

Formal Recommendation
From: National Organic Standards Board (NOSB)
To: the National Organic Program (NOP)

Date: April 26, 2019

Subject: Strengthening the Organic Seed Guidance April 2019

NOSB Chair: Harriet Behar

The NOSB hereby recommends to the NOP the following:

Guidance: X

Statement of the Recommendation:

This recommendation provides the NOP with suggestions for improvement to the NOP guidance 5029, which addresses implementation of §205.204(a) *“The producer must use organically grown seeds, seedlings and planting stock”*. The barriers to use of organic seed have changed over time, and the NOSB provides this guidance recommendation to improve the implementation of this rule. Growers, certifiers, seed suppliers and other members of the organic community weighed in on numerous drafts over the past 5 years, with this version incorporating many of the public comments received. There was general acceptance that this version offered both incentives and practical language to aid producers and certifiers in overseeing and encouraging the use of organic seed.

Rationale Supporting Recommendation (including consistency with OFPA and Organic Regulations):

This recommendation has numerous improvements to the current guidance, and clearly supplies improved guidance language for the NOP to consider in many areas. The suggested improvement to 4.1.6 which discusses the use of non-organic planting stock to produce organic crops and addresses the sale of an organic crop from that planting stock, does not belong in the guidance document, but addresses an issue that needs attention in the regulation. As the rule currently states, planting stock brought onto an organic farm must be managed organically for a year before being sold as organic planting stock. However, a vegetative crop sold from that planting stock, can be sold immediately from that nonorganic planting stock, with no wait period after arriving onto an organic farm. This is an area the NOSB crop subcommittee may ask as a work agenda item for rule change.

NOSB Vote:

Motion to accept the proposed changes to the National Organic Program Guidance 5029 as described below

Motion by: Harriet Behar

Seconded by: Asa Bradman

Yes: 14 No: 0 Abstain: 0 Absent: 0 Recuse: 0

Motion Passed

**National Organic Standards Board
Crops Subcommittee Proposal
Strengthening the Organic Seed Guidance April 2019
February 19, 2019**

Introduction and Background

The planting of organic seed/planting stock is required under the USDA organic regulations, unless these items are not commercially available. While there has been some growth in the availability and use of organic seed, progress towards reaching a goal of 100% organic seed and planting stock has been slow. The NOSB provided recommendations to the NOP in [2005](#) and [2008](#) focused upon increasing the use of organic seed. The NOP has addressed this issue with draft and final guidance in 2011 and [2013](#), respectively.

Organic seed/planting stock breeders work closely with organic producers to build in varietal characteristics that address regional organic production system challenges. Organic seed breeders focus on specific traits that provide consistent yields of high-quality crops that meet the unique needs of the organic marketplace. The use of organic seed can aid in the protection and expansion of genetic resources as well as offer additional economic opportunities for farmers and seed breeders/sellers. Continued growth of organic seed and planting stock availability will build a resilient future through continued development of varieties and cultivars focused on the needs of organic producers and the organic market.

The goal of the NOSB is to achieve full compliance with §205.204(a) *“The producer must use organically grown seeds, seedlings and planting stock”*. It is understood that the organic seed/planting stock industry is not currently robust enough to meet every organic grower’s needs, however, there is also some concern that the allowance to not use organic seed if not “commercially available”, leads some producers to seek out nonorganic seed/planting stock due to lower price, unfamiliarity with organic varieties, social or cultural pressures and more. The availability of organic planting stock is growing even slower than the availability of organic seed, and offers a great opportunity to perennial crop breeders, as the market becomes more robust. This proposal seeks to address the barriers to adoption of organic seed/planting stock use and to aid the NOP to set a path to increased organic use in the coming years, through improved guidance.

This NOSB proposal lists improvements to the practices listed within the current NOP guidance 5029. These practices are requested of both certified entities and their certification agencies, and were developed to result in more uniform compliance to §205.204(a). The implementation of these practices is not anticipated to have negative economic impact on the operations, other than a few additional farm activities and increased documentation that would need to be maintained.

