



April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

Comments to the National Organic Standards Board Spring 2022

National Organic Standards Board:

Thank you for this opportunity to provide comment on multiple topics. The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others.

One of OTA's strongest assets as an organization is the diversity and breadth of its membership. Unlike many trade associations, OTA is uniquely structured to include the full value chain for the organic industry, ensuring that all segments, from farm to marketplace, have a strong voice within the organization. It also creates a platform for a diverse group of stakeholders to work together to catalyze solutions, form coalitions and collaborate on matters critical to the organic sector.

Addressing critical issues and growing the organic industry are all part of our work together. It all fits in with OTA's Mission, to **promote and protect organic** with a unifying voice that serves and engages its diverse members from farm to marketplace.

WHAT IS OTA'S COMMENT PROCESS?

OTA submits comments on behalf of its membership. Our positions and policies are primarily shaped through our member task forces. In all cases, OTA's regulatory and legislative staff carry out an extensive process of membership engagement to capture how current issues and activities such as proposed rules or NOSB recommendations will impact certified farmers and handlers. Prior to submission of final comments, draft comments are distributed to membership at least a week in advance. Members are provided an opportunity to weigh in and shape any changes that may be needed prior to final submission. To carry out a meaningful comment process under OTA's governance structure, a comment period needs to be at least 30 days.

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April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: Livestock Subcommittee – 2024 Sunset Reviews

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment to the National Organic Standards Board (NOSB) on its 2024 Sunset Review.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

OTA thanks NOSB for carefully considering each crop production material scheduled for review as part of the 2024 Sunset Review cycle. Materials placed on the National List for use in organic crop production should remain on the National List if: 1) they are consistent with organic farming; 2) they are still necessary to the production of the agricultural product because of the unavailability of wholly natural substitute products in organic production; and 3) no new information has been submitted demonstrating adverse impacts on humans or the environment (OFPA SEC. 2118 [7 U.S.C. 6517] National List). Furthermore, decisions must be transparent, non-arbitrary, and based on the best current information and in the interest of the organic sector and public at large. It's critical that NOSB hears from certified farmers on whether these inputs are consistent with and necessary for organic production, or whether there are other effective natural or organic alternatives available.

About OTA Sunset Surveys

OTA is submitting results to our Sunset Surveys created for each input under review as part of the 2024 Sunset Review cycle. These electronic surveys include about 10 questions addressing the **necessity (crop and livestock)** or **essentiality (handling)** of each input. See Appendix A for a sample survey. Our surveys do not address information regarding the impacts on human health or the environment.

The surveys are open to any NOP certified organic operation. The names of the companies submitting the information are confidential (not disclosed to OTA). To ensure wide distribution of the surveys beyond OTA membership, OTA worked with Accredited Certifying Agencies (ACAs) to

distribute the survey to all of their clients as well as to targeted clients they know are using the inputs under review. OTA also worked through its Farmers Advisory Council (ota.com/FAC) to help assist in distribution to NOP certified farmers.

Results of OTA Sunset Surveys

OTA has received 2 responses on our 2024 Livestock Sunset Surveys. Below is a summary of the feedback received via OTA's Sunset Surveys to date.

§205.603 – Synthetic substances allowed for use in organic livestock production.

Substance	Summary of Responses	Average rating of Necessity (from 1 to 5, with 1 being "unnecessary" and 5 being "critical /would leave organic without it")
Chlorhexidine	No survey responses have been submitted so far.	
Glucose	No survey responses have been submitted so far.	
Tolazoline	No survey responses have been submitted so far.	
Copper sulfate	<u>2 Responses</u> received from certified organic livestock operations raising dairy cattle. Necessary because: - Used as a foot bath to control foot fungus. - Feet Issues Frequency of application: - Daily, in foot bath cows walk in and put onto infected feet daily under a wrap - As needed Have other foot bath treatments of similar efficacy come on to the market? - No - No alternatives are effective that I know of. Can the consistent use of foot trimming allow for the elimination of copper sulfate on dairy farms? - No If copper foot baths were to be prohibited: - What would I use for hoof fungus? I fear I would have a lot more lameness and I would be culling cows much more frequently for a controllable issue. - Huge Negative effects; Decline in Animal Welfare	5 out of 5 (Critical / would leave organic without it)

Elemental sulfur	No survey responses have been submitted so far.	
Lidocaine	No survey responses have been submitted so far.	

