

February 22, 2023

MEMORANDUM TO THE NATIONAL ORGANIC STANDARDS BOARD

FROM: Jennifer Tucker, Ph.D.
 Deputy Administrator
 National Organic Program (NOP)

SUBJECT: Response to National Organic Standards Board Recommendations
 (Fall 2022 Meeting)

Background

This memorandum responds to recommendations from the National Organic Standards Board (NOSB) to the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). Recommendations were made at the NOSB biannual meeting, which took place in Sacramento, California October 25-27, 2022. The memo also provides an update on NOP’s current and upcoming regulatory priorities.

Summary of Recommendations and AMS Responses

- Petitioned Substances**

The National List is the section of the USDA organic regulations that includes synthetic substances allowed in organic crop and livestock production, nonsynthetic (natural) substances prohibited in organic crop and livestock production, and non-organic substances allowed in organic handling. The NOSB reviewed four petitions to the National List of Allowed and Prohibited Substances (National List); of these four, only one passed, resulting in one recommendation to amend the National List.

Substance	Section of Organic Regulations	NOSB Recommendation
Carbon dioxide	Crops § 205.601	Classified as synthetic; recommended for addition to the National List.
Potassium hydroxide	Crops § 205.601	Classified as synthetic; the NOSB did not recommend adding this substance to the National List.

Substance	Section of Organic Regulations	NOSB Recommendation
Peroxlactic acid	Handling § 205.605	Classified as synthetic; the NOSB did not recommend adding this substance to the National List.
Phosphoric acid	Handling § 205.605	Classified as synthetic; the NOSB did not recommend adding this substance to the National List.

AMS Response: AMS thanks the NOSB for their continued diligent work considering petitions. AMS plans to implement the NOSB recommendation to list Carbon Dioxide on the National List. AMS will begin rulemaking after the NOSB completes its work on the related Carbon Dioxide agenda item, scheduled for a vote in Spring 2023.

- **Organic Livestock and Poultry Standards Resolution**

The NOSB passed a resolution expressing support for USDA to quickly complete the Organic Livestock and Poultry Standards rule. The NOSB stated this rule would help strengthen organic animal health and welfare standards, protect communities and the environment, improve consistency, better meet consumer expectations, and address market failures.

AMS Response: AMS thanks the NOSB for the resolution. The Organic Livestock and Poultry Standards Proposed Rule comment period ended on November 10, 2022. NOP is currently reviewing those comments and preparing a final rule.

- **Human Capital: NOSB Technical Support**

The NOSB recommended that NOP source technical support for the Board. The recommendation states that the support should come from within USDA but outside of AMS/NOP. These support staff could conduct literature reviews, review technical reports, prepare summaries of public comments, and draft language for proposals and recommendations.

AMS Response: AMS thanks the NOSB for their work on this topic. NOP will explore opportunities to initiate this project.

- **Oversight Improvements to Deter Fraud: Acreage Reporting**

The NOSB recommended that NOP require certifiers to list a certified operation's acreage on their organic certificate. The reported acres would include both total acres and harvested acres by crop type. This would allow interested parties (e.g., purchasers, auditors) to compare purchased or produced quantities against predicted yields for the acreage. This comparison could reveal fraudulent representation of nonorganic crop as organic.

AMS Response: AMS thanks the NOSB for their work on oversight improvement and fraud prevention. We are currently evaluating the policy question of whether to report total certified acreage on each operation's public organic certificate once the Strengthening Organic Enforcement (SOE) final rule is implemented. We currently do not plan to make

farm data at the commodity (crop) level public for several reasons, including, in particular, the business proprietary nature of the data. Aggregated data that is currently available in the Organic Integrity Database will remain available to public, and is expected to become more complete as certifiers increase data reporting under SOE.

- **Ion Exchange Technology – Recharge Materials**

The NOSB recommended that recharge materials used in the ion exchange process must be on the National List, as these substances become part of the organic product. The NOSB is still considering whether the resins that hold these charged substances need to be on National List.

AMS Response: AMS thanks the NOSB for their continued work on ion exchange. NOP is reviewing the recommendation and will await the conclusion of the NOSB’s work on ion exchange resins before we determine how to best address this topic.

- **2022 Research Priorities**

The NOSB recommended initiating integrated research that considers the whole farm system, recognizing the interplay of agroecology, the surrounding environment, and both native and farmed species of plants and animals. Building upon the [2021 list of research priorities](#), the NOSB revised research priorities and added several new research priorities in 2022:

Regionally Adapted Livestock Rations: Develop livestock rations that incorporate regionally adapted grain crops.

Food Packaging: Explore the effects of various types of food packaging on organic products, including alternatives to bisphenol-A (BPA).

Ancillary Substances: Create an overarching ancillary ingredient review process for materials used in processing.

Celery Powder Alternatives: Research alternatives to conventional celery powder for curing organic meat.

Heavy Metal Contamination: Research best practices for identifying potential sources of heavy metal contamination in organic systems.

Substances for Processing and Handling: Evaluate if substances on the National List for organic processing and handling are essential and identify suitable organic alternatives.

AMS Response: AMS is reviewing the NOSB’s recommendation and will share it with USDA research agencies.

- **Sunset Review - Not Recommended for Removal.** The NOSB completed its sunset review of the following substances (listed below). The Board did **not** recommend removing these substances from the National List; as such, they are to be relisted.

