



September 28, 2023

Docket Number: AMS-NOP-23-0026

These comments, made on behalf of OrganicEye and our members around the country, are submitted for consideration by the National Organic Standards Board (NOSB) members in preparation for their deliberations during the October 2023 semiannual meeting.

OrganicEye is a tax-exempt public charity engaged in research and educational activities benefiting all organic stakeholders (farmers, ethical businesspeople, and consumers). OrganicEye is best known as an organic industry watchdog.

RESIDUE TESTING

Choosing Targets

An unaddressed concern that we have had for some time regarding testing and selecting organic operations for unannounced inspections is the practice of deferring to certifiers to exclusively choose the targets for applying their resources for these required activities.

There is a profound economic disincentive to aggressively pursue inspections and testing against their riskiest “clients.”

First, some of the largest organizations represent the largest contributions to the certifier’s revenues. Let’s not forget that certifiers are generally for-profit business enterprises, some with revenues in the tens of millions of dollars.

Over the years we have received reports stating that when inspectors and certifiers aggressively carry out their duties, they sometimes get complaints and sometimes lose clients. So, there’s an economic incentive to *not rock the boat*.

Furthermore, discovering violations by organic operations is exceedingly expensive and personnel-intensive. Certifiers are required to provide due process to alleged violators and, in some cases, stairstep proposed enforcement actions, beginning with a letter of noncompliance before proceeding to suspensions and revocations.

Due process can include mediation and even litigation, with certifiers needing to interface with officials at the National Organic Program (NOP) at many junctures, resulting in a time-consuming and drawn-out process to both enforce the organic regulations and provide the requisite due process for operators accused of improprieties.

Thus, we would suggest that there needs to be an independent process for selecting targets for testing and unannounced inspections. That selection should take place under the direct supervision of officials at the NOP.

In today's technology-rich environment, with advanced machine-learning increasingly accessible, targets could be selected under the supervision of senior NOP staff based on comparable risk according to the crops or products produced, international location, the operation's enforcement track record, history of changing certifiers, and/or other factors so that resources can be applied, based on relative risk factors, where they are most needed.

Trusting certifiers to aggressively police their own clients could potentially result in this expensive process not finding fraudulent activity and, more importantly, undermining its ability to act as a potent deterrent to industry participants who, based on the immense upside profit potential, might be practicing "organic alchemy."

Sampling Protocol/Chain of Custody

The NOP should establish set protocols for sampling and approving testing labs. Otherwise, the value and integrity of the process could easily be materially compromised.

Mandating Universal Testing for Some Imports

Based on past experiences with wholesale fraud of large shipments of imported commodities, every single bulk organic shipment should be tested based on a predetermined minimum tonnage, and aggressive spot testing should be more liberally applied to smaller imported shipments.

When we petitioned for rulemaking in this regard a few years ago (without a response from the NOP), an official with one of the Midwest-based organic grain cooperatives estimated that one bulk shipment of organic grain coming in from countries such as Turkey could easily be equal to the annual output of 50 average US farms. The cost for this required testing would be inconsequential but could have a profound impact on preventing US producers from facing unfair competition and organic consumers from being subject to fraud.

I've asked livestock farmers in this country the rhetorical question, "Are your milk, meat, and eggs organic if the feed you are providing your animals is conventional?"

REVIEWING INERT INGREDIENTS IN ORGANIC PRODUCTION

For too long the USDA has not enforced the law requiring that all synthetic inputs used in organic agriculture be reviewed for safety and essentiality. Although we will supply a few additional comments, OrganicEye fully endorses the comments on this issue submitted by Beyond Pesticides. No one is more qualified or deserves more credit for this issue being brought forward, working tirelessly over a period of decades, than one of their board members, Dr. Terry Shistar, who authored their comments.