On behalf of our members across the supply chain and the country, the Organic Trade Association thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,



Johanna Mirenda
Farm Policy Director
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association

Appendix A – Sample Survey for Crop and Livestock Inputs

1. Is your operation certified organic? Yes / No
2. Is [SUBSTANCE] included in your organic system plan? Yes / No
3. Which types of organic crops or livestock products do you use [SUBSTANCE] on/for? (e.g., lettuces, fruit trees, broiler chickens)
4. What function does [SUBSTANCE] provide and why is it necessary? (e.g., to control a specific pest or disease, sanitation, etc.)
5. With what frequency does your operation use [SUBSTANCE]? (e.g., seldom, as needed when a certain condition arises, routinely, etc.)
6. Have you tried using any *other substances* as an alternative to [SUBSTANCE]? (e.g., other substances that are on the National List and/or other natural substances.)
If yes, please describe which substances you've tried and whether it was effective to fulfill the required function:
7. Are there any other *management practices* that would eliminate the need for [SUBSTANCE]? (e.g., hand weeding instead of using an herbicide; or using a particular harvesting practice to avoid a disease instead of using a fungicide).
If so, please describe the efficacy of the alternative management practices:
8. How would your organic production be impacted if [SUBSTANCE] was no longer allowed? (describe the agronomic, environmental or human health effects, product quality, economic effects)
9. [If applicable - Insert specific questions from NOSB Subcommittee about the necessity of the substances and the availability of alternatives]
10. On a scale from 1 to 5 stars, rate the overall necessity of [SUBSTANCE] for your organic operation

Unnecessary (don't
need it at all)

Neutral (nice to have
but could live without it)

Critical (would leave
organic without it)





April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: CAC Subcommittee – Proposal on NOP Risk Mitigation Table

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the National Organic Standards Board (NOSB) Compliance, Accreditation & Certification Subcommittee's Proposal on the NOP Risk Mitigation Table.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The NOP Risk Mitigation Table¹ was developed by NOP to document the ways it identifies and mitigates potential conflicts of interest to safeguard impartiality in the delivery of services and oversight over accredited certifiers. The purpose of developing the table is for NOP to maintain compliance under ISO/IEC 17011:2017 conformity assessment requirements for accreditation bodies.

OTA supports strong oversight of the NOP and accredited certifiers to ensure impartiality and safeguard against conflicts of interest. OTA's initial feedback regarding the NOP Risk Mitigation Table are detailed in response to the Subcommittee's questions below.

1. *What potential conflicts of interest and mitigation strategies are missing from the table?*
 - The table does not address potential conflicts or risks to impartiality that may arise from accrediting certifiers that operate within a larger governmental organization, i.e. within State Departments of Agriculture or State Organic Programs.
2. *Could any potential conflicts of interest and mitigation strategies identified in the table need further clarification?*
 - Throughout the document, we encourage close scrutiny with an eye towards broadening the assessment of possible risks for each potential conflict. In some cases the assessment of possible risks is far too narrow. For example, the only possible risk identified under "Favoritism, bias or discrimination" is related to sharing of information. This should be expanded to address other

¹ <https://www.ams.usda.gov/sites/default/files/media/NOPMemotoNOSBRiskMitigationCombined.pdf>

possible risks such as unfair enforcement procedures, etc.

- Under “Undue Influence,” the Control Measure simply states that the NOP will adhere to the USDA Organic Regulations in the decision-making process, and the Monitoring Method is to compare the decision with previous decisions to confirm consistency with the requirements. Achieving this goal becomes challenging when the USDA Organic Regulations are not clear, are outdated, or are knowingly applied inconsistently by certifiers. NOP must clarify and update the standards to resolve known inconsistencies and divergent certification practices in order to fully ensure strong and consistent oversight of certifiers.

On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Johanna Mirenda".

Johanna Mirenda
Farm Policy Director, OTA

cc: Laura Batcha
Executive Director/CEO, OTA



April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: CAC Subcommittee – Discussion Document on Modernization of Organic Traceability Infrastructure

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the National Organic Standards Board (NOSB) Compliance, Accreditation & Certification Subcommittee's Discussion Document on Modernization of Organic Traceability Infrastructure.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The Subcommittee is exploring whether to require reporting of crops by acreage on organic certificates. Currently there are no means to accurately calculate organic acreage and/or yield estimates on a regional or country-by-country basis. This hinders the ability of NOP, State Organic Programs, certifiers, and inspectors to evaluate the total volume of organic product coming from any given region and accordingly detect whether fraud is occurring. A requirement for certifying agents to report certified organic production by crop/livestock and location, on an at least an annual basis, to the NOP Organic INTEGRITY Database is one of the most impactful single actions that can be taken to increase the integrity in the global organic control systems. However, OTA is sensitive to confidential business information and therefore expects that USDA will continue its practice of aggregate reporting to the public. **Reports and data visible to the public must only include aggregated data in a manner to protect confidential business information.**

OTA also refers the Subcommittee to our previous fall 2021 comments¹ identifying specific information needed for OTA to engage in any discussion about the use of electronic tracking systems and the best way to modernize organic supply chain traceability, as follows:

1. A final SOE rule so we can tether the conversation to a known outcome and better identify holistically where the gaps are and what is needed;
2. A detailed accounting on how the \$5 million from the 2018 Farm Bill was spent; and
3. A detailed update on the status of electronic import certificates and the CBP-ACE system.

