



National Organic Program Notice to Stakeholders and Interested Parties

To: Stakeholders and Interested Parties

From: Miles McEvoy, Deputy Administrator 

Subject: Issuance of Final Guidance and Response to Comments

Date: May 6, 2011

FINAL GUIDANCE TOPICS ISSUED:

NOP 5021 – Compost and Vermicompost in Organic Crop Production
NOP 5022 – Wild Crop Harvesting
NOP 5025 – Commingling and Contamination Prevention in Organic Production and Handling
NOP 5026 – The Use of Chlorine Materials in Organic Production and Handling

On October 13, 2010, the National Organic Program (NOP) published in the Federal Register a notice of availability with request for public comment on five draft guidance documents (75 FR 62693). The topics covered in these documents address recommendations issued by the National Organic Standards Board (NOSB) and the USDA Office of Inspector General (OIG) in a March 2010 audit report of the NOP. The five guidance topics included compost and vermicompost, wild crop harvesting, outdoor access for poultry, commingling and contamination prevention, and the use of chlorine materials. The 60-day comment period closed on December 13, 2010.

The NOP received a total of 69 individual comments and 22,096 form letter responses on the five draft guidance documents. We received public comments on all five documents. Based upon the comments received, the NOP revised and is publishing four of the five guidance documents as final: *NOP 5021 – Compost and Vermicompost in Organic Crop Production*; *NOP 5022 – Wild Crop Harvesting*; *NOP 5025 - Commingling and Contamination Prevention in Organic Production and Handling*; and *NOP 5026 – The Use of Chlorine Materials in Organic Production and Handling*. Based upon the comments received, the NOP is not finalizing the draft guidance, *NOP 5024 – Outdoor Access for Poultry*. The NOP intends to initiate a separate rulemaking on the outdoor access requirements for poultry in 2011.

We are issuing this notice to provide a discussion of the comments received and the rationale behind any changes made to the guidance documents as well as any changes proposed, but not made to the guidance documents. The four final guidance documents will be available in *The Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations*, the central reference for clarification about the NOP regulations and best program



practices. The current edition of the *Program Handbook* is available online at <http://www.ams.usda.gov/NOPProgramHandbook>, or in print upon request. The guidances are intended to assist those who own, manage, or certify organic operations in carrying out their responsibilities by providing a uniform method for complying with the national organic standards and conducting audits and inspections.

NOP 5021 – Compost and Vermicompost in Organic Crop Production

• *CHANGES MADE IN RESPONSE TO COMMENTS*

- 1) **Less Prescriptive Requirements for Vermicompost.** Several commenters pointed out that the vermicomposting requirements were prescriptive and not suitable for all climates. They also noted that additional methods, other than those described in the guidance, are used to produce acceptable vermicompost. We agree that the policy should encompass performance based-approaches that result in a finished product that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances. We acknowledge that various methods are possible for maintaining aerobic conditions, and that the time period may be variable for completion of vermicomposting. We made changes in the final guidance to address these comments.
- 2) **Compost and Vermicompost Made Without Animal Materials May Be Used Without Restriction.** Most commenters agreed with the proposal, based on NOSB recommendations, to provide acceptable alternative methods for compost production. A number of commenters asked that we clarify that monitoring of required parameters (temperatures achieved for minimum of 3 days) is only required for compost containing animal materials, such as manure. We agree that compost made only of plant materials is permitted without restriction and have clarified that point. Compost and vermicompost made *with* animal materials that does not meet the requirements as described for composting methods may be used under limitations at 7 CFR § 205.203(c)(1) as raw manure.

• *CHANGES REQUESTED BUT NOT MADE*

- 1) **Permitting the Use of Post-Consumer Waste.** Several commenters asked that NOP address the use of post-consumer food waste, such as compostable plates, cups, cutlery, and plastic bags. We agree that this is a new development in handling food waste, but we believe these represent synthetic materials that would need review and recommendation by the NOSB before they can be utilized in compost for organic production. Members of the public may wish to file petitions for consideration by the NOSB for these types of materials as compost feedstocks. Instructions for the preparation and submission of petitions are provided at <http://www.ams.usda.gov/NOPFilingaPetition>.



