

**COMMENTS OF THE NATIONAL ORGANIC STANDARDS BOARD ON
DOCKET NUMBER TMD-00-02-FR**

"COMMERCIALY AVAILABLE"

ADOPTED MARCH 7, 2001

SUBMITTED MARCH 21, 2001

Preamble for commercial availability recommendation

The NOSB recommends that the criteria and procedures for determination of "commercially available" be further delineated: a) for processing ingredients; and b) for seeds and planting stock.

Recommended change in definition

The NOSB recommends that the first "or" in the definition of "commercially available" in the Final Rule be changed to "and" to read:

Commercially available. The ability to obtain a production input in an appropriate form, quality, and 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.

Rationale: The NOSB recommends that all three factors, form, quality, and quantity, must be assessed by certifying agents when making determinations concerning whether an ingredient or input is commercially available in an organic form.

Recommended criteria and procedures for assessing ingredients

The NOSB recommends that the following criteria and procedures be used by certifying agents to determine the commercial availability of ingredients:

Commercially available criteria

The ingredient shall be determined to be commercially available if the material:

1. is obtainable in a quantity necessary to meet a given production or processing cycle;

2. meets the technical requirements, including appropriate form, quality, and function specified for the ingredient;
3. is obtainable at no more than 3x the cost of the alternative conventional ingredient.

Commercially available determination procedures

A. The applicant must submit a written report to the certifying agent as part of the organic plan that lists:

1. Description and technical specifications of the ingredient;
2. Known sources of the ingredient, and organic status thereof;
3. Written evidence of efforts to locate sources of organic ingredients, including dates, letters, and phone logs of discussions with potential suppliers. A minimum of three suppliers shall have been contacted in a timely manner.
4. Estimate of the quantity of the ingredients needed within a specified time, if this is a factor in the requested allowance of a non-organic ingredient.
5. Explanation of how the ingredient is used to fulfill an essential function, and that there are no acceptable alternatives that may be sourced organically
6. The cost of the organic ingredient and the economic effect on the operation.

B. The certifying agent in granting an allowance shall:

1. Verify that the applicant has made a good faith effort to source organic ingredients and evaluate the claim that no organic substitutes are available;
2. Keep an ongoing, publicly available generic list of ingredients that have been granted allowances in non-organic forms; specify the time period for which an allowance is granted; and state the rationale for the allowance. The list shall maintain the confidentiality of parties granted allowances.
3. Require applicants to update commercial availability information in each annual organic plan, or sooner if new information is discovered.
4. Acknowledge all complaints concerning allowances granted and provide rationale for determinations. If the investigation of a complaint provides significant new information, then the certifying agent must revisit the allowance.

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.

Submitted by James A. Riddle, Secretary, NOSB