

## Agricultural Marketing Service

### Organic Oversight and Enforcement Update Summary of Activities – May 2019

Protecting the integrity of the USDA organic seal is the top priority of the Agricultural Marketing Service (AMS) National Organic Program (NOP).

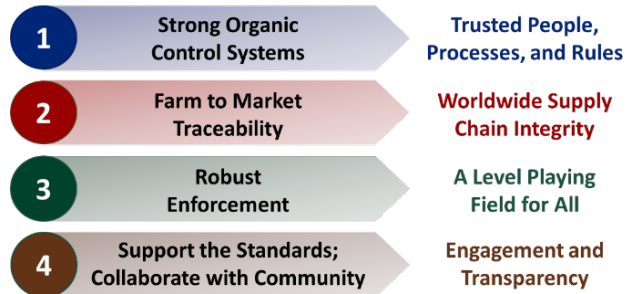
As the organic sector grows and supply chains become more complex, NOP continues to increase its oversight capacity to meet the evolving needs of the organic community. Between 2018-2019, the number of certified organic operations reached 43,004 worldwide.

Just over 1,000 of the new certifications were in the United States, for a new high of 27,494 certified farms and businesses. The net increase in international certifications slowed to 713 for a total of 15,510.

In May 2018, NOP published an [organic oversight and action plan report](#), outlining enforcement progress and action plans.

This 2019 update highlights activities and successes, including:

- Risk-based Oversight and Enforcement
- Import Oversight
- Dairy Compliance Project



### Oversight and Enforcement Summary

#### Risk-Based Complaint and Appeals Management

Risk analysis makes it possible for staff to focus resources where they have the greatest impact. Between October 2018 and March 2019, NOP received about 260 complaints and inquiries.

- Simple inquiries are now handled by intake staff, providing customers with answers faster and focusing analyst time on more complex investigations. NOP resolved 113 inquiries using this approach between October 2018 and March 2019.
- Complaints about uncertified businesses selling products as organic are handled by a team trained to reduce case processing times and to compel compliance faster. These cases continue to account for more than fifty percent of complaints received by NOP.

- Complex cases are assigned to more experienced NOP investigators. This specialization allows the team to initiate investigations more quickly than in the past. NOP has also increased its work with the USDA Office of Inspector General (OIG), referring cases that include potential criminal activity for investigation by other Federal law enforcement partners.



NOP recently teamed up with OIG representatives to conduct an organic training exercise with a certifier in New Jersey. Cross-training and increased collaboration are keys to continuing to grow our capacity to protect organic integrity.

NOP continues to meet its target of resolving 90 percent of appeals within 180 days of receipt. Between October 2018 and March 2019, NOP closed 22 appeal cases with an average processing time of 99 days.

By focusing resources on the most complicated cases with the highest risk to the market, NOP closed 175 complaint investigations and inquiries between October 2018 and March 2019.

NOP launched the COMPLIANCE Database in March 2019. This new tool allows the team to better track case progress and more quickly identify patterns and relationships across complaints.

### **Certifier Oversight**

Congress established NOP as a public/private partnership. The 78 Federally-accredited certifiers include private companies, nonprofits, and State departments of agriculture, all of which have a critical role in organic oversight and enforcement. The NOP accreditation team ensures certifier staff have the experience, training and tools they need to be effective.

