



September 30, 2024

National Organic Standards Board
Compliance, Accreditation, and Certification Subcommittee
USDA-AMS-NOP

Docket: # AMS-NOP- 24-0023

RE: Discussion on Consistency in Organic Seed Use Discussion Document

Dear NOSB Compliance, Accreditation, and Certification Subcommittee (CACS),

Thanks for reaching out to organic stakeholders to understand the current state of organic seed use, potential tools for increasing the amount and variety of organic seed that is commercially available, and methods for strengthening enforcement of the existing commercial availability requirements. SOS is answering select questions based on our involvement with the Organic Trade Association (OTA) Organic Seed Task Force, areas of expertise, and decades of being actively involved with organic seed at the certifier and national policy level. We hope our combined experience will effectively guide the next steps of NOSB and NOP.

In summary (SOS Topline Messages):

- Seed is the fundamental starting point for transforming agriculture through nutritious ecologically grown food, feed and fiber, especially when coupled with the principles behind organic production of building healthy soils, using non-toxic inputs, and stewarding natural resources and the environment. As the foundation for thriving organic farming systems, seed deserves continuous attention and prioritization, from protecting its genetic resources, to preventing contamination, to building a strong organic seed sector that can supply the needs of a diverse and resilient agriculture.
- SOS strongly encourages NOSB and all organic stakeholders to send a clear message to NOP to swiftly advance, without delay, the 2018 NOSB Recommendation to amend the regulations at § 205.204 to require demonstrable improvement of organic seed and planting stock usage over time. The recommendation is a simple yet critical revision to the regulations that codifies the principles of *continuous improvement* and sets a goal post for ultimately using only organic seed and planting stock.
- SOS urges NOSB and stakeholders to continue working on the 2019 recommended guidance to optimize its utility and effectiveness in supporting increased organic seed usage. Continuing to work on the guidance should not under any circumstance delay NOP from moving forward with the 2018 Recommendation.

- There is an important clarification in the 2019 Recommended Guidance that should be immediately addressed through ACA Instruction and/or NOP Training:
 - If seed/planting stock is sourced or mandated by the buyer of a contracted crop (e.g. handler), the producer must obtain sourcing information and documentation from the contracted buyer and include the documentation in the producer’s Organic System Plan.
- SOS supports and encourages a careful evaluation of the challenges created by commercial availability requirements and supports examination of stricter evaluation criteria and oversight of commercial availability justification through accredited certifying agents and USDA-NOP. Initially, SOS supports focused enforcement review and prioritization of commercial availability justification, including certifier training, instruction, and accreditation audit focused on commercial availability documentation and criteria evaluation. Seed justification under commercial availability exclusion is varied by certifier and operation and provides little enforcement opportunity if an operation supplies form, quality, or quantity justification. Providing focused enforcement oversight in this area will increase organic seed usage and remind operations of the importance of seeking and making efforts to source organic seed. Additionally, SOS advocates for a simple augmentation to the OID to designate seed suppliers so that an existing, and very recently improved resource can supply a quick identification point for operations and certifiers looking to check seed availability.

SOS offers the following detail and answers to select questions:

NOSB QUESTION: *Is there still support for the 2018 recommendations?*

SOS ANSWER: Yes. SOS supports the 2018 NOSB recommendation to amend the regulations at § 205.204 to require improvement in searching, sourcing, and use of organic seed / planting stock overtime. Based on the public record of support for the recommendation unanimously passed in 2018, the public comments NOP received on rulemaking priorities in 2022, and public comments received at the last few NOSB meetings, we believe there continues to be strong organic stakeholder support. We urge NOSB to recommend NOP initiate rulemaking by adding the 2018 Recommendation to the Unified Agenda and proceed as they did with the NOSB recommendations for mushrooms and pet food.

The 2018 recommendation is a critical revision to the regulation that codifies the principles of continuous improvement and increased organic seed usage as an Organic System Plan goal.

The pattern to use non-organic seed has flourished for decades despite the availability of organic seed. This is in part due to our current regulatory framework, particularly the commercial availability provision, that does not require any specific improvement benchmarks and is sufficiently open-ended to allow for farmers to use nonorganic seed provided they demonstrate their search is valid. This is further exacerbated by inconsistent enforcement of the commercial availability requirement by certifiers and varying interpretations of what is “valid.”

