

CACS Comments

§205.206(e)

4 comments: (Beyond Pesticides, NOC, OTA, individual)

1. **Terry Shistar of Beyond Pesticides** says, “Section 205.206, the practice standard for organic crops, sketches out elements of an organic system as applied to crops. Subsection 205.206(e) says that all elements of the system are not equal –there is a hierarchy in how they are to be applied in organic systems. In particular, the application of pest control products, both synthetic and nonsynthetic, should be only as a last resort. This hierarchy is essential to organic production. Although it is stated here only for pest control products, the Principles of Organic Production and Handling, adopted by the NOSB on October 17, 2001, states it more generally, and we hope that the NOSB applies this more general statement in reviewing materials, and that certifiers apply it in their assessments of Organic Systems Plans. We would also like to raise the issue of aquaculture materials with respect to the issues raised in this document. The synthetic materials that have been petitioned for use in aquaculture have all been petitioned for routine use. Although they are not pest control materials, their routine use would be contrary to the hierarchy established in the NOSB Principles.”
2. **NOC** strongly supports the concept embodied in §205.206--a preference for use of less invasive and disruptive pest controls balanced with an acknowledgement that farmers need effective tools for controlling the wide range of insects, diseases, vertebrates, weeds, and other pests that can impact crops.

On Question 1: “ACAs use carefully crafted OSP forms in order to collect information about both the practices and materials that farmers use for pest control...We recommend that common OSP forms should: Specifically ask about each of the points mentions in 205.206; and address subsections of 205.206...with a format that allow the farmer to enter information about other pest control practices that are being employed on the farm...” If the certifier uses its own unique OSP, NOP accreditation should require auditors to verify the OSP form contains info above. This should be conducted as part of the NOP’s Desk Audit of the certifier’s documentation, so that the auditor does not have to focus on deficiencies arising from the OSP form during the on-site part of the accreditation audit.

Question 2: “NOC believes that the most appropriate method of verifying integrated farming system is during the inspection.” Systems are difficult to describe on paper, discussion often provides more information. This concept applies to NOP’s accreditation audits, where auditors should observe certification inspectors discussing farming systems.

Question 3: For planned pest control strategies within ACA, NOC recommends that the OSP form provides a mechanism for the grower to share information on pests and actions. On short notice, they support electronic certification systems that allow OSPs to be updated, this should trigger ACA to review new information for compliance.

They also recommend a guidance document based on this information which reinforces who the standard should be used.

Organic Trade Association says, Annotations placed on specific materials that are redundant to current standards damage the public's perception of the preventative approach organic farmers are required to take, force organic farmers to continually defend their production systems, and ignores the inherent interrelationship between a farmer's whole preventative practices scheme and the materials he or she uses when that scheme fails to prevent pests, weeds, or disease. **OTA strongly supports resolutions that highlight the stepwise approach organic producers have pioneered in order to manage pest, weed, and disease issues. OTA does not support annotations on specific substances dishonoring the sunset provisions in OFPA (expiration dates), questioning farmers' compliance with production standards (stipulating specific practices prior to approval), or restating the general requirements outlined at 7 CFR 205.105 (prohibition of synthetic substances and excluded methods).**

3. Frances Dunham of Gulf Breeze, FL Consumers want clarity the in rules and in communications about how pests are controlled in organic food production. We expect only the least harmful methods and materials be used in organic foods production, including the fate and transport of synthetic substances when their use is unavoidable.

Retail Certification

7 organizations

(ACA, Cornucopia, CCOF, CROPP Cooperative, Beyond Pesticides, OTA, MOSA)

3 individuals

1. **ACA**- "The ACA supports the Subcommittee recommendation for additional education and outreach to retailers in the form of Guidance from the NOP. We also support the Subcommittee's request for clarification from NOP of the Rule as it applies to retailers including:
 - a) clarification regarding recordkeeping requirements for exempt and excluded operations;
 - b) clarification regarding whether an exempt or excluded retail establishment may sell products off-site, including on-line sales;
 - c) clarification of the labeling requirements in §205.308, §205.309 and §205.310.

They support the request for clarification of "prepared in a certified facility" which impacts whether retailers can use the term certified organic can be used for retail operations that do processing and handling.

Their members support the concept of voluntary retail certification, and the limitations of 205.308 and 309(b) act as an incentive for operations to choose certification. In short, it reduces organic integrity risks, provides higher quality consumer education and drive consumer demand.

2. **Cornucopia Institute** says there must be delineated procedure to ensure that consumer expectations are met in terms of trust in the organic labeling and retail process. The process followed during inspections of organic operations is to identify the **organic control points**, i.e., any point or procedure where loss of control may result in a loss of integrity.

