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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of final guidance.

SUMMARY: This notice announces availability of final guidance intended for use by accredited certifying agents, certified operations, material evaluation programs, and other organic industry stakeholders. The first set of guidance documents, NOP 5033, follows 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 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 guidance documents, NOP 5034, clarifies certain materials for use in organic crop production. These documents include an illustrative list 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.

DATES: The final guidance documents announced by this notice are effective on [INSERT DATE 1 DAY AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room

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SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 2013, the Agricultural Marketing Service (AMS) published in the Federal Register a notice of availability with request for public comment on two sets of draft guidance documents (78 FR 19637). These included NOP 5033 – Classification of Materials and NOP 5034 – Materials for Organic Crop Production. The draft guidance documents on Classification of Materials were developed in response to NOSB recommendations. The documents also address the identified need to develop guidance for certifying agents and certified operations for clarification on the classification of materials and for more definitive information on materials used in organic crop production.

The draft guidance documents can be viewed online at <http://www.ams.usda.gov/NopDraftGuidance>. The 60-day comment period closed on June 3, 2013.

AMS received 47 public comments on the draft guidance. Based on the comments received, NOP revised and is publishing final guidance on these topics.

The final guidance documents are available from NOP through “The Program Handbook: Guidance and Instructions for Certifying Agents and Certified Operations.” The Program 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>.

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

Because industry typically uses the word “material” to describe “substance,” for the purposes of these guidance documents, “substance” and “material” are synonymous and interchangeable.

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 construction of the National List has led to inconsistent determinations by industry on 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 guidance document NOP 5033, Classification of Materials, provides 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 NOSB recommendations and clarifies the classification of these defined terms. NOP 5033-1 includes a decision tree for classifying a material as synthetic or nonsynthetic. 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 final guidance NOP 5034, Materials for Organic Crop Production.

The guidance document NOP 5034, Materials for Organic Crop Production, guides the industry on materials used in organic crop production. NOP 5034-1 is a tool for organic

producers to understand which input materials are allowed in organic crop production. The guidance includes substances that are specifically allowed in section 205.601 of the USDA organic regulations, as well as materials that 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. Neither list is intended to be all inclusive. NOP 5034-2 does include items that have been previously reviewed by the NOSB and not recommended for use or whose use in organic crop production has expired. The appendix of prohibited materials also includes materials that are specifically listed in section 205.602 of 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 does 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.

II. Significance of Guidance

These final guidance documents are 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. These final guidance documents represent NOP's current positions on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind NOP or the public. Guidance documents are intended to offer uniform methods for operations that comply with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-6522) and USDA organic regulations, thereby reducing the burden on operators of developing their own methods and to simplify audits and inspections. Alternative

approaches that can demonstrate compliance with the OFPA and its implementing regulations are also acceptable. As with any alternative compliance approach, 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.

III. Electronic Access

Persons with access to Internet may obtain a copy of final guidance documents from the NOP's Web site at <http://www.ams.usda.gov/nop>. Request for hard copies of the final guidance documents can be obtained by submitting a written request to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notification of availability.

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

Dated: November 29, 2016.

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Administrator
Agricultural Marketing Service
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