



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. CS: Sunset 2015 –Aqueous Potassium Silicate, Sodium Carbonate Peroxyhydrate, and Sulfurous Acid

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.

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 that the Crops Subcommittee (CS) 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 CS has produced motions to delist that are admittedly contrary to NOP policy.

The CS has not provided the required justification linked to criteria in Organic Foods Production Act (OFPA) that establish the terms under which materials may be placed on the National List. Instead, the justification is, “The Crops Subcommittee believes that the full board should have the opportunity to complete the review of each sunset material by voting.” In the motions, the CS 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): [OFPA criteria at 7 U.S.C. 6158(m), (7) its compatibility with a system of sustainable agriculture.*” However, the CS does not justify that motion, as required by the FR notice. Is the public to understand that the NOSB members on the CS who voted for motions to remove aqueous potassium silicate, sodium carbonate peroxyhydrate, and sulfurous acid believe that these materials should be taken off the National List?

The CS does summarize evidence in favor of removal and in favor of relisting. However, it does not show how it has weighed that evidence in order to produce a motion to delist. In the motion to remove sodium carbonate peroxyhydrate, the CS makes it more explicit that the motion to remove the material from the National List is not truly based on OFPA criteria:

The subcommittee found no concerns regarding the continued listing of Sodium Carbonate Peroxyhydrate. The justification for this motion is that the whole NOSB needs to consider and vote on each material, rather than just a subcommittee.

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 CS's motions to remove these three sunset materials, 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 these motions 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 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.

Finally, Beyond Pesticides has submitted petitions to annotate the listings of these substances, and we urge the CS to give them prompt review.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar". The signature is fluid and cursive, written in a professional style.

Terry Shistar, Ph.D.
Board of Directors