



BEYOND PESTICIDES

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October 2, 2014

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Re. HS: 2015 Sunset materials

These comments to the National Organic Standards Board (NOSB) on its Fall 2014 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and groups around the world.

General comments

NOP Provides No Notice of the Restriction of “Timely” Input on Sunset Materials.

According to the Agricultural Market Service's (AMS) September 16, 2013 Federal Register (FR) Notice, the Spring 2014 National Organic Standards Board (NOSB) meeting was the last opportunity for public input on substantive matters affecting Board and public consideration of materials under sunset review on which the Board may vote at the Fall 2014 NOSB meeting. Since AMS /USDA has characterized new substantive information brought to a sunset voting meeting as "untimely," it is important that in announcing the first meeting on sunset materials that the National Organic Program (NOP) include a statement that only comments submitted in response to that meeting notice will be considered by NOP as being timely input into the sunset process. However, NOP did not include such a statement in the press release, FR announcement, or meeting packet before the spring 2014 NOSB meeting. Similarly, in publishing the 2016 sunset materials for this meeting (the first sunset review meeting for those materials), NOP did not include a statement that only comments submitted in the current comment period will be considered “timely.”

NOSB members stated during the spring meeting that they did not see the kind of input they hoped on pending sunset materials. This should have been expected. Besides the lack of notice, people are much more likely to respond to a proposal than a request for information –a practical flaw in NOP’s sunset policy.

Subcommittee Reviews Contradict the 2013 FR Notice and Further Diminish Consumer Confidence in the Organic Brand and Trust in the NOSB and NOP.

As we have stated since the September 16, 2013 FR notice was published, the decision regarding relisting cannot be made by a subcommittee, as will happen under the policy announced by AMS if no one supports a motion to delist. The FR notice says, under “Step 4,”

After the first public meeting, the NOSB Subcommittees will review public comment and technical information to draft a preliminary review of substances undergoing sunset review in a given year. AMS will publish this preliminary review on the NOP Web site. For substances that continue to meet the criteria for substances on the National List, the Subcommittee will summarize relevant information regarding its review of this substance. The review will also summarize information from any available technical report(s) on the substance and describe any new information pertaining to substance’s impact on human health and the environment, its necessity, and its compatibility with organic production and handling. If the Subcommittee determines that a substance should remain on the National List, and there are no proposals to remove the substance, then the Subcommittee’s preliminary review moves to the next step in this process. The Subcommittee does not vote on a motion to retain a substance on the National List.

As part of this review, the Subcommittee may identify new information that merits consideration of a substance for removal from the National List. If warranted, the NOSB Subcommittees can develop proposals to remove substances as part of their preliminary review. Any proposals to remove a substance must be justified using the evaluation criteria in OFPA and the USDA organic regulations. Proposals to remove a substance must be part of the preliminary review that is posted in advance of the NOSB meeting. [Emphasis added.]

The unsupported delisting motions on gellan gum and tragacanth gum that the Handling Subcommittee (HS) has brought forward only serve to highlight the lack of forethought that went into the NOP sunset policy. Faced with the likelihood that the NOP policy, if followed, would lead to undesired consequences, the HS has produced motions to delist that are admittedly contrary to NOP policy.

The HS has not provided the required justification. Instead, the justification is, “The Handling Subcommittee believes that the full board should have the opportunity to complete the review of each sunset material by voting.” In the motions, the HS says,

Based on the Subcommittee’s review, the Subcommittee proposes removal of this substance from the National List based on the following criteria in the Organic Foods Production Act (OFPA) 7 U.S.C. 6158(m)(6) the alternatives to using the substance in terms of practices or other available materials; (7) its compatibility with a system of sustainable agriculture.

In fact, no one on the subcommittee voted for the motions to delist gellan gum and tragacanth gum. Although the motions to delist referred to alternatives and compatibility, none of the evidence presented by the subcommittee supports the HS position, as required by the FR notice.

We believe the changes made to the sunset policy by USDA, as announced in the September 16 FR notice, are unsound and defy the structure of the material review and approval process that was intended to ensure super majority support for any National List exemptions of prohibited substances. This central precept in OFPA was intended to ensure the broadest possible agreement among organic stakeholders when exemptions were adopted, and protect against alienating major sectors of the organic community. With this unifying process in place for over a decade, the organic label has become trusted by consumers. Now, however, with the HS's unsupported motions to remove two of these sunset materials --gellan gum and tragacanth gum—the process is creating further confusion in the public. It is illogical, out of compliance with procedures and policies issued by USDA in the 2013 FR notice, and exacerbates the procedural problems associated with the new policies. How can the public trust in this process, one that was simply changed by USDA in the past month without public input or notice, after it had previously changed the procedures in 2013 without public input?

