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The National Organic Standards Board  
c/o Valerie Frances, Executive Director, NOSB  
1400 Independence Avenue, SW  
Room 4008 – South Building, Ag Stop 0268  
Washington D.C. 20250-0200

RE: Recommendation on Further Guidance on the Establishment of Commercial Availability Criteria

Dear NOSB Certification and Accreditation Committee members:

Thank you for the opportunity to comment on the NOSB's recommendation on Further Guidance on the Establishment of Commercial Availability. Oregon Tilth appreciates the efforts of the NOSB to help ACAs deal with this challenging issue. We agree with the assessment that there is much room for improvement and that ACAs (and subsequently their growers, processors and inspectors) would benefit from better training on this subject from the NOP. We also agree with, and currently practice, many of the itemized steps for ACAs in Part B of the recommendation, including incorporating commercial availability documentation into the Organic System Plan and annual audit process of each certified party.

However, we do not agree with and/or offer the following suggestions for Part B of the recommendation-ACA's role in determining commercial availability:

**Point 1 – The second sentence should be revised to include test data as one form of evidence to support the operator's claim. Oregon Tilth recognizes the crucial importance of substantiating a claim that a certain organic ingredient or seed does not meet the desired function, however test data may not be the only way to demonstrate such a claim. Including the phrase 'other supporting evidence' allows the ACA to review and consider *all* relevant documentation.**

1. Evaluate the applicant or certified operator's documented claim that no organic substitutes of the ingredients or materials are commercially available in the form, quality, or quantity needed by the operation to fulfill the required function, or the equivalent seed varieties, as appropriate to the operation. Documented claims should be accompanied by supporting evidence demonstrating that the organic forms of the ingredients, materials, or seeds do not meet the functional requirements for the form, quality, quantity or equivalent variety necessary to the operation. Examples of such evidence include but are not limited to test data, market reports, 3rd party research, reports on local growing season and soil types, and letters from suppliers. [Note: The global market is the universe of supply for agricultural ingredients – local market conditions are not sufficient criteria – aside from as described above. Searches for organic seed should extend beyond the local area

and should include regional, national and international searches as well, recognizing that climate and regional differences are significant influences on the success of the propagation of varieties of seed. Form, quality, quantity, and equivalent varieties factor into the search and selection of seeds.]

**Point 2 – The second half of the first sentence states “by reviewing information that includes a list of *all known sources of organic ingredients*”. At this point in time there is a no central database to all known sources. Until such a system is created and *maintained*, the word “known” will be a relative term subject to each certifier.**

**The word “multiple” is a vague term. It is generally thought of as at least three. However the number of companies contacted should be relative to supply. One may be enough, or, five might not be enough. The word multiple should be removed and the phrase “commensurate with known supply” inserted in parentheses after the word ‘results’.**

**The phrase “should also show the applicants efforts to do such research with proper lead-time” is problematic. While this is the ideal situation and smart company practice, the organic market with its supply and demand gap does not always allow for this. Unexpected new players or sales, sudden interruptions of availability, and buying patterns, for example, often makes spot buying unavoidable. This overly prescriptive part of the guidance should be struck.**

2. Validate that the applicant or operator has credible documentation that the ingredient, material or seed is not commercially available in an organic form by reviewing available information that includes a list of all known sources of organic ingredients, materials or seeds. Documentation should include detailed results (commensurate with known supply) of the applicants’ efforts to contact credible sources of ingredients, materials, and seeds. Examples of documentation would include dated letters stating ingredient, material, or seed needed and the form, quantity and quality, or equivalent seed variety specifications required to fulfill availability, as well as follow up documentation from the addressee explaining the response to the request.

