



October 31, 2016

Devon Patillo, Standards Division  
National Organic Program  
USDA-AMS-NOP  
1400 Independence Ave. SW  
Room 2646-So., Ag Stop 0268  
Washington, DC 20250-0268

Re: AMS-NOP-16-0028; NOP 16-01  
NOP 5036 Treated Lumber Draft Guidance

Dear Mr. Patillo:

Thank you for the opportunity to provide comments to the National Organic Program regarding the Treated Lumber Draft Guidance. The Accredited Certifiers Association (ACA) is a non-profit educational organization and our membership includes 51 USDA Accredited Certification Agents. We convened a Working Group from our membership to develop our comments.

## **General Comments**

ACA supports the intent of the NOP in providing clarification on the management of lumber treated with prohibited materials. However, there are sections in the Draft Guidance that are confusing, and there is terminology that conflicts with existing NOP Rule language.

ACAs are aware that treated lumber is used extensively in organic farming operations, in particular as a part of major structural portions of the operations. Changes in the requirements for compliance with the Treated Lumber Guidance, could be much more impactful than say a change in the use of a material to come into compliance with a new requirement. In addition, the Guidance appears to not address the impact on tree fruit operations that utilize trellis growing systems. Due to the potential impact this Guidance may have, we are requesting that NOP not move forward with publishing a Final Guidance document. **As the goal of any guidance should be to provide additional clarity for consistent implementation of the Regulation, ACA is requesting that any revisions made based upon comments received be published as *Draft Guidance* once again, to provide an additional comment opportunity.** We believe that this additional step is necessary to ensure that ACAs are clear on the requirements, and that there are no unintended consequences or barriers to certification in the guidance.

## **ACA Specific Comments/Requests**

### **a) Section numbering errors**

The *Policy & Procedures Section # 4*, pg. 2, outlines the various sections of this document, however, the actual sections contain errors in numbering. These include:

Page 4

4.5 Locations & Uses

4.5 New Installations (should be 4.6)

Page 5

4.6.1 Fences

4.6 Replacement Purposes (should be 4.7)

Buffers and Barriers will also need revision to Section 4.8 and Noncompliance Policy should be 4.9.

**b) 4.1 Substances Addressed**

Additional clarification is needed for the statement – “Substances applied to lumber that are not pesticides (e.g. paint without pesticides) are not within the scope of this guidance”.

To ensure consistency among ACAs, we request NOP clarify whether paint is a suitable barrier for above-ground contact.

**c) 4.2 Contact with Crops, Soil or Livestock**

We believe that the last sentence in this section: *Contact between crops, soil or livestock and prohibited materials contained in or on treated lumber must be prevented* is contradictory with §205.206(f), which only prohibits the use of treated lumber in contact with soil or livestock in new or replacement purposes.

Section 4.2 does not address the prohibition on the use of treated lumber in new installations or replacement purposes for soils and livestock, while permitting the use of lumber treated with prohibited materials and installed or used for replacement purposes prior to the operation achieving certification, providing there is no contact with crops (Section 4.4, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence.)

We suggest the last sentence of 4.2 be deleted as specific references are included in both sections 4.4 *Use of Treated Lumber prior to Certification* and 4.5 *New Installations*. Alternatively, this sentence could be revised to indicate the differences between no contact with crops; allowance for existing treated lumber uses in contact with soil and livestock (section 4.4), and the prohibition for new installation and replacement purposes in contact with soil and livestock (section 4.5, *New Installations* 1<sup>st</sup> paragraph, 1<sup>st</sup> sentence.) Also, see our comments regarding 4.61. Fences.

**d) 4.3 Treated Lumber and the Three-Year Transition**

Clarification is needed regarding why, if both treated lumber and treated seeds are considered “treated articles”, sites utilizing treated lumber are not required to undergo a 3-year transition if installed, but land where treated seeds have been planted must undergo a 3-year transition. We don’t believe this is a good precedent to set and request that NOP reconsider the assertion that treated lumber should be evaluated differently than other inputs that are prohibited materials under the USDA organic regulations.

**e) 4.4 Use of Treated Lumber prior to Certification**

This section states that treated lumber is not considered a “new” installation when the lumber was installed on a parcel prior to acquisition by a certified organic operation. Would this also apply to split operations having specific sites they are transitioning, if another portion of the operation is certified? Especially in fruit production conventional producers transition parcels over time to organic production.

**f) 4.5 Locations and Uses**

While examples are provided for treated lumber in contact with soil or crops, one that is not included, but is a very common use, is hay wagons. These are likely made from treated wood, and come in brief contact with harvested crops. We believe that this example would be permitted to be grandfathered in; clarification on this is requested.

**g) 4.5 New Installations**

We support this section.

**h) 4.6.1 Fences**

This section introduces a new concept of direct contact as contact with the entire plant, including the plant roots. We are also asking for clarification whether the definition of *contact* applies to the entire guidance as this is not contained in Section 4.2 *Contact with Organic Crops, Soil or Livestock*, or other sections preceding 4.6.1.

