



Date: March 30, 2022

Attention:

Erin Healy, Director, Standards Division, National Organic Program

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Submitted via: regulations.gov

Docket Number: [AMS-NOP-21-0085](#)

Re: Notice of Public Listening Session With Request for Comment

Dear Ms. Healy:

We appreciate this opportunity to provide feedback on regulatory priorities for upcoming standards development by the National Organic Program (NOP). MOSA (Midwest Organic Services Association) is an NOP-accredited organic certifier located in Viroqua, Wisconsin. MOSA provides practical, reliable and friendly certification services to approximately 2000 organic operations across the US. We value continued improvement and clarity in the organic regulations. We are committed to upholding and improving the integrity of the USDA Organic Seal. We recognize that sound and consistent standards enforcement increases trust in the Seal, and grows the organic movement. To that end, we have provided comments on many regulatory issues, from our frontline enforcement perspective, to the National Organic Standards Board and USDA for over 20 years. We recognize that delaying forward progress on many NOSB recommendations has impacted trust in the organic label. Below, we are providing feedback regarding the NOP Program structure, our prioritization ranking for outstanding NOSB recommendations and NOP Handbook updates, and some comments on additional considerations.

We look forward to the forthcoming, and very important, Standards improvements via the Strengthening Organic Enforcement, Origin Of Livestock, Organic Livestock & Poultry Standards, and Inert Ingredients rules.

Request for Comments # 1: AMS - NOP Structure

From our perspective, the current NOP structure seems to be working well. Our public-private partnership with the Program seems to be functioning effectively. We appreciate many Program initiatives including additional training, "Coffee with the NOP" and other opportunities for feedback, the NOP Program Handbook, clarifications and instruction regarding areas for improvement, and transparency regarding USDA processes and Program challenges. Communications from and with the NOP are usually useful, clear, and personable.

Request for Comments #2: Prioritization for Standards and Policy Development

We are grateful for the NOP's continued work toward improving the efficacy and clarity of the National Organic Standards. We also appreciate the continued good two-way communication with the Program as demonstrated within this listening and comment process.

MOSA has offered comments on many of these outstanding initiatives over the years. We find them all to have importance. All represent the work output of considered and sound NOSB processes, and organic community expectation that such work will proceed. That said, we also certainly recognize the value of prioritizing needs and considering costs, including time and human capital, as you take up further work on these issues.

To come up with our priority rankings, we surveyed our staff. Results were anonymous. Respondents ranked the concerns from 1 (highest priority) through 13 (lowest), and were able to offer comments on each issue. The staff's individualized 1 through 13 rankings allowed us to assign a value used for our overall priority ranking. We were also able to assess the staffs' relative consistency in prioritization rankings. This exercise showed the diversity in prioritization, but it also found general consistency regarding approximately where various recommendations should be in the priority rankings. The information below includes our rankings from highest priority to lowest. We've also included staff comments from the survey, and in some cases we've provided some summarization of MOSA's prior written and verbal comments on these issues.

Our Regulatory Priorities Rankings

1. (tie) Hydroponic/Aeroponic Production and Create Greenhouse and Container Production Standards (April 2010; November 2017—Prohibit Aeroponics)

Lack of clarity and decisiveness regarding hydroponic's place in organic has created divisiveness within the organic community, has hurt the USDA Organic Seal, and has set USDA Organic apart from most other standards worldwide. Certifiers also face continuing inconsistencies in interpretation regarding common greenhouse production and other container growing practices. We'd like to see these discussions come to more clarity, including further comment opportunities.

MOSA's prior written comments:

MOSA has provided multiple written and verbal public comments around hydroponics production and greenhouse and container production issues. All of these are part of the public record.

We previously commented, "We support the continued expansion of the organic industry into new systems that are sustainable and in line with organic principles. The standards are rooted in improving and maintaining our whole environment. The backbone of organic production is about complex natural interactions and symbiotic relationships. While we're traditionally focused on soil ecology, we recognize that life and all of its diversity exists in a continuum of living conditions, not just those reliant on soil. An organic producer's role is to nurture and steward the complex interactions found in nature, to foster cycling of resources, promote ecological balance, and conserve biodiversity. Soil is a part, but holistic thinking is the heart."