- 2) **Adoption of Compost Tea Guidance.** A number of commenters requested adoption of the NOSB recommendation for compost tea in this guidance. The NOP believes that some aspects of the NOSB recommendation, including requirements for testing certain types of products, require further research and review before issuing guidance on this topic.

NOP 5022 - Wild Crop Harvesting

- ***CHANGES MADE IN RESPONSE TO COMMENTS***

- 1) **Qualifying More Permitted Practices under Wild Crop Harvesting.** Many commenters proposed additional examples of agricultural management practices for consideration as allowed practices under the wild-crop harvesting standard. We agree and explain in the final guidance that re-seeding wild crops with the seed of the existing wild plants, some pruning of existing plants, and the removal of non-native or invasive species are additional management practices that could qualify for consideration under the wild-crop harvesting standard. These additional practices need to be essential for sustaining the wild-crop and its habitat, be well-described in the Organic System Plan (OSP), and documented with appropriate records when they occur.
- 2) **Disqualifying Neglectful or Uninformed Management under Wild Crop Harvesting.** Some commenters were concerned that uninformed, inappropriate, or unsustainable harvesting would be permitted under the wild-crop harvesting standard. One commenter expressed specific concern regarding the indiscriminate harvesting of wild mushrooms. One commenter was concerned that the wild crop harvesting standard would permit the certification of products harvested from abandoned farms or orchards.

Organic crop or wild crop certification requires improvement of, or at the very least, maintenance of the current natural resources. We added a reference in the final guidance to § 205.200 of the NOP regulations that specifies the natural resources management requirements to emphasize the importance of this fundamental tenet of organic production. Organic certification of crops or wild crops should not permit degradation of the natural resources in any way.

We agree that uninformed, untrained, and unmonitored harvesting of any wild products, including mushrooms, does not qualify for consideration for certification under the organic wild-crop harvesting standard. Operations seeking organic certification for the harvesting of wild products must demonstrate their knowledge by adequately describing and monitoring the impact of their management and harvesting practices on the long-term viability of the targeted wild-crop as well as on the sustainability of the area's ecosystem. We address this in the final guidance.



We also agree that harvesting products from neglected or abandoned areas or farms does not qualify a wild-crop for organic certification because there is no demonstrable management of natural resources. Wild crops harvested from an area slated for clearing or clear-cutting for uses unrelated to protecting the natural resources do not qualify for organic certification. We address these examples in the final guidance. An abandoned farm or orchard under new or improved organic management could qualify for crop certification upon verification of a new or improved OSP.

- 3) Clarifying Inspection Requirements.** Some commenters requested that the NOP provide additional details to clarify inspection requirements for wild-crops. We agree and provide examples in the final guidance of items that need to be addressed in the OSP, including the training of wild harvesting personnel, monitoring by the certified operation, and maintenance of records. During inspection, all management practices and documentation need to be verified as compliant with the OSP, and for impact on the natural resources, the long-term viability of the targeted wild crops or products, and the long-term sustainability of the ecosystem. This includes evaluating the knowledge, expertise, and skill of the primary wild harvester(s) and a sampling of the trained personnel.

• ***CHANGES REQUESTED BUT NOT MADE***

- 1) Qualifying More Permitted Practices as Wild.** We did not agree with the comments suggesting that irrigation, the use of permitted materials, introduction of new plants, seeding with seed not from existing plants, or any form of tillage could be considered compatible with certification as a wild crop. These are examples of practices that move an operation into agricultural crop management, rather than wild-crop harvesting. There seemed to be concerns expressed by some commenters that organic crop certification was a lower standard of management compared to that of the wild-crop harvesting standard. We disagree. Both organic crop production and wild crop harvesting require improvement of or at least maintenance of the natural resources to qualify for organic certification.
- 2) Disqualifying Aquatic Species.** Some commenters asserted that all aquatic species are outside the scope of organic certification. They cited the example of line-fishing as not qualifying as organic, and also specifically requested the removal of kelp and seaweed from consideration as wild crops. We agree that line-fishing would not qualify fish as certified organic under the wild crop harvesting standard because fish are aquatic animals, and are not sedentary or fixed in their location.