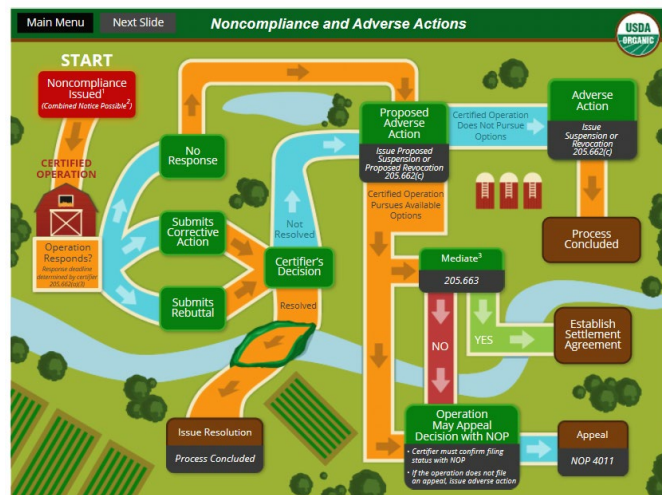
- Certifiers suspended 326 operations for noncompliance with organic standards in the six months from October 2018 through March 2019.
- NOP staff conducted 14 audits of certifiers, including four satellite offices in the past six months. The findings continue to demonstrate certifiers are highly competent, with 94 percent of accreditation compliance criteria being met across certifiers last year.
- In cases where a certifier fails to meet accreditation compliance criteria, NOP issues a “notice of noncompliance,” which the certifier must address. When noncompliances are not adequately addressed, NOP may propose the suspension of a certifier’s accreditation. In these cases, NOP may choose to enter into [settlement agreements](#) to quickly bring the certifier into compliance. In other cases, the adverse action process continues, and the certifier’s accreditation may be suspended. To comply with due process rights, enforcement actions may not be made public until due process is completed.

- When compliance is not achieved, certifiers are suspended. In September 2018, [Bolicert](#) accepted a suspension under a Consent Order with an Administrative Law Judge and in May 2019, NOP suspended [Control Union's Turkey Office](#). Operations certified by these organizations must surrender their certifications or reapply for certification with new certifiers.

## Deepening Global Organic Control Systems

In addition to operation and certifier-specific actions, NOP continues to lead projects that improve its capacity to oversee organic control systems around the world.

- The **Organic Integrity Learning Center**, launched in April 2019, provides free online training available 24/7 to support the professional development and continuing education of individuals working to protect organic integrity. More than 500 people established Learning Center accounts in the first two weeks.

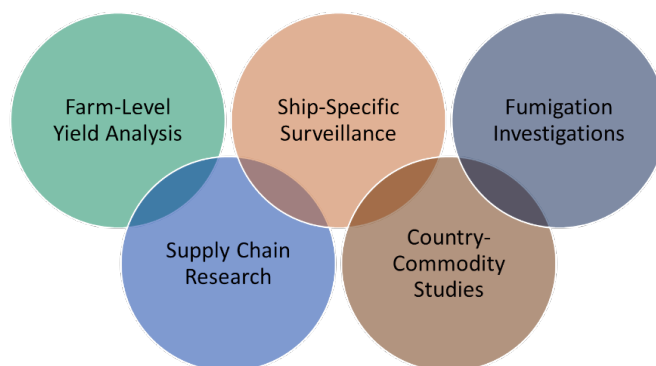


The Organic Integrity Learning Center, Compliance and Enforcement module provides interactive lessons that break down complicated concepts to provide certifiers a meaningful educational experience with real-world applicability.

- The **Strengthening Organic Enforcement** proposed rule is moving forward. This rule incorporates 2018 Farm Bill provisions to protect organic integrity, deter fraud, and bolster trust in the USDA organic label. It will do this by strengthening organic control systems, improving import oversight, and solidifying specific sections of the USDA organic regulations. The rule will be available for public comment this Fall.

## Import Oversight

The value of U.S. organic imports continued to increase in 2018, reaching \$2.2 billion, a nine percent increase from 2017. Given this growth, import oversight continues to be an area of focus for NOP, with five key initiatives that directly support enforcement.



### Farm-Level Yield Analysis

NOP is investing heavily to improve oversight of the complex supply chains stretching from the Black Sea region to the United States. NOP is also focusing on farm-level activities in high volume regions with multiple risk factors. To support these investigations, NOP conducted a review of all certified organic grain and oilseed producers in three Black Sea region countries using farm-level records, region-level data and international weather models. The analysis revealed a concerning pattern of organic farms reporting yields that far exceed regional averages. This analysis provided targeted information about specific farms and certifiers that is directly supporting active enforcement actions. Since the NOP began its investigative work on this region in 2016, more than 180 operations have surrendered their certification.

