



P.O. Box 821, 122 W. Jefferson Street, Viroqua, Wisconsin 54665
mosa@mosaorganic.org ■ 608.637.2526|phone ■
608.637.7032|fax

Devon Pattillo
Agricultural Marketing Specialist
National Organic Program
USDA-AMS-NOP
1400 Independence Ave. SW.
Room 2646-So, Ag Stop 0268
Washington, DC 20250-0268

October 31, 2016

Re: [Draft Guidance - Treated Lumber](#) - NOP 5036 - AMS-NOP-16-0028; NOP-16-01

Dear Mr. Pattillo,

Thank you for the opportunity to comment on the Draft Guidance for Treated Lumber. MOSA is a nonprofit organic certification agency rooted in the Midwest, certifying approximately 2000 producers and handlers. Most livestock and crop operations we certify use or have used treated lumber. We appreciate the National Organic Program's intent to provide further guidance on the use of treated lumber in organic production.

In general, MOSA's policies align with the principles outlined in the draft guidance, and we appreciate the further clarification and examples given in the document. There are a few areas where we'd like further guidance, clarification, and/or revision. We offer comments on one area where our policy conflicts with the proposed clarifications. We request that the NOP reconsider this document and delay publication of final guidance. Instead, we encourage the NOP to offer another opportunity for stakeholder input prior to issuance of final guidance.

We understand that this guidance provides clarification on which treatments are considered prohibited. To date, for new and replacement installations, MOSA has used a three-part policy based on relative toxicity. Some treatments, including creosote, arsenic, and penta, are prohibited outright, unless completely isolated from organic production. Others, including copper treated lumber, are allowed for use on the operation, but not in direct contact with livestock, land, or crops. And untreated lumber is simply allowed. The NOP's clarifications in this draft guidance simplify our policy. All copper, penta, creosote, and arsenic wood treated fall into the same prohibited category, and are not allowed for use in direct contact with organic product. At MOSA, this would relax our prohibition on the use of creosote, arsenic, and penta treated lumber. We also note that our policy has allowed boric acid treated lumber, though not in direct contact with organic product, however, we simply do not see use of this treatment. This draft guidance clarifies that borate treated lumber in contact with organic product is acceptable, and that the NOP is also aware that it is not generally used for this purpose. It would be beneficial for organic farmers if there were viable treatments allowed for use in contact with

organic product.

Section 4.1 Substances Addressed- We appreciate the NOP's intent to clarify which substances this guidance document does and does not address. In the last sentence, explaining substances not covered, the example given is “*paint without pesticides.*” We request that the guidance also specifically clarifies whether or not paint is an acceptable barrier. At MOSA, we've always viewed paint as a prohibited material, although we *could* appreciate the practicality of allowing organic operators to cover treated lumber with paint. We are often asked if painting the lumber would be an acceptable barrier. We understand that agencies are not consistent answering that question. We'd encourage this clarification be added to section 4.7 Buffers and Barriers.

Section 4.2 Contact with Organic Crops, Soil or Livestock- This section confuses policy and should be revised for clarification.

“The USDA organic regulations at section 205.206 state that treated lumber must not contact soil or livestock, but do not discuss contact with crops. However, USDA organic regulations at section 205.201 require organic producers to describe in their organic system plan how they prevent contact of organic production with prohibited substances. Contact between crops, soil or livestock and prohibited materials contained in or on treated lumber must be prevented.” (Emphasis added.)

Separating crops and soil is a new and important consideration. At MOSA we've considered soil and crops as equivalent *in this context*. We believe the preamble to the rule also gives this impression.

*“(7) Prohibition on Use of Treated Lumber. The proposed rule did not specifically address the use of lumber that had been treated with a prohibited substance, such as arsenic, in organic production. Citing the explicit prohibition on these substances in existing organic standards, many commenters felt that treated lumber should be excluded in the final rule. Commenters also cited the NOSB's recommendation to prohibit the use of lumber treated with a prohibited substance for new construction and replacement purposes effective upon publication of the final rule. We have included a modified version of the NOSB's recommendation within the crop pest, weed, and disease management practice standard. **This provision prohibits the use of lumber treated with arsenate or other prohibited materials for new installations or replacement purposes in contact with an organic production site. We included this modification to clarify that the prohibition applies to lumber used in direct contact with organically produced and handled crops and livestock and does not include uses, such as lumber for fence posts or building materials, that are isolated from production. The prohibition applies to lumber used in crop production, such as the frames of a planting bed, and for raising livestock, such as the boards used to build a farrowing house.**”* (Emphasis added)

The last sentence in Section 4.2, “*contact between crops, soil or livestock and prohibited materials contained in or on treated lumber must be prevented,*” should be revised. Specific and contradictory references are included in sections 4.4 Use of Treated Lumber prior to Certification, 4.5 Locations and Uses, and 4.5 New Installations. This should be revised to indicate that use of treated lumber for *new or replacement purposes* is prohibited, yet lumber treated with prohibited materials that was installed prior to certification is permitted.

