

Formal Recommendation
From: The National Organic Standards Board (NOSB)
To: The National Organic Program (NOP)

Date: October 27, 2022

Subject: NOP Risk Mitigation Table Review

NOSB Chair: Nate Powell-Palm

The NOSB hereby recommends to the NOP the following:

Other: X

Statement of the Recommendation:

The NOSB recommends that NOP revise the Risk Mitigation Table to include several areas related to the risk of impartiality, and that the NOP incorporate the Risk Mitigation Table (NOP 1009) into their procedures.

The NOSB also recommends that the NOP clarify several areas in NOP 1009.
See proposal below for detailed list of recommendations.

Rationale Supporting Recommendation:

Section 6518(a) of the Organic Foods Production Act of 1990 (OFPA) states that the NOSB is “to advise the Secretary on any other aspects of the implementation of this chapter”. Conflict of interest is further covered in OFPA (sections 6506(a)(8) and 6515(h)) as well as in the organic regulations at 7 CFR §205.501(a)(11). As a critical component of OFPA and the organic regulations, the NOSB appreciates the NOP’s work to improve their oversight of conflict of interest with the accreditation and certification process, as well as for including NOSB into the process to provide feedback.

In 2021 the NOP sent NOSB a memo asking the board to review the risk migration table that was developed in response to the 2020 Peer Review conducted by ANSI, as the new ISO standard now recommends that an organization’s risk mitigation controls be reviewed by a representative body. The NOSB is serving as this “representative body” given the board’s prior interest in the NOP’s Peer Review process.

The NOSB concurred with the CACS’s review and stakeholder comments to accept the NOP’s Risk Mitigation Table along with the request to revise the table to include areas that were missing or needed more detail.

NOSB Vote:

Motion to accept the proposal on the NOP’s Risk Mitigation Table

Motion by: Kyla Smith

Second: Nate Powell-Palm

Yes: 15 No: 0 Abstain: 0 Recuse: 0 Absent: 0

Motion Passed

National Organic Standards Board
Certification, Accreditation and Compliance Subcommittee (CACS)
Proposal: NOP Risk Mitigation Table Review
August 9, 2022

Background:

On November 18, 2021, the National Organic Program (NOP) sent a [memo to the National Organic Standards Board \(NOSB\)](#) requesting that it review and facilitate public comment on the National Organic Program's (NOP) Risk Mitigation Table. This table was developed in response to the 2020 peer review conducted by the American National Standards Institute (ANSI) National Accreditation Board and seeks to document the ways NOP safeguards impartiality in the delivery of services and oversight over accredited certifiers. In 2017 the International Standard ISO/IEC 17011; Conformity assessment - General requirements for accreditation bodies accrediting conformity assessment bodies was revised. This standard, along with the requirements outlined in the organic regulations themselves, is what NOP adheres to in carrying out its accreditation procedures. The new ISO standard now recommends that an organization's risk mitigation controls be reviewed by a representative body. The NOSB is serving as this "representative body" given the Board's prior interest in the NOP Peer Review process.

The CACS reviewed the table and drafted a proposal for stakeholder feedback and NOSB consideration for the Spring 2022 NOSB meeting. The CACS received several responses from stakeholders to the CACS' questions on whether the conflicts-of-interest needed to be clarified and/or if any potential conflicts of interest were missing. Based on the scope of the comments received, the Board voted to send this proposal back to subcommittee for further review.

Summary of Review:

During further review, the CACS had the opportunity to clarify the scope of the Risk Mitigation Table (NOP 1009) with the NOP. The scope of the table was meant to address how NOP can mitigate its risks in regard to the delivery of services and oversight of certifiers. It was not intended to address how the NOP manages conflicts-of-interest, or impartiality of certifiers and oversight of the operations they (certifiers) certify. Therefore, while the topic of conflicts-of-interest and impartiality of certifiers and the operations they certify is important, it is outside of the scope of this particular process.

With this in mind, CACS reviewed the Risk Mitigation Table and the public comments received during the Spring 2022 meeting. CACS and stakeholders acknowledge the work the NOP as done thus far, noting that the table was comprehensive regarding conflicts-of-interest. However, it was also noted that this isn't the only risk outlined by the governing documents NOP adheres to when carrying out their accreditation activities. Based on our review and the public comments received during the Spring 2022 meeting, the CACS recommends that the NOP revise the table to include the following areas related to the risk of impartiality in regard to delivery of the services they provide and oversight of certifiers:

- Analysis of the risk related to the steps in the accreditation process being implemented in a manner that is biased or unfair (ISO/IEC 17011:2017 §4.4.1 and §3.10)
- Analysis of the risks to impartiality created by the organizational structure of the accreditation body within a larger governmental organization, as well as certifiers that operate within larger governmental organizations (e.g., state departments of agriculture and state organic programs) (ISO/IEC 17011:2017 §4.4.2)
- Analysis of pressures created from the same agency acting as the standard setting body and the accreditation body. (ISO/IEC 17011:2017 §4.4.2)

