (b)(1)(ii) Sources should include companies that offer organic seeds and planting stock. Such sources should provide evidence of their organic certification (if relevant), ability to source organic seed and planting stock, and specific varieties sourced every year.

MOSA does not support this addition. This language seems to propose adding an additional layer of verification to the certification process. Not only does the certifier verify the producer's seed sourcing practices, but we now have to also verify the seed sourcing practices of the seed suppliers? If a seed supplier is certified organic, then their practices are already verified by their certifier, and if a seed supplier is not certified organic, then we have no oversight over their practices. We do require that our clients source seeds through suppliers who are known to carry organic seeds.

- 8) 4.2.1(b)(1)(iii) Failure to demonstrate improvement in sourcing organic seed and planting stock over time may result in additional seed sources being required or additional steps taken to procure organic seed and planting stock.

MOSA supports this addition, but we would like to see this addition in section 4.4.4 (a) Role of Certifying Agents, which is a more appropriate location for an expanded list of "additional steps." Our suggested revisions to that section incorporate this policy.

- 9) 4.2.1(b)(3) If seed sourcing is carried out or mandated by the buyer of a contracted crop, the producer must keep records of the buyer's documentation on attempting to source organic seed as part of the producer's own Organic System Plan. Such documentation must be comparable to that required of a producer who sources their own seed.

MOSA supports this addition, with the understanding that the Organic System Plan encompasses all supporting documentation required by the certifier.

- 10) 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.

MOSA supports the spirit of this addition but would like to see it expanded to incorporate other sections of this proposal and strengthened to more explicitly describe the additional steps for sourcing organic seed. An alternative might be:

(a) If sufficient progress is not demonstrated, a certifying agent may ask for a corrective action plan that may include, but is not limited to, requiring additional seed sources be checked, encouraging variety trials, additional recordkeeping requirements

such as records of variety trials or records specific to each variety of non-organic seed sourced noting in more detail the reason for use (form, quality, quantity, or equivalence), or other additional steps to procure organic seed.

- 11) 4.4.4 b. Non-compliances should be issued for repeated lack of progress in sourcing organic seed over time.

MOSA supports this addition and has issued Non-compliances for repeated lack of progress sourcing organic seed.

- 12) 4.4.5 Certifying agents should review the prevention measures taken to avoid contamination for seeds of at-risk crops.

MOSA does not support this addition. While we appreciate the spirit of the addition, the language is vague and there are limited regulatory enforcement actions certifiers can take if contamination is found. All organic operations are required to have strategies for prevention of contamination and commingling in place, and certifiers evaluate compliance annually. Unfortunately, even if GMO contamination is found, the preventive measures in place usually appear reasonable. Certifiers need additional guidance regarding *what to do* when GMO contamination is found, yet all organic production and handling practices appear compliant. We've discussed this issue in several previous NOSB comments. It is very clear that the public expects organic to be GMO-free, and, while the organic community continues productive work to guard against GMO incursion, USDA leadership is critical for ensuring that the responsibility for preventing GMO contamination is shared. Without meaningful shared responsibility, coexistence cannot work, and the organic label is harmed.

We appreciate you considering our comments. Thank you for your work on this challenging issue.

Respectfully submitted,

The MOSA Certification Team