Relevant Areas of the Rule and Guidance

From the NOP Rule:

§205.2 Terms defined

Commercial availability. The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

Excluded methods. A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

Planting stock. Any plant or plant tissue other than annual seedlings but including rhizomes, shoots, leaf or stem cuttings, roots, or tubers, used in plant production or propagation.

Practice standard. The guidelines and requirements through which a production or handling operation implements a required component of its production or handling organic system plan. A practice standard includes a series of allowed and prohibited actions, materials, and conditions to establish a minimum level performance for planning, conducting, and maintaining a function, such as livestock health care or facility pest management, essential to an organic operation.

§205.201 Organic production and handling system plan.

(a) The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include:

.....

- (5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and
- (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.

§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;

Excerpts from the **Guidance^[1] on Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production** published March 4, 2013 (NOP 5029).

4. Policy

Producers should develop and follow procedures for procuring organic seeds, annual seedlings, and planting stock and maintain adequate records as evidence of these practices in their organic

system plan (OSP).

4.1 Sourcing of Seeds, Annual Seedlings, and Planting Stock

4.1.1 Certified operations must use organic seed, annual seedlings, and planting stock in accordance with the requirements at § 205.204.

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.

a. Commercial availability is defined at § 205.2 and refers to the ability to obtain a production input, in this case seed or planting stock, in an appropriate form, quality, or quantity to fulfill an essential function in organic production. For the purposes of this exception, an “equivalent variety” is a variety of the same “type” (e.g. head lettuce types versus leaf lettuce types) or has similar agronomic or marketing characteristics needed to meet site-specific requirements for an operation. These characteristics may include, but are not limited to: number of days until harvest; color, flavor, moisture, chemical, or nutrient profiles of the variety of the harvested crop; vigor or yield of harvested crop; regional adaptation, disease and pest resistance, or the plant’s utility in a crop rotation.

b. Price cannot be a consideration for determination of commercial availability.

4.1.3 The following considerations could be acceptable to justify use of non-organic seeds and planting stock as not commercially available. These considerations must be described by the operation in their organic system plan (OSP), pursuant to § 205.201(a)(2), and approved by the certifying agent.

a. Form Considerations: Examples of forms may include, but are not limited to, treated or non-treated seeds or planting stock, use of pelleted seed, or use of bare root nursery stock or container plants.

b. Quality Considerations: Examples may include, but are not limited to, germination rate of the seed; presence of weed seeds in the seed mix; shelf life and stability of the seeds; and disease and pest resistance.

c. Quantity Considerations: Producers may provide evidence that quantities are not available in sufficiently large or small amounts given the scale of the operation.

4.1.4 For certified operations producing edible sprouts, there is no exception to the requirement to use organic seed, as stated at § 205.204(a)(1).

4.1.5 Certified operations may use non-organic annual seedlings to produce an organic crop only when a temporary variance has been granted by the AMS Administrator in accordance with § 205.290(a)(2) due to an extreme weather event or business disruption beyond the control of the producer (§ 205.204(a)(3)).

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 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:

- 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. Records describing on-farm trials of organic seed and planting stock can be used to demonstrate lack of equivalent varieties for site specific conditions.
- 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 documentation of contact with three or more seed or planting stock sources to ascertain the availability of equivalent organic seed or planting stock. Sources should include companies that offer organic seeds and planting stock.
 2. Records may include, but are not limited to: letters, faxes, email correspondence, and phone logs from seed suppliers and companies; seed catalogs; searches of organic seed databases; receipts; receiving documents, invoices, and inventory control documents.

4.4 Role of Certifying Agents

4.4.1 Certifying agents must verify the procedures that certified operations utilize to obtain and plant organic varieties suitable for their operations as part of their annual review of the OSP.

4.4.2 Certifying agents must review substances and inputs used to treat seeds and planting stock for compliance with the USDA organic regulations.

