



BEYOND PESTICIDES

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October 25, 2016

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. MOU with EPA Safer Choice Program for “Inerts” Review

These comments to the National Organic Standards Board (NOSB) on its Fall 2016 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 the world.

There has been an unconscionable delay in implementing NOSB recommendations for replacing the obsolete references to EPA List 3 and List 4 “inert” ingredients on the National List with listings of actual approved non-active ingredients in pesticide products. These ingredients frequently compose as much as 99% of pesticide products and due to NOSB scrutiny of active ingredients may be the most hazardous ingredients in pesticide products used in organic production. In these comments, we lay out a process for moving forward.

At its Fall 2015 meeting, the NOSB voted to change the listings at 205.601(m) and 205.603(e) to:

As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

- (i) Substances permitted for use as inerts in minimal risk products exempt from pesticide registration under FIFRA section 25(b).
 - (ii) Substances included on the EPA’s Safer Chemical Ingredient List.
 - (iii) Inert ingredients that are exempt from the requirement of a tolerance under 40 CFR 180.1122 –for use only in passive pheromone dispensers.
- [Reserved] (for any other inerts individually petitioned and reviewed)]

The NOSB proposed that a memorandum of understanding (MOU) with EPA would finalize the agreement between NOP and the Safer Choice Program that would spell out the details of how the recommendation would actually be implemented. In a conference call meeting with members of the National Organic Coalition, Deputy Director Miles McEvoy indicated that he has no idea of when the implementation will occur. He also said that the program does not usually accept public input into memoranda of agreement. Nevertheless, given the vacuum of experience at NOP and (soon to be occurring) on the NOSB, we offer some suggestions for elements to be included in the MOU.

The MOU is between EPA and USDA, but also involves the NOSB as a crucial part of materials review. Below is a description of the procedure for evaluating “inerts” to be covered by the MOU, followed by a description of the responsibilities of each body (NOP, EPA, and NOSB). It is based on the NOSB recommendations made in fall 2012 and fall 2015.

Timeframe

The fall 2012 NOSB recommendation said, in part:

- H. The anticipated timeline will enable the NOSB to finalize the procedure by spring 2013, start reviews for fall 2013 and to have as many reviews completed as possible by spring 2015. The intention is to have an amendment to the National List in 2017, which will address the materials reviewed with an implementation period of 2 - 5 years, taking into account public comment and the need for additional reviews for reformulation and compliance.
- I. By the time of the five-year sunset period the NOSB will approach a review of those inert substances permitted for use in minimal risk products exempt from pesticide registration under FIFRA section 25(b).

This timeframe is now delayed by four years –finalizing the procedure in spring 2017, resulting in completion in 2021.

MOU Procedure

1. NOP must immediately (as stated in the NOP response to Fall 2012 proposals) conduct a public notice and comment process including:
 - a. Notification to the public of “inert” ingredients known to be in use in organic production;
 - b. Notification to the public of NOSB’s review plan; and
 - c. A request for public comments regarding any other “inert” ingredients currently used in organic production that are not identified in the list provided by NOP.
2. NOP will publish for public comment a description of this MOU as a description of the means of implementing the Fall 2015 NOSB recommendation. It will state that “on the SCIL” means “on the section of the SCIL identified as ‘Ingredients Other than Active Ingredients in Pesticides Used in Organic Production.’” This may be the same Federal Register notice as the above notice.

