



# 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. CS: Micronutrient annotation change proposal**

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.

### **Annotation during Sunset Review**

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.

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. Please see additional information on this subject in our comments on the CS’s proposal on inerts.

### **We oppose changing the micronutrients annotation without site-specific required data and make a recommended change to the CS proposal.**

The Crops Subcommittee (CS) proposes to change the listing of micronutrients on §205.601 as follows:

205.601 (j) As a plant or soil amendment.

(6) Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. ~~Soil Deficiency~~ must be documented ~~by testing~~.

(i) Soluble boron products.

(ii) Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt.

While we agree with the CS that there are better ways other than soil testing to document a deficiency, we disagree with the CS proposal to allow use of synthetic micronutrients that is not based on verifiable site-specific conditions.

### **Soil testing is not necessary to establish soil deficiency, but soil deficiency is the relevant criterion for allowing use of synthetic micronutrients. The CS should not remove the focus on soil in organic systems.**

As the CS points out, evidence of micronutrient deficiency may be in the form of soil testing, tissue testing, or diagnosis of plant symptoms. We disagree with the use of “Professional crop advisors and agronomists who know the nutrient needs of specific crops and regions and will write recommendations for correction before the problem of deficiency occurs” because such opinions are not necessarily based on evidence at the site, and because it is contrary to the requirements in OFPA, as explained below.

These deficiencies are soil deficiencies, though, so there is no reason to remove the word “soil” from the annotation. On the other hand, a soil that is deficient for one crop may not be deficient for another, and the quantity of a micronutrient as reported by a laboratory may not

be the only condition that is relevant to determining deficiency. The CS should not shift the focus in organic away from the soil as the basis for the deficiency.

The CS says,

It was also pointed out that there may be a complex combination of soil biological components that inhibit the uptake of a particular micronutrient into the plant, even though a soil test shows that the micronutrient is present in adequate amounts in the soil. In these cases a professional agronomist or crop advisor could figure out that a nutrient was deficient even if a soil test doesn't show it.

Again, it is not necessary that the “testing” required under the current annotation be soil testing for the nutrient. It can be testing that shows the unavailability of the nutrient, or diagnosis of plant symptoms. However, even if the general soil type is known to a crop advisor, the decision to use synthetic inputs should be backed up by on-site testing.

### **The use of synthetic micronutrients without demonstrated need is contrary to OFPA.**

Such use is contrary to the hierarchy implied in the regulations at §205.203 and stated in OFPA at §6517(c)(1), which allows use of synthetic materials only if “necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products.” Reliance on synthetic micronutrients is counterproductive to building healthy soils. Growers should instead develop a fertility plan that includes cover crops, mulches, compost, and other inputs to build and maintain micronutrient supplies in the soil.

The CS also points to a comment, “Although the need for micronutrient use can be demonstrated through soil and/or plant analysis, please consider that waiting for a deficit situation to prove the need is not healthy approach for crops. It is the equivalent of not feeding people fruits and vegetables until they are deficient in vitamins.” The analogy given by this commenter is inconsistent with organic practice, as well as the practice of organic consumers. Feeding people fruits and vegetables is analogous to feeding the soil with natural soil amendments. Use of synthetic micronutrients is analogous to taking a vitamin pill made with synthetic vitamins and minerals. Synthetic micronutrients are a crutch that may be needed during transition to organic practices and in certain other situations, which should be rare. A grower who depends on regular inputs of micronutrients needs to modify fertility practices.

### **Conclusion: A new annotation could better support growers and certifiers.**

Therefore, we oppose the annotation change proposed by the Crops Subcommittee because it encourages the use of synthetic micronutrients without empirical evidence to demonstrate need. We support an annotation that allows a variety of site-specific documentation options and requires the producer to build into the Organic System Plan a process for building soil that provides adequate nutrition through soil-building practices and organic inputs.

Beyond Pesticides would support the annotation, "Soil deficiency must be demonstrated by verifiable site-specific documentation that is accompanied by a plan for building soil that provides adequate nutrition through soil-building practices and organic inputs." If the NOSB chooses this option, then we suggest that the current motion be sent back to the CS for the development of an annotation that could be considered with the sunset proposal in spring 2016.

Because of the complex nature of this change in annotation, as proposed by the subcommittee, and given the proposal's departure from the statute's focus on soil and soil building practices, and the lack of attention to site-specific data and verified site-specific organic systems plans, we urge the board to consider requesting a limited scope Technical Review that would fully inform this decision.

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