If the USDA and the Program had respected the intention of the NOSB, these materials would have begun being closely reviewed starting over 20 years ago. It seems commercial interests have been well-served, all too often, by the disregard for the public-private partnership we were all so proud of creating back in the 1980s when we lobbied for passage of the Organic Food Production Act.

The use of these unreviewed synthetics is one of the *dirty little secrets* in organic agriculture. If this deficiency was widely known by consumers, it would be highly injurious to the reputation of organic food.

Furthermore, the dependence on material review organizations (MROs), wholly unsupervised and unregulated the USDA, is unacceptable. As an example, the vast preponderance of revenue enjoyed by the Organic Materials Review Institute (OMRI) comes from either the corporations manufacturing proprietary materials for which they seek approval, or from the for-profit certifiers that access their data. Although their services are necessary, they should be subject to federal supervision to mitigate the existing conflicts of interest.

The fact that the majority of ingredients, by volume, in many "organically approved" pesticides, fungicides, and herbicides are unreviewed "inert" materials certainly justifies close scrutiny. And the fact that these so-called *inert* ingredients are sometimes listed in other approved products as *active* ingredients is profoundly unsettling and points to the easy, existing opportunity to *game the system*. It has long been known by agricultural practitioners that some of these inerts have functional properties as pesticides.

Capacity

There is little doubt that the NOSB's capacity for doing additional work needs to be addressed. In the past, three meetings were held in a given year when the workload required it.

We would respectfully suggest that the NOSB and the Program consider dialing back to the original procedures for approving petitioned materials and other materials at sunset.

The process was reformed during Miles McEvoy's tenure of leadership at the NOP. In deference to complaints, he bent over backwards to accommodate the interests of manufacturers of synthetic/nonorganic materials and some of the handlers who use them.

His new formula greatly increased the workload of the board which used to be able to review materials at a single meeting and openly discuss restricted annotations coinciding with approval or relisting at sunset.

Since all these deliberations are clearly noticed in the Federal Register, and subcommittee meetings alert organic industry members in advance of most of the preordained intentions, interested parties have ample opportunity to submit written comments and oral testimony, and to attend meetings in person if so desired.

We should be bending over backwards to follow the spirit and letter of the law instead of overly protecting the interests of material manufacturers, including multinational, multibillion-dollar agrichemical manufacturers.

"BIODEGRADABLE" PLASTIC MULCH

Finally, although not on the agenda, pursuant to recent communications by the NOP, the NOSB should absolutely not even consider approving the use of biodegradable plastics without first reviewing the requisite safety testing which, to my knowledge, does not currently exist.

Although the NOSB has received testimony that these materials basically "disappear," no one has done a study out in the field of the residual microscopic particles and whether growing in soil contaminated with microplastics would cause degradation to the soil microbiota or if the materials get up-taken into the plant tissues to be consumed by dedicated organic consumers looking for cleaner and safer food for themselves and their families.

Despite the fact that the NOSB has previously recommended reducing the bio-based content of these plastic mulches from 100% to 80%, reading between the lines, it seems pretty transparent that the Program would like the board to consider lowering the threshold to a commercially-expedient level of under 50%.

Please allow me to emphasize that, regardless of the percentage of petroleum-based oils or those produced agriculturally, the finished material will be loaded with a myriad of other synthetic chemicals (plasticizers, phthalates, etc.) and the constituencies we represent do not want them to become ingredients in their food.

The NOSB was established as a buffer between corporate lobbyists and the rulemaking in order to protect what makes organic food unique and special in the marketplace.

On behalf of organic farmers and businesspeople whose livelihoods depend on the integrity of the organic label — and just as importantly, their customers, organic eaters — we strenuously object to allowing the use of biodegradable plastic mulch in organic production until and unless these issues are addressed and its safety can be verified independently through published research.

Finally, following the lead of the Program will undoubtedly impact the capacity of the NOSB to address other critical issues, such as inerts, and will guarantee a high-profile public battle that will be injurious to the reputation of the organic seal.

Respectfully submitted,

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