In 2017, we also emphasized the need for clear, applicable standards and supported additional labeling requirements for these growing systems. "MOSA supports the growth of the organic industry and the inclusion of food produced by hydroponic and aquaponic production systems in the organic market place. We encourage further discussion and support the development of standards for hydroponic, aquaponic and other soilless production systems. We also support the development of additional mandatory labeling with the organic label for soilless growing systems. We agree that soil is historically linked with organic production and should be as well in its future. Like the minority opinion, we are pro-soil and we also do not view this as a mutually exclusive decision. Being pro-soil does not mean there isn't a home for other production methods that *respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.*"

Our previous comments also included support for the NOSB's general direction toward further defining greenhouse production methods. We provided feedback on discussion questions, noted concerns regarding measuring crop fertility requirements and resources, we pointed to several inconsistencies, and offered some suggestions for improvements, including definitions.

Other staff survey comments:

- “This area seems to have been a divisive decision and led to the development of the 'Real' organic movement and possibly weakened the seal and has the potential to shake consumer confidence.”
- “Standards creation for items consumers expect to be regulated should be a priority of the NOP.” (This same comment was also offered for many of the other outstanding recommendations, including mushrooms, aquaculture, apiculture, personal care items, and pet foods.)
- “I think this should come first but would also like to see the others prioritized.”
- “It would be nice to see the organic industry be on the same page.”
- “This topic, along with the other topics related to establishing standards, are of the most interest to me mainly for the point of clarification and consistency in our work. I think these topics can elicit a wide range of perspectives on how they should be interpreted/reviewed/inspected for organic compliance. I think the more consistency we have, by establishing standards, the more organic integrity in the marketplace.”
- “The 'ponics issue keeps festering within the organic community and is creating divisions and hurting the label. We also need clarity on a number of more traditional greenhouse/container certification concerns.”

1. (tie) Organic Mushroom Production Standards (October 2001)

This is another important topic where we'd like to see certifiers get on the same page. We're aware of inconsistencies among certifiers in expectations/requirements for organic mushroom production, and certifiers differ in interpreting which of the current standards apply. Some try to apply the crop production standards, which are not adapted to non-plant species. Others apply the 2001 recommendation. One or two may even try to use the livestock standards! Meanwhile, a [2020 NASS/USDA report](#) shows the mushroom market holds high value.

As is the case for most recommendations made prior to 2010, we were unable to easily locate previous comments that MOSA may have submitted on this subject in 2001, but we have provided the NOP feedback directly through email exchanges, and encourage this work to be picked up where it was left off.

Other staff survey comments:

- “Would be great to get Standards solidified for Mushroom production.”
- “Mushroom standards come to the top of my list as an area where policies are most frequently misunderstood and questioned. Following the crop standards would be a path that NOP could endorse, or they should provide added guidance. The playing field is unlevel and the mushroom industry is growing: Growers produced 127 million pounds of mushrooms that were certified organic during the 2019-2020 growing season, 22 percent above 2018-2019. Sixty-two percent of the total, or 79.4 million pounds, were sold as certified organic mushrooms. Agaricus mushrooms accounted for 88 percent of the mushrooms sold as certified organic, while all specialty mushrooms made up the remainder.”

3. Require Increased Use of Organic Seeds (April 2019)

We recognize the foundational importance of organic seed for organic farming systems and appreciate the NOSB's work to clarify and strengthen the Organic Seed Guidance and to provide

compliance tools for certifiers to better enforce the seed practice standard. MOSA strongly supports improved guidance on organic seed use, and resources directed toward research and development of well-performing organic seed varieties. We recognize that a healthy organic seed economy is part of a thriving organic world.

MOSA’s prior written comments:

Our several written comments on organic seed discussions provided specifics and great detail regarding which parts of the proposal we supported, and we requested some language clarifications. Many of our concerns were addressed before the final recommendation was approved.

Other staff survey comments:

- “Organic seed use is the foundation of the organic crop industry. Without incentive seeds will not become more available.”
- “It is long past time, in my opinion, to tighten up requirements re: organic seed usage. It is an area with a big gap, leaves lots of room for working the system, leaves too much up to individual agencies/reviewers or inspectors.”

4. Eliminate Incentive To Convert Native Ecosystems to Organic Production (April 2018)

This issue comes in pretty high in our staff’s ranking system. We surmise that is because it speaks to organic’s principles and relates to climate-smart agriculture priorities. However, we call for further discussion around this issue ahead of potential rulemaking. This would require complexity in enforcement, use of new assessment tools, and attention to regional differences and important farmland access concerns. Our ecologically focussed heartstrings may conflict with our desire for practical enforcement.

