

**National Organic Standards Board
Compliance, Accreditation and Certification Subcommittee
Import Oversight Discussion Document
February 25, 2018**

I. INTRODUCTION

Since the passage of the Organic Foods Protection Act into law in 1990, organic trade has grown to a nearly \$50 billion market in U.S. sales alone. Strong year over year growth has led to an increase in imports, particularly in grains. Integral to past and future growth is consumer confidence in the integrity of the USDA organic label. Recent press, NOP enforcement actions, and testimony from stakeholders have raised concerns around fraudulent imports of organic products. Organic supply chain integrity relies on a public/private partnership that has different roles for industry (growers and handlers), certifiers, and the USDA in a global organic control system. It is important that further actions are taken to improve the integrity of the organic supply chain and global control system to ensure U.S. businesses do not lose market share to fraudulent products and U.S. consumers get the product they expect.

II. BACKGROUND

On August 10, 2017, the USDA issued a memo to the NOSB on 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, certified 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 composed of federal agencies including representatives from NOP, AMS, APHIS, and 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. The NOP is convening a panel at the Spring 2018 NOSB meeting with representatives from certification agencies and industry representatives to provide testimony on import oversight.

IV. DISCUSSION

In order to gain further insight and background on the diverse perspective and opportunities to increase integrity in the global organic control system, the NOSB is seeking input from the public. Several specific subject areas are outlined below with questions. We also ask the public to provide their perspective on what actions or opportunities would have the greatest impact to increase integrity in the global organic control systems, whether listed here or not.

The NOSB plans to develop proposals for Board voting once we have received sufficient input and background information, as soon as the Fall 2018 NOSB meeting.

VI. REQUEST FOR PUBLIC COMMENT

We present over 75 questions below across 10 different subject matters and a broad area asking what areas we are missing. We realize most members of the public will not be able to answer all questions – we encourage all credible responses, even if they address just one or a few of the questions.

1) Role of documents in an organic supply chain with a focus on imports.

There are a number of documents created or utilized to import agricultural commodities. These documents are created by multiple parties, including but not limited to: export governments, U.S. government, exporter, importer, shipping company, and third parties. Some of the documents are: sales contracts, pro forma invoices, commercial invoices, customs invoices, inspection certificates, insurance certificates, phytosanitary certificates, sanitary certificates, health certificates, fumigation certificates, certificate of origin, packing lists, bill of lading, waybills, export permit/license, import permit/license. These documents may or may not document the organic status of the shipment since organic verification documents like organic certificates or transaction certificates are issued in addition to these other documents.

Questions:

- a) Should it be a requirement that the organic status of a product be recorded on all documents including those listed above? How would this increase organic integrity? What impact would this have on the industry?
- b) Which documents (listed above or in addition) are necessary to verify an import supply chain? How well do these documents serve to prevent fraud?
- c) Some imported products change hands once or several times while in transit. How do these documents appropriately trace and verify the organic status of the products for the ultimate importer?
- d) Different documents in the import supply chain are issued by different parties. Are some documents or issuing parties (like export governments) more reliable than others? Should these documents be required?
- e) Should the use of organic tariff codes (when they exist) be required when organic products fall under those codes? If so, should failing to use an organic tariff code negate the organic status of the imported product? Should the U.S. government be working actively to vastly increase the number of organic tariff codes? What impact would these changes have on the industry?
- f) Do organic import certificates (as required in the EU) or organic transaction certificates provide value in documenting the organic status of a shipment? What are the strengths and weaknesses of this system, and what can be done to further strengthen this process? Should a similar document be required for the import of organic products into the U.S., and if so, who should issue the document? What impact would this have on the industry? How do certifiers currently issuing Transaction Certificates utilize this data in audits of the certified operation?
- g) Are there procedures or systems that could be put in place that are not reliant strictly upon documentation, such as direct communication between the certifiers of the commodities being traded, that verifies the organic status of items being bought and sold?

2) Role of Importers in the organic supply chain.

Several international organic standards, like the EU or Japanese, require the certification of importers regardless of their interaction with organic products. Similarly, U.S. government regulations like FSMA have special requirements for importers of record as the first U.S. entity taking some level of responsibility for the imported product.