- Analysis of risks created if top management reduced its commitment to quality (ex. Budget pressures, political pressures) (ISO/IEC 17011:2017 §4.4.3)
- Risks related to not maintaining, nor making public (not in NOP 2000) a documented Impartiality Policy (ISO/IEC 17011:2017 §4.4.3)
- Analysis of risks related to not implementing a formal, public process that allows interested parties to be involved in safeguarding impartiality (ISO/IEC 17011:2017 §4.4.5)
- Analysis of risks related to not conducting an on-going review of topics related to impartiality (ISO/IEC 17011:2017 §4.4.6)
- Procedures outlined in NOP 2000 and 1009 do not address how NOP has eliminated or minimized ALL risks. Conflicts of interest are covered but other types of risks to impartiality are not addressed. (ISO/IEC 17011:2017 §4.4.7)
- Top management to “review any residual risk to determine if it is within acceptable levels” is not addressed in Accreditation Policies and Procedures (NOP 2000). (ISO/IEC 17011:2017 §4.4.8) – see additional comments below regarding additional clarification to this area in NOP 1009
- The requirement that NOP not provide accreditation in cases of unacceptable risk to impartiality (ISO/IEC 17011:2017 §4.4.9)
- Comprehensive discrimination analyses including non-discriminatory practices related to policies and processes, as well as that access to accreditation service not be conditional (ISO/IEC 17011:2017 §4.4.10)

Additionally, the CACS recommends that the NOP clarify the following areas in NOP 1009:

- Risk evaluation scale:
 - Based on this scale, action is not a mandatory requirement and therefore introduces subjectivity. Further clarification is recommended on the criteria used to make this determination to better understand where various circumstances may fall on the scale.
 - It is unclear who is making the initial determination regarding the risk and where it falls on the scale. NOP 1009 does state that if the “potential conflict is ‘possible’ or ‘likely’...NOP management reviews the specific circumstances...”. Further clarification is recommended on who is making the initial determination. (ISO/IEC 17011:2017 §4.4.8)
 - Again, as stated previously, this scale appears only to be applied to “conflicts of interest” but not to other risks such as impartiality. Further clarification is recommended to broaden this scale to other types of risk.
- Favoritism, bias, or discrimination:
 - This potential conflict area focuses on equal access to information. However, there are other ways that favoritism, bias, or discrimination can be introduced into the certification and accreditation process. Further clarification and examples are recommended on other types of favoritism, bias, or discrimination such as policy determinations and unfair enforcement procedures.
- Undue influence
 - This potential conflict focuses on undue influence caused by “third parties.” However, undue influence may also be caused by accreditation program personnel. Further clarification and examples are recommended to be included that address undue influence imparted by auditors, reviewers, or other decision makers.
 - Additionally, in the Control Measure column it is stated that the “NOP adheres to the USDA organic regulations in the decision-making process”, and the Monitoring Method column says to “compare the decision with previous decisions to confirm consistency with the requirements.” Achieving this goal becomes challenging when the USDA organic regulations lack clarity in some areas and are knowingly applied inconsistently

by certifiers. Further clarification and examples are recommended for how the NOP will proceed in known areas of inconsistencies.

- Due process
 - This potential conflict focuses on due process as it relates to the appeals process. However, there may be other aspects of implementing a regulatory process where due process must be incorporated. Further clarification and examples are recommended for how due process is included throughout each element of its quality system management (see Organic Produce Wholesalers Coalition (OPWC's) [Spring 2022 comments](#) for specific examples).

The CACS' discussion and some stakeholder comments included additional areas, that, as stated prior, are important but were not part of this review. The CACS would like to capture these areas for potential future work by the Board and/or NOP. These areas are:

- A tool for certifiers to compare accreditation findings
- Systemic sources of conflicts-of-interest such as organic operators choosing their own certifiers and paying them for certification, discrepancies between certifiers in interpretation and implementation of the rule, and operators shopping for certifiers that may be more in line with the operator's preferred interpretation of organic regulations.
- Clarification and revision to the standards on a routine basis to resolve known inconsistencies and divergent certification practices in order to fully ensure strong and consistent oversight of certifiers.

Subcommittee Proposal

CACS recommends that NOP revise the Risk Mitigation Table to include the areas outlined above and that the NOP incorporate the Risk Mitigation Table (NOP 1009) into their procedures.

Subcommittee Vote

Motion to accept the proposal on the NOP's Risk Mitigation Table

Motion by: Kyla Smith

Second: Nate Powell-Palm

Yes: 6 No: 0 Abstain: 0 Recuse: 0 Absent: 0