

NATIONAL ORGANIC STANDARDS BOARD MEETING SUMMARY

April 28–30, 2004

The Best Western Inn of Chicago, Buckingham Room
Chicago, Illinois

The National Organic Standards Board (NOSB) meeting of April 28–30, 2004, was attended by 13 members:

NOSB Members Present:

Mark King, Chair
Rebecca Goldberg
Goldie Caughlan
Nancy Ostiguy
David Carter
Andrea Caroe
Ann Cooper

Jim Riddle, Vice Chair
Michael Lacy
Kevin O'Rell
Kim Dietz, Secretary
George Siemon
Rosalie Koenig
Absent Members: Owusu Bandele
Dennis Holbrook (resigned)

National Organic Program (NOP) Staff:

Barbara C. Robinson, Agricultural Marketing Service Deputy Administrator; Richard H. Mathews, NOP Program Manager; Katherine Benham, Arthur Neal, Keith Jones, Toni Strother, Bob Pooler, Darcie Priester, NOP Program; and Anita Okrend, USDA Science and Technology Programs

Mark King thanked and welcomed everyone to the meeting and had each member introduce him/herself. Mr. King stated that the Board will have some interesting topics to discuss and deliberate over the next few days and appreciated everyone's positive focus and input.

Approval of the Meeting Agenda: – [OPEN SESSION – 8:00 a.m.]

Mr. King asked if everyone had a chance to review the agenda and moved for approval. Mr. Carter seconded. The agenda was unanimously approved. [See Discussion Document](#)

Approval of Meeting Minutes:

Mr. King directed the Board members to the October 2003 meeting minutes located in the meeting book at the first tab, and asked if there were any proposed changes or amendments – no response. Mr. Riddle moved for approval, and Mr. Siemon seconded. The October 2003 minutes were unanimously approved. [See Discussion Document](#)

Executive Committee Conference Call Minutes:

Mr. King stated that the executive committee meetings were listed in the meeting book and posted on the website for review and informational purposes. [See Discussion Document](#)

Announcements:

Mr. King announced that Mr. Bandele could not attend the meeting for medical reasons, and our thoughts are with him for a quick recovery.

Mr. Riddle announced that a letter went out to the Board last week informing them of the formation of an Accredited Certifiers Association, and wanted to mention that for the record. He stated that there is a need for a network, and a professional association for accredited certifiers. He also informed everyone that this is not an inspectors association. It is a similar organization for the certifiers that are USDA-accredited. The Accredited Certifiers Association is housed at an interim address at the Vermont Organic Farmers, NOFA–Vermont office. A scientific study was published in the Renewable Agriculture and Food Systems, entitled,

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“Profitability of Organic Cropping Systems in Southwestern Minnesota.” A 10 year study was conducted on an organic four–year crop rotation versus 2–year conventional systems, and according to the following statement from the abstract, “with premiums, the 4–year organic strategy had net returns significantly higher than conventional systems. Without premiums, the net returns were statistically equal”, and they were looking at yields and profitability in this study and finding that even without organic price premiums it was equivalent profitability. For more information review the Renewable Agriculture and Food Systems, Volume 119, pages 135–146.

Mr. King also announced that Dennis Holbrook resigned from the Board because of challenging family situations – he’s not only managing his own farm but some of his father’s business. It appears to be a wise decision based on the work and professional demands; he will be missed. Nancy Ostiguy agreed to step in and take over where Mr. Holbrook left off with Crops Committee; Mr. King wanted that to be reflected in the minutes.

PUBLIC COMMENTS – April 28, 2004

The following individuals presented public comments. Each person’s comments were recorded and transcribed for the record; and some individuals also presented written comments. Transcribed comments, and where applicable written comments can be found at **DESIGNATED ATTACHMENTS**.

REGISTRATION SHEET [ATTACHMENT A]

SIGN-IN SHEET [ATTACHMENT B]

John Clark, Roseland Organic Farms [Pg. 8, [Attachment 1](#)]
Merrill Clark, Roseland Organic Farms [Pg. 14, [Attachment 2](#)]
Kathy Seus, Farm Program Manager, Food Animal Concerns Trust, [Pg. 23, [Attachment 3](#)]
Steve Ham and Dr. Girish Ganjyal, MGP Ingredients, [Pg. 30, [Attachment 4](#)]
Thomas Harding, AgriSystems International, [Pg.43, [Attachment 5](#)]
Jim Pierce, Organic Valley, [Pg. 50, [Attachment 6](#)]
Haim Gunner, EcoOrganics, [Pg. 54, [Attachment 7](#)]
Maury Johnson, NC+ Organic Seed, [Pg. 69, [Attachment 8](#)]
Ray Boughton, Lakeland Organics, [Pg. 80]
Nenad Filajdic, Product Development Manager, Valent BioSciences, [Pg. 90, [Attachment 9](#)]
Zea Sonnabend, CCOF, [Pg. 96]
David Engel, Dairy Farmer & Executive Director, MOSA, [Pg. 108]
Leslie Zuck, Director PCO, [Pg. 112]
Urvashi Rangan, Environmental Health Scientist, Consumers Union, [Pg. 119]
James Wedel, President, Texas Organic Cotton Marketing –
Marty Mesh Proxy, [Pg. 123, [Attachment 10](#)]
Marty Mesh, Quality Certification Services, [Pg. 138]
Steve Harper, Small Planet Foods, [Pg. 142]

BREAK FOR LUNCH – 11:45 a.m.

THE NOSB MEETING RECONVENED AT 1:30 p.m.

NOP UPDATE – Richard H. Mathews, Program Manager, NOP – (Pgs. 144–265)

Mr. Mathews presented for discussion a slide presentation on Cost Share, Budget, Compliance, Nominations, Accreditation, Materials Review, and NOP Directives. The text of this presentation can be found with the meeting transcripts. For more information, see the [NOP Update Slide Presentation](#).

