

**Formal Recommendation by the  
National Organic Standards Board (NOSB)  
to the National Organic Program (NOP)**

**Date:** December 2, 2011

**Subject:** Evaluation of Material Review Organizations

**Chair:** Tracy Miedema

**The NOSB hereby recommends to the NOP the following:**

Guidance Statement

**Statement of the Recommendation (Including Recount of Vote):**

Recommendation to provide draft guidance language to NOP as per attached CACC Recommendation. Passed by a vote of 14 yes, 0 no.

**Rationale Supporting Recommendation (including consistency with OFPA and NOP):**

CACC recommendation is attached.

**NOSB Vote:**

<b>Moved: Joe Dickson</b>		<b>Second: Steve DeMuri</b>		
<b>Yes: 14</b>	<b>No: 0</b>	<b>Abstain: 0</b>	<b>Absent: 0</b>	<b>Recusal: 0</b>

**National Organic Standards Board  
Compliance, Accreditation and Certification Committee  
Proposed Recommendation  
Evaluation of Materials Review Organizations**

**December 2, 2011**

**Introduction**

The assessment of specific substances for compliance with the National Organic Standards – known as “Materials Review” – is a foundational element in the organic supply chain. Certifiers and other materials review organizations regularly review materials as a service to their clients, and these decisions directly impact the organic integrity of growing, livestock and handling operations and ultimately the integrity of the USDA Organic label. The uniformity, consistency and integrity of materials review decisions is of paramount importance to the integrity of the entire organic supply chain, and the National Organic Program must play a primary role in supervising and monitoring these activities.

Following the NOP’s request for NOSB advice on this issue, the CACC prepared a discussion document for the April, 2010 NOSB meeting in Seattle. This document summarized the issue and the NOP request, and posed a number of specific questions about specific facets of this complex subject. The board received written and oral public comment from numerous stakeholders, including certifiers, materials review organizations, input manufacturers and others. The CACC has evaluated these comments and has carefully considered them in making the current recommendation.

**Background**

On January 18, 2011, the NOP Deputy Administrator requested the participation of the NOSB in developing a clearer NOP policy on the oversight of materials review organizations:

The NOP is interested in developing a more uniform and consistent procedure for evaluating the competency and quality of material evaluation programs, as approved by accredited certification agencies or by other third party organizations.

The NOP is requesting that the National Organic Standards Board (NOSB) develop a recommendation that delineates the criteria that should be used by certifying agents and third party organizations to evaluate materials used in organic production and handling. The recommendation should include the criteria and process that should be used to determine the approval of input substances used in crop production (e.g. fertilizers, pest control materials, soil amendments, crop production aids), livestock production (e.g. feed supplements, feed

additives, medications and livestock production aids), post-harvest handling and food processing (e.g. processing aids, sanitizers, facility pest control materials).

A number of organizations currently provide materials review services to producers and certifiers. At least one of those organizations is an independent organization that is not an Accredited Certifying Agent or under any NOP oversight. At least one other materials review organization is a formal subdivision of an ACA, and many ACAs provide some material review services to clients on a formal or informal basis. The CACC agrees with the NOP that there is a clear need for more uniform and consistent policies governing material review services, and we believe that all organic stakeholders would benefit from a clearly defined NOP guidance around the qualification and activities of these organizations.

### *Challenges*

1. All certifying agents review input materials for compliance with the NOP regulations. Most certifying agents do not publish their list of approved inputs. This leads to a lack of transparency of what materials have been approved for use in organic production and handling.
2. There are numerous organizations reviewing materials for compliance with the NOP regulations. On numerous occasions a material that is allowed by one certifying agent is prohibited by another. This lack of consistency in what materials are approved creates an uneven regulatory landscape, is unfair to organic producers and handlers, and leads to certifier shopping to find the certifying agent that allows more materials.
3. There have been situations where the NOP has disallowed the continued use of materials and material review organizations continue to list/register these materials as approved for use in organic production/handling.
4. A universal list of approved substances is not currently available to organic producers and handlers. It is difficult for many organic producers and handlers to understand what materials are allowed and which materials are prohibited. This regulatory uncertainty causes reluctance by many potential organic producers and handlers to enter the organic trade.
5. OMRI and WSDA maintain a publically available list of approved materials. The process for removing substances from these approved lists is not consistent. There is not a consistent process for material input manufacturers to appeal decisions made by OMRI, WSDA or certifying agents.
6. The NOP does not have direct regulatory authority over material manufacturers. If material manufacturers violate the organic standards or fraudulently represent their product as approved for organic use the NOP does not have authority to issue civil penalties or propose adverse actions. Currently organic producers and handlers bear the risk of using substances that may not comply with the NOP regulations.

### **Relevant Areas in the Rule**

While both OFPA and the Rule deal extensively with the review of materials as performed by NOSB, NOP and ACAs, neither provides any language that relates directly the work or oversight of materials review organizations.

### **Discussion**

Based on the challenges presented above, the committee's March discussion document solicited feedback from impacted stakeholders on a number of specific questions. Those specific questions are attached to this document as Appendix A.

The committee spent several meetings carefully weighing and discussing each of the stakeholder responses to the various discussion questions. This analysis yielded the following recommendation.

### **Recommendation**

The NOSB recommends that the National Organic Program actively regulate materials evaluation programs, in order to facilitate consistent and uniform materials review decisions.

#### *Materials Review Organization (MRO) Qualification*

In order to facilitate adequate oversight and enforcement of the activities of MROs, the National Organic Program should require that MROs become accredited or formally recognized under a newly formed Material Review scope. MROs that only perform material review services should be restricted to materials review activities. ACAs who currently perform materials review would simply add the Materials Review scope to their existing accreditation. Materials review activities should only be allowed by NOP accredited entities.