MOSA’s prior written comments:

Our previous comments around this issue included: “This discussion touches on some deep organic principles and the inherent challenges of setting boundaries. As a global organic community, we seem to fairly well agree that organic agriculture must be concerned with how people interact with living landscapes, relate to one another, and shape the legacy of future generations. We believe that organic agriculture should work with living ecosystems, emulate them, and help sustain them. Organic agriculture should ensure fairness with regard to the common environment. And organic agriculture should be managed in a precautionary and responsible manner to protect the health and well being of future generations and the environment. ... The NOSB’s own principles of organic production and handling, from 2001, recognize organic as a system that promotes and enhances biodiversity, biological cycles, and soil biological activity. This promotion and enhancement includes the genetic and biological diversity of the production system as well as its surroundings. The NOSB principles also state that organic systems strive to be ecologically, socially, and economically sustainable. And yet, we also recognize, as noted in the background section of the document, that by its very nature, agriculture is destructive. It fragments ecosystems and reduces biodiversity.”

We also stated, “We think that organic principles are best honored if we seek to bring conventional farmland to organic. The principles are not being followed if we continue conversion of irreplaceable native lands or high-value conservation lands or fragile ecosystems to organic production. Our work should be about improvement, about promoting new life, not destruction. More organic land is good, but not at the expense of destroying what is irreplaceable.”

We also noted that this issue is tough to regulate. While we supported the basic idea of a rule change requiring a 10-year wait period before the native ecosystem land could be used for

organic production, we also called for added development, including guidance for assessing native ecosystems in the field and in the office, and we expressed concerns about some of the suggested verification tools, such as aerial maps maintained by the FSA or NRCS, and we questioned the practicality of *requiring* certifiers to verify this information. We'd like thoughtful guidance regarding *when* this historical assessment would be needed.

Other staff survey comments:

- “I think it is important this incentive be removed.”
- “This would be a big lift for certifiers to verify.”
- “Are there any native ecosystems left?”
- “Vital to keep eye on the ball of WHY the organic movement began: seeking a farming method that was healthier for the planet as well as people and animals. We're at a stage in the organic movement where we have to work hard to keep out those motivated more by greed & convenience than the founders who were motivated by a commitment to principles.”

5. (tie) Recommendations Related to Genetic Engineering and Excluded Methods (Multiple)

MOSA has offered a lot of feedback on various discussion documents and proposals related to genetic engineering and excluded methods. These are important issues for MOSA-certified operators, many of which are located in areas with a high potential for GMO contamination. And we recognize that biotechnology is moving at a fast pace compared to improvement in regulatory systems. Consistency and fairness are important to consumer and farmer confidence in our Standards.

MOSA's prior written comments:

In MOSA's many comments on excluded methods and related concerns, we've highlighted fairness and coexistence, contamination challenges, thresholds and baselines, enforcement challenges, and moral principles regarding a need for transparency from those who hold understanding of technologies so that organic stakeholders can make informed decisions.

In earlier discussions related to seed purity, we noted our comments were guided by the following principles:

- MOSA supports guidance that helps to foster and enforce organic integrity and to cultivate consumer trust in the organic label.
- MOSA endorses the guiding principle of “sound but sensible,” striving to not overburden organic operations or certifiers with onerous recordkeeping requirements, especially for those operations for which compliance is not in question. We support guidance that allows us to impose additional requirements in cases where compliance is potentially in question.
- MOSA would like to consider any seed guidance in the context of the larger picture of increasing awareness of GMO contamination of non-GMO crops and express concern that the current responsibility for preventing GMO contamination unfairly burdens organic and non-GMO producers.

Other staff survey comments:

“GMO contamination hurts organic producers and is a fairness issue.”

5. (tie) NOP Handbook Updates Specifically updates that will be needed due to SOE

We find the NOP Handbook to be a very useful tool that provides clarity and further understanding regarding sections of the standards where proper interpretation may not be clear

based on the regulatory language alone. It is evident that updates and further guidance will be imperative once the SOE rule is published. Although the Handbook is stated to not be binding, it is often interpreted as if it's binding, and sometimes serves as if it's de facto regulation in absence of regulatory language. We often share Handbook documents as a reference for organic operators. We also are aware of some parts of the Handbook where there are contradictions with other communications coming from the Program.

We have read the comments to be submitted by the Accredited Certifiers Association and find the ACA's list of documents needing updates to be useful.

It does not seem that MOSA has offered prior comments *specific* to needed NOP Program Handbook updates, although some prior MOSA comments have mentioned various parts of the Handbook and some inconsistencies.

Other staff survey comments:

"This ranks higher on my list since certifiers look toward the NOP for guidance on standards. I'm sure that there will be necessary revisions and the need for new guidance documents as a result of the SOE, not to mention that there will be some/many documents that would become incorrect and/or replaced by the new regulation."

