



# National Organic Coalition

3540 Route 52, Pine Bush, New York 12566

[Liana@NationalOrganicCoalition.org](mailto:Liana@NationalOrganicCoalition.org) 845-744-2304

November 13, 2011

**NOC MEMBERS**

*Beyond Pesticides*

*Center for Food Safety*

*Equal Exchange*

*Food & Water Watch*

*Maine Organic Farmers and Gardeners Association*

*Midwest Organic and Sustainable Education Services*

*National Cooperative Grocers Association*

*Northeast Organic Dairy Producers Alliance*

*Northeast Organic Farming Association - Interstate Council*

*Organic Seed Alliance*

*Organically Grown Company*

*Rural Advancement Foundation International -USA*

*Union of Concerned Scientists*

National Organic Standards Board

USDA-AMS-NOP

1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268

Washington, DC 20250-0268

**Docket No: AMS-NOP-11-0081**

National Organic Standards Board:

The National Organic Coalition, (NOC) is a national alliance of organizations representing farmers, environmentalists, other organic industry members, and consumers concerned about the integrity of national organic standards. The goal of the coalition is to assure that organic integrity is maintained, that consumers' confidence is preserved and that policies are fair, equitable and encourage diversity of participation and access.

Following are the comments of the National Organic Coalition to the National Organic Standards Board

## Contents

STATEMENT ON GENETIC ENGINEERING .....	2
HANDLING COMMITTEE .....	3
DHA/ARA .....	3
Sulfites In Wine .....	6
COMPLIANCE, ACCREDITATION and CERTIFICATION COMMITTEE .....	7
Proposed Inspector Qualifications .....	7
Materials Review Organizations .....	7
CROPS COMMITTEE .....	8
IBA .....	8
Inerts Discussion Paper .....	8
Copper Sulfate.....	9
Propane.....	9
POLICY DEVELOPMENT COMMITTEE .....	10
Conflict of Interest Policy .....	10
Committee Transparency .....	11
Public Comment.....	12
Administrative Team.....	14
NOSB Member and Leadership Transition.....	14
MATERIALS COMMITTEE .....	14
Research Priorities Framework .....	14
Aquaculture .....	14
LIVESTOCK COMMITTEE.....	15
Animal Welfare Standards .....	15

## **STATEMENT ON GENETIC ENGINEERING**

At the April 2011 NOSB meeting, the Board received over ninety unsolicited comments in writing and in public testimony expressing concern about the potential contamination of organic by genetically engineered organisms (GE). Again, at the NOP Listening Session in Washington, DC, on September 20<sup>th</sup>, many public commenters addressed this topic as well as the need for the NOP to be more proactive in developing policy that addresses the negative effects caused by contamination from GE organisms. These comments demonstrate the public's belief that the NOSB and the National Organic Program (NOP) need to do more to ensure that GE-contaminated organic ingredients do not make their way into the certified organic foods.

The National Organic Coalition (NOC) commends NOSB member, Jennifer Taylor, for taking the initiative to draft a "Sense of the Board Statement on Genetically Engineered Crops,"<sup>1</sup> to relay to the Secretary of Agriculture this issue of overwhelming concern to the organic community. Indeed, as a Federal Advisory Committee and statutory Board constituted under OFPA, one of the NOSB's significant and appropriate roles is to report directly to the Secretary and to give advice regarding all matters relating to organic farming and food production. As stated in the law:

The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2 et seq.) (hereafter referred to in this section as the "Board") to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this chapter. (OFPA)

The "Sense of the Board" statement is neither a policy document nor intended to outline solutions to the problem, but it is intended to keep the Secretary informed of important issues in a timely manner.

Although we understand this statement is a small first step to take, we believe that the adoption of a strong policy of shared responsibility between the USDA and NOP is necessary to protect organic crops from GE contamination and to preserve all agriculture markets for U.S. farmers -- organic, non-GE conventional, and GE.

Regarding the exact wording of the statement, we note that while "zero tolerance" of GE is a goal desired by many in the organic community, the issue requires a much wider public policy debate. We therefore support the removal of the "zero tolerance" language from the last sentence of the statement and retaining the rest of the language verbatim.

In conclusion, NOC urges the NOSB to immediately adopt the "Sense of the Board Statement on Genetically Engineered Crops" at the November 2011 meeting, and send it to Secretary Vilsack. This will go a long way in reassuring the public that the NOSB is responsive to this critical issue of concern in the organic community.

---

<sup>1</sup> "Sense of the Board Statement on Genetically Engineered Crops," (April 2010). National Organic Standards Board Meeting.

## HANDLING COMMITTEE

### DHA/ARA

The National Organic Coalition (NOC) does not agree with the Handling Committee's recommendations to add these materials to the National List for the following reason. We believe the Martek petitions for ARA and DHA currently before the Board do not fit the criteria for placement of materials on the National List. The petitioned items are not "substances", they are formulated, brand name products (which have brand names that are identical to the active substances). Petitions should specifically address a single substance in language that creates a narrow, unambiguous definition of the substance. The definition of a substance can be provided through an annotation of its listing on the National list which might provide information about allowable manufacturing processes; however, it should not be left to the NOSB to determine which process or processing aid the petitioner wishes to see as the annotation. This is the responsibility of the petitioner. NOC believes that the Martek petitions for ARA and DHA should be returned to the petitioner for further clarification.