We urge the NOSB to refer the motions on gellan gum and tragacanth gum back to the subcommittee based on a lack of support for its spurious motions to delist. Alternatively, the Board, with a substitute motion, could decide that the NOP policy is unworkable and not in compliance with OFPA, and return the Board voting process to the procedures adopted by the Board in its Policy and Procedures Manual (PPM) for making determinations of material exemptions for sunset materials. In the sunset process as adopted by the Board in its PPM, the sunset question is, "Should the sunset material still be on the National List as an exempt prohibited substance?" To maintain its listing, two-thirds of the Board must find that it is still exempt. This action would maintain public confidence in a procedure that has been fully vetted with through numerous public comment periods and is longstanding practice. It is the process that builds the organic market and public confidence in the organic food label.

Gellan gum

Beyond Pesticides opposes the relisting of gellan gum on §205.605(a). Although we were mistaken in our interpretation of the listing when we submitted comments in the spring, in which we proposed moving it to §205.605(b), there is additional evidence submitted for the April meeting that needs to be considered.

Consumers Union (CU) submitted comments regarding the likelihood that excluded methods are used in the manufacture of gellan gum, as well as ancillary substances that might be present. Since large segments of the gellan gum petition were redacted as confidential business information, the HS should request a supplemental technical review that would supply the missing information –particularly in view of the evidence submitted by CU. The CU comments present evidence from the published scientific literature that “suggests that scientists were

actively seeking to use excluded methods, including recombinant DNA technology, to “improve” the bacterium used for commercial gellan gum production.” The CU comments also present evidence concerning the use of nonionic surfactants to optimize production and the toxicology of gellan gum. Why was this evidence not included in the HS review?

Beyond Pesticides has submitted a petition to annotate the listings of this substance, and we urge the HS to give it prompt review in the case that the NOSB allows it to be relisted. Our petition requests prohibiting excluded methods, limiting ancillary ingredients, and adding an expiration date.

Tragacanth gum

Beyond Pesticides opposes the relisting of tragacanth gum on §205.606. There are potential health effects that have not been taken into account.

The Center for Science in the Public Interest lists tragacanth gum as a food additive that certain people should avoid because it has caused occasional severe allergic reactions. The HS has not previously investigated the impacts of nonorganic production of tragacanth gum on consumers, workers, or the environment.

Beyond Pesticides has submitted a petition to annotate the listings of this substance, and we urge the HS to give it prompt review in the case that the NOSB allows it to be relisted. Our petition requests clarifying that it is water-extracted and there are no ancillary ingredients, and adding an expiration date.

Sherry and marsala

Beyond Pesticides opposes the relisting of marsala and sherry on §205.606. Non-organic grape production involves the use of many toxic chemicals. There is no evidence of essentiality.

The Beyond Pesticides website, in our Eating with a Conscience section, lists 124 toxic pesticides used in nonorganic grape production, none of which are used in organic production.¹ Of these, 36 are acutely toxic, creating a hazardous environment for farmworkers; 109 are linked to chronic health problems (such as cancer); 19 contaminate streams or groundwater; and 99 are poisonous to wildlife. Grapes are dependent on pollinators, and there are 31 pesticides used on grapes that are considered toxic to honey bees and other insect pollinators. Thus, marsala and sherry fail the human health and environmental impact criterion.

We are disappointed that the HS does not seem to consider the impacts of nonorganic production practices in evaluating health and environmental impacts of substances for listing/relisting on §205.606 and those derived from agricultural sources on §205.605(a).

¹ <http://www.beyondpesticides.org/organicfood/conscience/navigation.php?foodid=19>

In the Handling Subcommittee notes, we see the following:

- Sherry (TF) – An extensive review of this substance failed to uncover a demand for this item. Numerous attempts to contact the original petitioner have been futile and the group discussed their inclination to delist Sherry based on this. Additionally, the lead reviewer found information that Sherry can be produced organically, but had a hard time finding specific information about this. The group will consider the public comment which will be incorporated into their decision for the spring 2014 vote.
- Marsala (CBe) – The review for marsala resulted in the same determination as for sherry; there were no organic products found containing sherry and there was a lack of demand.

In addition, the Spring 2014 comments of the Cornucopia Institute stated that the organization had contacted the original petitioners of marsala and sherry, Fairfield Farm Kitchens, and they are no longer using these cooking wines in their products. Organic sources of marsala- and sherry-like wines (like Organic Wine Company in San Francisco) exist to meet any change in demand for marsala and sherry in organic products.

Thus, the two cooking wines fail the essentiality criterion as well.

Finally, Beyond Pesticides has submitted petitions to annotate the listings of these substances, and we urge the HS to give them prompt review in the case that the NOSB allows them to be relisted. Our petitions request limitations on salt and other ancillary ingredients and an expiration date.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar".

Terry Shistar, Ph.D.
Board of Directors