National Organic Coalition

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USDA-AMS—TMP-NOP
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RE: Docket Number AMS-TM-07-0118 –Comments to NOSB regarding
Certification of Multi-Site Operations

Overview
The National Organic Coalition, (NOC) is a national alliance of organizations representing farmers, environmentalists, other organic industry members, and consumers concerned about the integrity of national organic standards. The goal of the coalition is to assure that organic integrity is maintained, that consumers' confidence is preserved and that policies are fair, equitable and encourage diversity of participation and access .

We would like to thank the NOSB Certification, Accreditation and Compliance Committee (CACC) for the thoughtful consideration of this important issue. However, we believe the draft proposal goes well beyond the scope of the problem it intends to solve, and in fact proposes a major change to the scope and nature of organic inspection that is not warranted and will be harmful to the integrity of organic certification.

We recognize that the NOSB has identified unresolved issues related to voluntary certification of retail handlers, but we believe this topic requires additional guidelines or rule making, and should not be included here with the original issue of concern: whether cooperative type of farmer-based "grower groups" can be certified under the USDA NOP standards.

We appreciate that NOP has endorsed the previous NOSB recommendation, Criteria for Certification of Grower Groups, of Oct. 20, 2002 as current policy pending further clarification or rulemaking. We further recommend strongly, that NOP consider certification of Grower Groups as a separate area of scope for accreditation of certifiers. This will provide extra assurance that certification agencies have the necessary policies and expertise to perform this

type of review, and will require witness audits by USDA of actual Grower Group inspections. This will help maintain consumer confidence in this form of organic certif ication to USDA standards. We recommend as reference that USDA consult the IFOAM Accreditation Criteria, for Bodies Certifying Organic Production and Processing (2005), specifically sections 8.3.13 - 8.3.15 for insight into evaluation of internal control sy stems by certification agencies.

We urge the NOSB to reject the CACC proposal, and instead consider amending the original 2002 recommendation to address concerns noted below.

What is the problem that needs solving?

We agree with the minority opinio n, that the current problem NOSB has been asked to address involves the ability of certifiers to certify growers (farmers) who have organized themselves into groups in order to consolidate their products and market jointly. This has been historical practic e in many developing countries, particularly for crops like coffee, cocoa, tea and tropical fruits such as bananas and mangos. The NOSB recognized in its 2002 recommendation that these systems for group certification exist, and suggested guidance for eval uation of grower groups under the existing regulations. However, NOP did not act on this recommendation. In October of 2006, the AMS issued a ruling in response to an appeal by a new grower group that was denied certification.

The AMS supported the certif ier's denial regarding the Mexican grower group (October 27, 2006). The decision states that the fundamental issues involved in the appeal were whether the certifier policies for grower group certification are consistent with NOP regulation. The two key problems noted were:

1) The selection of only a percentage of producers for inspection did not meet the requirement in 205.403(a)(1), and
2) Lack of documentation of inspector qualifications:
   "Additionally, the certifying agent's CCG certification policy in rega rds to internal inspection does not require that the inspector have sufficient expertise in organic production or handling techniques, as per 205.501(a)(5), no t be subject to annual performance review, as per 205.501(a)(6), or complete an annual conflict of interest disclosure report, as per 205.501(a)(11)(v). Therefore, the establishment of an internal inspection system as a proxy for the mandatory on-site inspections by the certifying agent or approved contract inspector is not permitted under the NOP regu lations." [1]

This language implies that if the Grower Group policy did comply with NOP requirements for inspectors, then an internal control system might be acceptable as a "proxy for mandatory on -site inspections." These problems can be remedied without t he extreme changes proposed by the CAC.

According to the NOP's posted policy statement of May 2, 2007, the Board's October 20, 2002 recommendation, "Criteria for Certification of Grower Groups" stands as effective at the present time. The Board will need to vote to rescind or amend it if it wishes to replace this policy. We believe that the original recommendation can be strengthened by adding conflict of interest provisions to assure that the internal inspector is free from conflicts of interest, and cla rification

[1] Day, Lloyd, USDA AMS Decision, Response to Appeal APL -011-06, Oct. 27, 2006

about inspection of individual members of grower groups. We offer specific changes as part of this comment.

Problems with the CAC Recommendation

1. This committee recommendation unnecessarily increases the scope of the previous 2002 NOSB recommendation to include all "multi-site operations." We support the minority opinion, that finds there is no need to change the inspection requirements for processing and handling operations that are not only well established, but also essential to provide adequate monitoring for these types of operations. Handlers and other processors, including retailers who choose to be certified, must have their central headquarters audited, operate under one Organic System Plan, and be subject to **annual inspection** of each site, facility and production unit, as required at 205.403(a)(1).

