



Response to Comments

Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production

Links Update: September 5, 2018

This document summarizes comments received on the draft guidance document, “Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production ([NOP 5029](#))”; which was posted on the NOP website for public comment. The public was notified in a Federal Register notice (76 FR 34180) on January 13, 2012.

- ***CHANGES MADE IN RESPONSE TO COMMENTS***

- 1) Define “Equivalent Variety” in Relation to “Not Commercially Available.”** Commenters pointed out that the draft guidance conflated the NOSB definition of equivalent variety with the definition of commercial availability. The NOSB stated: “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”.¹ The NOP agrees and has included this description and provided examples (including type, color, flavor, days to harvest, yield, pest resistance, etc.). The NOP clarified that a producer must determine if an equivalent organic variety is available, then determine if that equivalent variety is commercially available, using the criteria of form, quality and quantity.
- 2) Annual/Perennial Distinction.** Several commenters requested that NOP strike the distinction between annual and perennial planting stock for several reasons. They stated that this distinction would change the definition of “planting stock”, which would require a regulation change. NOP agrees that annual stock and perennial stock are both “planting stock”. Crops from either type of nonorganic planting stock can be used to produce an organic crop, provided that the producer demonstrates that an equivalent organic variety of planting stock is not commercially available (§ 205.204(a)(1-2)). The preamble to the NOP Final Rule (65 CFR 80559) states that planting stock used for perennial crops must be managed organically for one year before it can be sold as organic planting stock. Thus, the intent was that nonorganic perennial stock (such as lavender and other perennial herbs, fruit trees, nut bushes, etc.) must be managed organically for one year before being sold as organic perennial planting stock. NOP agrees that making a distinction between annual and perennial planting stock based on how a particular operation chooses to produce the crop will not provide consistent interpretation and implementation of the regulations. Therefore, the NOP removed this language from the guidance.
- 3) Implications of Current Chlorine Guidance NOP 5026 on this Guidance.** Most commenters agreed the guidance language should clearly reflect that levels of residual chlorine on seed must meet Safe Drinking Water Act (SDWA) limits, not that all levels of chlorine in contact with seed must meet this limit. In reference to guidance document NOP

¹ [NOSB, 2005. Commercial Availability of Organic Seed.](#)



5026, *The Use of Chlorine Materials in Organic Production and Handling*, this guidance classifies seed treatment for pathogen control as a production use, where chlorine is not in direct contact with the crop. Therefore, seed treatment with chlorine followed by a rinse with potable water that does not exceed the maximum residual disinfectant limit for chlorine under the SDWA is allowed. Certified operators should monitor the chlorine level at the point where the water last contacts the organic product in direct applications. Use of chlorine to treat seeds to prevent seed-borne plant diseases is also consistent with the handling allowance to permit chlorine in seed treatment for sprout production to prevent human pathogens.

- 4) **On-farm Seed Trials.** Several commenters stated the lack of on-farm trials to develop organic varieties poses a hindrance to the growth of the organic seed industry. Commenters emphasized that producer feedback informs seed producers regarding seed viability specific to regional and environmental conditions. The NOP has included a reference that acknowledges the use of on-farm seed trials as a method for demonstration of availability (or lack) of equivalent varieties.
- 5) **Definition of “Priming” and Types of Treatments that Need Review.** One commenter noted that the definition of “priming” in the draft guidance was incorrect. The NOP removed the reference to priming in the final guidance. The NOP recognizes that it is beyond the purview of certifying agents to review all substances used in handling of non-organic seeds and planting stock, such as sanitizers or priming aids used prior to purchase by organic farmers, and that this information is often not available. We have amended the final guidance to provide examples of the type of treatment that should be reviewed including all pesticides, pelleting materials and inoculants applied after harvest or collection of the non-organic seed or planting stock. We have also clarified that substances used during the production of non-organic seed or non-organic planting stock do not require review. This includes substances that may be used in post-harvest handling and cleaning of non-organic seed and planting stock, that do not remain on the seed when it is planted.