Substance	National List Section	Use
Herbicides, soap-based	§ 205.601(b)(1)	Crops
Biodegradable biobased mulch film	§ 205.601(b)(2)(iii)	Crops
Boric acid	§ 205.601(e)(3)	Crops
Sticky traps/barriers	§ 205.601(e)(9)	Crops
Elemental sulfur	§ 205.601(h)(2)	Crops
Coppers, fixed	§ 205.601(i)(2)	Crops
Copper sulfate	§ 205.601(i)(3)	Crops
Polyoxin D zinc salt	§ 205.601(i)(11)	Crops
Humic acids	§ 205.601(j)(3)	Crops
Soluble boron products	§ 205.601(j)(7)(i)	Crops
Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt	§ 205.601(j)(7)(ii)	Crops
Vitamins, C and E	§ 205.601(j)(9)	Crops
Squid byproducts	§ 205.601(j)(10)	Crops
Lead salts	§ 205.602(d)	Crops
Tobacco dust	§ 205.602(j)	Crops
Chlorhexidine (CAS #55-56-1)	§ 205.603(a)(9)	Livestock
Glucose	§ 205.603(a)(13)	Livestock
Tolazoline (CAS #59-98-3)	§ 205.603(a)(29)	Livestock
Copper sulfate	§ 205.603(b)(1)	Livestock
Elemental sulfur	§ 205.603(b)(2)	Livestock
Lidocaine	§ 205.603(b)(5)	Livestock
Attapulgate	§ 205.605(a)	Handling
Bentonite	§ 205.605(a)	Handling
Diatomaceous earth	§ 205.605(a)	Handling
Magnesium chloride	§ 205.605(a)	Handling
Nitrogen	§ 205.605(a)	Handling

Sodium carbonate	§ 205.605(a)	Handling
Acidified sodium chlorite	§ 205.605(b)	Handling
Carbon dioxide	§ 205.605(b)	Handling
Sodium phosphates	§ 205.605(b)	Handling
Casings, from processed intestines	§ 205.606(b)	Handling
Pectin (non-amidated forms only)	§ 205.606(o)	Handling
Potassium acid tartrate	§ 205.606(p)	Handling

AMS response: AMS thanks the NOSB for its review of these substances due to sunset. AMS will prepare a Federal Register Notice to renew (i.e., relist) these materials on the National List for five additional years.

NOP Regulatory Priorities Summary

NOP has continued to advance key rulemaking actions. Since the Spring 2022 NOSB Meeting, NOP has published four rules:

- Organic Livestock and Poultry Standards (OLPS) proposed rule
- Inert Ingredients in Pesticides for Organic Production advanced notice of proposed rulemaking (ANPR)
- Final rule to implement the NOSB’s recommendations to add paper pots and low-acyl gellan gum to the National List
- Strengthening Organic Enforcement (SOE) final rule

NOP’s current regulatory priorities for 2023 include:

- Analyzing public comments and drafting the Organic Livestock and Poultry Standards (OLPS) final rule. The public comment period closed on November 11, 2022.
- Developing external-facing communications and training materials related to implementation of the Strengthening Organic Enforcement (SOE) final rule.
- Continuing work on a proposed rule to address the NOSB’s Fall 2021 and Spring 2022 Recommendations related to nitrogen fertilizers in crop production.
- Analyzing public comments received on the Inert Ingredients in Pesticides for Organic Production ANPR and determining next steps (comment period closes December 31, 2022).
- Drafting a proposed rule to create organic standards for mushrooms and pet food.

In addition to these rules, the NOP Standards staff is researching and discussing the following topics raised by the community at the March 2022 Listening Session:

- Use of Organic Seeds. Many commenters raised concerns that organic seeds are not being adequately sourced by producers. NOP Standards staff are researching options to promote more organic seed use.
- Containers/Hydroponics: This topic was voiced as a high priority for many stakeholders, who note that inconsistent certification and enforcement has caused confusion among the certifier and producer communities. Now that the litigation related to this topic has closed, AMS is discussing possible next steps for a work agenda item for the Board to advance work in this area.
- NOP Program Handbook: Some commenters noted that parts of the Program Handbook require updates. NOP Standards staff is reviewing the Handbook to identify which sections require updates, including documents that may overlap or conflict with new regulations in the SOE final rule. NOP is prioritizing work on proposed and final rules in the near term, but may direct resources to the Handbook in the longer term to keep this resource current and relevant.

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

NOP appreciates the organic community's call for more regular and formal updates about its regulatory priorities from the Program. NOP plans to continue keeping 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 (such as this one) 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.

Summary

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 Under Secretary Jenny Lester Moffitt, Under Secretary Christine Birdsong, and Brise Tencer for presenting at the NOSB meeting. AMS also thanks four previous NOSB



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members, Steve Ela, Scott Rice, Jessie Buie, and Asa Bradman, for participating in a question-and-answer session with current members. Finally, AMS thanks Nate Powell-Palm for his continued service as NOSB Chair and thanks Mindee Jeffery and Kyla Smith for their service as part of the NOSB leadership team.

AMS thanks Rick Greenwood, whose term ended in January 2023, for his service to the Board. The program appreciates his dedication and hard work and wishes him well. AMS also wishes Liz Graznak much success, as she leaves the Board to focus on her farm and meet the demands of her rapidly-growing business.