The National List is made up of generic materials, not formulated products that may have proprietary or patented processing procedures for their manufacture. A processed product that uses numerous processing aids and/or ingredients would go through the typical certifier or third-party materials review process. This includes verifying that the main ingredients and all processing aids are acceptable, meaning that they meet all requirements for use in organic production under the Organic Foods Production Act.

There are precedents in the current National List for spelling out the specific manufacturing system, such as the annotation for Acids in §605.a. NOC concludes that to review and act upon the current petitions as presented, stretches the review process beyond the scope intended by OFPA and the NOP regulation, which is the consideration of single ingredient materials.

Further explanation of our position is contained in the points below.

- **The petitioned items are not "substances"—they are formulated, brand name products**

The petitions make it clear that they are not for ARA and DHA, but for "ARA Single-Cell Oil" and "DHA Algal Oil", which have respectively ARA and DHA as "primary components". (See responses to question 7 regarding CAS number.) "ARA Single-Cell Oil" in turn is listed as the primary ingredient of ARASCO, and "DHA Algal Oil" is listed as the primary ingredient of Martek DHA-S and DHASCO. (See product information, Appendix 10 of DHA Petition.)

However, it is not clear whether the "ARA Single-Cell Oil" that is listed as an ingredient of ARASCO is actually the product that has ARA as its primary component or the ARA material itself. The confusion arises because the additional ingredients in ARASCO (high oleic sunflower oil, tocopherols, and ascorbyl palmitate) are also the additional ingredients in "ARA Single-Cell Oil". Similarly, it is not clear whether the "DHA Algal Oil" that is listed

as an ingredient in Martek DHA-S and DHASCO is the material with DHA as its primary component or DHA itself because the additional ingredients in Martek DHA-S (high oleic sunflower oil, sunflower lecithin, rosemary extract, mixed tocopherols and ascorbyl palmitate) and DHASCO (high oleic sunflower oil, mixed tocopherols and ascorbyl palmitate) appear to be the same additional ingredients in “DHA Algal Oil”.

At any rate, it appears that ARA and DHA do not stand alone. Because of their susceptibility to oxidation, some form of antioxidant must be added to keep them from degrading. The sunflower oil is added to provide a product uniform in ARA/DHA potency, so it is clearly part of the formulation.

For further clarification, since there are numerous ingredients in DHA Algal Oil, it should appear on the label as “DHA Algal Oil (DHA, high oleic sunflower oil, mixed tocopherols and ascorbyl palmitate)” so that all ingredients are disclosed for the consumer.

Because "ARA Single-Cell Oil" and "DHA Algal Oil" are formulated products, whose active ingredients could be made from a range of additives (see below), it is inappropriate for the NOSB to consider the petitions as they have been submitted. ARA and DHA are the active ingredients and, as such, they are substances that are appropriate for review by the NOSB. Assuming that these substances were approved by the NOSB and included on the National list, certifiers and third party materials reviewers would then need to decide whether formulated products that include ARA or DHA are allowable, based their review of the additional ingredients.

- **Some additives are “ingredients” and some are “processing aids”**

ARA and DHA are extracted from fungal and algal cells, respectively. The extraction and purification processes involve the addition of substances not intended to be present in the final product. These are often called “processing aids”. The manufacturing process also involves the addition of materials that are intended to be in the final product—the sunflower oil and antioxidants. These are generally called “ingredients”.

The extraction process used in making ARA involves the addition of hexane, which is later removed by evaporation using heat and vacuum. Martek says hexane is undetectable in the final product, with a detection limit of 0.3 ppm. After extraction, the oil is purified. “Food acid and base”—the acid may be citric acid, for example, and the base specified was sodium hydroxide—are added to help remove metals and other undesirable components of the oil as precipitates and heavier gums or soaps that can be removed by centrifuge. Then filter aids, also known as adsorbents and chelators—such as citric acid, silica, and clay—are added, and subsequently filtered out with other residual soaps, metals, and oxidation products. A deodorizer is used with heat and vacuum to remove volatile components that might cause off-flavors. Finally, the antioxidants are added, and the ARA potency is adjusted with high oleic sunflower oil.

The processes for refining extracting and refining DHA are somewhat similar. Two different organisms are used as sources for DHA--*Cryptocodinium cohnii* (hereinafter *C. cohnii*) and

*Schiziochytrium* sp. *C. cohnii* is treated with hexane as a solvent in a process somewhat similar to that used for ARA extraction. Again, Martek says the hexane is undetectable in the final product, with a detection limit of 0.3 ppm. *Schiziochytrium* is treated with a (non-GMO) enzyme to rupture the cell walls and release the oil. (The pH may need to be adjusted first, which would require the addition of a “food acid or base”.) In this case, isopropyl alcohol is added to break up the emulsion formed by the enzymatic process into an oil layer and a water layer, which are separated by centrifuge, the alcohol going with the water phase. Antioxidants are added before the drying process, which involves adding nitrogen gas in a vacuum. Martek says no isopropyl alcohol is detectable in the final product, with a detection limit of 1 ppm.

