

National Organic Standards Board
Certification, Accreditation, Compliance Subcommittee (CACS)
Consistency in Organic Seed Use Discussion Document
August 6, 2024

Summary:

The **Certification, Accreditation, Compliance Subcommittee (CACS)** seeks to understand the current state of organic seed use, potential tools for increasing the amount and variety of organic seed that is commercially available, and methods for strengthening enforcement of the existing commercial availability requirements.

Background:

Organic producers are generally required to use organically grown seeds (7 USC § 6508(a); 7 CFR § 205.204). Nonorganically produced, untreated seeds may only be used “when an equivalent organically produced variety is not commercially available” (7 CFR § 205.204(a)(1)). In August 2005 and November 2008, the NOSB made recommendations on implementation of the commercial availability requirement, and in 2013, the NOP issued [Guidance 5029](#), which outlines procedures for verifying compliance with the commercial availability requirement. The relevant statutory, regulatory, and guidance text is attached as Appendix A. The NOSB made additional recommendations for rulemaking and strengthening Guidance 5029 in [2018](#) and [2019](#), respectively. The 2018 and 2019 recommendations are summarized in Appendix B.

During the recent public comment hearings in Spring 2024 organic stakeholders reported concern about the state of organic seed use. Research supports the public comments regarding low levels of organic seed use, that the commercial availability requirement is inconsistently enforced, and the organic seed market is stagnating in the face of uncertain demand. The 2022 [State of Organic Seed](#) presents reported organic seed use for 2011, 2016, and 2022, which shows that the percent of acres planted with organic seed has been roughly unchanged over the years. The one exception is that the share of acreage planted with organic vegetable seed increased between 2011 and 2016. Research examining organic seed use found that some organic food manufacturers require that their suppliers use specific varieties of ingredients, for which organic seeds are not available.

In the European Union (EU), pursuant to regulation EC No 2018/848, use of non-organic seed will be phased out completely by January 1, 2037. Member states have formed national seed expert panels that are currently developing lists (annexes) that identify seeds that are partially or fully commercially available as organic. Nonorganic seeds cannot be used in place of seed varieties identified as fully commercially available as organic. Organic seed supplier information is available in national organic seed databases.

Discussion & Questions:

The need for NOP action on the 2018 and 2019 recommendations is still strong, and additional actions may also be necessary to spur use of organic seed and growth of the organic seed market in the United States. The NOSB seeks stakeholder input on the following questions, to guide next steps:

1. Is there still support for the 2018 and 2019 recommendations?
2. How burdensome is it for producers to demonstrate compliance with the commercial availability requirement for seed?

3. In general, how available is organic seed, and is untreated seed significantly easier to find than organic seed?
4. Are there some crops for which organic seed is available? Are there any crops for which lack of organic seed supply is notable?
5. Is current organic seed research meeting industry needs? Which crops/varieties are the most promising avenues for organic seed research?
6. How can the NOP address the handler role in seed choice, beyond the updates to Guidance 5029 that the NOSB previously recommended? Should the regulations be amended to apply the commercial availability requirements in 7 CFR § 205.204 to handling operations? Should handler Organic System Plans address seed choice? If so, how?
7. What additional information do certifiers and inspectors need to effectively enforce the commercial availability requirement (i.e. how would a certifier or inspector know that an organic option is available and must be used)?
8. How could the NOP (or other entity) make information about commercial availability available publicly? What additional factors could be used to determine that a seed must be used? How could the EU's seed expert panel model inform the U.S. approach?
9. Who could/should build/maintain a U.S. commercial availability database for seed? What attributes should be listed/made available?

Subcommittee Vote:

