



Oregon Tilth Certified Organic

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October 6, 2006

The National Organic Standards Board
c/o Valerie Frances, Executive Director, NOSB
1400 Independence Avenue, SW
Room 4008 – South Building, Ag Stop 0268
Washington D.C. 20250-0200

RE: Recommendation Relative to “Agricultural” and “Nonagricultural”

Dear NOSB Handling and Materials Committee members:

Thank you for the opportunity to comment on the NOSB’s Recommendations Relative to “Agricultural” and “Nonagricultural” Substances for National List Consideration. Oregon Tilth appreciates the NOSB’s continued efforts to provide clarity and consistency regarding this complicated issue and would like to offer the following support, suggestions and concerns:

Recommendation #1 - Oregon Tilth supports the change to the definition of ‘nonagricultural substance’. This change will allow the Final Rule to accurately serve this growing and innovative industry by supporting the organic production of several products that could otherwise be deemed non-agricultural and therefore considered ineligible for certification and/or not be subject to commercial availability requirements.

Recommendation #2 – Oregon Tilth supports further development of the Decision Tree in order to provide greater consistency and clarity in its application. We would like to introduce suggestions for further development within these comments, but also plan to provide further explanation and example Decision Trees at the NOSB meeting during public comment.

Keeping with the proposed Decision Tree:

- **Box #1** - We urge the NOSB to consider and address whether certifiers should evaluate approval requests for organic microorganisms (i.e. yeast) to the NOP livestock requirements or to NOP organic handling requirements.
- **Box #3** - We urge the NOSB to maintain this box independently from the definitions of synthetic and non-synthetic unless the definition of non-synthetic is changed to allow for a chemical change via mechanical/physical processes described under § 205.270(a).
- Additional boxes should be added. **Box #5** - Have any other ingredients, additives, carriers or preservatives been added to the substance in question? No – Approve as Agricultural. Yes - Go to **Box #6** - Are they agricultural and/or non-synthetic and synthetic substances consistent with the National

List (§ 205.605)? Yes – Agricultural. Continue to evaluate for use in “organic” or “made with” product.
No – Prohibit based on presence of non-allowed non-agricultural substances.

Another approach is to greatly simplify the Decision Tree by asking the following question:

- **Box #1:** Can the substances in question be organically produced? This goes directly to the root of “agricultural” versus “non-agricultural” and is consistent with the history of OFPA and current NOP regulations. If the substance can be produced in accordance with NOP crop, livestock, wild harvest, or handling requirements, then it must be agricultural. Assessment of the material on behalf of the NOSB or the certifier would then be a matter of collecting the necessary information to determine whether the substance could be certified (manufacturing description, ingredient disclosure, etc.) according to the appropriate standards within the Rule. If the substance can’t be produced organically at the time of assessment, or at any time in the foreseeable future, then it should remain on or be petitioned to § 205.605. If it’s not or can’t be produced at the time of assessment, but can in the foreseeable future, it should be evaluated for listing on § 205.606 for use in “organic” products, or evaluated as a non-organic agricultural in a “made with” product. For substances deemed agricultural, **Box #5 and Box #6** as proposed above would apply.

Under this working thought, yeast and other microorganisms used in the manufacture and preparation of foods can be considered “agricultural *products*” as they are grown on/produced using primarily (95%) agricultural material and are intended for human or livestock consumption. While yeast may not be harvested on the farm, it is a product in which its manufacturing formulation relies on farm products. This approach would 1) eliminate the need to define microorganisms as livestock; 2) require a comprehensive review of the substance in question in order to assess its eligibility as organic; and 3) support the production of organic products by placing commercial availability requirements on products that are or could be sold as organic.

Recommendation #3 – Oregon Tilth supports further consideration of the National List substances that would be in conflict with the proposed Decision Tree, if accepted as is. The proposed Decision Tree guidance conflicts with more than the two substances (yeast and dairy cultures) addressed in this recommendation. When produced using biological processes or mechanical/physical processes, examples include but are not limited to: microorganisms; enzymes (include egg white lysosyme); vitamins; natural flavors; L-malic acid; citric acid; lactic acid; glycerin, tartaric acid and xanthan gum. In the Background text provided for this recommendation, enzymes and vitamins were included as examples that would be considered agricultural. However, they were not included for movement to § 205.606?

Additionally, a “technical move” from § 205.605 to § 205.606 does not seem appropriate for substances currently available in organic form. The proposed definition change necessitates removal of certain substances from § 205.605 that would be classified as agricultural as a result of the new definition. A documented assessment on their commercial availability for inclusion on § 205.606 should be conducted.

Once again, Oregon Tilth would like to thank the NOSB for their ongoing work and commitment to the organic industry.

Respectfully submitted,

Gwendolyn Wyard on behalf of Oregon Tilth
Processing Program Reviewer
Oregon Tilth, Inc.