The lack of a clear regulatory mandate for continuous improvement in organic seed usage fails to incentivize growth and works against the intent of the commercial availability allowance, which was to provide a transition time for organic farmers while the production of organic seed and planting stock caught up to its demand. Unfortunately, two decades later, most organic producers still rely on untreated conventional seed for at least part (if not all) of their operation. In fact, the newest State of the Organic Seed Report 2022 findings show no meaningful improvement in organic seed usage since the 2016 report.

While we acknowledge there are various factors contributing to the slow growth of organic seed, the lack of a clear regulatory mandate for continuous improvement in organic seed creates a notable loophole and hinders the demand for organic seed and thus its development. The current regulatory language does not provide clear direction to organic certification agencies to help them enforce the use of organic seed when commercially available and it does not send a clear market signal that stimulates investment in organic seed development and production.

In a capitalist supply and demand system, strong demand signals and fair competition are crucial for driving innovation, investment, and a thriving market. The commercial availability provision disrupts these mechanisms, creating a vicious cycle where limited demand leads to limited supply, and vice versa. Therefore, SOS strongly believes the desire for growers/buyers to choose organic seed/planting stock will continue to be less than robust without amending the regulations at § 205.204 to clearly state the goal is full compliance with the requirement to “use organically grown seeds, annual seedlings, and planting stock.”

The unanimous 2018 NOSB Recommendation reflects years of work and consensus building

It is important to review the history and timeline leading up to the 2018 Recommendation and understand the underlying reason the regulatory amendment was proposed. **Appendix A**

In the course of NOSB updating the 2013 organic seed guidance (NOP 5029), NOSB recommended that organic crop producers increase their organic seed usage over time, as a continuous improvement goal of the OSP. Much to the surprise of the organic community, NOP rejected the recommendation and explained that the proposal for guidance went beyond the regulations. NOP explained that the regulations, as written, do not require growers to take proactive steps to increase organic seed/planting stock usage. They explained that any guidance suggesting continuous improvement in organic seed sourcing would not be supported by the regulations as they stand, thus prompting the NOSB recommendation that was unanimously passed in 2018.

The 2018 NOSB Recommendation for a rule revision is therefore fundamental to the goal of increased organic seed usage and lays the regulatory groundwork for building a strong, diverse and resilient organic seed sector.



The 2018 Recommendation was identified by stakeholders as a NOP Rulemaking Priority

In 2021, OTA spearheaded what is called the Continuous Improvement and Accountability in Organic Standards (CIAO) initiative to address several NOSB recommendations that were stuck in the regulatory pipeline. The goal was (and is) to create a better process for advancing organic standards. In the course of the early work, OTA inventoried the backlog of NOSB recommendations that needed to be addressed and developed a corresponding infographic. **See Appendix B.**

The infographic messaging stated:

“In the past 10 years, the organic industry has advanced 20 consensus recommendations for improvements to the organic standards, yet USDA has not completed rulemaking on a single one of them. These recommendations include implementing clear and consistent livestock requirements, strengthening organic seed usage, and creating organic production standards for aquaculture, pet food, personal care products and greenhouses.”

In Feb 2022, NOP responded positively to the initiative, and sent out a public notice seeking input from stakeholders on upcoming standards development activities, including specific feedback about prioritizing NOSB recommendations. In regard to the NOSB 2019 Recommendation on Organic Seed Usage (the 2018 recommendation was seemingly overlooked), NOP wrote:

“NOP has not made this recommendation a regulatory priority because NOP believes the recommendation is already addressed by USDA organic regulations for commercial availability related to seeds and planting stock. Therefore, additional rulemaking is not needed. The NOP has completed training on organic seed sourcing as a practical, high-impact step; the training is available in the Organic Integrity Learning Center. The ACA has also published a Best Practice Document for certifiers to increase consistency. AMS invites comments on this prioritization.”

In response, stakeholders weighed in emphasizing the importance of the 2018 and 2019 NOSB recommendations on organic seed usage. The [comments submitted by OTA](#) explained that the 2018 Recommendation, in particular, was developed in response to feedback from NOP to support the 2019 recommendation. Through a Task Force and membership survey process, OTA rated the recommendations as “Urgent, Big Impact” (Group B – Pet Food, Apiculture, Mushroom Production and Strengthening Organic Seed Usage). The 2018 Organic Seed Recommendation rated higher than Pet Food and Mushroom production. **See Appendix C.**

From the OTA comments to NOP:

“This group of NOSB recommendations would create standards for specific production categories that are being inconsistently certified, modernize the organic regulations to meet the growing needs of the organic sector, and remove obstacles to continued growth of organic production. This would further develop a supply and variety of domestically produced organic products and create economic benefits for organic producers and handlers.

