

March 30, 2022

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Director, Standards Division
USDA-AMS-NOP

Docket: AMS-NOP-21-0085; Notice 87 FR 6839 – 6842

RE: NOP Notice of Public Listening Session with Request for comment

Thank you for the opportunity to provide comment on the upcoming standards development activities by the USDA Agricultural Marketing Service (AMS) NOP, including feedback about specific recommendations from the National Organic Standards Board (NOSB).

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

- Continuous improvement is the bedrock of organic. Congress, consumers, and the organic industry agree that the organic standards need to be regularly updated to keep pace with consumers' expectations and to ensure a level playing field and fair competition for the organic industry.
- USDA & NOP need to prioritize capacity-building for ongoing development and implementation of standards, and to devote additional resources and staffing exclusively to standards writing and development.
- All NOSB Recommendations are important, although some are more urgent than others. OTA has developed a 'Roadmap for Clearing the Backlog of NOSB Recommendations' that includes a multi-stage action plan to advance all outstanding recommendations over a reasonable timeframe, by grouping multiple NOSB recommendations in single recommended regulatory actions to ensure efficient and resourceful rulemaking.
 - √ Complete and implement final rulemaking on ***Strengthening Organic Enforcement, Origin of Livestock, and Organic Livestock and Poultry Standards***.
 - √ For a quick win that can make a big impact on clarifying and updating the standards for product categories that are inconsistently certified, USDA should act without delay to issue a proposed rule for ***Apiculture, Mushrooms, Pet Food and Strengthening Organic Seed Use (2018)*** and an ANPR on ***Greenhouse and Container Production***. Then begin work to advance rules on ***Livestock Vaccines and Livestock Parasiticides*** which are also needed to clarify and update the standards.
 - √ Start the rulemaking process for recommendations that strengthen ecosystem services, including ***Inerts in Pest Controls*** (Keep as a NOP Current Priority), ***Native Ecosystems***, and ***Biodegradable Mulch***.
 - √ Start the pre-rulemaking process for ***Personal Care*** and ***Aquaculture*** to establish new and delineated scopes of certification that currently fall outside of NOP's scope of oversight and enforcement.
 - √ Update and maintain the **NOP Handbook**.
- We support future NOP priorities that will support continuous improvement in environmental outcomes, protect organic integrity through strong oversight and enforcement, and allow the organic standards to keep pace with consumer and industry needs.

Responses to NOP's Specific Requests for Comment

NOP identified the following rules as **current priorities**: *Strengthening Organic Enforcement (SOE)*, *Origin of Livestock (OOL)*, *Organic Livestock and Poultry Standards (OLPS)* and *Inert Ingredients in Pesticides*. OTA supports these current rulemaking priorities and we urge the department to expeditiously complete its work on SOE, OOL, OLPS, and Inerts. See OTA's additional comments in Section III and in Group A & Group D of our CIAO Roadmap.

NOP invites comments on whether to prioritize the follow outstanding NOSB Recommendations. All NOSB Recommendations are important. We developed a proposed multi-stage action plan to advance NOSB Recommendations through a public and transparent process by grouping multiple NOSB recommendations in single recommended regulatory actions to ensure efficient and resourceful rulemaking. See OTA's additional comments below and in Section III and in our CIAO Roadmap.

- **Organic Apiculture (Honeybee) Standards** – Yes, urgent - prioritize. See Group B-1.
- **Organic Mushroom Production Standards** – Yes, urgent - prioritize. See Group B-1.
- **Organic Pet Food Product Standards** – Yes, urgent - prioritize. See Group B-1.
- **Organic Aquaculture Standards** – Yes, begin the pre-rulemaking process. See Group D.
- **Hydroponic/Aeroponic Production & Greenhouse/Container Standards for Organic Crops** – Yes, urgent - prioritize. See Group B-2. OTA disagrees with NOP's assessment of Greenhouses and Containers. NOP needs to begin the urgent yet complex work of developing standards for Greenhouse and Container Production to resolve known inconsistencies and widely divergent certification practices that have led to consumer confusion, certifier shopping and proliferation of "add-on" labels. We also disagree with NOP's premature conclusion to not publish standards to prohibit hydroponics. We strongly request that NOP publish an ANPR to begin the pre-rulemaking process for containers and greenhouse standards based on the 2010 NOSB recommendation and let stakeholders weigh in.

NOP identified the following topics as not a priority and seeks feedback on prioritization. OTA strongly disagrees with NOP's opinion on these items. As stated above, all NOSB Recommendations are important and should be prioritized. See OTA's additional comments below and in Section III and in our CIAO Roadmap.

- **Strengthening Organic Seed Usage** – Urgent, prioritize. See Group B-1. OTA does not agree that the 2018 NOSB Strengthening Organic Seed Usage recommendation is already addressed by the organic regulations. The 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 provided 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 updating 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 annually.
- **Personal Care Product Standards** – See Group D.
- **Eliminate Incentive to Convert Native Ecosystems to Organic Production** – See Group C.
- **Livestock Vaccines (Restricting Vaccines Made from Excluded Methods)** – See Group B-3.
- **Livestock Parasiticides (Clarifying Emergency Use)** – See Group B-3.
- **Excluded Methods Terminology and Determinations** – See Group E.
- **GMO Prevention Strategies** – See Group E.
- **Genetic Integrity for Transparency of Seed Grown on Organic Land** – See Group E.
- **Commercial Availability Criteria for Non-organic Agricultural Ingredients** – See Group E.

NOP has asked for comments on the NOP program structure and allocation of resources to support standards development or other program priorities. USDA & NOP need to prioritize capacity-building for ongoing development and implementation of standards. See OTA's comments below in Section II.

AMS invites comments on other areas of the NOP Handbook that need to be updated. See OTA's additional comments in our CIAO Roadmap (Group E) for specific NOSB Recommendations for instruction and guidance to be advanced through updates to the NOP Handbook.

We offer the following more detailed comments...

I. Introduction

Continuous improvement is the bedrock of organic. Despite the rapid growth and success of the organic sector, one of the largest challenges facing the industry is the lack of progress by USDA in implementing updates to the organic standards to keep pace with the changing marketplace and consumer needs. In the past 10 plus years, NOSB has passed over 20 final recommendations to advance the organic practice standards, yet USDA has not completed rulemaking on a single one of them. In fact, the only update to the organic practice standards since 2002 based on an NOSB recommendation was the pasture rule, completed in 2010.

The expectation has always been that as the organic market grew and evolved, the standards would not remain static but would require continuous improvement and fine-tuning by USDA. Unfortunately, the lack of advancement in the organic standards has prevented some segments of the market from developing, has led to declining consumer trust in the organic label, and caused economic hardship to U.S. organic farmers. The failure of government to keep pace with consumers, industry and the environment is harming and fragmenting the market, and stifling innovation and continuous improvement within the sector.

The organic standards need to be regularly updated to keep pace with consumers' expectations and to ensure a level playing field and fair competition for the organic industry. To continue the success of the organic program and keep up with the marketplace, USDA and NOP need to devote additional resources and staffing exclusively to standards writing and development. Updating standards is not only a basic tenet to ensure relevance of a standard, it is also a basic consumer expectation. This statement is strongly supported by data in an Edelman survey conducted in November of 2021. The survey shows that 89% of shoppers say that USDA should review and update the standards periodically and 87% expect that they be updated to reflect evolving understandings about soil, climate, animal welfare, etc.

Congress also agrees that USDA must realign priorities and take standards development more seriously. On April 30, 2021, Congress introduced significant bipartisan legislation (H.R. 2918) that provides a pathway forward. The bill, the **Continuous Improvement and Accountability in Organic Standards Act** (CIAO), establishes a new framework for advancing the organic standards to keep up with the marketplace and ensure the credibility of the USDA Organic seal. It puts in place a more responsive and transparent federal process for the oversight of organic that will bring the government up to speed with the modern organic sector. Nearly two dozen members of Congress are [co-sponsors](#) of H.R. 2918 ([list of co-sponsors](#)). Over 60 organic businesses have endorsed the bill as well as 50 current and former NOSB members ([list of endorsers](#)).