In the Fall of 2018, NOP trained certifiers to use these new analytical tools for researching regional data on yields, equipping participants to evaluate farm-level records against a range of open-source data as a part of organic certification. This training is also available in the Organic Integrity Learning Center. In addition to enforcement actions, NOP continues to develop training for certifiers to make this kind of analysis part of regular producer oversight.

### Supply Chain Research

To support supply chain investigations, NOP is also completing a project to illuminate the business relationships between high-impact farms, consolidators, handlers and exporters in the Black Sea region. This has involved the investigation of more than 450 shipping records and a comprehensive review of the shipment handling process for organic shipments of corn and soybeans entering the United States from the region since 2016.

This initiative directly supports the development of risk-based oversight models that can be deployed for any region in the world to better target resources to investigations.

### Ship-Specific Surveillance

Over the last year several organic industry organizations have requested NOP investigate specific shipments from the Black Sea region for fraud. NOP has engaged in ship-specific surveillance projects each time there has been credible information and enough detail to identify the entities involved. This has resulted in numerous vessel reviews and collaboration with colleagues at Customs and Border Protection for additional support, where appropriate. All these shipments have been traceable back to certified organic farms and handlers.

These ship-specific research activities are important for market surveillance and highlight the need for the farm-level yield analysis project described above. Although they have not revealed specific fraudulent activity on their own, in some cases, we found that the certifier involved had not performed adequate oversight of farms or supply chains. As a result, NOP has increased the focus on certifier competency. To better hold them accountable, NOP is providing clear expectations for the oversight of high-risk supply chains. This increased focus on certifier competency emphasizes the systemic improvements required at the certifier control system level to address root causes and block fraud.

### ***Market Impact***

*NOP's heightened oversight and enforcement actions in the Black Sea region have impacted the marketplace. At least 180 operations (60 percent) in the Black Sea region have lost their organic certification. The remaining certified operations are undergoing increased scrutiny. In 2016, imports from the Black Sea region represented 49 percent of the dollar value of key commodities; in 2018, imports from the region had dropped to 21 percent of that total dollar value. NOP staff are watching for risk factors, such as spikes in exports from other regions, that could trigger increased scrutiny.*

## **Country-Commodity Studies**

NOP is working with the International Organic Accreditation Service (IOAS) to conduct two country-commodity studies. The goal of this study is to develop standard approaches for examining risks, or emerging risks, at the commodity level across an entire country. One commodity being studied is grain in the Black Sea region. The other is a specialty crop in Central America. Study outcomes will advance our ability to rapidly respond to emerging concerns using validated risk-based approaches.

## **Fumigation Investigations**

NOP continues to collaborate with the USDA Animal and Plant Health Inspection Service (APHIS) to investigate the possible fumigation of products labeled as organic.

As an example, in March 2019, the APHIS team at Port of Philadelphia notified NOP staff that a shipment of about 350 boxes of bell peppers labeled as organic had been fumigated. They provided label photographs and supply chain documents, including invoices. Label photographs are critical evidence but are not included in the text-only automated fumigation reports currently provided by the APHIS database.

NOP used the evidence and available trade data to identify the importer who promptly replaced the individual stickers on each pepper and papered over the word “organic” on all bulk



APHIS oversees the fumigation of non-organic asparagus. NOP traveled to the Port of Miami in Summer 2018 to learn more about fumigation reporting.



containers. In addition to providing evidence of the relabeling, the importer voluntarily shared that a similar shipment was on its way to Miami and would also be relabeled to remove organic claims. NOP is working with APHIS to expand this type of information sharing to other ports.

