



December 21, 2017

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Standards Division Director
National Organic Program
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-17-0043

RE: Interim Instruction: Maintaining the Integrity of Organic Imports (NOP 4013)

Dear Dr. Lewis:

Thank you for this opportunity to provide comment on the draft Interim Instruction Document NOP 4013 – Maintaining the Integrity of Organic Imports.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The discovery of verified import fraud and the results of the Office of Inspector General (OIG) audit of NOP clearly call for changes to improve import verification and the integrity of the global organic supply chain. From the Organic Trade Association's view, fraud cannot be tolerated in the organic system, inside or outside of the United States. Anytime there is fraud anywhere in the organic system, it threatens the value of the organic chain, and hurts organic farmers wherever they farm. The oversight of foreign organic suppliers and the enforcement of organic standards must be rigorous and robust. The integrity of the organic certification process and the commitment to compliance and enforcement are the lifeblood of the organic industry, and ensure a level playing field for U.S. organic farmers. Therefore, strong action is needed to improve the effectiveness of controls throughout the organic product supply chain.

Summary

The Organic Trade Association acknowledges that there is a need to clarify the document control process for the verification of imported organic products. We also acknowledge that the current regulations provide for exclusions from certification that can create challenges for this verification. We applaud NOP for its issuance of the interim instruction document NOP 4013, as it clarifies current requirements and details the responsibilities of all members of the organic supply chain in the verification of compliance. This is a step in the right direction. We also acknowledge that ultimately, there is a need to eliminate the exclusion from certification for brokers and traders, and OTA is actively working with Congress on legislation that would give NOP the tools to pursue the regulatory change to help prevent fraud. OTA also recognizes that this instruction document will require adjustments on the part of ACAs and organic

businesses. However, we also believe that the entire organic supply chain has a responsibility in ensuring the integrity of imported organic products, and that this instruction document will not result in an undue burden on organic businesses. We note a lack of detail into NOP's expectations on how the instruction document will be implemented by operations certified under equivalency arrangements or recognition agreements. OTA also requests that NOP clarify its role in responding to instances where the organic integrity of product is suspect and compliance to the organic standards cannot be sufficiently verified. Lastly, OTA has identified that there may be inconsistency in how the exclusion from certification is applied in the case of ports of entry. We encourage NOP to clarify which specific handling activities at U.S. ports require certification and which specific handling activities do not.

A Modification to the Organic Regulations is needed

The Organic Trade Association recognizes the important role instruction and guidance have in strengthening and clarifying the regulations. We also believe that a regulatory modification to limit the types of operations that may be excluded from certification is imperative. Accordingly, OTA has been pursuing legislative changes for the next Farm Bill to give NOP the tools it needs to prevent fraud.

On September 28, 2017, Representative John Faso (R-NY) introduced the Organic Farmer and Consumer Protection Act (OFCPA), which would make significant strides to improve the oversight of global organic trade, create a level playing field for American organic farmers, and establish a better system to ensure the integrity of organic.

OFCPA provides support and necessary funding for NOP to keep pace with industry growth and to carry out compliance and enforcement actions in the U.S. and abroad. It strengthens the emphasis on the NOP's authority and capacity to conduct investigations to keep organic markets strong; it invests in technology and access to data to improve tracking of international organic trade; and it helps provide the necessary information to ensure a transparent marketplace.

As it specifically relates to exclusions from certification, the language in the marker bill reads:

MODIFICATION OF REGULATIONS ON EXCLUSIONS FROM CERTIFICATION. –

Not later than 1 year after the date of the enactment of this Act, the Secretary of Agriculture shall issue regulations to limit the type of operations that are excluded from certification under section 205.101 of title 7 Code of Federal Regulations, and any other corresponding sections.

We are highlighting this legislative action in our comments because of the important intersection it has with NOP 4013 and the need for USDA to close regulatory loopholes by mandating that uncertified entities, such as ports, brokers, importers and online auctions, become certified.

Impacts to the Organic Industry

Media reports of fraudulent activity in imported products has already pushed the organic industry towards heightened scrutiny of the supply chain. As U.S.-based organic companies implement their own measures to preserve organic integrity, some simple adjustments have proven to be successful in curbing the potential for fraudulent activity. For example, some operations require that all documentation accompanying an organic load identify that particular shipment as "organic." This helps to prevent accidental contamination and comingling, and makes it somewhat more difficult to falsify records. Taking stock of the current state of document control and supply chain integrity provides insight into how NOP

4013 will affect the burden on organic operations.