Motion to accept the discussion document on Consistency in Organic Seed Use

Motion by: Carolyn Dimitri

Seconded by: Jerry D'Amore

Yes: 7 No: 0 Abstain: 0 Recuse: 0 Absent: 1

Appendix A: Relevant Statutory, Regulatory, and Guidance Provisions

- 7 USC § 6508. Prohibited crop production practices and materials
(a) Seed, seedlings and planting practices
For a farm to be certified under this chapter, producers on such farm shall not apply materials to, or engage in practices on, seeds or seedlings that are contrary to, or inconsistent with, the applicable organic certification program.
- 7 CFR § 205.2 Terms Defined.
Commercially available. 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.
- 7 CFR § 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;
 - (2) Nonorganically produced seeds and planting stock that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;
 - (3) Nonorganically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with § 205.290(a)(2);
 - (4) Nonorganically produced planting stock to be used to produce a perennial crop may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management for a period of no less than 1 year; and
 - (5) Seeds, annual seedlings, and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phytosanitary regulations.
- Guidance 5029 § 4.1.2. ...
 - a. ... For the purposes of this [commercial availability] exception, an “equivalent variety” is a variety of the same “type” (e.g. head lettuce types versus leaf lettuce types) or has similar agronomic or marketing characteristics needed to meet site-specific requirements for an operation. These characteristics may include, but are not limited to number of days until harvest; color, flavor, moisture, chemical, or nutrient profiles of the variety of the harvested crop; vigor or yield of harvested crop; regional adaptation, disease and pest resistance, or the plant’s utility in a crop rotation.
 - b. Price cannot be a consideration for determination of commercial availability.
- Guidance 5029 § 4.1.3 The following considerations could be acceptable to justify use of non-organic seeds and planting stock as not commercially available. These considerations must be described by the operation in their organic system plan (OSP), pursuant to § 205.201(a)(2), and approved by the certifying agent.

- a. Form Considerations: Examples of forms may include, but are not limited to, treated or non-treated seeds or planting stock, use of pelleted seed, or use of bare root nursery stock or container plants.
 - b. Quality Considerations: Examples may include, but are not limited to, germination rate of the seed; presence of weed seeds in the seed mix; shelf life and stability of the seeds; and disease and pest resistance.
 - c. Quantity Considerations: Producers may provide evidence that quantities are not available in sufficiently large or small amounts given the scale of the operation.
- Guidance 5029 § 4.2 Recordkeeping for Organic Producers
 - 4.2.1 The following records should be maintained by organic producers:
 - a. A list of all seed and planting stock, indicating any non-organic seeds or stock used, and the justification for their use including lack of equivalent variety, form, quality or quantity considerations. Records describing on-farm trials of organic seed and planting stock can be used to demonstrate lack of equivalent varieties for site specific conditions.
 - b. The search and procurement methods used to source organic seed and planting stock varieties, including:
 - 1. Evidence of efforts made to source organic seed, including documentation of contact with three or more seed or planting stock sources to ascertain the availability of equivalent organic seed or planting stock. Sources should include companies that offer organic seeds and planting stock.
 - 2. Records may include, but are not limited to: letters, faxes, email correspondence, and phone logs from seed suppliers and companies; seed catalogs; searches of organic seed databases; receipts; receiving documents, invoices, and inventory control documents.
 - Guidance 5029 § 4.4 Role of Certifying Agents
 - 4.4.1 Certifying agents must verify the procedures that certified operations utilize to obtain and plant organic varieties suitable for their operations as part of their annual review of the OSP.
 - ...
 - 4.4.3 Certifying agents shall verify the commercial availability requirements on an annual basis, in their review of the OSP, pursuant to § 205.402(a)(1).
 - 4.4.4 Certifying agents should review an operation's progress in obtaining organic seeds, planting stock and transplants by comparing current source information to previous years.

Appendix B: Summary of NOSB's 2018 & 2019 Recommendations

October 2018 Rulemaking Recommendation:

To amend the 7 CFR § 205.204, Organic seed and planting stock practice standard as follows **(in bold)**:

- (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;

(i) Improvement in searching, sourcing, and use of organic seed/planting stock must be demonstrated every year with the goal of using only organic seed and planting stock.

October 2018 & April 2019 Guidance Recommendations:

4.1.2 Certified operations may use non-organic seed and planting stock only if equivalent organically-produced varieties of organic seeds and planting stock are not commercially available, **and the conventional replacement variety can be documented as being produced without the use of excluded methods.**

4.1.2

c. On-farm variety trials of organic seed/planting stock may be used by producers to evaluate and document organic variety/cultivar equivalency to the nonorganic item in use. If trials are not performed, the producer can use catalog or website seed descriptions, to document there are no organic seeds that have equivalent characteristics to the nonorganic seed in use.

4.1.2

d. Documentation of on-farm trials or seed characteristic searches can be provided at the annual inspection. This documentation can include which seed characteristics are desired, and be based upon the varietal benefits of the current nonorganic seed/planting stock in use. The varietal characteristics discovered during the on-farm trial, of both the nonorganic seed/planting stock and the organic seed/planting stock trialed, can be tracked in a simple table or spreadsheet detailing the specific characteristics sought, and whether or not the various varieties grown contained those characteristics.