Questions:

- a) Should importers of organic products be required to be certified regardless of how they handle a product? What impact would this have on the industry?
- b) The organic control system relies on a process that generally checks the organic status of a product one step back to the last certified operations. Should importers be held to a stricter standard of documentation or other forms of communication to verify the organic status of products being imported into the U.S.? What additional requirements should be placed on

- importers given their critical spot in the supply chain? What impact would this have on the industry?
- c) What documents or system should be developed for an importer to verify the organic status of a shipment?

3) Role of uncertified operations in the supply chain.

The current regulations exempt several types of operations from organic certification based on how products are handled. Operations may be involved in the import supply chain but not be certified - for example, brokers and traders who do not take possession but take ownership of a product are not required to be certified. Similarly, transport operations and customs brokers who are involved in the logistical transport or clearance of shipments are not required to be certified. CBP licensed private entities known as Customs Brokers serve a unique role in ensuring imports meet the documentation/regulatory requirements for import into the U.S.

- a) What are examples of uncertified handlers in import or domestic supply chains? Should these operators be certified or not, what additional value would this bring, and what impact would this have on the industry?
- b) Should operations that take ownership of products or operations that market but don't own products be required to be certified? What impact would this have on the industry, and how would this improve supply chain integrity?
- c) What role do customs brokers play in the organic control system? How could customs brokers be further engaged with organic integrity through regulation or other means? What impact do uncertified customs brokers have on the organic control system?
- d) How can audit trail documentation as well as systems of verification be improved with these types of operations?

4) Global and National organic crop acreage information.

Several data points are required by the USDA, either as part of annual reporting requirements or to populate the Organic Integrity database. A piece of information not required is acreage and yield information at the production level.

Questions:

- a) Would including production acreage and yield information in the Organic Integrity database serve to strengthen global organic control systems? If so, how would this information be used? What concerns do producers have in making this information public?
- b) Is acreage and/or yield information currently being accumulated by certifiers? What concerns do certifiers have in collecting and communicating the information to the NOP?
- c) Is both acreage and yield information important?
- d) Should acreage and yield information be proprietary to the operations and not be communicated? What would be the impact of sharing the information with certifiers and ultimately the NOP and public (thru the Organic Integrity database)? If privacy and other concerns prevent publishing individual information, would aggregate data be helpful and at what level of aggregation (state, country, etc.).
- e) Are there other means to accurately calculate organic acreage and/or yield estimates on a country-by-country basis?
- f) Should these reporting requirements also be required of countries operating under an equivalency agreement?
- g) Can this acreage and yield information be a basis by which certifiers can track the approximate volume of product an entity would be allowed to sell under their organic certificate?

5) Equivalencies, Recognition Agreements and certified operation databases (like the Organic Integrity database).

The NOP designed and maintained Organic Integrity database serves as a way to independently and rapidly verify the authenticity of an organic certificate. This database includes all operations certified to USDA organic regulations by an NOP accredited certifier. This database does not include operations in equivalent countries eligible to export to the U.S. as organic nor operations certified to the USDA regulations by a certifier operating under a recognition agreement.

Questions:

- a) Should the NOP require foreign governments to maintain a similar database with certified operator data in its equivalency and recognition agreements?
- b) Should this data be required to be integrated into the Organic Integrity Database?
- c) How would this data serve to strengthen the global organic control system? Is this system currently being utilized by industry or certifiers, and if so, how?

6) The role of residue testing to verify bulk shipments of grain.

USDA organic regulations require certifiers, on an annual basis, sample and test from a minimum of five percent of the operations they certify. Testing for residues has been an integral part of some organic control systems. For example, this is commonly required in Europe and is part of the procedures of the California State Organic Program.

Questions:

- a) Should testing of imports be required? Does testing provide useful information, or is it situational? If situational, please provide situations where it is useful or not useful. What burden would this put on the industry? What party (importer, exporter, other) should be responsible for testing?
- b) Should testing be required if the shipment passes a certain market value or size threshold?
- c) If testing should be completed, what type of testing should be done?

7) Verification of organic status in perishable supply chains.