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BREAK AT 4:00 p.m. AND RECONVENED AT 4:15 p.m.

PRESENTATION OF COMMITTEE DISCUSSION ITEMS

MATERIALS – Rose Koenig, Committee Chair

Review of Materials Process: [Pgs. 266–276]

Ms. Koenig gave a slide presentation on the Materials Process Update. The text of this presentation can be found with the meeting transcripts. For more information see the [Materials Process Update Slide Presentation](#).

Sunset Provision: [Pgs. 276–291] [See Discussion Document](#)

Ms. Koenig presented a report on the “Sunset Provision Report”, and stated that the document was posted one month in advance of the meeting and hoped everyone had a chance to review. She said that according to OFPA, the Board had the responsibility to come up with a policy for the provision, and they should look at all the sections within the N.L. going from 205.601 to 205.606 there are approximately 154 substances currently on the N.L. That number was not the same that NOP came up with, because she went through – one material was in multiple categories, and counted it as one rather than three. Assuming that if a review was to be done on chlorine materials that are listed, that review would cover all uses; and that’s how she came up with 154. Also according to OFPA, the N.L. exemptions and prohibitions must be reviewed within 5 years. The committee proposed as an internal policy and procedure for the review of substances in accordance with 7 USC 6517(e), that basically the NOSB and the NOP shall compile and manage a materials database for exemptions and prohibitions, including an official Sunset date for each substance on the N.L.

NOP stated that they are in the process of developing and working on a database. All materials appearing on the N.L. as published in the *Federal Register* Final Rule dated October 21, 2002, must be reviewed by October 21, 2007.

Based on the number of materials in any given 5 year period, the NOSB proposes to select approximately one–fifth of the N.L. for review to comply with that section of Sunset Provision. The Board did not vote for approval on the Sunset Provision document at this meeting because it was not into the NOP 30 days prior to the meeting. The NOP will publish the entire list of materials, 205.601 to .606 inclusive, which shall be reviewed by October 21, 2007, in the *Federal Register* and request public comments on the prioritization of materials for review.

Jim Riddle stated that the Board will need to vote to accept the committee’s report so that it’ll officially go on record as accepting the report. Ms. Koenig spoke to Richard via phone, and he indicated that he didn’t have a problem with the Board voting on it as a working document and then officially voting on it during the next meeting, and the Board should consider that. Ms. Koenig also received an email from Mr. Neal indicating NOP’s position on the Sunset Provision which is very different from the committee.

Mr. Neal commented that the e–mail that was sent was a well–vetted document with approval from senior management at USDA. NOP built upon the NOSB committee recommendation to take into consideration the Federal process that has to take place to reestablish these materials that have exemptions under the NOP.

Ms. Dietz wanted to know the status of the working draft document for the Sunset, and stated that because of the timeline the Board couldn’t vote, but take it as a committee recommendation and give it formally to the NOP. Mr. King stated that the Board should acknowledge it as a work in progress, it’s

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not perfect and there will be ongoing dialogue with the Department. He also asked if NOSB could work with NOP on the document, knowing that there is a sense of urgency to get the process started and move forward with the agenda today. Mr. Neal stated that he didn't see any changes being made to the NOP document. The NOP version allows for the collection of additional information on materials.

Ms. Koenig stated that she'll convene a meeting of the materials committee to discuss the document and before the end of the meeting provide at least a position, and after discussion, make a recommendation on how they can proceed.

Mr. Neal commented that the process should be driven by the comments, because they should take into consideration that that particular process helps the process to be nonarbitrary and noncapricious, and it's fully transparent to the entire public. Further, it should fit within the federal process.

ACCREDITATION, CERTIFICATION, AND COMPLIANCE – Andrea Caroe, Committee Chair

Compliance Procedures for Non-Compliances Recommendation: [Pgs. 291–293] [See Discussion Document](#)

Ms. Caroe stated that version 7 or draft 7 in the meeting book was obsolete and that there was a new version 8 with minor changes that was left in track mode so they could see the changes. The changes were based on comments, and the back section of the document discusses each of the comments that were received. She received comments from one commenter only and addressed every portion of those comments; and it was sent to the committee and Jim made some additional changes and there was none further. This has been voted on by the committee; the document has been around for a long time and hope to have a vote on it by the next day. One commenter asked for the word "major" to be used, and there is an opportunity for a hybrid, where they could put "major" in parentheses to keep the integrity of the language that's used in the Rule, and more clarification to the users of this document.

Mr. Riddle stated that most of the changes are on page 7, which is the addendum section, and that's where the definitions and the use of the word "major" non-compliance in parentheses to clarify the difference between minor non-compliances and major non-compliances. There are also some changes to the headings of the tables that have been recommended by the commenter.

CROPS – Nancy Ostiguy, Committee Chair

Ms. Ostiguy stated that the committee didn't have anything at that time but will address the issue on Compost Tea on Friday.

HANDLING – Kevin O'Rell, Committee Chair

Update on Materials Used as Food Contact Substances Report: [Pgs. 294–297] [See Discussion Document](#)

Mr. O'Rell provided an update on materials used as food contact substances that was submitted on April 15, it wasn't published for 30 days. He stated that it was the committee's intent to acknowledge food contact substances and give a quick update and then move on in our work plan. NOP did acknowledge that food contact substances were outside of the scope of the NOP or the NOSB for materials review.

The Board recommended the materials from past meetings to be added to the N.L. and there were six materials: activated carbon and periacetic acid, and four boiler water additives: ammonium hydroxide, cyclohexylamine, diethylaminoethanol, and octadecylamine, the materials should be considered as food

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contact substances. The Handling Committee recommended that since the materials were previously petitioned and approved, that the Board should include them on the N.L. Mr. O'Rell stated that he understands that there's confusion in the industry regarding food contact substances, however, the committee will prioritize their work plan to clarify the qualification of materials for the food contact substance list.