7. Clarification of Emergency Synthetic Parasiticide Use With Organic Livestock (April 2018)

Our mid-level ranking on this item may reflect the very high number of livestock operations that are certified organic by MOSA. However, this is not an issue that is causing complications in our certification decisions or policies.

MOSA's prior written comments:

Our prior comments on this issue in 2017 and 2018 began with our not supporting rule changes because we'd felt (then) that the OLPP final rule had adequately revised section 205.238, by adding, "(d) Organic livestock operations must have comprehensive plans to minimize internal parasite problems in livestock. The plan will include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Parasite control plans shall be approved by the certifying agent." However, we also commented that we would support a new definition defining "emergency." We spoke in support of a step-up approach to parasite management, comparable to facility pest management requirements, and said, "More robust parasite prevention, control, and treatment plans, including certifier understanding and approval, is the outcome we are trying to achieve." After the NOSB worked with comments submitted in 2017, we expressed support for the language used in the revised proposal prepared for the Spring 2018 NOSB meeting, and we offered some minor suggestions for simplification, and noted that our biggest concern with regulatory language is that it is clear and enforceable. We also noted our concern with potential abuse or misuse of parasiticides due to the 2019 National List change that dramatically reduced the withholding period for milk, to just two days. At MOSA, we are not seeing abuse of parasiticide inputs; approximately only ten farmers list inputs containing moxidectin or fenbendazole on their Organic System Plans.

Other staff survey comments:

"Have we seen a significant increase in parasiticide use due to the milk withhold (timeframe) being reduced? We do have policies on "emergencies.""

8. Establish Standard Criteria for Commercial Availability Determinations—Agricultural Ingredients in Processed Products Standards (November 2007)

Establishing standard criteria for commercial availability criteria for agricultural ingredients will clarify expectations for organic producers and ensure consistent enforcement. While certifiers have worked together to develop consistent guidance, including criteria in regulatory language makes consistency more enforceable. There are already some good examples to build from. [NOP 5029 Guidance on Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production](#), sections 4.1.2 and 4.1.3, is an example of helpful commercial availability guidance. The Accredited Certifiers Association's Materials Working Group has also worked to provide guidance for the [commercial availability of natural flavors](#), and for other section 205.605 materials that have a commercial availability clause, as noted in the Handling section of the [Best Practices for Common Material Review Issues](#). We recognize that this NOP Priority is referencing agricultural ingredients (i.e. section 205.606 materials), but commercial availability requirements have also been included for .605 listed materials. We encourage those to be included too.

We did not provide prior public comments on this issue.

Other staff survey comments:

“(This is important) with regard to all things we are supposed to verify commercial availability for (including) .605 materials and .606 materials.” (Seed commercial availability requirements are addressed separately.)

9. (tie) Organic Aquaculture Production Standards (March 2007)

Although Standards creation for items consumers expect to be regulated should be among NOP priorities, we do not expect this to have much impact on MOSA stakeholders. It is noted that since this recommendation was put forth in 2007, new factors, such as widespread contamination of ocean waters by the Fukushima nuclear disaster, may need consideration. Other considerations include market potential and related NOSB recommendations that are indicated as “closed” in the NOSB recommendation library, including final recommendations on Aquaculture - Fish Feed & Related Issues, Aquaculture - Net Pens & Related Issues, and Bivalves and Molluscan Shellfish. We'd also suggest giving attention to related international organic regulations.

We did not provide prior public comments from MOSA on this issue.

MOSA operators would likely be most impacted by regulations that would apply to farmed fish that are not in oceanic or other wild water environments.

9. (tie) Organic Apiculture Production Standards (October 2010)

This does not seem to be a high demand or priority for current MOSA-certified operations. However, again, Standards creation for items consumers expect to be regulated should be among NOP priorities. We're not finding prior MOSA comments specific to apiculture, but we recall that a former MOSA Inspection Manager (and beekeeper) was involved in providing detailed feedback toward early proposed standards development. We recognize that apiculture production is important to a thriving organic world, and that lack of enforceable standards, including clarity on land base expectations, can lead to undesirable inconsistency among certifiers. Since a proposed regulation is already drafted, perhaps catching up with these bees might be easy to achieve. Like pollinating the low-hanging fruit?

11. Develop Organic Personal Care Product Standards (December 2009)

We recognize that personal care product organic claims are a source of consumer confusion, as well as consumer interest, and we understand that this sector involves other federal regulatory authorities. As noted several places above, standards creation for items consumers expect to be regulated should be an NOP priority. And in this case, perhaps clarifying regulatory authority boundaries or referencing other applicable third-party standards is a way forward that could provide needed clarity.

We did not provide prior public comments on this issue.