DHA from both processes then goes through the same refining process that is used for ARA—which again involves the addition of citric (or some other) acid, sodium hydroxide, as well as adsorbents and chelators (such as citric acid, silica, diatomaceous earth, and clay). Finally, the antioxidants are added, and the DHA potency is adjusted with high oleic sunflower oil.

Thus, in the language of food processors, the following are used as “processing aids”: hexane, isopropyl alcohol, citric acid, sodium hydroxide, nitrogen gas, silica, diatomaceous earth, and clay.

The following are added as “ingredients”: high oleic sunflower oil, sunflower lecithin, rosemary extract, mixed tocopherols and ascorbyl palmitate.

**Both ingredients and processing aids are subject to the provisions of the National List, including the requirement that, those from nonagricultural sources be included on §604 of the National List, and those that are from agricultural sources either be listed on §606 or be sourced organically. In the case of the DHA and AHA algal oil products, it is certifiers and third party materials reviewers, not the NOSB, who are authorized to make decisions about whether specific sources of processing aids and ingredients conform with the listing on the National List.**

- **Allowable processing aids should be specified in annotations**

Hexane is prohibited by 21 CFR 205.270(c)(2) “A volatile synthetic solvent or other synthetic processing aid not allowed under §205.605: *Except*, That, nonorganic ingredients in products labeled “made with organic (specified ingredients or food group(s))” are not subject to this requirement.”

As the petitions specifically mention that hexane is used as an extractant, and hexane is a “volatile synthetic solvent,” the Handling Committee and the NOSB as a whole should judge whether the extracted and refined ARA and DHA are compatible with the organic handling standard §270(c)(2).

Note that while the petitions contain references to residues of solvents in the finished product, in terms of the regulation of organic foods, the concept of residues is irrelevant. In

organic terms, the question is whether the use of the processing aid is compliant with the standards that govern the composition and manufacture of processed products that carry the organic label.

**In conclusion, NOC urges the NOSB to reject the petitions for Martek ARA and DHA. NOSB is authorized by OFPA and the NOP regulation to review only substances, not formulated products such as those presented in these petitions.**

### **Sulfites In Wine**

NOC opposes the petition to change the annotation for sulfur dioxide on §205.605 to allow sulfur dioxide in organic wine at concentrations not to exceed 100 ppm. We are in favor of leaving the current annotation which allows sulfites in wine labeled as “Made With Organic” products only.

- Sulfites are synthetics and synthetics are generally prohibited in organic.
- Sulfites are a known allergen and, therefore, they present a potential public health threat. In the early 1980s, the ATF began requiring that *all* alcoholic beverages that contained more than 10 ppm be labeled “contains sulfites,” due to the health risks associated with unknowingly consuming sulfites by those with sulfite sensitivities.
- Sulfites are not essential to modern wine making or to cleaning equipment. In 2009, 8 certified organic wineries sold a combined total of 3,794,400 bottles of organic non-sulfated wine.<sup>2</sup>
- Allowing sulfites in certified “organic” wine would decrease organic integrity and consumer confidence in organic, and the USDA organic seal, because consumers expect that the organic food and beverages they buy are the healthiest and safest wines on the market and that they do not contain synthetic additives and preservatives.
- Allowing sulfites in certified organic wine would serve as a gateway for other products to contain sulfites such as organic wine vinegar, organic salad dressings, and other organic wine and organic vinegar-based products.
- It has been more than 10 years since the passage of the Final Organic Rule and by now consumers are quite familiar with organic wine labels. Those who seek to avoid drinking wine without sulfites know that “organic” wines do not contain added sulfites-- they can easily discern whether wine a wine labeled as “made with organic grapes” contains added sulfites because that information is clearly marked on the label.
- Organically grown grapes are one of the fastest growing organic sectors in wine growing regions. In California alone, wine grape production acreage has at least doubled in the last 7 to 10 years, clearly demonstrating that existing restrictions on sulfite use for wines carrying the “organic” label do not adversely affect the desire of grape growers to adopt organic farming methods.<sup>3</sup>

---

<sup>2</sup> Frey, Paul. (2011) Personal Communication, 12, February.

<sup>3</sup> Brodt, Sonja & Karen Klonsky. (2008) “Marketing Reports for Three Organic Crops in California,” Dept. of Agricultural and Resource Economics, University of California, Davis.

## **COMPLIANCE, ACCREDITATION and CERTIFICATION COMMITTEE**

### **Proposed Inspector Qualifications**

NOC is aware that a contract has been awarded to IOIA to develop criteria for the training and activities of organic inspectors. Therefore, NOC concludes that the current NOSB recommendation should be tabled until the results of this contracted work are made public. At that point, the NOSB could use the ideas emanating from IOIA's work as the basis for their own recommendation on inspector qualifications.