4.4.3 Certifying agents shall verify the commercial availability requirements on an annual basis, in their review of the OSP, pursuant to § 205.402(a)(1).

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.

DISCUSSION

In October 2018, the NOSB passed the following recommendation, in bold below, as an addition to the change to the organic regulation. Public comment was almost unanimous in favor of this regulatory improvement.

(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 must be demonstrated every year with the goal of using only organic seed and planting stock.

These improvements to NOP 5029 guidance are covered in this proposal:

2. Changes to NOP 5029 Guidance

The Guidance for Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production should be amended as follows, the bold/italic are the recommendations and will be repeated again as a clean document at the end of this proposal. The areas struck out are language that has been changed from either the current NOP 5029 guidance, or from a previous proposal.

4.1 Sourcing of Seeds

No changes to 4.1.1.

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.

Public Comment and Subcommittee Response:

In the fall 2018 proposal, the phrase in bold above was removed since public comment stated this is currently required by certifiers. Further public comment stated it should remain, and the crops subcommittee agrees. There are over 80 accredited certifiers and in order to encourage consistency, including this phrase is no hardship for certifiers and operators already providing this documentation. 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. The bold addition above will remain as part of this proposal.

No changes to 4.1.2a

No changes to 4.1.2b

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.

Public Comment and Subcommittee Response:

This is an addition to the current NOSB 5029 guidance and is included based upon public comment. Performing trials on organic seed helps an operator determine if the organic seeds are “equivalent” to the nonorganic seed that they are currently using. Many organic seeds, especially in the commodity crop sector, are different variety numbers, bred by organic seed breeders and sold by organic seed companies. These organic seed varieties may not be familiar to the organic grower, and operators are typically reticent to plant large acreages of seeds they do not know to be acceptable for their soil type, climate, and growing systems. Use of seed characteristic descriptions in catalogs or on websites can also be used to illustrate the producer is searching for equivalent organic varieties and they were not found.

4.1.2(d) Documentation of on-farm trials or seed characteristic searches can be provided at the annual inspection. This documentation can 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 trail, 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.

Public Comment and Subcommittee Response:

This is an addition to NOP guidance 5029. It provides more clarification on producer methods of trialing or searching for an “equivalent” organic variety. Since this is guidance only, the word “must” was removed from this section and replaced with the word “can”. It is important to encourage growers to document that the organic seed varieties are not “equivalent” to the nonorganic seeds they are using. As stated above, many organic seed varieties may have different names or numbers, but could be considered equivalent to a nonorganic seed in most, if not all, characteristics sought by a grower.

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.**~~

Public Comment and Subcommittee Response:

There was not universal support for this suggested addition, and it has been removed. There were comments stating this section was problematic for a variety of reasons, and the crops subcommittee believes that dealing with GMO contamination of seed can be better addressed in a separate recommendation, rather than this proposal which supports the use of organic seed.

No changes to 4.1.3, 4.1.4, 4.1.5, 4.1.6

~~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 and any vegetative harvest from that planting stock may be sold, labeled or represented as organic only after 12 months of organic management §205.204 (a)(4).~~

Public Comment and Subcommittee Response:

~~As 4.1.6 is currently written, certifiers can allow sale of an organic crop for consumption from nonorganic planting stock immediately after planting it, but would not allow any cuttings from that planting stock, to be sold as organic planting stock for at least a year. As an example, an organic grower can purchase a nonorganic rosemary plant, plant it in their organic field, cut it immediately and sell it as an organic crop. However, as written, if they make a cutting, put it in water and root it, they cannot sell that plant for a year as organic planting stock. §205.204 (a)(4) states:-~~

~~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.~~

~~This allowance for a crop to be sold from nonorganic planting stock that has not been under organic management for at least one year, was to provide for the sale of fruit from nonorganic strawberry plants within the first year of planting on organic land. Typically, other perennial plants do not produce fruit/nuts or other nonvegetative crops within the first year, so this one year wait time for a crop from nonorganic planting stock planted into organic ground is not a hardship for other perennial crops. However, vegetative growth that would be sold from the nonorganic planting stock would have been managed nonorganically. It does not make sense to sell this vegetative crop as organic, but Strawberry fruit would not be present at the time of planting, and therefore the sale of this fruit as organic had been considered to be more in line with current regulations.~~

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.

