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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-NOP-12-0060; NOP-12-14]

National Organic Program: Notice of Draft Guidance on Classification of Materials and Materials for Organic Crop Production

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of draft guidance with request for comments.

SUMMARY: This notice announces draft guidance for review and comment by accredited certifying agents, certified operations, material evaluation programs, and other organic industry stakeholders. The first set of draft guidance documents implements recommendations from the National Organic Standards Board (NOSB) concerning the classification of materials under the USDA organic regulations (7 CFR part 205). The Classification of Materials draft guidance, NOP 5033, details the procedures and decision trees for classifying materials used for organic crop production, livestock production, and handling. The second set of draft guidance documents, NOP 5034, provides clarification regarding materials for use in organic crop production. These documents include an itemization of allowed natural and synthetic materials and a limited appendix of materials prohibited in organic crop production.

The guidance explains the policy of the National Organic Program (NOP) concerning the portions of the regulations in question, referenced herein. The Agricultural Marketing Service (AMS) invites organic producers, handlers, certifying agents, material evaluation programs, consumers and other interested parties to submit comments about these guidance provisions. Notices of availability of final guidance on these topics will be issued upon final approval. Once

finalized, final guidance documents will be available from NOP through “The Program Handbook: Guidance and Instructions for Certifying Agents and Certified Operations.” This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/nop> or in print upon request.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit written requests for hard copies of this draft guidance document to Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250–0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Interested persons may submit comments on these draft guidance documents using the following procedures:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW, Room 2646-So., Ag Stop 0268, Washington, DC 20250-0268.

Written comments responding to this request should be identified with the document number AMS-NOP-12-0060; NOP-12-14. Clearly indicate the draft guidance and, if applicable, the material(s) you are addressing, your support for or opposition to it, and the reason for your

position. Please include only relevant information and data to support your position. AMS is specifically requesting comments on the status of some materials as described in the **SUPPLEMENTARY INFORMATION** below.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on www.regulations.gov and at USDA,AMS, NOP, Room 2646-South building, 1400 Independence Ave., SW., Washington, D.C., from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are request to make an appointment by calling (202) 720-3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268, Washington, D.C. 20250. Telephone: (202) 720-3252; Fax: (202) 205-7808.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance documents announced through this notice were developed in response to outstanding NOSB recommendations. These documents also address the identified need to develop guidance to address requests by certifying agents and certified operations for clarification on the classification of materials and for more definitive information on materials used in organic crop production.

Under the Organic Foods Production Act (OFPA) (7 U.S.C. 6501-6522), the National List of Allowed and Prohibited Substance section of the USDA organic regulations must include

synthetic substances which are permitted for use in organic crop production, and nonsynthetic (natural) substances which are prohibited for use in organic crop production.

Within the guidance, NOP has used the synonymous term “material” in place of the term “substance,” as the term “material” is more commonly used within the organic community.

Nonsynthetic (natural) materials are generally permitted to be used in organic production, but are not required to be included in the National List. At times, this unique construction of the National List has been a source of confusion or inconsistency in determining which input materials are allowed for organic production, since permitted nonsynthetic materials (e.g., feather meal, fish meal, botanical pesticides) are not specifically identified in the standards. The lack of guidance on classification has led to confusion and inconsistency in the industry in how to classify materials as natural or synthetic, and, by extension, whether the material needs to be on the National List.

The draft guidance document NOP 5033, Classification of Materials, provides additional guidance to the industry on how materials are classified as nonsynthetic, synthetic, agricultural, or nonagricultural. The terms “nonsynthetic,” “synthetic,” “agricultural,” and “nonagricultural” are defined at 7 CFR 205.2 of the USDA organic regulations. This guidance implements a series of recommendations of the NOSB and provides clarification on how materials should be classified according to these defined terms. Draft guidance NOP 5033-1 includes a decision tree for classifying a material as synthetic or nonsynthetic. Draft guidance NOP 5033-2 includes a decision tree for classifying a material as agricultural or nonagricultural. For materials used in organic crop production, the classification guidance is intended to be used in conjunction with the draft guidance NOP 5034, Materials for Organic Crop Production, to assist in determining whether a material is permitted for use.

The draft guidance document NOP 5034, Materials for Organic Crop Production, provides guidance to the industry on materials used in organic crop production. Once finalized, NOP 5034-1 is intended to provide a tool for organic producers to understand which input materials are allowed in organic crop production. The guidance includes substances which are specifically allowed in section 205.601 of the USDA organic regulations, as well as materials which are permitted, but are not required to be included on the National List. The appendix NOP 5034-2 provides a list of materials that are specifically prohibited in organic crop production. The appendix of prohibited materials is not intended to be all inclusive, but is provided for guidance to the industry of items which have been previously reviewed by the NOSB and not recommended for use. The appendix of prohibited materials also includes materials which are specifically listed in section 205.602 the National List as prohibited for use in organic crop production (e.g., lead salts) or that are otherwise prohibited by the USDA organic regulations (e.g., sewage sludge). The guidance, once finalized, will not grant new allowances for any synthetic substance to be used in organic production that have not been specifically recommended by the NOSB and added to the National List through rulemaking for such purpose.

NOP is aware that there may have been some inconsistency in the classification of a small number of materials used in organic crop production. NOP is issuing this draft guidance in an effort to clarify the status of these materials. Comments are specifically requested on the classification and descriptions provided in NOP 5034-1 for the following materials: bagasse, biochar, corn steep liquor, fatty acids, glycerin, molasses, vegetable protein hydrolysate, vinasse, and xanthan gum. NOP is requesting comments on whether these materials are accurately classified according to the draft guidance on classification, NOP 5033-1, and whether any

amendments are needed to the descriptions provided in NOP 5034-1, Materials for Organic Crop Production.

II. Significance of Guidance

This draft guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent the NOP's current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-6522), and its implementing regulations are also acceptable. The NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

Authority: 7 U.S.C. 6501-6522.

Dated: March 28, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

