



**STATE OF WASHINGTON**  
**DEPARTMENT OF AGRICULTURE**  
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National Organic Standards Board  
c/o Keith Jones  
Room 4008 – South Building  
1400 and Independence Avenue, SW  
Washington, D.C. 20250-0001

RE: Rule change on Commercial Availability – Draft 2

There are a number of items within the National Organic Standards (NOS) that provide flexibility to producers and handlers to demonstrate compliance with the standards. For instance, section 202.202 requires buffer zones that are adequate to prevent the unintended application of prohibited substances that are applied to adjacent land that is not in organic production. This provision provides the discretion and flexibility to the operator and the certifier to determine what is an adequate buffer zone. The standard allows site specific buffer zones to be developed that address the risk factors including prevailing wind direction, type of application equipment used and other considerations. The Organic Production System Plan and the organic inspection provides the methodology to develop site specific buffer zones that meet the intent of the National Organic Standards and protect the integrity of organic food products.

The commercial availability provision of the National Organic Program is another area that provides flexibility and discretion to the operator and certifier to develop an operator specific plan that addresses the intent of the NOS. The National Organic Standards Board (NOSB) commercial availability recommendations are intended to provide consistency in implementing the commercial availability provisions of the NOS. Unfortunately the recommendations would create additional requirements that would increase the regulatory burden of the NOS and eliminate the discretion currently provided by the NOS. For this reason I am opposed to the NOSB Commercial Availability Task Force February 25, 2004 recommendations.

The availability of organic ingredients has improved over the last few years. At the current time there are very few agricultural ingredients that are not commercially available in an organic form. The NOSB commercial availability recommendations would increase the complexity of the NOS by creating new rule sections and developing burdensome requirements. The organic trade and organic consumers would be better served by eliminating the commercial availability provisions for processed organic foods. Food manufacturers that could not locate minor agricultural ingredients in organic form can label their products as “made with organic.”

The commercial availability provision for processed organic foods should be eliminated. If the commercial availability provision is eliminated, processors that cannot locate a minor ingredient in organic form can label their products as “made with organic” rather than organic. This would reduce the inconsistency in the implementation of the NOS by accredited certification agencies. It would create an organic standard that is clear to organic handlers and understandable by consumers. It would provide an incentive to organic producers and handler to develop those agricultural products that aren’t currently available in organic form.

If you have any questions I am available at (360) 902-1924, email: [mmcevoy@agr.wa.gov](mailto:mmcevoy@agr.wa.gov).

Sincerely,

Miles McEvoy  
Organic Program Manager