Our policy has been in line with the general principle of this section. Existing treated lumber should not contaminate organic products, and new or replacement treated lumber must be acceptable or installed with a buffer or barrier if necessary. At MOSA, our approach to existing treated lumber has been to assess whether or not contamination is apparent, and if it is, we require barriers, buffers, or removal as appropriate.

Section 4.3 Treated Lumber and the Three-Year Transition- This paragraph includes a new consideration: *“treated articles.”* Seed is also a treated article, according to the EPA. But, when seeds are treated with a prohibited material, a 36 month transition is required for the land. However, we do agree that prior use of treated lumber should not necessitate a 36 month transition for the land. Installations prior to certification have not been considered by MOSA, unless there is an apparent risk for contamination of organic products. We recognize the historical precedent of *grandfathering* in existing treated lumber. We agree with the NOP’s statement in the background section regarding the current section 205.206(f) regulation: *“The intent of this requirement was to ensure that, over time, all lumber in contact with crops, soil, or livestock will be untreated, treated with nonsynthetic materials, or treated with allowed synthetic materials.”* Prohibiting the use of treated lumber for new and replacement purposes will achieve this goal.

Section 4.4 Use of Treated Lumber prior to Certification- This section also introduces a new interpretation. The draft guidance states: *“Also, lumber treated with prohibited materials is not considered a ‘new’ installation when the lumber was installed on a parcel **prior to acquisition** by a certified organic operation (lease, purchase, rent, etc).”* (Emphasis added.) This statement needs clarification. We do not track when clients **acquire** land. We do track land in transition to organic production, and of course, when land becomes certified. While we collect basic information on the conventional land that a farmer may manage, we do not inspect it for treated lumber. This sentence seems also to directly conflict with the sentence just before it. *“Thus, lumber treated with prohibited materials and installed or used for replacement purposes **prior to the operation achieving certification** is permitted, provided there is no contact with crops.”* (Emphasis added.) The first paragraph clarifies that existing lumber treated with prohibited materials is grandfathered in, when installed **prior to the operation achieving certification**. Installations **during** organic transition are acceptable, and transition generally happens after **acquisition**. We request this section be revised.

Section 4.5 Locations and Uses- The statement, *“Lumber treated with prohibited materials **in contact with crops is always prohibited.**”* (emphasis added) contradicts MOSA policy and the certification community standard for installations which existed when the operation first achieved certification for the parcel. Again, we have considered land and crops as one in this context, and we allow prior installations to remain on the organic operation. When operations are first applying for certification, we’ve always assessed risk, and if there is *an apparent threat to organic integrity*, we’ve required buffering, covering, or removal.

Section 4.6.1 Fences states that *“contact is direct contact with any part of the plant under organic production, including direct contact with plant roots.”* We feel that this new definition of contact as presented redefines how we would consider crops. We have followed the definition as outlined in section 205.2 *“Crop. Pastures, cover crops, green manure crops, catch crops, or any plant or part of a plant **intended to be marketed** as an agricultural product, fed to livestock, or used in the field to manage nutrients and soil fertility.”* (Emphasis added.) We

have not considered the crop as *any* part of the plant. Rather, we see it as the harvested portion of the plant. While this new definition for contact makes sense for edible crops grown in ground in a greenhouse, it would be difficult to assess in other crops, such as field crops, vineyards, and orchards. We feel that this is new information which presents a major change to the current interpretation of the regulations.

We appreciate the examples given for assessing contact for each type of production, but again find conflict with the new interpretation that treated lumber in *contact* with crops *is always prohibited*. All examples given in the first section would require major changes if *contact* with crops is found, which would be fairly certain. While we would require a barrier or buffer be installed between food crops and existing treated lumber in some cases, we would not *always* require that trellises, posts, or boards be removed or that buffering or barriers be put in place.

We also ask for clarification regarding transportation equipment, such as a hay wagon, which clearly have contact with harvested crops, yet are generally in contact only briefly with those crops. We think of contact as direct, regular contact and have allowed such uses.

The examples given for contact with livestock are useful. We also assess risk factors when operations first enter organic production. For existing treated lumber, we require covering, removal or buffering when in contact with livestock, *where there is an observed risk*, such as rubbing or chewing. We require all new and replacement lumber to be untreated when in direct contact with livestock.

Examples of lumber that does not contact organic product are clear.

We encourage the NOP to reconsider this section and the definition of contact in section 4.6.1 Fences to ensure that there are not unintended ramifications for the organic community.

