



The Organic Specialists

March 19, 2013

Ms. Michelle Arsenault, Special Assistant
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2648-So, Ag Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-12-0070

RE: Policy Subcommittee – Materials Initiation Review

Dear Members of the National Organic Standards Board,

Wolf, DiMatteo + Associates appreciates that the Policy Subcommittee is working to ensure that the policies and procedures by which the NOSB operates are clearly stated and helpful to NOSB members in fulfilling their obligations under OFPA and to the organic community stakeholders. However we believe that this discussion document is not critical to the successful implementation of the National Organic Program, is not in the interest of the organic community, and is not a clarification of NOSB responsibilities but rather an unnecessary extension of the NOSB mandate. We request that the NOSB withdraw further discussion of this document.

Our answers to the questions raised in the discussion document provide our reasons for not supporting further work on an NOSB Material Initiation Review.

1. Should an NOSB subcommittee utilize the public petition process when proposing changes to the National List?

WDA does not believe that any NOSB subcommittee should propose changes to the National List that do not come through the public petition process, or the Sunset Review. Any critical new information about National List substances or natural substances not listed, or changes that occur in other Federal regulations that impact National List substances can be presented to the NOSB by the NOP and by the numerous organic organizations, associations, businesses and individuals. NOSB members should trust that organic stakeholders are invested sufficiently in the NOP Regulations, including the National List, to be vigilant in submitting petitions to propose changes to the National List.

We deliver the strategic expertise to help organic, socially, and environmentally responsible products and projects reach their full potential—and flourish.

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If the NOSB does decide that it is appropriate for a subcommittee to propose changes to the National List then the public petition process must be followed. The public must be fully informed and given the opportunity to comment on any changes proposed to the National List.

2. Are there situations when it would be appropriate for the NOSB to use an expedited or alternative petition process to consider a National List change? What are those situations?

There may be a situation in which a substance on the National List is immediately banned for any use by the U.S., by Codex Alimentarius or by the United Nations. In such a situation immediate action by the NOP and the NOSB would be required. In most all other situations, the existing policies and procedures of the NOSB including setting priorities, work plans, and public meeting agendas are adequate for National List changes.

3. If the answer to #2 is yes, what elements to the process are important to ensure transparency and facilitate public involvement, such as posting on the petition database or similar database?

At the very least, in the extreme situation of an immediate national or international ban of a substance on the National List, public notice through the Federal Register and the NOP website and press releases should be employed to inform the public of such changes to the National List.

4. How and when should the public be notified that the NOSB has initiated a review if it is added to the work plan?

WDA does not support the NOSB initiating a review of materials on the National List outside of the public petition or sunset review process. If the NOSB changes their work plan and has prioritized a review of a public petition or a substance during its sunset review then the public should be notified through the NOP website and announcements. All procedures for the public petition process and sunset review process should be followed.

5. Is it reasonable to interpret the NOSB-NOP Collaboration section of the PPM (p25), #2 Recommendation for modification of existing standards or new standards, as quoted above, to include the listing, delisting, or annotating National List materials?

In the background provided in the discussion document, reference is made to Section 6518(n) of OFPA – “The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List.” WDA believes that it is illogical to interpret this section of OFPA in such a way that the NOSB would be considered a “person” that can petition itself. The NOSB was established to be the representative of the private sector, the organic stakeholders, to balance the public sector, the USDA, in the implementation of OFPA. It is the expectation of stakeholders that they also have a role in the implementation of OFPA through the National List petition process, as well as public comments. The NOSB is not

selected by stakeholders and their actions and decisions can only be held in balance by the public sector and the participation of stakeholders in the public process. To stretch the interpretation of the NOSB-NOP Collaboration section of the PPM as has been suggested in this discussion document would not be in the interest of the stakeholders who, through OFPA, are the “persons” that may petition the Board regarding the National List.

6. Is the current system for determining the priority of reviews (PPM, p.49) acceptable? If not, please list any concerns?

Yes, WDA supports the current system for determining the priority of reviews.

WDA appreciates the opportunity to comment on this discussion document.

Sincerely,

Bill Wolf, Katherine DiMatteo and Sandy Mays
Partners

The partners and associates of Wolf, DiMatteo + Associates have over 100 years of combined experience in the organic sector. We have served hundreds of farms and businesses with their organic production systems and regulatory compliance, both nationally and internationally. We have been involved in the founding of several key organic organizations including the Organic Trade Association, Organic Materials Review Institute and the Organic Center. We are fiercely committed to continual improvement and to provide our clients and the organic sector with the tools to advance organic, environmental, and social practices.