



CORNUCOPIA
INSTITUTE

April 4, 2019

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National Organic Standards Board
USDA-AMS-NOP
1400 Independent Ave., SW
Room 2648-S, Mail Stop 0268
Washington, D.C. 20250-0268

RE: *Meeting of the National Organic Standards Board*

Docket # AMS-NOP-18-0071
Federal Register Number: 2018-25572

Dear National Organic Standards Board Members:

The following comments are submitted to you on behalf of the The Cornucopia Institute, whose mission is, in part, to support economic justice for family-scale farming.

Oversight Improvements to Deter Fraud Discussion Document

SUMMARY

The Cornucopia Institute submits this comment in response to the Compliance, Accreditation and Certification Subcommittee's (CACS) request for public input to develop a stronger certification system that is both reactive when fraud is suspected and proactive to deter and identify fraud.

In September 2017, the USDA's Office of the Inspector General (OIG) concluded that the USDA "was unable to provide reasonable assurance that ... required documents were reviewed at U.S. ports of entry to verify that imported agricultural products labeled as organic were from certified organic foreign farms."

In July 2018, the USDA-NOP provided a response to the OIG's critical assessment of the NOP's enforcement efforts and insufficient regulatory authority to monitor organic imports.

The NOP's July 2018 response is a publicly available self-assessment that provides details of NOP's planned activities to address the identified deficiencies at ports of entry.

We recommend that the CACS closely examine the NOP's stated goals and the activities it is pursuing to address ongoing deficiencies.

Specifically, the CACS should make inquiries in the following areas where NOP action requires some clarification.

Cease and Desist/Stop-Sale

The NOP states that it is not clear that it has the authority to issue and enforce Cease and Desist notices for businesses if they fraudulently label organic products.

To the extent the Organic Food Productions Act, and other governing laws, do not provide the NOP with this authority, the NOP should immediately propose necessary provisions and amendments to enabling legislation that would authorize these critical regulatory amendments.

Cease and desist and stop-sale authority are the only measures that will close U.S. borders and ports of entry to fraudulently labeled products.

Inquiry 1 to NOP: *Has the NOP requested stop-sale authority and, if not, then why not?*

- ⇒ What are the limitations to the NOP's authority to issue cease and desist and stop-sale orders and how can they be overcome?
- ⇒ Is the proposed alert system, which enlists the help of Customs and Border Patrol (CBP), sufficient to identify fraudulent shipments in time for the effective exercise of stop-sale authority?

If the alert system cannot provide timely notice, the alert system proposal simply fails at the outset.

Organic Message Set

The NOP proposes using an "organic message set" that will be incorporated in the Automated Commercial Environment (ACE) database currently used by CBP. ACE is the system through which traders report information on imports and the government determines admissibility of products.

As described in the NOP's response to the OIG, the "message set" will be tied to CBP Entry Form 7501. According to the NOP, the information on the Entry Form 7501, including an "organic" designation, typically appears in the ACE system 30 days after the imported product is delivered in the U.S.

The 30-day delay in the input of information all but assures some fraudulent organics will continue to enter distribution channels in the U.S.

Inquiry 2 to NOP: *Why the 30-day delay?*

⇒ Why has the NOP proposed a reporting system that includes a 30-day delay?

The NOSB should recommend that a system overhaul eliminate this 30-day delay, or explain why a system without an extended delay is not feasible.

Inquiry 3 to NOP: *What are the limitations of using Form 7501 in establishing organic authenticity?*

The NOP mentions that the information on Entry Form 7501 is “often sufficient to effectively review the validity of the product.”

⇒ The NOSB should inquire as to how the validity of the product is confirmed by the specific data points included in the “organic message set.”

⇒ Specifically, what will the “organic message set” and/or Form 7501 identify in terms of where the organic commodity was harvested, the identities of the shipper, the importer, the consignee, and the buyers?

The NOSB should recommend that the information included in the “organic message set” ensure complete traceability and inquire if additional information could be included on Entry Form 7501 that would enhance fraud detection efforts.

Inquiry 4 to NOP: *Is the proposed data review procedure adequate?*

⇒ After the information is available in the ACE system, will a governmental agency be responsible for verifying the organic integrity for each shipment or is the data simply available on a case-by-case basis?

The NOSB should recommend proactive measures that require review of all organic imports presented for entry at U.S. borders and ports. Ad hoc, post-entry review will continue to allow fraudulent imports to penetrate U.S. borders.

Inquiry 5 to NOP: *Is there a plan for mandatory review of high risk shipments?*

⇒ If there is no plan to verify the organic integrity of each shipment once the data is entered into ACE, is there a plan to identify high-risk shipments for mandatory review?

The NOSB should request clarification as to how high-risk shipments would be flagged, how the technology assures federal agencies are notified, and the responsibility of each agency in investigating the organic integrity of the shipment.

Inquiry 6 to NOP: Will fraud detection data be publicly available?

Public disclosure of data, including product categories of organic food that has been fumigated at the border and detection successes and failures, is a hallmark of transparency. The public should be made aware of the products and quantities that have been fumigated, as well as data related to fraud detection successes and failures.

The NOSB should request public disclosure of data compilations, including fraud detection data.

CONCLUSION

Numerous comments, including those made by The Cornucopia Institute, have previously advocated for regulatory reform to, among other things, ensure that every entity in the supply chain is certified and that every entity be required to complete full tracebacks to the farm.

It is also critical that the NOP's specific plan of actions and fraud-detection systems as currently proposed be thoroughly evaluated, especially in light of the 2018 Farm Bill mandates.

Because its response to the OIG report is the only publicly available analysis which provides details of the alert system the NOP envisions, the NOSB should focus on this document and initiate the above-stated inquiries.

The NOP should, in turn, provide the NOSB with timely and sufficient answers in accordance with the important role this Board exercises, by law, in ensuring a robust and authentic organic food system.

Sincerely,



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