**Point 3 – This point is completely unreasonable and should be removed all together. The certifier’s responsibility is to determine compliance and assist operators in understanding what is required by the regulations. We are not allowed to conduct operator-specific research and provide individual consultancy services, which is where this type of requirement falls. Providing operators with general sources of information is an optional service that can be made available via a website, for example, or provided upon request. As a requirement with a designated lead-time, certifiers become liable for providing information that is not uniformly accessible. This could lead to unfair competition amongst certifiers as well as irate clients. This type of information needs to be accessible from a neutral party or a privately hired consultant.**

3. ACA’s will notify the certification applicant or certified operator, with proper lead-time, sources of information which list available organic ingredients, materials or seeds, if the certifying agent finds that such materials or seeds exist. The expectation in lead-time is that 6 months prior to the need of ingredients, materials or seeds the certifier will be able to evaluate and determine requests. However, it is understood there are extenuating circumstances that would limit proper lead-time, such as sudden interruptions of global supply of availability of ingredients, which may necessitate an abbreviated evaluation period.

**Point 4 – While Oregon Tilth supports the concept of a transparent database of all granted allowances, the amount of detail necessary must be determined and a standardized way of reporting established so that ACA’s can uniformly submit information that will have meaning. Take hops for example. There are several varieties of hops available in organic form. However, one brewer can use an organic hop variety to make one kind of beer (i.e. IPA), while another brewer can't because the variety needed to make their Porter isn't available in organic form. Thus, a data system that only reported allowance of nonorganic "hops" (without additional detail / specification) wouldn't help much. The additional info on the plant variety is critical to inform why a particular allowance was granted. At the same time, from a database data system design / planning perspective, it would be very hard to standardize what details of info are necessary in reporting allowances because the details that led to allowances can be quite different, unique to the product/formulation, often unpredictable and usually confidential. Ultimately this brings us to the question: what is the intent of this listing and how will it have meaning while protecting confidential business information? What meaningful information will be conveyed by a list without detail to support it? On top of all this, we are concerned that we will be required to spend time on an effort that will not be taken up by the NOP. Our concern stems from the fact that the NOP to date has not launched the database of certified parties that was promised some years ago.**

4. ACA’s will keep an up-to-date listing of CA determinations as an ongoing part of the Organic System Plan (OSP) for record keeping to track all granted allowances for materials and seeds in nonorganic form. This list will be maintained and submitted to the NOP annually by the ACA for the NOP to collate into a master list of materials and ingredients that have been granted allowances in nonorganic form. It is recommended that the data base of all granted allowances of nonorganic materials and ingredients will be maintained by the NOP, or other NOP appointed organization, for documentation and history. (The list shall maintain the confidentiality of material suppliers and parties granted allowances. The reporting requirement shall be monitored through the accreditation process by providing ACAs ample notification and time to adapt data management systems.)

**Point 5 – Oregon Tilth shares the concern of many others that without proactive steps to generate organic ingredients or organic seed, the commercial availability clause will function as an exception without incentive. However, it’s a huge task for operators, especially farmers, to extensively search, document and submit their attempts, let alone have time to promote, or money to fund, development. It’s up to research and education organizations, the OTA and other organic consumer groups, concerned individuals, certified operators and industry entrepreneurs to rise to the occasion, at-will. The market should bring availability to the operator. We do not see in the regulation, the preamble, or OFPA where certified operators are required to generate the organic ingredients, materials, or seeds as part of their commercial search efforts. This requirement goes too far and creates undo burden on the operator. A rule change would be necessary if the operator’s plan is to include mandatory proactive steps.**

5. Require certified operators to update commercial availability information in each organic system plan update. This plan will also include detailed documentation of proactive steps that the applicant or certified operator is taking to generate the organic form of commercially unavailable organic ingredients, materials, or seeds. Examples of proactive steps could be, but are not limited to, the following: documentation of research, funding of research, funding or sourcing of development, promotion to develop the organic source of material, incentive or bonus to crops in transition to organic status, hiring of consultants to help promote and source organic material, or grower contracting.

**Point 6 – With respect to the first sentence in point 5 and all of point 6, Oregon Tilth sincerely hopes there is not an accredited certifier out there that is not incorporating commercial availability into the OSP and the annual audit system.**

6. All documentation of the above will be incorporated as part of the ACA's annual audit process of the certified parties to validate authentic and established processes for commercial availability determinations as part of the Organic System Plan.

Once again, Oregon Tilth would like to thank the NOSB for their ongoing work and commitment to the organic industry.

Respectfully submitted,

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Gwendolyn Wyard on behalf of Oregon Tilth  
Processing Program Reviewer  
Oregon Tilth, Inc.