



ACA Best Practices for Commercial Availability of Natural Flavors

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Purpose

ACA Best Practices describe actions certifiers should take to verify operator compliance, as well as producer activities that can easily be approved by certifiers. The ACA strives to ensure that all Best Practices are consistent with the Organic Foods Production Act (OFPA) and the USDA Organic Regulations. These Best Practices are not legally binding, but if a producer presents plans that fall outside of these Best Practices, then the Organic System Plan (OSP) should provide a rationale for alternative methods and an explanation for how their system fulfills the applicable portion(s) of the related regulations. Certifiers will evaluate whether the differences can be justified. Similarly, if certifiers take an approach that is different from what is presented here, they should be able to articulate how the differing approach is justified according to the OFPA and the USDA Organic Regulations.

Background

This ACA Guidance document describes background, policy, and procedural steps that certifiers should take to ensure compliance with §205.605(a):

Flavors—nonsynthetic flavors may be used when organic flavors are not commercially available. All flavors must be derived from organic or nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.

In 1995, the National Organic Standards Board (NOSB) recommended the use of Natural Flavors in organic foods with the requirement that certified operators demonstrate efforts towards production of organic natural flavors. In 2011, the National Organic Program (NOP) published [Policy Memo 11-1](#), which clarified the current requirements for flavors permitted in organic production and handling. The Organic Trade Association submitted a [petition](#) on November 6, 2014 to require the use of organic flavors when they are available in the quality, quantity and form needed. On October 29, 2015, the NOSB unanimously passed a recommendation to revise the annotation for flavors to require organic when commercially available. On December 27, 2018, the NOP issued a final rule amending the National List with the implementation date of December 27, 2019.

Historically, commercial availability has applied to seeds, materials listed at §205.606, yeast and silicon-dioxide at §205.605. The application of commercial availability to natural flavors led to many questions among certifiers:

- How do certifiers assess commercial availability of natural flavors?
- How do certifiers assess commercial availability of flavoring substances?
- What type of documentation is required for processors to demonstrate lack of commercial availability?
- How does quantity, quality, and form specifically apply to flavors?

The working group identified two groups of operations to consider for the commercial availability of natural flavors: operators sourcing flavors as an ingredient in an organic processed product and operators creating certified organic flavors. Operators sourcing flavors as an ingredient in an organic processed product may only use non-organic natural flavors that meet the requirements at §205.605(a) if they have demonstrated that an organic version of that flavor is not commercially available. Operators creating organic natural flavors may only use non-organic flavoring substances that meet the requirements at §205.605(a) if they have demonstrated that an organic version of that flavoring substance is not commercially available.

Definitions

Natural flavor: 21 CFR 101.22. Foods; labeling of spices, flavorings, colorings and chemical preservatives. (a) (3) the term natural flavor or natural flavoring means the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional. Natural flavors include the natural essence or extractives obtained from plants listed in §§ 182.10, 182.20, 182.40, and 182.50 and part 184 of this chapter, and the substances listed in § 172.510 of this chapter.

Flavoring Substances (components, ingredients, agents): Substances added to impart or help impart a taste or aroma in food. FDA regulations refer to these as Flavoring agents and adjuvants. *In this best practice, the term “flavoring substance” is used to refer to the component of a natural flavor that gives the natural flavor its flavor. Natural flavors may also contain other non-flavoring substances, such as preservatives, carriers, and extractants.*

Commercial Availability

According to 7 CFR 205.2, commercial availability is 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. The working group agreed to the following when determining commercial availability of organic natural flavors and flavoring substances:

- Operators must contact at least three valid suppliers, with exceptions considered on a case-by-case basis.
 - An operator sourcing natural flavors products or flavoring substances to be used in an organic flavor must contact flavor houses that may have an organic version of the flavor/ flavoring substance or the ability to create an organic version.
 - Operators should check with different suppliers of flavors year-to-year.
 - Having a contract in place with a flavor manufacturer is not sufficient justification to contact fewer than three valid suppliers. Additional documentation must be submitted and may be considered on a case-by-case basis.
 - A contract in place with a non-organic flavor manufacturer working towards certification or with a certified organic flavor manufacturer working to develop an organic version may be sufficient justification for contacting fewer than three valid suppliers, provided that documentation is submitted to verify the anticipated date of certification and/or organic system plan.
 - Claiming that a flavoring substance cannot be certified organic is not sufficient justification for contacting fewer than three valid suppliers. Additional documentation must be submitted justifying the lack of ability to certify the ingredient, which may be considered on a case-by-case basis, or three valid suppliers must be contacted.
- Operators must verify and document commercial availability annually for each non-organic flavor or flavoring substance used, with exceptions considered on a case-by-case basis.
 - An ordering or manufacturing schedule can be considered if part of the company's Standard Operating Procedure (SOP).
- The use of otherwise compliant non-organic flavors in made-with-organic products does not invoke a commercial availability search (as long as it meets the requirements of made with organic products).
- The use of made-with-organic flavors as an ingredient in an organic product does invoke a commercial availability search since not "organic".
- Using the flavor name alone may not be sufficient evidence to verify lack of commercial availability of an organic flavor.
- Price cannot be a consideration for determination of the commercial availability.

