



# National Organic Coalition

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National Organic Standards Board  
USDA-AMS—TMP-NOP  
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<http://www.regulations.gov>

Docket no. AMS–TM–08–0021

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## Comments on Materials Petitioned for Addition to the National List

The National Organic Coalition, (NOC) is a national alliance of organizations representing farmers, environmentalists, consumers, and progressive industry members concerned about the integrity of national organic standards

The NOSB has an important mandate, granted in the OFPA, to consider petitions for materials and make recommendations regarding changes to the National List. (See 7 USC 6517(d).) In 2007 we saw a record amount of new substances added to the List: 48 new substances have been added in one year, of these 38 are non-organic agricultural substances allowed in organic food that are considered to be currently unavailable, or of “fragile supply” in organic form. However, some fundamental policy questions regarding interpretation and classification of the National List remain unanswered. Despite the fact that 38 substances were added as “agricultural,” there is still no clarification of the distinction between the definitions of “agricultural” and “non-agricultural” substances. In addition, the distinction between synthetic and non-synthetic is not clear yet either and this is a fundamental criterion for consideration of materials on the National List. The discussion paper on Agricultural and Non-agricultural Substances provides some promising options for review of processing materials, but it also assumes that one can clearly distinguish synthetic from nonsynthetic substances. The NOSB also adopted a comprehensive recommendation on the clarification of the definition of “synthetic” in 2005. The NOP responded to the NOSB with further proposed changes in April of 2006, but NOSB has not taken this up again and decisions on synthetic status are being made without any consultation to either of these documents. For this May 2008 meeting, 25 new materials are under consideration for proposed addition to the National List.

It is time to put the horse before the cart, and make some fundamental policy decisions before any more materials are added to the National List.

We respectfully request a **moratorium** on the recommendations to add any substance to the National List until the following actions are taken:

1. A final recommendation on synthetic/nonsynthetic determinations is adopted.
2. A final recommendation on agricultural/non agricultural determinations is adopted.
3. Publication of the final rule for the 38 substances added to §205.606 as “interim final rule” of June 27, 2007 that addresses the public comments and questions filed on those substances.
4. TAP reviews must be conducted for any substance recommended for the National List. We respect and admire the efforts carried out by the NOSB to prevent disruption of the organic industry. However, without independent, objective TAP reviews the NOSB cannot make an informed recommendation on materials petitioned for inclusion on the National List. In fact, it may be illegal to do so. TAPs are required by the OFPA 7 USC 6518(k)(3)– “The Board SHALL convene technical advisory panels ...” OFPA requires also at 7 USC 6518(l)(3) that “the Board SHALL submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board’s evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.” In order for the NOSB process to demonstrate integrity and consistency in decision making, it is important that the steps set out in the law are followed.

Based on experience with past petitions, the NOSB cannot assume that the petitioners have provided an accurate and complete description of the information needed to evaluate a substance for inclusion on the National List. For example, a petition may claim that the petitioned substance is “not chemically changed” or is “derived from plants” or “the result of the decomposition of tiny aquatic plants and animals that lived in ancient seas millions of years ago” (e.g. petroleum used for cheesewax) when in fact there have been many technical extraction and purification steps that result in chemical changes and should be considered synthetic. The NOSB needs scientific, technical advice and better access to historical decisions in order to prevent these types of mistakes.

5. More comprehensive reviews are needed for substances proposed for §205.606. The environmental and human health impacts of agricultural practices used to produce non-organic agricultural ingredients petitioned for addition to §205.606 need to be evaluated using the criteria in OFPA at 7 USC 6518(m). The NOSB is incorrectly limiting the reviews of substances at §205.606 to a determination of potential commercial un-availability. The Notice of Guidelines for National List Petitions of Jan. 18, 2007 (FR 2168) confirms that NOSB must apply all the OFPA criteria including consideration of alternatives, compatibility with sustainable agriculture, effects on the environment and human health as well as the potential commercial un-availability. If funds are not available for necessary TAP reviews, then materials review should be delayed until adequate funds are appropriated and the necessary oversight established.
6. Questions regarding substances on §205.606 need to be answered for the regulation to be uniformly implemented. These include:
  - How is the permitted substance identified? Specifically, are certifiers and their clients to use the Chemical Abstract Services (CAS) number in the regulation, the Latin name in the petition, or some other standard of identity?
  - What formulants may be used with items on the National List? Must all items in an ingredient on §205.606 either be organically produced or on the National List?

- Are items that appear on §205.606 subject to restrictions or annotations limiting source, processing aids, or type? Specifically, can items that are manufactured with synthetic solvents or other processing aids not on the National List be used?
7. The NOP should develop a policy that permits either NOSB or the TAP contractor to review and summarize Confidential Business Information (CBI). Many of the petitions have redacted information about manufacturing as CBI, so that it is not possible for the NOSB or members of the public to assess whether the substance is in fact synthetic, agricultural, or compatible with organic production and handling. A TAP review should be mandatory in cases where the petitioned information is redacted as CBI. When a material is approved, and there is no TAP, and the petition redacts all the manufacturing information, it is impossible for anyone trying to implement the regulations to determine if a substance in question conforms with the substance approved by NOSB. There is no detail, no manufacturing process described, to use as reference. The NOSB should not recommend any item to be added to the National List unless there is sufficient information available for public comment.

**Conclusion:**

Given that it has been very rare that substances are removed from the National List by petition or by sunset, we think it is prudent that the NOSB take the necessary time to resolve these questions before more materials are added. The establishment of a strong policy framework will make NOSB future decisions more credible and consistent. We also request that a streamlined process be developed to petition for removal of substances on §205.606, since these substances may become available in organic form much more quickly than the 5 year sunset review.

The NOSB should also be mindful that more substances added will geometrically increase the future work load of the Board, as all substances must continue to be reviewed every five years.

Thank you for the opportunity to comment, and for your efforts to take on this challenging but critical work.

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