



BEYOND PESTICIDES

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September 19, 2017

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW.,
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Re. CACS and All: Oversight of Imports and Others

These comments to the National Organic Standards Board (NOSB) on its Fall 2017 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

Consumer trust and organic farmer and handler investments are jeopardized by ineffective oversight and enforcement of organic standards by USDA. USDA and accredited organic certifying agents are generally meeting expectations, but the enforcement process has fallen short in several instances, and additional actions are needed to safeguard the integrity of the organic label. We appreciate that organic producers are subject to much more rigorous oversight than their counterparts in chemical-intensive or “conventional” production and processing, which is understandable given high organic consumer expectation and the market premium. However, it is critical that we address any failing of the organic system when it occurs and ensure corrective action in a timely fashion. Without this kind of response, public trust in the organic food label will suffer dramatically.

Recent reporting by the *Washington Post* has highlighted failures of USDA’s oversight of organic products. In particular, public attention has been drawn to imports of nonorganic grain entering the certified organic stream of commerce, organic factory eggs, and questionable organic milk. All of these reports raise questions about the integrity of the organic label and whether consumers are getting the quality they expect. The investigations that uncovered this fraud have not been undertaken by the National Organic Program (NOP), but by independent organizations like the Cornucopia Institute, Consumers Union, and Organic Farmers’ Agency for Relationship Marketing (OFARM).

Now USDA’s Agricultural Marketing Service (AMS) is asking the National Organic Standards Board for “recommendations on improving the oversight and control procedures

that are used by AMS, certifiers, and operations to verify organic claims for imported organic products.” The first recommendation should seek a broader review than the narrow question NOP is asking. The problems go beyond imported organic products and include domestic certification of hydroponic operations, the egg and milk factory farms on which the *Post* reported, and fish from fish farms.

Some Identified Problems

Organic grain imports

Imported organic products are required to meet the same standards as domestically produced organic products. Over the last year, the National Organic Coalition (NOC) has raised concerns about enforcement procedures governing organic grain imports from Turkey. These procedures have fallen short, allowing a surge of soybean and corn imports labeled as organic. The recent *Washington Post* investigation found that some of those imports have been fraudulently labeled.

Poultry animal welfare standards

Unequal enforcement of federal organic standards has long been a problem in the organic poultry and egg sector. To address this problem, USDA published a long overdue regulation to require ALL organic poultry and egg operations to provide meaningful outdoor access for chickens. Most certified operations already meet these standards, but this rule will help create more uniformity to meet the needs of organic farmers and consumers alike. The effective date of the Organic Livestock and Poultry Practices rule has been delayed twice.

Dairy pasture rule enforcement

In 2010, after an open and transparent public rulemaking process, USDA put into place a detailed set of rules to ensure that all certified organic dairy farmers were giving their animals meaningful access to pasture. Similar to the current poultry situation, most dairy farmers were already meeting that standard, but a few very large dairy operations were using a loophole in the regulations to skirt those requirements. However, in some cases, dairy enforcement is still falling short, and some large operations continue to deny their animals meaningful access to pasture.

Hydroponics

Contrary to a 2010 recommendation by the NOSB, NOP has been allowing hydroponics operations to be certified as organic.

Aquaculture

In spite of a lack of standards, NOP has allowed certified organic fish from aquaculture operations to be sold in this country.

Overall

The NOP lacks effective oversight of its accreditation functions. A Peer Review Panel charged with reviewing NOP’s accreditation functions was appointed by NOP and convened by (ANSI) in May 2016. A major problem contributing to the ineffectiveness of oversight of NOP

was NOP's control over the panel's function. NOP appointed members of the panel, chose files for their review, and determined the questions that the panel could consider.

Nevertheless, members of the Peer Review Panel found a number of problems. Among the issues relevant to these comments are the following:

- Previous Peer Review Panel Reports were specifically excluded from this Peer Review, per letter from Deputy Administrator dated May 19, 2016, although a review of them may have allowed this Panel to determine what progress has been made implementing any recommendations made by those previous review panels.
- Records and required forms in files reviewed do not consistently include the required signature of an NOP official. For example, form LPS 109, dated 8/26/15, in one file does not include the required NOP signature.
- [N]o evidence was observed indicating that the requirements of 205.400(f) (1-2) are assessed during NOP audits. 205.400(f)(1-2) requires that certified operators and applicants must "immediately notify the certifying agent regarding any: (1) application, including drift, or a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of the operation; and (2) change in a certified operation or any portion of a certified operation that may affect compliance..."
- A review of NOP 2005 "Accreditation Assessment Checklist" reveals no questions under section 205.400 to assess certifying agents' procedures and performance requiring certified operations and applicants to immediately notify the certifier regarding the application of prohibited substances or changes to their operations that may affect compliance, as required by 205.400(f)(1-2).
- NOP 2024, "Information Submission Requirements for Certifying Agents," and NOP 2024-1, "Annual Report Checklist," itemize the information that must be submitted by certifying agents to the NOP. There is no mention of the submission of analyses and residue test results, as required by 205.670(d)(1).
- All labels making "organic" claims are to be reviewed by certifying agents to determine that the products' composition, percentage of organic ingredients, and market information are in full compliance with all applicable requirements. Reviewed accreditation files indicate that NOP auditors, during label reviews, do not assess product composition or the method used by certifying agents to calculate percentage of organic ingredients. No evidence was observed indicating that all ingredients and processing aids allowed by certifying agents were verified by auditors as in compliance with National List requirements (annotations). No evidence was observed demonstrating that the NOP has established procedures for auditors to assess certifying agents' disallowance of substances rejected by the NOSB.
- This review did not access the NOP's compliance with 205.500(c), which addresses the approval of foreign governments' accreditation programs and equivalency agreements.
- NOP 2402 is not as complete as NOP 2005 and does not address Export Certificate authorizations for products exported to the European Union, Switzerland, Canada, Korea, or Japan.

