



CCOF

Advancing organic agriculture through certification, education, advocacy, and promotion.

Ms. Michelle Arsenault
Advisory Committee Specialist
National Organic Standards Board, USDA-AMS-NOP
1400 Independence Ave. SW., Room 2642-S, Mail Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-18-0071-0001

Re: Compliance, Accreditation, and Certification Subcommittee Discussion Document: Oversight Improvements to Deter Fraud

April 4, 2019

Dear Ms. Arsenault and NOSB,

Thank you for the opportunity to comment on the Compliance, Accreditation, and Certification Subcommittee's discussion document "Oversight improvements to deter fraud."

CCOF is a nonprofit organization governed by the people who grow and make our food. Founded in California more than 40 years ago, today our roots span the breadth of North America. We are supported by an organic family of farmers, ranchers, processors, retailers, consumers, and policymakers. Together, we work to advance organic agriculture for a healthy world.

CCOF provides the attached responses and comments to the discussion document. CCOF supports the goal of building a stronger organic certification system that can deter fraud. CCOF recommends organic acreage reporting, the National Organic Program (NOP) having "stop sale" authority, and the development of a stronger system of collaboration and transparency between organic certification agencies as the top three priority items. NOSB should recommend that NOP update the Organic Integrity Database (OID) daily and require certifiers report current data to OID on a monthly basis, at a minimum.

NOSB should also consider whether to recommend that certifiers conduct cross check audits of production and sales data for 2% of their clients. Certifiers could be required to use risk assessments to determine which operations to cross check. This requirement could be similar to the requirement to perform unannounced inspections or sampling of operations.

Thank you for your review of our comments. Please do not hesitate to contact me for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Nell". The signature is fluid and cursive, with the first name "Peter" and last name "Nell" clearly distinguishable.

Peter Nell
Government Affairs Manager

cc: Kelly Damewood, CEO
Jody Biergiel Colclough, Interim Chief Certification Officer, CCOF Certification Services, LLC

CCOF's Comments on the CAC Subcommittee Discussion Document Oversight Improvements to Deter Fraud

The following comments are based on CCOF's experience offering organic certification for more than 40 years and our current certification of over 3,600 organic producers across the supply chain.

1. Explore working with Congress to provide the NOP with "stop sale" authority.

CCOF supported increasing NOP's authority in the 2018 Farm Bill. Providing NOP the authority to stop the sale of products to investigate their organic integrity is a logical extension to increase oversight over the organic supply chain and consumer confidence in the organic label.

2. Organic certification agencies should develop a stronger system of collaboration and transparency when investigating fraud.

NOSB should recommend a mechanism on how accredited organic certifiers should collaborate. NOSB could recommend that NOP develop a guidance document on cross-certifier communication with specific expectations for timelines (30-day response time between certifiers, for example) and the types of information shared between accredited certifiers, including sales/production data critical for implementing production cross-checks. NOP could train accredited certifiers on best practices for communicating confidential information as part of the NOP Organic Integrity Learning Center or at a NOP/Accredited Certifiers Association (ACA) training.

Currently, many certifiers do communicate and collaborate on issues such as investigations, but a formal framework should be established to ensure that responses are comprehensive and timely. Certifiers should also be required and empowered to do cross-checks with other certifiers.

3. Close the loophole which allows uncertified handlers to both buy/sell organic products, as well as to physically take possession.
 - a. Handlers who take possession of organic products in unsealed containers, where they could sort, consolidate, relabel or otherwise compromise the contents or container label, must be certified. This would include warehouses, transfer areas, repack operations, retail consolidation locations among others.
 - b. Handlers who do not take physical possession, but instead buy/sell or broker product, must be certified. This would include exporters, traders, importers, brokers and others.
 - c. Handlers who manage private labels that have an organic claim, which they then sell into the marketplace, must be certified.

The certification of uncertified handlers would strengthen organic integrity. However, requiring certification for the excluded/exempt operations that currently fall under § 205.101 would have a large economic impact. A phase-in period for certification should be established to ensure an orderly

transition in the marketplace. Some currently excluded/exempt operations may choose to discontinue selling organic products instead of getting certified.

