



ORGANIC FARMERS ASSOCIATION

March 30, 2022

National Organic Program
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 2642-South, Stop 0268
Washington, D.C. 20250-0268

Docket No. AMS-NOP-21-0085-0001

Dear Deputy Administrator Tucker,

The Organic Farmers Association (OFA) is a membership organization that represents America's certified organic farmers. Our organization was founded by and is controlled by certified organic farmers, and only domestic certified organic farmers vote on OFA's policies and leadership. We appreciate the opportunity to comment on the National Organic Program (NOP)'s upcoming standards development activities, including feedback about specific recommendations from the National Organic Standards Board (NOSB). (Docket No. AMS-NOP-21-0085-0001.)

Organic is a growing sector of the U.S. agriculture system, with tremendous potential to address climate change, help family farms flourish, revive rural communities and protect public health. The USDA sets the regulations and standards that must be met by products that bear the organic label. Certified organic farmers rely on this label to accurately convey information about their products in the marketplace. Because consumers believe in the integrity of the organic label, the organic sector has enjoyed tremendous growth and provided a path to economic viability for many family farms. But the USDA has considerable work to do to maintain the standing of the organic label with consumers and ensure a level playing field for organic farmers, including finishing long-delayed updates to regulations and increasing the agency's focus on enforcement.

Short Term Priorities

In the immediate term, there are several key actions needed to get critical rulemaking processes across the finish line after years of unnecessary delay:

Strengthening Organic Enforcement Rule - The organic market is a \$60 billion industry with global supply chains. U.S organic grain farmers reported negative impacts on the prices they could get for their products after increased volumes of organic grains abruptly started to arrive in the United States several years ago. Since then, imports from regions with questionable oversight and that seem to lack sufficient organic acreage to produce the amount of organic product being exported have continued, while several high profile investigations have also revealed large-scale schemes in the United States to sell fraudulent organic products. A critical next step for the NOP must be to finalize and implement the “Strengthening Organic Enforcement” proposed rule as quickly as possible. As well as putting the rule into effect as soon as possible, the NOP must continue to coordinate with other USDA agencies as well as U.S. Customs and Border Protection (CBP) to increase awareness of organic commodities that are likely to be imported (and the potential for fraud) and to leverage other agencies’ inspection resources at ports of entry.

Origin of Livestock Rule - We are pleased that the NOP has completed a final rule on the Origin of Livestock. The long delay in strengthening the standards for organic livestock has allowed large-scale organic dairies to undermine those organic farms that comply with the intent of the organic label. We urge the NOP to focus on communicating the new final rule requirements to organic certifiers and dedicating oversight resources to making sure that all certifiers are interpreting the new rule consistently.

Organic Livestock and Poultry Standards Rule - Strengthening the requirements for animal welfare on organic operations is also long overdue. We appreciate the NOP’s work to move the Organic Livestock and Poultry Standards proposed rule through the rulemaking process. This rule is desperately needed to allow the NOP to consistently enforce stronger animal welfare standards on organic farms and close loopholes being taken advantage of by some large operations. Animal welfare is an issue of critical importance to organic consumers, and these standards must be tightened to retain consumers’ confidence in the organic label.

Priorities for Addressing Past NOSB Recommendations

In addition to swift action to complete these rules that are already underway, the NOP should prioritize work to update regulations, guidance and practices related to several other issues, including:

Hydroponic Production - Healthy soil is essential to healthy organic food, healthy ecosystems and efforts to address climate change. The Organic Foods Production Act lays out requirements

for soil fertility for organic farms and building soil health is a foundational principle of organic agriculture. The NOP's decision to allow hydroponic (soil-less) operations to be certified organic, as well as controversy over inconsistent interpretation of the NOP's guidance for how container operations transition to organic, could undermine consumer confidence in the organic label overall and reduces the potential for organic agriculture to sequester carbon. The NOP should clarify that organic farming occurs in the soil and ensure that all organic certifiers are consistently applying this requirement. For organic agriculture to maximize its potential as climate-friendly agriculture, soil must be recognized as the cornerstone of organic production.

Greenhouse Standards – Different interpretations by different certifiers of the standards for how greenhouse production and crop facilities transition to organic after the application of a prohibited substance have created widespread confusion. This inconsistency between certifiers hurts farmers who now have to compete with operations following different standards than they are, and ultimately threatens the integrity of the organic label in the marketplace. The dramatic growth of greenhouse and other indoor operations, as well as changes in the technologies used in these operations, should trigger a review of past recommendations and guidance on this issue. Once that review is complete, the NOP should issue clear guidance to certifiers on what is required for the transition of these operations into organic production.

Native Ecosystems - OFA has a policy position approved by our organic farmer members to support the NOSB recommendation to eliminate the incentive to convert native ecosystems to organic production. We urge the NOP to take immediate action to implement this regulatory change and guidance to protect the biodiversity and essential environmental services offered by these unique lands. Organic agriculture embodies an environmentally beneficial type of production, where soil and natural resources are protected and enhanced over time. Unfortunately, because organic management requires that conventionally managed land undergo a three-year transition before being certified organic, it has caused an incentive for farmers to start farming native ecosystems, since often they have not had a prohibited substance applied and thus can be certified immediately. This presents an undue pressure on native ecosystems and goes against organic principles; thus, it should not be allowed under the organic program. There are few areas left with intact native ecosystems and organic agriculture should not contribute to their further decline. U.S. organic farmers support the NOSB recommendation, and we encourage the USDA to move forward with swift rulemaking to protect these native ecosystems before they are destroyed.