Inaction by USDA has led to market failure, prevented unique segments of the organic industry from advancing, and created consumer confusion around the consistency and value of the organic label.”

Specific to organic seed usage, OTA commented,

“The 2018 recommendation on *Strengthening Organic Seed Usage*, involves a simple yet critical revision to the regulations that requires certified crop producers to demonstrate improvement in sourcing and use of organic seed and planting stock each year. All of these recommendations are widely supported by organic stakeholders and will create environmental and economic benefits for organic producers and handlers.”

Despite the comments received stressing the importance of organic seed usage, NOP did not prioritize rulemaking on the 2018 or 2019 recommendations. Instead, NOP added mushrooms and pet food to the Unified Agenda and proceeded with a proposed rule for both, stating:

“Both markets exhibit inconsistent interpretations of the organic regulations by certifiers and uncertainty around regulatory requirements that are likely to deter investments in the sectors. In addition, the National Organic Standards Board (NOSB) has made recommendations to revise the regulations for these organic products, and these changes are supported by the organic industry. Finally, both organic mushrooms and pet food are developing markets that would benefit from clearer standards to facilitate and promote growth.”

Organic stakeholders continue to emphasize organic seed usage as a priority

At the Spring 2022 NOSB meeting, NOP provided an update on NOP activities and priorities. NOP received 572 written public comments. Commenters generally supported the NOSB recommendations and urged NOP to address them by developing standards via rulemaking. Many commenters said all topics should be prioritized; however, **organic seeds**, hydroponics/containers, and conversion of native ecosystems were among the most mentioned. Many commenters ranked organic seed usage as a high priority issue. In response, NOP voiced they were aware of the concerns about low use of organic seed based on these comments and the new report from the Organic Seed Alliance, and the comments provided very good historical feedback and information that would help NOP re-evaluate (i.e., elevate) this priority going forward.

The NOP October 21, 2022, Memo to NOSB (Response to the Spring Meeting) states:

“NOP is aware of concerns about the low use of organic seed, and recently invested in training on organic seed sourcing, which is available in the Organic Integrity Learning Center. NOP is currently considering additional strategies, such as more specific certifier oversight, continued outreach and training across crop supply chains, technology (seed database) support, and increased enforcement, to address concerns about organic seed use. We will consider additional standards to support this area as needed.”

Finally, as mentioned in the Fall 2024 Discussion Document for this meeting, NOSB heard from several stakeholders during the Spring 2024 public comment hearings expressing concern about the stagnant state of organic seed use and the importance of the NOP implementing the Board's 2018 recommendation to update the organic seed requirement. Stakeholders asked that Organic Seed Usage be placed back on the NOSB Work Agenda.

In conclusion, the public record clearly indicates there is still strong support for moving forward with the 2018 recommendation.

NOSB QUESTION: *Is there still support for the 2019 recommendations?*

SOS ANSWER: There is still support for improved NOP 5029 Guidance, but we think additional work on the recommendation is needed to optimize utility and effectiveness, better reflect the current state of the organic seed industry, and incorporate new learnings gathered over the past 5-6 years. The bulk of the work that went into the 2019 recommendation was trying to create criteria and processes that would support continuous improvement through improved sourcing efforts and documentation thereof, on-farm trialing, and increased certifier oversight and enforcement. The recommendation was arguably too prescriptive in some areas, missed some key changes supported by several commenters, and focused too heavily on the organic producer (user of the seed) and the certifier. Missing from the document is the role of the seed/planting stock grower/supplier, and the role of NOP (accreditation and training). See **Appendix C for a summary of what NOP 5029 “does and does not do.”**

We recommend NOSB continue to work on improved Guidance provided it does not slow up or delay NOP initiating rulemaking on the 2018 NOSB recommendation. To help keep the ball rolling, we suggest a timeframe and deadline be set for starting and finishing the work.