Public Comment and Subcommittee Response:

Numerous certification agencies and producers provided negative comments about the statement removed above, stating that it would be a significant burden to track each nonorganic seed and justify its use, especially for diverse vegetable operations. Many noted the subsequent improvement to section 4.2.1 b, noting that it provides more flexibility and quantifiable methods of tracking the reasons nonorganic seed is being used. On-farm trials or descriptions that specifically illustrate characteristics can provide justification there was no organic equivalent to the nonorganic seed or planting stock used.

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.~~

Public Comment and Subcommittee Response:

There were many comments on this section, with some requesting this be extended to all crops, and others concerned that there was not a clear definition of “at-risk” crops. Many supported the increased number of sources to be contacted for organic seeds and others did not. A variety of commenters suggested a more practical approach to this seed search describing a variety of typical search activities that could result in higher use of organic seed. The list of (i)-(vii) summarizes these activities suggested by commenters and NOSB crop subcommittee members. The number of seed searches required by the certifier remains at three in this proposal, and gives the certifiers and operators more options to judge if the seed search was done in an effective manner, as well as the option to require more activities, if the certifier feels the quality of the search could be improved.

No changes to 4.2.1 (b) 2.

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.

Public Comment and Subcommittee Discussion

This section addresses the common occurrence of a buyer either supplying the seed, or requiring a specific seed and source, when working with a contracted producer for the final crop. When the buyer requires a nonorganic seed, the grower is constrained by their contract and will not perform an organic seed search. In discussions with the National Organic Program, it became clear that it is difficult through regulatory channels, to require a handler to have a seed search as part of their business' Organic System Plan. Therefore, this section requires the farmer to obtain documentation from the organic handler who is requiring their contracted organic farmer to use a nonorganic seed to grow an organic crop. The handler needs to provide documentation that they searched for organic seeds and provide this to the grower to become part of the grower's OSP. Handlers have unique opportunities when requiring nonorganic seed, and this section suggests a variety of methods they could increase the use of organic seed/planting stock when working with contracted growers.

No changes to 4.3, 4.3.1, 4.3.2, 4.3.3

4.4 Role of Certifying Agents

No changes to 4.4.1, 4.4.2, 4.4.3

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.

Public Comment and Subcommittee Discussion

Most commenters felt this was a reasonable request, with certifiers stating they work with their operators to develop solutions that will result in greater use of organic seed and planting stock. No changes to this recommendation.

4.4.4

(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:

(i) The certifier's communication detailing commercial 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.

Public Comment and Subcommittee Discussion

Most commenters agreed with this sentiment and many certifiers noted they are currently issuing noncompliances if they believe the organic operation is not taking effective action in sourcing organic seed/planting stock. Certifiers obtain information from many operations and have knowledge of what organic seed/planting stock is available and practical in their regions for many types of crop production. This provides the certifiers a unique perspective to determine if a producer is doing a valid search. Many commenters requested more detail in assessing noncompliances, and these items listed above are based upon public comment and NOSB member input.

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.

Public Comment and Subcommittee Discussion

The vast majority of commenters felt this was an important addition to the policy guidance. Producers who save their own organic seed, as well as those that sell organic seed to others, should include practices that specifically address GMO contamination prevention. Certifiers should be reviewing these contamination prevention measures to lessen the presence of this contamination in the organic seed supply chain.