However, sedentary or fixed aquatic crop species may be considered for certification as organic under the wild-crop harvesting standard. For example, kelp and seaweed are listed on the National List of Allowed and Prohibited Substances (National List) at § 205.606 of the NOP regulations. Due to the listing at § 205.606, kelp and seaweed are agricultural products allowed as ingredients in processed products labeled as “organic.” Organic kelp and seaweed



is commercially available in the marketplace as certified organic by certifying agents. Given their placement on the National List, we cannot declare that kelp and seaweed are not agricultural and disqualify them from certification as organic. One commenter requested a 24-month implementation period for requiring organic kelp in livestock feed. A forthcoming draft guidance regarding the use of kelp in organic livestock feed will address this request.

- 3) **Disqualifying Mushrooms.** One commenter asserted that the wild harvesting of mushrooms should not qualify for consideration as organic under the wild-crop harvesting standard because fungi are not plants, and, therefore, cannot be considered as crops. We agree that mushrooms and fungi are not plants. However, in the absence of specific mushroom standards under the NOP, many species of cultivated mushrooms are routinely certified and sold as organic under the crop practice standards. By extension, wild mushrooms should also be eligible for certification as a wild-crop.

NOP 5025 – Commingling and Contamination Prevention in Organic Production and Handling

- ***CHANGES MADE IN RESPONSE TO COMMENTS***

- 1) **Include Reference to Commingling and Contact with Prohibited Substance Prevention Practice Standard.** One commenter brought to our attention that we omitted the reference to § 205.272 Commingling and contact with prohibited substance prevention practice standard. We have included this reference in the final guidance.
- 2) **Better Differentiation between Activities that Prevent Contamination from Activities that Prevent Commingling.** One commenter voiced that our efforts to clarify contamination and commingling prevention activities were not sufficient, and that greater differentiation was needed to better explain these activities. The commenter offered many examples illustrating these activities specific to all organic and split organic/non-organic crop, livestock, and handling operations. The commenter requested that these and other examples be added to the guidance.

We agree and have incorporated many of the commingling and contamination prevention practices provided into the final guidance. We also provided additional examples and outlined the preventative practice examples by type of organic or split operation. Furthermore, the inclusion of the reference to § 205.272 as recommended by the previous commenter should provide clearer emphasis regarding these activities as well. In our review of the comments, we also realized that providing definitions for organic integrity and Organic Control Points would further clarify the guidance. Organic integrity and Organic Control Points are issues that OSPs and inspections have to specifically and routinely address and demonstrate compliance with in their activities and record keeping. We added these definitions to the guidance. Inspection of non-organic areas may also be necessary.



Additional draft guidance is forthcoming that will specifically address contamination and commingling issues as they pertain to the packaging of organic products.

- ***CHANGES REQUESTED BUT NOT MADE***

- 1) **Requiring a Specific OSP Section to Summarize All Commingling and Contamination Prevention Activities.** We do not agree that a specific section in the OSP that summarizes all of the commingling and contamination prevention activities is required by the regulation, or would necessarily add clarity to the certification process. As a whole, the OSP usually covers all commingling and contamination prevention activities by practice section such as crop inputs, livestock feed, natural resource management, use of sanitizers, buffer zones from roads and neighboring operations, pest management materials, etc. for the whole operation, and serves as the summary for all of these activities. Certifying agents can consider including an additional section in the OSP that allows producers and handlers to summarize their risks and preventative practices, or the Organic Control Points throughout their operation. This can include checklists and narrative questions that assist the producer or handler in describing their unique contamination risks, explaining their prevention practices, and documenting their efforts. Summarizing all of the activities again in a specific OSP section could prove to be redundant and unnecessarily burdensome. Certifying agents are the best judge of the sufficiency of each OSP's description of and monitoring of their unique contamination and commingling risks.

