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September 29, 2021

Ms. Michelle Arsenault, Special Assistant  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Ave. SW.,  
Room 2648-S, Mail Stop 0268  
Washington, DC 20250-0268

**RE: Docket: AMS-NOP-21-0038  
Compliance, Accreditation and Certification Subcommittee (CACS) – Oversight Improvements  
to Deter Fraud: Modernization of Organic Supply Chain Traceability Discussion Document,  
August 13, 2021**

Dear Ms. Arsenault:

Thank you for the opportunity to provide comments to the National Organic Standards Board (NOSB) Compliance, Accreditation and Certification Subcommittee regarding improvements to deter fraud in the organic system. We appreciate NOSB's comments in the Oversight Improvements to Deter Fraud: Modernization of Organic Supply Chain Traceability Discussion Document August 13, 2021 (discussion document). Oregon Tilth supports the document's overall objective to eliminate fraud from the organic system. We believe that to do so will result in a more robust, consistent, and trusted system—qualities that will spawn industry growth and encourage it to thrive in the years to come.

We believe that the above-cited discussion document provides an excellent start to analyzing, discussing, and defining the fraud issue; however, we would support additional work in these areas before implementing a nationwide program or process to address fraud. The document identified many key issues in addition to sparking some important questions. We provide our comments and perspectives below, following the NOSB's Questions for Stakeholders as the outline for our remarks.

### **1. How can technology efficiently and effectively be deployed to enhance supply chain traceability?**

In order for technology to efficiently and effectively be deployed, it must be able to ensure: • all types of operators have access to and trained knowledge of the system (e.g. Plain Community), • the confidentiality of all parties is protected and maintained, • the process for data management (collection, reporting and filing) be streamlined and consistent across the industry and the same for all certification bodies.

## **2. What form [must] an organic link system (OLS) take to be non-burdensome for organic stakeholders, including certifiers, inspectors, handlers, operations, importers, etc.?**

By experience, other regulatory systems, such as the food safety system, have learned that a national/centralized database is taxing to administer, difficult to maintain current/accurate, and costly. One unintended adverse impact of a centralized database has been the imposition of significant financial, time, and human capital constraints on small and very small operations in that system. In the case of the proposed OLS, Oregon Tilth is concerned about the impact it will have on the organic industry's small and very small operations, in addition to the administrative burden to certifying bodies. Furthermore, Oregon Tilth questions whether amassing documentation from operators is the most efficient and effective method to address fraud. We believe that a more targeted approach such as imposing severe civil penalties and revoking the organic certification of the fraudulent operation could likely be less burdensome on the organic system as a whole, more equitable to operators, and a more effective deterrent.

An OLS must be technologically advanced, while at the same time accessible and user-friendly to the least technologically savvy link (operation) in the supply chain. To avoid confusion, eliminate duplication, and ensure accuracy, it should be administered by one universal administrator rather than requiring the management of multiple entities in the supply chain. Who is going to gather, review, report and maintain the copious amounts of intended information? The overburdened certification bodies that currently struggle with limited resources do not have the capacity to administer the OLS. Furthermore, organic certified operations report that they are already pushed beyond capacity when it comes to time, human capital, and financial resources.

## **3. What challenges exist with the implementation of an organic link system (OLS)?**

We mentioned some of the challenges with implementing an OLS in our answers to the questions above--accessibility, usability for all, finding someone or something with the capacity for administrative oversight, ensuring accuracy in reporting, and eliminating duplication of information and duplication of effort. It is suggested that a central database such as the Organic Integrity Database (OID) be used to manage the data collected. If this were the case, certification bodies would be required to upload "mandatory data" for each of its certified operations *at least* annually (if not more frequently), to ensure that data in OID remain current and accurate. Additionally, it is recognized in the discussion document that at this time, "the tools and processes needed to improve supply chain traceability remain substantially undefined." How can we set out to build a viable program/system based on speculation? Technology will ultimately enhance and support the eradication of fraud, but what are those technologies? Do they currently exist? Are they affordable? Regardless of cost, who will bear the financial burden?

## **4. Is there value in AMS, certifiers, and inspectors getting more granular with transaction-level detail to gain transparency throughout the complex supply chain?**

In the process of researching this topic, Oregon Tilth asked a similar question: Once all of the new, additional data is collected, what is to be done with it--will it actually serve as an effective deterrent to fraud? There already exist data streams and methods of collection that allow certification bodies and regulatory agencies to identify fraudulent transactions. What is to be gained by requiring "additional granularity?" Does the goal of "*verifying all sales at a field level and throughout the supply chain*" enhance the reliability of the organic

system and the validity of the organic products being certified, or might it serve to address an interest that need not be satisfied? Do the envisioned benefits outweigh the challenges to implementation discussed in Question 3? With the information currently available, Oregon Tilth believes that the answer to these questions is, “No; the proposal to get more granular with transaction-level detail is not substantiated at this time.”

In considering this question, we highlight the fact that public comments at the Spring 2021 NOSB meeting voiced a concern that organic systems are continuously becoming more complex. Most certainly, the proposal to implement an OLS would serve to increase the complexity of the organic system rather than to reduce it.

## **5. What other methods exist for enhancing transparency?**

Oregon Tilth supports a premise set forth in the discussion document--that it is “imperative to continuously improve and modernize transparency.” Even so, we believe that the burden/responsibility of discovering and addressing fraud should not be shouldered by *all members* of a system where most participants already demonstrate integrity, honesty, transparency and compliance. Rather, a more equitable and effective method for enhancing transparency would be to require organic operations to establish and employ a dynamic fraud prevention program, while a preferable method for eliminating fraud would be to focus enforcement efforts specifically onto those who violate regulations and diminish organic integrity.