Ms. Dietz also commented that the confusion out there was two-fold: confusion on the materials that they did make a recommendation for, and the contact materials that never appeared on a docket. She said as a handler representative, she kept receiving calls regarding periacetic acid, saying that "my certifier said that I can't use it, well, it's a food contact substance and people don't know how to read the List. Therefore, until they understand how to read the List, and the public understands the issue of contact materials, those previously approved by the NOSB should be placed on the List. It's an acknowledgment and then the committee will go forward and try to hash out exactly how to interpret food contact substances for handlers. Mr. Riddle wanted to know if they would vote to accept as a committee report. Ms. Dietz stated that it was not sent to the NOP for a vote to accept this as a committee report. Mr. O'Rell stated that it was their intention to vote on it as a committee recommendation.

Mr. Riddle stated he appreciated the confusion that this attempts to clarify as far as the status of those six materials, but the whole food contact substance list doesn't fit our needs, and they've reviewed those materials on the food contact substance list and they have different names or they're combined with other ingredients, and is a more formulated product for specific use – this is a generic substance that fits the rest of our format for the N.L. Therefore, he supports moving that part of it forward.

Mr. O'Rell stated that he wanted the Board to a vote on that, and maybe have a discussion with the NOP. The committee was in favor of putting this to a vote of the full NOSB. The committee recognizes that these could also be considered food contact substances, but there needs to be a lot of clarification on food contact substances as far as the pre-market notification with the FDA on food contact substances, and the definition of it.

LIVESTOCK – George Siemon, Committee Chair

No committee reports.

POLICY DEVELOPMENT – Dave Carter, Committee Chair

Board Policy Manual Revisions/Action Item for a Vote: [Pg. 298] [See Discussion Document](#)

Mr. Carter stated that the committee only had two items: (1) the Board Policy Manual which is a living document that gets addressed as new policies come forth (they had two changes addressing confidentiality procedures – particularly with non-public information, confidential business information and how the Board handles that) and (2) the incorporation, or the substitution, of new materials review forms based on the forms developed by NOP and used at the last NOSB meeting. The committee will bring that forth for consideration.

Compatibility Recommendation: [Pg. 299] [See Discussion Document](#)

Mr. Carter circulated a draft of the statement on compatibility with organic production and handling. The process on that is that NOP requested a recommendation on the following question: What are the factors (reasons, issues, parameters, structures, limitations) and constraints that the NOSB should use to determine a substance's compatibility with a system of sustainable agriculture and its consistency with organic farming and handling?

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He stated that at the last meeting, the committee developed 13 criteria which was listed in the book and posted for public comment. They received six public comments, and the comments suggested that they drop the 13th item which was Item M: does the substance facilitate the development of new organic products? There was a lot of discussion which lead to dropping item 13.

Mr. Riddle also added that the draft, Pages 2 and 3, summarizes the comments received and explains how they were addressed.

PRESENTATION OF MATERIALS RECOMMENDATION

CROPS COMMITTEE – Nancy Ostiguy

Soy Protein Isolate [Pgs. 306–309] [See Discussion Document](#)

The material was petitioned for use as a fertilizer, and the committee recommendation was to return the TAP for additional information because it did not address the use of the material as a soil amendment. The TAP focused on food. The committee recommended deferral, and voted 3 Yes, 0 Nos, and 0 Abstained

6-Benzyladenine [Pgs. 310–314] [See Discussion Document](#)

The material was petitioned for use as an apple fruit thinner, and what it does is cause you to lose a certain portion of the fruit on the apple trees, eventually enhancing production. The committee's conclusions on the material was that it was agricultural, synthetic, and voted to reject the material because hand pruning is an alternative practice that is available and currently used. One of the quotes from the TAP that they used was: "Switching to chemical solutions as an alternative to farmers working in the field is not an example of sustainability, regardless of economic profitability." The committee voted 4 Yes, 0 Nos, and 0 Abstained, and the committee recommended rejection based upon failure on Criteria 2 and 3.

Urea [Pgs. 314–316] [See Discussion Document](#)

The material was petitioned for use as an insect fruit fly attractant. After the TAP was completed, the committee was informed that the material is not approved for the petitioned use. Ms. Ostiguy stated that as far as she can tell, nothing should be done on this one, and wanted to know if anybody had an alternative view. Mr. King asked if the Board should officially reject a material that the petitioned use does not have a legal label claim.

Ms. Dietz stated that in the past something similar to this happened and they withdrew the petition versus reject the material – if there's no EPA allowance for it, it's up to the petitioner to do that. Mr. Mathews commented that if there's no EPA allowance, we don't take action.

Hydrogen Chloride [Pgs. 317–320] [See Discussion Document](#)

The material was petitioned for use in cotton seed de-linting. The committee voted that the material was agricultural, and synthetic. They also voted to reject the material because it fails Criteria 1, 2, and 3. The material is extremely corrosive; very reactive, if released; very damaging to soil and plant life; and, as they had heard this morning, which is not true, that alternative organic acids may be use. The committee voted 4 Yes to reject, 0 Nos, 0 Abstained. The committee will continue to review the material.

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HANDLING COMMITTEE – Kevin O'Rell

Nitrous Oxide [Pgs. 321–326] [See Discussion Document](#)

The material was petitioned for use as a whipping propellant for food-grade aerosols, and most of the concern was around the environmental aspects of nitrous oxide and the fact that it is a potent greenhouse gas and has a half-life of 120 years. They answered Question #1, adverse effects, yes, but they also considered a magazine article which said that it was an infinitesimal amount, 2 parts per million for total production. After this consideration they still felt that the answer was yes on most of the environmental questions. This is a GRAS item, with harmful effects on human health, mostly resulting from misuse of the product (from inhalation of laughing gas), so we answered yes. Is there a natural source? Not that's practical for commercial availability. It naturally occurs -- nitrous oxide naturally occurs due to the action of soil bacteria.