¹ https://ota.com/sites/default/files/indexed_files/OTA_CAC_SupplyChainOLS_Fall2021_AMS-NOP-21-0038_Final.pdf



On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

Johanna Mirenda
Farm Policy Director, OTA

cc: Laura Batcha
Executive Director/CEO, OTA



April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: Handling Subcommittee – 2024 Sunset Reviews for §205.605 & §205.606

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment to the National Organic Standards Board (NOSB) on its 2024 Sunset Review.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

OTA thanks NOSB for carefully considering each handling input scheduled for review as part of the 2024 Sunset Review cycle. Materials that have been placed onto the National List for use in handling should remain on the National List if: 1) they are still essential to and compatible with organic production and handling practices; 2) there are no commercially available alternative materials (natural, organic) or practices; and 3) no new information has been submitted demonstrating adverse impacts on humans or the environment (OFPA SEC. 2118 [7 U.S.C. 6517 and 6518] National List). Furthermore, decisions must be transparent, non-arbitrary, and based on the best current information and in the interest of the organic sector and public at large. It's critical that NOSB hear from certified handlers on whether these inputs are consistent with and essential to organic handling, or whether there are other effective natural or organic alternatives available.

About OTA Sunset Surveys

OTA is submitting results to our Sunset Surveys created for each input under review as part of the 2024 Sunset Review cycle. These electronic surveys include about 10 questions addressing the **necessity (crop and livestock)** or **essentiality (handling)** of each input (**Appendix A**). Our surveys do not address information regarding the impacts on human health or the environment.

The surveys are open to any NOP certified organic operation. The names of the companies submitting the information are confidential (not disclosed to OTA). To ensure wide distribution of the surveys beyond OTA membership, OTA worked with Accredited Certifying Agencies (ACAs) to distribute the survey to all of their clients as well as to targeted clients they know are using the inputs under review.

Results of OTA Sunset Surveys

OTA has received **2** total responses on our 2024 Handling Sunset Surveys. Below is a summary of the feedback received via OTA's Sunset Surveys to date on the § 205.605 materials under review.

§205.605(a) – Non-synthetic Non-agricultural (non-organic) substances allowed as ingredients in or on processed products labeled “organic” or “made with organic (specified ingredients or food group(s)).

Substance	Summary of responses	Average rating of Essentiality (from 1 to 5, with 5 being “critical – would leave organic without it”)
Attapulgit	No responses received so far.	
Bentonite	No responses received so far.	
Diatomaceous Earth	1 Response received from a certified operation that uses DE in the manufacturing of organic pea syrup. Necessary because: - Filter aid to purify the maltose syrup. DE is able to remove smaller particles than other types of filter aids. Frequency of use: - DE Filters are always used during processing. Are there alternative filtration aids or management practices that would replace DE? - No If DE were to be prohibited: - Our organic pea syrup would contain impurities contributing to shorter shelf life and off colors, making it non-competitive with other (conventional) syrups.	4 out of 5
Magnesium chloride	No responses received so far.	

Nitrogen	2 Responses received from certified operations that make organic fruit preparations and dairy products. Uses / Functionality: - essential tool to reduce oxidation during processing and storage of organic fruits and flavors - flush equipment Frequency of use: - Routinely - As needed Are there any alternative materials or practices that would eliminate the need for Nitrogen? - No	4 out of 5
Sodium carbonate	1 Response received from certified operation. Use / Functionality: - It is a component of the primary manual cleaner we use in our manufacturing facility. Used routinely. Are there any alternative materials or practices that would eliminate the need for Sodium carbonate? - No If sodium carbonate were prohibited: - Our options for cleaning our manufacturing facility are limited and thus the removal of any materials allowed for cleaning can be problematic.	4 out of 5

§205.605(b) – Synthetic Non-agricultural (non-organic) substances allowed as ingredients in or on processed products labeled “organic” or “made with organic (specified ingredients or food group(s)).

Substance	Summary of responses	Average rating of Essentiality (from 1 to 5, with 5 being “critical – would leave organic without it”)
Acidified sodium chlorite	No responses received so far.	
Carbon dioxide	No responses received so far.	

