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Ms. Erin Healy, Director, Standards Division
National Organic Program
USDA-AMS-NOP
1400 Independence Ave. SW.,
Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268

National Organic Program: Market Development for Mushrooms and Pet Food - Proposed Rule Comment
Re: Docket Number: AMS-NOP-22-0063
Regulatory Information Number: 0581-AE13

Dear Ms. Healy:

Thank you for the opportunity to provide comments on the Proposed Rule for Market Development for Organic Mushrooms and Organic Pet Food ("Proposed Rule"). The Accredited Certifiers Association (ACA) is a nonprofit educational organization, and our membership includes 64 certification agencies that are accredited by the USDA, several more in the process of becoming accredited, and associate members that support ACA's mission. Our mission is to ensure consistent interpretation of USDA Organic Regulations through collaboration and education of accredited certification agencies.

We are pleased to see that the National Organic Program (NOP) has published this Proposed Rule. We are generally supportive of new rules that support consistency and reduced uncertainty in the organic market, and that enable strong enforcement of the organic seal. Such improvements benefit certifiers and organic integrity as a whole.

Because our members, accredited certification agencies ("certifiers"), will be tasked with interpreting these regulations and applying them to verify compliance, we offer a unique perspective on how the rule will work in practice. Inconsistencies in interpretation are a threat to organic integrity (and can lead to certifier shopping or enable fraud) - so it is important that every effort is made to be clear in rulemaking, and avoid these outcomes.

We offer the following specific comments on the Proposed Rule, aligned with the questions posed:

1. Is the regulatory language and accompanying discussion in this document clear enough to allow producers, handlers, and certifying agents to comply with the proposed requirements?

As noted above, clear regulatory language is critical to avoid inconsistent interpretations, certifier shopping, fraud, and eventual consumer distrust in the organic seal. We appreciate NOP's recognition of this, and offer the following recommendations to improve clarity and compliance:

We recommend clarifying the definition of "spawn media", particularly in the area of standards related to use of mycelium media. We seek clarification on whether the mycelium culture, such as agar agar, is included in the definition of spawn. The definition used at Pennsylvania State University Extension¹ states that "mycelium propagated vegetatively on various grains or agars is known as spawn." Alignment with this or other suitable definition will create more clarity for certifiers.

Relatedly, we recommend that NOP clarify whether agar, which is currently widely used for mycelium culturing, is allowed as a mycelium culture media in organic. Does the certifier review start with the mycelium as a final product, or does the review begin with the culture media for the mycelium?

We recommend changing the word "mushroom" to "fungi" in the proposed amended definition of "Crop" in §205.2. This would encompass mushrooms, spawn, and mycelium. If the term "mushrooms" is used in the Crop definition it would exclude the potential for the certification of mycelium and/or spawn products.

We appreciate the sentence in §205.210 that clearly states that some of §205.203, §205.204, and §205.205 do not apply to mushroom production. This clear statement will facilitate consistent interpretation and reduce open questions.

We recommend further clarification on the use of compost in mushroom production, particularly considering some differences across scopes and the recent discussions on compost at the Spring 2024 National Organic Standards Board (NOSB) meeting. §205.203(e)(1) states "The producer must not use any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic crop production...." This can be read to allow synthetics listed on the National List as allowed compost feedstocks. Similarly, this is also stated in Section 4.2 of NOP 5021: Guidance Compost and Vermicompost in Organic Crop Production. If this interpretation is correct, clear acknowledgement of this understanding would be beneficial for certifiers in their review of compost. This can be achieved by clarifying the definition of "Compost" to: *Compost*. The product of a managed process through which microorganisms break down plant and animal materials, and permitted synthetic compost feedstocks in § 205.601(c), into more available forms suitable for application to the soil or as a component of mushroom substrate.

