



National Organic Program
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October 21, 2022

MEMORANDUM TO THE NATIONAL ORGANIC STANDARDS BOARD

FROM: Jennifer Tucker, Ph.D.
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SUBJECT: Response to National Organic Standards Board Recommendations
(Spring 2022 Meeting)

Background

This memorandum responds to recommendations the National Organic Standards Board (NOSB) made to the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP) at its virtual meeting, which was April 26-28, 2022. It also provides an update on NOP’s current and upcoming regulatory priorities.

Summary of Recommendations and AMS Responses

- **Petitioned Substances**
The NOSB reviewed three petitions to the National List of Allowed and Prohibited Substances (National List) and did not recommend any amendments to the National List - a section of the USDA organic regulations that includes synthetic substances allowed in organic crop and livestock production, nonsynthetic substances prohibited in organic crop and livestock production, and non-organic substances allowed in organic handling.

Substance	Section of Organic Regulations	NOSB Recommendation
Cetylpyridinium Chloride (CPC)	Handling § 205.605	Classified as a synthetic substance; not recommended for addition to the National List.
Phosphoric acid	Handling § 205.605	Returned to Handling Subcommittee for additional work.
Carbon Dioxide	Crops § 205.601	Returned to Crops Subcommittee for additional work.

AMS Response: AMS thanks the NOSB for their continued diligent work considering petitions. AMS looks forward to future discussion on phosphoric acid and carbon dioxide.

- **Highly Soluble Nitrogen Restriction**

The NOSB voted to restrict use of nitrogen fertilizer with a carbon-to-nitrogen (C:N) ratio below 3:1. This recommendation would limit use of these fertilizers to no more than 20 percent of a crop's nitrogen requirement.

AMS Response: AMS thanks the Board for their work on this topic. AMS is reviewing the Board's recommendation to limit use of these nitrogen products and has initiated the rulemaking process based on the recommendation.

- **Excluded Methods**

The NOSB recommended that NOP develop formal guidance addressing excluded methods. This recommendation includes a table developed by the Board over several years. This table lists several technologies and determinations as to whether they should be considered excluded methods as defined by the USDA organic regulations. This recommendation adds determinations for cell fusion and protoplast fusion to this table.

AMS Response: AMS thanks the NOSB for their work on this complex topic. AMS is reviewing the Board's recommendation to update the NOP Program Handbook, including the possible addition of this document on excluded methods.

- **NOP Risk Mitigation Table**

The NOP asked the NOSB to review and facilitate comment on the NOP Risk Mitigation Table. This table documents the NOP's approaches to safeguard impartiality and was drafted in response to an American National Standards Institute (ANSI) peer review of the program. In response to public comments, the NOSB sent the table back to subcommittee to consider additions.

AMS Response: Peer Reviews are an important part of the NOP's accreditation quality system. AMS thanks the NOSB for their work on this topic. We look forward to future discussion on safeguarding impartiality to complete this project in support of the peer review process.

- **Policy & Procedures Manual Updates**

The NOSB recommended an update to their Policy and Procedures Manual to address oral public comment policies and procedures. This update directs commenters to refrain from personal attacks in their written comments.

AMS Response: AMS updated the Policy and Procedures Manual to implement this recommendation. We encourage the Board to continue inviting public comments as part of the process for updating the Manual.

NOP Regulatory Priorities Summary

AMS posted a Federal Register Notice and hosted a listening session on March 21, 2022, to solicit feedback on regulatory priorities and prior NOSB recommendations. NOP received 572 written public comments. Commenters generally supported the NOSB recommendations and urged NOP to address them by developing standards via rulemaking. Many commenters said all topics should be prioritized; however, hydroponics/containers, organic seeds, and conversion of native ecosystems were among the most mentioned. Commenters also voiced appreciation of NOP's current rulemaking efforts and supported their implementation.

In the time since the Regulatory Priority Notice was published, NOP published the Origin of Livestock final rule, the Organic Livestock and Poultry Standards (OLPS) proposed rule, and the Inert Ingredients in Pesticide Formulations advanced notice of proposed rulemaking (ANPR). All of these have been top priorities expressed by the organic community. In addition, the Strengthening Organic Enforcement (SOE) final rule is in review by the Office of Management and Budget (OMB).

In addition to reviewing public comments and facilitating the clearance process for these rules, NOP is also currently drafting the following National List rules and practice standards:

- A market development proposed rule that includes mushroom production and pet food standards;
- A final rule to implement NOSB 2020 and 2021 Recommendations to add paper pots and low-acyl gellan gum to the National List; and
- A proposed rule to implement Fall 2021 and Spring 2022 NOSB Recommendations related to organic fertilizers.