On question number 3 essential for organic, we put yes and no. In the petition there were stated alternatives using already-approved materials but there was some dispute from the petitioner on the effectiveness of these substances to yield a product that's acceptable for the consumer, so we tried to recognize both aspects of it since there was conflicting information. However, the petitioner did say he was unaware of any tests that have been done on a gas mixture of nitrogen and CO₂. On alternative substances, again we answered yes/no, and under the same conflict: that the TAP had indicated there were but the petitioner said that they were not acceptable to produce a product for consumer quality. The committee voted on synthetic and non-agricultural: 5 Yes, 0 Nos, 0 Abstained, and 1 Absent. Then there was a motion to allow nitrous oxide for addition to 205.605, Vote 0 Yes, 5 Nos, 0 Abstained, and 1 Absence. Material was voted not to be allowed.

Tetrasodium Pyrophosphate (TSPP) [Pgs. 326–342] [See Discussion Document](#)

The material was petitioned for a specific use as a pH buffer and dough conditioner for use in organic meat-alternative products. The NOSB previously voted to approve TSPP. Due to public comment during rulemaking, NOP returned the material to the NOSB for reconsideration.

Based on additional information the committee determined that there may be alternative substances but that these would produce, based on information from the petitioner, an undesirable product in terms of quality, functionality, unwanted discoloration, undesirable odor, and foul taste. The other issue considered centered around this product's used to recreate texture. After consulting with the petitioner and considering today's public comments we understand the intended use to be as a pH buffer and dough conditioner, there by also acting as a processing aid to condition the dough through the extrusion process. The actual texture is being formed by a thermo mechanical process, as opposed to the sole use of tetrasodium pyrophosphate. The committee reviewed it again, and recommended a motion to allow under 205.605(b). The committee voted as synthetic and non-agricultural: 4 Yes, 0 Nos, 0 Abstained, and 2 Absent.

LIVESTOCK COMMITTEE – Nancy Ostiguy

Moxidectin [Pgs. 343–345] [See Discussion Document](#)

The material was petitioned for use as a topically applied broad-spectrum parasiticide effective against both internal and external parasites; the committee recommended that it was agricultural, synthetic, and that it be allowed with an annotation for control of internal parasites only.

It was the committee's opinion, that it failed on Criteria 1, and that was the reason for the proposed annotation because of concern about the half-life of the material and impact on soil organisms. The

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committee recognized that it is also less problematic than a material that's currently on the List, Ivermectin, but the annotation was to respond to the issue of its half-life and soil-organism impact. There is much less chance of any kind of contamination if it is used for internal parasites versus external.

Proteinated Chelates [Pgs. 346–end] [See Discussion Document](#)

The material was petitioned for use as a supplement in livestock, and the committee voted that it was synthetic, allowed, and non-agricultural. The committee voted 4 Yes, 0 Nos, and 0 Abstained.

There was some concern about copper and zinc, on the effect in soil and on soil organisms, but the committee didn't feel that an annotation was reasonable. Mr. Riddle suggested an annotation that the protein source must not be of animal origin. There was considerable discussion on this issue without the addition of an annotation.

The meeting was recessed at 6:30 P.M.

The Board Meeting reconvened on April 29, 2004 at 8:00 a.m.

COMMITTEE RECOMMENDATIONS:

CFR205.606 TASK FORCE REPORT – Jim Riddle and Kim Dietz

Guidance Document on Commercial Availability and Recommendation on Rule Change for CFR205.606 [Pgs. 362–389] [See Discussion Document](#)

Mr. Riddle stated that he had passed out the current draft from the task force that is for commercial availability, and recommended rule changes. He said that it came to the Executive Committee's attention early this year – January, that there remain issues on commercial availability and the need for consistency and how it's being interpreted in the field. There was a request for comments when the Final Rule was published in 2000, recognizing the need for further rulemaking on commercial availability and so it remained an open issue.

Comments were submitted, including comments from the Board, and then further recommendations from the Board as it relates to the agricultural ingredients on the list, (205.606). That was really the basis of the work and the starting point of this task force and the objective was to establish acceptable practices to be followed by certification applicants, certified operators, and certifiers, for consistent, transparent, and predictable determinations of commercial availability. Commercial availability applies to two sections of the Rule. The one being seeds where a producer can use non-organic seeds if it's documented that organic seeds are not commercially available in the equivalent variety and form, quality, and quantity needed by the operation. It also applies to minor agricultural ingredients used in processed products, where a handler must attempt to source organic ingredients if the product is to be labeled as organic. They must attempt to source organic ingredients for everything agricultural in that product, and if it's documented that an ingredient is not available in an organic form, is not commercially available, then the certifier can allow a non-organic form of the ingredient. But there's been no further guidance to provide consistency in how those determinations are being made or to spell out the requirements for the operators to meet in order to state their case.

The recommendation from the Task force has a lengthy introduction section, and then the background section, which has the definition of "commercial availability." The recommendation also includes some citations from the regulation and from the preamble. All have been posted on the web.

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BREAKOUT SESSION

NOP ECERT Program – Keith Jones [396–428]

Mr. Jones presented a slide presentation on the ECERT Program, and the text of this presentation can be found with the meeting transcripts.

LUNCH BREAK – 11:45 a.m.

The meeting reconvened at 1:11 p.m.