### **Upcoming Projects: Farm Bill Initiatives**

The Agricultural Improvement Act of 2018 (Farm Bill) includes several provisions that directly support NOP oversight and enforcement work. Upcoming projects include:

- The Farm Bill establishes an “Organic Agricultural Product Imports Interagency Working Group,” to include AMS, APHIS and CBP for coordination, reporting and information sharing related to organic imports and integrity. Working group participants have been identified and will convene in June 2019.
- The Farm Bill calls for technological enhancements to improve the ability of CBP and NOP to target the illegal entry of organic products. NOP and CBP will initiate an organic import certificate project in the CBP primary import system known as the Automated Commercial Environment (ACE) database. These enhancements to ACE will ensure the capture of organic import data and make it easier for the U.S. government to monitor organic imports as they enter the country.
- The Strengthening Organic Enforcement proposed rule will also implement a number of Farm Bill requirements into the USDA organic regulations, including minimizing exclusions from certification for handlers and requiring the use of import certificates.
- CBP and AMS have also worked together to outline needed changes to the CBP-AMS Memorandum of Agreement, which governs AMS access to data in customs’ systems. CBP provided significant guidance in identifying changes that will support current and future NOP research, reporting and investigations.

### **Dairy Compliance Project**

In 2018, AMS initiated a Dairy Compliance Project to better assess industry compliance with the USDA organic regulations, particularly with respect to the pasture standard. This initiative began with face-to-face training on pasture compliance for certifiers in January 2018. This was followed by unannounced, on-the-ground visits by Federal auditors to assess both certifier and operation compliance.

#### **Process**

The project spanned the 2018 grazing season. Visits were conducted by AMS Auditors with livestock oversight experience and NOP Compliance Specialists. For specific investigations, NOP also collaborated with the USDA Office of Inspector General and Animal Plant Health Inspection Services.

All AMS visits conducted for the Dairy Compliance Project were unannounced. The visits were conducted at dairies across the United States. A risk-based approach was used to select the participants; factors included size, previous compliance history, and farm characteristics such as herd size.

## Outcomes

Findings from the 2018 Dairy Compliance Project have implications for both policy and enforcement. The unannounced visits highlighted a need for additional certifier training in six key areas to ensure consistency:

- Defining the regional grazing season
- Reviewing justifications for allowed breaks in the grazing season, like weather or disease
- Crop rotation and natural resource management
- Access to shade and water sources
- Evaluating livestock healthcare practices
- Conducting enough feed audits



Federal auditors performed unannounced compliance visits to dairy farms across the country during the 2018 grazing season based on several risk factors, including herd size. 2019 visits have already begun.

The 2018 visits confirmed that all the targeted dairies demonstrated at least 120 days of grazing and all cows received at least 30 percent dry matter intake (DMI) from pasture during the season. However, several correctable issues were identified, requiring action from operations.

This work also resulted in targeted audits of certifiers based on their oversight of specific livestock operations and non-compliances were issued to certifiers and operations. Where supported by the evidence, investigations are ongoing at both the certifier and operation levels. In addition, a significant civil penalty was levied against a livestock operation; that case is now under appeal.

It was also determined that certifiers need to make sure they assign inspectors who have sufficient expertise and experience with livestock operations to effectively and completely assess the farms they evaluate, particularly for large complex dairy operations. New training on dairy compliance and oversight will be launched in the Organic Integrity Learning Center in Summer 2019. In addition, NOP plans concentrated face-to-face training with certifiers in January 2020.

Based on the 2018 results, AMS is expanding the Dairy Compliance Project in 2019. NOP has trained 12 auditors this Spring to prepare for the work and visits have already begun.

## Conclusion

USDA is committed to setting a level playing field for all certified organic producers and businesses.

Trust is the key to building and maintaining successful brands, organizations, and partnerships. For the organic industry, the USDA organic seal creates the foundation for that trust. Our top priority is protecting the value of the organic seal – a value that is directly related to our collective ability to effectively trace products across the supply chain, ensure the integrity of organic products, and rigorously enforce the standards worldwide to deter fraud.

USDA is an equal opportunity provider, employer and lender.