Just as inspectors look for these organic control points (OCPs) and verify that adequate procedures are in place, the NOP and NOSB must look at the organic control points that occur as food travels from the farm to the table. At any time that organic food is removed from its original container and put into a different package, that procedure is considered "handling." The

operation, whether it is a retailer or a processing facility, must be certified organic. This does use the broad definition of “processing” as noted in the discussion document: “any act of packaging or enclosing food in a container.” This broad definition is needed because many retailers re-package foods, but are not familiar with organic regulations. Labels on the retail packages are not always clear.”

Because there is a burden of certification on small operations, they suggest exemption for small producers and handlers, for retailers a limit higher than \$5000 may be appropriate.

As for signage, Cornucopia believes consumers should have access to information about the certifier for any organic product including bulk bins, meats, salad bar items etc. which should be feasible for even small retailers.

3. **CCOF** believes retail certification increases the integrity of the organic supply chain by providing additional oversight of retailers. They are concerned about the use of the term certified organic “CCOF supports the exemption from mandatory certification for retailers but believes that an uncertified retailer should not reprint the USDA seal on price signs or represent unpackaged products as “Certified Organic.”” They believe allowing uncertified retailers to use the terms “certified organic” and the USDA or certifier seals may undermine the process and the seal alike.

They support education including handbook guidance, instructions and fact sheet flyers on the NOP website to foster consistency. There should be market surveillance and enforcement of exempt and excluded operations, both certified and uncertified.

CCOF agrees there is a need to clarify the rule for retailers, for example, by prohibiting the use of the USDA seal and the phrase “certified organic.” While they could still label displays as organic we propose they should not be able to label with certified organic unless they are a certified retailer.

CCOF does not believe that products handled or processes at uncertified exempt or excluded locations may be sold off-site to be sold as organic, particularly as the industry will be open to fraud due to lack of oversight.

CCOF does not believe an exempt non-certified retail establishment can handle a product and then display the USDA seal or call it certified organic. They believe it must be prepared in a certified facility, otherwise it can be called organic but not “Certified organic.”

4. **CROPP Cooperative** supports the work of CACS on retail certification: “Enhanced education and support services for retailers will ensure consistent compliance with the National Organic Standards. It is critical to provide guidance and instruction particularly to exempt and excluded operations to ensure an understanding of the requirements for handling certified organic products. Consistent compliance with the standard will increase consumer trust of the USDA Organic Label. Secondly, with the market place expanding to a virtual reality, it is important that the regulation, just as it defines where processing activities occur, clearly defines the location of where the sales of those products would occur.”
5. **Terry Shistar of Beyond Pesticides** says, “We appreciate the work of the CACS in recognizing the importance of this issue, especially as it pertains to consumer confidence and trust in the certification of retail operations and the use of the word “organic.” We urge the NOSB to

develop, based on the work of the CACS, a clear set of recommendations and specific substantive proposals for changes in the standards utilized for organic certified retailers, in addition to drawing attention to the need for education and enforcement on existing rules and regulations.”

6. **MOSA** – “We do often have difficulty interpreting the applicability of exemptions and exclusions to retailers that are not certified. The lack of clarity has affected our regulatory enforcement.” They support more education and outreach targeting the retail sector; they have one suggested edit that the “relevant areas of rule” section should be included in sections 205.308 and .309 as they are referenced in recommendation. They discuss four clarification area:
 - a. Clarification regarding the USDA Organic Seal use to ensure that organic claims is appropriate and not misleading
 - b. MOSA believes requiring additional records to be maintained by uncertified retailers would bring more consistency to the retail setting although they are unsure whether it should extend to all excluded operation.
 - c. MOSA considers off-site sales by retailers, including online sales, to require certification, looking to “retail food establishment” definition at section 205.2 to help determine which types of operations may be exempted or excluded from certification requirements.
 - d. MOSA supports clarification of the “prepared in a certified facility” language standards. They believe a certified facility refers to the retail food establishment, not a different certified facility farther up the supply stream. As such, we would require certification for any use of certified organic claims and Seal use on any products that are repackaged, labeled or transformed by the retailer. They also would clarify that section.310 restrictions should not apply to products that are handled at facilities that are excluded per section 205.101(b)(1).