NOP 5025 – The Use of Chlorine Materials in Organic Production and Handling

- ***CHANGES MADE IN RESPONSE TO COMMENTS***

- 1) **Crop Uses.** A number of commenters found that the distinction between crop and handling use of chlorine was not clear, especially in regards to post harvest usage. We agree and made changes in the guidance to indicate that chlorine use prior to harvest is subject to restrictions for crop use, and that water used in contact with growing crops or applied to soil in irrigation systems should not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act. Chlorine used post-harvest (e.g., in washing and packing lines) is addressed under handling.

Commenters asked for clarification on when an intervening event, such as rinsing, is required when chlorine is used on equipment for crop production. We have added language to indicate that use of chlorine, for instance to disinfect pruners or plant containers, does not require a rinse or other intervening event before plant or soil contact.

- 2) **Livestock Operations.** Commenters pointed out that both bullet points under livestock uses referred to use on equipment or facilities, and that the distinctions between facilities and equipment uses were not clear. We have clarified these two uses. For example, direct use of



chlorine would be that used for drinking water, whereas facility use of chlorine would be that used in dairy pipelines.

- 3) Handling Operations.** We have clarified that use of chlorine products in post-harvest handling of crops or livestock products on-farm (such as vegetable washing) is considered a handling use, and that higher rates of chlorine as approved by EPA or FDA for the use may be used, provided the treatment is followed by immediate rinsing with potable water. Chlorine levels should be monitored at the point of final rinse. Chlorine products used to sanitize equipment and facilities may be used as per the label instructions. Rinsing of equipment is not required unless mandated by the label use directions.

One certifying agent requested guidance as to what reference may be cited for violation of the requirement that water used as an ingredient must not exceed the maximum residual disinfectant limit for the chlorine material under the Safe Drinking Water Act. We have added the appropriate reference from the Organic Food Production Act (OFPA) into the final guidance.

• ***CHANGES REQUESTED BUT NOT MADE***

- 1) Alternative Methods for Disinfecting Seed for Use in Sprouts.** A trade organization pointed out that alternative methods exist for disinfection of seeds used in sprouting other than the method described by Food and Drug Administration (FDA) guidelines. These guidelines permit high rates of chlorine. The commenter requested that the NOP consult with FDA regarding appropriate methods for sanitation of sprouts. The NOP plans to address sprout sanitation further in forthcoming guidance on seeds and planting stock.
- 2) Free Chlorine Materials Should Never Exceed 4 ppm when in Contact with Organic Products.** One certification agency disagreed with the interpretation that chlorine levels higher than those permitted by the Safe Drinking Water Act (generally 4 parts per million (ppm) for free chlorine) should be allowed in direct contact with organic products. The commenter suggested that peracetic acid is an available alternative to chlorine with less concern for human health and negative environmental impact. We acknowledge this concern, but this guidance followed the advice of the NOSB and their concerns about the need for tools to protect food safety. The NOSB recommended a final rinse with potable water as a measure to protect consumers from excessive levels of chlorine in organic products. New developments in food safety techniques and materials may merit further review by the NOSB, and members of the public may wish to petition NOSB for a change in status of chlorine products in the future.
- 3) Testing and Delay as Alternative Intervening Events to Potable Water.** One certification agency suggested that other types of intervening events or testing of residues after a time delay as options that could replace a rinse with potable water for some products. In



particular, the commenter had specific concerns regarding air-chilled chickens, and stated that USDA regulations would not permit a potable water rinse. The Food Safety and Inspection Service (FSIS) Directive 7120.1, *Safe and Suitable Ingredients Used in the Production of Meat, Poultry, and Egg Products*¹ provides a list of substances that may be used in meat, poultry and egg production. A number of the substances listed are compliant with the National List (e.g., peracetic acid or ozone) in addition to chlorine products. These substances are approved by FSIS for poultry chill water and as antimicrobials which are optional for water sprays used in air cooling systems for poultry carcasses.² Per FSIS Directive 7120.1, sources of chlorine (sodium hypochlorite and calcium hypochlorite) that are generally recognized as safe (GRAS) by FDA may be added to potable water as intake to poultry chill tanks at levels up to 50 ppm free available chlorine. Chlorine dioxide may also be used at levels not to exceed 3 ppm as residual chlorine dioxide per FSIS at Directive 7120.1. There is no regulatory prohibition against rinsing, and other substances are approved on the National List without a restriction requiring rinsing. Therefore, we do not see a need to provide an exemption from potable water rinses when higher levels of chlorine are use in direct contact with organic products.

