

DRAFT
NATIONAL ORGANIC STANDARDS BOARD
MEETING MINUTES
October 19–20, 2002

The National Organic Standards Board meeting of October 19–20, 2002, was attended by 14 members:

Members Present:

Owusu Bandele	Rosalie Koenig
Kim Burton	Michael Lacy
Dave Carter	Goldie Caughlan
Kevin R. O'Rell	Nancy Ostiguy
Ann Cooper	Jim Riddle
Rebecca Goldberg	George Siemon
Dennis Holbrook	
Mark King	

National Organic Program (NOP) Staff:

Barbara C. Robinson, AMS/Deputy Administrator, Richard Mathews, Program Manager, Katherine Benham, and Robert Pooler.

CALL TO ORDER: October 19, 2002, 8:05 a.m., Presiding: David C. Carter, Chair, (pp. 5–13)

Mr. Carter opened with the introduction of the NOSB members. He stated that there will be a two day meeting before the celebration of the implementation of something that has been in the works for well over 30 years. He also understands that there are a lot of approval jitters and concerns about things that will happen before October 21st, however, he believed that we all will have a chance to stand up and celebrate what has been done and building a whole new part of the agriculture in the food system.

He also stated that the NOP and NOSB will have a lot of work to do in the next two days and there will be a good opportunity for a lively exchange of debate, but will expect it to be done in a professional and courteous manner.

He stated that the board will be adopting a Board Policy Manual at this meeting, and the Executive Committee has recommended using an operating policy for this meeting that the proxies are allowed as long as one additional proxy in addition to your speaking time, it will be allowed only if it was filed in writing by the person offering the proxy in advance, but no speaker will have more than 10 minutes for comment period.

He also asked that everyone sign up in advance for public comment and sign the attendance sheet.

AGENDA APPROVAL

The chair asked for any comments, corrections or additions to the agenda.

MATERIAL COMMITTEE: Ms. Burton stated that there are some changes to the agenda regarding the materials for crops: Potassium silicate material will not be review, the TAP was not completed in time for the meeting; Livestock: several materials have been deferred until the contractor supply us with supplemental information. She stated that they provided us with three supplemental reports, however, she went through the agenda and based upon the fact that they

NOSB OCTOBER MEETING MINUTES

Page 2

did not get the reports in, there the following materials have been deferred: Calcium propionate, Furosemide, and Proteinated chelates.

PROCESSING COMMITTEE: Mr. King stated the Processing committee attempted to get a speaker to do an overview of the ion exchange. However, due to the short time frame, we had lost some 30 days to acquire someone and the criteria was for an expert, to be object and would not charge a fee.

INTERNATIONAL COMMITTEE: Ms. Goldberg stated that the it will deferred its recommendation regarding US/EU Equivalency.

Mr. Carter stated there were no other comments regarding the agenda, however in regards to livestock materials, the executive committee discussed the fact that they did receive some additional and incomplete information, and it was determine in order to make the right decision, that it was better to defer or delay rather than to based something on incomplete information.

Based upon Ms. Burton's comment regarding the materials, it was concluded that Livestock Committee will make the decision.

PUBLIC COMMENTS – October 19, 2002. (pp. 13–107)

The following individuals presented public comment. Each person's comments were recorded and transcribed for the record. Some individuals also presented written comments.

Transcribed comments, and where applicable written comments, can be found at the designed **ATTACHMENTS**.

Tom Harding, AgriSystems – (p. 13)
Ken Chambers, Colorado Sweet Gold (p. 17)
Richard Siegel, Attorney representing Colorado Sweet Gold, (p. 24)
Grace Marroquin, Marroquin International, (p. 35)
Tom Hutchinson, (p. 41)
Jim Pierce, (p. 44)
Dan Leiterman, Crystal Creek Company, (p. 55)
Bill Donovan, Apple Grower, CCOF, (p. 58)
Jim Cranney, US Apple Certification, (p. 74)
David Engle, Midwest Organic Services Association, (p. 87)
Emily Brown–Rosen, Organic Materials Review Institute, (p. 92)
Marty Mesh, (p. 99)
Mark Keating, USDA/AMS, (p. 101)
Kim Burton, Proxy for Lauren Morbeta, Pure Foods, (p. 105)
Kim Burton, Proxy for Joseph Stern, Organic Ingredients and (p.107)

NOSB OCTOBER MEETING MINUTES

Page 3

NOP UPDATE – Barbara Robinson and Richard Mathews (pp. 110 –

WEBSITE UPDATE (p. 110)

Ms. Robinson invited everyone to review the NOP website and stated that it has been revamped and it is now user friendly.