   Why does handling and processing of organic food merit strict procedures?
   The handling and processing of organic food does add complexity to the certification process and a greater level of risk for organic integrity than for the initial certification of farm products. Ingredients come from many sources, so that problems can be multiplied as they are incorporated into multi-ingredient products. Food processors are often innovative, and make frequent changes in product lines and labels, as well as changes in personnel, all of which requires scrutiny. The paper trails for sourcing products become very convoluted when there are many ingredients. If there are problems with the certification of the products these handlers are buying, on-site inspection provides an opportunity to identify the problems but only if inspection occurs on a frequent basis. In addition, most certifiers use input/output (I/O) audits to determine whether the amount of organic product entering a handler's production system is reasonably related to the amount of organic product coming out of the operation. Even with this level of scrutiny, it is difficult to identify product substitution and other cases of fraud because an inspector can only perform a few I/O audits during an inspection --annual inspections provide more opportunities to perform this type of analysis.

2. The regulation must be consistent with OFPA:
   This CACC recommendation interprets the language at 205.403(a)(1) very narrowly to propose that complete inspections of every site, facility and production unit are only required the first year of certification and that thereafter, inspections can be less comprehensive. This is a dangerous argument, that conflicts with OFPA's clearly articulated requirements for annual inspection:

   > OFPA
   > 6506(a) In General – A program established under this title shall –
   > (5) provide for **annual on-site inspection** by the certifying agent of **each farm and handling operation** that has been certified under this title;
   > 6502 Definitions
   > (4) Certified organic farm – The term "certified organic farm" means **a farm, or portion of a farm, or site, where agricultural products or livestock are produced,** that is certified by the certifying agent under this title as utilizing a system of organic farming as described by this title.
   > (5) Certified organic handling operation – The term "certified organic handling operation" means **any operation, or portion of any handling operation**, that is certified

by the certifying agent under this title as utilizing a system of organic handling as described by this title. (emphasis added).

(10) Handling operation - The term handling operation means any operation or portion of an operation (except final retailers of agricultu ral products that do not process agricultural products) that (A) receives or otherwise acquires agricultural products; and (B) processes, packages or store such products.

(18) Producer. A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products

NOP regulation

205.403(a) *On-site inspections.* (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An annual on-site inspection shall be conducted each year annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

The OFPA clearly provides oversight rigor through annual on-site inspections for both farms and handling operations. The term "production unit" as used at 205.403(a)(1) can be considered to refer to an agricultural operation, not a processing or handling operation. OFPA typically uses the phrase “production or handling” to distinguish farming from handling, for example at 6503(a): “In General – The Secretary shall establish an organic certification program for producers and handlers …” The definition of certified operation identifies “crop or livestock production, wild-crop harvesting **or** handling operation…” as distinct categories. “Producer” is d efined as a person engaged in the business of growing food, fiber or feed. It is logical to construe annual inspection of production units as a term apply to farm and livestock operations, so the current regulation at 205.403(a) can be interpreted to requi re annual inspections for all handling/processing facilities, while granting some flexibility to production units that are part of farm operations.

In addition, the OFPA is very clear at 6506(a)(5) that every handling operation must be annually inspected. Handling operation is separately defined, although “farm” is not, leaving some discretion for NOP to consider grower groups as “farms.” It is clear from the OFPA requirement for annual on-site inspections that every portion of a handling operation must be annually inspected. It is not clear that every portion of a farm must be annually inspected. If a grower group is certified as one farm and the farm is annually inspected, then the requirements of OFPA are fulfilled. Properly run programs for grower group certification have historically provided good controls to monitor farm ‘fields’ in grower groups that are independently owned, and subject to frequent oversight and inspections in an ongoing manner.

The Federal Register of Dec 12, 2000, (“preamble” at 8059) also provides insight into rationale for inspection requirements, showing that the distinction between annual and renewal inspections was not intended to be less rigorous, only that inspections are required only for the certified portion of the opera tion.

3. We agree with the minority opinion that the addition of new definitions of "Renewal inspection", "Facility or Site", "Production Unit" radically changes the requirements for organic inspection. These should be omitted. We do agree with the majority (and the original NOSB recommendation) that cooperatives of growers meet the definition of "person" and are eligible for certification as a group.