The statement: *Treated lumber may be used for fences that are not in contact with soil or crops in the organic production area* combined with the proposed definition of “contact”: (*direct contact with any part of the plant under organic production, including direct contact with plant roots*), conflicts with the existing definition of *crop*:

*§205.2 Terms Defined: Crop. Pastures, cover crops, green manure crops, catch crops, or any plant or part of a plant **intended to be marketed** as an agricultural product, fed to livestock, or used in the field to manage nutrients and soil fertility.*

ACAs have historically considered ‘crop’ to be the *marketable portion of the plant*, not the entire plant, including the roots. The inference of this guidance is that treated lumber cannot contact any part of the plant. We urge NOP to revise the definition of ‘contact’ and review the language throughout the document and ensure the use of the word ‘crop’ matches the definitions in the USDA organic regulations.

Based upon the new definition of ‘contact’ the requirement that: *Certifiers should evaluate site-specific conditions during inspection and review whether treated lumber in fences will contact soil or crops in the organic production area* is impractical. Due to differences in root growth patterns, inspectors would not be able to conduct site-specific evaluations to determine whether treated lumber in fences will contact soil or crops (i.e. roots) in the organic production area, without digging up the fence post or using a best educated guess. Common practice has been that contact *with the marketable portion* of the crop and/or livestock is not permitted. Consistent assessment from operation to operation is necessary; we do not believe it is possible to consistently determine the extent of plant root contact with treated lumber.

There is a lack of understanding among ACAs regarding the need for section 4.6. We recommend that this section be struck, and examples of various fence scenarios should more appropriately be included under *4.5 Locations & Uses*, as it is a major omission that fencing is not discussed in in this section.

**i) 4.6 Replacement purposes**

We believe that as written the 2<sup>nd</sup> sentence of this section may encourage the loophole of moving treated lumber within the organic production area. It is not necessary to specify “outside” vs

“inside”. Most ACAs have policies prohibiting the use of stockpiled (stored) treated lumber. We suggest the following revision:

*Lumber treated with prohibited materials that was previously installed or stored ~~outside of organic production areas (no contact with soil, crops, or livestock)~~ may not be moved into organic production areas, where it will contact soil, crops or livestock.*

**j) 4.7 Buffers and Barriers**

With the specific requirement that direct contact with plants, includes plant roots (Section 4.6.1 *Fences*) we are asking for additional guidance on acceptable buffer zone examples.

Many producers request to use paint as a barrier. Some ACAs allow paint; others do not permit paint as a barrier. To ensure consistency among ACAs, we request NOP clarify whether paint is a suitable barrier for above-ground contact.

**k) 4.8 Noncompliance Policy**

We understand this section to state that if a producer has lumber treated with prohibited materials in contact with crops, soil or livestock, the options for correction are: a) removal of the treated lumber, or b) applying a barrier or establishing a buffer zone. If the producer does not / cannot install a barrier or buffer zone, they can decide to remove the parcel from certification.

There is the very real possibility that the producer could decide to sell the parcel containing treated lumber in contact with crops, soil or livestock. If the purchaser of the parcel applies for a new certification, the treated lumber that already existed on the operation, therefore was not new or a replacement, prior to the operation achieving certification would be permitted, provided there is no contact with crops (soil and livestock contact would be permissible). (Section 4.4 *Use of Treated Lumber prior to Certification*) It seems arbitrary for the lumber to suddenly become acceptable to be in contact with the soil and livestock simply based on the acquisition of land.

The evaluation of treated lumber whether for an existing certified operation or a new applicant for certification must be consistent, such as the practice of considering treated lumber a prohibited material and use of the three-year rule for prohibited materials. An evaluation based upon whether the operation is currently certified, or is a new applicant is arbitrary and does not provide consistency.

**Additional Information Requested**

Our discussions also focused on the lack of availability of alternatives to treated lumber. There are no materials included on the National List for this purpose, and NOP has not provided guidance on alternative types of lumber that are available and effective at resisting rot and decay. ACA, in 2014, requested that NOP provide additional resources regarding treated lumber prior to publishing guidance and we again request that NOP provide, and/or request that the NOSB work on the following topics. Resources such as these are key to providing both ACAs and operators with appropriate information on which to base their decisions.

- Request that the NOSB gather additional information and research regarding the extent of leaching of materials from treated lumber. This knowledge is key to the determination of whether or not to permit barriers and establish buffer zones. Based on the information gathered

by NOSB we ask that NOP provide ACAs with resources and guidance to develop appropriate buffer recommendations;

- Request NOSB gather information regarding more recent advances in wood treatments, including information regarding the acceptability of these newer products for organic production; identify alternative types of lumber that are available and effective at resisting rot & decay; or do not require treatment; or other materials that might be used instead of wood;
- Request NOSB to identify materials for treating lumber that are in compliance with the National List, and petition these for addition to the National List.

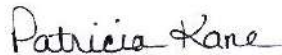
## Summary

We ask that the NOP:

- Clarify whether paint is acceptable as a barrier.
- Reconsider the assertion that treated lumber is evaluated differently than other prohibited materials.
- Clarify whether split operations may transition parcels containing treated lumber at different times, and have the lumber classified as existing rather than new.
- Revise the definition of 'contact' and review the language throughout the document to ensure the use of the word 'crop' matches the definitions in the USDA organic regulations.
- Clarify of whether the definition of 'contact' applies to the entire guidance, or just section 4.6.1.
- Address our requests for additional information and resources.
- Publish a second draft guidance document prior to the publication of final guidance.

Again, thank you for the opportunity to provide comments on the Draft Guidance on Treated Lumber.

Respectfully Submitted,



Patricia Kane  
ACA Coordinator