NOC agrees that guidance from NOP regarding Inspector qualifications is appropriate, and that such a guidance would "allow for a wide variety of ACA-inspector relationships while ensuring that the inspectors are doing their part to uphold the high levels of integrity expected by the organic community." Whatever training or accreditation requirements are recommended, they should accommodate the principle that any organization which meets the criteria for serving as an inspector training organization could function in this capacity as opposed to tying the recommendation directly to approval to one organization, IOIA. There are many Accredited Certification Agencies in Europe and other parts of the world that do not have ready access to IOIA's services. Even here in the US, there are other training systems that provide inspector trainings, such as experts in investigatory methods housed in State Departments of Agriculture and in-house trainings organized by private certification bodies. Such trainings, in addition to the excellent opportunities afforded by IOIA, help inspectors meet the qualifications necessary to perform complete and consistent inspections.

### **Materials Review Organizations**

NOC agrees that there is a need to have consistency in the evaluation of materials by the wide range of organizations that perform materials review. We also agree that there could be an additional scope of accreditation added within the NOP's system for oversight of accredited certifying agents (ACAs) that would include materials evaluation. Before this scope is added, the NOP will need to create clearly articulated accreditation requirements for the ACAs and also work with ARC to ensure that their auditors are fully trained to implement this new scope of accreditation.

Further thought is necessary to determine whether organizations that limit their activities to materials review should be held to the same accreditation requirements as an ACA that performs materials review as a service related to certification of organic operations. Due to the limited scope of materials review, NOC is considering whether all requirements of ACA accreditation are necessary for materials review organizations working within a more limited scope.

We refer for more details to the comments by the Accredited Certifiers Association, and their proposal to do more work on this topic within a task force.

Additional comments on the Committee's proposed recommendations:

1. Clarification of definitions: It is important to use terminology that differentiates between generic and brand-name materials. Is there a difference between the term "substance" and "material" in the opening paragraph? And is the definition of "input substances" actually what we usually call a brand-name material?
2. While consistency among MROs is important, "uniformity of procedures" is not necessarily desirable. Especially given emphasis on ISO Guide 65 accreditation in the Committee's recommendation, it is important to note that accreditation doesn't necessarily require a uniform set of procedures. Accreditation allows for each MRO to create a set of procedures that meets the operational needs of that organization..
3. Adding a scope of accreditation related to evaluation of materials would require NOP to have standards for certification of materials. Current NOP standards focus on certification of a process, while materials evaluation is essentially a product certification system.
4. Unless NOP issues a closed, positive list of materials that may be used, some decisions regarding the synthetic/nonsynthetic nature of substances will be left to the ACAs a part of their evaluation of brand name materials. In lieu of a closed positive list, standards on materials evaluation must contain clear guidance on making the synthetic/nonsynthetic and ag/non-ag decisions.
5. Clarification is needed in the statement "MROs should be compliant with ISO Guide 65". How would a certifier show compliance other than by ISO accreditation? In the current regulatory environment, in which the NOP regulation does not confer compliance with all requirements of ISO Guide 65, a requirement of ISO accreditation would have a large impact on current ACAs as they would have to either discontinue reviewing materials or maintain a separate ISO accreditation.

## **CROPS COMMITTEE**

### **IBA**

NOC agrees with the Committee recommendation to reject the petition for Indole-3-butyric acid (IBA). There has not been shown to be a demonstrated need for IBA in organic production and it does not fit within any of the categories of allowed synthetics listed in OFPA [7 USC 6517(c)(1)(B)]. Further, the petition is for both point and area application, the latter presenting possible significant risks to the environment.

### **Inerts Discussion Paper**

We support the entire discussion laid out by the Working Group paper, and the excellent comments submitted by Beyond Pesticides to move this issue forward.

In addition, NOC thinks that the NOSB's policy on inerts should include provisions that foster reformulation of brand name products with less toxic inerts. As part of this effort, we think it is important for NOSB to set a timeline for the Board to evaluate all substances that are used as inerts in products now approved for use by organic operators.

NOC believes the key principle in this paper is that all generic materials must be reviewed by NOSB by being evaluated against the criteria in OFPA. As our understanding of inert materials has advanced over the past twenty years, we (including EPA, USDA and the general scientific community) now know that inert materials are not chemically and functionally inert. In fact, we now understand that many inerts are, indeed materials which have significant environmental and health risks. Referencing “List 4A” or other obsolete EPA classifications that group materials by their “safety levels” is insufficient reason to assume that these materials comply with the requirements for materials evaluation as set forth in OFPA.

We agree with the Working Group recommendation that manufacturers provide information on the additional substances used in the passive pheromone dispensers. We support this idea because we believe it will help the organic industry to understand the universe of inerts currently used in passive pheromone dispensers and this information will provide a strong foundation for policy decisions related to the evaluation of inerts that recognize the needs of growers.

### **Copper Sulfate**

NOC supports the committee recommendation to list copper sulfate with annotations to its use. We acknowledge both the toxicity of copper sulfate in aquatic systems, and the need for this material under certain conditions.

We also note that the alternative to this material – drill seeding – is a technique available only with relatively expensive equipment, which can limit its use by small farmers. Therefore, we suggest that NOSB consider supporting research on development of less expensive alternatives for the use of copper sulfate in organic rice production systems. Additionally, we note the importance of financial support for capital improvements for small farmers.