As a start, the CIAO Bill requires USDA to seek input from organic stakeholders to help prioritize and create an action plan to address the backlog of stalled organic standards. We greatly appreciate the immediate steps AMS-NOP is taking to respond and move forward on this call to action. OTA's "CIAO Roadmap for Clearing the Backlog of NOSB Recommendations" (See Section III) was developed to support USDA's development of its action plan.

II. USDA Capacity, Resources, and Program Structure

To help address the backlog of NOSB recommendations and set a course for successful standards development in the future, a realignment of current resources and staffing within NOP is necessary. In our process of prioritizing NOSB recommendations, the TOP priority that emerged is that **USDA and NOP need to build capacity for the ongoing**

development and implementation of standards. To continue the success of the organic program and keep up with the marketplace, USDA and NOP need to devote additional resources and staffing exclusively to standards writing and development and stakeholder outreach.

Transparency and accountability in the organic standards are critical for a truly participatory stakeholder engagement structure. Increasing communication with stakeholders must be a top priority. USDA needs to regularly update stakeholders and the Unified Agenda with the status, priorities, decision criteria and current positions on NOSB recommendations.

It is critical that we institutionalize better processes in the next farm bill. Future funding for NOP should be contingent upon success in advancing standards, and specific resources should be directed towards standards development. To foster a healthy public-private partnership, USDA must regularly update stakeholders and the Unified Agenda with the status, priorities, decision criteria and current positions on NOSB recommendations. Lastly, we will ask Congress to set a statutory requirement for USDA to review and update organic practice standards beyond just the National List to ensure continuous improvement. We believe that the structure of NOP can and should allow for prioritizing standards and market development along with maintaining strong compliance and enforcement.

III. The CIAO Roadmap for Clearing the Backlog of NOSB Recommendations

OTA's CIAO Roadmap is a **multi-staged action plan (Table 1)** that was developed over the past year through an extensive outreach and evaluation process with our membership. Each NOSB recommendation in the backlog was evaluated using two sets of criteria to help determine their *importance (urgency)* as well as the *ease of implementation (complexity)* of moving each one through USDA's rulemaking process. The NOSB recommendations were then grouped together by common and complementary factors into a few single regulatory actions, laying the groundwork for an approach that can achieve efficient and resourceful rulemaking and garner broad organic stakeholder support.

This approach will facilitate resourceful rulemaking and help ensure that all NOSB recommendations are finalized over a reasonable time span. The regulatory model we used for this approach is the Strengthening Organic Enforcement (SOE) rule that addresses 18 separate topics, including five NOSB recommendations.

The complete evaluation process we used to shape our decisions and conclusions is explained in **Appendix A**. The complete evaluation results of each recommendation against our criteria for importance (urgency) and ease implementation (complexity) are available in **Appendix B**.

The outcome of OTA's evaluation process identified some NOSB recommendations as being more urgent than others. However, organic stakeholder feedback continues to express the importance of all of the recommendation and how they collectively strengthen the organic standards beyond what any single recommendation could do. **Our main conclusion is that the recommendations are all important to the organic sector as a whole.** The evidence for this statement is found in the fact that all of the NOSB recommendations included in our plan were advanced to the Secretary of Agriculture through a public process of consensus under the design of the Organic Foods Production Act, and they *collectively* address decades of extensive work and invested resources that aim to:

- ⇒ Further advance organic farming as a sustainable form of agriculture
- ⇒ Develop and grow the supply and variety of domestically produced organic products
- ⇒ Assure consumers that USDA organic products meet a consistent standard
- ⇒ Protect the integrity of organic products and practices

The summary of the multi-staged action plan (the CIAO Roadmap) is provided in **Table 1**. Additional explanations of each group are provided below in the table.

Table 1: Multi-Stage Action Plan (The CIAO Roadmap)

Group	NOSB Recommendations	Recommended Action
Group A – Final Rules in Progress <i>Most Urgent, Easier to Implement</i>	- Origin of Livestock (OOL) - Strengthening Organic Enforcement (SOE), including: - Uncertified Handlers - Grower Groups - Calculating Organic % - Retailer Compliance - Certifier + Insp Oversight	⇒ Action: Move Directly to Final Rule
	- Organic Livestock & Poultry Practices (OLPP)	⇒ Action: Reinstate the original Final Rule
Group B – Clarifying and Updating the Organic Standards <i>Urgent, Big Impact</i> Groups B-1 and B-2 are actions that USDA should take <u>without delay</u> that can lead to a quick win and make a big difference in advancing organic standards.	Group B-1 -Pet Food -Apiculture -Mushroom Production -Strengthening Organic Seed Use	⇒ Action: Add to the Unified Agenda as a Proposed Rule
	Group B-2 -Greenhouses & Containers	⇒ Action: Add to the Unified Agenda and release an ANPR
	Group B-3 -Vaccines in Livestock -Parasiticides in Livestock	⇒ Action: Add to the Unified Agenda
Group C – Strengthening Ecosystem Services <i>Important, More Difficult to Implement</i>	- Inerts in Pest Controls	⇒ Action: Keep as current NOP priority and release the ANPR
	- Native Ecosystems	⇒ Action: Start the Pre-Rulemaking Process
	- Biodegradable Mulch	⇒ Action: Accept NOSB recommendation and start rulemaking
Group D – New and Delineated Scopes of Certification <i>Important, Most Difficult to Implement</i>	- Personal Care - Aquaculture	⇒ Action: Start the Pre-Rulemaking Process
Group E – NOP Handbook Updates <i>Easier to Implement, Work with the ACAs</i>	- Excluded Methods Terminology - Commercial Availability of 205.606 - Organic Seed Guidance - Excluded Methods Prevention - Genetic Integrity of Seed	⇒ Action: Update the NOP Handbook

Group A: Final Stages of Rulemaking are in Progress – Keep Going

Most Urgent, Easier to Implement

The NOSB recommendations in **Group A** have already been published in a final rule or they were published as a proposed rule and the comment period was completed. A final action would complete USDA’s rulemaking process, close major gaps in the organic regulations and ensure a level-playing field for all producers and handlers. It would also protect organic integrity in the supply chain, build consumer trust by strengthening organic control systems, and provide robust enforcement of the USDA organic system.

Group B: Clarifying and Updating the Standards – Start Now

Urgent, Big Impact

The NOSB recommendations in **Group B** would create standards for specific production categories that are being inconsistently certified, modernize the organic regulations to meet the growing needs of the organic sector, and remove obstacles to continued growth of organic production. This will further develop a supply and variety of domestically produced organic products and create economic benefits for organic producers and handlers. Inaction by USDA has led to market failure, prevented unique segments of the organic industry from advancing, and created consumer confusion around the consistency and value of the organic label.

Groups B-1 and B-2 are actions that USDA should take without delay that can lead to a quick win and make a big difference in advancing organic standards. USDA should work on these narrowed group of recommendations as a starting place that can lead to immediate progress and early success.

Publish a Proposed Rule on Mushrooms, Apiculture, Pet Food, and Strengthening Organic Seed

- **Urgency:** USDA action on this group would significantly update the organic regulations by implementing long-standing NOSB recommendations that were written to provide additional standards for specific production categories that are covered under OFPA and bring the regulations up to speed with the growth and developments of the organic sector. Standards would address inconsistent certification practices due to the lack of standards and further develop the supply and variety of domestically produced organic products. There are some inputs specific for apiculture and mushroom production that have been added to the National List even though there are not practice standards. Lack of apiculture standards is preventing domestic production and availability of organic apiculture products.
- **Ease of Implementation:** This group is non-controversial and positioned for a relatively easy rulemaking glidepath. *Pet Food, Apiculture* and *Mushrooms* were previously published in the Unified Agenda and proposed rules were drafted for Pet Food and Apiculture. The 2018 recommendation on *Strengthening Organic Seed Usage*, involves a simple yet critical revision to the regulations that requires certified crop producers to demonstrate improvement in sourcing and use of organic seed and planting stock each year. All of these recommendations are widely supported by organic stakeholders, and will create environmental and economic benefits for organic producers and handlers.