NOP 5024 – Outdoor Access for Organic Poultry

• SUMMARY OF COMMENTS

We concur that the draft guidance did not serve to clarify the requirements for outside access for poultry and are withdrawing the draft guidance at this time. The NOP plans to initiate rulemaking to codify outside access requirements for poultry. Rulemaking will ensure uniform implementation and enforcement by certification agencies. Formal rulemaking will also provide an opportunity for public comment on changes that may affect the industry.

- 1) Unenforceable and Not Prescriptive Enough.** Out of 69 individual comments received on the five different draft guidance documents, thirty two responded to the proposed policy on outdoor access for poultry. In addition, a consumer organization submitted a form letter endorsed by 22,096 of their members that objected to the proposed guidance as being vague, unenforceable, and not strict enough to ensure adequate year round outside access for poultry. This organization suggested a minimum stocking rate of 1.75 square feet per bird in henhouses with access to perches, and an additional 5 square feet per bird available in vegetated outdoor runs, which should be accessible to all birds at the same time.

Several certification agencies and a certifier educational organization noted that the proposed guidance referred to NOSB recommendations of 2002 and 2009, which included specific stocking rates for birds, but correctly pointed out that a guidance document is not legally

¹ FSIS Directive 7120.1 Rev. 5, 1/4/11. *Safe and Suitable Ingredients used in the Production of Meat, Poultry, and Egg Products*. <http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/7120.1.pdf>

² See 9 CFR 381.66(e)



binding. They believed that formal rulemaking is required to ensure consistency between certification agencies. They also pointed to the need for more public comment on specific components of the NOSB recommendation regarding welfare and living conditions.

- 2) **Health and Environmental Benefits of Outdoor Access.** Some organic poultry producers wrote in support of outdoor access on pasture or other vegetation, and described the health benefits and the protection of the environment that a pasture or other vegetated area would afford. A number of commenters, including organic poultry producers, requested a change to the draft guidance language to say that poultry should be maintained on soil and (rather than “or”) be provided outdoor hen runs. Many commenters noted “hen runs” was not defined, and some suggested this could be interpreted as porches or confined areas. Consequently, they felt that requiring both soil contact and outdoor runs was important.
- 3) **Health and Food Safety Risks of Outdoor Access.** Some organic egg producers, a few consultants, and a trade organization supported the use of production systems that limit outdoor access to enclosed porches or other enclosed areas so that poultry are not in contact with soil or pasture. These stakeholders addressed the benefits of these systems to protect birds from predation, pathogens that cause food safety problems, exposure to parasites, and contact with wild birds that could carry diseases. These producers asserted that these systems are consistent with the 2002 NOSB recommendation, which stated, “bare surfaces other than soil (e.g. metal, concrete, wood) do not meet the intent of the National Organic Standards”. These commenters stated that bare surfaces should be suitable if litter materials such as wood shavings are provided to facilitate the natural behavior of birds (e.g., dust bathing or scratching).
- 4) **Economic Harm by Change in Status Quo.** A number of organic poultry producers stated that the 2009 NOSB animal welfare recommendation includes many requirements that are not part of the 2002 NOSB recommendation, or the October 2002 NOP policy statement on outdoor access for livestock. They also noted an appeals decision in October 2002 that allowed the use of porches on an organic poultry operation. They voiced that producers have made substantial investments in facilities based on this understanding of the regulations. Some also expressed concerns regarding their ability to comply with both the NOP requirements for outdoor access and the FDA salmonella prevention food safety regulations published in the Federal Register on July 9, 2009 (74 FR 33030). Several producers expressed concern with the 2009 NOSB recommendation that pullets be given outdoor access at 6 weeks of age, as they stated their birds (layers) are not fully immunized (including for protection against salmonella) until 16 weeks of age, and should not be exposed to uncontrolled environments until that time.