### **Propane**

While NOC recognizes the need for a tool for controlling rodents on organic farms, we have substantial concerns about the mode of action of this material. NOC finds that the Committee’s recommendation does not provide adequate information to either the Board or the public for making an informed decision. We find that a more complete comparison of alternatives as well as a more thorough examination of the non-target effects of the use of propane for rodent control is warranted. As a way to balance these ideas we suggest the following annotation for consideration by the Board: “Not for routine use. Farm plan must include justification of need and include plans for changes to farm systems to avoid future use.”

NOC understands that heavy infestations of gopher or ground squirrels can cause severe damage to crops, especially in perennial cropping systems in which tillage has limited utility as a control, as well as physical injury to humans, and even death to large animals that break legs in deep holes.

That said, NOC is concerned that the Technical Review used as the basis for the committee recommendation did not address the full range of issues such as those presented in comments submitted by Beyond Pesticides, including the fact that the product does not appear to have any

mid or long term effectiveness in lessening the colonization of an area by these problematic pests. Once the soil is loosened further by the explosions of the deodorized propane, it makes it even easier for the burrowing animals to move back in and cause further damage, setting the stage for additional rodent control needs.

The TR mentions the possibility of damage to other soil life but it does not clearly address the damage to other soil dwelling organisms caused by the use of propane to create a concussive explosion underground. Clearly, the effects of this practice are not limited to the target rodents. Therefore, NOC concludes that more information is needed about 1) how far the impact to non-target soil organisms extends from the area in which the propane is exploded, and 2) effects of the use of propane explosion on other types of soil dwelling organisms particularly those that rely on establishment of burrows and tunnels such as other species of mammals, birds, snakes, and macro invertebrates. Because supporting biodiversity is an NOP requirement, NOC also suggests that impacts on predators of both the target and non-target species be considered in the evaluation of the use of propane for rodent control

From the information presented in the TR, NOC concludes that this product should not be allowed for unrestricted, routine use. On the other hand, in cases of land that is extremely impacted by burrowing rodents, use of propane may be an acceptable tool to allow a grower to reduce rodent populations to a level that is manageable through modification of the farming systems to discourage re-colonization.

NOC looks forward to listening to further debate on this material.

## **POLICY DEVELOPMENT COMMITTEE**

### **Conflict of Interest Policy**

As noted in NOC's comments to the Board in April 2011 regarding conflict of interest provisions, we agree that revising the Board's COI policy is important, and we thank the Committee for this work.

Overall, we agree that it is the nature of this Board – being comprised of members who have direct expertise and experience as stakeholders of the organic industry – for conflicts of interests to be present. Therefore, a strong, transparent Conflict of Interest policy and procedure is the best way to ensure that decisions made by this board are not influenced by untoward conflicts – either inappropriate or undisclosed.

The policy changes proposed by the Committee go a long way toward helping the Board avoid such conflicts, but we note that the successful implementation of this policy in the end relies on the integrity of the individual board members.

### **Specific Comments:**

Define “vested interest” in Recommendation #2

Discussion of Example #2: In this instance, and in all instances of possible, perceived conflict of interest, the Board member should not make the decision on their own as to whether COI exists. The members should disclose the issue to the Chair of the body that is considering the issue (i.e., Committee or full Board or Task Force) to help decide whether the issue needs to be disclosed by the entire body. This maximizes transparency while minimizing the possibility for confusion or error.

This disclosure (of possible COI) should occur at the very beginning of consideration of an issue, during the committees' work, and be reiterated at the public NOSB meetings. With regard to COI disclosures during NOSB meetings, NOC supports disclosure of COI each time a discussion item is brought to the floor and also suggests that COI be addressed at the beginning of the discussion of a topic. Such disclosure procedures provide, greater transparency to both the board and the public during periods of discussion and debate as well as when votes are made. From NOC's experience with attending NOSB meetings, we note that disclosure of interests has not necessarily made the comments from those with announced interests less important; at times disclosure of expertise related to a topic has resulted in their opinions having more weight.

#### Conflict of Interest in Technical Reviews

Finally, in the process of avoiding Conflict of Interest issues and ensuring full transparency of the NOSB's technical review process, all subcontractors should be required to list the authors of their report and be required to disclose any potential conflicts of interest related to both the authors and the subcontracting agency.

#### Committee Transparency

NOC appreciates this work, and fully supports this committee recommendation.

We do note that it is important and useful for the public to be able to communicate with the Board during the periods in which the committees are developing their positions. NOC urges a policy that allows for NOSB committees, as well as the Board itself, to receive communication from the public through the Executive Director at any time, not just during the official public comment open docket.

To facilitate transparency during the open docket, it would be helpful to have a more reasonable timeframe to be able to submit comments. In this case, some Committee Recommendations were not posted until the beginning of November, giving the public much less than 30 days to respond to them. We understand the pressure on NOSB members, and propose that there be some thought given to methods of reducing the amount of work required between meetings so that the quality of work by both NOSB and the public might be increased. To this end, NOC suggests that in the Board's discussion of committee work plans, topics not only be listed, but they be prioritized with the goal of creating a more manageable workload for committee members.

## Public Comment

NOC's overarching message to this Board regarding public comment is that while the public comment process can be unpredictable and difficult to manage, it serves a critically important function in the NOSB's role as a nexus in the public-private partnership envisioned by OFPA.