- ***CHANGES REQUESTED BUT NOT MADE***

- 1) **Seed and Planting Stock Database.** Several commenters asked that NOP address the lack of a national seed and planting stock database. The NOP recognizes that the NOSB 2008 recommended the establishment of an interactive national database developed by an independent party. The NOP supports the industry’s efforts to develop a standard informational tool to help growers find organic seeds and planting stock, however, addressing this is beyond the scope of this final guidance.
- 2) **Requiring a Minimum Search of Three Seed Sources is Too Low.** Several commenters remarked that a search of three suppliers to demonstrate an equivalent organic variety is not available is not specified in the regulation. Furthermore, commenters felt that this number is inadequate due to the increasing availability of organic seed and planting stock varieties. The 2005 and 2008 NOSB recommendations on commercial availability of organic seed



suggested that the NOP issue guidance requesting operators to provide written evidence of efforts to source organic by contacting at least three suppliers. This NOP guidance is consistent with those NOSB recommendations. While guidance documents cannot establish legally enforceable responsibilities, they can provide a uniform method for operations to comply with the regulations. Producers may provide other types of evidence to demonstrate lack of commercially available equivalent varieties, subject to certifier review and approval.

- 3) **Handlers Purchasing Seed for Contracted Growers.** Several commenters stated that 7 CFR § 205.204 applies to handlers purchasing seed for contractual growing purposes, and that language should be included in the guidance emphasize this. However, this guidance is applicable to crop producers subject to requirements of § 205.204, and handlers are not typically certified as crop producers subject to this requirement. All growers must meet the same standard and use organic seeds unless they can demonstrate that organic seeds are not commercially available. All producers must provide the necessary documentation regarding lack of commercial availability of organic seeds to justify use of non-organic seed or planting stock. Contracted growers should inform their buyers of the need to use organic seeds unless they are not commercially available.
- 4) **Timely Seed Sourcing Activities.** Commenters stated that growers need to inform their seed supplier(s) of their seed varietal needs, including requirement dates and quantity and treatment needs. Commenters also suggested certifiers should require this information to be included as part of an operator's OSP in an effort to curb exception requests for quantity considerations. The NOP does not believe this is necessary and it would impose an additional recordkeeping burden that was not previously recommended by the NOSB or included in the draft guidance.
- 5) **NOP Should Follow the EU Process for Seed Exemptions.** One commenter suggested the NOP refer to the EU model by laying down procedural rules and criteria relating to derogations (exemptions) for seed and vegetative propagating material.² In the EU, the rules for issuing derogations rely upon interaction with national databases. The EU regulation mandates each EU member country create and maintain its own organic seed database. Neither the OFPA nor the USDA organic regulations mandate a national seed and planting stock database. NOP supports the development of organic seed/planting stock databases but does not have the resources to create and maintain a database.
- 7) **Seed Handling and Labeling Guidelines.** A number of commenters noted a lack of regulatory text regarding organic seed handling and labeling and requested that the NOP provide guidance regarding questions such as:
 - a. Whether a treated seed should be labeled as "made with organic" ingredients if a significant portion of the overall weight of the seed is comprised of the treatment (such as clay)?

² Articles 45 and 47 through 58 of the EU Council Regulation (EC) No. 889/2008



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- b. Whether an operation that is treating organic seed must be certified organic for seed handling? For example, if organic seed is coated with clay at a non-certified facility, does it then become non-organic seed?
 - c. How should a seed blend containing both organic and nonorganic seed be labeled?

The NOP believes more information must be gathered on this issue from certifiers and other stakeholders before developing guidance on this topic.

- 8) Training for Certifying Agents.** Several commenters stated that certifiers need guidance on criteria for evaluating adequacy of seed and planting stock sourcing documentation, assessing continuous improvement in seed and planting stock sourcing activities, and guidelines for enforcement when a grower demonstrates noncompliance. Under § 205.504, certifying agents must demonstrate ability to fully implement the organic certification program, which includes § 205.204. A variety of methods for conducting these evaluations exist, such as: (a) providing operations with resources relating to organic seed and planting stock suppliers, or (b) asking operations to document all seed usage to determine the percentage of organic seed usage versus total seed usage on an acreage basis. However, the NOP does not wish to issue prescriptive criteria as they may not be suitable for all types of operations. The NOP notes that additional training for certifiers in evaluating seed and planting stock sourcing will be considered in the future.