Sodium phosphates	2 Responses received from certified operations making yogurt and Box Mac and Cheese with Cheese Powder Deluxe Mac and Cheese with liquid Cheese sauce. Use / Functionality: - Buffer - It is used as an emulsifier and pH buffer in the spray drying cheese process and cheese sauce Frequency of use: - Routinely Are there any alternative materials or practices that would eliminate the need for Sodium phosphates? - No If sodium phosphates were prohibited: - We would no longer be able to produce our Mac and Cheese products. The cheese powder & sauce would not be viable and is a critical component to the Finished Mac & cheese	4.5 out of 5
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§205.606 – Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”

Casings	No responses received so far.	
Pectin	3 Responses received from certified operations that use pectin to make fruit snacks and yogurt. Use / Function: - Stabilizer - Thickener - Gelling agent, essential for structure and texture Frequency of use: - Routinely Have you tried using any other substances as an alternative to pectin? - No - There were no allowed alternatives that meet quality; No organic pectin that meets quality or quantity Are there management practices that would eliminate the need for pectin?	4.7 out of 5

	- No Has an organic source of pectin become commercially available? - No If pectin were prohibited: - Product quality would decline significantly, yogurt would separate and be less palatable to consumer - We would no longer be able to produce certified organic fruit snacks.	
Potassium acid tartrate	No responses received so far.	

On behalf of our members across the supply chain and the country, the Organic Trade Association thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,



Gwendolyn Wyard
Vice President of Regulatory and Technical Affairs
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association

Appendix A – Sample Survey for Handling Inputs

1. Is your operation certified organic? Yes / No
2. Is [SUBSTANCE] included in your organic system plan? Yes / No
3. Which types of organic products do you use this substance in/on? (e.g., yogurt, fruit juices, baked goods, etc.)
4. What function does the substance provide in/on your organic products and why is it essential? (e.g., stabilizer, thickener, flavor, sanitizer, etc.)
5. With what frequency does your operation use the substance? (e.g., seldom, as needed when a certain condition arises, routinely, etc.)
6. NOSB collects information about the "ancillary substances" (e.g. carriers, preservatives, stabilizers) that may be used to formulate commercial forms of the substance. Please list any ancillary substances that are identified on the ingredient statement on the specification sheet that accompanies the substance you purchase.
7. Have you tried using any *other* substances as an alternative to [SUBSTANCE]? (e.g. other natural substances if the substance in question is synthetic; or organic substances if the substance in question is natural)

If so, please describe your search and sourcing efforts, which substances you've tried and whether the quantity available was sufficient and/or whether the alternative substance had the quality and form necessary to fulfill the required function of the organic product or process.
8. Are there any *other management practices* that would eliminate the need for [SUBSTANCE]? If so, please describe the efficacy of the alternative management practices:
9. How would your organic handling be impacted if [SUBSTANCE] was no longer be allowed? (describe the effects on product quality, economic effects, environment effects, or human health effects)
10. On a scale from 1 to 5 stars, rate the overall necessity of [SUBSTANCE] for your organic operation:

Unnecessary (don't
need it at all)

Neutral (nice to have
but could live without it)

Critical (would leave
organic without it)





April 1, 2022

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National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: Materials/GMO Subcommittee – Proposal on Excluded Methods Determinations

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the National Organic Standards Board (NOSB) Materials/GMO Subcommittee's Proposal on Excluded Methods¹ Determinations. The Subcommittee is continuing the work of identifying emerging excluded methods technologies. For this document, the subcommittee is addressing the terms 'cell fusion' and protoplast fusion' and clarifying the conditions that would make each one either an allowed or excluded practice under the regulatory definition of excluded methods.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing organic businesses across 50 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

Summary of OTA's Position:

OTA is in full support the Subcommittee's Recommendation as written:

- ✓ NOP to develop a formal Guidance document to include the Definitions, Criteria, Excluded and Allowed Methods tables as developed by previous Board Proposals, with the additions of cell fusion and protoplast fusion:
 - Add **Cell Fusion** to the Guidance document as both an allowed and excluded method based on the conditions detailed in the proposal and our comments below
 - Add **Protoplast Fusion** to the Guidance document as both an allowed and excluded method based on the conditions detailed in the proposal and our comments below

¹ *Excluded methods (§ 205.2 Terms defined).* A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

Introduction

For the sake of the NOSB Spring 2022 record, OTA is carrying forward many of our comments from the Fall 2021 meeting. We recognize that the definition of “excluded methods” was based on the efforts of NOSB in 1995, and is now outdated. Organic producers and handlers as well as Accredited Certifying Agencies (ACAs) and USDA’s National Organic Program (NOP) must have clear and up-to-date definitions to make consistent and concrete determinations regarding compliance with the prohibition of GMOs in organic farming and handling. It is also critical that seed breeders have a clear understanding of the methods that are allowed and prohibited so they can confidently employ innovative and compliant seed breeding techniques and advance the development of organic seed used in organic systems. For this reason, we continue to be supportive and appreciative of the work being done in this area.

