

**FORMAL RECOMMENDATION BY THE
NATIONAL ORGANIC STANDARDS BOARD (NOSB)
TO THE NATIONAL ORGANIC PROGRAM (NOP)**

Date: August 17, 2005

Subject: Commercial Availability of Organic Seed

Chair: Jim Riddle
(sign)

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action:	_____
Guidance Statement:	<u> X </u>
Other:	<u> X </u>

Statement of the Recommendation (including Recount of Vote):

In order to ensure consistent application of organic seed requirements, the NOSB recommends the following:

1. The establishment of a national database by an independent party to provide public access to current information on the availability of organic seed varieties. Producers using non-organic varieties not appearing on the database will need to provide justification for such use.

In the interim period before such a database is developed, accredited certifying agents should provide every applicant and certified crop producer with resources relating to organic seed suppliers. Listings of organic seed sources may be found at www.omri.org and www.attra.org.

2. 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.

3. For an organic producer to receive an allowance to use non-organic seed or planting stock to produce a crop that can be sold or labeled "organic," the producer must provide records to the certifying agent as a part of the organic system plan demonstrating lack of "commercial availability." These records will provide:

- A. Justification for use of non-organic seed or planting stock, based on the attributes of appropriate form, quality, and quantity of the seed or planting stock;
- B. A description of the site-specific agronomic or marketing characteristics required by the operation;
- C. Written evidence of efforts to locate and source organic seed by contacting at least three suppliers of organic seed – written evidence may include letters, faxes, e-mail correspondence, and phone logs; or

D. Written description of trials comparing organic and non-organic seeds or planting stock. If the producer makes a claim that the varieties of organic seed are not equivalent to non-organic seed that the producer prefers to use, supporting documentation must be provided to the certifying agent. (Certifiers may grant an allowance from the organic seed requirement if an applicant or operator conducts “on farm” trials comparing organic and non-organic seed varieties. If so, documentation of “on farm” trials should be recorded in the operation’s organic system plan.)

4. Buyers of organic agricultural products who contractually require organic growers to grow selected varieties should require or provide organic seed or planting stock. When a producer is contractually obligated by a buyer of organic agricultural products to use a variety or varieties that are not currently available as organically grown seed or planting stock, the producer must receive written documentation from the buyer describing:

- (a) the unique characteristics sought by the buyer; and
- (b) the non-availability or non-equivalency of organic varieties.

5. In granting an allowance that organically produced seed or planting stock is not commercially available, the accredited certifying agent shall:

A. Evaluate the applicant’s claim that no organic seed or planting stock was commercially available in the equivalent variety, form, quality, or quantity needed;

B. Validate that the applicant has properly and completely documented that the organic seed or planting stock was not commercially available. This includes validation of the documentation producers receive from buyers who require the use of non-organic varieties.

C. Require certified operators to update commercial availability information in each organic system plan update; and

D. Maintain and annually submit to the National Organic Program an up-to-date list of specific non-organic crop varieties permitted by each agency.

Board vote – August 16, 2005

13 yes, 0 no, 1 absent

Rationale Supporting Recommendation (including consistency with OFPA and NOP):

Rationale provided in text of recommendation below.

Response by the NOP:

Updated 2/25/05

**National Organic Standards Board
Crops Committee Recommendation for Guidance
Commercial Availability of Organic Seed
Adopted by the National Organic Standards Board
August 16, 2005**

Introduction

The NOP and NOSB have been asked to provide guidance concerning determinations of the commercial availability of organic seed made by accredited certifying agents (ACAs). The objective of this recommendation is to establish appropriate practices to be followed by certification applicants, certified operators, and ACAs for consistent, transparent, and predictable determinations of commercial availability that provide regulatory certainty.

Background

§205.2 of the Final Rule defines “commercially available” as, “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.”

§205.204(a) states that, “The producer must use organically grown seeds, annual seedlings, and planting stock...”

However, §205.204(a)(1) states that “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...”

Recommendation

In order to ensure consistent application of organic seed requirements, the NOSB recommends the following:

1. The establishment of a national database by an independent party to provide public access to current information on the availability of organic seed varieties. Producers using non-organic varieties not appearing on the database will need to provide justification for such use.

In the interim period before such a database is developed, accredited certifying agents should provide every applicant and certified crop producer with resources relating to organic seed suppliers. Listings of organic seed sources may be found at www.omri.org and www.attra.org.

2. 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.

3. For an organic producer to receive an allowance to use non-organic seed or planting stock to produce a crop that can be sold or labeled "organic," the producer must provide records to the certifying agent as a part of the organic system plan demonstrating lack of "commercial availability." These records will provide:

A. Justification for use of non-organic seed or planting stock, based on the attributes of appropriate form, quality, and quantity of the seed or planting stock;

B. A description of the site-specific agronomic or marketing characteristics required by the operation;

C. Written evidence of efforts to locate and source organic seed by contacting at least three suppliers of organic seed – written evidence may include letters, faxes, e-mail correspondence, and phone logs; or

D. Written description of trials comparing organic and non-organic seeds or planting stock. If the producer makes a claim that the varieties of organic seed are not equivalent to non-organic seed that the producer prefers to use, supporting documentation must be provided to the certifying agent. (Certifiers may grant an allowance from the organic seed requirement if an applicant or operator conducts "on farm" trials comparing organic and non-organic seed varieties. If so, documentation of "on farm" trials should be recorded in the operation's organic system plan.)

4. Buyers of organic agricultural products who contractually require organic growers to grow selected varieties should require or provide organic seed or planting stock. When a producer is contractually obligated by a buyer of organic agricultural products to use a variety or varieties that are not currently available as organically grown seed or planting stock, the producer must receive written documentation from the buyer describing:

(a) the unique characteristics sought by the buyer; and

(b) the non-availability or non-equivalency of organic varieties.