Oregon Tilth agrees that implementing the proposed SOE rule will serve to help close the gap in fraud prevention. Specifically, requiring brokers and (previously) exempt handlers to become certified will close loopholes that currently allow for fraud. The proposal to have certifying bodies develop procedures for identifying high-risk operations and agricultural products and to follow up with risk-based supply chain audits will also help to combat fraud. Additionally, the requirement that certifiers share with each other information implicating fraud will help to address the issue. Oregon Tilth would support extending to the NOP the requirement to share information that implicates fraud in order to more completely safeguard every supply chain in the organic system.

The discussion document opines that, “without an OLS, it will be challenging to execute SOE’s requirement for ‘certifying agents to create fraud prevention procedures to identify high-risk operations, conduct risk-based unannounced inspections...and share information with other certifying agents to verify supply chains and conduct investigations.’” An alternative perspective is that there are many effective methods for preventing and evaluating the potential for fraud other than increased data collection. Certified operations should partner with regulators and certification bodies in the fight against fraud by developing and implementing an organic fraud prevention plan. Such fraud prevention plans are supported by quality assurance programs like Organic Fraud Prevention Solutions--a program that is supported by several certifying bodies, including Oregon Tilth. Another beneficial method to combat fraud would be for the NOP to augment its role in fraud detection and prevention. The NOP could conduct more frequent audits using a risk-based approach. It could work more closely with U.S. Customs and Border Protection to identify and closely monitor known offenders. It could share more freely with certification bodies the information it collects related to fraudulent activities. Saving the most important for last--the NOP could delegate to certifying bodies the authority to respond to fraudulent activities with the force and response necessary to eliminate fraud and preclude future occurrences.

## **6. Are there additional areas that need to be considered for improvement to prevent fraud or react to fraud?**

Yes. In taking up fraud prevention, the NOP is not paving an entirely new path. Other similarly situated regulatory agencies, like the FDA, have recently taken up the fight against fraud and implemented regulations and best practices to work with states and industry partners in an effort to eliminate fraud. As another example, GFSI published a well-defined definition of fraud, that being, “A collective term encompassing the deliberate and intentional substitution, addition, tampering or misrepresentation of food, food ingredients or food packaging, labelling, product information or false or misleading statements made about a product for economic gain that could impact consumer health.” [\[link\]](#) The GFSI definition which pre-existed the SOE definition is more comprehensive and could likely provide significantly more context and defined purpose when addressing fraud. The NOP should identify those industries and partners that have more experience dealing with fraud to learn from their challenges and borrow from their successes.

Another important consideration previously mentioned is that any program implemented to improve or prevent fraud should not burden all members of an industry where most do not engage in fraudulent activities. Rather, a more equitable and effective method for enhancing transparency would be to require organic operations to establish and employ a dynamic fraud prevention program. A more just and efficient method for eliminating fraud would be to grant enforcement (including penalty authority) to certifying bodies, thereby giving them the tools and means to impactfully address fraud, specifically focusing on those few bad actors that violate regulations and diminish organic integrity.

Finally, the benefits and efficiencies presented by conducting risk-based assessments/audits/inspections should be thoroughly exploited in the development of a program to eliminate fraud. Fraud is generally economically motivated. Therefore, socio-economic issues and fraud history should not only be included, but should be highlighted when conducting risk based assessments and when developing a fraud prevention program.

## **7. Should the industry require the registration of land 36 months before certification?**

Oregon Tilth does not currently believe this requirement would provide a significant benefit for fraud prevention in the organic industry. There are multiple confirmed situations where it is reasonable and necessary to allow farmers to add rented or purchased land that has not undergone 36 months of planning (as long as the previous land history requirements are met and verified). Requiring the registration of land 36 months before certification could unnecessarily restrict farmers and amplify land access issues even further. Such a requirement would have little impact on fraud prevention and detection in the organic industry. Rather, it is more likely to create a greater incentive for farmers in need of land to engage in fraudulent activities in order to obtain needed land. In addition, Oregon Tilth also has similar concerns here as those raised above, particularly related to the burden of administrative oversight, financial and temporal costs, and the responsibility for enforcement.

## **Conclusion**

The integrity and future success of the organic system is dependent on the awareness, collaboration and cooperation of everyone involved--the regulators, the certifiers, and the certified operations. Similarly, the prevention, detection and eradication of fraud must be a cooperative effort, endorsed and implemented

equally by all. Whether intentional or unintentional, to place a disproportionate burden on any one segment of the industry, such as requiring copious documentation of all operators regardless of their compliance history or requiring of certification bodies significant increases (and duplication) in data collection, filing and reporting would have a chilling effect on the very industry we all want to see grow and thrive. A fraud-free industry that is sluggish and suffers from attrition would not be a desired outcome. Still, Oregon Tilth recognizes the importance of eliminating fraud from the organic system and will support our industry's efforts to do so. To be successful in our joint pursuit, we stress the importance of learning from the experiences of other industries that have gone before, utilizing *existing* processes and information, tapping into the wealth of information made available by conducting risk-based assessments, and encouraging certified operations to be proactive by implementing and following an Organic Fraud Prevention Plan.

Respectfully Submitted,

Oregon Tilth

*Oregon Tilth is a leading certifier, educator and advocate for organic agriculture and products since 1974. Our mission to make our food system and agriculture biologically sound and socially equitable requires us to find practical ways to tackle big challenges. We advance this mission to balance the needs of people and the planet through focus on core areas of certification, conservation, policy and the marketplace.*