OTA supports the recommendations that have been made to date, and these include the clarification provided in the 2016 Recommendation that gene editing techniques such as CRISPR are currently prohibited under the NOP definition (7 CFR 205.1) of “excluded methods.” Further, we maintain that gene editing, gene silencing, synthetic biology and all of the other new and emerging techniques identified as ‘excluded methods’ in the terminology chart are prohibited in organic production and handling because they meet the NOP definition of ‘*excluded methods*.’

As we continue this discussion, it is important that we do not lose sight of the strength of our existing definition of ‘*excluded methods*,’ as per § 205.2, and the first sentence that needs to be maintained and held central to our decision-making:

“Excluded Methods: A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production.”

Although the definition was written pre-2000, this first sentence provides a key foundation that should be applied to all new and emerging technology. The definition goes on to include *examples* of methods that are prohibited and allowed, but the list is not exhaustive. NOP Guidance (adopted and placed in the NOP Handbook) to support the regulatory definition is important and helpful because it provides industry and certifiers with additional definitions and criteria to help guide evaluations and compliance decisions, and compiles more examples (new and emerging) that can be referred to and updated over time.

OTA’s Position on the Spring 2022 Proposal

OTA agrees that cell fusion and protoplast fusion employed within taxonomic plant families (consistent with PM 13-1) be moved to the list of techniques that are allowed under the organic regulations (not Excluded Methods). The cell and protoplast fusion methods covered under this section of the list would be covered under the third sentence in the regulatory definition of ‘excluded methods’ as traditional breeding, hybridization, in vitro fertilization, and tissue culture. NOP Guidance that explicitly recognizes that cell and protoplast fusion are not excluded methods when the donor cells/protoplasts fall within the same taxonomic plant family, and when donor or recipient organisms are not derived using techniques of recombinant DNA technology, will further validate long-time NOP policy and secure the historical and future use of such techniques within traditional breeding programs. All other cell and protoplast fusion techniques would continue to be excluded methods per the NOP definition, and as further expanded upon in NOP Policy 13-1.

We also agree that cell and protoplast fusion involving recombinant DNA technology, techniques involving the direct introduction into the organism of hereditary materials prepared outside the organisms (such as microinjection), and use of donor cells or protoplasts that do not fall within the same taxonomic plant family should be added to the list of techniques as excluded methods.

To be clear, we are in full support of the subcommittee's recommendation as written:

- **Cell Fusion**

- The NOSB recommends the NOP add Cell Fusion to the table of Excluded Methods when the donor and the recipient cells are outside taxonomic plant families and/or when either is derived using techniques of recombinant DNA technology; with notes on the exception for use when donor and recipient cells are within the same taxonomic plant families.
- The NOSB recommends that Cell Fusion be added to the table of Allowed Methods with notes limiting the use to when the donor and recipient cells are within taxonomic plant families, and neither are derived from techniques of recombinant DNA technology.

- **Protoplast Fusion**

- The NOSB recommends the NOP add Protoplast Fusion to the table of Excluded Methods, when either the donor or the recipient cells are outside taxonomic plant families and/or when either is derived using techniques of recombinant DNA technology; with notes on the exception for use when donor and/or recipient cells are within the same taxonomic plant families.
- The NOSB recommends that Protoplast Fusion be added to the table of Allowed Methods with notes limiting the use to when the donor and recipient cells are within taxonomic plant families, and neither are derived from techniques of recombinant DNA technology

Continuous Improvement in Organic Seed Usage is a Top Priority

OTA continues to express the critical nature of standards development and the need for USDA to modernize the organic standards to better reflect the growth and developments of the organic market. Since the regulations were implemented in 2002, the organic practice standards have been updated just twice (pasture regulations and residue testing) and only one of those updates (pasture regulations, completed in 2010) was the result of a NOSB recommendation.

The arrested state of the recent NOSB recommendation on organic seed usage is a perfect example and one that is very relevant to this Proposal. Many of the excluded methods that NOSB and the organic sector are grappling with are seed breeding techniques. As we know, seed is a fundamental input of an organic system and organic seed *must be used* unless an equivalent organically produced variety is commercially unavailable. The commercial availability clause developed 20 years ago, opens the door to conventional seed use in organic systems. Thankfully, organic **and** non-organic seed used on a certified organic farm must be produced without the use of excluded methods, and certified operations are obligated to meet those requirements. That said, it is difficult if not impossible for the organic sector to regulate the conventional seed sector.