5. In granting an allowance that organically produced seed or planting stock is not commercially available, the accredited certifying agent shall:

A. Evaluate the applicant's claim that no organic seed or planting stock was commercially available in the equivalent variety, form, quality, or quantity needed;

B. Validate that the applicant has properly and completely documented that the organic seed or planting stock was not commercially available. This includes validation of the documentation producers receive from buyers who require the use of non-organic varieties.

C. Require certified operators to update commercial availability information in each organic system plan update; and

D. Maintain and annually submit to the National Organic Program an up-to-date list of specific non-organic crop varieties permitted by each agency.

NOSB vote

Yes: 13

No: 0

Abstain: 0

Absent: 1

**Addendum A:
COMMENTS OF THE NATIONAL ORGANIC STANDARDS BOARD ON
DOCKET NUMBER TMD-00-02-FR
“COMMERCIALLY AVAILABLE”
ADOPTED MARCH 7, 2001
SUBMITTED MARCH 21, 2001**

Recommended criteria and procedures for assessing organic seeds and planting stock

Seeds and planting stock should be handled separately from processing and livestock inputs.

The NOSB recommends that certifying agents handle determinations and documentation of commercial availability through the organic farm plan requirements stated in 205.201(a)(2) and the normal verification process.

The essential criteria for determination of commercial availability are stated in the definition:

appropriate form,
quality, and
quantity.

The NOSB recommends that excessive price considerations for organic seeds and planting stock should not be included at this time because no consensus has been reached to cover all regions, and because of pricing differences. The NOSB acknowledges that this may need to be reconsidered in the future if problems develop in implementation.

The NOSB recognizes that certifying agents have experience monitoring commercial availability claims for untreated seeds, including pricing and appropriate forms. The NOSB recommends that these systems be adapted to verify the availability of organic seeds and planting stock.

Because of the volume involved (many growers plant a large number of varieties and crops) and the timing of the planting cycle relative to the filing of the organic farm plan, prior approval by certifying agents should not be required. Compliance would be reviewed in the context of the organic farm plan, which is verified during the annual farm visit. A pattern of inadequate documentation and lack of good faith effort to obtain organically grown seeds and planting stock would be considered noncompliance and might result in the certifying agent requiring prior approval regarding commercial availability issues in future planting cycles.

**Addendum B: NOP Questions and Answers posted at:
<http://www.ams.usda.gov/nop/Q&A.html#Production/Handling>**

Q: Does Breeder Seed need to be raised organically in order for its progeny; i.e., Foundation, Registered, and/or Certified¹ Seed, to be sold, labeled, or represented as organic seed?

A: No. The seed of any generation planted with conventional, untreated seed and produced under organic conditions can be certified as organic. In other words, untreated seed of Foundation, Registered, or Certified generations may be sown in an organic seed field/cage/greenhouse, and the progeny will qualify as organic seed. Many varieties are only legal for sale as a class of certified seed according to the Plant Variety Protection Act (PVP), Title V. Check with your official state seed certification agency for the specific varieties protected by PVP, Title V. Additionally, it is not necessary to use only genetically¹ certified² untreated seed to produce organic seed. Any generation of “common,” untreated seed may also be used.

1 The use of the term “genetically” in this sentence in no way implies or authorizes the use of genetically modified organisms.

2 Certified – As defined by the Federal Seed Act Regulations (7 C.F.R. 201(2) (ee)).

Q: Does organic seed always need to be used to produce an organic crop?

A: For edible sprouts, yes; for all other organic crops, no. The National Organic Standards (7 C.F.R. 205.204 (a) (1)) provides that nonorganically produced, untreated seeds may be used to produce an organic crop when an equivalent organically produced variety is not commercially available. The National Organic Standards (7 C.F.R. 205.204 (a) (2)) also provides that nonorganically produced, treated seeds may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available. The seed treatment, however, must be with a substance included on the National List of synthetic substances allowed for use in organic crop production. The only time that a seed treated with a prohibited substance may be used to produce an organic crop is when use of the prohibited substance is a requirement of Federal or State phytosanitary regulations.

Q: How does the National Organic Program (NOP) interpret “equivalent variety” in 7 C.F.R. 205.504(a) (1-2)?

A: An equivalent variety means a variety exhibiting the same “type” (such as head lettuce types, leaf lettuce types, etc.) and similar agronomic characteristics such as insect and disease resistance when compared to the original varietal choice.

“Type” is defined by the Federal Seed Act of 1939 (7 U.S.C. 1551-1661.) as either (A) a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions, or (B) when used with a variety name means seed of the variety named which may be mixed with seed of other varieties of the

same kind and similar character, the manner of and the circumstances connected with the use of the designation to be governed by the rules and regulations prescribed under section 1592 of the Federal Seed Act.

Variety is defined by the Federal Seed Act as a subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other sorts of the same kind, for example, Marquis wheat, Flat Dutch cabbage, Manchu soybeans, Oxheart carrot, and so forth. Kind means one or more related species or subspecies which singly or collectively is known by one common name, for example, soybean, flax, carrot, radish, cabbage, cauliflower, and so forth.

Q: How many generations removed from the present must a grower research the breeding techniques for a given variety to ensure compliance with the NOP? In many cases it is impossible to research breeding techniques of older varieties as breeding methods are usually highly confidential and in some cases lost to history.

A: Effective October 21, 2002, plant breeders developing new varieties for use in certified organic production must comply with the requirements of the NOP.

All varieties (open pollinated and hybrid) in existence prior to October 21, 2002 may be used by organic producers provided that these varieties have not been produced using Genetically Modified Organisms (GMO).

What constitutes GMO is defined by NOP through the term “excluded methods,” (7 C.F.R. 205.2).