Therefore, NOC asserts that the Board must cultivate flexibility to the greatest extent possible, to allow a positive response to the varying public comment situations that are bound to arise over time. We believe that a primary responsibility of the Board is to honor the commitment of time and resources invested by the public to attend the Board's meetings.

We suggest below the option of extending a public comment day one hour, but no more.

*1) Given that the public comment period cannot be unlimited, how should the requests to make public comment be prioritized?*

We note that it is an improvement for both the Board and the public not to have the comment periods go late into the evening. We suggest that the first principle for handling requests to comment be "first come, first served." However, in recognition that the Board sometimes has an urgent need to hear comments on controversial issues, we recognize that there is a benefit to all parties if such circumstances can be accommodated by allowing for additional speakers on such topics. Additionally, we suggest that former NOSB members be given some deference for requests both within and outside of the sign-up period due to their personal experience with the NOSB's process.

*2) Should the policy be clarified to state a fixed presentation time for public comment?*

Current policy (p.27) is acceptable.

*3) Should policy also define a maximum question and discussion time once public comment is received?*

Absolutely not. NOC asserts that the interactions initiated by Board members with commentors are a necessary component of these meetings. Based on our experience with NOSB meetings we note that when the time for public comment became short it seemed most effective for the Board Chair to publicly note the time constraint, request that Board members be cognizant of the it, and then leave the responsibility for shortening questions to the individual Board members.

*4) Who should allow the variation or combine the time(s) into a defined total in #3 above?*

We do not agree with this concept so we do not think it is appropriate for anyone to set a total for the Board's consideration of a specific public comment.

*5) Is time setting best done by the Board Chair, at the time of the meeting, depending upon the circumstances at hand?*

We suggest that the Executive Committee review the list of public commentors at the time of the meeting and agree on a plan for managing the public comment periods. The Executive Committee can gauge whether people have not shown up to present their testimony, whether there has been a lot of duplicative testimony that is likely to be able to handled without

additional questions from the Board, and whether there is a commenter on deck who's likely to present a unique viewpoint or address a particularly pivotal point. This can only be determined during the meeting as the decision relies on not only the amount of public comment but also the topics that arise during commentors' presentations.

6) *Should the time allocated be flexible or related to the number of requests?*

The time allocated for public comments should be related to the number of requests, but in no case should less than 3 minutes be allotted to each commentor. Every attempt should be made to allocate 5 minutes per commentor, with reductions to 4 minutes only when absolutely necessary, and to 3 minutes only when the number of commentors is overwhelming.

In the past, hearing comments through the evening was not reasonable for either the Board or the public. However in the case of meetings that elicit an extraordinary number of commentors, extending the adjournment time for days including comment periods for no more than one hour, should be considered.

7) *Should the public comment time allowed remain as it is now in the PPM?*

Yes, we think it should not be changed.

8) *Is some other designation of time(s) more appropriate?*

No comment

9) *Should public comment through live/"remote" means be allowed and/or encouraged?*

No, this option would add to the complexity of the situation, in our opinion. Commentors who cannot attend the meeting are already accommodated through the option of submitting written comments or through presentation of the comments by proxy during the meeting.

10) *Given the limits of time, should the recent revisions to the PPM to clarify proxy procedures (p27) continue?*

Yes.

*Or, should the proxy practice be abolished?*

No, proxies are important so they should not be abolished. However, NOC finds that recent revisions limiting the number of proxies to 1 person are very helpful in curbing abuse of this procedure. It is not appropriate to prohibit presentation of a proxy following an individual's own comments – we think that policy too restrictive and that it increases scheduling problems. We suggest allowing a proxy comment to be presented immediately following a commentor's own testimony. To facilitate this, NOSB could request that proxy scheduling happen prior to the meeting, following the commentor receiving notification of their own speaking time. We do not recommend that NOSB require all proxies to be scheduled in this manner because some proxies are presented based on an urgent need to comment that arises during the meeting.

We also suggest considering the idea of limiting the number of proxies to a small percentage of the in-person public comment. However, as referenced in our answer to Question #9, we would not support a system that eliminated the opportunity for proxies because proxies offer a chance for the Board to hear the opinions of those who cannot be attend an NOSB meeting in person.

*11) How can this function (NOSB serving as an advisory role) best serve as a public-private partnership that is responsive to the concerns raised by the broader organic community?*

First, we support the concept of the NOSB developing “Sense of the Board” statements following its meetings. Such statements can be used to convey any over-arching issues to the Secretary that were discussed during the Board meeting. This idea reinvigorates a tool that previous Boards used routinely to convey information about issues of importance to the organic industry and its stakeholders, which may not even have been officially represented on the meeting agenda. In NOC’s experience, “Sense of the Board” statements were used as yet another link in the public private partnership. As noted in our discussion of the GE Statement, (page 2 of these comments), such statements do not necessarily require posing solutions to an issue, it is enough to simply bring the issue to the Secretary’s attention.

Second, it is important to keep an open, transparent line of communication between the Board and the public at all times. NOC asserts that this is true not only when public comment periods are open. For example, we think it is important for the public to be able to communicate with the board while they are doing committee work. Communication at this important time can provide answers to questions arising while Committees are developing their recommendations, resulting in inclusion of a wider range of ideas and options than may otherwise be available.