To be clear, we do not believe that updated NOP Guidance is critical for organic producers and certifiers to begin complying with a requirement to demonstrate improvements in searching, sourcing, and use of organic seed/planting stock. The critical action is an amendment to the regulation that codifies continuous improvement, a concept we believe aligns with the intent of the organic law.

NOSB QUESTION: *How can the NOP address the handler role in seed choice, beyond the updates to Guidance 5029 that the NOSB previously recommended? Should the regulations be amended to apply the commercial availability requirements in 7 CFR § 205.204 to handling operations? Should handler Organic System Plans address seed choice? If so, how?*

SOS ANSWER: Existing ACA Best Practices, NOP Instruction and/or NOP training should adequately address the handler role in seed and planting stock choice. The regulations do not need to be amended.

7 CFR 205.204 applies appropriately to the producer, which is the operation ultimately responsible for adhering to the crop standard requirements. Certifiers have the responsibility to enforce the requirement of operations to use organic seed or supply adequate proof that efforts were extended to source in the

form, quality, or quantity necessary, which extends to any expectations supplied by handlers contracting with crop operations. Arguing that a crop operation can't comply with seed sourcing requirements if their customer dictates a specific variety or nonorganic seed usage is like arguing that prohibited material application could be allowed if a customer requested its' use. The standard requires organic seed use, unless not commercially available in organic form, and operations must supply evidence organic seed was not commercially available or use organic seed. The solution in this case is for the handler to demonstrate their commercial availability efforts or supply organic seed to the operation.

ACA developed a best practices document relating to seed sourcing (linked [here](#)), which if applied consistently, ensures that handler requests for specific seed usage is not excluded from the commercial availability criteria under § 205.204. SOS does not support regulatory change to this requirement, as applying a crop requirement to handlers would be difficult to apply in compliance and enforcement. For example, if a crop operation is supplied with a required seed by the handling operation, under the current requirements the crop operation would be obligated to supply evidence the handler sought a commercial equivalent form, quantity, or quality in organic form. If this was not provided, the operation would be subject to a notice of noncompliance.

Alternatively, if a handler is included as part of the requirements under § 205.204, the operation using nonorganic seed would need to be referenced as evidence to issue a noncompliance to the handler, unless handlers were additionally and directly audited for seed sourcing. This is impractical from an enforcement and oversight perspective, since the number of handlers sourcing seed, at least in produce, is limited. To capture this requirement directly with handlers, certifiers would need to update handler OSP forms to ask if seed sourcing is performed by the handler, and a corresponding question added to audit reports also. In the time of reducing cumbersome and unnecessary paperwork, this approach would be counter to any paperwork reduction efforts in the organic certification space, and waste certifier and handler time. Crop operations should be accountable to all requirements under the USDA National Organic Program relevant to crop production, regardless of the effort or discomfort potentially necessary to explain the requirement to their customer (a handler contracting production of a specific product or variety).

Certifiers are responsible and in the critical role of enforcing existing requirements relating to commercial availability. It's their obligation to emphasize through education, enforcement and reviews, the importance of consistency in this area. This supports expansion and improvements in seed availability in the marketplace. Failure to consider the impact of lax commercial availability evaluation undercuts the market for all categories, including seed, and reduces motivators to expand organic options.

NOSB QUESTION: *What additional information do certifiers and inspectors need to effectively enforce the commercial availability requirement (i.e. how would a certifier or inspector know that an organic option is available and must be used)?*

SOS ANSWER: Commercial availability is an area of opportunity for improved oversight and compliance, not only in seed sourcing activities, but across the organic certification space (think § 205.606). Certifiers are in a challenging position with respect to evaluating documentation for commercial availability. SOS does not support any recommendations that increase certifier’s responsibility to research or monitor marketplace availability of products subject to commercial availability annotation. This is an operation level accountability, and a marketplace cultural improvement opportunity. SOS supports improved outline of acceptable criteria for commercial availability, including the proposed change outlined in the 2018 recommendation for operations to demonstrate improvement over time (increase in organic seed and planting stock), as this is a measurable monitoring tool that would reduce subjective evaluation variation.