Organic operations are obligated to ensure conventional seed is compliant with the organic regulations, but this can be challenging since its production falls outside of the organic certification and oversight system. Our best option for success is to focus on and regulate ORGANIC seed, and to put our energy into the

development of organic seed production and organic seed breeding. A focus on requiring and increasing organic seed usage will keep the oversight of excluded methods within the organic seed trade, ensure we have the best adapted varieties for organic growers and address the important environmental benefits of using seed produced organically rather than conventionally. **All of this points to the critical importance of USDA prioritizing and implementing the 2018 (rulemaking) and 2019 (guidance) NOSB recommendations to update and strengthen the organic seed and planting stock regulation.**

In addition to the organic seed recommendations, other NOSB proposals that are integral to this discussion but have not been acted upon by USDA include:

- Excluded Methods Prevention Strategy (2015, Guidance)
- Genetic Integrity Transparency of Seed Grown on Organic Land (2019, Instruction)
- Use of Excluded Methods Vaccines in Livestock Production (2019, Rulemaking)

On February 7, 2022, AMS-NOP released a [federal register notice](#) requesting input from stakeholders on upcoming standards development activities, including feedback about specific recommendations from the NOSB. In the notice, NOP described their current rulemaking priorities and its current thinking on outstanding NOSB recommendations that focus on practices standards. In the notice, NOP addressed the NOSB recommendation on Increasing Organic Seed Usage by saying:

NOP has not made this recommendation a regulatory priority because NOP believes the recommendation is already addressed by USDA organic regulations for commercial availability related to seeds and planting stock. Therefore, additional rulemaking is not needed. The NOP has completed training on organic seed sourcing as a practical, high-impact step; the training is available in the Organic Integrity Learning Center. The ACA has also published a Best Practice Document for certifiers to increase consistency. AMS invites comments on this prioritization.

OTA strongly disagrees with NOP's reasoning, and we feel it is important to flag the matter in the context of the Excluded Methods proposal, for the reasons we have described above. The 2018 NOSB recommendation is a simple yet critical revision to the regulations to require **continuous improvement** in using organic seed on an annual basis. Commercial availability does not require any specific improvement benchmarks and is sufficiently open ended to allow for farmers to use nonorganic seed as long as they demonstrate their search is valid. The pattern to use non-organic seed has flourished for decades despite the availability of organic seed. In the course of NOSB's public deliberations to update the 2013 organic seed guidance (NOP 5029), NOSB recommended that organic crop producers increase their organic seed usage over time, as a continuous improvement goal of the OSP. NOP rejected the recommendation and explained that the proposal for guidance went beyond the regulations. NOP explained that the regulations would need to be revised to support a requirement for increased organic seed usage, thus prompting the NOSB recommendation that was passed in 2018. Unfortunately, NOP is now saying that the NOSB recommendation is already addressed by the organic regulations. Further, while we appreciate the NOP training on organic seed sourcing and the ACA Best Practices to help support certifier consistency, these tools are **not** a substitute to a regulatory requirement to increase organic seed usage over time.

OTA continues to urge NOSB and organic stakeholders to call upon USDA to prioritize standards development and address the backlog of NOSB recommendations that were developed to clarify and update the organic standards through a stakeholder consensus process. Inaction by USDA is preventing unique



segments of the organic industry from developing or advancing and lending to inconsistent certification practices and consumer confusion about the value of the organic label.

In closing, OTA remains supportive of moving recommendations forward to NOP that will not only improve the practices used to keep GMOs out of organic seed, feed and crops, but will also clarify the standards and terminology used for making clear and consistent compliance determinations. The list of techniques covered to date and the clarification provided are incredibly important and useful and are already assisting the organic sector with regulatory determinations. It is time to formalize this significant body of work by accepting the NOSB recommendations and finalizing the Guidance in the NOP Handbook.

On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

Gwendolyn Wyard
Vice President of Regulatory and Technical Affairs
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association



April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: Crops Subcommittee – Proposal on Highly Soluble Nitrogen

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the National Organic Standards Board (NOSB) Crops Subcommittee's Proposal on the Highly Soluble Nitrogen.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The Subcommittee proposes to add a new restriction on all highly soluble nitrogen fertilizers at §205.105:

“Nitrogen fertilizers with a C: N ratio of 3:1 or less, including those individual components of a blended fertilizer formulation, are limited unless use is restricted to a cumulative total use of 20% of crop needs.”

OTA cannot support the proposal because many of the concerns that we identified in our fall 2021 comments¹ remain unresolved. We continue to have questions about whether certifiers, inspectors, operators have the information and tools to understand, demonstrate, and verify compliance with this language, and whether NOSB has enough technical information to inform a recommendation on this topic. The proposal narrative does not sufficiently overcome or resolve the outstanding questions and concerns we have about this approach.

