

**National Organic Standards Board
Materials Subcommittee
Discussion Document
Defining “Production Aids” As Used in OFPA §6517**

February 12, 2013

Background

The Organic Foods Production Act (OFPA), Section 6517 (c)(1)(B)(i) allows substances to be added to the National List if (among other requirements):

(B) the substance -

(i) is used in production and contains an active synthetic ingredient in the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers;

There has been some discussion on the National Organic Standards Board (NOSB) over past years concerning the meaning of “production aids.” The examples given in the law are materials that have a minimal impact on food, soil, or the ecosystem. However, there have in the past been requests to allow a range of substances under this category, including (as recommended by the NOSB in August 2005) “carriers, stabilizers, adjuvants, fillers, extractants, excipients and solvents that do have an active function in the formulations of farm production aids such as fertilizers, soil amendments, compost inoculants, sanitizers, aquatic plant extracts, and fish emulsions” and “active substances used in pest control (disease, weed, insects and nematodes) that do not fit into other OFPA categories.”¹

On the other hand, some interpret OFPA’s definition of “production aids” as disallowing materials similar to the groups mentioned in the August 2005 recommendation. The interpretation of the list in OFPA seems to hinge on whether one views the list “including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers” as exemplary (that is, a list exemplifying the kinds of things that might be considered “production aids”) or as items meant to be included, but not limited by type of substance. If it is the latter, then clearly some limitation is still implied by the fact that OFPA §6517 (c)(1)(B)(i) is stated as a constraint on what can be on the National List: “The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this chapter only if -(B) the substance - (i) is used in production and contains an active synthetic ingredient in the following categories:...” [Emphasis added.]

¹ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3104476> This recommendation was referred to the NOP to check on its legality and was never implemented.

Although only one substance –microcrystalline cheesewax for use in log grown mushroom production– is listed as a “production aid” on the National List, there are several items listed as crop or livestock inputs on the National List that do not fit into any of the OFPA categories, and some recommendations for these materials refer to them as “production aids.” For example,

In the opinion of this committee, hydrated lime should be considered a production aid, insofar as it is vital to the production of two exempted sulfur or copper containing materials in order to make these materials non-phytotoxic to plants. (4/20/2006 hydrated lime sunset recommendation)

Regarding whether the OFPA provides an exemption category that would permit hydrogen peroxide to be considered for inclusion on the National List, the NOP provided feedback to the NOSB that hydrogen peroxide could be considered a “production aid” under section 6517 of the OFPA. As a result, hydrogen peroxide would be eligible for continued use in organic production. (4/20/2006 hydrogen peroxide sunset recommendation)

Bioplastic mulch is used as a production aid, but is not technically considered a row cover because it increases soil temperature, reduces weed pressure, maintains soil moisture levels, and may help extend the growing season. (8/15/2012 committee recommendation (checklist) for biodegradable biobased mulch film)

This [6-benzyladenine] is a production aid; this fruit thus improving quality of fruit; improves air circulation thus reducing pests and disease; “enhances lateral bud break and lateral shoot growth, which leads to improved branching” TAP pg. 2 (5/2004 committee recommendation (checklist) for 6-Benzyladenine)

Its [Ethylene gas] use as a synthetic is not specifically listed in the exempt categories of 6517(1)(B)(i) unless it is considered a crop production aid. This term should be more carefully defined for consistent use in decision making on synthetic crop materials. (Supplementary information on ethylene gas provided to NOSB, to be added to 1999 Technical Advisory Panel review for review of use in crop production. This information was prepared by OMRI staff and did not receive additional review by the initial three TAP reviewers.)

This material [ferric phosphate] is a production aid. (March 2005 recommendation (checklist) for ferric phosphate.)

In addition, NOP frequently identifies petitioned substances as production aids or possible production aids when assessing the eligibility of a substance prior to NOSB review. If these materials were not so identified, they would not fit into an OFPA category, and the board would not need to commit resources to their evaluation. Some recent examples include:

Indole-3-butyric acid (IBA): “Plant hormone used for root cuttings. Does not fall under specific category, but could be considered a production aid.”

Carbon monoxide/exhaust gas: “TBD - unclear if product could be considered a production aid. EPA categorizes it as a device, rather than a pesticide.”

Carbon dioxide for aquaculture: “TBD - Unclear is use of petitioned substance may be considered a production aid.”

Chlorine in aquaculture: NOP underlined “equipment sanitizers,” but the petition also included use for disinfecting water.

Oxidized lignite: “Petitioned as a soil amendment.” (No such category.)

Biodegradable bioplastic mulch: NOP underlined “row covers,” but as the TR pointed out, the use is not “row covers,” but mulch.

Discussion

There are at least two distinct interpretations of the phrase “production aids.” One, a strict reading of the law and the legislative history, limits the application of the category to a narrow type of material that is delineated in the statute by example, “including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers.” Another interpretation of the phrase would allow materials that enable production of a crop and/or help inputs to work better.

Several pesticides are allowed on the National List because they fit into other categories –copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines– so the use of “production aids” as a catch-all for pesticides is considered contrary to the intention of OFPA. Furthermore, the examples listed in OFPA as production aids do all have something in common because they are all things that have only a minimal impact on the crop, soil, or surrounding ecosystem. In fact, the original Senate bill referred to “production aids such as machinery cleansers,” and the House bill did not contain any reference to production aids. The conference committee came up with the current language.

As noted above, others have argued for a much broader interpretation of the term – arguing that the examples listed are not meant to limit the types of materials covered by the term “production aids.”

Questions:

1. Is clarification of the term “production aids” needed?

2. Should clarification give further examples of what is and is not covered by the term? If so, please suggest inclusions and/or exclusions
3. What kinds of materials have historically been covered by the term “production aids”?
4. Should clarification give a narrative definition, such as “materials used in production but not having direct impact on plants, soil, or the ecosystem”? If so, please suggest language.

Subcommittee Vote:

Motion: The Materials Subcommittee moves to accept this document and present it for full Board discussion at the spring 2013 NOSB meeting:

Moved: Jay Feldman

Second: Jennifer Taylor

Yes: 5 No: 0 Abstain: 0 Absent: 2 Recuse: 0