They also support the concept of voluntary retail certification which strengthens the organic community by reducing organic integrity risks.
7. **Organic Trade Association** agrees that guidance from NOP is needed for retail certification and compliance. “Guidance should result in consistent and compliant organic practices and messaging throughout the retail sector and increased consumer understanding and trust of organic claims. OTA supports the proposal and we strongly agree that guidance should focus on clarification and education for retail establishments, particularly ones that are exempt or excluded from certification, but still must comply with certain requirements of the regulations. OTA urges NOSB to pass this proposal as written at this meeting.”
8. **Bea James** (former NOSB member) says, “The CACC has pointed to several specific issues requiring additional clarification. These issues can be summarized into 3 possible solutions:
 - a. Adding “Merchandiser” into 205.2 terms to help define and expand voluntary retail certification. The organic merchandiser role would be to display and merchandise packaged finished ready to sell organic good from containers that are not handled or processed from the original received packaged containers. No handling or processing at all would take place with this option. Also the 205.2 definition of Handle does not allow for a retailer that wants to become a certified organic merchandiser to remain separate from handling and/or processing regulation. Adding merchandiser certification as an option for those wanting to become certified organic voluntarily is a great solution for retailers that are reselling certified organic products that they do not handle or process.
 - b. Clarifying labeling requirements for “Merchandiser” vs. Processors and Handlers – Customers do not know the difference between the labeling distinction of saying certified organic or organic on the package. Propose CACS consider changing 205.310 2 (b) so “an

- exempt of excluded operation intending to use the term organic on the main labeling name of a finished product must be a certified handler or processor.
- c. Creating guidance for retail certification –suggests that retailers would benefit from guidance on organic marketing and labeling for voluntary retail certification and voluntary merchandizer certification.
 9. **Allan Peterson** of Gulf Breeze, FL “I agree that clarification is necessary. Certification needs to be unambiguous in labeling and store advertising. Some buyers may assume that everything in an organic retail store is organic, when that may not be the case.
 10. **Francis Dunham** of Gulf Breeze, FL “Guidelines for retail operations in which certified or non-certified products are sold must be developed with practical and effective provisions to distinguish these categories. Where both organic and conventional products are sold, the distinction is even more important. If anyone benefits from the current confusion of the two, it certainly is not the consumer or the genuinely organic supplier.”

Sound and Sensible

4 organizations- (NOC, OPWC, IOIA, Cornucopia)

2 individuals

1. **Cornucopia Institute** provides several comments. On current inspection and certification weaknesses there are several reports of unqualified inspectors with no agriculture experience inspecting organic facilities. These problems are exacerbated because certifiers are hiring independent contractors on the basis of lowest bid which undercut sustainable fees collected by experienced inspectors. They are also concerned that inspectors have not bothered to look at audit trails. These concerns have spawned one of the largest scandal in history at Aurora Dairy. They support recommendations to increase mentoring and apprenticeship opportunities for inspectors.

For targeting inspection, they acknowledge that present fee structures and loss of cost sharing might require a new model. They suggest the NOP consider a basic annual review which could include random unannounced annual inspections every three to five year to free up budget dollars.

For Materials Review, Cornucopia suggests that the NOP needs to provide oversight in OMRI’s decisions to ensure they are impartial and credible.

2. **IOIA-**
 - a. NOP auditors need be trained to produce streamlined interpretation of paperwork.
 - b. Inspectors that find discrepancies between the OSP and the conditions of the operation, how are they supposed to ‘fix it’? For example, with altered crop rotations.
 - c. Exit interviews are tremendously varied “from a blank piece of paper to somewhat detailed forms in prior years... The exit interview form should be the ‘cap-stone’ of the on-farm inspection. It should be the first place the certifier’s reviewer will look, and it should serve as a great guidance document for that reviewer.”
3. **NOC** is supportive of efforts to retool the National Organic Quality System, at the heart of which is a multi-level oversight system. “NOC proposes an overarching concept of the “National Organic Quality System” as a way to frame the discussion of the Sound and Sensible Initiative. The integration of the multiple levels of the National Organic Program’s (NOP), which have been managed independently from each other, affords many opportunities for increased efficiency as

well as clarity. Based on this integrated model, NOC suggests that correcting the imbalance in oversight responsibilities is a cornerstone for successfully addressing many of the concerns that have arisen in discussions of the “Sound and Sensible” initiative. NOC’s view is that the NOP has not completely fulfilled its responsibilities, which has resulted in the overly heavy burden on certifiers and operators. NOC proposes rebalancing the National Organic Quality System so that responsibility for management of at each level of oversight is commensurate with the level of authority at which each level.”