Section 4.5 New Installations- We agree with the policy as explained in this section. *“Following certification, use of treated lumber for new installations or replacement purposes would comply with the USDA organic regulations only if there is no contact with soil, crops or livestock in the organic production area.”* We do determine if treated lumber used for new installations on certified operations is in contact with soil, crops, or livestock, and, we see that for many installations, treated lumber is a practical necessity and operators install adequate buffers or barriers to separate organic product from contact.

Section 4.6.1 Fences- We propose that this section be deleted, and the examples of fencing be added to section 4.5 Locations and Uses. Fencing is an example of treated lumber that *may* be in contact with both livestock and land. Existing fences have been allowed in organic production, but for new or replacement installations using treated lumber, we almost always see some sort of barrier or buffer put in place.

In livestock production, if a new treated post is used in a pasture, we sometimes require that a buffer or barrier be put in place, but we also recognize the same factors as explained in the draft guidance. Essentially, we assess risk. When answering questions from farmers about treated lumber use in fencing, our answer is often, “it depends” and we follow with a series of questions about their proposed use. We appreciate the recognition given to the variety of factors that should *practically* be considered.

Oddly, this section is where further definition of contact with crops is offered, which includes “*direct contact with any part of the plant..including direct contact with plant roots.*” This new clarification should be explained in Section 4.2 Contact with Organic Crops, Soil, or Livestock. We’d appreciate practical examples of how we’d effectively assess contact with field crop, bush, vine, and tree roots. It simply isn’t reasonable or practical to arm our inspectors with shovels and ask them to dig up posts to see if roots are touching. We have concern that this new definition in combination with the new interpretation that *contact with crops is always prohibited* has unassessed ramifications. For example, a fence surrounding an orchard which has never been a concern before may now be prohibited.

Section 4.6 Replacement Purposes- We propose revision to this section regarding lumber treated with prohibited materials that was previously installed or stored *outside* of organic production areas. We do not believe that it matters *where* the lumber was stored or installed. The regulations are clear - lumber treated with prohibited materials must not be used on the organic operation for new or replacement purposes. We propose striking “*outside of organic production areas (no contact with soil, crops or livestock).*” This sentence then would accurately state, “*lumber treated with prohibited materials that was previously installed or stored may not be moved into organic production areas where it will contact soil, crops or livestock.*”

Section 4.7 Buffers and Barriers- We concur that buffers and barriers are acceptable to prevent contact with crops, soil, and livestock when treated lumber is used for new or replacement purposes. We also require barriers and buffers to be put in place when an obvious risk is observed with existing treated lumber on operations new to organic production.

“*Buffer zones are to be sufficiently sized or designed to prevent unintended contact.*” We again register our concern regarding the new definition of contact as described above in sections 4.5 Locations and Uses and 4.6.1 Fences, and we ask that some additional guidance or examples be given for adequate buffer zones for different crops. Also, as a point of clarity, we propose that the word “unintended” be struck. In this context, buffer zones must be sufficiently sized to *prevent contact*.

We allow a variety of materials to be used as a barrier. We do not include paint in our list of allowed materials, but we are aware of other certifiers that do, so, as described above, we ask if paint is an acceptable barrier to use on treated lumber to separate it from organic crops, livestock, or land. We can appreciate the practicality of allowing paint to be used as a barrier.

Section 4.8 Noncompliance Policy- We can agree that use of lumber treated with prohibited materials for new or replacement purposes in contact with organic crops, livestock, or soil, is not in compliance with the organic regulations. We rarely see an organic operation install treated lumber without their planned use first being approved by us. When it is necessary to install treated lumber, a buffer or barrier is generally planned along with the installation. We can agree to issue a noncompliance notification when lumber is installed in contact with crops, land, or livestock without a plan in place to prevent contact, and we agree that the issue would be resolved by installing a buffer or barrier. We also recognize that the land where treated lumber has been used could be surrendered or suspended, and then immediately be certified by a new operation. It seems arbitrary for the lumber to suddenly become acceptable to be in

contact with the soil and livestock simply based on the acquisition of the parcel by a different operator, but we accept this as the way things work.

Policy Numbering- While we've used the numbers presented in the document with section names for clarification, we also point out the section numbers of this document do not follow the numbers outline in section 4 Policy and Procedures and should be edited accordingly.

In summary, we will appreciate the following:

- Consideration of treatments that would be acceptable for addition to the National List.
- Reconsideration of the division between crops and land in this context.
- Alignment of the new definition for contact with the existing definition of crops.
- Addition of fencing examples to the locations and uses section.
- Clarification that lumber that has been previously installed or stored in any location is prohibited for use.
- Clarifying the acceptability of paint as a barrier.
- A second opportunity for public input prior to publication of final guidance.

We appreciate your consideration of this difficult topic and look forward to reviewing additional guidance, with revisions and clarifications. MOSA's Certification Policy Manager, Jackie DeMinter jdeminter@mosaorganic.org, is available for any questions you may have.

Respectfully submitted,

The MOSA Certification Team