This instruction document helps to clarify and reinforce the requirements for organic operations and acknowledge the process for Accredited Certifying Agents (ACAs) to verify compliance with the current organic standards. This clarification is welcomed by the industry, which relies on consumer confidence in the integrity of the organic seal for its continued success in the marketplace. Specifically, NOP 4013:

- Clarifies that the burden is on the importer of organic products to demonstrate that the imports are in compliance with the regulations.
- Stresses the importance of a comprehensive Organic System Plan that addresses specific contamination and comingling concerns related to imports.
- Identifies examples of additional documents that ACAs can request as part of audits and inspections, and it clarifies that an organic certificate alone is not enough to demonstrate compliance.

OTA recognizes that NOP 4013 does not significantly change the current organic requirements, but we acknowledge that by detailing the current organic standards in an instruction document directed at imported product, there will be increased consistency among ACAs in their verification process and increased scrutiny by certified businesses of their supply chains. We also recognize that the documents listed in NOP 4013 under the “Audit Trail Records” section may not always be applicable in every situation. However, it is helpful, for both ACAs and certified businesses, to provide a comprehensive list of records that may be critical in verifying compliance of imported organic product.

Lastly, OTA acknowledges that implementation of NOP 4013 will likely require brokers and traders to reveal names of their suppliers, which may impact the current level of supplier confidentiality in the supply chain. While OTA understands the business advantage to maintaining confidential sources of product, we believe that fraud in the industry poses a far greater risk to the success of the organic marketplace, and acknowledge that a trade-off must be made to ensure continued consumer trust in the label. We also believe that implementation of NOP 4013 may push some handlers excluded from certification, like brokers and traders, to choose voluntary certification and eliminate some of the gap in oversight of the organic supply chain.

International Certification

Imported organic products can originate from operations certified under direct oversight by a USDA accredited ACA, from operations certified by ACAs accredited by a foreign entity under a recognition agreement (e.g. India), or from operations certified under an equivalency arrangement (e.g. European Union). It is not clear, however, how NOP intends to ensure dissemination and implementation of this instruction document for the certification of imported organic products originating from a country that operates under either a recognition agreement or equivalency arrangement since no such list of those operations exists within the NOP Organic Integrity Database or otherwise. We suggest NOP include a new section that describes how this instruction document should be implemented for the certification of products from countries under recognition agreements and equivalency arrangements. Further, we suggest NOP requests a list of all certified operations from recognition agreement and equivalency partners to disseminate this instruction document to those operations and/or share the final instruction document back to those partners for distribution to certified operations under partners’ purview should contact information not be provided.

USDA maintains the Organic Integrity Database, so real-time certification status of specific businesses can be confirmed quickly and efficiently. OTA is not aware of comparable databases for operations certified through recognition agreements or equivalency arrangements. Without these technology investments, real-time confirmation of a business' certification status could create a challenge to importers working with trade partners under recognitions or equivalency.

USDA's Responsibility to Respond to Detected Fraud

OTA notes that while this instruction document provides more clarity to the responsibilities of certified operations and ACAs in verifying compliance of imported organic products, it does not detail roles and responsibilities of businesses, ACAs, and NOP in responding to situations where the organic integrity of product is suspect and compliance to the organic standards cannot be sufficiently verified. With the exception of cases where prohibited substances or ionizing radiation were used on organic product, the instruction document is silent on how and when suspect products should be diverted from the organic marketplace.

- What are NOP's expectations of ACAs and organic businesses to report instances when compliance could not be verified and fraud is detected?
- How will NOP respond when organic compliance cannot be verified but there is insufficient evidence to confirm fraudulent activity?
- Under what circumstances will NOP allow ACAs to hold shipments from entering the organic market pending further residue testing, document review, or other necessary compliance related verification action?
- Under what circumstances will NOP require that a shipment be diverted from the organic marketplace?

OTA believes that the organic industry needs an assurance that organic products that do not meet the basic documentation requirements included in this instruction document are diverted from the organic marketplace. It is also critical that once a product is diverted from the organic marketplace because it cannot be verified to meet the organic requirements, it remain diverted. We encourage NOP to describe how information sharing can occur between ACAs and organic businesses to ensure diversion of fraudulently produced products is effective and permanent. Detailing the proper response to cases when compliance with the organic standards cannot be verified and fraud is suspected is essential to consistent application of the organic production requirements and continued confidence in the organic label.

Interaction with NOP 5031 – Certification Requirements for Handling Unpackaged Organic Products.

