

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

Date: 11/19/2008

Subject: Commercial Availability of Organic Seeds

Chair: Rigoberto Delgado

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action: _____
Guidance Statement: X
Other: _____

Summary Statement of the Recommendation (including Recount of Vote):

The recommendation concerns guidelines for the process of verifying commercial availability of organic seed. The stakeholders involved in certified organic farming- certified producers, certifying agencies, and the National Organic Program- are advised on each one's role in the process.

NOSB Vote: Motion: Gerry Davis Second: Jeff Moyer

Board vote: Yes - 14 No- 0 Abstain- 0 Absent - 1

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

The intent of the recommendation is to offer guidance leading to increased levels of compliance with Title 7 Part 205 National Organic Program (§205.204).

Response by the NOP:

**National Organic Standards Board
Joint Crops, and Compliance, Accreditation, and Certification Committee**

Further Guidance on Commercial Availability of Organic Seed

September 22, 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) Non-organically 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 unavailability.

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 ability to produce the required quality, quantity, and varietal diversity 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. Particularly distressing to some organic vegetable growers is the contention by certain hybrid vegetable seed producers that organically grown versions of their varieties will require a 300-400% price premium over conventional versions.

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 in seed production and competition toward lowering prices for organically grown seed.

The Board 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 undue 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 Board believes that the status quo, of relatively limited use of organically grown seed in various sectors of organic production, must be addressed by this guidance document. In order to achieve progress in this area, new incentives to accelerate the supply and use of organically grown seed are appropriate.

Discussion point: One proposal considered was one in which the grower would document for their certifier what percentage of their production was achieved through the use of organically grown seed and a step by step phase-in of ever increasing percentages of organic seed usage would be required, eventually leading to 100% usage. Other proposals involve a less austere, gentler prodding of the industry toward the 100% usage goal. All of the proposals involve some manner of increased effort from each of the parties involved in organic certification, from the NOP through improved accreditation guidelines and ACA training on seed issues, from the certifiers through additional emphasis on organic seed in grower inspections, and from growers themselves in calculating and documenting how much organic seed they currently use and seriously exploring avenues to increase use of organic seed.

Guidance Document Recommendation:

In order to ensure consistent application of organic seed requirements, the NOSB recommends several additions (highlighted in blue **bold and strikethrough**) to the 2005 NOSB Guidance Statement on organic seed as presented below. For the purposes described above, the NOSB recommends in this document that the responsibilities for providing the impetus toward increased use of certified organic seed be divided among the three entities (growers, ACA's, NOP) with the greatest ability to insure, monitor, and document organic seed use.

A. NOP role in promoting use of organic seed

- 1. Emphasize protocols for determining commercial availability of organic seeds during Accredited Certifying Agency (ACA) training programs.**
- 2. Emphasize to ACA's that organic seed usage by clients must be monitored and improvement in percentage usage is expected and must also be monitored. Documentation of the levels of organic seed usage and evidence of improvement in the percentage vs. total seed usage by the ACA's clientele should be audited as part of the NOP accreditation reviews.**
- 3. Inform ACA's during training sessions that the issuance of both minor and major non-compliance statements to growers on this issue is the tool to be considered in all audits as a method to incentivize growers to use more organic seed in their operations.**

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. Document the organic seed usage status of their clients and be prepared to present the information to the NOP as part of the ACA's accreditation audits.**
- 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 and ongoing effort to find organic seed varieties suitable for their farm.**
- 4. Impress upon growers and clients that if known sources of organic seed are available, they must be sought out and utilized or face the possibility of having individual crops decertified. This possibility could occur following the issuance of non-compliance statements over a period of no less than (2) yearly audit cycles.**
- 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. This includes validation of the documentation producers receive from buyers who require the use of non-organically grown varieties. **As part of the validation process, copies of the applicant's documentation from previous years should be consulted to determine if they are making any progress in their search methods and results.****
 - 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 **documentation of the organic seed usage status (current percent levels as compared to historical levels of usage by acreage) of each certified operator.****

C. Certified Grower's role in increasing organic seed use.

- 1. Document annually all seed usage to determine the percentage of organic seed usage vs. total seed usage on an acreage basis.**
- 2. Search for and request organic seed for all crops grown.**
- 3. Document a diligent search for organic seed, by listing and legitimately working with a minimum of three seed vendors that are known within the industry as organic seed suppliers.**
- 4. 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 credible suppliers of organic seed – written evidence of such inquiries may include letters, faxes, e-mail correspondence, and phone logs.
- D. Written description of trials comparing organic and non-organic seeds or planting stock. If the producer makes a claim that available 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.)

For the purposes of this document: 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.

Further, the NOSB recommends and encourages:

1. The establishment of a **“two way”** national database by an independent party. **This data base should provide public access to current information on the availability of organic seed varieties and allow for the posting of requested varieties and quantities of organic seeds from growers in a manner that protects private company business information.**

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. Buyers and/or processors 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/processor 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/processor describing:

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

Motion: J. Moyer Second: K. Engelbert

Committee Vote:

Yes- 11 No- 0 Abstain - 0 Absent- 0