Grower Groups - OFA is aware that there are successful and well-run grower group networks around the world that provide a viable way for small producers to participate in the organic market. We are supportive of those operations having this opportunity and see the concept of grower groups as a very valuable option for small operations, both internationally and in the United States. But we do have concerns about the complexity of grower group systems and the need for well-designed and well-run internal control systems and thorough oversight by certifiers. We offered specific comments on this concept during the public comment period for

the Strengthening Organic Enforcement proposed rule. For NOP's priorities, we urge you to conduct a much more thorough conversation among organic stakeholders about the best way to set rules for grower groups that strike the proper balance between allowing this unique system to provide small growers a way to participate in the organic market and reducing the potential for violations of the organic standards or unfair economic conditions for growers.

We believe that discussion should be initiated at the National Organic Standards Board because it has been over a decade since this topic was last addressed in that venue, which serves as a forum for the entire organic community. In the decade that has passed since the last NOSB consideration of this issue, the need to make sure that organic is a viable option for black, indigenous and people of color farmers has become much clearer. Well-designed grower groups could serve as a useful way for a more diverse set of farmers to enter the organic community. That discussion is one worth having in a thoughtful way that includes the entire organic community. If that means removing this concept from the Strengthening Organic Enforcement proposed rule in order to take the time to have a broader conversation about this topic, then that is an appropriate change for NOP to make.

Practices Without Organic Standards – The lack of organic standards for some common products including honey and mushrooms creates an opportunity for confusion in the organic marketplace and certifier shopping that could undermine organic integrity. In the absence of defined standards, operations are setting up their operations and investing in equipment and systems based on their interpretation of what organic practices should be, not a defined set of standards backed by the NOP. When the NOP eventually does set standards for these practices, these existing operations may find themselves out of compliance, and facing major costs to change their facilities or practices. This disruption for facilities that proceeded with their own version of organic production (and the potential for opposition to new or upgraded standards) can be avoided if the NOP works swiftly to use past NOSB recommendations to create standards for organic methods for common products such as honey and mushrooms. If the past NOSB recommendations are out of date, the NOP should work with the NOSB to review relevant industry standards to assess if an update to their recommendation is needed.

Climate Smart Agriculture – As the USDA considers its programs for advancing climate-smart agriculture, we urge the NOP to act on several fronts so that organic can live up to its potential as an early example of climate smart production. The NOP can advance the case that organic is climate-smart by focusing on these areas:

- Prioritizing enforcement of the pasture standard for large-scale dairies, with a focus on dairies larger than 1000 head.
- Swiftly completing the Organic Livestock and Poultry Standards rule to include a requirement that livestock operations provide meaningful access to pasture.

- Prohibiting the certification of hydroponic operations as organic. For organic agriculture to maximize its potential as climate-friendly agriculture, soil must be recognized as the cornerstone of organic production.

National List – In addition to failing to complete NOSB recommendations on practice standards, the NOP has also failed to implement some NOSB recommendations for materials related to the National List. Of the unresolved issues related to the National List, these are of particular interest to OFA members:

Sodium Nitrate – In 2011, the NOSB voted to change the annotation of sodium nitrate, a high nitrogen fertilizer, to prohibit its use in organic production. Instead, the NOP failed to renew the listing and it became an “invalid listing” meaning that the material now has no restrictions despite the NOSB recommendation to prohibit this material. Overreliance on high nitrogen fertilizers undermines the soil building practices that are foundational to organic systems. OFA urges the NOP to re-list Sodium Nitrate on 7 CFR 205.602 without annotation immediately.

Ammonia Extract – Although it is a newer recommendation from the NOSB than many others that are pending, OFA urges the NOP to act swiftly to prohibit the use of Ammonia Extract for use in organic production because such use is incompatible with OFPA and good soil health practices.

NOP Process for Acting on NOSB Recommendations

The backlog of NOSB recommendations that require action from the NOP reflect problems in the NOP’s process that also must be addressed.

- The NOP should devote the necessary resources to update the organic standards and the National List in a timely way. Fiscal Year 2022 funding for the NOP has increased, which should allow the NOP to dedicate more resources to keeping up with changes needed to protect the integrity of organic.
- The NOP should communicate to the public its plans for implementing new NOSB recommendations within 60 days, including its timeline for implementation.
- The NOP should provide a written explanation, with a clear justification, to the NOSB and public stakeholders within 60 days for recommendations that they do not plan to implement.
- All comments submitted to the NOSB and a transcript of NOSB deliberations should automatically be included as part of the Federal Register docket for rulemaking on National List materials and practice standards. The NOP should not base its decisions on

a limited number of Federal Register comments. The full breadth of evidence that was submitted during the NOSB's deliberations should also be considered as part of the rulemaking process.

- In recognition of the intended close relationship between NOSB recommendations and NOP action, we urge that all NOP proposed and final rules, guidance documents, and instructions to certifiers include an explanation of how the rule or document's provisions relate to past NOSB recommendations and the actions taken by USDA to consult with the Board regarding the rule or document.
- USDA must educate the White House Office of Management and Budget (OMB) about the need for ongoing regulatory updates to the organic standards as part of the nature of the 'continuous improvement' mandate that is built into the organic program. We also urge the USDA to broaden the scope of costs and benefits included in their rulemaking process, to create an opportunity to assess harm done to organic farms and businesses in the absence of updated regulations or enforcement that could provide consistency in the organic marketplace.
- USDA should reverse the 2013 policy change, made without required public notice and comment, to the sunset process for synthetic materials on the National List.

We appreciate the opportunity to offer these suggestions for how the NOP should tackle the backlog of NOSB recommendations and necessary updates to the organic standards. The effort to address these long-delayed improvements to the organic standards is vital to ensuring that consumers continue to trust the organic label and to ensuring a level playing field for organic farmers.

Sincerely,



Kate Mendenhall
Executive Director