COMPOST TEA TASK FORCE REPORT – Rose Koenig [Pgs. 430–465] [See Discussion Document](#)

Ms. Koenig presented a slide presentation and stated that the task force went through many changes of authority over time, and Eric Sideman, who was a past NOSB member, co-chaired the committee with Dennis Holbrook, Rose Koenig and Owusu were the individuals that from the Board were actually on the committee. Because Owusu could not attend, Ms. Koenig asked Zea Sonnabend, who was a member of the compost tea task force, to assist with the presentation. She provided the Board with a summary document and encouraged everyone to review for the finer details. The document is posted on the web site.

She said that the task force recognized that there was wide usage of compost tea by organic growers but that there was a lack of uniformity in the regulation of compost tea by certifying agents. After the Compost Task Force presented its findings, the Board felt that there was a need to further investigate the implications of using compost teas. The second Compost Tea Task Force was initiated to gather this information. There was a need to investigate scientific data regarding human pathogen issues, and many certifiers and organic farmers expressed concern about the restrictive natures of the NOP's ruling of treating compost tea as raw manure.

She said that 11 of the 12 members supported the compost tea task force report. The member who did not vote in favor of the task force report agreed with the recommendations but did not agree with some of the scientific data and analysis that was expressed in the report. That individual has been encouraged to do public comment to the Board on that minority opinion. The member requested that the information be forwarded to NOP prior to the meeting, however Rose felt it was not her role to do that. She stated that the committee was not voting on this report at this meeting. She encouraged members to put it in a format that they're comfortable with, and looked forward to seeing the minority opinion.

There was extensive discussion regarding the report which can be found in the meeting transcript pages 430-465. The Compost Tea Task Report is found at <http://www.ams.usda.gov/nosb/meetings/CompostTeaTaskForceFinalReport.pdf>

Mr. Riddle moved that the Board accept the Compost Tea Task Force Report, and Ms. Cooper seconded. The Board unanimously approved the report. The report will be posted and the NOSB will be taking public comment on the recommendations to be voted on at the next meeting.

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COMMITTEE RECOMMENDATIONS

Materials Committee – Rose Koenig

SUNSET PROPOSAL [Pgs. 465–500]

Ms. Koenig stated that the document was posted, and was not submitted in time to make a formal vote. The NOP sent the committee some documentation last week, with what they believe is a better version. NOP took the committee version of the Sunset Provision, and reviewed and considered things such as the whole federal rulemaking process. Ms. Koenig said that she had been thinking about the process and asked that Arthur Neal explain the proposal that they've worked with, and what modifications have been made.

Ms. Robinson came forth and thanked the Board for their recommendation on Sunset; and told them that she appreciated and understood the amount of time and thought that went into it. She stated that the NOP also did research on our end, regarding "what is a Sunset," because we had the same questions and looked at legislation. Sunset is not unique to this program, it does happen with many laws or many regulations, and Sunset is typically an expiration that would occur – it's a call for a review of the conditions that warranted the law or the regulation in the first place. In the case of this program, Sunset is a call to review the conditions that warranted putting a material on the National List in the first place, and we are asking the public and the Board to review the conditions, not the material.

Since this program has been implemented, only two petitions have been submitted to the Department to remove a material from N.L.; one for cornstarch, on the basis that there was apparently an organic supply of cornstarch available – the Handling Committee considered that and rejected that and left cornstarch on the List; the second was sodium nitrate, and the Board again took public comments on that and decided to leave sodium nitrate on the List.

She said that from the NOP perspective, Sunset is a public process; it's facilitated by rulemaking through the NOSB's mechanisms, and you're part of the integral process. Rulemaking must be done with the public fully engaged, because this will help ensure, and it's important that you understand this, that neither we nor you appear to be arbitrary, or capricious.

The important thing to remember is: if the public does not weigh in, in writing, to the Board through the Department regarding whether you believe there is still a continued need for these materials on the National List, if you do not do that, if we receive no comment on material X, on October 21, 2007, regardless of what the Board thinks, the material goes away. It will not be available for use. If it is a prohibited material, it will be available for use.

She wanted people to understand that Sunset is not an event, from now on it's an annual activity that will take place. Every year that you add materials, 5 years later someone is reviewing the need for those materials to continue; and this is the first Board that will initiate a Sunset process. Sunset is a growing activity, and it will become a bigger job every year, assuming Boards continue to add materials to the List. That is why the process has been laid out for rulemaking; it must withstand this annual action by the Board and participation by the public. We could not write procedures for a sunset as if it was a one-time event; we have to put something in place, because what you're doing is, as we talked about before, creating the process again for future Boards. Ms. Robinson and Mr. Neal further explained the Advanced Notice of Public Rulemaking (ANPR) steps and process to the Board and the public, and continued to address and answer questions regarding the Sunset Provision. The Sunset document is found at

<http://www.ams.usda.gov/nosb/meetings/PolicyontheNationalListSunsetProvision.pdf>.

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MATERIALS RECOMMENDATIONS

Handling Committee – Kevin O'Rell

TETRASODIUM PYROPHOSPHATE (TSSP) (Pgs. 501–515) [See Final Vote](#)

Mr. O'Rell stated that TSSP was petitioned for the use as a pH adjuster and dough conditioner, and following the committee's recommendation, they had a discussion with the Board. They incorporated some of the comments from the Board and also considered public comment that was made yesterday. There was further discussion regarding the changes made to the public comment documents that the committee reviewed.

