



October 5, 2020

National Organic Program
USDA-AMS-NOP
1400 Independence Avenue, SW
Washington, D.C. 20250-0268

Re: Docket No AMS-NOP-17-0065

PCC would like to thank the National Organic Program (NOP) for the opportunity to comment on the proposed Strengthening Organic Enforcement (SOE) rule.

PCC Community Markets is a community-owned, co-operative food market that began as a food-buying club of 15 Seattle families in 1953. Today, we have more than 82,000 active member-owners and 15 stores in seven cities, generating over \$300 million in annual sales — making PCC the largest consumer-owned and operated grocer in the United States. We are a triple bottom line organization, advocating for consumers and the community in everything we do.

Supporting the organic food supply system has always been a priority because of its benefits to consumer and environmental health. This is why we not only prioritize organic products and advocate for organic food systems at local, state, and national levels, but also voluntarily participate in the organic supply chain as a **certified organic retailer**.

Overall, PCC supports and appreciates the goals of the SOE to provide better clarity and systems to prevent fraud in the organic supply chain. In particular, we support the added requirement of electronic import certificates and unannounced inspections for a minimum of 5% of a certifier's organic operations. We would, however, like to provide our perspective an input on the following provisions:

I. Exempted Operations - § 205.101

PCC supports the NOP's amendments to limit the types of operations excluded from organic, but do not believe the amendments go far enough. With the exception of operations with less than \$5,000 in sales of organic products, we believe that now is the time to eliminate the uncertainty that is bound to plague the continually evolving supply chain. While we understand that integration of the full breadth of operations within the organic supply is a significant undertaking and must be approached in a strategic manner to allow for certifier expansion and education, it is a step that should be taken.

PCC believes there are numerous logistical and organic-integrity-based reasons for this position across all categories of the exempted operations but would like to share some of our concerns pertaining to the retail category.

A. Retail Operations

As a certified organic retailer, we are in a unique position to provide feedback on the benefits and potential challenges of requiring certification at the retail level. We appreciate that under the proposed SOE, NOP clarified requirements that retailers must adhere to comingling, 205.310 labeling, and records retention requirements. It is well known, however, that with the expanding and changing offerings and roles of retailers there is a significant risk of noncompliance without appropriate education, auditing, and enforcement mechanisms.

Fraud at the retail level, is an issue—one that will only grow with the increasingly complex integration of virtual and traditional retail. We have heard too many reports from internal sources at competing non-certified retailers of violations of organic labeling, comingling, and records retention. Some of this is intentional, but often it is lack of education and understanding surrounding the organic regulations that lead to potential contamination of organic products or misbranding.

Ensuring the integrity of the supply chain is one of the primary reasons why PCC has voluntarily undertaken its certification, however, it has also ensured that we continue to better understand the organic supply chain and the needs of our producers. What has often been challenging in this experience, however, is understanding the operational nuances of the very standards the NOP proposes retailers and other exempted organizations self-enact and monitor. Even with the improvements presented in the SOE, we have concerns about NOP's capacity to enforce these critical standards. We also have concerns that without the added support and incentive of annual audits against these standards, that non-certified retailers will be able to uphold these standards in the way that consumers deserve.

While we believe these potential issues apply to all forms of retail, there are also increased concerns and questions surrounding retail processing—concerns that are increased under the proposed SOE amendments. For example, under the proposed new definition of retail operation (a definition we support), there is the new inclusion of “virtual transactions.” However, in many contexts retailers service both in-store and virtual consumers with products produced onsite. If we understand the proposed regulations correctly, it is only agricultural products produced and sold at the same physical location as the point of sale to the consumer that would be exempted. Would this then mean that deli salads prepared on site could be sold to the customer without certification, but that same salad ordered via online or a third-party delivery service like Instacart would not be permitted to be sold without certification? While we appreciate the physical location distinction, the lines are often not as clear as the regulation proposes and point to the need for a retail level certification to avoid confusion and regulatory gaps.

These blurred lines are not exclusive to retail operations as many types of operations throughout the organic supply chain have overlapping and/or uncaptured gaps. Transportation, and storage operations often have hybrid functions (e.g., transportation and packing) and

hybrid operations (e.g., non-organic and organic) and by not requiring certification this often shifts the burden to the certified producers to document and potentially pay for additional costs.

Recommendation: As we have noted, to avoid this confusion and bring more integrity to the system we would recommend that the exemption provisions be modified to eliminate the majority of exempted operations. We do appreciate that integration of this broad of this could take time to shift. For example, there should be a transitional period of three years for these previously exempt operations to adapt to achieve certification. We also appreciate that as a starting point, initial requirement for these operations should be limited to the labeling, comingling, and records retention requirements outlined under the current SOE regulations. However, for the future, the NOP should develop clearer and more detailed standards for separate category of handling operations.