5. Other items

Public Comment and Subcommittee Discussion

Organic Seed/Planting Stock Database

Commenters supported the development of an organic seed and organic planting stock database, to be managed and maintained by the National Organic Program. Certifiers, suppliers, brokers and operators could all contribute information to this database, and having a link to this on the NOP website would be a service to all sectors of the organic community. The Crops Subcommittee strongly supports the development of this database and encourages the NOP to consider how this might be added to the organic integrity database or be developed separately.

Accredited Organic Certifier and Organic Inspector Training

Many commenters agreed with the previous proposal's assessment that both certification office staff and organic inspectors could benefit from further training on how to assess a valid organic seed/planting stock search. The above organic seed/planting stock database would be a very useful tool for certifiers to track the availability of organic sources and their offerings, as well as providing objective information to their certified operators. In-person and webinar trainings with knowledgeable certification personnel as well as NOP staff, should be developed to provide useful tools and/or checklists to aid in consistent review of a valid organic seed or planting stock search. Certifiers are encouraged to share the practical activities and documentation they require with other certification agencies and inspectors. Training of certification personnel has been recognized as an important aspect of preventing fraud in the organic marketplace, and information on organic varietal sourcing and documentation could be added to the training opportunities being explored for fraud prevention.

Other Issues

Based upon public comment, the NOSB requests the NOP look at this issue below.

As 4.1.6 and §205.204 (a)(4) are currently written, certifiers can allow sale of an organic crop for consumption from nonorganic planting stock immediately after planting it, but would not allow any cuttings from that planting stock, to be sold as organic planting stock for at least a year. As an example, an organic grower can purchase a nonorganic rosemary plant, plant it in their organic field or leave it in its original container, cut it immediately and sell it as an organic crop. However, as written, if they make a cutting, put it in water and root it, they cannot sell that plant for a year as organic planting stock.

This allowance for a crop to be sold from nonorganic planting stock that has not been under organic management for at least one year, was to provide for the sale of fruit from nonorganic strawberry plants and other fruits within the first year of planting on organic land. Typically, other perennial plants do not produce fruit/nuts or other nonvegetative crops within the first year. However, vegetative growth that would be sold from the nonorganic planting stock would have been managed nonorganically. It does not make sense to sell this vegetative crop as organic, but the allowance for fruit does fit better with the regulation's intent, since fruit would not be present at the time of planting. Therefore the sale of this fruit as organic had been considered to be more in line with current regulations.

4.1.6 states:

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 after 12 months of organic management §205.204 (a)(4).

An improvement to the guidance and possibly the regulation could be:

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 **and any vegetative harvest from that planting stock** may be sold, labeled or represented as organic **only** after 12 months of organic management §205.204 (a)(4).

Crops Subcommittee Proposal: To Amend NOP Guidance 5029 – changes in bold

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.**

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. 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.**

4.1.2

d. Documentation of on-farm trials or seed characteristic searches can be provided at the annual inspection. This documentation can 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.

~~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).~~

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. 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.

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.**

4.2.1 b. 2. (no changes)

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:

- i. **The handler's organic search documents there are no organic equivalents in quality, quantity or function, to the nonorganic seed/planting stock they require.**
- ii. **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.**
- iii. **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.**
- iv. **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.**
- v. **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.**

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. Judgement of a noncompliance can include, but is not limited to:**

1. The certifier's communication detailing commercially availability organic seed/planting stock and continued non-use by the farmer
2. Organic seed searches that do not include suppliers who carry organic seed/planting stock of that specific crop.
3. The producer's lack of on-farm seed trials, or reference to descriptions, for judging equivalency between nonorganic seed and organic seed.
4. When producer returns to nonorganic seed/planting stock use, if the organic equivalent seed/planting stock was not documented as having a significant yield, market or other loss.

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.

Motion to accept all changes to the National Organic Program Guidance 5029 as described in the proposal section above.

Motion by: Harriet Behar

Seconded by: Asa Bradman

Yes: 6 No: 0 Absent: 2 Abstain: 0 Recuse: 0

Approved by Jesse Buie, Subcommittee Vice Chair to transmit to NOSB, February 19, 2019