NOP 4013 reinforces instruction document NOP 5031, which clarified that when an exempt or excluded handler is used for brokerage or transportation, the burden is on the certified entity purchasing the product for complete chain of custody documentation. OTA supports this clarification and believes that the entire supply chain plays a role in ensuring organic product integrity. NOP 5031 also clarified that any operation splitting or combining loads or otherwise handling product other than for transport must be certified. Since all imported product must pass through a U.S. port of entry, it is important that organic stakeholders clearly understand which port activities must be certified and which fall under the current exclusion from certification.

It is OTA's understanding that under the current regulations, a port of entry which is trans-loading sealed containers of organic product from ships to rail or freight and never removes product from those sealed containers is not required to be certified. However, we also understand that a port which trans-loads product from a bulk ship to another container, rail car, or storage bin must be certified under the current organic requirements. It is not apparent that this understanding is consistent among organic businesses and ACAs. We encourage NOP to consider including these two specific examples in its final draft of this instruction document. Ensuring that the exemption from certification is consistently applied at various ports will go a long way in ensuring the integrity of organic imports.

OTA's Global Organic Supply Chain Integrity Task Force

Compromised supply chains due to fraud can erode consumer trust in the integrity of the organic brand. Strong action is needed to improve the effectiveness of controls throughout the organic product supply chain. In addition to the number of steps currently being taken to strengthen NOP oversight of imported organic products, further actions include oversight and training of ACAs, improved collaboration with other agencies to better oversee organic products at U.S. Ports of Entry and increased communications with regards to enforcement activities including suspensions, revocations, and fraudulent certificates. The Organic Trade Association is pleased to see the actions being taken by USDA and other agencies --such efforts must continue.

The Organic Trade Association's position is that everyone has a role in organic fraud prevention. In addition to the steps that USDA is taking, it is critical that distributors, traders and holders of organic brands have systems and measures in place that adequately support the promise of providing organic food that people can trust. For this reason, we have convened a task force that is developing a best practices guide that will provide businesses engaged in the organic trade with a risk-based approach for developing and implementing a written organic fraud prevention plan to assure the authenticity of organic products by minimizing vulnerability to organic fraud and mitigating the consequences of occurrence. The Guide's recommended practices are intended to establish an industry standard for businesses to create continuously improving internal programs and processes for achieving organic integrity throughout their associated supply chains. In addition to presenting a systematic approach to developing a written organic fraud prevention plan, the task force is developing an alert system procedure concerning what to do when you suspect or detect fraud along with detailed information on how to effectively file an actionable complaint to an ACA or to NOP.

The work of the task force and the commitment on behalf of the organic industry to implement best practices for preventing organic fraud will go a long way. Guidance and instruction are also very helpful, and we are working to incorporate all applicable information into our Best Practices Guide. However, AMS' work to strengthen the oversight of imports and deepen the rigor of oversight across the supply chain through rulemaking will be essential in supporting the efforts made by both the ACAs and the private sector.

Conclusion

The Organic Trade Association supports NOP's work to provide clarification and support to ACAs and the organic industry as it works towards ensuring the integrity of organic imports. We recognize that current exclusions from certification provide challenges to ensuring the integrity of supply chains, and we believe that legislation and rulemaking to eliminate those exclusions will significantly help prevent the

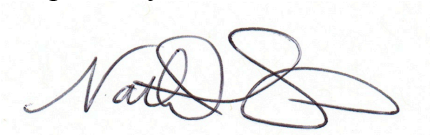
problem of organic fraud. However, in the interim, this instruction document provides clarification needed by ACAs and organic businesses as we shore up the supply chain.

To improve the utility and clarity of this instruction, OTA suggests NOP include the following:

- Additional sections to the instruction document that describe how the procedures will be administered for foreign certifiers and suppliers operating under recognition agreements and equivalency arrangements;
- Clarification on how exclusions from certification apply to specific handling activities at ports. OTA remains concerned about inconsistent application of the exclusion from certification when it comes to bulk product coming into U.S. ports;
- A description of the roles and responsibilities of businesses, ACAs, and NOP in responding to situations where the organic integrity of product is suspect and compliance to the organic standards cannot be sufficiently verified; and
- An explanation on how information sharing can occur between ACAs and organic businesses to ensure diversion of fraudulently produced products is effective and permanent.

On behalf of our members across the supply chain and the country, the Organic Trade Association thanks the National Organic Program for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,



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cc: Laura Batcha
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