Our overarching concern is that the proposal over-burdens farmers without meaningful benefits. The proposal appears to be effective only to restrict guano and any other “unknowns,” yet every farm and every fertilizer and every crop would need to be scrutinized against the restriction, regardless of whether they are using any highly soluble nitrogen fertilizers or low C:N fertilizers. (Provided that NOSB Recommendations to prohibit stripped ammonia and concentrated ammonia are implemented, as well as the NOSB Recommendation to reinstate restriction on Sodium Nitrate.) The documentation and calculation requirements for farms appears overly burdensome, *especially* for diversified organic farms that grow many crops per season and *especially* for farms that are not using guano or any other novel or new highly soluble nitrogen fertilizers or low C:N fertilizers. The impact to organic farms and businesses as a result of this proposal is largely unknown.

¹ https://ota.com/sites/default/files/indexed_files/OTA_Crops_AmmoniaExtract_AMS-NOP-21-0038final.pdf



We also question whether the Subcommittee's proposal is the appropriate solution to be more proactive in reviewing and restricting future novel nonsynthetic nitrogen materials that are not compatible with organic principles instead of waiting for individual petitions. Is the NOSB's fall 2021 recommendation to prohibit "concentrated ammonia" sufficient to achieve this goal? And/or can NOSB explore improvements to the communication mechanisms and feedback loops between certifiers, material reviewers, and NOP when a concern about a novel nonsynthetic substance is identified?

Lastly, we continue to support the NOSB Recommendations from fall 2021 regarding the prohibition of stripped ammonia and concentrated ammonia, and would like to see NOP advance the recommendations through rulemaking without delay.

On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

Johanna Mirenda
Farm Policy Director, OTA

cc: Laura Batcha
Executive Director/CEO, OTA



April 1, 2022

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-21-0087

RE: Crops Subcommittee – 2024 Sunset Reviews

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment to the National Organic Standards Board (NOSB) on its 2024 Sunset Review.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

OTA thanks NOSB for carefully considering each crop production material scheduled for review as part of the 2024 Sunset Review cycle. Materials placed on the National List for use in organic crop production should remain on the National List if: 1) they are consistent with organic farming; 2) they are still necessary to the production of the agricultural product because of the unavailability of wholly natural substitute products in organic production; and 3) no new information has been submitted demonstrating adverse impacts on humans or the environment (OFPA SEC. 2118 [7 U.S.C. 6517] National List). Furthermore, decisions must be transparent, non-arbitrary, and based on the best current information and in the interest of the organic sector and public at large. It's critical that NOSB hears from certified farmers on whether these inputs are consistent with and necessary for organic production, or whether there are other effective natural or organic alternatives available.

About OTA Sunset Surveys

OTA is submitting results to our Sunset Surveys created for each input under review as part of the 2024 Sunset Review cycle. These electronic surveys include about 10 questions addressing the **necessity (crop and livestock)** or **essentiality (handling)** of each input. See Appendix A for a sample survey. Our surveys do not address information regarding the impacts on human health or the environment.

The surveys are open to any NOP certified organic operation. The names of the companies submitting the information are confidential (not disclosed to OTA). To ensure wide distribution of the surveys beyond OTA membership, OTA worked with Accredited Certifying Agencies (ACAs) to

distribute the survey to all of their clients as well as to targeted clients they know are using the inputs under review. OTA also worked through its Farmers Advisory Council (ota.com/FAC) to help assist in distribution to NOP certified farmers.

Results of OTA Sunset Surveys

OTA has received **8** responses on our 2024 Crops Sunset Surveys. Below is a summary of the feedback received via OTA's Sunset Surveys to date.

§205.601 – Synthetic substances allowed for use in organic crop production.

Substance	Summary of Responses	Average rating of Necessity (from 1 to 5, with 1 being "unnecessary" and 5 being "critical /would leave organic without it")
Herbicides, soap based	No survey responses have been submitted so far.	
Biodegradable biobased mulch film	No survey responses have been submitted so far.	
Boric acid	No survey responses have been submitted so far.	
Sticky traps/barriers	1 Response received from a certified organic operation that produces organic mushrooms that uses sticky traps/barriers for catching pests such as flies, gnats, and rodents. Necessary because: - This is critical because we have to maintain sterile conditions for our lab to be able to produce contaminant-free materials. Frequency of application: - Used routinely. If sticky traps/barriers were to be prohibited: - Sticky traps are a simple and effort-free way to help eliminate wayward pests that get past our physical barriers. Without them we would undoubtedly have greater contamination rates.	4 out of 5
Elemental sulfur	No survey responses have been submitted so far.	
Coppers, fixed & Copper sulfate	7 Responses received from certified organic operation producing mandarins, pistachios, stone fruit, cannery tomatoes, garlic.	5 out of 5