PETITION TO FILE LEGAL ACTION (p. 110)

Ms. Robinson stated that the Center for Food Safety has filed a petition for legal action with the Secretary, alleging that we have consistently refused to establish a peer review panel. It is now with the USDA lawyers, and not sure what the outcome will be at this point because of trying to get to the implementation, and haven't had time to discuss with the Administrator, Associate Administrator, and the Secretary.

WHOLE FOODS MARKET (p. 111)

Ms. Robinson stated that the NOP Implementation event is on the Secretary's calendar and is hopeful that she will attend.

BUDGET (p. 111)

Ms. Robinson stated that we're in a new fiscal year with a smaller budget.

ACCREDITATION (p. 111)

Mr. Mathews stated that we have 6 new certifying agents that are being accredited. The letters have been signed for 3 of them, 2 of them are on the Administrator's desk for signature, and we'll get at least 1 more the first part of the week. That will put us in the neighborhood of 66 accredited certifying agents at the start of the next phase.

STREAM OF COMMERCE (pp. 112–119)

Mr. Mathews stated that the issue for a lot of people was what do you do about product that was not product to the NOP?

He stated that there are only two kinds of products out there. There's that which is produced to the NOP and that which is not produced to the NOP. Everything that is produced to the NOP has to be labeled in accordance with the NOP. Things that were not produced to the NOP, we consider to be in the stream of commerce at whatever stage they're at. They were not certified as produced to the NOP. Many of those products are produced by certifying agents who are not accredited to certify to the NOP, and what we have said is that all product may continue to carry the designation of that word organic until used up. We expect that to be relatively quickly, hopefully anyways. Certifying agents should be inquiring as to how much stock is on hand, how long will it take them to get rid of it, and then monitoring that.

Products that was not produced to the NOP, it was never indicated that it could be labeled as produced to the NOP. The regulations are very clear on what you have to do to be labeling it and carrying the organic seal.

NOSB OCTOBER MEETING MINUTES

Page 4

Finally, Mr. Mathews stated that he sympathize with those manufacturers and producers who have old products, but the old product cannot claim that it was produced to the NOP and it cannot carry the organic seal of the USDA. However, that does not prevent them from using the new labeling scheme. In fact, it's a good idea that they use the new labeling scheme. What they cannot say is that we produced it to the NOP and here, by the way, is the USDA seal. And that's what we've tried to convey through our policy statement on stream of commerce.

Mr. Siemon and Ms. Burton stated that there was confusion up until September 12th, that we had to be in compliance with the NOP rule and that we were told that we could use stream of commerce raw materials. Most manufacturers had new labels made under, and on the 21st you have to use new labels, and before the 21st you can use up your old labels and can't use the seal until the 21st. She stated that it's not stated in the rule or in clarification documents that the seal with raw materials could not be used in stream of commerce. Maybe negligence on manufacturers part, and the only link to the seal was the position on the label and that it could not be used until the 21st. No one thought that it couldn't be use with raw materials that weren't in the stream of commerce, and this change is affecting hundreds of manufacturers.

Mr. Mathews stated that the concerns will be taken back and ask for copies of the letters to enter into further discussion with the attorneys. There was further discussion on stream of commerce.

STATUS OF MATERIALS APPROVED BY THE NOSB SINCE MARCH OF 2000 (pp. 119–

Mr. Riddle stated that it was his understanding that there's not a Federal Register notice to officially announce approval of materials. He asked how will producers and certifiers know with certainty that the materials that he Board has approved are indeed allowed with certain annotations?

Mr. Mathews stated that Arthur is assigned to this issue, and he has been busy with telephone calls. However, we are creating a listing that will go up on the website, with a statement that says that these are material that the NOP has recommended for addition to the national list. They are not sanctioned until they go through the rulemaking process.

He also stated that certifying agents who have clients who use them can use them as a minor non-compliance until the rule-making process is complete. This would be an example of a minor non-compliance that is only allowed during this transitional phase from the old system to the new system. At that point, down the road that kind of minor non-compliance would become a major non-compliance because it would be using a prohibited substance.