¹ <https://extension.psu.edu/six-steps-to-mushroom-farming>

We recommend further clarification specific to Ready to Use (“RTU”) environments intended for mushroom production. We also recommend that NOP address the Implementation of ready-to-use Mushroom Spawn - Shiitake Mushroom Logs Notice to Certifiers. We seek more clarity in instruction regarding "ready-to-use-spawn". Because "spawn" is defined differently than "ready-to-use spawn" we would like to see the final rule address this type of product to avoid inconsistencies across certifier interpretation. We would appreciate clarification that nonagricultural inputs and nonsynthetics on the National List are acceptable media in organic RTU spawn products.

We recommend more guidance around the definition of commercially available, as it relates to mushroom production (including substrate materials, yeast, spawn, etc.). We are concerned that as it currently stands, smaller mushroom producers would need to obtain organic inputs, but larger producers may not be required to do so based on quantities of commercial availability. We are concerned that this would lead to an uneven playing field, where costs are higher for smaller producers. An uneven playing field might also lead to inconsistencies in interpretation.

For pet food, we request more clarification around how vitamin and mineral premixes used for pet food will be reviewed.

2. Do the proposed amendments create any conflict with current organic regulations?

“Conflict” can be interpreted in two ways here, both of which are important to address. First, conflict can be between the proposed approach to organic mushrooms and organic pet food and how certifiers have been, and are currently interpreting the existing regulations in understanding compliance for mushrooms and pet food. Here, we do identify conflict between how certifiers are currently certifying mushrooms (generally, under the crop standards), and how certification would be required under proposed rule.

Second, conflict can be between the proposed standards and other organic regulations that may also apply. Specifically, we note differences between the Proposed Rule and the NOSB recommendation for mushroom standards.

Unlike plants, mushrooms consume the substrate they grow in and do not generate energy from carbon dioxide in the air and water. It makes sense that they would need to consume organic agricultural materials, but the commercial availability clause on agricultural substrate materials allows the status quo. Uncomposted nonorganic agricultural material will still be allowed.

Pet food falls under the regulations at §205.605 and §205.606, and as such human nutrient vitamins and minerals allowed would appear to also be allowed in pet foods, yet the proposed rule also adds the FDA approval for pet foods (ie AAFCO listing for pet food). Are there other materials on §205.605 that are not appropriate in pet food?

3. Would a one-year implementation period (from the effective date of a final rule) be appropriate for affected operations to comply with these proposed changes? If not, what timeframe would be appropriate?

ACA very much appreciates the opportunity to offer comment on this topic. Certifiers have been tasked recently with the implementation of many large and complex rules - and while we fully support continuous improvement to ensure organic integrity and consistency, sometimes implementation periods/timelines can lead to challenges. As certifiers, we are tasked with updating our processes, procedures, forms, and approaches to ensure new rules are enforced appropriately. This is done most efficiently in the months between November and May, when volume of inspections and related certification work is lower than in summer and shoulder-season months.

In general, one year is an appropriate timeline for implementation of both the organic mushroom and organic pet food proposed rules. However, we recommend that the year be based off of the certification cycle referenced above, rather than the date of final rule publication. We recommend referring to the Organic Livestock Poultry Standard (OLPS) Final Rule as an example of an implementation window made effectively smaller due to unfavorable alignment with certifier annual activity cycles.

We also note that implementation of final rules is a process, not a singular event. Delaying implementation is not a desired outcome, so a clear understanding of how to move toward implementation while allowing for the process to play out in the certification calendar will help certifiers focus on the pursuit of compliance when volume is highest and add efforts toward consistent implementation when certification work volume is likely to be lower.

4. Are there any concerns about the proposed requirements for compost used in organic mushroom operations? Are there any additional health and sanitary issues that AMS has not considered? Would the proposed requirements hinder any current methods of substrate preparation? Would the proposed changes impact other organic sectors and if so, how?

We welcome the clarifications contained in this proposed rule. However, we have identified two areas of concern:

- Non-alignment with the crop composting requirements, NOP 5021 and NOP 5006.
- Currently the substrate in many cases is not composted but is sterilized. The sterilization process would not fit into the composting methods described at §205.210(c)(1).