	Types of copper used: - Copper sulfate (3), copper hydroxide (3), copper oxide (1) What diseases does Copper control and why is it necessary? - Powdery Mildew, Mildew. If not used, entire crop can be lost from diseases. - Suppress Algae Growth - Mildew, clear rot, brown rot, various other fungi, plant infections, also serves as an important micronutrient. - Taphrina deformans and other fungi - Fungal diseases and rust - Bacterial - Peach Leaf Curl - essential to spray in dormant season BEFORE disease appears. Brown Rot (tree fruit) - light dose in early spring to control disease BEFORE it grows and much more treatments required. Frequency of application: - Routinely. If copper is not used beforehand to strengthen the plants and only used after, it is then too late to save the crop. Ounce of prevention is worth pound of cure. - Seasonal light application to open irrigation delivery channels - Annually; more necessary with moisture & rain - 1-2x/year - As needed - typically 2-2 times a year max - Only when conditions exist that foster growth of bacteria - Routinely but small amounts because diseases are currently under control. Alternatives tried: - Sulfur - Competitive disease probiotics - Peach Leaf Curl: Soap spray, Garlic spray -- Brown Rot: milk spray, Neem oil sprays, Lime mix - all were not very effective and potential for more damage requiring much more treatments Are there organic alternatives to copper products that are more suitable for use in disease control? - No (x6) - Possibly (x1) - Management practice not available to remove the need for copper disease controls. They are either insufficient or not effective Are there viable practices that can be used in situ to offset the toxic build-up of copper in soil and water? - No (x4)	(Critical / would leave organic without it)
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	- We do not over use copper to cause such build up. It is a lack of copper in the plants that causes problems. - Dilute sprays; target concentration rate based on fungus pressure - Keeping previous years nuts/detritus off the berms and the soil surface relatively clear helps - Use only when needed in our environment which is normally dry and not conducive to the diseases copper is used for How would your organic production be impacted if Copper for disease control was prohibited? - We would be forced to return to conventional farming. Without copper protection, production would severely drop off and the health of the plants would decrease rapidly over time. - Negatively - More fungus, poor product quality (unpackable), fewer employees, reduce ability to grow organically. - Trees would become diseased and die - Our product is graded at harvest and affected/stained shells/nuts are not paid for. The negative effect on gross revenue can be considerable. - It would eliminate one of the minor elements necessary for plant growth - Disease would gradually transition from a limited impact requiring minimal treatments to a full bore outbreak and I'm not sure what I could do to treat that situation.	
Polyoxin D Zinc Salt	No survey responses have been submitted so far.	
Humic Acids	No survey responses have been submitted so far.	
Micronutrients	No survey responses have been submitted so far.	
Vitamins C & E	No survey responses have been submitted so far.	
Squid Byproducts	No survey responses have been submitted so far.	

§205.602 – Non-synthetic substances prohibited for use in organic crop production.

Substance	Summary of responses
Lead Salts	No survey responses have been submitted so far.
Tobacco Dust	No survey responses have been submitted so far.



On behalf of our members across the supply chain and the country, the Organic Trade Association thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

A handwritten signature in black ink that reads "Johanna Mirenda".

Johanna Mirenda
Farm Policy Director
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association

Appendix A – Sample Survey for Crop and Livestock Inputs

1. Is your operation certified organic? Yes / No
2. Is [SUBSTANCE] included in your organic system plan? Yes / No
3. Which types of organic crops or livestock products do you use [SUBSTANCE] on/for? (e.g., lettuces, fruit trees, broiler chickens)
4. What function does [SUBSTANCE] provide and why is it necessary? (e.g., to control a specific pest or disease, sanitation, etc.)
5. With what frequency does your operation use [SUBSTANCE]? (e.g., seldom, as needed when a certain condition arises, routinely, etc.)
6. Have you tried using any *other substances* as an alternative to [SUBSTANCE]? (e.g., other substances that are on the National List and/or other natural substances.)
 If yes, please describe which substances you've tried and whether it was effective to fulfill the required function:
7. Are there any other *management practices* that would eliminate the need for [SUBSTANCE]? (e.g., hand weeding instead of using an herbicide; or using a particular harvesting practice to avoid a disease instead of using a fungicide).
 If so, please describe the efficacy of the alternative management practices:
8. How would your organic production be impacted if [SUBSTANCE] was no longer allowed? (describe the agronomic, environmental or human health effects, product quality, economic effects)
9. [If applicable - Insert specific questions from NOSB Subcommittee about the necessity of the substances and the availability of alternatives]
10. On a scale from 1 to 5 stars, rate the overall necessity of [SUBSTANCE] for your organic operation

Unnecessary (don't
need it at all)

Neutral (nice to have
but could live without it)

Critical (would leave
organic without it)

