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April 9, 2009

Barbara Robinson
Acting Director, National Organic Program
U.S. Department of Agriculture
Agricultural Marketing Service
STOP 0201, Room 3071-S
1400 Independence Avenue, S.W.
Washington, DC 20250-0201

Dear Barbara:

The Accredited Certifiers Association wishes to thank the National Organic Program for addressing the issue of contamination and sale of potentially fraudulent organic input materials quickly, and for your support of accredited certifying agents' authority in regard to approval of organic inputs.

Our members are very concerned with the protection of the integrity of organic food products and ensuring that consumers maintain confidence in the organic label. They agree that a more rigorous process of verification is required for some types of input materials. We convened a working group of our members to discuss the implementation processes being used to address the *Input Approval under NOP Regulations: Liquid Nitrogen Fertilizers* notice, and also identify areas of the notice which are in need of clarification.

Our members are currently in the process of identification of materials they have approved for use that are addressed by the above notice. They have begun notification of the manufacturers of the materials regarding the requirements that were put forth. In developing a process to address the new requirements, several questions have arisen, and clarification is needed prior to full implementation of the notice requirements.

We have identified several issues of concern and are providing the following comments:

- 1) As certifiers, we understand our authority to review all inputs for use in organic production. However, it is not clear we have authority to inspect fertilizer manufacturers that are not certification clients. Your February 20, 2009, statement states:
 - “By Oct. 1, 2009 approval of all high nitrogen liquid fertilizers ... must be accompanied by documentation that demonstrates their compliance ...based upon a **third party** inspection...”
 - “NOP will require all **third party** reviewers to undergo audits by NOP as a condition of ongoing recognition as a third party reviewer.”
 - “NOP will require all **third party** reviewers to implement a system of audit and inspection.”

We believe that **third party** reviewers may be either:

- a) Governmental regulatory agencies such as EPA or state fertilizer control officials;
- b) Inspection bodies that are not organic certification agencies, such as OMRI, who provides contractual services for material review to certification agencies; and
- c) Organic certification agencies that provide contractual services for material review to other certification agencies, such as WSDA.

We do not believe that accredited certifying agents who conduct product review based upon requests from our clients are 3rd party reviewers. Please clarify if this is not the case.

We do appreciate that the NOP has recognized the independent program of OMRI as a “reputable third party source” (memo, March 5, 2008) since they provide excellent technical expertise on a contractual basis to certification agencies. The WSDA program also provides this service on a contractual basis.

As both 3rd party reviewers and certification agencies will be reviewing materials we feel that equivalent standards and procedures should be employed by all to ensure uniform compliance. We look forward to the NOP providing us with standardized criteria for the materials review process and ongoing recognition of third party reviewers.

- 2) The notice states: “Inspections must include but not be limited to high risk inputs such as liquid fertilizers and other inputs where synthetic substitutes are readily available and the potential to be concealed.” To address the current situation we believe that manufacturer inspections be focused on those producing high nitrogen liquid fertilizers. Clarification of the term “high risk” is needed to identify other specific inputs which may also require additional inspection and verification in the future.
- 3) Approval Criteria for Fertilizer Manufacturers

- The Notice requires verification of no synthetic nitrogen equipment, tanks, or supplies within 100 yards of the facility that produces the organic approved inputs at any time of the year.

We believe that this requirement will eliminate some parallel production materials facilities and thus make fewer inputs available to organic producers. Several input manufacturers have indicated that this requirement cannot be met in their facilities, thus they will no longer be able to provide product. The 100 yard requirement holds parallel production materials manufacturers to a higher standard than parallel production food facilities, and we have not been able to determine an objective basis for the 100 yard requirement.

We suggest that the issue of possible contamination and comingling of conventional inputs and organic inputs be addressed through:

- a) A plan provided by the manufacturer, similar to an organic system plan of a producer/handler, a portion of which would address organic integrity as described in §205.272 of the NOP;
- b) Specific requirements to conduct audits at the time of inspection comparing amounts of materials/ingredients – both conventional and organic – received, used, stored and shipped;
- c) Sampling and testing of the basic ingredients and the finished products to assess nitrogen content of ingredients and formulation percentages;
- d) Secondary unannounced inspections for parallel production manufacturers.

We request that NOP issue a clarification to the February 20, 2009 notice indicating that the above process would be an acceptable mechanism for addressing parallel production facilities.

- ACA is concerned also with the deadline of October 1 for completion of the inspection and verification process of manufacturers of liquid nitrogen materials. Our members are currently reviewing their approved products lists to identify which manufacturers will require additional inspection and verification. There is a concern that if there are high numbers of manufacturers that require additional verification, the 3rd party review organizations may have difficulty completing the entire process for new applicants. We are asking that the NOP be flexible and monitor the work that has been completed versus the remaining work at the October 1 deadline.

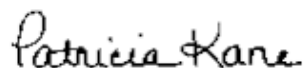
In addition to the above concerns, the ACA believes that there are other more long term issues involved with the NOP Notice. We are putting these forth in the hope that we can work with you to address these concerns in the future.

- Rulemaking to establish the standards for organic materials production/labeling should be implemented to include penalties and fines for failure to comply. One of the main problems at this time is that there is no authority for penalty (other than fraud under mainly state regulation) for fraudulent activities. If legislative authority is needed, this need should be identified.
- We ask USDA to consult with state agencies, and the Association of American Plant Food Control Officials to develop a consistent approach to the definition and regulation of organic fertilizers. States have authority under existing laws to register and inspect fertilizer manufacturers, and should be the first contact for enforcement of existing laws to prevent false and misleading claims.

We also wish to express our willingness to work with your staff during the development of notices/policies/procedures addressing the implementation of the National Organic Standards. We believe that our membership represents an invaluable amount of expertise regarding all aspects of organic production and processing – expertise that could be extremely helpful to the NOP. We also believe that working with NOP staff in a proactive, collaborative manner will provide clearly defined guidance and policies for accredited certifiers. The ACA Board and membership is very willing to assist NOP staff during the development of policies so that all perspectives of a particular situation are considered.

Again, we appreciate the National Organic Program's response to the fertilizer issue. We look forward to receiving the clarifications we have requested and to a collaborative working relationship that will benefit all in the organic community.

Sincerely,



Patricia Kane
Coordinator