Quantity, Quality, and Form

The working group clarified quantity, quality, and form as it relates to Natural Flavors:

Quantity relates to the appropriate amount needed for production. Factors to consider regarding quantity:

1. Insufficient amounts for production requirements
2. Excessive minimum purchase requirement

The working group agreed that the operation should submit documentation on the number of suppliers and the amount produced. This report should specify the projected production and quantity of the flavor needed for a given amount of time and contrast the amount with the amount available.

Quality relates to performance attributes most often accompanied by research and development (R & D). Examples of quality for commercial availability:

1. Unreliable manufacturer - providing product with inconsistent quality
2. Shelf life
3. Analytical test results from or that support R & D (microbial testing)
4. Results from a table top comparison (comparing the flavor to other flavors by diluting it to the level used and tasting them side by side)
5. Results from a taste panel (often done after a tabletop comparison)
6. Grade
7. Flavor profiles
8. Effect on the quality of the finished product

The working group agreed that the operation must submit appropriate documentation justifying that an organic version is not of the appropriate quality, which may include but is not limited to R & D testing, visual of the product upon arrival, microbial testing, organoleptic, etc. Operations must provide a clear description as to why the quality of the organic flavor is not acceptable and how this conclusion was made.

Form relates to the physical attributes of a flavor or flavoring substance such as its specifications. Examples of form for commercial availability:

1. Whether the product is powder or liquid

The working group agreed that information should be submitted as to why the form of the ingredient cannot be used in the product or why the product cannot be modified within reason. For example, why can't the product be modified to include a powder instead of a liquid? If the final product is in powder form then it is not within reason to request product modification. Documentation may include specification sheets for the desired flavor and similar flavors found.

Use Up

When an organic version of a natural flavor or flavor substance is commercially available, the working group agreed to the following use up parameters:

- Operators must develop a plan for using up non-organic natural flavors or flavoring substances when organic versions become commercially available. Operators may use up existing stock on a case-by-case basis, but generally no longer than 12 months.
 - Factors to consider for an extended use up include existing production schedules, amount the producer has on-hand, and whether or not the product can be diverted (used in a conventional product),
 - A client cannot use a contract with a non-certified manufacturer to indefinitely stall using an organic flavor or flavoring substance.

Documentation

Operators must have annual documentation of their commercial availability search looking at three sources for each flavor or flavoring substance, or justification for fewer sources. The organic system plan should include a commercial availability plan which details the operations overall usage of natural flavors. Documentation must include justification of a lack of commercial availability when an organic version of a natural flavor or flavoring substance is identified. Only processors of certified organic flavors are required to attempt to source flavor substances (i.e., components, ingredients, agents) used in a manufactured flavor product as organic.

The working group created sample forms to use for documentation of commercial availability. Usage of these forms is not mandatory; however, the information in these forms should be documented by the client. Documentation should be verified as part of the Organic System plan by either being submitted to certifiers, verified at inspection, or a combination of both.

The [ACA Commercial Availability Form Organic Search](#) is completed by the certified operator intending to use a non-organic flavor or flavor substance. The form is used to indicate the three valid sources that were checked for an organic version of the flavor or flavor substance.

The [ACA Commercial Availability Plan](#) is completed by the certified operator using or intending to use non-organic flavors or flavor substances as ingredients in or on processed products labeled as “organic.” The plan details the operations overall usage of natural flavors and flavor substances.

The [ACA Commercial Availability Manufacturer Affidavit](#) is completed by a flavor manufacturer contacted during a commercial availability search. This form is not to be used solely to determine commercial availability but can be used as a supplement to document commercial availability.

Examples

The working group discussed the following scenarios and considerations for commercial availability of organic natural flavors:

Scenario	Considerations
<p>An organic processor of organic ice cream, “Ice, Ice, Baby,” would like to make a label claim about the origin of a specific flavor. Their “Tahitian Vanilla” ice cream product is labeled as such, so they must use Tahitian flavor. They are unable to find organic Tahitian Vanilla flavor.</p>	<p>Claiming lack of commercial availability of an organic flavor because it is not available from a particular geographical origin. More information must be submitted to justify a difference in form, quality, or quantity, such as differing flavor profiles. An operation should not source a specific flavor name but instead should source for an equivalent flavor profile or the desired profile of the flavor.</p>
<p>An organic processor of organic candy, “Santa’s Sweet Shop,” is producing a chocolate bar with candy cane flavor for the holidays. They are unable to find “candy cane” flavor as organic.</p>	<p>Using the flavor name alone is not sufficient evidence to verify lack of commercial availability. The producer must look at three valid suppliers for equivalent flavor profiles such as mint.</p>
<p>An organic processor is sourcing a non-organic flavor from a flavor house, and the flavor house is certified and has the ability to make the flavor organic.</p>	<p>The processor must submit justification for why the flavor house cannot make a version in suitable quantity, quality, or form, and the client is responsible for checking three valid sources for an organic version of the flavor.</p>
<p>An organic processor has a contract with a flavor house that is not certified organic and is not necessarily familiar with organic flavors.</p>	<p>The processor is responsible for checking three valid sources for an organic version of the flavor. If an organic version is commercially available, the processor will have to develop a certifier-approved use-up plan.</p>
<p>An organic processor has located an organic version of a flavor, but the flavor is not available consistently, which will affect the production schedule of the processor.</p>	<p>This may be an acceptable reason for lack of commercial availability due to quantity. A statement from the company contacted (or similar documentation) regarding the amount available must be submitted. The processor must still check with two other valid sources.</p>