The committee recommendation based on new information and public comment voted to allow TSSP under 205.605(b), with annotation, "for use in meat–analog products." He stated that this will go back to the original annotation that was voted on by the Board, striking the word, "texture." The committee voted: 6 Yes, 0 Nos, and 0 Abstained, 0 Absent. Ms. Dietz made a motion to add TSSP on 205.605(b) as a synthetic, with the annotation for use in meat–analog products, and Ms. Caroe seconded. **Final Board vote: 3 Nos, 10 Yes 0 Abstained, 1 Absent**

NITROUS OXIDE (Pgs. 516–519) [See Final Vote](#)

Mr. O'Rell stated that the Nitrous Oxide was petitioned for use as a propellant, and the committee talked about some of the environmental concerns and the greenhouse effect. Accordingly, the committee has not changed its recommendation. There was no public comment given on this material, and there was no Board discussion. The committee voted to not allow nitrous oxide for addition to 205.605(b): 0 Yes, 5 Nos, 0 Abstained, and 1 Absent. Ms. Caughlan made a motion to allow nitrous oxide for addition to 205.605(b), synthetic non–agricultural product, and Ms. Ostiguy seconded. **Final Board vote: 13 Nos., 0 Yes, 0 Abstained, and 1 Absent. MOTION FAILED**

FOOD CONTACT SUBSTANCES:

Mr. O'Rell announced that the Handling Committee submitted a written report which was an update on materials used as food contact substances. He stated that the report did not get the 30–day publication, and will not officially be voted on at that meeting. He suggested that the Board vote to accept the document and it will be posted again on the website and then take future action. The Handling Committee will be doing more work on food contact substances and would like to recognize six materials that were formally approved for addition to the N.L. Ms. Dietz made a motion to accept the report, and Ms. Caughlan seconded. **Final Board Vote: Unanimous – motion carries.**

Crops Committee – Nancy Ostiguy

Soy Protein Isolate (Pgs. 520–534) [See Final Vote](#)

Ms. Ostiguy stated that the committee met and discussed the comments received and public testimony, and the motion was to reject the TAP and request information that addresses the material's used as a soil amendment. The committee vote to reject the TAP: 4 Yes, 0 Nos, 0 Abstained, and 0 Absent. Mr. Riddle made a motion to defer the material because of the need for additional information; details on the needs to be provided by the committee. Mr. Siemon seconded. **Final Board Vote: 12 Yes, 0 Nos, 1 Abstained, 1 Absent. DEFERRED**

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6–Benzyladenine (Pgs. 534–536) [See Final Vote](#)

Ms. Ostiguy stated that the committee discussed the public testimony and voted that the material was synthetic and rejected its addition to the N.L. because hand pruning is an alternative practice that is currently available and currently used. The committee vote to add was 0 Yes, 4 Nos, 0 Abstained, and 1 Absent. Mr. Riddle moved that it be added to the List. Ms. Caughlan seconded. **Final Board vote was 13 Nos, 0 Yes, 1 Abstained, and 1 Absent. MOTION FAILED**

Urea (Pgs. 536–540) [See Final Vote](#)

There was no additional information that was presented, and Urea was petitioned for a use that doesn't exist with EPA. Ms. Koenig made a motion to deferred and archive the petition and TAP report on Urea, and accept the committee's findings that it is not EPA-approved (it's not a legal EPA label claim). Ms. Dietz seconded. **Final Board vote was 13 Yes, 0 Nos, 0 Abstained, and 1 Absent. DEFERRED**

Hydrogen Chloride (Pgs. 540–542) [See Final Vote](#)

The committee considered the information that was provided during public comment, and the public comments received prior to the meeting on hydrogen chloride's use for de-linting cotton seed. The committee voted to add hydrogen chloride to the N.L. with the annotation "for de-linting cotton seed for planting." The committee vote was 4 Yes, 0 Nos, 0 Abstained. Mr. Riddle made a motion to accept, with the annotation for de-linting cotton seed for planting. Ms. Koenig seconded. **Final Board Vote: 13 Yes, 0 Nos, 0 Abstained, and 1 Absent**

Livestock Committee – George Siemon/Nancy Ostiguy

Moxidectin (Pgs. 544–547) [See Final Vote](#)

Ms. Ostiguy stated that because of errors she had a couple of changes on the evaluation criteria; on Category 1, Number 3, the documentation has that the half-life of moxidectin is up to 6 months; actually the citation in the TAP, on Pages 5 and 6 is 2 months; this error is also found in Question 8, Category 1, and Question 9, Category 1. The committee voted, synthetic, 5 Yes, 0 Nos, 0 Abstained, to add to the N.L. with the following annotation, "control of internal parasites only." Ms. Caughlan moved to approve and Ms. Cooper seconded, with the annotation, "control of internal parasites only." **Final Board Vote: 11 Yes, 1 Abstained, 1 No, and 1 Absent**

Proteinated Chelates (Pgs. 547–562) [See Final Vote](#)

The committee recommended that Chelated Minerals be added to the List, as synthetic, with the annotation: "protein sources must not be of mammalian or poultry origin." 5 Yes, 0 Nos, and 0 Abstained. Mr. Riddle moved that proteinated chelates be placed on the List with the annotation: "protein sources must not be of mammalian or poultry origin", and Mr. Carter seconded. The Board vote: 7 Yes, 5 Nos, 1 Abstained, 1 Absent. The motion failed. Mr. Koenig made a motion to defer the material and Mr. Carter seconded. Ms. Dietz based the deferral on gathering information on the commercial availability of plant – non-mammalian sources of the protein chelates. She also urged the community and the livestock industry to comment and find out whether or not you have commercial availability sources based on that original annotation, and be specific in the document from the livestock committee. **Final Board Vote: 13 Yes, 0 Nos, 1 Abstained, 1 Absent. DEFERRED**

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Livestock Committee Antibiotic Directives – George Siemon (Pgs. 562–574)

Mr. Siemon stated that the committee put forth a resolution, a simple paragraph that read, “The National Organic Standards Board respectfully requests that USDA NOP withdraw the 4/13/04 Antibiotic Guidance Statement and work collaboratively with the NOSB to develop policy guidance which is consistent with the Livestock Healthcare Practice standard, statements made by the NOP in their preamble, NOSB Recommendations, Consumer Expectations, and the Principles of Organic Livestock Production.” Ms. Dietz commented that the Board has not seen the document and therefore she can not support it. Ms. Koenig moved to defer the issues at this meeting and allow the Executive Committee to process all the policy statements and come up with a format to address the issues. Ms. Dietz seconded. There was a discussion on what type of document Mr. Siemon put forth, and then the second was withdrawn.