3. EPA will create a new section of the Safer Chemical Ingredient List (SCIL) for “Ingredients Other than Active Ingredients in Pesticides Used in Organic Production.” This list will contain sublists by the function –such as surfactants, chelating agents, and antioxidants– that they perform in the pesticide product.
4. EPA will identify products in use in organic production in which the “inerts” identified by NOP are used, the function of each “inert” ingredient within the products, and alternative materials that serve the same function.
5. In concert with NOP and the NOSB, EPA will divide the list of “inerts” into five groups and review one group per year. One year’s review group may include one or more functional classes.
6. EPA will evaluate the “inerts” identified by NOP and the EPA alternatives according to the criteria appropriate for the substance’s function and will assign ratings according to the current practice within the Safer Choice Program (SCP) –i.e., green circle, green half-circle, yellow triangle, and gray square.
7. EPA’s review will cover all topics covered in a technical review commissioned for the NOS, as well as the topics required to rate the substances according to the SCP. To minimize duplication of work and ease NOSB review, a single review will cover chemicals in the same functional class.
8. EPA will provide a public version of the information it reviews to the NOSB, which will be used as a technical review. It will be posted on the NOP website for public viewing. It will contain the following:
 - a. a chart of all inerts in the class identified by CAS number with their chemical properties, uses, types of product categories in which they occur, EPA regulatory status, including data gaps.
 - b. a description of how inerts within the class are related and how different, especially outliers that are significantly different from others.
 - c. a chart that evaluates each inert in the class under the screening steps suggested by NOSB and any additional screening recommended by the NOSB, with input from the IWG [Inerts Working Group].
 - d. OFPA criteria will be addressed that are not usually covered in the EPA review (environment, interactions, and alternatives or essentiality)
9. Based on results of the group TR, the NOSB Crops Subcommittee will accept the class to move forward to the NOSB agenda, or single out one or more substance for individual review –in which case, the group will then move forward without that substance and that one will be re-reviewed in more detail if necessary.
10. The NOSB will review the information provided by EPA according to its usual materials review procedures, subjecting them to OFPA criteria.
11. In accordance with its meeting and notice procedures, after NOP publishes the NOSB proposal for listing a class of “inerts” on the National List (as part of the SCIL sublist for “Ingredients Other than Active Ingredients in Pesticides Used in Organic Production”), the NOSB will vote on the proposals and recommend listing or not listing each class.

12. NOP will publish recommendations from the NOSB for public comment according to its usual National List procedures, gather public comment, and finalize the listing.
13. EPA will add the approved chemicals, with approved annotations, to the appropriate subsection of the SCIL sublist for “Ingredients Other than Active Ingredients in Pesticides Used in Organic Production.”

MOU Responsibilities

NOP:

- NOP must immediately (as stated in the NOP response to Fall 2012 proposals) conduct a public notice and comment process including:
 - Notification to the public of “inert” ingredients known to be in use in organic production;
 - Notification to the public of NOSB’s review plan; and
 - A request for public comments regarding any other “inert” ingredients currently used in organic production that are not identified in the list provided by NOP.
- NOP will publish for public comment a description of this MOU as a description of the means of implementing the Fall 2015 NOSB recommendation. It will state that “on the SCIL” means “on the section of the SCIL identified as ‘Ingredients Other than Active Ingredients in Pesticides Used in Organic Production.’” This may be the same Federal Register notice as the above notice.
- NOP will publish in the Federal Register recommendations from the NOSB for public comment according to its usual National List procedures, gather comments, and send the finalized listing to EPA.
- NOP will provide expertise as needed to EPA to address issues not generally covered by EPA’s Safer Choice reviews.

EPA:

- EPA will create a new section of the Safer Chemical Ingredient List (SCIL) for “Ingredients Other than Active Ingredients in Pesticides Used in Organic Production.” This list will contain sublists by the function –such as surfactants, chelating agents, and antioxidants—they perform in the pesticide product.
- EPA will identify products in use in organic production in which the “inerts” identified by NOP are used, the function of each “inert” ingredient within the products, and alternative materials that serve the same function.
- In concert with NOP and the NOSB, EPA will divide the list of “inerts” into five groups and review one group per year. Each group may contain one or more functional class.
- EPA will evaluate the “inerts” identified by NOP and the EPA alternatives according to the criteria appropriate for the substance’s function and will assign ratings according to the current practice within the Safer Choice Program –i.e., green circle, green half-circle, yellow triangle, and gray square.

- EPA will provide a public version of the information it reviews to the NOSB.
- EPA will list in the appropriate section of “Ingredients Other than Active Ingredients in Pesticides Used in Organic Production” those “inerts” approved by the NOSB and NOP.

NOSB:

- The NOSB will review the information provided by EPA according to its usual materials review procedures, subjecting them to OFPA criteria.
- In accordance with its meeting and notice procedures, after NOP publishes NOSB proposals for listing of “inerts” on the National List and the SCIL sublist for “Ingredients Other than Active Ingredients in Pesticides Used in Organic Production,” the NOSB will vote on the proposals and recommend listing or no listing of each.

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