

**National Organic Standards Board  
Compliance, Accreditation and Certification Subcommittee  
Oversight Improvements to Deter Fraud Discussion Document  
February 21, 2019**

## **I. INTRODUCTION**

Organic products have been one of the fastest growing sectors in agriculture for decades. In 2017 organic sales in the U.S. were nearly \$50 billion. The most recent figures for 2017 show growth of 6.4% for organic food products versus 1.1% growth for nonorganic food products. The strong demand for organic products, coupled with limited supply in some supply chains, has led to documented occurrences of both domestic and import fraud in the use of the organic label. The organic community, trade, regulatory agencies and Congress have all taken note of these activities and have moved forward with stronger enforcement, and the development of new tools to build a stronger system for protecting organic integrity.

## **II. BACKGROUND**

On August 10, 2017, the USDA issued a memo to the NOSB about the oversight of imported organic products. In this memo, the USDA outlined a number of actions taken by the NOP to deter fraudulent shipments. Additionally, the memo expressed the AMS's priority to explore additional measure that would strengthen the global organic control system. AMS specifically requested the NOSB "provide recommendations on improving the oversight and control procedures that are used by AMS, certifiers, and operations to verify organic claims for imported organic products."

To support this work AMS convened a panel at the Fall 2017 NOSB meeting. This panel was comprised of representatives from several Federal agencies including the Agricultural Marketing Service (AMS), , Animal Plant Health Inspection Service (APHIS), and Customs and Border Protection (CBP) to discuss the federal perspective and tools used in relation to imports of agricultural products. The NOP also provided suggestions on areas of work. At the spring 2018 NOSB meeting, the Board convened a panel representing various entities involved in certification and the organic supply chain, to delve deeper into possible solutions for deterring fraud and protecting organic integrity.

## **III. DISCUSSION**

To continue the work of the NOSB in providing guidance to the NOP, this discussion document summarizes the input we have received from the public, representing certifiers as well as all links in the supply chain from the farm through processing, distribution, and retail. We welcome additional public comment about priorities, and where best to focus funds and enforcement activities that will result in the most positive outcome, and will build a better system for full compliance. The following areas received public support, but could be further refined through public input in order to develop a stronger organic certification system that is both reactive when fraud is suspected and proactive to deter as well as identify fraud. The items below are not listed in terms of priority.

1. Explore working with Congress to provide the NOP with "stop sale" authority.
2. Organic certification agencies should develop a stronger system of collaboration and transparency when investigating fraud.

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.
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.
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?
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?
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?
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.
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.
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).

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.
  
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.

#### **IV REQUEST FOR PUBLIC COMMENT**

1. Are there additional activities missing from the list above that would result in better oversight and enforcement of the organic regulations?
  
2. Are there specific items above that are impractical or difficult to implement and why?

3. Please provide your thoughts on how these items should be prioritized. E.g. by importance? By ease of implementation?

**V Subcommittee vote**

Motion to accept this discussion document on oversight improvements to deter fraud

Motion by: Harriet Behar

Seconded by: Lisa de Lima

Yes: 5 No: 0 Abstain: 0 Recuse: 0 Absent: 1

**Approved by Sue Baird, Subcommittee Chair to transmit to NOSB, February 21, 2019**