Fresh produce supply chains are unique. Such products cannot be fully packaged due to their nature and requirements for refrigeration, inspection, sampling, and respiration. This makes fresh produce especially vulnerable to cross contamination and difficult to label and track. Fresh produce transactions often occur very quickly due to their perishable nature.

Questions:

- a) What additional actions can be taken to increase supply chain integrity in fresh produce supply chains?
- b) Are there difficulties experienced by the industry in documenting the organic status of organic produce offered for purchase? What are some potential solutions to better ascertain the organic status of produce offered for purchase?
- c) In an organic fresh produce supply chain, which operators should be certified (transport operators, storage warehouse, distributors, retail distributors, brokers, etc.)? What impact would this have on the industry?
Is there repacking of fresh produce currently occurring by non-certified handlers?

8) Role of certifier/operation when certifying a commodity in a third country with import controls on the commodity.

Some commodities imported into the U.S. from certain origins may be subject to fumigation or other treatment in order to be imported into the U.S. as a requirement of APHIS, another government agency, or by statute. The Fruits and Vegetables Import Requirements (FAVIR)

database lists the requirements for fresh fruits and vegetables, and the Seeds Not for Planting lists several other requirements for non-fruit or vegetable commodities.

- a) Should certifiers of operators who are producing commodities subject to import restrictions or mandatory fumigation conduct further assessments to verify a compliant marketing plan is in place for said commodities?
- b) Is this currently being done by certifiers, and have certifiers operating abroad had this activity verified during NOP accreditation audits?
- c) Should certified operators importing products from abroad conduct specific assessments related to mandatory fumigations or treatments? Is this currently done by certifier's who are certifying importers?
- d) Do certifiers have the expertise, training, and ability to conduct these audits/risk assessments? What additional training would be helpful to certifiers and operators?

9) Additional controls for origins with documented fraud or integrity issues.

It is common in other import regimes for food control or phytosanitary regulations to impose additional requirements from regions with documented issues or fraud. In August 2017, additional control and reporting requirements were imposed by NOP for a set period of time on certifiers of handling operations in regions identified as high risk. Similar actions have been taken by the EU in regards to the import of certain organic products from some countries.

- a) Should the NOP develop an ongoing system to impose additional requirements on operations doing business in or with countries or regions with documented fraud?
- b) Should testing be mandatory for shipments from these regions? If so, where should testing be done?
- c) What criteria should be used to identify a region of increased concern? What role do changes in USDA ERS import data play in these evaluations?
- d) What impact would this have on the industry?
- e) Should the NOP develop specific channels of communication with our global organic certification partners, to better identify, track, deter and prevent fraudulent organic products? Are there examples of this type of communication already present and how could this be improved and implemented?

10) Full Supply Chain audits.

Organic control systems currently rely on checking the organic status one step back from the party from which products are being purchased or the last certified operation in the supply chain). The control system makes it difficult to conduct full supply chain audits (from shelf to field) if each operation and certifier is only looking one-step back.

Questions:

- a) Do full supply chain audits offer value in ensuring organic integrity? If so, who should conduct these audits, and when?
- b) What are the challenges of completing full supply chain audits?
- c) How could the start and end points of a supply chain audit be defined in a systematic and repeatable way (commodity-based, geography-based, other criteria)?
- d) What are possible approaches that a full supply chain audit could take (desk audits, physical audits, etc.)?

11) Other Areas/Questions/Opportunities/Threats.

- a) What other areas should the NOSB focus on in order to have the greatest impact on strengthening the global organic control system or to deter fraud in an organic supply chain? What are the areas of greatest weakness in the global organic control system, and what can be done to improve them?

- b) What other information would be helpful to inform the NOSB deliberations and work on composing recommendations?
- c) Can the NOP accreditation system play a role in providing consistency in the oversight of both domestic and international certifiers in the area of global trade? Do you have suggestions for specific activities or systems that could be implemented?

Subcommittee vote

Motion to approve this discussion document on Import Oversight

Motion by: Tom Chapman

Seconded by: Ashley Swaffar

Yes: 6 No: 0 Abstain: 0 Recuse: 0 Absent: 1