The motion was restated, “for the Executive Committee to respond to the directives from the NOP and formulated a process and response based on information.” No second, motion failed. Mr. Carter made a motion that we direct the Policy Committee to bring forward to the Executive Committee for consideration a resolution concerning the sense of the NOSB regarding the NOP policy directives. Ms. Koenig seconded. **Final Board Vote: Unanimously – Motion carries**

Policy Development Committee – Dave Carter

Board Policy Manual (Pgs. 574–577) [See Final Vote](#)

Mr. Carter stated that the committee reviewed two issues: (1) amendments to the Board Policy manual; changes were made and posted for comment, specifically, the confidentiality requirements in the manual, and (2) to address changes in the materials approvals forms used by the Board, to incorporate those changes and to place the amended forms into the policy manual. Mr. Carter moved to amend the policy manual as recommended by the committee, and Mr. Riddle seconded. Mr. Riddle stated that there are additional changes to the manual including deleting the whole peer-review section, changing the name of the processing committee to “handling”, and there were things pending because they didn’t deal with any non-material issues in October. Mr. King stated that the manual is posted on the web site. **Final Board vote: Unanimously – Motion Carries**

Mr. Riddle will follow-up and send a clean copy to the NOP that actually deletes those green things and add the yellow comments.

Compatibility with Organic Production and Handling (Pgs. 577–580) [See Final Vote](#)

Mr. Carter recognized and thanked Mr. Riddle for the incredible amount of work that was done, and stated that he carried 95 percent of the workload, including developing 22–23 page drafts of material with background. He said that this was posted and there were six public comments received; all of the comments recommended that we drop Section M, which read “does the substance facilitate the development of new organic products?” The committee has recommended that we move forward the statement of “compatibility with organic production and handling,” with the deletion of Section M. Mr. Carter made a motion to accept the Draft 5 recommendation; Mr. Siemon seconded. **Final Board Vote: Unanimously – Motion Carries.**

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Accreditation, Certification, and Compliance Committee – Andrea Caroe

Compliance Procedures for Non-Compliances Recommendation (Pgs. 581–582) [See Final Vote](#)

Ms. Caroe stated that Draft 8 was handed out and was voted to accept as guidance because this is educational information for certifiers. There were no changes from that version, and that version had very few changes from draft 7 which is posted on the web. They received one public comment and changes were made based on the comment. Mr. Riddle moved for approval of draft 8, and Mr. Siemon seconded. **Final Board Vote: Unanimously – Motion Carries.**

606 Task Force Report – Jim Riddle, (Pgs. 583–592) [See Final Vote](#)

Mr. Riddle stated that there had been some Board and public comments, and there was a need for the Task Force to meet and redraft the document. Mr. Riddle discussed all the changes that were made and moved for adoption of the document, and Ms. Caroe seconded.

Ms. Ostiguy stated that she didn't understand Recommendation 2a, Number 5, at the top of the next page, "as applicable" and asked for explanation.

Ms. Caroe stated that this is to accommodate situations where the ingredient is very specific and two -- three reasonable sources are available, so it is a guideline that three is a reasonable or a typical number but there may be situations that require more or less than that.

Ms. Dietz agreed, however, where are the certifiers able to determine if it's applicable for three potential suppliers? Ms. Caroe stated that in the negotiation between an applicant and certifier, that is a discussion that they would have, as far as the applicant coming to them and explaining the challenge.

Ms. Dietz stated that as a handler, if she has "as applicable" in her handling plan, she can always make justification as to why she only chose one and try to get that through. She also understand that if there's not three suppliers, at least she can try for three, you know; and felt that the industry has somewhat supported a minimum of three sources, and it's too weak and wasn't sure if she would support that. Mr. King asked if there was a motion. Ms. Dietz confirmed, and Mr. Riddle said to amend to delete. Mr. Carter moved to strike; Ms. Dietz made a motion to strike "as applicable" and put in "minimum of three" and at least you can document where you've tried three different sources and you've only got one. Mr. O'Rell seconded. **Board Vote as amended: 11 Yes, 2 Nos, 1 Abstained, 1 Absent, Mr. King stated that they were back at the original recommendation, and made a motion to accept the recommendation as amended – Vote: Unanimously approved – motion carries.**

The meeting was recessed at 5:05 p.m.

Reconvened on April 30, 2004 at 8:05 a.m.

Mr. King opened the meeting and stated that the first thing on the agenda was public input; however, Mr. Carter has a quick announcement.

Mr. Carter felt that it was important for the Board to make some sort of statement before they left Chicago in regards to some of the policy directives. He wanted to offer up a very short resolution and give the Board members something to think about that would express the disappointment and concern of the Board over the lack of advance notice or consultation by NOP in the issuance of certain policy directives.

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Mr. King stated that for public input they have 35 signed up and allotted approximately 2 hours and 15 minutes on the agenda; and several Board members expressed to him how important public input was and requested extension of the public input session.

PUBLIC COMMENTS – April 29, 2004:

The following individuals presented public comments. Each person's comments were recorded and transcribed for the record; and some individuals also presented written comments. Transcribed comments, and where applicable written comments can be found at **DESIGNATED ATTACHMENTS**.