The 2018 recommendation brings in an additional component – how does the inspector / certifier evaluate increased organic seed usage annually? While we think there will be a learning curve on this, we do not think Guidance is needed to start and/or complete rulemaking. Acknowledging the strain on certifier resources with important oversight changes from SOE, OLPS, and additional proposed rules, the solution to improved operation compliance and efforts to use organic seed and planting stock starts with:

1. Clear education to certified operations and certifiers for the reason and value in using and/or producing organic options (seed and products with commercial availability annotation).
 - a. Include increased market opportunities for growers to *produce* organic seed, planting stock, or organic products, supports organic research through market growth and footprint, increases product integrity, and reduces external potential contamination sources;
2. Prioritization in a risk-based certification system to systematically prioritize auditing and increasing compliance minimums under commercial availability (potentially on a 3 year cycle). For further clarification on this recommendation - see SOS comments on risk-based certification.
 - a. Focused accreditation oversight and prioritization from NOP during annual training on a defined cycle (3 years, for example) - confirming commercial availability is prioritized at the certifier level.
3. After education, targeting and escalating compliance activities based on operation records and adherence: Minor noncompliance, noncompliance, etc.

NOSB QUESTION: *How could the NOP (or other entity) make information about commercial availability available publicly?*

SOS ANSWER: As the USDA organic integrity database (OID) is expanded, including an organic seed variety designation for operations that is searchable provides a location for current, public designation of

organic seed suppliers. Seed could be noted as an operation or handler category under services and business types (see IMAGE below), similar to “processor” or “slaughter” check boxes.

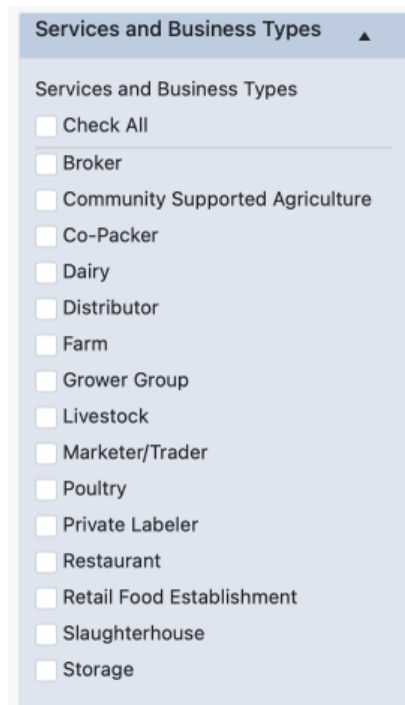


IMAGE: *OID service or business type options currently available. Recommend adding “Seed Supplier” for businesses offering seed for sale to operations.*

Instruction for nomenclature around top level seed naming in OID operation information, and addendum or additional detail seed variety and type for OID upload would support consistency and searchability of organic varieties through the OID.

NOSB QUESTION: *Who could/should build/maintain a U.S. commercial availability database for seed?*

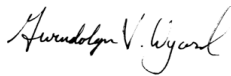
SOS ANSWER: SOS does not consider a seed database a practical solution, as it requires frequency of update and resources that create logical success hurdles. Increasing the value of the OID listings of businesses would accomplish seed database resources that are maintained as current, and legally represent certified products in the marketplace. OID listings are initially the responsibility of the operation (to supply accurate and current information) and updated by the certifier at compliance verification. USDA NOP’s responsibility in this solution would be to expand the OID with a designation for “seed supplier” and provide necessary improvements and alignment on OID nomenclature.

Seed businesses have the opportunity to specifically call out on their business website what seed is available in organic form, and update directly the form, quality, and quantity available. Making this information public for certifier cross-verification provides improved enforcement tools for certifiers to dispute justification provided by operations for commercial availability substitution.

In closing, SOS considers organic seed to be foundational to the success of organic agriculture. In the regulatory arena, the goal of our efforts should be to promote the continued growth and improvement in organic seed and planting stock production, and subsequent usage by organic growers without hurting or putting undue burdens on growers. The intent is not to have non-compliances handed down to farmers trying to comply with the seed and planting stock commercial availability section of the Rule, or to place undue burden on certifiers trying to enforce an arguably flawed provision in the regulations. Instead, the intent is to maintain NOP regulation and guidance that will help ensure the consistent application and enforcement of organic seed requirements, which, in turn, will promote the breeding, development and production of a greater diversity of varieties well suited for organic production systems.

We thank NOSB for its volunteer service and everyone's commitment to continuing work on this important topic. We offer our on-going support and dedication to growing and protecting the organic seed and planting stock supply chain.