NOC presents specific ideas and recommendations on:

- a. Criteria for evaluating “Sound and Sensible” Initiatives.- NOP system should focus on compliance with standard that should be evaluated with a range of stakeholders; NOP must become compliant with enabling legislation which must include a system of peer review and oversight; certification must be a practical tool; OSP must be useful for planning and tracking improvements and information to verify practices; they need to ensure consumer confidence, include educational activities, practice measure, accountability; the tone of oversight process must be welcoming and rewarding; oversight must be transparent; educational outreach with operations exempt from certification; oversight should include confidential annual surveys of all stakeholders which will be tabulated to highlight and forecast trends and identify action topics.
- b. Oversight systems: NOC recommends identifying standards that lack clarity which should be clarified by NOP through Guidance Documents; clarification procedures and instructions should be posted in the NOP Program Manual with reference to 205.501 a. 21 and use ISO for the basis for procedures; NOPS should sponsor trainings at all levels of organic quality assurance systems; they highlight the need for a Peer Review Panel comprised of 3 people with experience in ISOs, the organic industry and NOP regulations that will review and oversee the results of audits; rebalance responsibility so, for example, responsibility for documenting quality of primary systems should lie not just with farmers/handlers; NOC says there is a need for Guidance Documents and Instructions to Certifiers to fine tune implementation of standards and procedures.
- c. Standardized forms for OSP and supporting documentation- They call for the development of a common OSP form to facilitate ease of certification. They lay out 8 benefits of standardization of OSP forums as it will : improve transparency, encourage technical and educational support, foster links between NOP and conservation program, reduce the variability and increase efficiency of inspection, reduce certifier shopping, reduce costs and increase value of inspector training, and it would be helpful for marketplace buying and selling of products.
- d. Improving competency of inspectors and auditors- The NOC stresses the importance of using well-trained and experienced inspectors and certifier who have background in organic production and skilled with witnessing certification inspections. They recommend emphasizing observations of an operation during inspection to demonstrate compliance through explanation which is richer than paper documentation; recommend sampling methods be used to determine whether the documentation of a farms production and storage is sound; recommend improving assessor training by instituting mentoring or apprentice type programs, having more than one inspector, and training for accredited auditors; the recommend institutionalizing consistent methods of evaluating on-site and written work of the

organic inspector; and finally they recommend the NOP take advantage of International Organic Accreditation Service to reduce costs of international auditing activities.

- e. One list for brand name materials- NOP suggesting that NOP should facilitate sharing of information on brand name products that have been approved by the various certifiers. Particularly to standardize the materials review systems used by ACAs through NOP guidance, reinforce standardization by developing a section of NOPS's accreditation checklist related to materials system review; emphasize policies that encourage supplier to submit materials to OMRI for review; require all certifiers to make public their list; expand the scope of NOP's accreditation program to include Materials Review Organizations that are not ACAs
- f. Operator records – There is a need to streamline recordkeeping requirements. Particularly, they recommend reducing redundancy which exists for example, in the Spray Log and in the Field Activity Log.

4. **Organic Produce Wholesalers Coalition** – “Real time information on operator’s certification status and accurate product lists on certification is the #1 change that would make the regulatory environment in which OPWC member operate both more sound and more sensible,” it would save time, money, and ensure integrity.”

They also support a single, standard format for certificates, particularly suggesting NOP require a “valid until” date on certificates, eliminate certifiers use of “letters of good standing” as a method of extending the validity of a certificate, and finally recommend that certification numbers be assigned to each certified party and remain constant so it can serve as a reference.

OPWC suggest that NOPs compliance system be streamlined to be less slow and opaque, as fresh produce spoils by the time NOPs compliance system kicks in. OPWC suggests that the NOP should clarify the terms “should” and “must” in NOP Instruction 2603 “Organic Certificate” as some requirements are not mandatory. They urge full implementation of NOP 2603 as an enforceable rule.

Question 6: On visual verification, they say if the NOP Operator Database were more robust and up to date it could be used as a central reference for the majority of the documentation. For electronic certification, some features that would be useful are the ability to updates OSP and ability to check and update product listings.

Question 9: OPWC members agree that the Peer Review Panel is important to improving oversight of NOP’s compliance actions.

Question 10: OPWC supports the centralization of the materials review system through OMRI and in the meantime that NOP maintain a public list of all materials reviewed by ACAs.

- 5. **Patricia Toolan** of Severna Park wrote supports Beyond Pesticides comments that multi-level oversight system is required for quality assurance and certification, and that the NOP requires continuous oversight.
- 6. **Allan Peterson** of Gulf Breeze, FL: As a concerned member of the public, I want to be assured of the effectiveness of the certification process and its oversight. The emphasis on the integrity of

the process is a further assurance in my trust in the Organic label. I support the suggestions of the National Organic Coalition in this regard.