Published an ANPR on Greenhouse and Containers

- **Urgency:** USDA action on this recommendation would address significant inconsistent certification decisions and widely divergent certification practices and ensure a level-playing field and fair competition for all organic producers and handlers. Inaction by USDA has led to consumer confusion about the value of the organic label, fragmentation of the organic sector, certifier shopping, and proliferation of “add-on” labels. The Accredited Certifiers Association worked for 6+ months to develop best practices for certifying greenhouse and containers but were unable to come to consensus, and therefore communicated to NOP that inconsistent interpretations among certifiers can only be resolved through rulemaking.
- **Ease of Implementation:** Rulemaking will be more complex due to legal challenges and controversy within the organic community. The benefits to creating a standard (urgency) far outweigh the cost and challenges. NOP has a NOSB recommendation passed in 2010 and over 15 years of production and certification best practices to inform the process.

The items in Group B-3 (Livestock Vaccines and Livestock Parasiticides) are still important for clarifying and updating the standards, but Livestock Vaccines may be too complex to be part of the “Quick Win” sub-set of Group B.

Group C: Strengthening Ecosystem Services

Important, More Difficult to Implement

The NOSB recommendations in **Group C** (Inerts; Native Ecosystems; Biodegradable Mulch) support a system of farming that responds to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity. All of these activities play an important role in fighting climate change and lead to environmental benefits. A final rule on this group of NOSB Recommendations will further advance organic farming as a climate-change solution and as a provider of sustainable ecosystem services.

OTA recognizes the complexity of the NOSB recommendations identified in Group C. We also recognize the important role that each one plays in further advancing organic farming as a climate-change solution.

Group D: New & Delineated Scopes

Important, Most Difficult to Implement

The NOSB recommendations in **Group D** (Personal Care; Aquaculture) would create standards for new and delineated scopes of certification that currently fall outside of NOP's scope of oversight and enforcement. Inaction by USDA has led to the proliferation of inaccurate and misleading organic labels and prevented major sectors of the industry from developing. A final rule would help assure confidence in the legitimacy of products labeled as organic, and allow U.S. producers to compete in the organic seafood market.

OTA recognizes the complexity of the NOSB recommendations identified in Group D. We also recognize the important role that each one plays in expanding the organic market and helping to assure confidence in the legitimacy of products labeled as organic. In the absence of NOP personal care standards, we urge NOP to take enforcement action against companies making false and misleading organic claims on agriculturally based personal care products

Group E: NOP Handbook

The NOSB recommendations in **Group E** call for Guidance or Instruction to support consistent certification practices. The NOP Handbook was created to serve as a central location that would provide industry and certifiers with program guidance that is readily available and are not applied as binding requirements. Final Guidance would help support uniform regulatory decisions and in turn assure consumers that organic products meet a consistent standard.

OTA agrees that the NOP Handbook is an importance guidance tool that is helpful to both certifiers and certified operations. We support the continued use of the NOP Handbook to help support uniform regulatory decisions and, in turn, assure consumers that organic products meet a consistent standard. The NOP Handbook was created to serve as a central location that would provide industry and certifiers with program guidance that is readily available and not applied as binding requirements. We request that the guidance recommendations in Group E are addressed by NOP for advancement as a group. A similar "group action" approach was taken in October 2010, when NOP requested comments on five draft guidance documents; once finalized, they were added to the NOP Handbook. We also identified a number of items in our Strengthening Organic Enforcement comments where further guidance or instruction is needed.

We strongly encourage the continued use of the NOP Handbook provided it is not used in place of or as a substitute to updating the organic standards. Contents of the Handbook should be formalized through rulemaking where regulation is needed to support enforcement.

IV. The Future of Organic

Success is not just about moving forward on the backlog of NOSB recommendations. A new framework must also be set for advancing the organic standards to keep up with the marketplace and ensure the credibility of the USDA Organic seal. It has been 30 years since the passage of the Organic Foods Production Act. Now is the time to take a step back and assess what has and has not worked in the program, and think creatively for solutions to meet the needs of the sector for the next

30 years. OTA supports future NOP priorities that will support continuous improvement in environmental outcomes, protect organic integrity through strong oversight and enforcement, and allow the organic standards to keep pace with consumer and industry needs.

Topics to explore include:

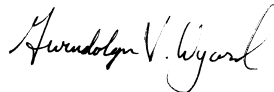
- Leveraging the *Organic System Plan* as a tool for demonstrating continuous improvement in soil health, climate mitigation and other sustainability attributes.
- Modernizing the *Organic seal* to communicate the climate-smart benefits of organic agriculture.
- Strengthening oversight of inputs by formally bringing *Material Review Organizations* under the USDA-NOP accreditation system.
- Granting NOP the *authority to take enforcement actions* against false organic claims on non-food.

Conclusion

In closing, we ask that USDA work closely with industry and stakeholders to repair the public-private partnership, address the backlog of stalled standards, and set a path forward for a more sustainable future that can support this robust industry.

On behalf of our members across the supply chain and the country, thank you for the opportunity to provide feedback. We look forward to working with NOP to make these important changes.

Respectfully submitted,



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cc: Laura Batcha
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APPENDICES

A: Three-Step Process to Developing the CIAO Roadmap

Figure 1: Backlog of NOSB Recommendations

Figure 2: Scoring Tool Results (See Appendix B for the corresponding evaluation criteria)

Figure 3: Evaluation Criteria

B: Evaluation Criteria – Results for each NOSB Recommendation

C: Description of the NOSB Recommendations that have not been implemented

Appendix A – Three-Step Process to Developing the CIAO Roadmap

The development of CIAO Roadmap is detailed below in a series of questions and answers explaining the three-step process we used to inform our decisions and conclusions. The CIAO three-step process is as follows:

- 1) **Identify** each NOSB recommendation to be acted upon (**Figure 1 and Appendix C**);
- 2) **Evaluate** each NOSB recommendation based on criteria for IMPORTANCE (urgency) and COMPLEXITY (ease of implementation) (**Figure 2 and Appendix B**); and
- 3) **Group** multiple NOSB recommendations into single recommended regulatory actions according to common and complementary factors to ensure efficient and resourceful rulemaking (**Figure 3**).

The regulatory model we used for the grouping approach is the Strengthening Organic Enforcement (SOE) Rule that amends several sections of the USDA organic regulations and, in doing so, addresses 18 separate topics, including five NOSB recommendations, and multiple technical corrections.

By utilizing various criteria for prioritization and grouping related recommendations together in one rule, we think that USDA can balance industry needs while also working within the constraints of the federal rulemaking process. We also believe the CIAO three-step process offers a thoughtful, inclusive and solution-oriented approach to creating an action plan that will support high-level engagement and collaboration between USDA and organic stakeholders and lead to a successful outcome.

QUESTIONS AND ANSWERS

1. How did the Organic Trade Association decide which NOSB recommendations to focus on?

NOSB makes recommendations on a wide range of issues involving the production, handling and processing of organic products. These recommendations are referred to as “practice standards” recommendations. NOSB also has statutory responsibilities related to maintaining the National List of Allowed and Prohibited Substances. These recommendations are referred to as ‘National List’ recommendations. If an NOSB proposal receives a decisive vote (2/3 majority) by Board members in favor of the proposed motion, it becomes a recommendation to USDA, and is provided to the Secretary through NOP.

The historical record shows that the large majority of the ‘National List’ Recommendations passed by a decisive vote have been addressed by NOP. However, over the past decade, NOSB has passed over 20 final recommendations* to advance the organic ‘practice standards,’ yet USDA has not completed rulemaking on a single one of them. Over 20 of the recommendations have passed in just the last decade.

