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Chairwoman Plaskett, Ranking Member Dunn, and other members of the subcommittee and full committee, thank you for the opportunity to appear before you today to discuss organic agriculture and the role of USDA's National Organic Program (NOP) in ensuring the integrity of the organic label. I am Greg Ibach, Under Secretary for USDA's Marketing and Regulatory Programs. With me today is Dr. Jennifer Tucker, the Deputy Administrator who oversees the NOP. The NOP facilitates market access for organic agricultural products and conducts compliance and enforcement activities that protect the integrity of the organic label.

Today I would like to provide you the latest information on our enforcement activities, specifically as they relate to organic imports, as well as update you on the status of the Agricultural Marketing Service's (AMS) implementation of the organic provisions in the 2018 Farm Bill.

HOW THE NOP WORKS

This May, the Organic Trade Association released the results of their 2019 Organic Industry Survey which showed 2018 organic sales reaching \$52.5 billion, up 6.3 percent from the previous year. USDA-approved certifiers issued just over 1,000 new certifications for organic operations in the United States and 713 certifications for international operations in 2018. USDA develops clear and enforceable organic certification standards that describe *how* farmers grow crops and raise livestock and *which* substances they may use throughout the product's lifecycle, from farm to market.

Agricultural products that are sold, labeled, or represented as organic must be produced and processed in accordance with the NOP standards. All farms and processors with more than \$5,000 in annual organic sales must be certified organic. The certification process verifies that a farm or handling facility complies with organic regulations and allows products to be represented as organic. Seventy-eight certifying agents are currently USDA-accredited and authorized to certify to the USDA organic standards for more than 43,000 operations around the world. Each of these certifying agents is authorized to issue an organic certificate to operations that comply with the USDA organic regulations. NOP accredits state departments of agriculture and private certifying agents around the world who ensure producers and handlers are in compliance with the National Organic Standards.

OVERSIGHT AND ENFORCEMENT

Consumers choose to purchase organic products expecting that they are grown, processed, and handled according to the USDA organic regulations. A high-quality regulatory program benefits organic farmers and processors by taking action against those who violate the law.

Every year, 5 percent of farms and businesses are selected for an unannounced inspection, and 5 percent have their products tested for residues of prohibited substances—such as synthetic pesticides, antibiotics, or arsenic. Certifiers follow-up on any noncompliances with operations to either bring them into compliance or to initiate adverse actions, such as proposed suspensions.

In addition to unannounced inspections, the public—from consumers to producers to other organic market participants—submits complaints of suspected violations of the USDA organic regulations to the USDA. These complaints allege that farms and businesses are using the USDA organic seal incorrectly, selling products under the label without certification, or using prohibited substances. Certifying agents and the USDA collaborate to address each complaint, taking enforcement action when appropriate. Punishments may include financial penalties up to \$11,000 per violation and/or suspension or revocation of an operation's organic certificate.

Risk-Based Complaint and Appeals Management

Risk analysis makes it possible for NOP staff to focus resources where they have the greatest impact. Between October 2018 and March 2019, NOP received about 260 complaints and inquiries.

- Simple inquiries are now handled by intake staff, providing customers with answers faster and saving analyst time for more complex investigations. NOP resolved 113 inquiries using this approach between October 2018 and March 2019.
- Complaints about uncertified businesses selling products as organic are handled by a team trained to reduce case processing times and to compel compliance faster. These cases continue to account for more than fifty percent of complaints received by NOP. Many of these cases result in farms and businesses successfully seeking organic certification – they were not aware that certification was required, so they seek it in response to our contact with them. Others come into compliance by no longer falsely selling their products as organic.
- Complex cases are assigned to experienced NOP investigators. This specialization allows the team to initiate investigations more quickly than in the past. NOP has also increased its work with the USDA Office of Inspector General (OIG), referring cases that include potential criminal activity for investigation by other Federal law enforcement partners. While some cases are dismissed due to insufficient evidence, others result in warning letters, cease and desist notices, civil penalties, or suspensions of existing certifications. Last year, approximately half our cases resulted in no findings, because there was insufficient evidence, or no violation was found. The other half led to some time of enforcement action, leading either to compliance or the businesses exiting the organic market.

NOP continues to meet its target of resolving 90 percent of appeals within 180 days of receipt. Between October 2018 and March 2019, NOP closed 22 appeal cases with an average processing time of 99 days. By focusing resources on the most complicated cases with the highest risk to the market, NOP closed 175 complaint investigations and inquiries between October 2018 and March 2019. In addition, NOP launched the COMPLIANCE Database in March 2019. This new tool allows the team to better track case progress and more quickly identify patterns and relationships across complaints.