4. The proposal fails to provide needed, specific guidance necessary for evaluations of grower groups in order to determine if they can meet NOP requirements for certification.

Rationale for a Different approach:

We support the comments of the Accredited Certifiers Association members who find that the inspection of "production units" rather than all individual farm members of a grower group would ensure the integrity of the organic products. Note that while §205.403 utilizes the term "production unit", and the Appeal Summary also references it, this term remains undefined within the National Organic Program. The organizational structure of grower groups provides an example of a type of production unit that has evolved to facilitate monitoring and administration through a common management system. In many cases grower groups are defined by a common watershed, local community, harvest collection site, or proximity to the local warehouse through which inputs are directly distributed to growers. A grower group could be managed as one, or more than one "production units". The applicant would define the units in the operation's organic system plan.

We are also concerned that without a restriction to its application to small-scale farmers, the allowance of the "Multi-Site Operation" model will be exploited by operations that wish to bypass the basic requirements of USDA organic certification and avoid independent third party inspection. Given the current challenges facing USDA to provide oversight of accredited agencies in foreign countries, we do not think a method that allows for reduced inspection protocol is warranted for all producers. We suggest that while grower groups may include farm units of all different sizes, the use of risk-assessment type of criteria for determining rate of inspection should factor the sales of productions units as a criterion. In other words, individual members of a grower group that produce more than $5,000 US in organic sales should be subject to more external inspections than other individual producers. Units within a grower group that produce less than $5,000 of gross organic sales would be subject to annual inspections performed by the group's internal control system, as well as periodic inspections performed by the certifier. This sales level is supported in OFPA as a threshold for exemption from certification, so allowing a slightly different protocol for inspection is legally supportable. [2]

The USDA has acknowledged the concerns of Congress regarding impacts of NOP regulations on small entities.[3] Both the Regulatory Flexibility Act and Small Business Regulatory Enforcement Act of 1996 express Congressional concern about impact of regulations on small businesses. Senate report language cited in the Regulatory Impact Assessment of the final rule

[2] We also encourage USDA to index the $5000 exemption to inflation using the Bureau of Labor inflation calculator. This would seem to be well within the agency's enforcement discretion, resulting in a current exemption of $7975.90 for 2007.

[3] Regulatory Impact Assessment for Final Rule Implementing the Organic Foods Production act of 1990. FR 80673, Dec.21, 2000

states: "The Committee continues to recognize the importance of organic markets for small farmers and fishermen. The Committee expects the Secretary to construct a national organic program that takes into consideration the needs of small farmers and fishermen." There is clearly authority for USDA to limit the participation in grower group type certification schemes to small-scale growers who historically have utilized this system, and who will otherwise be unable to attain organic certification.

We believe that while the goal should be inspection of 100% of the grower group members by the certification agent, we recognize the difficulty this model creates for growers in some developing countries. This is due to a variety of factors, including time constraints related to extended travel a lack of sufficiently trained and experienced inspectors in the less developed countries and the high cost of obtaining qualified inspectors from other areas for the length of time necessary to conduct all of the inspections. Grower groups utilize internal inspectors to monitor compliance by the producers. These internal inspections, coupled with an inspection of the larger group, the "production unit", by a NOP-accredited certifier will ensure the integrity of the organic products.

Specific Proposed Solutions

Rather than extend the concept of group certification to all processors and retailers, as the CAC has proposed, we suggest that the NOSB's original recommendation from Oct. 2002 be revisited and updated to address concerns expressed by the appeals decision. Additional suggestions are indicated by underlining. We offer comments for improving Recommendation 1, which is the Criteria for Certification of Grower Groups. NOSB's Recommendation 2, Inspection of Grower Groups can be retained and used as guidance for inspection procedures by accredited certifiers.

Recommendation # 1

Guidance for Certification Agencies
Criteria for the Certification of Grower Groups

Add the following definition:

Production Unit is defined as – a physical site within a certified operation, at which organic crop or livestock production, and related post harvest handling is conducted. A production unit may be a single farm, or may be comprised of multiple locations grouped by geographical proximity, or contiguous farms utilizing the same management techniques. Each production unit must undergo an annual inspection, and operate under one organic system plan.