II. “Handle” and “Handler” Definitions - §205.2

Much like the exemption provisions, we support the effort of the NOP to revise the definitions of “handle” and “handler” to include a broader set of operations, however, we do not feel they go far enough. For example, “[t]o sell, process, or package agricultural products, including but not limited to trading, facilitating sale or trade, brokering, repackaging, labeling, combining, containerizing, storing, receiving, or loading” does not include marketing and private labeling. While we understand that the products of these businesses are often certified under the producer’s organic plan, they are still a critical part of the organic supply chain that should be captured by the scope of the SOE. We also believe that transloading operations should be more clearly identified in the handle and handler definitions. In all, we feel that to capture as much of the supply chain as possible, we would recommend expanding the handle and handling definitions to include private labeling, marketing, sorting, splitting or combining of lots or loads, treating, sorting, opening before end-consumer purchasing, enclosing, relabeling, conditioning, inspection, and sampling.

III. Nonretail labeling - §205.307

PCC supports SOE revisions to require nonretailer containers to bring better transparency to the organic supply chain. Large nonretail transport containers, however, need organic labeling too. While the exclusion of large nonretailer containers is only noted in the NOP’s preamble as there is no definition of nonretail containers provided in the rule, we believe the scope of these provisions should include large nonretail containers and is a critical part of ensuring that there is a consistent organic identifier at all stages of the supply chain and preventing comingling and fraud. Section 205.307’s requirement that non-retail containers be labeled with more information should be expanded to large non-retail containers such as trailers, tanks, rail cars, shipping containers, grain elevators/silos, vessels, cargo holds, freighters, barges or other methods of bulk transport or storage. We believe that this is particularly necessary should NOP continue to exempt large categories of operations.

IV. Certifier Training and Transparency

PCC is very supportive of the additional requirements to expand certifier training requirements and establish continuing education requirements. What is still missing, however, are stronger transparency requirements concerning internal certifier standards, especially for product certification where there are large discrepancies in interpretations and where NOP has not issued clearly defined regulations or guidance. Access to these standards would not only help those considering transitioning to organic better prepare for what will be evaluated, but also inform the organic community of differing approaches. We believe the mandatory sharing of this information would also ensure that NOP is better able to assess areas of inconsistency and gain the support of the public in being able to identify these areas.

V. Accepting Foreign Conformity Assessment Systems - § 205.511

We have some concerns regarding the proposed addition of 205.511 and the potential for confusion concerning the following language:

Foreign product that is produced and handled under another country's organic certification program may be sold, labeled, or represented *as organically produced in the United States* if AMS determines that such organic certification program provides technical requirements and a conformity assessment system governing the production and handling of such products that are at least equivalent to the requirements of the Act...

We recognize that the Organic Foods Production Act (OFPA) allows for organic equivalency arrangements for imported products and inclusion of these provisions within the organic rule is important. As worded, however, we are concerned that the language could be interpreted to mean that organic products produced in a foreign country could not only be labeled organic, but also as organically *produced in the United States*. In other words, that there would not have to be identification of the country of origin and that a consumer would potentially be told that the product was produced in the United States, rather than certified to United States organic equivalent standards. If the intention of the NOP is in fact this scenario, then we would strongly object that this is deceptive to consumers.

Recommendation: To avoid this confusion we recommend that the language be corrected to read, "may be sold, labeled, or represented as organic, in accordance with the applicable labeling provisions for imported products, in the United States."

VI. Timing of Publication in Federal Register

We understand and respect that once the NOP received approval to promulgate the proposed SOE rule, it wanted to do so with haste, but experienced significant delays. We appreciate that the organic community was provided with a draft copy of the rule ahead of publication in the

Federal Register, however, the timing of publication and accompanying deadline of October 5, 2020 to submit comments on one of the most comprehensive reforms of the organic rules since the inception of the organic program was unreasonable given the deadline of October 1, 2020 for the NOSB comments. PCC feels this was particularly challenging given the stresses and strains that the entire food system has been under in the face of the pandemic and western fires. In the future, we would ask the NOP to please provide at least a week or two between significant comment deadlines.

VII. Conclusion

PCC would again like to thank the NOP for the significant investment of time and thought that underlies the SOE rulemaking. We are grateful for the opportunity to provide input on this important piece of rulemaking and look forward to working with the NOP to improve upon the strong foundation of the SOE and continually improve organic integrity.

Sincerely,

Aimee M. Simpson, J.D.

Director of Advocacy & Product Sustainability
PCC Community Markets