



# BEYOND PESTICIDES

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October 2, 2015

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: Reclassification and change of list for carnauba wax**

These comments to the National Organic Standards Board (NOSB) on its Fall 2015 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.

Beyond Pesticides supports the reclassification of carnauba wax as agricultural. We support the listing of carnauba wax on §205.606 if an annotation is added to prevent contamination with undesirable synthetic materials.

While we are commenting on proposed changes in annotations to materials under sunset review, we do this under protest because of NOP's failure to follow legally prescribed public process when changing the rules governing the NOSB's policies and procedures. Although we support the adoption of changes at sunset to annotations that limit, but do not expand, uses of synthetic materials, and the application in 2015 or 2016 of the NOSB recommendation to that effect, NOP has disallowed this procedure after adopting it as a procedural rule change governing materials review. The record reflects that the NOSB-adopted procedural rule proposing the allowance of restrictive annotations at sunset involved a vote on the changed listing, along with a back-up vote on the current listing. The second, or back-up, vote was adopted to ensure that possible delays at USDA did not cause disruption when sunset rules required default removal of materials from the National List if relisting did not occur at the end of a five-year period. However, under the new sunset process unilaterally promulgated by the NOP on September 16, 2013 without public hearing and comment, the NOP policy now explicitly prohibits annotations at sunset.<sup>1</sup>

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<sup>1</sup> AMS/NOP issued a rule in 78 FR 56811 (September 16, 2013), stating, in part, the following: "Can NOSB recommend a change to or addition of an annotation to a substance during Sunset Review? Can the NOSB recommend moving a substance to a different section of the National List during the Sunset Review?"

However, NOSB subcommittees are proposing to move forward listings with changed annotations along with a vote on sunset –for micronutrients and List 4 “inerts” on §205.601, List 4 “inerts” on §205.603, and flavors on §205.605(a). In addition, the HS is proposing to change the listings of alginic acid from §205.605(a) to §205.605(b) and carnauba wax from §205.605(a) to §205.606. These actions are not allowed by the current NOP-directed sunset procedure. Has NOP changed the procedural rules governing NOSB review of materials again? This abuse of agency discretion and failure to comply with administrative procedure regarding reinterpretations of rules governing materials review undermines a historically transparent and collaborative process and, we believe the, legal requirements in administering NOP and the NOSB. If the NOP and NOSB believe that there are instances in which the board should modify annotations and/or list at sunset –and we believe there are– then the NOP must revoke its policy and reinstate the board-adopted policy, prior to adopting changes to annotations at sunset.

### **Carnauba wax is agricultural.**

We agree with the Handling Subcommittee (HS) proposal that carnauba wax is agricultural. As summarized in the Technical Report (TR –lines 341-345), “It is derived from a plant, the carnauba palm, and does have intended uses for “human consumption.” FDA regulations permit its use on food, and certified organic carnauba wax is available in the marketplace. There are seven operations in Germany, Brazil, and the U.S. that produce or handle organic carnauba wax according to the 2012 list of certified USDA organic operations.”

### **The listing of carnauba wax must be annotated.**

A listing on §205.606 would not allow non-organic carnauba wax to be used if organic carnauba wax is available. Since the TR documents the availability of organic carnauba wax, we anticipate that it may not be relisted during the next sunset review.

Meanwhile, however, there is a possibility that carnauba wax extracted by a processor who is not certified may have been extracted using volatile synthetic solvents. There is also a

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No. For substances already on the National List, changes to or addition of annotations, or changes to the location of a substance on the National List (e.g., agricultural versus nonagricultural), cannot be proposed during the Sunset Process. In the past, NOSB made recommendations to further restrict the use of substances during Sunset Review. At times, these recommendations have not been exposed to robust public comment and have been difficult for AMS to implement through rulemaking actions by the sunset date. The difficulties with implementing these recommendations include the level of analysis required to assess how organic stakeholders may be affected by the recommendation and the deadline for completion of the Sunset Process. If the NOSB identifies new information that it believes merits reconsideration of a use restriction on a substance (e.g., to expand its use, further restrict its use, or correct its restrictive annotation) or the location of a substance on the National List, then a member of the NOSB or a member of the public can file a petition for changes to the use or classification of a substance through the National List Petition Process ([www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)).” *National Organic Program –Sunset Process*. 78 FR 56811. See <http://www.gpo.gov/fdsys/pkg/FR-2013-09-16/pdf/2013-22388.pdf>.

possibility that some certifiers or materials review organizations may permit formulation using ancillary substances that are not permitted in organic products. Therefore –and since the prohibition against list changes during sunset would already be violated—we request that the listing for carnauba wax be annotated with, “Not extracted using volatile synthetic solvents; contains only ancillary substances approved for organic production.”

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, with a long horizontal stroke at the end.

Terry Shistar, Ph.D.  
Board of Directors