COMMITTEE MATERIAL ACTION ITEMS

MATERIALS ACTION ITEMS

Kim Burton stated that the following materials have been deferred until the May 2003 meeting:

- **POTASSIUM SILCATE – not available**

NOSB OCTOBER MEETING MINUTES

Page 5

- **MINERAL OIL – Recommend to defer the vote not happy with the TAP**
- **CALCIUM PROPIONATE – not available**
- **FUROSEMIDE – not available**
- **PROTEINATED CHELATES**
- **ATROPINE – send back to TAP reviewers**

CROPS MATERIALS, Owusu Bandele, Chair

- **BUTYLATED HYDROXYTOLUENE (BHT)**

Proposed change to 205.601(f) pheromones – includes only EPA exempt pheromone products, EPA-registered pheromone products with no additional synthetic toxicants unless listed in this section, any inert ingredients used in such pheromone formulations that are not on EPA list 1 or list 2, provided the pheromone products are limited to passive ***polymer*** dispensers. Pheromone products containing only pheromones, active ingredients listed in this section, and list 4 inerts may be applied (w/o restrictions) at any time and in any form.

MOTION: Owusu Bandele

SECOND: Rose Koenig

Amend to strike “***at any time and in any form***” and to add “***applied without restrictions.***”

Discussion: Kim Burton asked about passive polymer dispensers – to make sure that we are not limiting ourselves on the annotation. Mr. Bandele stated that the reviewers recommended it for plastics. Petitioners are using polymer dispensers, and it is acceptable. The reviewer recommended it for crops, and are there uses for livestock – petitioner stated no other use of the material in livestock. Mr. Riddle stated that on the labeled on the product of proper disposal – petitioner disposal on label, what you do with a product – there is no grower who is going to remove these dispenser because it would be very costly. Ms. Goldberg stated that the key idea is that we want to say passive dispenser – why not say that, not to limited that, and would like clarification.

MOTION: Becky Goldberg

SECOND:

Amendment to strike the word “polymer.” **Vote: 14 Favored, 0 Opposed**

MOTION: George Siemon

SECOND: Nancy Ostiguy

Friendly amendment to add to 205.603(e) to the livestock National List. Ms. Burton stated that we are only approving the annotation. **Vote: 10 Favored, 4 Abstained, 0 Opposed**

Back to the original motion for crops and livestock to both section. Mr. Bandele read the original motion.

Vote 14 Favored, 0 Opposed

- **POTASSIUM SULFATE**

MOTION: Owusu Bandele

SECOND: Dennis Holbrook

Synthetic, not to add the product to the National List. **Vote 13 Favored, 1 Absent, 0 Opposed**

NOSB OCTOBER MEETING MINUTES

Page 6

▪ 1,4 DIMETHYLNAPHTHALENE (1,4-DMN)

MOTION: Owusu Bandele

SECOND: Nancy Ostiguy

Synthetic, should not be added to the National List. **Vote 12 Favored, 1 Absent, 1 Abstained, 0 Opposed**

▪ LIST 3 INERTS ALLOWANCE

MOTION: George Siemon

SECOND: Owusu Bandele

To allow Class 3 inerts that have tolerance in food products to be used in crop pesticides if pesticides are not using materials on national list. To identify any Class 3 inerts that need review and make that a priority for material review.

MOTION: Mark King

SECOND: Jim Riddle

Mark King motioned to the Board to continue this discussion on Class 3 inerts before voting

MOTION: Kim Burton

SECOND: Mark King

To table the motion until after the lunch break. **Vote: 13 Favored, 1 Absent, 0 Opposed**

Break for lunch – 12:15 p.m. – RECONVENE – 1:30 P.M. on October 20, 2002

SUBSTITUTE MOTION: Kim Burton

SECOND: Mark King

"The NOSB recommends that any list 3 inert material forwarded for a technical review be allowed for use until that material is approved or prohibited by the Secretary of Agriculture." Chair to assigned a task force to work with EPA. **Vote: 12 Favored, 1 Absent, 1 Opposed**