In fact, since the USDA organic standards became effective in 2002, the only update to the practice standards since 2002 based on an NOSB recommendation was the Pasture Rule, completed in 2010. The Pesticide Residue Testing requirements were revised in January 2013; however, the update was made in response to a USDA Office of the Inspector General audit. Given these circumstances, the NOSB backlog included in our recommendation to USDA is based on the following criteria:

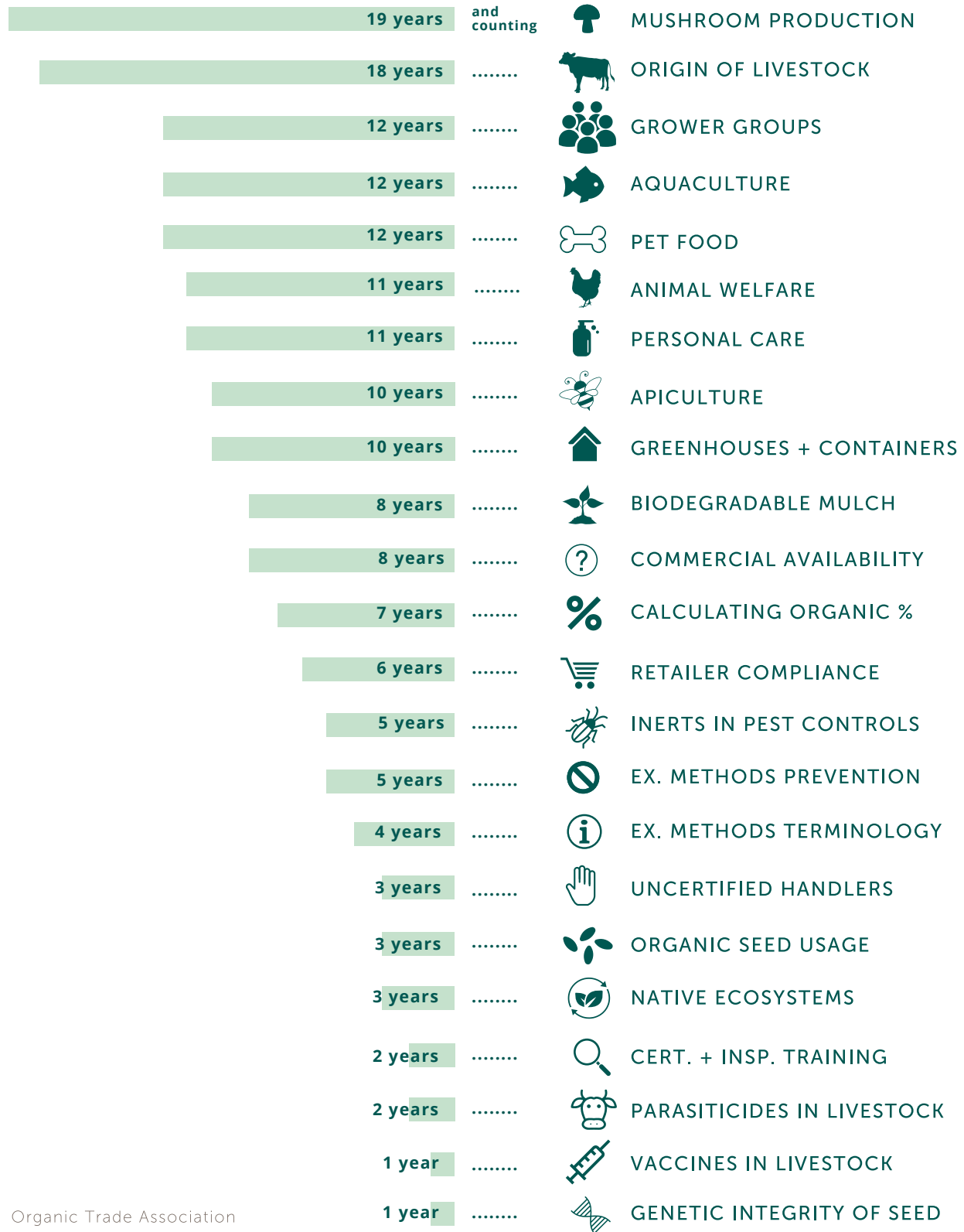
- Submitted to USDA between 2001 (implementation of NOP) and December 2020
- Approved by a decisive vote and submitted to the Secretary of Agriculture, but has not been implemented by a final rule or final guidance
- Limited to organic “practice standards” with the exception of two National List related recommendations that require extensive interagency work, will have a far-reaching impact on the organic farming sector and involve long and complex annotations that may require amendments to the practice standard.

**Twenty of the NOSB Recommendation passed between December 31, 2007 and December 31, 2020. Three of the recommendations (Mushroom Production, Origin of Livestock and Commercial Availability of § 205.606) were passed in 2001, 2006 and 2007 respectively.*

Figure 1 – Backlog of NOSB Recommendations

Timespan for USDA-NOP Rulemaking

ORGANIC STANDARDS

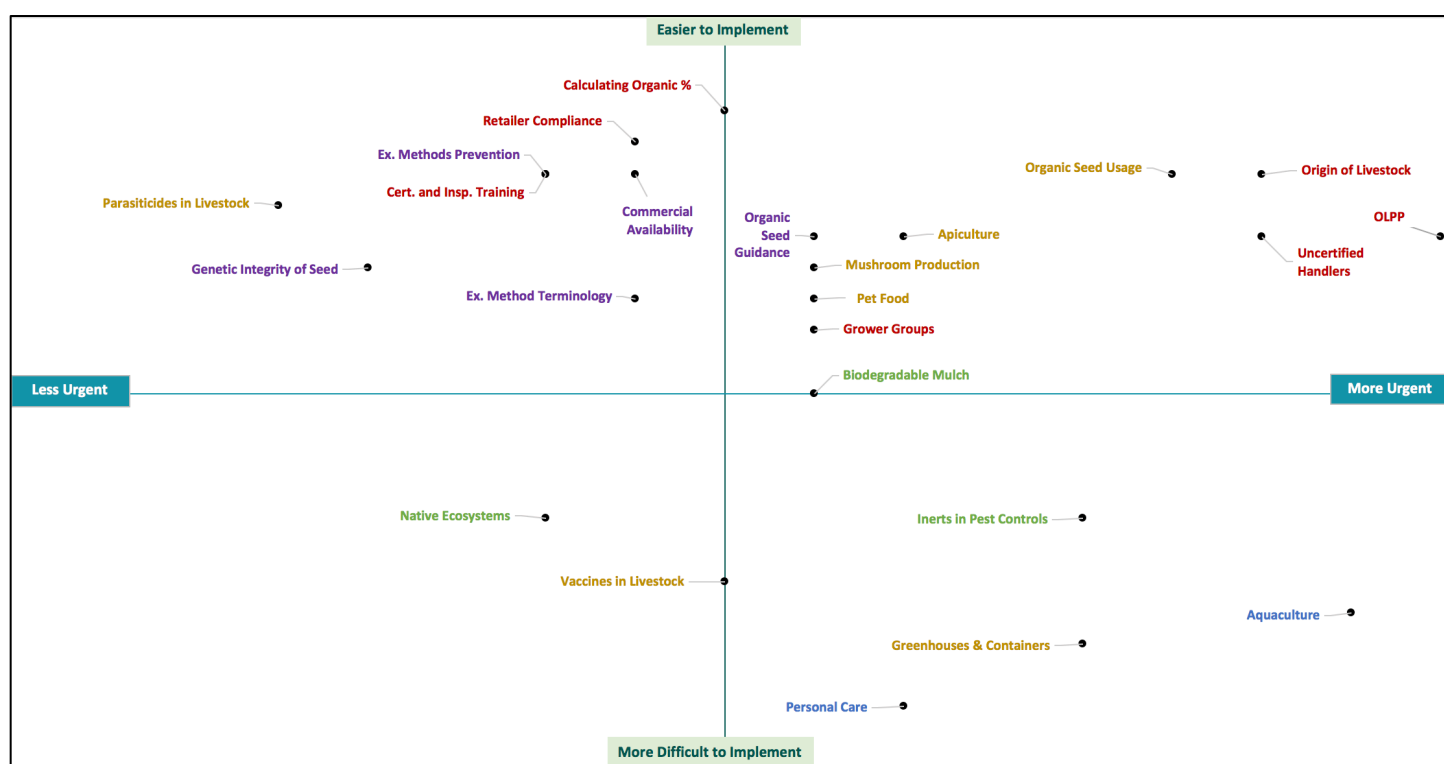


Organic Trade Association

2. How did the Organic Trade Association evaluate the NOSB recommendations?

The Organic Trade Association’s action plan was informed by an extensive evaluation process using two sets of criteria to help determine the importance (urgency) of each NOSB recommendation, as well as the ease or complexity of moving each one through USDA’s rulemaking process (ease of implementation). To facilitate the process, we developed a scoring tool that evaluates each NOSB recommendation against the criteria using ‘yes’ and ‘no’ answers. The results were then automatically plotted onto a quadrant chart (**Figure 2**) that helps collectively view the recommendations in relation to their importance and ease of implementation. The visual also helped inform how to group the NOSB recommendations by common and complementary factors. Grouping the multiple recommendations into a few single regulatory actions will allow for efficient and resourceful rulemaking and provide the greatest opportunity for success.