In order to be certified as a grower group, the following conditions must be met:

1) Eligibility for determination of a production unit
   a) The crops and farming practices of the producers must be uniform and reflect a consistent process or methodology, using the same inputs and organic system plan.

b) The group must be managed as a legal entity or with a contractual linkage under one central administration that is uniform and consistent.
c) Participation in the group is limited to producers who sell all of their organic production through the group.
d) Participants in the group must provide information on their production practices .
e) Grower groups must utilize centralized processing, distribution, and marketing facilities and systems.
f) Production units are limited to crop and livestock production, and normal on-farm post harvest handling.

2) Group Management

a) Grower groups must establish and implement an internal control system (quality system), with supervision and documentation of management procedures/policies, identification of each production unit. Grower groups must develop and maintain an Organic System Plan that members agree to follow and which provides information on production practices and inputs used at each production unit to insure compliance with the USDA's National Organic Standard.

b) The group shall be large enough and have sufficient resources to support a viable internal control system that assures compliance of individual members with production standards in an objective and transparent manner.

c) The grower group must conduct an annual review of its program, using the internal control system, either conducted by the management of the group, an outside auditor, or consultant who has expertise to conduct such reviews and implement measures to correct any noncompliance in operating procedures.

d) The grower group must maintain a complete and up-to-date list of grower group members including each member's name, location, other contact information as applicable, product(s) produced, estimated yields, and date(s) of internal inspection.

e) The group must control the purchase and distribution of all external inputs used by the growers. This includes, but is not limited to, seed, fertility and pest control products.

f) Grower groups must ensure that all members are provided with a copy of the USDA National Organic Standards in the appropriate language. All group members must attest that they understand and will comply with the USDA's National Organic Standard as it applies to their specific operation, and with the internal control system policies, and must agree to permitting inspections.

g) The Internal Control System must provide a sanction policy and procedure to address producer noncompliance or a loss of the organic integrity of a crop. A list of sanctioned producers must be maintained.

h) All procedures that verify the ability of the internal control system to effectively monitor the individual members of the group and ensure compliance with the USDA's National Organic Standard must be documented. Documented procedures and records used to verify compliance must be maintained and made available at

inspections by the USDA-accredited certification agent, by authorized representatives of the Secretary, and if applicable, by the State program's governing State official.

i) Grower groups must not accept new members until they have been inspected by the internal control system and found to be compliant with the USDA's National Organic Standard and internal control system policies. Changes in group membership must be reported to the USDA-accredited certification agent.

j) Producers who are certified as part of a grower group do not possess individual certificates. Rather, the grower group is certified as a production unit.

3) Personnel

a) The internal control system must maintain a list of its employees, their job descriptions, evidence of their expertise, and organizational flow charts.

b) Internal control system personnel must have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the USDA's National Organic Standard.

c) Internal control system management must use a sufficient number of adequately trained personnel, including inspectors, to fully comply with and implement the terms and conditions of the USDA's National Organic Standard.

d) Management of the internal control system must conduct annual performance reviews of all personnel, including internal inspectors.

e) Personnel of the internal control system must disclose any conflicts of interest, as defined in §205.501(a)(11).

4) Inspection

a) All production units must be inspected annually by the accredited certifying agency, and individually owned fields within the production unit must be monitored annually by the internal control system.

b) The certifying agent shall have policies and procedures for determining how many growers must receive an annual inspection based on ISO compliant methodologies that include appropriate risk-assessment and random selection of a portion of the samples. This determination must include consideration of:
• The number of operations participating in the grower group;
• The size of the average operation in the grower group;
• The degree of uniformity between the group's operations;
• The complexity of the group's production system(s);
• Size of individual operations, to provide additional scrutiny of any members of the grower group that have gross organic returns of over $5,000 US.
• The management structure of the group's internal control system.[4]

[4] See also the IFOAM Accreditation Criteria, Sections 8.37 – 8.3.12 for discussion of risk assessment inspection policies.

c) The accredited certification agency's inspector must not have a conflict of interest with the inspected party, as defined in §205.501(a)(11).

d) The group must maintain copies of any internal control system annual inspec tion reports and make these available at inspections by the USDA -accredited certification agent, by authorized representatives of the Secretary, and if applicable, by the State program's governing state official.

Thank you for the opportunity to comment.

Sincerely,

Liana Hoodes (Policy Organizer), on behalf of the
National Organic Coalition:

Beyond Pesticides
Center for Food Safety
Equal Exchange
Food & Water Watch
Maine Organic Farmers and Gardeners Association
Midwest Organic and Sustainable Education Services
National Cooperative Grocers Association
Northeast Organic Dairy Producers Alliance
Northeast Organic Farming Association, Interstate Council
Rural Advancement Foundation International USA
Union of Concerned Scientists