CCOF recommends NOSB prioritize the highest-risk operation types, such as handlers who do not take physical possession but buy and sell products, before requiring all uncertified handlers to come under certification. Risk level could be determined by reviewing instances of fraud. Private label owners, for example, are lower risk.

NOSB should also evaluate how some business structures may be affected by a requirement to be certified. Some organic operations establish separate businesses to market and sell products. These types of operations are low risk as they do not source organic from any other channel than the certified farm or processor.

4. In addition to the education of inspectors and internal certification personnel, information on the requirements of organic certification should be developed specifically targeted to handlers to improve their sourcing, processing, and sales of organic products. A goal of this education would be to harmonize, where possible, the procedures used in the trade that track organic compliance. Better understanding of NOP organic crop production is also needed. For example, washing off prohibited pesticide residue does not result in a NOP compliant product.

NOSB should recommend that this, and other trainings, be added to the NOP Organic Integrity Learning Center tool as a resource for organic certifiers, inspectors, reviewers, and compliance professionals.

5. Certification agencies should improve upon the Handler Organic System Plan, by increasing the focus on the *system* that verifies the ingredients, processing, transfer and storage are compliant with organic regulations. Is the system robust enough to address risk to the supply chain for that specific type of business? Are there multiple sources of ingredients? Are they domestic or imported sources?

CCOF supports all system-based approaches to ensure organic certification is scalable and remains robust.

6. Does every organically sold product, have clear correlation between the information on the certificate, the shipping documentation, and the physical product with the source, certifier, and company name, beyond just the lot number?
 - a. At times, in order to maintain a proprietary source a supplier may not wish to have their sources disclosed to their buyer. How can this be addressed?

The current organic standards do not require the level of detail proposed for nonretail labels. This change would require rulemaking and the creation of new nonretail labels for organic producers.

7. When known, all certifiers provide acreage and possible yields of organically grown commodities for tracking in the Organic Integrity Database. Are there confidentiality issues that need to be addressed? How do we track this information for foreign organic commodities certified under equivalency or recognition agreements?

Acreage reporting to the Organic Integrity Database (OID) must be required. Certifiers that do not or cannot provide production acreage data require additional oversight because their lack of acreage reporting indicates that they cannot adequately trace product through the supply chain, and in turn hinders the ability of NOP, certifiers, and stakeholders to evaluate the total volume of organic product coming from any given region. CCOF reports acreage on our organic certificates, on our website, in our organic member directory, and to OID because it supports transparency in the global organic supply chain.

When requiring acreage reporting, NOP should clearly define what acreage is to be reported to ensure the data can be interpreted uniformly. CCOF recommends requiring crop acres to be reported by certifiers on a monthly basis and including this data on the OID.

Reporting yield information can be challenging for organic certifiers. Mexican authorities require yield estimates for the coming year of production, however estimates have proven to be difficult to determine and may be of little value if the estimate is incorrect. Crop loss throughout the growing season could also affect the calculation. Actual yield may be of higher value in investigating potential fraud.

Calculating yields, estimated or actual, at inspection would add additional time and, therefore, increase costs of inspections. Yield information would also vary depending on when inspections happened: before, during, or after harvest. For some crops with annual single harvests (rice, almonds, etc.), determining yield would be easier. For others with multiple or continuous harvest throughout the season, yield is dynamic and can be difficult to determine.

8. Implement the use of transaction or import certificates for all imported product and track in a database the source, volume, and type of commodity imported.

Requiring transaction certificates does provide some additional potential oversight, however transaction certificates have limitations as verification and oversight tools. There is no guidance on how to issue transaction certificates. Issuance may only be based on whether an organic certificate lists the same product that is on the transaction certificate. This can be a necessity for frequent transactions, such as truck shipments between the United States and Mexico.

Transaction certificates could be used to track trade between entities, but they may not verify the legitimacy of an individual shipment's organic status. Certifiers and control bodies could use

transaction certificates in aggregate to note spikes, drops, or trends in trade if sales volumes were tracked.

The transaction certificate system and concept should be updated into an automated trade registration system. The system would give certifiers, the NOP, and other oversight bodies visibility into trade as it occurs. Using this system, certifiers should be required to complete quarterly trade registration reports to the NOP to identify trends and create analysis of the global organic supply chain.

