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November 10, 2011

Ms. Lorraine Coke
National Organic Standards Board
National Organic Program,
USDA-AMS-NOP
1400 Independence Ave., SW.,
Room 2646 So., Ag Stop 0268
Washington, DC 20250-0268

Via www.regulations.gov

RE: NOSB Certification, Accreditation and Compliance Committee Proposed Recommendation
Unannounced Inspections

Summary:

Oregon Tilth strongly endorses and commends the proposed recommendation for unannounced inspections recommended by the Accreditation and Compliance Committee. This change will address the need for unanticipated review on organic certified operations and makes all accredited certifiers equally accountable for their clients. We respectfully ask that the recommendation be delineated in the following ways to ensure uniform understanding by all Accredited Certifying Agencies.

Oregon Tilth finds the recommendation warranted and crucial to organic certification and courteously asks that the Certification, Accreditation and Compliance Committee provide guidance, or revision to specific areas noted below.

Section 4. Unannounced inspections may fulfill the requirements for annual on-site monitoring sections required by section 205.403 only if the inspector is able to conduct a full inspection of the operation as required by this section.

A. Part of the certified operations requirements is to annually report additions, or deletions detailed to the previous organic system plan per §205.406(a)(1)(i)(ii). Although per §205.400(f)(2) certified operations are to immediately report changes that affects its compliance with the act to their certifying agent, minor changes per §205.406(a)(1)(i)(ii) do not immediately need to be reported. If an operation has not submitted their annual organic system plan update, it would be difficult to ascertain compliance with any minor, or major changes that have occurred since the last inspection. Minor changes for one certifier might be considered major changes to another certifier, which does not bring consistency to organic compliance enforcement. Additionally per §205.406(a)(3) the certified operation is to provide an update on the correction

of minor non-compliances previously identified by the certifying agent as requiring correction for continued certification. This does not require immediate response and if a minor non-compliance was issued the year before and an operation has failed to acknowledge this during the next annual renewal and inspection, it will usually result in a non-compliance, which would require the operation to develop a more thorough monitoring system. If during an unannounced inspection, which is replacing the annual inspection, a minor non-compliance has not been acknowledged the operation can then debate that they would have reported such changes in their annual update, which could then defer the much needed monitoring system.

B. This gives certified operations receiving an unannounced inspection an unfair advantage of knowing exactly what they need to report to their certifier, as opposed to going over their most current organic system plan and self evaluating what changes need to be disclosed.

C. This may put pressure on the certified operation to go through with an annual audit, when they are not necessarily willing, or ready to do so. The regulation does not discuss this matter and certified operations would need to have clear understanding that it is not an obligation. It would be up to the inspector to portray this option in an unsolicited way, which may complicate an already somewhat imposing unannounced inspection.

Summary: We respectfully request that this consideration be removed and that unannounced inspections may not be used to fulfill the annual inspection requirement in absence of an Organic System Plan update.

Section 7.a & 7.b: An unannounced inspection may occur even if no representative of the operation is present.

A. This is a dangerous recommendation that encroaches on the safety of the inspector and legal liabilities of the certifier. We ask that it be clarified, if no representative, then an observational unannounced inspection can be conducted from public property, or allowed usage of other private property.

B. §205.403(d) requires that an exit interview be conducted with an authorized representative and §205.403(e) states that a receipt shall be provided for any sample taken by the inspector. Although, §205.403(b)(2) states for unannounced inspections an authorized representative does not need to be present, §205.403(d) and §205.403(e) do not include this statement. Additionally, the regulation is not clear if the unannounced is to be conducted with an unauthorized representative, personnel not listed as contacts in the organic system plan, as opposed to no representative at all. Clarification should be made to solidify these terms.

Summary: We respectfully request that this be revised to incorporate language as suggested above to indicate an unannounced inspection may only be conducted when there is a clearly identifiable operator representative present, or may be conducted by visual observation from public property, or allowed usage of other private property.

Oregon Tilth supports the adoption of this recommendation with the revisions and clarification listed above. We appreciate the CACC's work on this recommendation and believe this is a great step in accountability for accredited certifiers and further strengthens organic integrity for the organic community.

Respectfully submitted,

Oregon Tilth, Inc.

Oregon Tilth, Inc. is a non-profit 501(c)(3) organization that supports and promotes biologically sound and socially equitable agriculture. Oregon Tilth offers educational events throughout the state of Oregon, and provides organic certification services to organic growers, processors, and handlers internationally. An NOP accredited certifier since 2002, Oregon Tilth currently certifies over 650 farms and ranches and over 600 handlers in more than 35 states affording us a broad perspective of current practices and challenges faced by organic producers and handlers.