

National Organic Standards Board (NOSB)
Joint Crops and Compliance, Accreditation, and Certification Committee

Further Guidance on Commercial Availability of Organic Seed
April 3, 2008

Introduction:

In the fall of 2005 the NOSB issued a formal recommendation regarding Commercial Availability of Organic Seed in the form of a Guidance Statement. In 2006, the Crops Committee agreed to reassess the recommendation and gave response to public comment. Based on still more public comment received at ensuing NOSB meetings, including the November 2007 meeting, the Board recommended that the Crops Committee evaluate prior recommendations on seed availability and suggest ways to increase the utilization of organically grown seeds.

This Joint Committee acknowledges that only a small proportion of the seed currently used by organic farmers is certified organically grown seed. Also that, many certifying agents do not believe they have been given viable guidelines for their role in verification procedures concerning organically grown seed availability. The Committee now offers adjusted guidance that we hope will bring clarity to the issue and accelerate the utilization of organic seed in all sectors of organic crop production.

Regulatory Citations Background:

§ 205.2 Commercial availability [defined] – 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 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;

The 2005 NOSB guidance on commercial availability of organic seed included these basic concepts and recommendations (ordered as presented in the 2005 recommendation):

1. Establishment of a public reference database listing available organically grown seed varieties.
2. Definition of the conditions in which organically grown and non-organically grown seed varieties should be considered equivalent.
3. Guidance for producers on evidence required to prove commercial un-availability of seed..
4. Request for contractual buyers of organic agricultural products who contractually require organic growers to grow selected varieties to also provide organically produced seed or require the use of organically produced varieties.
5. Guidance for accredited certifying agents (ACAs) on how to verify commercial un-availability.

Discussion:

The Committee continues to agree with the points listed above as they pertain to the 2005 NOSB Guidance Statement on organic seed. The Committee concludes that several factors still exist which limit the wider use of organic seeds, including:

- A. An emergent organic seed industry that may, in certain cases, lack the diversity, quality, and quantity of organically grown seed to meet the needs of the organic production sector.
- B. Lack of readily available information for growers and certifiers regarding organically grown seed varieties and their characteristics.
- C. The occasional marketing of substandard seed by the organic seed industry, which results in bad experiences for organic growers and appears to create an aversion to the continued use of organically grown seed.
- D. Unwillingness of many growers to use organically grown seed varieties, and the reluctance of some certifiers to require them to do so. A substantial portion of this grower resistance is believed to stem from the price differentials between conventionally and organically grown seed.

The NOSB continues to point out that price differentials between conventionally grown and organically grown seeds do not justify the use of non-organic seed. Development and growth of the organic seed industry will naturally lead to economies of seed production and lower prices for organically grown seed.

The Committee highlights that further development of the organic seed industry is the key to increasing commercial availability of organically grown seeds and subsequent increased usage by growers. Again, the goal is to promote the continued growth and improvement in organic seed production and subsequent usage by organic growers, without hurting or putting undo burdens on growers. It is not the committee's intention to have major non-compliances handed down to farmers trying to abide by the seed commercial availability section of The Rule. Achieving the goal of a healthy, viable organic seed industry is important, especially when considering the pathway the conventional seed industry is taking toward increasing inclusion of biotechnology in seeds (excluded methods in The Organic Rule). The organically grown movement will not benefit from allowing the organic seed production industry to stagnate while the conventional seed production sector moves on to the likely future situation in which traditionally bred and produced seed is only an afterthought, a relic of bygone days. A vibrant organic seed industry would be expected to be the best guardian of proven traditional seed varieties and methods, as well as the likely source of new innovations in organic growing methods that will result in excellent quality seed in sufficient quantities to supply the market need at reasonable costs.

The Committee believes that channeling information on market supply/demand needs to producers and suppliers of organically grown seed would be a vital way to accelerate the supply and use of organically grown seed. In addition, providing this type of information to companies that produce conventionally grown hybrid seed varieties could facilitate better understanding of the organic seed market, leading to increased interest in producing organic seed themselves or in creating partnerships with organic seed producers through sub-licensing agreements. We believe that the seed industry would be the best and most motivated stakeholder for coordinating the collection, tabulation, and reporting of such seed market information. Furthermore, a proposed system requiring ACA's to gather such market information and submit annually to the NOP for tabulation and posting would be predictably cumbersome and flawed in scope and function. A better approach would be to encourage the following roles among the parties involved in enforcement:

A. NOSB and NOP role in promoting use of organic seed

1. Encourage private seed companies, organic seed trade associations and public interest organizations to use seed market information to create joint internet portals to promote wider use of organic seeds.
2. Emphasize protocols for determining commercial availability of organic seeds during ACA training programs.

B. ACA's role in enforcing commercial availability.

1. Continue to enforce requirements for use of organic seeds, applying NOP guidance on commercial availability of seeds.
2. Emphasize that seed price differentials between organically grown and conventionally grown seed are not a factor in determining commercial availability.
3. Verify that organic farmers are making a sincere effort, on an ongoing basis, to find organic seed varieties suitable for their farm.

Recommendation:

In order to ensure consistent application of organic seed requirements, the NOSB recommends several additions (highlighted in **bold below**) to the 2005 NOSB Guidance Statement on organic seed as presented below.

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 of **such inquiries with supplier and corresponding response** may include letters, faxes, e-mail correspondence, and phone logs.

One simple way that some growers are already accomplishing this task is by making a list of all seed varieties they will require for their annual needs and submitting it to at least three seed suppliers (seed brokers, catalog seed suppliers, etc.) with access to organically grown seed. The supplier then has a ready-made checklist for a proper written response to the grower on which varieties they are able or not able to supply in the organically grown form.

The information on the list would include:

Name of grower or farm- (as shown on organic certificate)

Location- (town, state, country)

Seed type- (lettuce, soybeans, wheat, etc.)

Variety name

Amount of seed- by weight or number of seed

Names and locations of seed suppliers being accessed

For growers ordering from seed catalogs, photocopies of catalog pages showing non-availability of organically grown seed of the varieties requested are acceptable to demonstrate supplier response only.

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 (ACA) 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.

ACA’s shall forward each grower’s list of non-organic seed varieties used (commercial unavailability documentation) to the appropriate, recognized organic seed trade association. A recognized organic seed trade association for this purpose must be:

- 1) at least national in scope and representation of organic seed growers and**
- 2) working together with a third party non-governmental, public interest organization, such as OMRI or ATTRA, for the tabulation of the provided seed information and publication of the database.**

Certifiers must also validate 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 submit **upon request** to the National Organic Program **copies of grower's lists of seed varieties (commercial unavailability documentation)** for the crop varieties permitted by each agency.

Motion: K. Engelbert Second: G. Davis

Committee Vote: Yes: 10

No: 0

Abstain: 1

Absent: 0