Certifier Oversight

Congress established NOP as a public/private partnership. The 78 Federally-accredited certifiers include private companies, nonprofits, and State departments of agriculture, all of which have a critical role in organic oversight and enforcement. In total, certifiers suspended 326 operations for noncompliance with organic standards. This number has stayed consistent over time and reaffirms that most organic operations are complying with the rules or come into compliance quickly when problems are found.

The NOP accreditation team ensures certifier staff have the experience, training and tools they need to be effective. NOP staff conducted 14 audits of certifiers, including four satellite offices, in the past six months. The findings continue to demonstrate 94 percent of accreditation compliance criteria being met across certifiers last year.

In cases where a certifier fails to meet accreditation compliance criteria, NOP issues a “notice of noncompliance,” which the certifier must address. When noncompliances are not adequately addressed, NOP may propose the suspension of a certifier’s accreditation. In these cases, NOP may choose to enter into settlement agreements to quickly bring the certifier into compliance. In other cases, the adverse action process continues, and the certifier’s accreditation may be suspended. To comply with due process rights, enforcement actions may not be made public until due process is completed.

When compliance is not achieved, certifiers are suspended. In September 2018, a certification company based in Bolivia, accepted a suspension of its organic accreditation under a Consent Order with an Administrative Law Judge. The suspension was due to the fact that the entity was unable to demonstrate an ability to comply with the USDA organic regulations. In May 2019, NOP suspended a certifying organization in Turkey, because they did not demonstrate the ability to effectively ensure compliance and oversee organic operations in the Black Sea region. Following a suspension, organic companies that want to import into the US must surrender their certifications or reapply for certification with new certifiers.

Import Oversight

The size and complexity of organic trade has grown over time, and many U.S. businesses rely on imports to create the organic products that consumers want. As the organic market grows, many growers, processors, and handlers are working within multi-business supply chains, often across borders. Organic handlers play a vital role in ensuring the integrity of organic products from farm to market. The value of U.S. organic imports continued to increase in 2018, reaching \$2.2 billion, a nine percent increase from 2017 (Source: USDA Foreign Agricultural Service). Given this growth, import oversight continues to be an area of focus for NOP, with five key initiatives that directly support enforcement.

1) Farm-Level Yield Analysis

NOP is investing heavily to improve oversight of the complex supply chains stretching from the Black Sea region to the United States. NOP is also focusing on farm-level activities in high volume regions with multiple risk factors. To support these investigations, NOP conducted a review of all certified organic grain and oilseed producers in three Black Sea region countries using farm-level records, region-level data and international weather models. The analysis revealed a concerning pattern of organic farms reporting yields that far exceed regional averages. This analysis provided targeted information about specific farms and certifiers that is directly supporting active enforcement actions. Since the NOP began its investigative work on this region in 2016, more than 180 operations have surrendered their certification.

In the Fall of 2018, NOP trained certifiers to use these new analytical tools for researching regional data on yields, equipping participants to evaluate farm-level records against a range of open-source data as a part of organic certification. This training is also available in the Organic Integrity Learning Center. In addition to enforcement actions, NOP continues to develop training for certifiers to make this kind of analysis part of regular producer oversight.

2) Supply Chain Research

To support supply chain investigations, NOP has also completed a project to illuminate the business relationships between high-impact farms, consolidators, handlers and exporters in the Black Sea region. This has involved the investigation of more than 450 shipping records and a comprehensive review of the shipment handling process for organic shipments of corn and soybeans entering the United States from the region since 2016. This initiative directly supports the development of risk-based oversight models and helps us effectively target our resources. We will now deploy this approach to investigate different specialty commodities in other regions.

3) Ship-Specific Surveillance

Over the last year several organic industry organizations have requested NOP investigate specific shipments from the Black Sea region for fraud. NOP has used information both provided by importers and accessed through Customs and Border Protection's Systems to engage in ship-specific surveillance projects each time there has been credible information and enough detail to identify the entities involved. This has resulted in numerous vessel reviews and collaboration with U.S. Customs and Border Protection (CBP) colleagues for additional support, where appropriate. All these shipments have been traceable back to certified organic farms and handlers.

These ship-specific research activities are important for market surveillance and highlight the need for farm-level yield analyses. Although they have not revealed specific fraudulent activity on their own, in some cases, we found that the certifier involved had not performed adequate oversight of farms or supply chains. As a result, NOP has increased the focus on certifier competency to improve oversight systems at all levels of the public-private partnership designed by Congress.

Working collaboratively, actions and information sharing across Customs and Border Protection, the Agricultural Marketing Service, and the Animal and Plant Health Inspection Service have heightened oversight and enforcement actions in the Black Sea region have impacted the marketplace. At least 180 operations (60 percent) in the Black Sea region have lost their organic certification. The remaining certified operations are undergoing increased scrutiny. In 2016, imports from the Black Sea region represented 49 percent of the dollar value of key commodities; in 2018, imports from the region had dropped to 21 percent of that total dollar value. NOP staff are watching for risk factors, such as spikes in exports from other regions, that could trigger increased scrutiny.