<p>An organic processor contacts a supplier of organic natural flavor but there is only so much organic flavor in inventory.</p>	<p>This may be an acceptable reason for lack of commercial availability due to quantity. A statement from the company contacted (or similar documentation) regarding the amount available must be submitted. The processor must still check with two other valid sources.</p>
<p>An organic processor needs a quantity of flavor and the flavor house can create it organically but not by the time needed for production.</p>	<p>This may be an acceptable reason for lack of commercial availability due to quantity. A statement from the company contacted (or similar documentation) regarding the amount available must be submitted. The processor must still check with two other valid sources.</p>
<p>The required minimum order is too large for an organic processor's needs.</p>	<p>This may be an acceptable reason for lack of commercial availability due to quantity. A statement from the company contacted (or similar documentation) regarding the amount available must be submitted. The processor must still check with two other valid sources.</p>
<p>An organic processor has an agreement with the flavor house that it will be the sole supplier of flavor products for 2 years.</p>	<p>The processor must still check three valid sources for an organic version of the flavor. If an organic version is identified, the certifier should ask for a plan moving forward.</p>
<p>A flavor house designed the whole product, not just the flavor, then the organic processor brought it to market.</p>	<p>The processor must still check three valid sources for an organic version of the flavor. If an organic version is identified, the certifier should ask for a plan moving forward.</p>
<p>An organic processor uses a non-organic flavor in a processed product. They document the lack of commercial availability of an organic version every 18 months, which coincides with ordering and production schedules.</p>	<p>This may be an acceptable reason to verify commercial availability every 18 months instead of every year.</p>

<p>The organic processor is using a natural flavor in powder form and there is an organic version available in liquid form.</p>	<p>This may be an acceptable reason for lack of commercial availability due to form. Documentation of the flavor’s form and why it is not an appropriate form for the product must be submitted. The processor must still check with two other valid sources.</p>
<p>An organic processor wants to use food grade lavender flavor in their cookies but checked three sources and could only find aromatherapy grade organic lavender flavor, not food grade.</p>	<p>This may be an acceptable reason for lack of commercial availability due to quality.</p>
<p>The organic processor needs (or is using) a 2% concentration of a flavor but a supplier only has an organic 5% concentration available.</p>	<p>This may not be an acceptable reason for a form or quality exemption since the processor or supplier may be able to make adjustments to the product in order to make it usable. However, this may be an acceptable reason for lack of commercial availability if the changes made to use the different concentration affects the finished product. Documentation of the flavor’s concentration and why it is not an appropriate form or quality for the product must be submitted. The processor must still check with two other valid sources.</p>
<p>The organic processor “Jam rock Hasidic Foods” only manufactures foods that are kosher and from Jamaica. It uses a kosher-certified natural rum flavor in products it wishes to certify as Organic. Equivalent organic kosher flavors are commercially available; and equivalent organic Jamaican rum flavors are commercially available, but there are no equivalent organic rum flavors on the market that are both Jamaican and kosher. The company claims that the Jamaican rum flavor is allowed since organic flavors are not available in the quality, form, or quantity required.</p>	<p>More information must be submitted to justify a difference in form, quality, or quantity, such as differing flavor profiles. An operation should not source a specific flavor name (in this case “rum flavor”) but instead should source for an equivalent flavor profile or the desired profile of the flavor. However, requiring an operation to source an organic flavor that does not meet the requirements of additional certifications of the product (in this case “kosher”) is not supported by the regulations.</p>

Conclusion

The ACA recommends all accredited certifiers adopt ACA Guidance for consistent implementation of the USDA Organic Regulations. ACA Guidance Documents are reviewed periodically to ensure they are accurate and up to date. Concerns with this or any ACA Best Practice or guidance document should be submitted to the ACA Coordinator.

Resources

Definitions of types of flavors - [OTA petition](#), page 13/81

OTA's [guide](#) to commercial availability of flavors

[NOP Policy Memo 11-1](#)

[PART 170 -- FOOD ADDITIVES](#)

[ACA Commercial Availability Form Organic Search](#)

[ACA Commercial Availability Plan](#)

[ACA Commercial Availability Manufacturer Affidavit](#)