



August 2, 2006

Bob Pooler
National Organic Program
USDA-AMS-TMP-NOP
1400 Independence Ave., SW, Room 4008 So.
Ag Stop 0268
Washington, D.C. 20250

RE: Docket No. TMD-06-04
Sent Via E-Mail to: National.List@usda.gov
Sent Via Fax to: 202.205.7808

Dear Mr. Pooler:

OMRI appreciates the opportunity to comment on the proposed amendments to the USDA National List of Allowed and Prohibited Substances (National List), Docket Number TMD-06-04.

OMRI supports the intent of the National Organic Program to adhere to the public process as set out in the Organic Foods Production Act of 1990 (OFPA). With respect to this Docket, as we also did in our April 16, 2003 Docket (TMD-02-03) comments, we would like to comment on the advisory function of the NOSB for implementing and amending the National List as well as the need for adequate opportunities for public comment on NOSB recommendations and proposed amendments to the National List. OMRI would like to reiterate our observation that the NOSB has an advisory function to implement the NOP rule and propose amendments to the National List when appropriate.

OMRI supports the addition of the following items to the National List as annotated:

205.601(e)(9) Sucrose octonate esters (CAS #s 42922-74-7; 58064-47-4)—in accordance with approved labeling.

And

205.603(b)(7) Sucrose octonate esters (CAS #s 42922-74-7; 58064-47-4)—in accordance with approved labeling.

OMRI also wishes to enter a comment on Chitosan, which was included in the *Federal Register* notice, but not proposed to be added to the National List. OMRI supports the intent of the NOSB's recommendation. The NOSB supported adding this substance to the National List as an adjuvant due to lack of information regarding its use as a biopesticide. The recommendation and decision to not add the substance to the National List should not preclude further consideration as an active pesticide ingredient if a separate petition is submitted with additional information that addresses the OFPA criteria.

OMRI's opinion is that 7 CFR 205.601(m) extends to include adjuvants that are used with active pesticide ingredients subject to the instructions found on the label for that active. The active substances would need to be either non-synthetic, not prohibited on the National List, and recognized for the pesticidal activity, or on the National List in a section appropriate for pesticidal use. Such adjuvants could not be used as stand-alone inputs or with non-pesticidal inputs such as fertilizers or feed additives.

If an organic farmer's Organic System Plan (OSP) documents that a given adjuvant and active are necessary to manage a certain pest or disease when other options are not sufficient, the on-farm formulation should be treated the same as a registered pesticide that has the same ingredients. The OSP is subject to approval and oversight of the Accredited Certifying Agent (ACA) and the farmer would need to follow all the appropriate laws governing the safe mixing, loading, and use of pesticides. OMRI understands the concerns that such substances could be abused, and that is why we assign a 'Restricted' status to products with synthetic ingredients on List 4 when they are used as adjuvants on the OMRI *Generic Materials List* and *OMRI Products List*.

OMRI appreciates the NOP's explanation why chitosan is already allowed under the NOP rule (71 *Federal Register* 37855-37856) because it affirms our opinion. We're aware that some Accredited Certifying Agents (ACAs) accept OMRI's opinion that farmers can formulate tank mixes of pesticides and List 4 inerts and some ACAs do not. Moreover, some state pesticide laws define adjuvants as active ingredients, and may lead to the NOP rule being implemented differently from those states where adjuvants are unregulated and considered non-active pesticide ingredients. OMRI does not question specific decisions to grant or deny certification when a synthetic adjuvant that is on List 4 is used on an organic farm, understanding that such decisions need to be made in the context of local conditions and governing state laws.

To facilitate discussion about how 601(m) applies to adjuvants, tank mixes, and on-farm formulations and avoid misunderstanding, OMRI suggests that the NOP provide the NOSB and the public with documents of the consultation with the EPA on the NOSB's chitosan recommendation.

OMRI once again thanks the NOP for the opportunity to comment on these proposed amendments. We look forward to commenting on the NOP's proposals based on other recommendations made by the NOSB.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dave H. DeCou".

Dave DeCou
Executive Director
Organic Materials Review Institute

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