4) Country-Commodity Studies

Because of the structure of organic certification and oversight, we often are investigating specific certifiers, operations, or supply chains. For effective risk-based surveillance, it is also important to study country and commodity combinations, such as a specialty crop coming from a specific country where organic imports have suddenly jumped. To support this layer of investigation, NOP has initiated a study with an international accreditation nonprofit to conduct two country-commodity studies. The goal of this study is to develop standard approaches for examining risks, or emerging risks, at the commodity level across an entire country. For example, certain factors may be more important than others in signaling there is an increased risk for fraud with respect to a particular organic commodity or in a region. Identifying the most important and common factors will drive future risk-based oversight approaches.

5) Fumigation Investigations

NOP continues to collaborate with APHIS to investigate the possible fumigation of products labeled as organic. As an example, in March 2019, the APHIS team at Port of Philadelphia notified NOP staff that a shipment of about 350 boxes of bell peppers labeled as organic had been fumigated. They provided label photographs and supply chain documents, including invoices. Label photographs are critical evidence but are not included in the text-only automated fumigation reports currently provided by the APHIS database. NOP used the evidence and available trade data to identify the importer who promptly replaced the individual stickers on each pepper and papered over the word “organic” on all bulk containers. In addition to providing evidence of the relabeling, the importer voluntarily shared that a similar shipment was on its way to Miami and would also be relabeled to remove organic claims. NOP is working with APHIS to expand this type of information sharing to other ports.

Domestic Oversight

We have made significant progress in protecting the integrity of organic imports. We are also overseeing and protecting the market here at home. The NOP resolves just under 500 inquiries and investigations every year. Eighty-five percent of these complaints relate to U.S.-based businesses. The NOP has also increased its coordination with the USDA OIG for criminal violations. This increases the penalties against the most serious violators who threaten to defraud legitimate organic businesspeople.

Recently, an OIG-NOP investigation delivered significant penalties for domestic fraud through the U.S. Attorney’s office. Five individuals pled guilty to conspiring to sell grain which was fraudulently marketed as organic in a scheme totaling \$140 million in sales. USDA is serious about enforcing a fair market for organic farms and businesses.

In the U.S. organic dairy sector, in 2018, USDA initiated a Dairy Compliance Project to better assess industry compliance with the USDA organic regulations, particularly with respect to the pasture standard. This initiative began with face-to-face training on pasture compliance for certifiers in January of 2018. This was followed by unannounced, on-the-ground visits by Federal auditors to assess both certifier and operation compliance. The visits were conducted at dairies across the United States.

The visits confirmed that all the dairies visited were grazing their animals on pasture. Several correctable issues were identified, requiring action from operations. This work also resulted in targeted audits of certifiers based on their oversight of specific livestock operations. We will also be publishing training materials this summer to ensure that certifiers and operations have the same information needed to ensure compliance. Based on the 2018 results, we are expanding the Dairy Compliance Project in 2019 and visits are currently underway.

2018 FARM BILL

Congress provided us with additional tools for enforcement in the 2018 Farm Bill, which we continue to make progress toward fully implementing. Here are a few highlights of our implementation progress to date:

- Provisions requiring the Secretary to issue regulations to limit the type of operations that are excluded from organic certification, as well as requiring the use of import certificates, will be included in the Strengthening Organic Enforcement rulemaking that AMS was working on prior to passage of the 2018 Farm Bill. AMS expects to publish the proposed rule late this Fall.
- In May, AMS, CBP, and APHIS formed the Organic Agricultural Product Imports Interagency Working Group for coordination, reporting and information sharing related to organic imports and integrity. The first Working Group meeting was on June 27, 2019 and it will meet monthly.
- AMS recently entered into an inter-agency agreement with CBP and provided approximately \$700,000 to fund the development of an Organic Message Set in CBP's Automated Commercial Environment. This message set will automate NOP's Import Certificate to reduce paper processing and improve traceability and accountability for organic imports. Government personnel will be able to identify organic shipments that cannot be flagged through organic-specific Harmonized Tariff Schedule codes, of which there are only a few dozen. This will allow personnel to respond to fraud investigation requests more rapidly and perform preliminary analysis of risk with minimal reporting burden for partners.

CONCLUSION

Organic agriculture continues to provide economic opportunities for thousands of American farmers and ranchers. USDA is committed to supporting these farmers and ranchers by developing clear standards for organic operations and by promoting compliance through meaningful enforcement action. In doing so, USDA continues to ensure the organic seal maintains consumer confidence, so producers can benefit from growing consumer demand in both domestic and international markets.

Thank you. I am happy to answer any questions you may have.