

MATERIALS SUBCOMMITTEE

Limited Scope Technical Reviews

We agree with the Materials Subcommittee that there are circumstances when the materials review process could be shortened by a truncated review considering certain “gateway” issues. However, the process as described in the proposal should be clarified that the ultimate decision on any material rests with the entire NOSB and not a subcommittee.

Confidential Business Information

NOC submitted a letter to the NOSB on January 21, 2013 specifically on this topic of Confidential Business Information. For ease of reference, we have attached the letter to the end of this document, and it is also available electronically: <http://tinyurl.com/nosbcbi>. Answers to specific questions are below.

1. Should Confidential Business Information be allowed in petitions? Please explain your answer.

NOC sees no purpose in prohibiting CBI altogether, but we note that organic is a unique regulatory environment with regards to information that needs to be made clear to petitioners prior to their submittals:

- A. There is no specific right for a material to be approved for organic – some materials just cannot be organic.
 - B. To be approved for use in organic a material must submit to rigorous review that includes a very high degree of public transparency, often specifically based on a material’s ingredients and manufacturing process.
 - C. What may stand as CBI in other cases, often does not in organic because a material’s appropriateness for organic may necessarily be judged on some proprietary information. Therefore, a petition with CBI stands a high likelihood of rejection for insufficient information.
 - D. There may be cases where CBI may be withheld that might be appropriate such as specific formulas or recipes (? More examples??).
2. If CBI is allowed, should it be limited so that it does not involve ingredients or manufacturing processes?

Yes.

3. Do the provisions in Possible Recommendation 2 make sense and are there others that the board should consider?

These recommendations do make sense. We would urge that both NOP and NOSB provide additional instructions noting that NOSB decision-making as mandated by the OFPA, is wholly different than other regulatory decision-making: Since there is no right per se to have a material approved for organic, CBI declaration could itself

be the reason for rejection since organic requires full disclosure of ingredients and processes.

4. Provision I in Possible Recommendation 2 is about using an affidavit to supplement a CBI petition. Comment on whether this is valuable.

An affidavit such as this assumes a good understanding of the review criteria, and even OFPA and the breadth of the entire regulation. This is a difficult task to those who are experts in organic, but is extremely hard for a manufacturer who may have never entered the organic world before. A misunderstanding of the criteria could lead to an improper attestation, even from a well-meaning petitioner. For instance, an affidavit that claims that the information contained in CBI complies with all applicable federal regulations, that actually complies with EPA or FDA regulations, but not with specific organic standards. That said, any petitioner claiming CBI should be encouraged to provide any additional information that clarifies the missing information contained in CBI.

We are unconvinced of the value of such an instrument, but not opposed.

5. Should procedures, such as a Confidentiality Agreement, be developed that would allow the NOSB, but not the public, to see any CBI?

No. Given the intended interplay of the NOSB and the public, it appears that this option might be a set up for failure: 1) the NOSB would have an additional responsibility to clearly understand (and remember at all times) the boundaries of each specific CBI information amongst the mountain of all other information that comes at them; 2) the temptation increases for the public to demand such information since it is in the hands of this quasi-public board (i.e., via FOIA, etc.).

Definition of Production Aids

We are happy to see that the NOSB is addressing the meaning of the term “production aids.” Considering only one item on the National List is actually identified as a production aid, we believe that the term, as described in §6517(c)(1)(B)(i), is designed to describe a limited universe of synthetic materials that might be used in organic production. It does not list “pesticides,” “growth regulators,” “solvents,” or others under so-called “production aids.” We believe that the term should be strictly limited to physical items with minimal direct interaction with crops and livestock, as well as chemical substances that are used on equipment, but not directly on crops or livestock.

GMO ad hoc SUBCOMMITTEE

GMOs and seed purity

We agree with the subcommittee that preventing contamination of organic crops by genetically engineered (GE) organisms is important to maintaining organic integrity. We also agree about the importance of GE-free seeds as a basic requirement for organic production. It is a tremendous challenge to maintain high quality organic seeds free from