Figure 2 – Scoring Tool Results (See Appendix B for the corresponding evaluation criteria)



3. What evaluation criteria did OTA use to determine the importance and complexity of each recommendation?

The following figure (Figure 3) list the criteria that each NOSB recommendation was evaluated against. The significance of each criteria is explained. Generally speaking, the criteria selected for ‘urgency and importance’ focused on recommendations that improve the environmental outcomes of the organic standards and/or actualize the intent of the Organic Foods Production Act. For ‘ease of implementation,’ we focused on criteria reflecting situations that either create or remove regulatory hurdles and barriers.

Figure 3 – Evaluation Criteria

URGENCY AND IMPORTANCE
Improves the environmental outcome of the organic standards – Further advances organic farming as a sustainable form of agriculture and provider of ecosystem services.
Needed to address market failure⁽¹⁾ – Clarifies existing requirements or creates standards to remedy inconsistent certification practices and ensure a level-playing field and fair competition for all producers and handlers.
Inaction has prevented industry from developing or advancing⁽¹⁾ – Creates new standards or clarifies existing standards to allow organic industry sectors to further advance or develop and maximize economic benefits for producers and handlers.
Highest priority for industry – Rates in the top 5 of OTA’s Member Survey ⁽²⁾ or is expressed as extremely important in the public record.
Congressional oversight or deadline – Responds to either a congressional mandate or pressure to complete or conduct rulemaking.
Needed to reduce consumer confusion and/or ensure consumer trust – Assures confidence in the legitimacy of products sold as organic; addresses misleading or fraudulent labeling (i.e. organic claims being made on products outside NOP’s scope of enforcement); and reinforces the value of the organic label.
Needed to resolve Interagency Inconsistency – Addresses inconsistencies between organic and other federal regulations or programs
Currently or Previously listed on USDA Unified Agenda – Signifies the recommendation was accepted and USDA was/is in the process of regulatory development with a timetable for final action. Reflects prioritization and the most significant regulatory activities planned for the year.
Office of Inspector General (OIG) weighed-in as supportive or calling for action – Responds to OIG findings as a result of an audit report. OIG’s mission is to promote economy, efficiency and integrity in USDA programs and operations.
Out of step with international norms – Needed to support successful equivalency negotiations and to advance with our major trading partners.
EASE OF IMPLEMENTATION
Interagency involvement – Rulemaking will require working with other federal agencies, including regulatory cross-referencing, working groups, formal agreements and strategy
Proposed Rule published & Comment Period completed – The large majority of the NOSB and NOP rulemaking process is complete. Few steps are needed to get to a final action.
Proposed Rule drafted but not published – A significant portion of the NOSB and NOP rulemaking process is complete. Although significant work is still required, the substantial time and resources already invested sets these recommendations ahead of the pack.
Legal challenges, active lawsuits, or unanswered legal questions – Anytime legal challenges or active lawsuits are in play, the rulemaking process becomes more complex. This criteria reviews whether USDA’s Office of General Council took a position, whether there is an active lawsuit in play and whether there are unanswered legal questions that make the recommendation vulnerable to legal challenges.
Controversial within organic community – Public comments indicate lack of consensus or significant minority opinion for NOSB recommended solution. A lack of support within the organic sector will inevitably lead to a more complex and challenging rulemaking process.
Extensive changes to the regulation – Significant revisions to the existing organic regulatory text will be needed. This will require more time and resources for formulating, reviewing and amending the rule.
Difficult/Costly to implement – Rulemaking will be designated as ‘significant’ or ‘economically significant’ per AMS classification, triggering additional justification, interagency review and cost-benefit assessment.
External political factors – Elected officials and stakeholders outside of the organic sector are opposed, likely resulting in political factors that work against progress and a final rule.
New scope – Creates a new scope of standards or certification outside of the existing crops, livestock, wild harvest and handling.
Additional NOSB work needed – The NOSB recommendation is so out of date that it may warrant reevaluation by NOSB, or, other related NOSB work agenda items exist but do not preclude successful implementation of the recommendation at hand.
NOP considers it addressed – NOP lists the NOSB recommendation as “closed” in its ‘NOSB Recommendation Library.’ Such designation may indicate an unwillingness to initiate rulemaking, for one reason or another.
NOP responded favorably to NOSB recommendation – A favorable response to the NOSB recommendations means NOP accepted it and indicated they would proceed with rulemaking. If they did not accept it or responded without an opinion, we anticipate greater complexity
Unanimous NOSB Vote – A unanimous NOSB vote is a significant indicator of organic stakeholder consensus for industry, certifiers and consumers. Strong stakeholder support should make for easier rulemaking.
Industry solutions privately adopted – Accredited certifiers and/or industry have implemented the recommendation in practice and/or developed agreed upon best practices. The regulations need to catch up with industry.
Needed to clarify the intent of regulation – The recommendation does not change the meaning of the regulation. Instead, it clarifies the intent and brings about greater consistency.

(1) The Organic Foods Production Act (OFPA) was enacted to create “national standards governing the marketing of certain agricultural products as organically produced products,” to assure consumers that “organically produced products meet a consistent standard,” and to facilitate “interstate commerce in fresh and processed food that is organically produced.” 7 U.S.C. § 6501.

(2) OTA conducted a member survey to solicit stakeholder priorities on the backlog of unimplemented NOSB recommendations. The survey asked participants to rank 15 topics from highest to lowest priority. The survey ran from September – November 2020. Nearly 450 responses were received and 50% were from farmers. Over 95% of the respondents support continuous improvement and accountability in organic standards. Although some NOSB recommendations did rank higher than others, the major take away was that ALL the outstanding NOSB recommendations are important to various organic stakeholder groups. There is no single “winner” in terms of importance across the diverse organic sector.

5. How did the Organic Trade Association go about grouping the NOSB Recommendations and why is it important to bundle multiple recommendations together?

The **quadrant chart** (Figure 2) provides a visual that helps to collectively view the recommendations in relation to their ‘urgency’ and ‘ease of implementation.’ It also helps inform how to group the NOSB recommendations by common and complimentary factors. Throughout the course of our evaluation, and in thinking ahead about a recommendation to USDA, two critical considerations emerged:

- √ **All of the NOSB Recommendations are very important.** The evidence for this statement is found in the fact that NOSB and the organic community already advanced these recommendations to the Secretary of Agriculture through a process of consensus. A key takeaway from OTA’s Survey on ranking the importance of each recommendation was that ALL of the standards need to be advanced. All of the recommendations are important to various organic stakeholder groups. Although our evaluation process points to certain recommendations being more urgent than others, there is no real winner in terms of importance. From this perspective, our goal was to focus on how to best group and prioritize the recommendations so they can all get addressed over a reasonable timespan. This consideration is inherently tied to the nature of the rulemaking process and the time and resources it entails.
- √ **The USDA rulemaking process is long and arduous:** The Organic Trade Association recognizes that the rulemaking process is extremely time and resource intensive, and one single NOSB recommendation must move through all the same regulatory steps as would multiple NOSB recommendations if they were grouped together. While each single NOSB recommendation is important, they collectively strengthen the organic standards beyond what any single recommendation could do. Therefore, we believe the most efficient, resourceful and successful approach to take, is to follow the example of USDA’s *Strengthening Organic Enforcement Rule*, and bundle multiple recommendations (topics) into a few single rulemaking actions.

