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Patricia Atkins
National Organic Standards Board
USDA–AMS–TMP–NOP
1400 Independence Ave., SW.,
Room 4646-So., Ag Stop 0268
Washington, DC 20250–0268

Docket: AMS–NOP–11–0014; NOP–11–05

RE: **NOSB Compliance, Accreditation & Certification Committee Agenda Item: Proposed Discussion Document NOP Oversight of Materials Review Organizations**

Dear Ms. Atkins:

Thank you for the opportunity to provide comments to the National Organic Standards Board regarding the Compliance, Accreditation & Certification Committee discussion document on Oversight of Materials Review Organizations to be discussed at the April 2011 NOSB meeting.

The Accredited Certifiers Association (ACA) represents 40 USDA Accredited Certifying Agents, both foreign and domestic. ACA did supply the Compliance, Accreditation and Certification Committee with a copy of our *Materials Review White Paper* of 2010 in which our membership identified many of the same issues and concerns outlined by the Committee in this document.

ACA has reviewed the above document and has provided general comments as well as specific responses to the questions asked.

General Comments

1. ACA believes that prior to the establishment of a scope of accreditation for review of materials, the National Organic Program should provide detailed guidance describing an appropriate process and the procedures desired for review of materials.

2. ACA also believes that increased enforcement oversight by the National Organic Program of all organizations reviewing materials is needed prior to the establishment of a scope of accreditation for review of materials. Our members have stated that accreditation auditors had generally not reviewed the materials review process /

procedures with the same scrutiny that the certification process receives.

3. ACA believes that there are currently two primary types of organizations reviewing materials, each with a different purpose[1]:

   - materials review organizations (such as OMRI and WSDA) who conduct material reviews for manufacturers and publish a list of approved materials

   - accredited certifying agents who conduct materials review as an integral part of the certification process, at the request of the client, but do not publish a list of approved materials

   Throughout our comments we have addressed issues that may affect these organizations differently.

Comments regarding 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.

   Comment: ACA's working in conjunction with the National Organic Program and the National Organic Standards Board would provide the expertise for development of guidance and procedures for review of materials that would meet the needs of all.

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.

   Comment: The ACA believes that the development of a separate accreditation scope is a long term process, and should not be the primary focus. There was agreement that materials review organizations (those not associated with the certification process) should be accredited for materials review. Those organizations that also "certify" (rather than "approve") products should be required to obtain accreditation. A scope of accreditation for materials review would bring input manufacturers into the system.

   However, since review of materials is an integral part of the certification process, ACAs electing to <u>not</u> obtain an additional scope of accreditation to perform materials reviews, must

[1] While this is the case in the US, in Europe it is quite common for certification agencies to conduct a review of materials on behalf of the manufacturer and publish a list of materials.

not be prohibited from reviewing materials. This prohibition would cripple the certification process. The materials review program of the ACA electing not to obtain the additional scope of accreditation must be reviewed as part of their normal accreditation audit, with the same scrutiny as is applied to accredited materials review programs.

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.

   Comment: ACA believes the management of a materials review function by the National Organic Program is not seen as a preferred option due to the necessary timeliness of the review in order to complete the certification process, uncertainty of government funding and changing political climates.

4. Status quo, with no change to current practices.

   Comment: The ACA believes that the current system could be improved upon the easiest and in a shorter amount of time than developing a new accreditation scope. Suggestions for improvement include:
   - NOP develops additional guidance for materials review
   - NOP focuses more on the materials review process during accreditation audits;
   - NOP provides more detailed training modules to ACAs for materials review (not just focus on liquid fertilizers).
   - Clarification on particular review procedures
     - process for determining agricultural or non agricultural status of material
     - process for synthetic or non synthetic status of a material
     - source and composition of ingredients
     - where does the information come from – the ingredient label or the manufacturer
     - how deep do you go in the review – are additives not included in the ingredient list reviewed?

5. A combination of two or more of the above.

   Comment: ACA believes that a combination of models will be the most efficient both in time and resources.

ACA Response to the NOSB Questions

1. *Is there a need to develop a more uniform and consistent procedure for evaluating the competency and quality of material evaluation programs?*

   Yes. ACA believes that prior to the establishment of a scope of accreditation for review of materials, the National Organic Program should provide detailed guidance describing an

appropriate process and the procedures desired for review of materials.

We would like a definition included for *material evaluation program* as a part of an NOSB Recommendation. The National Organic Program defined (in the 12.14.2009 Liquid Fertilizer Memo) *materials evaluation program* as:

> An organic certification or other program, independent from the crop producer or the input manufacturer, with the expertise to verify compliance of inputs used in organic production and handling with the NOP regulations. The expertise and approval of material evaluation programs will be a component of the NOP accreditation program. Approved material evaluation programs include NOP accredited certifying agents and the Organic Materials Review Institute (OMRI). ACAs and OMRI are audited regularly to evaluate their compliance with the NOP regulations and this policy.

The ACA believes that ACAs and organizations that review materials independent of the certification process should not be considered "similar" when it comes to regulation. ACAs review materials for use by a specific client in a specific situation, rather than provide a blanket product approval for a manufacturer.

2. *Should NOP regulate material evaluation programs?*

ACA also believes that increased enforcement oversight by the National Organic Program of all organizations reviewing materials is needed prior to the establishment of a scope of accreditation for review of materials. Our members have stated that accreditation auditors had generally not reviewed the materials review process / procedures with the same scrutiny as the certification process receives. In many cases ACAs are educating the auditor regarding the materials review process.

