

**National Organic Standards Board
Policy Development Subcommittee
Discussion Document
NOSB Initiation of Materials Review**

February 12, 2013

Background

It may be necessary to clarify in the Policy and Procedures Manual (PPM) of the National Organic Standards Board (NOSB) the process by which material review requests may be initiated. This process may be distinct from the normal public petition process. Examples of situations in which this process may arise are when the NOSB or NOP is notified that:

- (1) a nonsynthetic material appears not to meet the criteria of the Organic Foods Production Act (OFPA), resulting in confusion by growers;
- (2) there has been a reevaluation of a substance's classification by a review organization, calling into question its existing use; and,
- (3) new information that requires prompt revisiting of a recent decision.

The basis for the review process flows from the NOSB's responsibility to propose amendments to the National List and the procedures by which it considers these amendments. The NOSB's authority to make these proposed amendments stems from the Organic Foods Production Act (OFPA):

SEC. 2118 [7 U.S.C. 6517] NATIONAL LIST

(d) PROCEDURE FOR ESTABLISHING NATIONAL LIST. –

- (1) IN GENERAL.- The National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List developed by the National Organic Standards Board.
- (2) NO ADDITIONS.- The Secretary may not include exemptions for the use of specific synthetic substances in the National List other than those exemptions contained in the Proposed National List or Proposed Amendments to the National List.

The PPM contains policy dealing with NOP requests for modified or new standards in the NOSB-NOP Collaboration section of the PPM (p25), #2:

Recommendation for modification of existing standards or new standards.

The NOSB will use the decision making procedures outlined in Section VIII to justify modifying existing standards or proposing new standards. The NOP may request that the NOSB develop recommendations for new or existing standards. The request should be in writing and should include a statement of the problem to be addressed, background, including the current policy or situation, statutory/

regulatory authority, legal situation, and desired timeframe for receiving the recommendation. The request will be posted on the NOP web site.

Issue and Discussion

The process of identifying issues is outlined under Step 1 of the Procedures of the NOSB, section on Committee Work Plans. “Step 1, Identifying all issues” is outlined on p. 33 of the Policy and Procedures Manual (December 2011.) It is stated there:

The committee work plan rises out of these main situations:

- Items committed, or assigned to a subcommittee, by the Board during an official session.
- Items that are reviewed by a subcommittee on a regular basis such as materials sunset review or petitions submitted by members of the public.
- Requests or suggestions from the National Organic Program such as clarifications on a particular issue or guidance on enforcement.
- Proposals stemming from the subcommittee members’ contact with the organic community.

Under the last bullet above, it is clear that the subcommittee members may initiate a “proposal.” Assuming that these proposals may include materials review, the process for initiating that review appears to need clarification. This section is followed by the Materials Review Process (p. 34), which then references a “receipt” of petition. It is that part of the process that may need clarification.

OFPA §6518(n) states, “The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List.” The law does not make distinctions based on the “persons” who may petition the board—, the NOP, NOSB, commercial interests, and the general public are all included. Therefore, it is the board’s responsibility to establish procedures for any situations that do not fit the currently established petition procedures. This may include the situations outlined above or others.

Priority. The PPM assigns levels of priority to different types of petitions (p. 49). That is,

1. Reviews to Remove a Material From the National List:

a. A proposal to **remove** a material presently on the National list that raises serious health, environmental, or regulatory concerns, including petitions to reconsider previous decisions, will be given the highest priority - **Priority 1**, above all other petitions in the queue of the reviewing committee (Crops, Handling, or Livestock).

b. A proposal to **remove** a material presently on the National list not based on serious health, environmental, or regulatory concerns, but based on other new information, such as commercial availability status, would be assigned a **Priority 2**, behind Priority 1 petitions, but above any petitions to list materials that are in the queue of the reviewing

committee (Crops, Handling, or Livestock). This priority assignment would include any removal proposals requesting reconsideration of previous board decisions, if the proposal contains substantive new information to warrant reconsideration. [The process also includes reconsideration of the classification of materials currently considered nonsynthetic because that is a *de facto* delisting of the material.]

2. Petitions to Add a Material to the National List: Proposals to add materials to the National List of allowed synthetics might arise from reconsideration of the classification. A proposal to **add** a material to the National List will be considered by the reviewing committee (Crops, Handling, or Livestock) in the chronological order it is received, and will be designated as **Priority 3**. [The process also includes reconsideration of the classification of materials currently considered synthetic.]

3. Petitions to Reconsider a Material for Addition to the National List: A proposal to **reconsider** adding a material that had previously been rejected by a board vote would be given the lowest priority - **Priority 4**, and would go to the bottom of the committee (Crops, Handling, or Livestock) queue of petitioned materials. Proposals for listing a substance that had been previously rejected by the board must contain substantive new information to warrant reconsideration.

Public participation. When a material is petitioned, the petition becomes available on the NOP website. Technical reviews are also posted when finalized. The public needs to have similar access to information involving reviews that do not arise from the normal petition process.

Comments Requested

Clarify the process to initiate reviews for annotation of materials by the NOSB, the public, and NOP.

1. Should an NOSB subcommittee utilize the public petition process when proposing changes 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?
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?
4. How and when should the public be notified that the NOSB has initiated a review if it is added to the work plan?
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?
6. Is the current system for determining the priority of reviews (PPM, p.49) acceptable? If not, please list any concerns?

7. Are there other related issues that should be raised?

Subcommittee Vote:

The Policy Development Subcommittee moves to accept this document and present it for full Board discussion at the spring 2013 NOSB meeting:

Moved: Jay Feldman

Second: Nick Maravell

Yes: 6 No: 0 Abstain: 0 Absent: 0 Recuse: 0