Respectfully submitted,



Gwendolyn Wyard
Founding Partner



Kim Dietz
Founding Partner



Johanna Phillips
Director, Business Development
& Technical Affairs

Appendices:

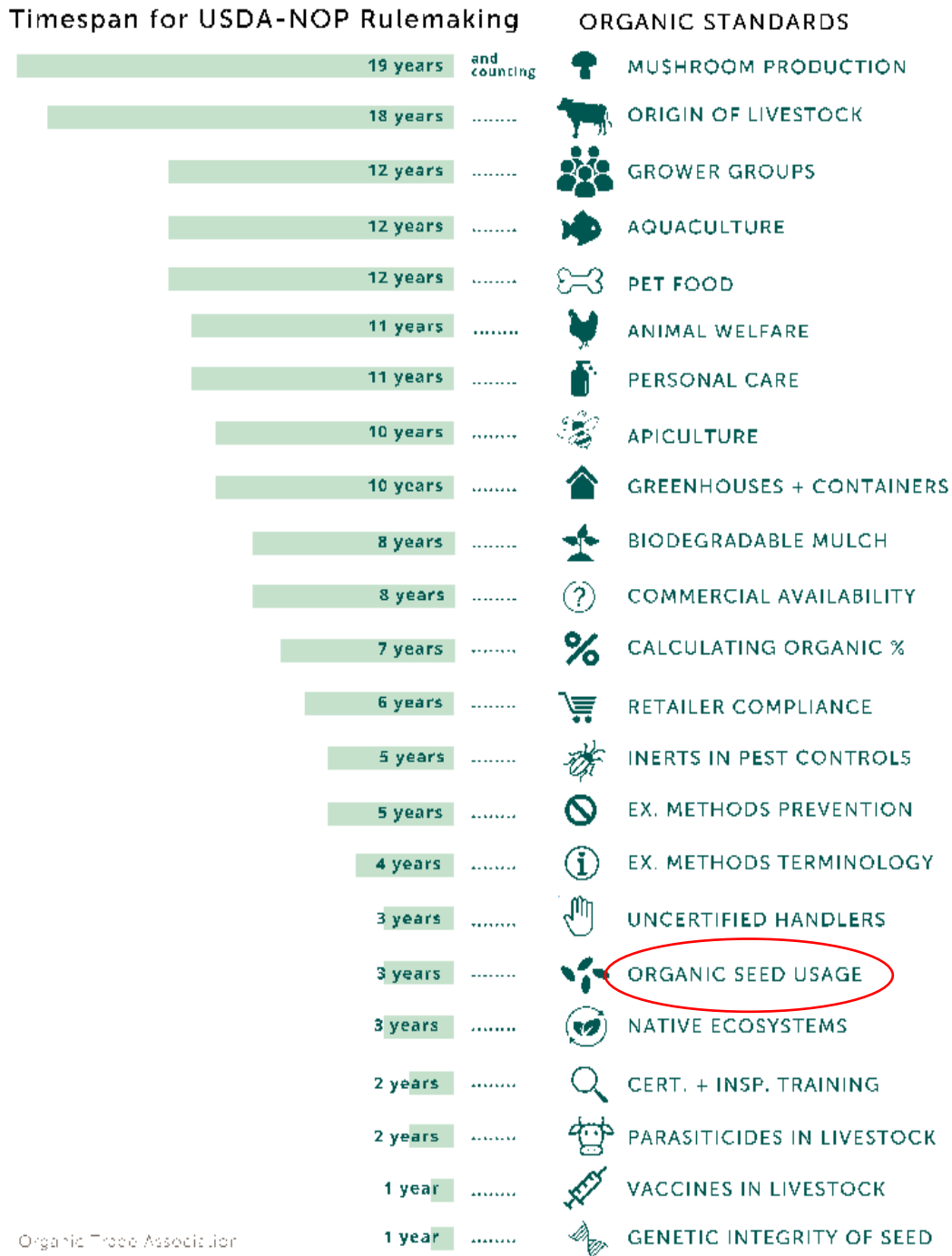
- A - Timeline leading up to the 2018 and 2019 NOSB Recommendations
- B - Timespan for USDA Rulemaking & NOSB Recommendation on Organic Seed Usage
- C - NOP Priority Rulemaking for the 2018 NOSB Recommendation on Organic Seed Usage
- D - What does NOP 5029 do and not do? What changes were recommended?



