



Oregon Tilth Certified Organic

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The National Organic Standards Board
c/o Keith Jones
Room 4008 - South Building
1400 and Independence Avenue, SW
Washington, D.C. 20250-0001

Dear NOSB Members:

Thank you for the opportunity to comment on the NOSB's recommendations regarding "Rule Change on Commercial Availability – Draft 2."

Oregon Tilth Certified Organic (OTCO) takes the issue of commercial availability seriously and appreciates the NOSB's efforts to establish reliably uniform certification decisions among accredited certification agents. OTCO offers the following specific comments on the NOSB recommendations.

Recommendation 1a

The May 2002 NOSB recommendation for amending 205.606 includes reference to “made with organic (specified ingredients or food groups).” These references should be removed because commercial availability provisions do not apply towards “made with” products.

Section 205.301(c) provides the product composition requirements for “made with” products. Commercial availability is not a component of these requirements. In fact, the product composition requirements indicate nonorganic ingredients may be produced without regard to commercial availability requirements established in 205.301(f)(6).

Recommendation 1b

OTCO supports the recommendation to eliminate a list of allowed nonorganic agricultural products, as currently established under 205.606.

OTCO also supports establishing a new section which would identify additional restrictions or annotations associated with nonorganic agricultural ingredients. This would clarify the regulations and how they apply to certain agricultural ingredients.

We recommend entitling this section “Nonorganically produced agricultural substances restricted for use in or on processed products labeled as ‘organic’ or ‘made with organic

(specified ingredients or food group(s))’.” There won’t be any agricultural ingredients that would be entirely prohibited.

As discussed above, the agricultural ingredients included on this list would only be subject to commercial availability requirements if used in products labeled as “organic.” Annotations and restrictions associated with ingredients included on the list would apply to their use in both “organic” and “made with” products.

Creating a new §205.607 will be unnecessary because we propose placing this suggested content at 205.606 (see comments on Recommendation 2 below).

Recommendation 1c

OTCO supports this recommendation.

Recommendation 2

General comments:

While OTCO understands the motivation behind writing detailed procedural requirements, we do not support building them into the standards as currently recommended for several reasons, including:

1. Certification procedures are outlined/established in two parts of the NOP standards: Subpart E – Certification (205.400 – 205.406) and Subpart G – Administrative Compliance (205.660 – 205.669). The NOSB recommendation proposes to include detailed certification compliance procedures into a section dealing with materials standards.
2. OTCO believes some of the detailed procedures recommended by the NOSB are already required/addressed by more general provisions of the NOP standards (and therefore redundant). Changing or adding new language to the standards should only be done when absolutely necessary. Some of the proposed new language is not necessary.
3. OTCO believes some of the detailed procedures recommended by the NOSB are better served as inclusion in guidance documents for operators and/or certification agents.

Detailed comments on proposed new language:

Section A, points 1 – 3: The first three points are good guidance recommendations of elements operators should build into organic management plans and annual updates.

Section A points 4 – 5: The last two points describe documentation that need not be submitted directly to certification agent by the operator as part of their plan or annual update. This supporting documentation of commercial unavailability can be reviewed and verified by the inspector and described in the subsequent inspection report.

Section B, points 1, 2, 8, and 9: These four points are already required and/or addressed by the NOP standards. Thus, OTCO feels they are redundant and unnecessary.

Section B, points 3 and 7: OTCO feels these two points are good recommendations for inclusion in guidance documents for operators and certification agents.

Section B, point 4: OTCO believes it is a good idea to provide certification applicants and certified operators with sources of information which list available organic ingredients. However, this information should be proactively provided, not reactively offered following a review requesting allowance of nonorganic forms of an ingredient. Also, OTCO doesn’t believe providing such information and resources should be made the certification agent’s responsibility via regulations. Several industry groups currently offer such information services, such as the OTA website. Also, the NOP website lists sources of organic livestock feed. While we agree

such information and resources should be accessible, we don't feel its accessibility should be made the sole responsibility of certification agents.

Section B, point 5: It is not the certification agent's role to state the rationale for the allowance of non-organic ingredients. It is the operator's responsibility to state the rationale for requesting an allowance of non-organic ingredients based on the criteria for commercial availability established by the NOP definition (appropriate quantity, quality or form to serve essential function). It is the certification agent's responsibility to review the rationale and supporting documentation presented by the operator. The certification agent then determines if it is adequate, reasonable and reflects a good faith effort to source organic ingredients.

Section B, point 6: The annual report listing all ingredients granted allowance as nonorganic due to commercial unavailability is a significant new accreditation requirement for certification agents.

The variation in operator's product formulations combined with multiple criteria within the definition mandates evaluation of commercial availability occur on a case by case basis. This fact also negates the uniform applicability of a list of ingredients that are commercially unavailable in organic form.

OTCO maintains this information (on hard copy) in each individual operator's certification file. This data is not currently tracked electronically by our program. OTCO certifies over 800 operators and it would take innumerable staff hours to review all certification files for instances of determination of commercial unavailability and then transfer such data from hard copy to an electronic format.

If such a requirement were imposed, the USDA should provide ample notification so that certification agents may adjust their programs to track such information in a more easily accessible format, such as electronically. Also, such a requirement would be better placed in section 205.510 which identifies reports annually submitted to the USDA by accredited certification agents.

To summarize our comments: Because the procedural requirements suggested for 205.606 are either unnecessary, belong elsewhere in the standards or are more appropriate as guidance documents; and because commercial availability is addressed in other sections concerning product composition requirements, we propose that the suggested 205.606 be entirely replaced by the proposed content for the new section 205.607.

Here's the proposed language:

§205.606 “Nonorganically produced agricultural substances restricted for use in or on processed products labeled as ‘organic’ or ‘made with organic (specified ingredients or food group(s))’.”

Any nonorganically produced agricultural product may be used in products labeled “organic” in accordance with restrictions specified in this section and when the product is not commercially available in organic form.

Any nonorganically produced agricultural product may be used in products labeled “made with organic (specified ingredients or food group(s))” in accordance with restrictions specified in this section.

[appropriate listing of restricted nonorganic agricultural products]

Thank you in advance for your consideration of these comments.

Respectfully submitted,

Chris Schreiner
Oregon Tilth