The NOSB acknowledges that the creation of a new accreditation scope is a complicated and potentially long-term undertaking. On an immediate basis, NOP should provide detailed guidance and criteria on the material review process in order to promote consistency and uniformity among currently operating MROs while longer term regulatory changes are undertaken.

The CACC intends to develop additional a recommendation regarding specific material review criteria and procedures for the Spring 2012 meeting.

#### *MRO Definition*

**Material Review Organization:** Any entity accredited or authorized by the Secretary to review and approve materials as compliant with the National Organic Program for use in producing or handling certified organic products.

### *MRO operation and review criteria*

MROs should use OFPA, the USDA National Organic Standards, NOP guidance and the National List as the base standards for their operations and activities. MROs should not make synthetic vs. non-synthetic determinations except as guided by NOP materials classification guidelines. MROs should be compliant with ISO 65 standards, which require the development of detailed review protocols and policies.

MROs must make their review process -- including organizational hierarchies, procedures and governance structures related to materials decisions -- transparent to all stakeholders. While the creation of such review criteria and procedures by the NOP should necessarily be done in partnership with certifiers, MROs and other stakeholders, we do not believe that a the creation of a formal Task Force is necessary to accomplish this goal. The NOSB functions as an advisory body which represents diverse factions of the organic community, and has carefully considered rich stakeholder feedback in creating this recommendation.

### **Equivalency among Accredited MROs**

We believe that once an entity is accredited as an MRO, its decisions must be accepted by other MROs and ACAs. If we develop a uniform, accredited, transparent material review program, at its core must be equivalency of review and decision-making among accredited MROs. Without equivalency, we will lose the trust and confidence of organic input manufacturers, which will certainly lead to fewer input options to the organic production community and create a disincentive to the development of new and innovative input materials.

In addition to accepting the decisions of other MROs and ACAs, the program must have a description of a transparent process to resolve conflicts between the MRO's decision and determinations with those of another MRO, ACA or the National Organic Program. We believe it will be critically important for the NOP to establish clear standards and requirements for how a MRO decision can be appealed.

### *Structure and Consistency of a Materials List*

We believe that the most effective way to ensure consistency among MROs is to ensure that all such organizations are operating by a consistent set of review protocols and procedures. NOP oversight and accreditation will promote consistency both by requiring a uniform set of procedures and by allowing NOP to monitor materials review decisions made by accredited MROs.

While a generic materials list is an extremely valuable guidance tool to the organic producers and input manufacturers who rely on MRO services, we do not believe it is the interest of the organic community to require producers to *only* use

inputs on any materials list. Many local products and custom mixes are provided on a regional basis, and such materials are reviewed by ACAs as part of the certification process. Membership on a list should never be a requirement for use of an input on an organic operation.

The NOP should work closely with certifiers and existing MROs to determine a set of subcategories and list structure which reflects the review criteria to be used for each category. Such structure should at minimum reflect the National List Categories reflected in 205.601-201.606, and potentially include sub-types of National List categories. For example, OMRI's generic materials list currently divides the "Crops" category into the classes Crop Fertilizers and Soil Amendments (CF), Crop Pest, Weed and Disease Control (CP), and Crop Management Tools and Production Aids (CT). We also note that the effective use of such a list is contingent on guidance as to the point at which an agricultural product ceases to be a crop and becomes the subject of processing/handling. The current National List contains several post-harvest handling substances in both 206.601 and 605.605, and the precise contour of the line between crops and handling should be resolved prior to the design of such a list.

We believe that the NOP should maintain a single, national Generic Materials List along with a Brand Name Materials List. The generic materials list would serve as guidance to ACAs and the industry on specific substances' consistency with the rule, and as a record of NOP decisions on such materials (including synthetic vs. non-synthetic and agricultural vs. non-agricultural determinations). A brand name list would serve as an aggregation of ACA/MRO decisions which had been reported the NOP. Such a list would drive inter-ACA/MRO consistency and provide a valuable service to the organic community. Both lists should be available to the public via the NOP website, and updated in real time. Such lists will only be possible once consistent and transparent review criteria and oversight mechanisms are established. Regular communication of materials review decisions by MROs to the NOP would also facilitate NOP monitoring of MRO decisions.

### *Finance and Oversight*

We believe that the MRO program should at least be financed in part by those input producers seeking review. Under a model which follows the existing ACA structure, entities seeking certification (or review) would pay certification costs directly to the ACA/MRO. Accreditation would managed financed through the existing NOP accreditation structures.

Similarly, programmatic oversight and appeals would also be handled by the same set of structures which currently govern the oversight of ACAs. MROs would be different from other ACAs only in terms of the scope of their certification activities. As with existing ACAs, the NOP should provide clear and uniform guidance, training, oversight, audits and enforcement over MROs. NOP should review their existing appeals process to ensure that input manufacturers have the

same ability to appeal and MRO decision as producers currently have to appeal ACA decisions.

*Enforcement and Fraud*

The NOP MRO process should clearly hold the MRO accountable for mistakes and prescribe penalties, just as is currently the case for ACA certification decisions. NOP should pursue legal action against fraudulent manufacturers. We believe that NOP oversight of MROs as ACAs is the most effective way to ensure consistency and integrity in the organic input material supply chain, and provides the most powerful set of tools to prevent fraud, monitor compliance, and enforce the National Organic Standards.

**Committee Vote**

Motion by: Joe Dickson                      Second: Calvin Walker  
Yes: 6              No: 0              Absent: 0              Abstain: 0              Recuse: 0