

**National Organic Standards Board  
Compliance, Accreditation and Certification Committee  
Proposed Discussion Document  
NOP Oversight of Materials Review Organizations**

**March 3, 2011**

## **Introduction**

The National Organic Program has requested the National Organic Standards Board's input on the regulation and oversight of materials review organizations. Such organizations generally provide guidance to ACAs and producers on the compliance of specific generic and brand name materials with the National Organic Standards. The CACC acknowledges the complexity of this issue and its potentially substantial impact on the organic certification and production community. Accordingly, the committee intends to solicit the feedback of impacted organic stakeholders through this discussion document prior to making a recommendation to the National Organic Program.

## **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 organizations 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**

The committee has identified a number of potential models and relevant questions on this issue. We are seeking public comments from any stakeholders on the items below.

### *Potential Oversight Models*

A number of potential approaches have emerged in the CACC's discussion of this issue. The committee notes that this is not an exhaustive list of oversight models, but is soliciting feedback on the benefits and drawbacks of each of these approaches, along with suggestions on any other relevant models:

1. The current model, with ACAs and independent organizations existing as they are, but NOSB provides guidance on what the qualifications should be for an organization to review and approve materials under the NOP and NL structure.
2. Create a separate accreditation category for Materials Review and Approval, modeled after the existing accreditation categories. Existing non-certifier review organizations would need to apply for accreditation as a certifier within the materials review category.
3. The National Organic Program adds a materials review function, under which NOP manages a single brand names list of formulated products. This may be a pay-for-use service to offset its operating costs.
4. Status quo, with no change to current practices.
5. A combination of two or more of the above.

### *Discussion Questions*

The CACC is seeking response from the organic community to several questions as follows:

1. Is there a need to develop a more uniform and consistent procedure for evaluating the competency and quality of material evaluation programs?
2. Should NOP regulate material evaluation programs?
3. Should reviews be performed only by authorized organizations?
4. Should authorized material review organizations only be:
  - a. Independent third parties?
  - b. Government (NOP, other federal agency, foreign governments)?
  - c. Certifying agents?
  - d. A combination of above?
  - e. Other?
5. What standards should be used to judge the competency of material review organizations?
6. What criteria should be used by material review organizations to evaluate materials?
7. How do you resolve differences in listed materials from different review organizations?
8. Should there be one material list? If so, who should maintain it?
9. Should only materials on the list be permitted to be used?

10. Should “product types” be broken into categories with possibly different criteria?
11. How should the material review program be financed?
12. What programmatic oversight is needed by NOP?
13. Should there be an appeals process for manufacturers of organic input materials?
14. Currently organic producers and handlers take all of the risk for using approved materials. If a material is found to not comply with the NOP regulations then the organic producer/handler could lose certification. Is there a way to protect organic producers and handlers from manufacturers that supply them with materials that are fraudulently represented as complying with the NOP regulations?

### **Committee Vote**

Motion by: Joe Dickson      Second: Barry Flamm  
Yes: 5      No: 0      Absent: 1      Abstain: 0      Recuse: 0