With this in mind, we were able to use the information from our evaluation process to bundle multiple NOSB recommendations into five groups, each with a recommended regulatory action:

Group A*: Final Stages of Rulemaking are in Progress – Complete the Work

- *Critical, Most Urgent, Easiest to Implement ⇒ Move Directly to a Final Rule, or in the case of OLPP, reinstate the Final Rule:* The NOSB recommendations in this group have already been published as a proposed rule and the comment period is complete. A final action would complete USDA’s rulemaking process, close major gaps in the organic regulations and ensure a level-playing field for all producers and handlers. It would also protect organic integrity in the supply chain, build consumer trust by strengthening organic control systems, and provide robust enforcement of the USDA organic system.

* *Organic Livestock + Poultry Practice Rule; Origin of Livestock; SOE Rule*

Group B*: Clarifying and Updating the Organic Standards Rule

- *Urgent, Big Job ⇒ Add or keep on the Unified Agenda:* USDA action on this group would significantly advance the organic regulations by implementing long-standing NOSB recommendations that were written to provide additional standards for specific production categories and/or to clarify existing organic requirements that are resulting in inconsistent certification practices. Addressing this group of recommendations would assure consumers that USDA organic products meet a consistent standard and help develop the supply and variety of domestically produced organic products.

* *Pet Food; Apiculture; Mushrooms; Strengthening Organic Seed Usage; Greenhouses and Containers; Livestock Vaccines; Emergency Use of Parasiticides*

Group C*: Strengthening Sustainable Ecosystem Services

- *Urgent, Challenging Work ⇒ Start with a Pre-Rulemaking Process:* The NOSB recommendations in this group support a system of farming that responds to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve

biodiversity. All of these activities play an important role in fighting climate change and lead to environmental benefits. A final rule on this group of NOSB Recommendations will further advance organic farming as a climate-change solution and as a provider of sustainable ecosystem services.

** Inert Ingredients; Biodegradable Mulch; Native Ecosystems*

Group D*: New and Delineated Scopes of the Organic Regulations

- *Urgent, Hard Slog* ⇒ *Start with a Pre-Rulemaking Process*: The NOSB recommendations in this group would create standards for new and delineated scopes of certification that currently fall outside of NOP’s scope of oversight and enforcement. Inaction has led to the proliferation of inaccurate and misleading organic labels that go unregulated and unenforced. It has prevented major sectors of the industry from developing, and it creates barriers for expanding the scope of equivalency arrangements with major international trading partners. A final rule would help assure confidence in the legitimacy of products labeled as organic, it would help consumers understand that the term “organic” reflects a codified and transparent set of production and handling standards, and it would allow U.S. producers to compete in the organic seafood market.

**Aquaculture and Personal Care*

Group E*: Updating the NOP Handbook

- *Easier to Implement, Work in Partnership with the Certifying Agents* ⇒ *Update the NOP Handbook*: The NOSB recommendations in this group request NOP Guidance or Instruction. A similar Handbook “group action” approach was taken in October 2010, when NOP requested comments on five draft guidance documents. Once finalized, they were added to the NOP Handbook. The Organic Trade Association encourages the continued use of the NOP Handbook and we support its role in providing those who own, manage or certify organic operations with guidance and instruction that can assist in compliance with the organic regulations. We also believe this is an opportunity for NOP to work with accredited certifying agents to help inform and/or draft the Guidance based on the NOSB recommendations. Although the NOP Handbook does not have the force and effect of law, it is very helpful and supports the consistent implementation of the standards. Advancing this group of recommendations would add helpful updates to the NOP Handbook and assist in developing uniform regulatory decisions. This in turn would help assure consumers that organic products meet a consistent standard.

**Excluded Methods Terminology; Organic Seed Guidance; Genetic Integrity of Seed; Commercial Availability of Non-Organic Agricultural Ingredients (205.606)*

Appendix B: Evaluation Results for each NOSB Recommendation

NOSB RECOMMENDATIONS	Importance	Ease of Implementation/Complexity
Organic Livestock + Poultry Practice (OLPP)	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Highest priority for industry (public record) Previously on USDA Unified Agenda OIG weighed-in supportive or calling for action Needed to reduce consumer confusion / ensure trust Improves the environmental outcome of the Organic Standards</p>	<p>Final Rule Published (withdrawn prior to becoming effective) NOP responded favorably to NOSB recommendation Unanimous NOSB Vote Industry solutions privately adopted Needed to clarify the intent of the regulations</p> <p>Legal challenges/active lawsuits/unanswered legal questions Extensive changes to the regulation External political factors</p>
Origin of Livestock (OOL)	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Highest priority for industry (public record) Currently on USDA Unified Agenda Congressional oversight or deadline OIG weighed-in supportive or calling for action</p>	<p>Proposed Rule published & Comment Period completed NOP responded favorably to NOSB recommendation Industry solutions privately adopted Needed to clarify the intent of regulation Unanimous NOSB Vote</p> <p>Legal challenges/active lawsuits/unanswered legal questions External political factors</p>

<p>Strengthening Organic Enforcement (SOE): Uncertified Handlers Grower Groups Calculating Organic Percentage Retailer Compliance Certifier + Inspector Oversight & Training</p>	<p>Needed to address market failure Highest priority for industry (public record) Congressional oversight or deadline OIG weighed-in as supportive or calling for action Currently listed on USDA Unified Agenda Needed to reduce consumer confusion / ensure trust Out of step with international norms</p>	<p>Proposed Rule published & Comment Period completed NOP responded favorably to NOSB recommendation Industry solutions privately adopted Needed to clarify the intent of the regulations</p> <p>Difficult/Costly to implement Extensive changes to the regulation External political factors Additional NOSB work needed (retailer compliance?)</p>
<p>Pet Food</p>	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust</p> <p>Previously listed on USDA Unified Agenda</p>	<p>Unanimous NOSB Vote Proposed Rule drafted but not published NOP responded favorably to NOSB recommendation Industry solutions privately adopted</p> <p>Interagency involvement Extensive changes to the regulation New Scope NOP considers it addressed</p>
<p>Apiculture</p>	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust</p> <p>Previously listed on USDA Unified Agenda Out of step with international norms</p>	<p>Unanimous NOSB Vote Industry solutions privately adopted Proposed Rule drafted but not published NOP responded favorably to NOSB recommendation Extensive changes to the regulation New Scope NOP considers it addressed</p>
<p>Mushroom Production</p>	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust</p> <p>Previously listed on USDA Unified Agenda Out of step with international norms</p>	<p>Proposed Rule drafted but not published NOP responded favorably to NOSB recommendation Industry solutions privately adopted</p> <p>Extensive changes to the regulation New Scope NOP considers it addressed</p>
<p>Greenhouses and Container Production</p>	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust</p> <p>Highest priority for industry (Public Record & OTA Survey) Previously listed on USDA Unified Agenda Out of step with international norms</p>	<p>Industry solutions privately adopted Legal challenges/active lawsuits Controversial within organic community Extensive changes to the regulation New Scope Difficult/Costly to implement External political factors NOP considers it addressed</p>
<p>Organic Seed Usage - Rulemaking</p>	<p>Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust</p> <p>Highest priority for industry (OTA survey) Out of step with international norms</p>	<p>Unanimous NOSB Vote NOP responded favorably to NOSB recommendation Industry solutions privately adopted Needed to clarify the intent of the regulations</p> <p>External political factors</p>
<p>Vaccines in Livestock</p>	<p>Needed to address market failure Inaction has prevented industry from developing/advancing</p>	<p>Unanimous NOSB Vote</p> <p>Interagency involvement Controversial within organic community Difficult/Costly to implement External political factors</p>
<p>Parasiticides in Livestock</p>		<p>Unanimous NOSB Vote Industry solutions privately adopted Needed to clarify the intent of the regulations</p>
<p>Biodegradable Mulch</p>	<p>Improves the environmental outcome of the Organic Standards Inaction has prevented industry from developing/advancing</p>	<p>Proposed Rule published & Comment Period completed NOP responded favorably to NOSB recommendation Needed to clarify the intent of the regulation Interagency involvement Controversial within organic community</p>

