



# National Organic Coalition

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March 19, 2013

**NOC MEMBERS**

*Beyond Pesticides*

*Center for Food Safety*

*Equal Exchange*

*Food & Water Watch*

*Maine Organic Farmers and Gardeners Association*

*Midwest Organic and Sustainable Education Services*

*National Cooperative Grocers Association*

*Northeast Organic Dairy Producers Alliance*

*Northeast Organic Farming Association - Interstate Council*

*Organic Seed Alliance*

*Organically Grown Company*

*Rural Advancement Foundation International -USA*

*Union of Concerned Scientists*

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**Docket No: AMS-NOP-12-0070**

National Organic Standards Board:

The National Organic Coalition, (NOC) is a national alliance of organizations representing farmers, environmentalists, other organic industry members, and consumers concerned about the integrity of national organic standards. The goal of the coalition is to assure that organic integrity is maintained, that consumers' confidence is preserved, and that policies are fair, equitable and encourage diversity of participation and access.

Following are NOC's comments on the April 2013 Docket, except for Oxytetracycline, which is submitted separately and is available at: <http://tinyurl.com/nosboxytet>

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## **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

GE contamination while not burdening organic growers, who are the victims of contamination of their seed stock. NOC encourages creative approaches that take into account that organic growers need seeds that are not contaminated by GE genes, are diverse and regionally-adapted to their growing conditions, and that costs to prevent contamination should be borne by the GE seed patent holders, who should be held accountable for the costs associated with their products.

## **POLICY DEVELOPMENT SUBCOMMITTEE**

### **Public Communications**

NOC has previously commented in detail in at least our last 2 comments to the Board (September and May 2012) that we fully support the direction of more communication with the Board. We specifically like the proposed *Policy for Public Communication between NOSB Meeting* voted by the Policy Development Subcommittee. NOC has recently been writing letters to the Board outside of Board biannual meetings and public comment periods directly through personal emails of those Board members who have agreed to receive this information. We think that a year-round public communication mechanism sponsored by the Board is preferable and more transparent. We appreciate this Recommendation.

### **Material Review Initiation Policy**

We agree with the subcommittee that the initiation of materials review requires further discussion. Currently there are established policies for NOSB review of petitioned materials. However, there needs to be established procedures if a material comes to the NOSB by a process outside of the normal public petition process. NOC urges the NOSB to promote transparency and public participation in this process. In particular, technical reviews should be accessible to public so that they can provide comments of substance for the board.

## **CROPS SUBCOMMITTEE**

**OxyTetracycline – See separate submission by NOC for this petition**

### **Polyoxin D Zinc Salt**

NOC agrees with the subcommittee's recommendation to deny the petition to add Polyoxin D zinc salt to the National List. Polyoxin D is a broad spectrum fungicide, and as such is inherently incompatible with the basic principles of organic production. There are significant concerns about the capacity of this material to negatively affect non-target organisms, including beneficial fungi, insects, and aquatic species. Moreover, there are effective alternatives available control fungal pathogens--several currently allowed substances on the National List, crop rotation, crop nutrient management practices, sanitation to remove disease vectors, selection of resistant species and varieties (where applicable), beneficial antagonistic bacteria, and monitoring are listed in the TR as effective alternatives.

### **Indole-3-butyric Acid (IBA)**

NOC supports the Crops Subcommittee recommendation to deny the petition to list IBA for the purpose of plant propagation via dipping. IBA is a plant hormone in the auxin family and is an ingredient in many commercial horticultural plant rooting products. This use of IBA does not meet the requirements of OFPA—it does not fit into a category of allowed synthetic inputs, and its health and environmental effects are not sufficiently known. In addition, there is no demonstrable need for IBA since successful rooting from stem cuttings is one of numerous plant propagation processes, and a number of synthetic and nonsynthetic substances can facilitate the process.

### **INERTS WORKING GROUP UPDATE**

We thank the Inerts Working Group (IWG) and the Crops Subcommittee (CS) for creating a workable policy and procedure for subjecting so-called “inert” ingredients to the criteria of OFPA. NOC has noted several times in previous comments the importance of “inerts” review and the fact that ingredients of pesticide products that are labeled as “inert” are generally not physically, chemically, or toxicologically inert. But the use of the word “inert” has led policy makers and the public to discount the problems they might be cause. We urge the IWG and CS to begin the process of reviewing these substances as soon as possible. An important advantage of beginning this process now, is that if there are problems with the process, they are most likely to be revealed in practice, and can be dealt with prior to sunset deadlines.

### **HANDLING SUBCOMMITTEE**

#### **Sulfuric Acid**

We agree with the subcommittee’s recommendation to deny the petition to add sulfuric acid to the National List for use in the production of seaweed extracts. The manufacture of the material creates numerous adverse effects on the environment, as sulfuric acid is a primary contributor to acid rain, and hence acidifying natural environments. The material also has the potential to contain heavy metal residues and impurities at levels above FDA tolerances. Additionally, sulfuric acid derived seaweed extracts such as fucoidan are not essential for organic production. Sulfuric acid is a synthetic substance whose use is neither compatible with organic principles nor necessary in organic production.