#### **Administrative Team**

NOC supports the Recommendation of the Committee in developing an Administrative Team

#### **NOSB Member and Leadership Transition**

NOC supports the Recommendation of the Committee in clarifying NOSB Member and Leadership transition.

### **MATERIALS COMMITTEE**

#### **Research Priorities Framework**

As an organization that has commented often on the important role of USDA research in providing information about issues identified through the work of the NOP and NOSB, NOC is heartened to see this draft framework for NOSB to identify research priorities. This document is a great beginning to initiate the conversation about research needs within USDA as well as throughout the entire organic community.

We will be submitting substantive comments at the November meeting, as well as in an ongoing manner in the future.

#### **Aquaculture**

NOC suggests that answers to the questions/trial balloons about aquaculture materials raised by the committee need to be re-framed so that they are firmly linked to specifically defined aquaculture systems that are congruent with other systems of organic production. We urge NOSB to begin the expansion of organic standards into aquaculture to address only the scope of

systems that raise herbivorous fish in inland enclosures. We propose this idea because such systems can provide experience with organic aquaculture systems while minimizing known problems associated with aquaculture systems outside of this scope. We suggest that standards must cover:

- Regulation and monitoring of control inputs, outputs, and fish health and welfare.
- Feeding fish 100% organic feed, as required for all organic livestock and poultry producers under OFPA. Wild fish meal and oil must be prohibited in feed.
- Escapes of farmed fish into inland waterways or the ocean must be prohibited.
- Fish must be reared in closed, recirculating systems that do not release waste or water into waterways.
- Aquaculture wastes can be used on farms as fertilizers provided that run-off is contained and does not reach inland waterways or the ocean. Wastes from organic aquaculture facilities must be composted and otherwise managed in the same way that livestock waste is required to be handled under the organic standards.
- Stocking rates for organic herbivorous fish must avoid the problems of overcrowding common in conventional, industrial, aquaculture systems.
- Antibiotics, genetically engineered inputs, hormones and any other substances that are prohibited under OFPA cannot be used in certified organic aquaculture systems, without exception. This includes antibiotics administered directly to fish or added to feed and water. Extra-label uses of drugs and experimental drugs must also be prohibited.

## **LIVESTOCK COMMITTEE**

### **Animal Welfare Standards**

NOC is concerned about relying on heavily prescriptive or quantifiable measures to define the limits of animal welfare standards because standards written in this way don't allow either the farmer or certifier any room for considering individualized solutions that are suitable for the wide range of production systems used by organic livestock producers of differing scales and located in different parts of the country.

As one example, some operators' livestock production systems rely on multiple species inhabiting the same area (pasture or paddock) at the same time, which makes space calculations extraordinarily difficult to implement. In addition, understanding and quantifying the individual needs of the wide range of domesticated animal species is a daunting task.

Instead, our suggestion is to write the standard as a list of mostly qualitative (descriptive) measures based on the "Principles of Organic Production"<sup>4</sup> and then rely on the use of a

---

<sup>4</sup> NOSB Principles of Organic Production and Handling, Adopted October 17, 2001

comprehensive Organic System Plan to allow a producer to explain the details of a specific production system to a certifier.

For instance, we think vegetative cover is one of the significant criteria for evaluating a quality organic livestock system. In discussions regarding the role of “outdoor access” in animal welfare, it is often clarified that this outdoor area must not be a dirt or cement pad, but instead, it must have vegetation in order to provide benefits such as 1) animal natural behavior; 2) animal health and hygiene; and 3) environmental benefits.

We propose making all livestock operations comply with one strong, **qualitative** standard. Qualitative standards are used in the NOP regulations, as well as other organic rules around the world. For example, see the NOP standards on crop nutrients and soil fertility in §205.203.d. This standard starts with an introduction that is based on organic principles and uses subheadings to provide more definition to the “edges” of the standard, thus making it easier for producers and certifiers to know which practices are compliant and which are not. We have attached NOSB Organic Principles passed by this board in 2001.

We understand that the development of enforceable qualitative standards is difficult. In the short term we can present some examples of how this system might work, but we also encourage the Board to engage the assistance of a standards developer who has experience with codifying organic standards .

We have learned from the implementation of the new pasture standard, which contains many quantitative limits, that while this standard has increased consistency , it has also burdened farmers and certifiers with paperwork. The result has been less time for farmers to devote to innovating and perfecting their organic production systems unique to their operation. The reliance on quantitative measures in the pasture standards has also encouraged inspectors/certifiers to focus on the paperwork during assessment of farm operations as opposed to focusing on an assessment of the whole livestock system.

### **NOSB Minority Opinion**

As examples of the use of qualitative standards, NOC supports the minority opinion as it relates to poultry and swine. We think this draft describes goals for maintaining the welfare of the livestock while also considering the other goals that organic production systems must meet. For example, offering poultry a place to scratch in living soil, to peck at insects and to consume grasses and forbs promotes health and well being for the birds. At the same time, the standard must recognize that the birds’ actions can denude the soil, leaving it bare and lifeless over time. Clearly, a ‘bare earth’ condition would contradict other organic standards that require maintenance of soil health.