Appendix A: Timeline of events leading to the 2018 and 2019 NOSB Recommendations:

- **1992:** NOSB begins work on organic seed policies
- **October 2002:** NOP organic regulations become effective
- **August 2005 and November 2008:** NOSB recommendations for guidance on demonstrating commercial availability
- **June 2011:** Proposed NOP Guidance on Seeds & Planting Stock
 - OTA establishes Organic Seed Task Force and provides extensive comments on ways to improve the proposal to support continuous improvement
- **March 2013:** NOP Guidance 5029 becomes effective
 - Organic stakeholders are very disappointed in the NOSB recommendations and stakeholder comments that were not accepted. OTA, several organic seed companies and OSA write to NOP with a request for improved guidance.
 - NOP explains that comments related to guidance on continuous improvement could not be made because the regulations do not require continuous improvement. A regulatory change is needed.
- **Spring 2016:** NOSB seeks feedback on ways to improve guidance
 - Focused on a regulatory change to support guidance for continuous improvement
 - Extensive work on guidance to satisfy a diverse range of commenters
- **Fall 2018:** NOSB unanimously passes regulatory recommendation to require continuous improvement of organic seed usage; sends proposal on Guidance back to subcommittee.
- **2019:** NOSB unanimously passes the Strengthening Organic Seed Guidance proposing changes to NOP Guidance 5029. Still far from perfect. There was notably stakeholder and NOSB fatigue in trying to address the underlying pitfalls of commercial availability. The hope was to clean it up during the NOP Handbook (rulemaking) process.

Appendix B - Timespan for USDA-NOP Rulemaking from NOSB recommendation



*Table created in 2021 by the Organic Trade Association: Organic Seed Usage Recommendation is now 6 years and counting

Appendix C - Scoring Tool Results from OTA CIAO Action Plan



NOSB RECOMMENDATIONS	Importance	Ease of Implementation/Complexity
Organic Seed Usage - Rulemaking	<ul style="list-style-type: none"> Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust Highest priority for industry (OTA survey) Out of step with international norms 	<ul style="list-style-type: none"> Unanimous NOSB Vote NOP responded favorably to NOSB recommendation Industry solutions privately adopted Needed to clarify the intent of the regulations

From OTA comments submitted to AMS-NOP on March 30, 2022:

https://ota.com/sites/default/files/indexed_files/OTA%20Final%20Comment_NOP%20Rulemaking%20Priorities.pdf

Appendix D - NOP 5029 and the 2019 Recommendation

What does the existing NOP 5029 do?

- Describes practices for certified operations to demonstrate their efforts to procure OG seed
- Gives examples of records that should be maintained
- Provides a definition of “Equivalent Variety”
- Provides examples of FORM, QUALITY & QUANTITY
- Clarifies that PRICE cannot be considered
- Clarifies that THREE OR MORE sources should be contacted
- Clarifies the inputs that may be used for treating seeds
- Describes the role of certifying agents

What does 5029 not do?

- Fails to establish organic seed usage as an OSP goal and does not stress continuous improvement
- Fails to address non-GMO requirement for non-OG seed
- Skirts the responsibility of buyers (handlers) and contract growing

What key revisions were made in the 2019 recommendation for Guidance?

- Brings continuous improvement into search and procurement methods including an increase in percentage of organic seed/planting stock used overtime by the operation
- Maintains three or more sources must be contacted, suggests improved timeliness of ordering, and clarifies the search should be for suppliers known to carry organic varieties
- Formalizes on-farm trials as a method to evaluate and document organic variety/cultivar equivalency to the nonorganic item in use and suggests documentation can include varietal characteristics discovered during the on-farm trial of organic and non-organic
- Clarifies the non-GMO requirement for conventional untreated seed
- Suggests certifiers ask for corrective action plan or additional steps if sufficient progress is not demonstrated by the operator and clarifies that non-compliances should be issued for repeated lack of progress
- Clarifies handlers/buyers that contract with growers must pass along sourcing records to be included in the organic producer’s OSP
- States that certifiers should review the prevention measures taken to avoid contamination for seed of crops grown by the organic operator, at-risk of GMO contamination
- Supports the development of an organic seed and planting stock database
- Supports further training for certification staff and inspectors on how to assess commercial availability