#### **Barley Beta Fiber**

NOC urges the NOSB to deny the petition since adding nonorganic barley beta fiber to organic food is not compatible with organic handling: the barley source will not be grown with any restrictions on synthetic fertilizer use or pesticide use; the processing of barley beta fiber involves conventional ethanol grown from GMO corn; alternatives are widely available; and finally, the barley beta fiber is not essential to production, particularly as the claimed health benefits are based on the nutritional value of the whole grain not just the fiber.

### **Sugar Beet Fiber**

We oppose the subcommittee's recommendation to add sugar beet fiber produced by chemical-intensive methods to the National List. Sugar beet fiber is petitioned for use as a dietary fiber in organic foods. Manufacturing sugar beet fiber from nonorganic sources creates adverse impacts on the environment during both the production and processing stage. Production of nonorganic sugar beets uses toxic pesticides that harm the environment.

Sugar beet processing produces high volumes of wastewater, and can cause air pollution and emissions problems. Although organic sugar beet fiber processing also has the potential to create these problems, conventional sugar beet processing may use certain chemicals that are not allowed in organic processing, including various antimicrobials not approved for organic processing.

Additionally, there is the possibility that genetically engineered sources of sugar beets will be used given that fact that 95% of sugar beets in the United States are genetically engineered to resist applications of the herbicide glyphosate. Although the petitioner is in Europe where there are no genetically engineered sugar beets in agricultural production, the petition does not restrict sugar beet fiber to European sources. Moreover, this product is not essential for organic production, as whole foods and other grains already on the National List represent reasonable, available alternatives.

NOC supports the more extensive comments of the Center for Food Safety and Beyond Pesticides on Sugar Beet Fiber.

### **DBDMH**

We agree with the subcommittee that the petition for DBDMH, an antimicrobial wash in meat packing, should be denied. DBDMH is "extremely destructive to the tissue of the mucous membranes and upper respiratory tract" posing a threat to workers handling DBDMH. The material is not essential as there are numerous alternatives that are already approved for use in organics including hot water and lactic acid. In this instance it seems clear that the Precautionary Principle should be applied.

### **Auxiliary/"Other" Ingredients**

NOC is concerned that the Handling Subcommittee proposal on "other ingredients" does not subject those ingredients to the criteria required by OFPA. The "baseline criteria" are not OFPA criteria. We propose that NOS B already has a policy for "other ingredients," and it is the same as the policy for all ingredients. All ingredients in food labeled "organic" must be organic or on the National List.

## **COMPLIANCE, ACCREDITATION AND CERTIFICATION SUBCOMMITTEE**

### **Calculating Percentage of Organic Ingredients in Multi-Ingredient Products**

**Comments on the Background Section of the CACS's Proposal**

**“Many certificates list raw agricultural ingredients as “organic” when in fact, they should be listed as 100% organic.”**

Prior to the implementation of the NOP, the organic industry did not use a “100% organic” label and, to date, the label is not widely used in the marketplace, largely due to the requirement that all processing aids in a “100 % product” must be from organic sources.

In the case of raw agricultural ingredients, applicability of the “100% label hinges on the acceptability of the use of postharvest handling materials such a flotation aids and sanitizers in wash water. NOC notes that the NOP regulations do not make a clear distinction between materials allowed for use in postharvest handling (used on farms or packing sheds on raw commodities) and those used as processing aids (used by handlers to create processed products). NOC thinks it would be beneficial for NOSB to clarify where postharvest handling materials stand with respect to crop materials and handling materials classified as "processing aids." In turn, that decision would help inform the discussion of % organic.

**“There is also a wide array of mechanisms in place amongst handlers as to how processing aids as opposed to additives are recorded or, if necessary calculated as part of the ingredient list.”**

We are unclear what the term “additive” means. This term is undefined in the NOP regulations. Is the CACS referring to an “ingredient” when using this term?

**Comments on the Discussion Section of the Proposal**

**“These comments came from Approved Certifying Agencies, non-profit organizations, research groups and trade associations, and they are included in the brief discussion below.”**

Just a small correction, because NOP oversees all certifying agents through its accreditation program, the term “ACA” means Accredited Certifying Agents, as opposed to Approved Certifying Agencies.

**Comments on the Subcommittee Recommendations**

**Proposed Regulatory Change**

NOC supports the proposed change in the NOP regulations that would base the calculation of % organic on ingredients instead of on the finished product. NOC notes that making the calculation based on ingredients is current industry practice.