4.1.6 Use of non-organic planting stock to produce organic crops is subject to commercial availability as per § 205.204.(a)(1). If planting stock is from a non-organic source and is used to produce perennial crops, then that planting stock may be sold, labeled or represented as organic planting stock or an organic vegetative crop only after 12 months of organic management §205.204 (a)(4). STRIKE THIS SECTION

4.2.1 The following records should be maintained by organic producers:

a. A list of all seed and planting stock, indicating any non-organic seeds or stock used, and the justification for their use including lack of equivalent variety, form, quality or quantity considerations. Records describing on-farm trials, **or other descriptions illustrating seed characteristics**, can be used to demonstrate lack of equivalent seed or planting stock varieties/cultivars for site specific conditions.

b. The search and procurement methods used to source organic seed and planting stock varieties, including:

1. Evidence of efforts made to source organic seed and planting stock varieties **should include but is not limited to:**

i. Documentation of contact with at least three or more seed or planting stock sources to ascertain the availability of equivalent organic seed or planting stock, including

date, variety requested, quantity of seed, as well as if the seed is available organically, or was out-of-stock.

ii. Improved timeliness of seed/planting stock ordering by documenting the date(s) of orders. Earlier ordering can result in a greater chance of organic seed/planting stock availability. For larger orders, suppliers need to be given sufficient lead time to provide the quality, quantity and variety/cultivar within the timeframe needed by the organic producer.

iii. Work with seed/planting stock suppliers that provide a quick response of organic availability, to enable the producer to request seed, in a timely manner, of other suppliers if organic seed was not available from the first supplier.

iv. Demonstrate an increase in the percentage of organic seed/planting stock used over time by the operation.

v. Search suppliers that are known to carry organic varieties or cultivars of the type they seek.

vi. Discuss and document their desire to purchase equivalent organic varieties or cultivars with their current nonorganic suppliers.

vii. Failure to demonstrate improvement in sourcing organic seed/planting stock over time may result in additional seed/planting stock sources being required or additional steps taken to procure organic seed/planting stock, by the organic certifier.

4.2.1 b. 2. (no changes)

4.2.1 (b) 3. If seed/planting stock is sourced or mandated by the buyer of a contracted organic crop, the producer must obtain sourcing information and documentation from the contracted buyer. The buyer's attempts to source organic seed/planting stock then becomes part of the producer's Organic System Plan. Such documentation could include:

i. The handler's organic search documents there are no organic equivalents in quality, quantity or function, to the nonorganic seed/planting stock they require.

ii. The handler has discussed the development of an equivalent organic seed/planting stock source with their nonorganic seed supplier, as well as with organic seed breeders.

iii. The handler seeks out organic growers, either those that are contracted to grow organic crops from that nonorganic seed/planting stock source, or known organic growers who are experienced in seed/planting stock production, to trial production of an organic equivalent variety/cultivar.

iv. The handler clearly documents that mandating use of nonorganic seed/planting stock is not solely based upon the possibly higher monetary cost of an organic equivalent variety.

v. The handler can be required to illustrate they have performed the items required of producers in 4.2.1 (b), where the certifier feels this is appropriate, in order to achieve the goal of full compliance in the use of only organic seed/planting stock.

4.4.4 Certifying agents should review an operation's progress in obtaining organic seeds, planting stock and transplants by comparing current source information to previous years

a. If sufficient progress is not demonstrated a certifying agent may ask for a corrective action plan and require additional seed sources be researched, encourage variety trials, or require additional steps to procure organic seed.

b. Non-compliances should be issued for repeated lack of progress in sourcing and using commercially available organic seed/planting stock over time. Judgment of a noncompliance can include, but is not limited to:

- 1. The certifier's communication detailing commercial availability organic seed/planting stock and continued non-use by the farmer**
- 2. Organic seed searches that do not include suppliers who carry organic seed/planting stock of that specific crop.**
- 3. The producer's lack of on-farm seed trials, or reference to descriptions, for judging equivalency between nonorganic seed and organic seed.**
- 4. When producer returns to nonorganic seed/planting stock use, if the organic equivalent seed/planting stock was not documented as having a significant yield, market or other loss.**

4.4.5 Certifying agents should review the prevention measures taken to avoid contamination for seed of crops grown by the organic operator, at-risk of GMO contamination.