SIGN-IN SHEET [ATTACHMENT C]

Mark Kastel, Organic Farmer Representative, Cornucopia Institute, [Pg. 596, [Attachment 11](#)]
Kelly Kasper, proxy for Alice Rolls, Executive Director, Georgia Organics, [Pg. 602, [Attachment 12](#)]
Marty Mesh, Executive Director, Florida Organic Growers and Quality Certification Program, [Pg. 607]
Urvashi Rangan, Environmental Health Scientist, Consumers Union, [Pg. 611]
Brian Condon, proxy for Bart Reid, Organic Shrimp Producer, Permian Sea Shrimp Company, [624]
Brian Leahy, President, California Certified Organic Farmers, [Pg. 628, [Attachment 13](#)]
Liana Hoodes, Organic Policy Coordinator, National Campaign
for Sustainable Ag, [Pg.635, [Attachment 14](#)]
Harriet Behar, Organic Inspector, [Pg. 641]
John Clark, Certified Organic Farmer, [Pg. 646]
Jonathan Landeck, Organic Farming Research Foundation, [Pg. 651]
Richard Wood, Executive Director, Food Animal Concern Trust (FACT), [Pg. 652, [Attachment 15](#)]
Merrill Clark, Roseland Organic Farms, [Pg. 656]
Tom Harding, [Pg. 667]
John Cleary, Accredited Certifier, NOFA–VT, proxy for Erich Bremer, NOFA–NJ, [Pg. 675]

Break at 10:00 a.m., and reconvened at 10:17 a.m.

Mr. King made a couple of announcements that there was an ACA training that afternoon and the room needed to be vacated no later than noon. He mentioned that the Board responded with an official letter concerning the materials review process and he was literally forced as Chair to distribute the letter asking Board members to review and support the letter in 24 hours or less, and asked Ms. Dietz to provide a brief acknowledgement.

Statement from Kim Dietz, NOSB Secretary, [Pg. 682]

Ms. Dietz informed the Board that for the record to formally acknowledge the letter and the dedication and hard work of the Board. She said that as a representative of the industry, it was very important that they work together to protect the word, "organic." The Board drafted a letter to the NOP regarding the materials review process and she didn't sign the letter prior to its submission because of the short time frame that they were asked to review it. Therefore, she wanted to go on record in saying that she supports the letter's directive on the materials review process. And finally, that it's essential that the Board have a full understanding of the process and their roles in the process; and she pleaded with the NOP and the Board to respect the fact that each person deserves to have an adequate time period to review documents.

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Public Comment continues

Ed Daniel, Vice President, Bushinboy Farms, [Pg. 683]

Ray Green, California Certifier, [Pg. 687, [Attachment 16](#)]

Cissy Bowman, President/Owner, Indiana Certified Organic, proxy for Jay Feldman, National Coalition Against the Misuse of Pesticides, [Pg. 689]

Lynn Coody, Organic Ag System Consulting, [Pg. 703]

Weenonah Brattset, Organic Farmer, proxy for James Christianson [Pg. 706, [Attachment 17](#)]

Richard Kanak, Organic Consumer, proxy for Rufus Yoder and Tony Ends The Churches' Center for Land & People [Pg. 712]

Statement from Kevin O'Rell, Handling Committee Chairperson, [Pg. 718]

Mr. O'Rell said that he wanted to go on record as saying that he was disappointed to hear that people were coming to use the public comment period for making public and personal attacks to companies, and felt that is not what public comment was for in that forum. It's for commenting about organic standards, commenting about the NOSB and NOP, and in his opinion, it is not a place for public and personal attacks on companies and individuals. He urged the public not to use this tact.

Public Comment continues

Kevin Chernis, Organic Farmer, [Pg. 718]

Michelle Wander, Professor Soil Scientist, University of Illinois, [Pg. 725, [Attachment 18](#)]

Rachel Azzarello, proxy for Nathan Hetrick [Pg. 731, [Attachment 19](#)]

Jane Brandley, Organic Consumer, and proxy for John Bobbi, Executive Director, Organic Farmers Agency for Relationship Marketing [Pg. 736, [Attachment 20](#)]

David Engel, Executive Director, MOSA, [Pg. 743]

Leslie Zuck, Pennsylvania Certified Organic (PCO), [Pg. 744]

Jean Zazadil, Organic Consumer, proxy for Jim Koan, AllMar Orchard, [Pg. 748, [Attachment 21](#)]

Steve LaFayette, and proxy for Jeff Webster, Sierra Club National Ag Committee, and Larry Gilbertson, [Pg. 752, [Attachment 22](#)]

Kelly Shea, Horizon Organic Dairy, [Pg. 757]

Public Comment Period Officially Closed

Statement by David Carter, Policy Development Chairperson, [Pg. 759] For more information, see Discussion Document]

Mr. Carter offered for the Board's consideration the following resolution, "The NOSB expresses its strong opposition to and concern with the NOP's issuance of significant policy directives without consultation with or advance notice to the NOSB. Mr. Carter moved that the resolution be accepted by the Board, and Mr. Riddle Seconded. **Final Board Vote: 12 Approved, 1 Abstained, 1 Absent**

Mr. King suggested that the Board members submit their work plans to Katherine Benham by next Friday, May 7, 2004.

Mr. Riddle requested the status of livestock materials recommended previously by the Board. They wanted to move it forward because they heard from FDA in October, and several public commenters. Mr. Jones stated that the document is at the Office of General Counsel, they've raised a number of questions, they have significant concerns about the level of documentation associated with the materials. NOP will be going back in consultation with OGC and attempt to answer their concerns. That's where they are and they won't move forward until those concerns are answered. He also stated

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that the docket contains everything through May 2003. We have gone through the consultation process with FDA on all of those materials. Some of the materials that were mentioned during public testimony are off-label use and will not be included in the docket. Propylene Glycol for the use of treatment of milk fever is an off-label use for that material and will not be included in the docket.

Next meeting: October 12, 13, 14, 2004

Meeting adjourned at 12:08 p.m.