	Previously listed on USDA Unified Agenda	External political factors Additional NOSB work needed (currently on NOSB work agenda)
Inerts in Pest Controls	Improves the environmental outcome of the Organic Standards Inaction has prevented industry from developing/advancing Highest priority for industry (public record) Needed to resolve Interagency Inconsistency	NOP responded favorably to NOSB recommendation Needed to clarify the intent of the regulations Interagency involvement Controversial within organic community Difficult/Costly to implement Extensive changes to the regulation – possibly
Native Ecosystems	Improves the environmental outcome of the Organic Standards	Difficult/Costly to implement Additional NOSB work needed NOP considers it addressed (see NOSB recommendation library)
Personal Care	Needed to address market failure Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust Needed to resolve interagency inconsistency	Significant New Scope Interagency involvement Legal challenges/active lawsuits/unanswered legal questions Controversial within organic community Extensive changes to the regulation External political factors Difficult/Costly to implement NOP considers it addressed Industry solutions privately adopted
Aquaculture	Improves the environmental outcome of the Organic Standards Inaction has prevented industry from developing/advancing Needed to reduce consumer confusion / ensure trust Previously listed on USDA Unified Agenda Out of step with international norms	Significant New Scope Interagency involvement Legal challenges/active lawsuits/unanswered legal questions Controversial within organic community Extensive changes to the regulation External political factors Difficult/Costly to implement Proposed Rule drafted but not published NOP responded favorably to NOSB recommendation
Excluded Methods Terminology - Guidance	Inaction has prevented industry from developing/advancing Out of step with international norms Needed to reduce consumer confusion / ensure trust	Unanimous NOSB Vote Industry solutions privately adopted Needed to clarify the intent of the regulations External political factors Industry solutions privately adopted
Organic Seed Usage – Guidance (2019)	Improves the environmental outcome of the Organic Standards Needed to address market failure Needed to reduce consumer confusion / ensure trust	Unanimous NOSB Vote Industry solutions privately adopted Needed to clarify the intent of the regulations NOP responded favorably to NOSB recommendation External political factors Controversial within organic community (more so than the proposed rule itself)
Commercial Availability of Non-Organic Agricultural Ingredients - Guidance	Needed to address market failure Inaction has prevented industry from developing/advancing	Unanimous NOSB Vote Industry solutions privately adopted Needed to clarify the intent of the regulations NOP responded favorably to NOSB recommendation NOP considers it addressed
Excluded Methods Prevention Strategy - Guidance	Highest priority for industry (OTA Survey) Needed to reduce consumer confusion / ensure trust	Unanimous NOSB Vote Industry solutions privately adopted Needed to clarify the intent of the regulations External political factors NOP responded favorably to NOSB recommendation
Genetic Integrity Transparency of Seed Grown on Organic Land - Instruction	Needed to reduce consumer confusion / ensure trust	Unanimous NOSB Vote External political factors

Appendix C - NOSB RECOMMENDATIONS THAT HAVE NOT BEEN IMPLEMENTED BY A FINAL RULE

Apiculture (Rulemaking): In 2010, NOSB recommended to establish specific production standards for organic apiculture (honeybee) production. This recommendation would minimize the wide variation currently used by applying the current livestock production standards to these production systems. Apiculture standards were previously listed on the Unified Agenda and NOP was developing a proposed rule although it was never published. Apiculture was removed from the Unified Agenda in 2018. There has been no formal action on rulemaking for practice standards although some inputs specific for apiculture production have been added to the National List.

Aquaculture (Rulemaking): Between 2007 and 2009, NOSB passed a series of recommendation to create new standards for organic aquaculture. Together the recommendations would authorize organic certification of aquatic plants and animals including finfish and molluscan shellfish, and establish specific standards for feed, health care, facilities, and living conditions for this unique type of livestock. Aquatic animals are currently excluded from the organic regulations; therefore, this series of recommendations would create a new certification scope and market for organic aquaculture products. Aquaculture was previously listed on the Unified Agenda and NOP had completed writing of a proposed rule although it was never published. Aquaculture was removed from the Unified Agenda in 2017.

Biodegradable Mulch (Rulemaking): Biodegradable biobased mulch film (BBMF) is currently listed on the National List of allowed materials for crop production as a weed barrier. The final rule to add BBMF to the National List was published September 30, 2014, in response to an NOSB Recommendation in fall 2012. The preamble to the final regulations adding BBMF to the National List require that BBMFs must not contain any non-biobased content (further explained in a 2019 NOP Memo). Because of the 100% biobased requirements, the final rule was not effective to allow use of the petitioned material intended to be allowed. Commercially available BBMFs contain around 20% biobased content, therefore there are no products on the market that meet the terms of the NOP allowance. An effective regulatory solution has not yet been identified. This is a current NOSB work agenda item.

Calculating Organic Percentages of Organic Products (Rulemaking and Guidance): In 2013, NOSB passed a recommendation to clarify the requirements for determining the percentage of organic ingredients in multi-ingredient products. The recommendation would make calculations based on "all ingredients", not "finished product", which is consistent with OFPA and NOP. The recommendation would standardize practices for developing self-calculating forms, excluding salt, excluding water, processed-single ingredient calculations, multi-ingredient product calculations, and organic labeling versus organic content. The recommendation also would ensure that the organic community with easily accessible, web based, detailed Guidance on these topics. In 2016, NOP published a Draft Guidance 5037 in an attempt to implement the recommendation, but this has not been finalized. Portions of the SOE Proposed Rule 2020 also partially address these issues.

Certifier Oversight and Inspector Qualifications and Training (Rulemaking and Guidance): NOSB has passed a series of recommendations for the establishment of guidance to strengthen the training and qualification requirements for inspectors who perform on-site reviews of organic operations, and certification review personnel who assess the organic system plans of organic operations and the inspection reports of these operations. NOSB also passed a recommendation to develop criteria for risk-based accreditation and oversight of certifiers. Portions of the SOE Proposed Rule 2020 address these issues.

Commercial Availability Criteria for Non-organic Agricultural Ingredients (Guidance): In 2007, NOSB passed a recommendation to establish standardized criteria to be used by NOSB, ACA's, and the organic industry when making commercial availability determinations for agricultural ingredients that are listed on §205.606. NOP accepted the NOSB Recommendation but has not taken action to implement the guidance.

Excluded Methods Prevention Strategy (Guidance): In 2015, NOSB passed a recommendation to develop guidance that identifies best management practices for organic operations to prevent unintended GE presence in seed and crop production, livestock production, and handling. NOP responded favorably to the recommendation but has not taken action on implementing the guidance.

Excluded Methods Terminology (Guidance): In 2016, NOSB passed a recommendation that would establish guidance for interpreting the excluded methods provision of the organic regulations. The recommendation includes definitions, principles, criteria that help address the increased diversity in types of genetic manipulations performed on seed, livestock and other inputs used in agriculture. The 2016 recommendation and subsequent recommendations between 2016-2019 identify specific technologies and whether they are prohibited under the existing regulatory definition of excluded methods. NOP has not taken action on implementing guidance.

Genetic Integrity Transparency of Seed Grown On Organic Land (Instruction): In 2019, NOSB passed a recommendation to establish instructions for certifiers to inform certified producers that information on possible genetic contamination of seeds with GE equivalents could be obtained from their seed suppliers to improve transparency of genetic integrity of seed grown on organic land.

NOP's response to the recommendation was neutral (under review) and there has been no action on implementing the instruction.

Greenhouse and Containers (Production Standards for Terrestrial Plants in Containers and Enclosures) (Rulemaking): In 2010, the NOSB passed a recommendation that would allow container and greenhouse production of organic crops under specific provisions that support natural and diverse soil ecology within the container, while prohibiting hydroponic production, with an exception for mushrooms, sprouts, and micro-greens. This recommendation would minimize the wide variation currently used by applying the current crop production standards to these production systems. Hydroponics is defined in the 2010 NOSB Recommendation as “the production of normally terrestrial, vascular plants in nutrient rich solutions or in an inert, porous, solid matrix bathed in nutrient rich solutions.” In 2017, NOSB considered another proposal on hydroponics and container-growing, but the proposal did not pass. Hydroponics was the subject of recently litigation, where in the courts concluded that OFPA is ambiguous about hydroponics to the extent that USDA did not abuse its discretion in denying a petition for rulemaking to prohibit hydroponics based only on OFPA. NOP published a memo in 2019 attempting to clarify requirement for land-based container production although many questions still exist from certifiers about the requirements for container and greenhouse production. The Accredited Certifiers Association worked for 6+ months to develop best practices for certifying greenhouse and containers but were unable to come to consensus, and therefore communicated to NOP that inconsistent interpretations among certifiers can only be resolved through rulemaking. Wide variation of policies and significant inconsistencies continue to exist across certifiers, and operations are certifier-shopping.

