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October 16th, 2009

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: Docket Number AMS-TM-09-0060

- Materials due for Sunset 2011
- Personal Body Care Standards
- Nanotechnology

Comment Summary

Handling Materials due for Sunset 2011

Oregon Tilth **SUPPORTS** the Handling Committee's recommendations for the continued use of Egg White Lysozyme, L-Malic Acid, Microorganisms, Activated Charcoal, Peracetic Acid, Sodium Acid Pyrophosphate, and Tetrasodium Pyrophosphate.

We **DO NOT SUPPORT** the recommendation to remove Cyclohexylamine, Diethylaminoethanol, and Octodecylamine. As required by Sunset Review Procedures, the committee has not received or provided adequate evidence demonstrating that alternative materials or practices have a function and effect that equals or surpasses the specific exempted substance that is to be continued.

Personal Body Care Standards

Oregon Tilth **DOES NOT SUPPORT** this recommendation and ask that it be withdrawn at this time. The mislabeling of personal body care products and the development of standards should be explored via a discussion document.

Nanotechnology

We **DISAGREE** with this recommendation, and **AGREE with the minority opinion.**

Comment Detail

Handling Materials Due for Sunset 2011

Oregon Tilth **supports** the Handling Committee's recommendations for the continued use of the following National List materials:

205.605(a): Egg White Lysozyme, L-Malic Acid, and Microorganisms.

205.605(b): Activated Charcoal, Peracetic Acid, Sodium Acid Pyrophosphate, and Tetrasodium Pyrophosphate.

We **do not support** the recommendation to remove Cyclohexylamine, Diethylaminoethanol, and Octodecylamine.

The committee has not properly followed the Sunset Review Process Procedures published on pages 53 and 56 of the NOSB Policy and Procedures Manual, and outlined in the Federal Register notice of March 14, 2008, docket number AMS-TM-07-0136. The NOSB procedures state that the review is based on force of evidence, however comments providing evidence for their delisting were not submitted. As required by the Sunset process, comments must provide "EVIDENCE THAT ADEQUATELY DEMONSTRATES THAT THE ALTERNATIVE HAS A FUNCTION AND EFFECT THAT EQUALS OR SURPASSES THE SPECIFIC EXEMPTED SUBSTANCE. The only comments submitted were in favor of their continued use, and while those comments may not have provided adequate support, the only other information presented is hearsay evidence presented by the committee. We therefore request that the handling committee adequately demonstrate:

- 1) That non-volatile substances have a function and effect that equals or surpasses the specific exempted substance that is to be continued;
- 2) That "turning off the boiler feed" has a function and effect that equals or surpasses the specific exempted substance that is to be continued;
- 3) That hot water rinsing has a function and effect that equals or surpasses the specific exempted substance that is to be continued.

Personal Body Care Standards

Oregon Tilth asks that the **Recommendation** for Personal Body Care Standards be **withdrawn** at this time. We share the concerns surrounding the mislabeling of personal body care products and the misuse of the term "organic", therefore we support the continued work of the NOSB and NOP in addressing the problem and request that solutions be explored via a **Discussion Document**. We find the recommendation to be premature for three primary reasons:

- The USDA NOP policy statement of August 23, 2005 extended the NOP regulations to cover organic claims made by several categories of products, so long as they are agricultural and comply with existing standards. A recommendation should therefore explicitly address all types of products, or not be made at all. There are issues of mislabeling at hand for ALL types of products that can be labeled as organic under the August 23, 2005 policy.
- There is an unresolved industry debate on the certification of soap and other type products that are synthesized by combining organic ingredients with organic ingredients, or organic ingredients with

allowed National List materials. Such processing methods and products are the foundation of personal care products. We would hate to see the allowance for personal care standards brought under the NOP while simultaneously prohibiting the certification of soap or other types of processes.

- The proposed recommendation does not address labeling, when labeling is the challenging obstacle at hand. We are concerned about a rule change that brings a class of non-food products under the scope of the NOP, prior to working out the details of a clear policy regarding jurisdiction. We would rather see continued efforts made between the USDA, FDA and FTC with respect to truth in labeling and federal enforcement, while the NOSB and NOP address the current debate on soap and soap by-products.

Nanotechnology

We DISAGREE with this recommendation and AGREE with the minority opinion.

We do not agree that the comments of stakeholders at the May 2009 meeting "overwhelmingly called for the total prohibition" of nanotechnology. Rather, the stakeholders were very clear that the categorical or unintentional allowance of nanotechnology in organic production systems is unacceptable and that an attempt to add regulatory language to the NOP is a high priority. To that degree, we appreciate the NOSB taking on the issue of nanotechnology as a priority.

We agree with the minority opinion that a unilateral ban on an emerging technology such as nanotechnology would be short sighted by the organic program. While there are applications of nanotechnology that are clearly unacceptable, there are also promising aspects to the technology that may well be appropriate and acceptable to a system of organic production. We therefore endorse the minority opinion that identifies nanotechnology as a process that would render a material synthetic, and would allow the board to address petitioned products of nanotechnology on a case-by-case basis as the technology develops.

The current discussion surrounding livestock vaccines illustrates how the best thinking of the day cannot anticipate application of a technology in the future. The discussion and recommendation by the Livestock Committee for the carefully considered allowance of vaccines, demonstrates that even as the OFPA was written, there were those who recognized the danger of categorical disallowance. The vaccine discussion illustrates that although the vast majority of GMO technology has no place in a system of organic production, the possibility of an instance where it does is possible. Nanotechnology is a very complex technology and therefore potentially very diverse in its application. The Minority Opinion would create a more flexible approach to future decision making, while at the same time satisfying the short term need to exclude nanotechnology from organic production.

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

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Oregon Tilth, Inc.

Oregon Tilth is a nonprofit research and education membership organization dedicated to biologically sound and socially equitable agriculture. Oregon Tilth offers educational events throughout the state of Oregon, and provides organic certification services to organic growers, processors, and handlers internationally. An NOP accredited certifier since 2002, Oregon Tilth currently certifies over 650 farms and ranches and over 600 handlers in more than 35 states affording us a broad perspective of current practices and challenges faced by organic producers and handlers. This perspective also extends to the anticipated successes and challenges that this discussion topic will affect upon them.