Also, please refer back to our discussion of compost in our answer to question 1.

5. Are there any concerns about the proposed requirements for producing certified organic spawn? What are the barriers to producing certified organic spawn for mushroom production? How would this rule affect these barriers?

As previously stated, the RTU spawn notice allowed nonsynthetic materials to be used in organic spawn (e.g. wood products). If the proposed regulations require the use of agricultural ingredients to be used as spawn media in organic spawn this will be a barrier.

Additionally as noted above, spawn media often go through a sterilization process and not necessarily a composting process. If this sterilization process is not incorporated as an allowed "composting" method at §205.210(c)(1) then all of those agricultural ingredients would be considered "uncomposted plant materials" (e.g. grains) and would be required to be organic per §205.210(d) in order to produce organic spawn. This would be an additional barrier to producing organic spawn."

The quantity of material needed could be a barrier. We recognize that this may change over time, in the ensuing years after rule implementation results in market development and increased demand for organic materials for spawn.

6. Stakeholders and data indicate that many organically produced mushrooms are sold as conventional mushrooms. Why are certified organic mushroom operations producing significantly more organic mushrooms than they are selling as certified organic? What could be included in this rule to help ensure that mushrooms that are produced organically can be sold as organic?

ACA has no comment on this question.

7. What factors have kept pet food manufacturers from seeking organic certification? Are there barriers that the proposed rule does not address?

Certifiers have used both food and feed standards in the pursuit of compliance. Clearer standards will remove existing barriers to manufacture of certified organic pet food, specifically on allowances for vitamins and minerals and their carriers, and whether premixes that contain organic agricultural ingredients need to be certified organic. This would differ from how premixes are currently reviewed when in livestock feed (certifiers review according to NOP 5030).

8. Are there any additional synthetic, nonsynthetic, or nonorganic substances required in pet food to meet pet health needs that are not included in the proposed rule?

The Association of American Feed Control Officials (AAFCO) is the independent organization that regulates pet food. ACA recommends that NOP compare regulations in this proposed rule with AAFCO standards and ensure compliance. ACA recommends creating a list of vitamins and minerals appropriate

for pets as per AAFCO. Alternatively a suggestion is to modify the restriction on nutrient vitamins and minerals to add as per AAFCO for pets or appropriate authority.

The proposed rule mentions “taurine,” and these standards should be reviewed to ensure any other ingredients essential for pet health are included.

9. Are slaughter by-products commonly used in organic pet food? Are there obstacles to greater use of organic slaughter by-products in organic pet food? Is there existing data on the organic slaughter by-product market utilization and prices?

Yes, slaughter byproducts are very common and critical in this industry, and are more typical in products aiming for lower price points for the purchaser. We believe a market is there to support this in organic and will increase sales of these products as organic. Food manufacturers will have an avenue to sell their byproducts as organic.

Lack of currently certified slaughter facilities will be an obstacle. Since the pet food standard has been and is under human consumption standards, slaughter byproducts that are not organic (not on 205.606) can be labeled as “made with organic ingredients” product but not a certified organic product.

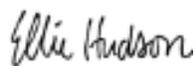
We recommend that NOP review and revise (as needed) NOP 5032, which brings in clarification on “made with organic ingredients” labeling of pet food.

The proposed rule mentions the requirement for operations to have an OSP that describes how the operation complies with the new requirements. If more specific guidance is available on this directive, it could lead to increased likelihood of consistent implementation among certifiers.

Conclusion

ACA appreciates the opportunity to offer comments regarding this Proposed Rule. On behalf of our membership, we appreciate the NOP’s work to ensure and improve organic integrity and align with certifiers’ pursuit of consistency. We appreciate the opportunity to provide comments and look forward to continued engagement as we all work together to strengthen the organic sector.

Respectfully submitted,



Ellie Hudson
ACA Executive Director