Other staff survey comments:

“This is low on my list and I think it works to certify personal care products to the "food" production standards.”

12. Restrict the Use of Livestock Vaccines Made From Excluded Methods (October 2019)

As we provided feedback on this issue during NOSB deliberations, we were cautiously supportive, if it would offer improvements to the Standards. However, we do not feel this should be a regulatory priority. Our concerns include currently inadequate review resources, unintended animal welfare impacts, and potential unavailability of excluded methods vaccine alternatives.

MOSA’s prior written comments:

Our previous written comments on vaccines included, “MOSA can align with the subcommittee’s goal to correct the inconsistency in usage of vaccines known to have been produced through excluded method technology, and ‘to increase the trust of the organic certification system and provide consistency and certainty for organic livestock producers.’ We could support a change to the USDA organic regulations to require the use of vaccines that are not produced with excluded methods when available over options produced with excluded methods. *However, we...* are concerned that adequate resources for an accurate and efficient review process may not exist. This proposal does not mention one of the most important requirements regarding vaccine use. National Organic Standards §205.238(a)(6) states, *‘The producer must establish and maintain preventive livestock health care practices, including: Administration of vaccines and other veterinary biologics.’* And, vaccines are listed as the only synthetic biologics allowed at §205.603(a)(4). With this regulatory language and the industry’s categorical allowance of vaccines, it’s easy to interpret that vaccines are not just allowed, but actually required. To change this thinking will take time, education, and practicality.”

We also had suggested a revision to more simply get to a similar end result as approving vaccines produced through excluded methods as a “class” of vaccines. We suggested striking the “Provided, That the vaccines are approved in accordance with §205.600(a)” language at §205.105.

Other staff survey comments:

- “This would provide for busy work. If it doesn't matter for some vaccines, then it should not matter for any, though I firmly believe we should keep gmos out of organic as much as possible.”
- “Vaccines should continue to be allowed.”

13. Organic Pet Food Product Standards (November 2008)

This may be a good place to reiterate that every one of these priorities is important, and represents a lot of time, effort and public input. Pet food standards could be helpful for clarifying the special needs of this organic products sector, but it's a low priority for MOSA.

We did not find prior public comments from MOSA specific to pet food products, although, anecdotally, one of our staff presented on Pet Food Task Force recommendations at a pet foods industry convention, years ago.

Other staff survey comments:

- “Standards creation for items consumers expect to be regulated should be a priority of the NOP.”
- “We do certify some treats. Since there are pet food standards AAFCO - it'd be nice to see a change in this area.”

Other identified concerns that we would like the NOP to consider

We reviewed the library of NOSB recommendations, here: [NOSB Recommendations Library \(usda.gov\)](https://www.usda.gov/nosb-recommendations-library). We only came across a few recommendations that are not either on the above priorities list or indicated as already being acted upon. These include Marine Macroalgae in Crop Fertility Inputs, and Wild, Native Fish for Liquid Fish Products, and Ancillary substances - definition, criteria for compliance, review procedure. We would like the NOP to provide guidance on ancillary substance review, and/or require that the NOSB, through annotation, *continue to* identify any ancillary substances that do require certifiers' review. The Accredited Certifiers Association Material Working Group sent the NOP a document regarding ancillary substances, certifiers use several different methods to review ancillaries, and NOP has not replied that any of these are incorrect.

We also would like the Program to consider a new aspect to the regulatory community's human capital challenges. With new remote work capabilities, certifiers are increasingly competing for staff and inspectors on a National scale, which does not coincide with regional economies. This favors certifiers with bigger budgets or more lucrative clientele, and that's been a challenge in the face of increased enforcement requirements and expectations from certified operations. Certification must remain affordable and accessible to all types of organic operations, many of whom are well-served by regional certification agencies.

Certifiers could use additional guidance or search capabilities regarding “person”/business entity identification and when business entities change. While the ACA has developed practical guidance for assessing certification needs when there are changes of ownership, this requires certified operations or applicants to be forthcoming regarding prior business history and identifying responsibly connected persons. The Organic Integrity Database is useful, but requires knowledge of an operator's history and previous business names, and that is not often made available to certifiers. It also is unclear how changes to a business impact certification eligibility if a responsibly-connected person previously had a certification adverse action.

Thanks again for this opportunity to offer comments on NOP Priorities. It's evident that boosting the Program's capacity for Standards development is key to a strong and trusted organic label. We appreciate this type of feedback and listening opportunity, and ask that the NOP keeps stakeholders informed of progress on these issues, including any obstacles faced. Organic stakeholders have a lot invested in this work.

Respectfully,

The Staff of MOSA Certified Organic