3. *Should reviews be performed only by authorized organizations?*

The ACA believes that clarification is needed regarding what an "authorized organization" is. What is the "authorization" based upon; what does "authorization" grant to an organization; what is the criteria to "authorize" an organization? Should the terminology be "accredited" rather than "authorized"?

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?*

The ACA believes that if there are criteria in place for materials review organizations, it would be difficult to exclude anyone. ACA believes that product manufactures should not be permitted to be materials review organizations. However we note that manufacturers are currently allowed to self confirm that ingredients are compliant with GRAS guidelines.

Clarification is also needed regarding how other federal agencies, such as the EPA, would be permitted to review materials for compliance with the National Organic Program. Would those other government agencies be required to utilize the same criteria as private accredited programs?

5. *What standards should be used to judge the competency of material review organizations?*

The ACA believes that there should be guidelines (not necessarily standards) for the operation of a materials review process. An example would the ISO 65 Guidelines. Competency would be determined by how well the organization is following the guidelines it established, and could include:

- does the organization have procedures for the materials review process and is the review process audited
- is there a transparent process for determining synthetic/non synthetic classification; for agricultural/non agricultural determination
- is there a transparent process for changes to the procedures;
- is there a transparent process for informing clients of changes in requirements
- how are changes verified

6. *What criteria should be used by material review organizations to evaluate materials?*

The ACA believes that the formation of a Task Force, with a broad stakeholder membership including the National Organic Program staff, the National Organic Standards Board, ACAs, non-governmental organizations and representatives of the input sector, should determine the criteria to evaluate materials.

The Task Force should start with the basic requirements and work down to the details. Please see #4 of *Comments regarding potential oversight models.*

7. *How do you resolve differences in listed materials from different review organizations?*

The ACA believes that the issuance of clear guidance by NOP will alleviate many of the issues of differing interpretations by reviewing organizations. Increased oversight and enforcement by NOP will also reduce differences and develop consistent review of materials.

It was also noted that the NOSB could assist by completing the work on the classification of materials document. This would provide guidance in determining synthetic/non synthetic and agricultural/non agricultural classifications.

8. *Should there be one material list? If so, who should maintain it?*

The ACA believes that one publically maintained list would be a benefit to all; however, until there is a consistent review process with oversight, it is difficult to know the level of scrutiny applied to the review of a material by the various organizations reviewing materials.

There is the possibility of an error in the review, and a material being considered approved, when it should not have been. The liability will increase for all operations.

There is also a question whether ACAs who review materials in conjunction with client certification would be required to supply information regarding materials status to a central database. If ACAs are not charging the manufacturer for the review, and the product is listed, this would essentially be a marketing tool for the manufacturer – paid for essentially by the operator.

The determination of if there should be one materials list, and who should maintain it should be included in the work of the Task Force identified in # 6 above.

9. *Should only materials on the list be permitted to be used?*

No. There are many local products / custom mixes that are only available on a regional basis. ACAs generally review these materials as a part of the certification process for a specific operation.

10. *Should "product types" be broken into categories with possibly different criteria?*

Yes; materials with different uses cannot be reviewed using the same criteria. Examples include the review of livestock materials: some are for feed use; others are for health care uses.

11. *How should the material review program be financed?*

The ACA believes that this is likely to continue to be a two-track system determined by the output of the reviewing agency:

a) If the reviewing agency provides a published list, and this is essentially used as a marketing tool, product manufacturers should pay.

b) If an ACA provides the review as part of the certification process, these costs are included in the certification fee. There is usually not a published list associated with the review by an ACA. ACAs could charge manufacturers if reviewing an entire product line.

12. *What programmatic over sight is needed by NOP?*

The National Organic Program must

a) provide clear guidance for the review of materials
b) develop an effective oversight program for all organizations that review materials
c) provide additional, detailed training to ACAs regarding the process of materials review
d) provide comprehensive training for NOP staff which is then disseminated to the accreditation auditors.

13. Should there be an appeals process for manufacturers of organic input materials?

Clarification is needed whether the appeal is from the materials review organization perspective or the NOP. If a materials review organization is ISO Guide 65 accredited, they are required to address rebuttals or disagreements with decisions to comply with accreditation. If a review is conducted on behalf of a manufacturer, there does need to be an appeals process developed.

Many ACAs who conduct materials review do not have a formal process to address an appeal. Several indicated that if a decision is made, and then they are presented with additional information, there is reconsideration of the decision.

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?

The ACA believes that it is necessary to include inputs under the compliance program. There does need to be clearer regulation, and consistent requirements for input manufacturers.

Currently there is an apparent two track system that is not equal across the spectrum:

a) If a manufacturer has sought an official marketing seal of OMRI and WSDA and then has defrauded producers, the producers were exempt from penalty.

b) If material has been reviewed by an ACA, approved based on incorrect information and the manufacture sells prohibited materials to client, then client gets certification revoked.

Addressing this issue dependent on where the product was reviewed, is not fair or consistent. It is widely understood among ACA's that manufacturers often "shop" ACAs for those that do provide acceptance of a material. This includes varying the information supplied to the different ACAs in order to gain product approval.

ACA appreciates the attention to this issue by the National Organic Program and the National Organic Standards Board and appreciates the opportunity to provide comments.

Sincerely,

Patricia Kane

Patricia Kane
ACA Coordinator