Other rules currently listed on the Office of Management and Budget (OMB) Unified Regulatory Agenda are apiculture and aquaculture (long-term action). USDA does not currently have a timeline for initiating these rules.

The following bullets summarize NOP's analysis related to other items for which feedback was requested in the Regulatory Priorities Notice.

- Use of Organic Seeds. Many commenters also raised concerns that organic seeds are not being adequately sourced by producers. Some commenters say the current regulations are adequate, and that mandating use of organic seed would unnecessarily burden farmers. Other commenters claim that the use of organic seed, and related research, has stagnated. They cite the importance of continuous improvement benchmarks to help drive innovation and increase the use of organic seeds. NOP is aware of concerns about the low use of organic seed, and recently invested in training on organic seed sourcing, which is available in the [Organic Integrity Learning Center](#). NOP is currently considering additional strategies, such as more specific certifier oversight, continued outreach and training across crop supply chains, technology (seed database) support, and increased enforcement, to address concerns about organic seed use. We will consider additional

standards to support this area as needed.

- Containers/Hydroponics: This topic is a high priority for many stakeholders, who note that inconsistent certification and enforcement has caused confusion among the certifier and producer communities. NOP acknowledges the significant interest in this topic, and is considering next steps pending the resolution of related litigation. NOP has reviewed past work on this issue by the Board and believes that the next best step may be to develop a Work Agenda item for the Board to help frame and scope the topics that would be most important for the NOP to have recommendations on for any rulemaking process.
- Native Ecosystems: Some commenters ranked this issue as high-priority, citing concerns that current standards incentivize the conversion of native ecosystems, which do not require the three-year transition period to use as farmland. Other commenters, however, ranked this as a low-priority issue, citing the complexity of this issue and the possible need for legislation to amend the Organic Foods Production Act (OFPA) to provide additional authorities. NOP has asked the current Board if they would like to reengage with this topic to address the statutory authority challenges and build more support in a revised recommendation. Otherwise, NOP does not plan to take additional steps at this time.
- Genetic Engineering and Excluded Methods: Most commenters ranked this a medium-high priority (except for one certifier, who notes that certifiers already enforce this area consistently). Some comments claimed that a better definition of “excluded methods” would increase consumer confidence; others claimed that prohibiting technologies may increase confusion and stifle innovation. As noted above, AMS is reviewing the Board’s recommendations related to excluded methods.
- NOP Handbook: In addition to the rules above, NOP is considering various updates to documents in the NOP Program Handbook, which some commenters noted are unclear or out of date.

Other topics that were mentioned by fewer stakeholders include: emergency use of synthetic parasiticides in livestock, establishing standards criteria for assessing commercial availability of processed products, livestock vaccines made using excluded methods, and personal care products. Little support for rulemaking was demonstrated regarding these issues, and commenters acknowledged challenges involved in rulemaking, such as jurisdictional complexity or lack of market impetus. Some commenters felt rulemaking was not necessary regarding commercial availability for processed products, citing existing Accredited Certifiers Association (ACA) best practices on this topic.

The organic community’s call for more regular and formal updates about its regulatory priorities from the Program was important and we take it seriously. NOP plans to keep the community updated in four key ways:

- Regular program updates to NOSB recorded before and/or presented during meetings and posted in the [Organic Integrity Learning Center](#).
- Regular Memos to the Board after each Board meeting, which are posted on the [NOP web site](#).
- Regular updates to the existing [NOSB Recommendations Library](#) on the AMS website, with explanations of changes where appropriate.
- The OMB [Unified Regulatory Agenda](#), issued twice a year, lists rules that the Administration plans to advance.

NOP thanks the community, the Board, and stakeholders for their valuable input into our work and priorities, and we look forward to our continued collaboration to develop new standards and protect the integrity of the organic seal.

Acknowledgements

AMS acknowledges and sincerely appreciates the many hours NOSB provided in developing its recommendations. AMS supports NOSB's vital role in representing the diversity of the organic community and ensuring organic integrity.

AMS thanks Sean Babington, Adam Chambers, Kiki Hubbard, and Mat Ngouajio for presenting at the NOSB meeting. AMS also thanks Nate Powell-Palm for his service as NOSB Chair and thanks Mindee Jeffery and Kyla Smith for their service as part of the NOSB leadership team.

AMS welcomes four NOSB members whose terms started in January 2022: Liz Graznak, Allison Johnson, Dr. Dilip Nandwani, and Javier Zamora. The program appreciates their commitment and congratulates them on their first meeting as NOSB members.