Additionally, from a practical point of view, we see three advantages to the regulatory change:

- The information on ingredients that is easily available is the recipe or formulation
- Adjustments to the ingredients going into recipes are easy to for the processor to plan and for the certifier to evaluate, whereas if calculations are based on the final product, processors would be forced to run a batch of each proposed recipe change in order to get the information needed to make the % organic calculations

- Basing the calculations on ingredients eliminates a source of variability in the calculations related to loss of weight and other product changes that commonly occur during processing.

### Self Calculating Forms

We agree that, for a multi-ingredient product used as an ingredient in a another product, information about the actual organic content of the ingredient must be available in order for the ingredient to be calculated at an amount above 95% or 70%, depending on how the ingredient is represented on the certificate.

NOC agrees that a self-calculating form is a simple and practical way for certifiers to implement the NOP regulations on % organic calculation. We think that an NOP template could provide a starting place for certifiers to adopt this methodology and also think it could benefit processors who are working on development of organic products and want to assess how different ingredient choices would affect product labeling.

However, we do not think that certifiers should be required to use any specific self-calculating form. Accreditation requirements allow for ACAs to develop quality and record keeping systems that suit their own management styles and needs. Further, we see benefit for ACA's being able to develop their certification systems in a way that will attract operations of specific types—we think this is a mechanism that tends to drive the quality of certification services upwards.

Although NOC supports the concept that ACA's should be able to differentiate themselves by providing unique forms and tools to operators, we also recognize that that certifiers' current practices in making calculations of % organic currently differ. To address this, NOC urges the NOP to institute a special audit focus on ACA's systems for calculating % organic. NOP should require all certifiers to submit the procedures, tools and forms used to calculate % organic as part of the ACAs' next annual update process and then audit these tools to determine whether the calculations they produce conform with the NOP's standards. NOP can evaluate the certifier's tools against NOP's own template form, which could be used to provide a standard of calculation for a few different types of products that represent all of the elements that a calculation form must be able to address: salt, water, 70% ingredients, 95 % ingredients, single-product ingredients, multiple-product ingredients, ingredients with unknown % organic, etc. After entering the same product information into the certifier's form, the % organic information results could be easily compared.

These principles may also be applied in parallel to CACS's proposal that handler utilize a self-calculating form of their own, or a form provided by a certifier. In this case, the certifier's own form would serve as the standard of calculation and the handler's form would be audited against the certifiers'.

### Types of salt excluded from Calculations

NOC agrees that only sodium chloride may be excluded when making calculations of % organic. All other salts and salt additives must be included in the calculation.



### Water Calculations

NOC agrees that the exclusion of water in % organic calculations is more complicated than it sounds! We agree with CACS's recommendation that NOP guidance on this topic would be very helpful. For example, information on product identity standards for a wider range of products, especially those that are of special interest to organic consumers, would be very helpful to certifiers, processors and consumers alike.

### Processed Single Ingredients

NOC supports more extensive use of Specification Sheets for processed single ingredients. We suggest that providing Specification Sheets is another opportunity for certifiers to distinguish themselves from their competition.

Due to questions about the use of materials in post harvest handling (explained earlier in these comments), we note that Specification Sheets could also help to clarify situations in which raw agricultural products are exposed to materials used during postharvest handling. Use of a Specification Sheets in this instance would document why a raw product is ineligible for the 100% organic label and would provide more detail about how the product should be considered in a % organic calculation when used as an ingredient in a processed product.

### Multi-Ingredient Ingredients

NOC supports the CACS's point that it must be the certifier that provides the documentation of % organic claims. We think that including such information on the certificate is the most efficient mechanism for the transfer of this information because it would require no additional work for either the certifier or handler to get the information, as certificates are passed along as part of the sale of organic products.

### Organic Label vs. organic content

NOC finds that CACS's distinction between "organic label" and "organic content" is helpful. The NOP regulation addresses these topics in different sections of the regulation, yet provisions of these sections clearly interact with each other when making calculation of "% organic".

- NOC urges further clarification of the provision when applied to raw commodities that are treated with postharvest materials.

### Raw agricultural and Single-Ingredient Products

NOC supports a system in which the labeling category is accurately represented on certificate for both raw and processed products. We note that although such information is not specifically required by NOP §404.b, it is specifically mentioned in NOP Guidance document #2603.

We support the practice of listing this information because it not only clarifies the calculations for processors who use this product, if accuracy were improved with regard to listing raw agricultural products it would also aid in differentiation of raw product that

has been treated with a synthetic processing aid--in this case, the raw product could not be listed as 100% organic on the certificate.

NOP Guidance

NOC agrees that it is helpful for NOP to provide explanations of technical points on its website because that makes the information available to all stakeholders. We think information on calculating % organic would fit well into the NOP Handbook. We support the inclusion of information on all of the points recommended by the CACS and any additional topics that arise from communications with ACAs, processors, growers and consumers, as the topic of calculating % organic is further developed.

The National Organic Coalition appreciates the significant work of the National Organic Standards Board, and this opportunity to comment.

A handwritten signature in cursive script that reads "Liana Hoodes".

Liana Hoodes,  
Executive Director