9. The organic industry could setup an alert system, where buyers who reject a product due to concern of the validity of organic certification, could present this information so other buyers could do their own review before purchase and/or processing or resale.

Buyers should have more accountability in what they are purchasing. However, a public forum for buyers to discuss the organic integrity of their purchases could lead to negative allegations against certain buyers. If OID was updated more frequently and had more current information, OID could be used more successfully to verify the organic certification of operations.

10. If the supply chain has been identified in the trade as having risk of fraud, does the supplier or certifier perform pesticide residue testing? Is there clear documentation that all transportation and warehousing has been verified as protecting organic integrity by preventing commingling with nonorganic product or contamination by prohibited substances? Maintain a database of positive pesticide residue tests (similar to the EU).

A sample's chain of custody, the laboratory and testing protocols used, and other details are very important in maintaining the integrity of samples and ensuring valid results. Therefore, certifiers should be responsible for performing pesticide residue testing. Handlers should be provided training in how to develop their own sampling programs; however, handler testing cannot replace certifier verification.

11. In determining areas of risk, does the supplier or certifier take into account:
 - a. The distance between the production of the item and the ultimate consumer.
 - b. The social pressures found along the supply chain, that might discourage oversight of high-status individuals or companies.
 - c. The market demand coupled with short supply of the commodity.
 - d. The economic pressures found along the supply chain that might encourage the sale of nonorganic products as organic.
 - e. Are samples retained along the supply chain; and if so, is pesticide residue testing being done? Are the pesticide residue results transparent?
 - f. The number of intermediaries and or borders crossed between raw supplier and final buyer.
 - g. The number of legal entities in the marketplace owned by one supplier that moves product internally as well as externally, making it difficult to track which entity has possession as the product moves through the supply chain.

- h. There is a very large volume of organic product being bought and sold.
- i. The handler manages both organic and nonorganic.
- j. Approach risk assessment and oversight by providing higher scrutiny to the 20% of operations that would affect 80% of the commodities traded.

The areas of risk identified by NOSB should be evaluated by certifiers and buyers. Buyers should have more accountability in what they are purchasing. However, some of the factors to consider could be difficult for a buyer or a certifier to determine such as, the distance between the production of the item and the ultimate consumer or the number of legal entities in the marketplace owned by one supplier.

In general, different factors are relevant during different times when determining risk. Whether a handler manages organic and nonorganic products should always be considered. Market demand and supply is also considered throughout a certifier's investigation process. But the distance between production and purchase is not.

12. The National Organic Program could improve its oversight through the following activities:
 - a. Dedicate staff to oversee the tracking of organic grain being imported from overseas through tools such as "Vesseltracker".
 - b. Improve the regulations by requiring all handlers, both those that take physical possession and those that do not, to become certified organic and provide oversight of organic inspection.
 - c. Work with certifiers and the trade for the development of an "approved supplier" list for businesses that import organic into the United States. The European Union has a system like this in place.
 1. Each entity could be assigned a unique number or code, that would then be used by their sub-entities, private labels or other identification in the marketplace, to more easily track which companies are part of a larger parent company, even though they have a different name.
 - d. Dedicate funds to aid in spot checking commodities for pesticide residues, in high risk operations. Certifiers could handle the risk assessment, sample collection and testing, and get reimbursed by the NOP for the cost of the testing. This could be tried as a pilot project first, with a limitation on the samples taken.
 - e. Review blockchain technology and geotagging as two systems that could enhance and provide redundancy to the current certificate and documentation system which have shown vulnerability to counterfeit or scams by sophisticated operations.
 - f. Strengthen requirements for certifier attendance at NOP trainings, and verify during accreditation audits that appropriate staff have been advised of the information obtained at those trainings.

CCOF supports continued communication between NOP and accredited certifiers and increased requirements of accredited certifiers (f). In addition, NOP should meet biannually with certifiers to provide analysis of potential and ongoing issues in trade. And NOP should require certifiers

doing major investigations or with large market shares to participate in the meetings and relevant trainings.