We support the concept of assessing the stocking rate of an outside yard on the qualitative measure of the maintenance of living vegetation<sup>5</sup>. Compliance with this benchmark is not only

---

<sup>5</sup> We have suggested calling it “maintaining” living cover instead of “providing” so that vegetation would not just be provided at the beginning of a season, but maintained so that the chickens could not scratch away all of the vegetation.

dependant only on the size of the flock or of the yard, but rather to a system of interrelated management choices.

A standard based on a qualitative description of an outdoor chicken yard supports implementation of systems that work toward satisfaction of not only animal welfare standards, but also the organic principals such as “optimizing soil biological activity” and of “minimizing soil erosion.” In contrast, a quantitative limit such as a number of square feet/bird, although measurable, may not be as effective as meeting the combination of goals that result in a successful organic system<sup>6</sup>. For example, five square feet of outdoor access on concrete or on completely lifeless soil, does not provide the same health-promoting characteristics for the birds as does two square feet of living vegetation, and clearly the first option does nothing to address organic principals related to maintaining the health of the soil.

For example, here are examples of two different systems that could meet a qualitative-type standard that is based on maintenance of vegetative cover:

- A farmer could provide 2 square foot of outdoor access per bird, but have an intensive rotation system, where the birds are in this area for 4 weeks, and are then moved to another area with fresh vegetation. The first area can be reseeded if necessary, and even irrigated to promote vigorous growth.
- A poultry producer whose organic system plan relies on the use of mobile units to allow the chicken access to the outdoors could change the area for their birds as often as once per day to provide them with vegetated ground.

### **Qualitative Standard with Quantitative Measures**

Focusing on a qualitative standard does not necessarily mean that the use of some quantitative measures must be completely precluded, as long as these measures are not taken as individual hard-numbered benchmarks that each must be met separately. Instead, quantitative measures can be used to create a minimum requirement that must be met separately.

A qualitative standard can address multiple goals by including multiple subsections in the standard. In the case of the poultry standard, birds should also be able to stretch their wings and have enough room so that they can “get away” from each other. Chickens in particular, have a natural instinct to prey upon weak individuals in their flock so having enough space to allow birds “lower on the pecking order” to run or fly a distance away from their tormentors promotes the health of both the flock and its individual members. It must also be understood that all of the birds in a flock will not be outside of the building at one time; some will be inside laying eggs, eating, drinking or just choosing to be indoors for a time. In writing the standard so that it recognizes the organic principle of “Designing husbandry systems adapted to the species' needs”, we could add a subsection that prevents overcrowding by including either a qualitative or quantitative requirement:

---

<sup>6</sup> Organic systems must address more than just animal welfare; therefore animal welfare standards for organic may be quite different from those developed by animal welfare organizations, which are only concerned with welfare issues.

- Using a descriptive approach such as “give birds the ability to stretch their wings and find refuge areas away from other birds”;
- Using a quantitative approach such as “each bird must have at least 2 square feet on space”

We support the minority opinion, noting that it meets our goals of relying on many qualitative standards that address the poultry’s natural instinct to seek out refuge under trees, brush or tall grass, as a protection against predators and to find refuge from the heat of the sun.

NOC does not support the majority opinion’s restriction of beak tipping that requires tipping to be performed only at the hatchery. [NOC does not support beak trimming whatsoever]. Beak tipping is not offered by all hatcheries and can be performed on-farm within the first few days of a bird’s life, with minimal added stress to the birds. In addition, tail docking and other physical alterations should be allowed when the body part has been injured and this amputation is necessary for the health and well-being of the animal. In other words, we support an allowance for emergency use of tail docking.

Body scoring is an example of a quantitative measure that does cross over well into application in organic livestock production systems. This technique was a tool developed for conventional agriculture, so it does not account for the impacts of raising animals in a more ‘natural’ organic system. As an example, confinement systems (not allowed in organic) may result in animals with high scores because these animals don’t move very much, are not subjected to outdoor conditions (mud, rain, etc.), and are fed specific rations for weight gain. Yet very healthy organic animals that are raised mainly outdoors may score lower because the scoring systems do not allow consideration of varying environmental conditions and normal changes in pasture quality that are required parts of organic livestock production systems.

The recommendation on Animal Handling, Transport and Slaughter, while well intentioned, would have a chilling effect on the availability of certified organic slaughter facilities due to its requirements for slaughter facilities to possibly have organic inspectors present at all organic slaughter events to verify the requirements listed are implemented. NOC believes more input is needed from both farmers who use organic slaughter facilities, as well as the facilities themselves on how these requirements would affect their activities. At this time, many farmers who raise their animals organically, do not have access to organic slaughter facilities and are forced sell their meat as “natural” rather than organic due to the lack of organic slaughter facilities. As a result, NOC is concerned that the Committee’s recommendations would reduce the number of slaughter facilities who could process organic animals, thus decreasing the availability of organic meat in the marketplace.

We thank the Board for its work, and appreciate the opportunity to make this public comment.

Sincerely,



Liana Hoodes, Director