- Consistent accreditation application forms are not being used and retained in order for the NOP to be in full compliance with 205.502.

Suggestions for NOSB Recommendations

Imported Grain

USDA should institute heightened procedures to ensure that all organic imports are meeting USDA organic standards. These procedures should include the following:

- A requirement that all imported organic products carry an electronic import certificate, to help prevent fraudulent labeling of conventional product as organic;
- Implementation of a policy that triggers an immediate USDA audit of any international organic certifier whose accreditation has been revoked by a nation with which the U.S. has an organic equivalency agreement;
- Implementation of a policy that triggers an automatic investigation when there is an extreme surge in imports of an individual organic product category, such as seen recently with organic corn and soybean imports;
- The Global Agricultural Trade System (GATS), operated by USDA's Foreign Agriculture Service, should be updated to track imports of all organic products. Currently, the U.S. government only tracks the value and quantity of a limited number of organic imports product categories.
- The U.S. Customs and Border Protection's automated import/export tracking system, the Automated Commercial Environment (ACE), should be updated to build organic-specific fields and questions into the system. This would provide USDA and the organic sector with more standardized and detailed information about organic imports.

Poultry animal welfare

The effective date of the Organic Livestock and Poultry Practices rule has been delayed twice. USDA should allow this rule to go into effect, for the benefit of organic farmers and consumers.

Dairy pasture rule

The NOSB should urge USDA to take immediate action to bring bad actors in the dairy sector and their organic certifying agents into compliance, or exclude them from the program. The NOSB should carry out its statutory duty to provide advice and consultation to ensure that USDA takes the necessary actions to tighten enforcement.

Hydroponics

The NOSB should insist that hydroponics operations be decertified unless regulations are adopted that provide standards for their management.

Aquaculture

The NOSB should insist that products of aquaculture not be certified organic in the U.S. without standards proposed by the NOSB and adopted by NOP.

Overall

The Peer Review Panel must be convened annually. Its membership should be determined by the NOSB, and it should have the authority to request any files and evaluate any certifier that it judges to be appropriate. We concur with the recommendation of Peer Review Panel member Jim Riddle:

In a November 19, 2014 memo to the National Organic Standards Board, the NOP Deputy Administrator stated that a goal of the peer review was to establish a “repeatable and transparent peer review process.” In order for the review to be repeatable and transparent, future panels must be provided the following: 1) nonconformities identified during previous audits; 2) corrective actions undertaken in response to previous audits; 3) internal audit reports; 4) management review reports; 5) complaint files; 6) files to assess the NOP’s compliance with 205.500(c) regarding the approval of foreign governments’ accreditation programs and equivalency agreements; and 7) the ability to conduct site visits and interview NOP auditors and other staff members.

In addition, NOC 2009 comments on compliance with §205.509 and the NOSB 2005 Recommendation on ANSI Audit of NOP Accreditation are still relevant to ensuring continuous oversight of NOP.

The procedures used to implement the Peer Review Panel must be publicly accessible, because they are an integral link between the public and the private aspects of the regulatory partnership instituted by OFPA. The process is just as important as the outcome, and we note that ISO standards require all audit reports to describe the audit methodology. We understand that a new internal procedure on Peer Review has been outlined in the NOP’s Quality Manual, which should be available to the public.

Conclusion

The problems of inadequate oversight and enforcement by NOP go beyond imports of organic grains and also include poultry animal welfare, access to pasture for dairy, hydroponics, and aquaculture. We suggest specific remedies to these problems and also suggest programmatic changes to prevent future problems:

Imported Grain: USDA should institute heightened procedures to ensure that all organic imports are meeting USDA organic standards.

Poultry: USDA should put into effect the Organic Livestock and Poultry Practices proposed.

Dairy: The NOSB should urge USDA to take immediate action to bring bad actors in the dairy sector and their organic certifying agents into compliance, or exclude them from the program.

Hydroponics: The NOSB should insist that hydroponics operations be decertified until regulations are adopted that provide standards for their management.

Aquaculture: The NOSB should insist that products of aquaculture not be certified organic in the U.S. without standards proposed by the NOSB and adopted by NOP.

General: The Peer Review Panel must be convened regularly. The procedures used to implement the Peer Review Panel must be publicly accessible. Its membership should be determined by the NOSB, not the NOP, and it should have the authority to request any files and evaluate any certifier that it judges to be appropriate.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar".

Terry Shistar, Ph.D.
Board of Directors

Attachments:

Peer review panel report

NOC 2009 comments on NOP compliance with §205.509

NOSB 2005 Recommendation on ANSI Audit of NOP Accreditation