LIVESTOCK MATERIALS, George Siemon, Chair

▪ FLUNIXIN

MOTION: George Siemon

SECOND: Nancy Ostiguy

For use to added to 205.603, synthetic substances for organic livestock production withhold time shall be double the FDA requirement

MOTION: Rose Koenig

SECOND: Owusu Bandele

To deferred the material until a telephone meeting can be established. **Vote: 3 Favored, 1 Absent, 10 Opposed – Motion Fails**

NOSB OCTOBER MEETING MINUTES

Page 7

VOTE ON ORIGINAL MOTION: Vote: 11 Favored, 2 Opposed

Feed additives recommendation – **Available for use after 10/21/02, based on NOP feed additive recommendation**

ACCREDITATION COMMITTEE – Jim Riddle, Chair

MOTION: Jim Riddle

SECOND: George Siemon

Grower Group Certification Criteria Recommendation – see final document posted to website.

Vote: 13 Favored, 1 Abstained

LIVESTOCK COMMITTEE – George Siemon, Chair

DAIRY ANIMAL REPLACEMENTS

The Livestock Committee recommends that, on existing organic dairy farms all replacement or expansion dairy animals shall be under continuous organic management from the last third of gestation. It is recommend that until 10/21/05, animals shall be under continuous organic management beginning no later than one year prior to production of the milk or milk products that are to be sold, labeled, or represented as organic.

MOTION: George Siemon

SECOND: Nancy Ostiguy

To amend the motion and delete the second sentence. **Vote: 10 Favored, 2 Opposed, 2 Abstained**

MOTION: George Siemon

SECOND: Jim Riddle

EXCIPIENTS

The NOSB recommends that excipients be defined as follows: Excipients are substances other than the active ingredient(s) that are used in the manufacturing process or found in the finished livestock pharmaceutical product. The primary function of excipients are as binders, disintegrants, fillers, lubricants, flow enhancers, compression aids, colors, sweeteners, preservatives, suspending/dispersing agents, film formers/coatings, favors, anti-microbials, and printing inks. Excipients may be used to transport the active drug ingredient to the target site, slow the release of the drug, enhance absorption, flavor or color, or disintegrate or stabilize the drug.

MOTION: Nancy Ostiguy

SECOND: George Siemon

The committee recommends that excipients be defined as follows (see document) and the addition of a new 205.603 (h). **Vote: 12 Favored, 2 Abstained**

CROPS COMMITTEE – Owusu Bandele, Chair

NOSB OCTOBER MEETING MINUTES

Page 8

HYDROPONIC

Mr. Bandele stated that the "Guidance Document for Hydroponic" is not a guidance doc or a recommendation. The document does not require an action item. However, please notify him if there's any feedback from the Board. Richard Mathews stated that the hydroponic is covered, and if the committee thinks that there are better standards, they need to submit it.

PLANTING STOCK

Rose Koenig stated that this is just a Q/A for clarity document to be posted. The language can be change, but it's mainly for growers.

MOTION: Rose Koenig

SECOND: Nancy Ostiguy

Recommend the Q/A to the NOP for approval and posting to website. **Vote: 11 Favored, 3 Abstained**

Richard Mathews stated that the NOP will not comment on the recommendation, however will review for compliance.

COMPOST TASK FORCE

MOTION: Owusu Bandele

SECOND: Nancy Ostiguy

Motioned to react and to be chair by Dennis Holbrook and Eric Sideman. **Vote: 14 Favored**

NOSB OCTOBER MEETING MINUTES

Page 9

PROCESSING COMMITTEE – Mark King, Chair

PROCESSING TASK FORCE

MOTION: Mark King

SECOND: Kevin O'Rell

Recommends that direct and secondary direct food additives are subject to NOSB review. Indirect food additives are not subject to NOSB review. (See Final Document). See addendum to be review and posted for comments. Moved that the NOSB accept the final draft with the addendum approve. **Vote: 14 Favored**

WHEN HANDLING BECOMES PROCESSING FOR PRODUCERS & RETAILERS

MOTION: Mark King

SECOND:

FIRST DRAFT: Guidance Post harvest handling vs. processing, recommend to NOP for consideration and legal review – simply for crops not for livestock. Motion to strike the words, “farmers market” on the second page, 2 bullet paragraph. No Vote Taken

ADJOURNMENT – Sunday, October 20, 2002 – 5:00 p.m.