Grower Groups (Rulemaking): Between 2002 and 2008, the NOSB passed recommendations to establish specific requirements for certification of operations with multiple production units, sites or facilities-- including operations consisting of legally-constituted groups--based on their organic system plan, their internal control systems and other oversight provided by certifying agents. NOP published a Policy Memo in 2011 to instruct certifiers to use these recommendations until implementation was finalized. The 2020 Proposed Rule on Strengthening Organic Enforcement included a section on grower group certification.

Inert Ingredients (Recommendation to Change the EPA List 4 Annotation): EPA List 3 and 4 are no longer in use and the EPA requested that these references be removed from the NOP Regulations in 2010. In 2015, NOSB passed a recommendation that would revise the listing for inert ingredients at §205.601(m) and §205.603(e) to remove the outdated and obsolete references to EPA Lists 3 and 4, and replace with EPA's current mechanism for approving the least-toxic inert ingredients. In NOP's response to the 2015 NOSB Recommendation, NOP stated “The NOP has reviewed the NOSB's recommendation and plans to collaborate further with EPA's Safer Choice Program to develop a program for inert ingredient review, and to initiate notice and comment rulemaking to revise the annotations for inert ingredients at §205.601(m) and §205.603(e).” For a short time after the 2015 NOSB Recommendation was passed, NOP made some effort to provide verbal updates at NOSB meetings to the organic community on its progress of implementing the recommendation, although this has not occurred since 2016. At the Fall 2020 NOSB Meeting, the Board voted unanimously in favor a resolution calling for NOP action to resolve this regulatory interagency conflict and modernize the system for reviewing inert ingredients. NOP's response to the Fall 2020 resolution indicates it intends to publish an Advanced Notice of Proposed Rulemaking.

Mushroom Production (Rulemaking): In 2001, NOSB passed a recommendation to establish specific standards for organic mushroom production. This recommendation would minimize variation among certifies applying the current crop production standards to these production systems. NOP was previously working on developing a proposed rule although it was never published. There has been no formal action on rulemaking for practice standards although some inputs specific for mushroom production have been added to the National List.

Native Ecosystems (Eliminating the Incentive to Convert in Organic Production) (Rulemaking): In 2018, NOSB recommended a requirement for a ten-year waiting period between conversion of land supporting native ecosystems and subsequent organic certification. NOP's response to the recommendation was neutral (under review) and NOP has not taken action on rulemaking.

Organic Livestock + Poultry Practice (Animal Welfare) (Rulemaking): The Organic Livestock and Poultry Practices Final Rule was published in 2017 but was subsequently withdrawn by the USDA in 2018. The rule defined appropriate requirements for space, density and outdoor access in organic poultry production, among other clarifications for how producers and handlers must treat livestock and chickens to ensure their health and well-being throughout life, including transport and slaughter, and physical alterations. The policies within the rule are based on unanimous NOSB recommendations and a decade of public NOSB meetings, lengthy discussions, public comment periods and consultation from organic producers, processors, consumers, and the veterinary and scientific community. The USDA's withdraw of the rule is the subject of ongoing litigation. In the time since USDA blocked implementation of the rule, NOSB has passed two unanimous resolutions urging immediate re-issuance of the rule as final (spring 2017 and spring 2021). USDA has been asked to rescind the withdrawal and reinstate the final OLPP Rule. USDA intends to request a voluntary remand to draft a proposed (only) rule.

Origin of Livestock (Rulemaking): The Origin of Livestock Proposed Rule published in 2015 was based on 6 NOSB Recommendations passed between 1994 and 2006. The rulemaking would clarify and narrow the requirements for the transition of dairy animals (cows, goats, sheep) into organic milk production as a one-time event. Once a distinct herd has been converted to organic production through one year of organic management, all dairy animals must be under organic management from the last third of gestation. The practice of continuously transitioning and/or cycling dairy animals in and out of organic production would be explicitly prohibited. NOP published a proposed rule that would implement this policy in 2015, re-opened the comment period 2019, but has still has not implemented a final rule. NOP recently opened a third public comment period to address additional questions to inform the rule.

Parasiticides in Livestock (Clarifying “Emergency” Use of Synthetic Parasiticides in Organic Livestock Production) (Rulemaking): In 2018, NOSB passed a recommendation to add definition of “emergency use” to §205.2 (Definitions) and amend §205.238(b) to providing clear protocols that need to be in place before the use of approved synthetic parasiticides are used on organic livestock. The goal of the recommendation is to promote consistent implementation when certifiers allow the use of the National List approved synthetic parasiticides, as well as providing clear direction to certified organic operators so they can plan their animal health strategies which first promote animal health through a wide variety of practices. Following the NOSB Recommendation, NOP Responded that it was reviewing the recommendation. NOP has not proceeded with rulemaking action on this recommendation, but NOP has implemented other National List revisions relevant to parasiticides.

Personal Care (Rulemaking): In 2009, NOSB passed a recommendation to recognize personal care products (cosmetics, body care) under the scope of National Organic Program enforcement. This recommendation will ensure that USDA can police organic claims on personal care products and require compliance with organic standards. NOP published a Policy Memo (22-1) and a Fact Sheet in 2008 although has not taken any action on rulemaking.

Pet Food (Rulemaking): In 2008, NOSB passed a recommendation to recognize pet food under the scope of National Organic Program enforcement. This recommendation will ensure that USDA can police organic claims on pet food and require compliance with organic standards specific to organic pet food composition, handling, and labeling. Pet food standards would create a market for organic livestock operations’ slaughter byproducts and other types of meat feed ingredients under consistent and appropriate standards. Pet food standards were previously listed on the Unified Agenda and NOP was developing a proposed rule although it was never published. Pet food was removed from the Unified Agenda in 2018.

Retail Compliance and Certification & Voluntary Retail Certification (Guidance): NOSB passed two recommendations that would clarify organic compliance requirements for retailers of organic products. The 2014 Recommendation provides education and guidance to clarify several specific sections of the rule as it applies to the retail sector. The 2009 Recommendation identifies key areas that need clarification, as well as define the role of NOP, ACAs and retailers in improving the marketing and implementation of USDA organic retailer certification. Together these recommendations will also improve consistency and integrity in merchandising, handling and marketing of organic products in retail establishments, and improve consumer understanding of the distinction between “organic” and “certified organic” retailers. NOP responded favorably to these recommendations, and portions of the recommendations are addressed in the 2020 SOE Proposed Rule.

Strengthening Organic Seed Usage (Rulemaking): In 2018, NOSB passed a recommendation to implement a rule change that would require certified crop producers to demonstrate improvement in sourcing and use of organic seed/planting stock every year. NOP accepted the recommendation but has not taken action on rulemaking.

Strengthening Organic Seed Usage (Guidance): In 2019, NOSB passed a recommendation for a series of improvements to the existing NOP Guidance 5029 Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production that includes both incentives and practical language to aid producers and certifiers in overseeing and encouraging the use of organic seed. NOP accepted the recommendation but has not taken action on rulemaking.

Uncertified Handlers (Rulemaking): In 2017, NOSB passed a recommendation to clarify which operations are excluded from certification through updates to language and additional examples in Guidance NOP 5031 Certification Requirements for Handling Unpackaged Organic Products. Also included are recommendations for additional training of USDA-accredited certifiers and certified handlers, as well as a recommendation to USDA to include in its audits of certifiers a verification that adequate audit procedures are in place. The 2020 Strengthening Organic Enforcement Rule implements this recommendation.

Vaccines in Livestock (Use of Excluded Methods Vaccines in Livestock Production) (Rulemaking): In 2019, NOSB recommended to limit the use of livestock vaccines made from excluded methods only when an equivalent alternative not made from excluded methods is not commercially available to prevent a specific disease. There has not been any NOP action since its response to the NOSB Recommendation that “AMS is reviewing the NOSB’s recommendation.”